

आयकर अपीलिय अ धकरण “ए” न्यायपीठ पुणे में ।  
**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, PUNE**

**BEFORE SHRI S.S.GODARA, JM  
AND SHRI DR. DIPAK P. RIPOTE, AM**

आयकर अपील सं. / **ITA No.215/PUN/2020**  
**निर्धारण वर्ष / Assessment Year : 2002-03**

Manganga Sahakari Sakhar Karkhana Ltd.,  
A/p. Sonarsiddhanagar,  
Tal. Atpadi,  
Dist -Sangli,  
Pin - 415 301

PAN : AAAAMI794J

.....अपीलार्थी / Appellant

बनाम / V/s.

DCIT, Circle, Sangli

.....प्रत्यर्थी / Respondent

Assessee by : None  
Revenue by : Shri Arvind Desai

सुनवाई की तारीख / Date of Hearing : 15.06.2022  
घोषणा की तारीख / Date of Pronouncement : 28.07.2022

**आदेश / ORDER**

**PER S. S. GODARA, JM :**

1. This assessee's appeal for A.Y. 2002-03 is directed against the CIT(A)-1, Kolhapur's order dated 12/12/2019 passed in case No. SLI/ 195 & 196/11-12 involving proceeding u/s. 143(3) of the Income Tax Act, 1961; in short "the Act".

Case called twice. None appears at assessee's behest. It is accordingly proceeded ex-parte.

2. We note at the outset that the assessee's sole substantive grievance raised in the instant appeal challenging correctness of both the lower authorities action disallowing the amount in issue of Rs.36,24,008/- representing sale of sugar at concessional rate to its members. The same is found to be no more res-integra as tribunal's co-ordinate bench in ITA No. 668/pun/2014 Shivajirao Nilangekar Patil SSK Ltd. Vs DCIT dated 16.09.2019 restoring the very dispute to the Assessing Officer as follows.

*"8. The second ground is against the confirmation of disallowance of Rs.36,294/- on account of sugar sold to members at concessional price.*

*9. Having heard both the sides and gone through the relevant material on record, it is observed that the AO made addition of the difference between the market price and the concessional price at which sugar (final product) was given to farmers and cane growers. In this regard, it is observed that this issue has been considered by the Hon'ble Supreme Court in the case of CIT Vs. Krishna Sahakari Sakhar Karkhana Limited (2012) 27 taxmann.com 162 (SC). Vide judgment dated 25-09-2012, the Hon'ble Supreme Court noticed that the difference between the average price of sugar sold in the market and the price of sugar sold by the assessee to its members at ITA No.668/PUN/2014 Shivajirao Nilangekar Patil Sahakari Sakhar Karkhana Ltd., concessional rate was taxed by the Department under the head "Appropriation of profit". The Hon'ble Summit Court remitted the matter to the CIT(A) for considering, inter alia, : "whether the abovementioned practice of selling sugar at concessional rate has become the practice or custom in the Co-operative sugar industry?; and whether any Resolution has been passed by the State Government supporting the practice?; The CIT(A) would also consider on what basis the quantity of the final product, i.e. sugar, is being fixed for sale to farmers/cane growers/Members each year on month-to-month basis, apart from others from Diwali?" The issue under consideration can*

*be decided by an appropriate lower authority only on the touchstone of the relevant factors noted in the above judgment. In our considered opinion, it would be just and fair if the impugned order on this score is set aside and the matter is restored to the file of AO, instead of to the CIT(A), for fresh consideration as to whether the difference between the average price of sugar sold in the market and that sold to members at concessional rate is appropriation of profit or not, in the light of the directions given by the Hon'ble Supreme Court in the case of Krishna Sahakari Sakhar Karkhana Limited (supra). Restoration to the AO ITA No.668/PUN/2014 Shivajirao Nilangekar Patil Sahakari Sakhar Karkhana Ltd., is necessitated because, following the judgment of the Hon'ble Apex Court in the case of Tasgaon Taluka S.S.K. Ltd. (supra), we have remitted the issue of payment of excessive price to the file of AO, and as such, the instant issue cannot be sent to ld. CIT(A) as it would amount to simultaneously sending one part of the same assessment order to the AO and other to the CIT(A), which is not appropriate. We order accordingly.”*

3. Learned DR could hardly pinpoint any distinction on facts and law before us. We thus adopt very course of action in the assessee's instant sole substantive grievance in identical terms. Ordered accordingly.

4. This assessee's appeal is allowed for statistical purposes in above terms.

Order pronounced in the Open Court on this 28<sup>th</sup> day of July, 2022.

**Sd/-**  
**(DR.DIPAK P.RIPOTE)**

लेखा सदस्य/**ACCOUNTANT MEMBER**  
पुणे / Pune; दिनांक / Dated : 28<sup>th</sup> July, 2022.  
Ashwini

**Sd/-**  
**(S.S. GODARA)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Kolhapur.
4. The Pr.CIT-1, Kolhapur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File. आदेशानुसार / BY ORDER,  
// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

S.No.	Details	Date	Initials
1	Draft dictated on	15.06.2022	
2	Draft placed before author	28.07.2022	
3	Draft proposed & placed before the Second Member		
4	Draft discussed/approved by Second Member		
5	Approved Draft comes to the Sr. PS/PS		
6	Kept for pronouncement on		
7	Date of uploading of Order		
8	File sent to Bench Clerk		
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R.		
11	Date of Dispatch of order		