

आयकर अपीलीय अधिकरण “ए” न्यायपीठ पुणे में।
IN THE INCOME TAX APPELLATE TRIBUNAL “A”
BENCH, PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपीलसं. / ITA No.395/PUN/2018
निर्धारणवर्ष / Assessment Year : 2000-01

Rajarambapu Patil SSK Ltd., Sakharale, Tal: Walwa, Dist. Sangli – 415414. PAN: AAAAR 0790 D	Vs .	The DCIT, Circle-2, Sangli.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Prasanna Joshi – AR
Revenue by	Shri S P Walimbe – DR
Date of hearing	12/08/2022
Date of pronouncement	29/08/2022

आदेश/ ORDER

Per S.S.Godara, JM:

This assessee’s appeal for Assessment Year 2000-01 is directed against the Commissioner of Income Tax(Appeals)-1, Kolhapur’s order dated 27.12.2017 passed in appeal no.Sli/413/2006-07, in proceedings u/s.143(3) of the Income Tax Act, 1961 [in short “the Act”].

Heard both the parties. Case files perused.

2. The assessee raises the following substantive grounds in the instant appeal.

“1. On the facts and in the circumstances of the case, the learned CIT(A) erred in confirming loss incurred by appellant of Rs.1,89,82,242 on diversion of sugarcane to other sugar factories.

2. On the facts and in the circumstances of the case, the Ld.CIT(A) has wrongly ignored the submissions and supporting

evidences which are already on records and has come to wrong inference and recorded wrong findings in the matter.

3. *Ld. CIT(A) erred in concluding that the appellant was itself responsible for the loss incurred on diversion of sugarcane.*

4. *Without prejudice to all of the above, on the facts and in the circumstances of the case, it may be held that the loss incurred is an allowable deduction while computing profits and gains of business of the appellant under Chapter IV-D of the Act.”*

3. It emerges at the outset that the instant appeal raises the first and foremost issue of legality of the impugned proceedings itself since the same have arisen on account of the CIT(A)-Kolhapur's remand order dated 04.08.2005 issuing directions to the Assessing Officer for examining the assessee's losses arising from diversion of sugarcane to other sugar factories. The CIT(A) first round remand directions form part of the case records before us at pages 26 to 98 in the assessee's paper book.

4. Learned Departmental Representative has raised a very strong objection that the instant legal issue could not be allowed to be raised in light of the assessee's pleadings in this second round of consequential proceedings.

5. We find no merit in the Revenue's foregoing technical objections. Hon'ble jurisdictional high court's landmark decision in [1993] 199 ITR 351 (Bom) Ahmedabad Electricity Company Limited Vs. CIT has settled the law long back that the clinching statutory expression in section 254(1) defining contours of this

tribunal's jurisdiction "may pass such order as it thinks fit" has to be interpreted in its widest sense. This is coupled with their lordship's yet another decision 194 ITR 548 (Bom) Inventors Industrial Corporation Vs. CIT and P.V.Doshi Vs. CIT 113 ITR 22 (Guj) holding that a legal issue going to route of the matter could very well allowed to be raised in consequential proceedings as well as since there is no waiver of jurisdiction in income-tax proceedings.

6. We keep in mind the foregoing settled legal proposition and note that the Assessing Officer had framed his first round assessment making the impugned disallowance of the assessee's business loss of Rs.1,89,82,242/- arising from diversion of sugarcane to other factories. The assessee appears to have preferred its appeal before the CIT(A) Kolhapur; who in turn, remitted the issue back to the Assessing officer in his first round lower appellate order dated 04.08.2005. We make it clear that his remand directions are contained in para 17.4.1 page 94 in assessee's paper book. Such a course of action is admittedly not available to the CIT(A)'s as the clinching statutory expression "or he may set aside" in sec 251(1)(a) of the Act stood omitted by the Finance Act, 2001 w.e.f 01.06.2001. We conclude in this factual backdrop that once the CIT(A) had committed a patent illegality in setting aside the instant issue back to the Assessing Officer, the instant round of consequential proceedings

deserve to be quashed as non-est in the eyes of the law. We order accordingly. All other pleadings on merits are rendered academic.

7. This assessee's appeal is allowed in above terms.

Order pronounced in the open Court on 29th August, 2022.

Sd/-
(DR. DIPAK P. RIPOTE
ACCOUNTANT MEMBER

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 29th Aug, 2022/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

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