आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ

IN THE INCOME TAX APPELLATE TRIBUNAL,
'' A" BENCH, AHMEDABAD

BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA Nos. 506-507/AHD/2018**
निर्धारण वर्ष/**Asstt. Years: 2012-2013 & 2014-2015**

Vadodara District Co-op. Sugarcane Growers Union Limited, At & Post Gandhara, Tal. Karjan, Dist. Vadodara-391201. **PAN: AAAAV0287H**	Vs.	The Deputy Commissioner of Income Tax, Circle-3(1), Vadodara.

(Applicant)		**(Respondent)**

Assessee by :	Ms Amrin Pathan, A.R
Revenue by :	Shri Vijay Kumar Jaiswal, CIT. D.R with Shri Alpesh Parmar, Sr. D.R

सुनवाई की तारीख/**Date of Hearing : 28/09/2022**
घोषणा की तारीख /**Date of Pronouncement: 09/11/2022**

आदेश/**O R D E R**

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned two appeals have been filed at the instance of the Assessee against the separate orders of the Learned Commissioner of Income Tax (Appeals)-3, Vadodara, dated 15/12/2017 & 18/12/2017 arising in the matter of assessment order passed under s. 263 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Years 2012-13 & 2014-15.

2. The assessee has raised following grounds of appeal:

All the grounds of appeal in this appeal are mutually exclusive and without prejudice to each other.

Disallowance of Expenditure on Purchase of Sugarcane;

1. The learned Commissioner of Income Tax (Appeals)-3, Vadodara ["the CIT(A)"] erred in fact and in law in confirming the action of the learned Deputy Commissioner of Income Tax. Circle-3(l), Vadodara ("the AO") in disallowing the expenditure incurred towards purchase of sugarcane amounting to Rs. 37,65,02,637/-.

2. The learned C1T(A) erred in fact and in law in confirming the action of the learned AO in disallowing the purchase expenditure incurred b| the Appellant over and above the Statutory Minimum Price (SMP) of sugarcane. without appreciating the fact that the same was an actual expenditure incurred by the Appellant.

3. The learned C1T(A) erred in fact and in law in confirming the action of the learned AO in treating the SMP of the sugarcane as the purchase expenditure incurred despite the Tact that the same was not the final consideration paid by the Appellant.

4. The learned CIT(A) erred in fact and in law in confirming he action of the learned AO in computing the amount of expenditure allowable on ad hoc basis without appreciating the actual expenditure incurred towards purchase of the sugarcane.

5. The learned CIT(A) erred in fact and in law in confirming the action of the learned AO in treating the expenditure, incurred towards purchase of sugarcane as diversion of profits.

6. The learned CIT(A) erred in fact and in law in confirming the action of the learned AO in not appreciating the provisions of section 37(1) of the Income Tax Act, 1961 ("the Act").

7. The learned CIT(A) erred in fact and in law in confirming the action of the learned AO in not appreciating the fact that the excess expenditure incurred by the Appellant is in accordance ||ith the commercial!} accepted business practices and is therefore a genuine business expenditure of the Appellant.

8. The learned CIT{A) erred in fact and in law in confirming the action of the learned AO, in making the disallowance merely on the basis of assumptions, surmises and conjectures.

9. Without prejudice to above, the learned C1T(A) erred in fact and in law in confirming the action of the learned AO in not allowing the deduction of the expenditure incurred in the succeeding year.

Other Grounds;

10. The learned C1T(A) erred in fact and in law in confirming the action of the learned AO in charging interest u/s 234B of the Act.

11. The learned CIT(A) erred in fact and in law in confirming the action of the learned AO in charging interest u/s 234C of the Act.

12. The learned C1T(A) erred in fact and in law in confirming the action of the learned AO in initiating penalty proceedings u/s 27I{1)(c) of the Act.

3. The interconnected issue raised by the assessee vide ground Nos. 1 to 9 of its appeal is that the learned CIT-A erred in confirming the disallowance of purchase cost of sugarcane over and above SMP for Rs. 37,65,02,637/- only.

4. Brief facts of the case are that the assessee is a Cooperative Society, running Cooperative Sugar Mill, and engaged in production of sugar and its bye-products. The assessee filed its return of income for AY 2012-13 on 29.09.2012 declaring at 'Nil' income. During the assessment proceedings, the AO noted that the assessee was making payment to sugarcane supplier/agriculturists over and above the SMP declared by the Central Government for particular season (crushing period) in the year. The AO was of the view that the amount paid over and above the SMP is not cost of purchase but the same represents the distribution of profit. Thus, the additional amount paid to the sugarcane producer was not incurred wholly and exclusively for the purpose of business, and therefore, not admissible as deduction under section 37 of the Act. Therefore, the AO made disallowance of Rs. 37,65,02,637/- being amount incurred over and above the SMP.

5. On appeal by the assessee, the learned CIT(A) confirmed the action of the AO.

6. Being aggrieved by the order of the ld. CIT-A, the assessee is in appeal before us.

7. The ld. AR of the assessee before us submitted that the grounds of appeal raised by the assessee are now covered by the decision of Hon'ble Supreme Court in the case of CIT v. Tasgaon Taluka S. S. K. Ltd, reported viz. (2019) 103 taxmann.com 57 (SC), where the Hon'ble supreme court in identical facts restored the issue to the file of the AO by holding that the amount paid to the sugarcane producer over and above SMP per se does not represent distribution of profit. As such only the part/ component of profit which included in determining the SMP

/Additional price would be said to be an appropriation of profit and for that an exercise is to be done by the AO by calling upon the assessee to produce the statement of accounts, balance sheet and the material supplied to the State Government for the purpose of fixing the final price/additional price/SMP. Accordingly, the learned AR prayed to restore the issue to the file of the AO for fresh adjudication in the light of order of Hon'ble Supreme Court in case of CIT v. Tasgaon Taluka S. S. K. Ltd *(supra).*

8. On the other hand, the ld. DR for the revenue fairly agreed that the issues/grounds of appeal raised by the assessee may be restored to the file of the AO for considering the same afresh in accordance with the decision of Hon'ble Apex Court, in CIT v. Tasgaon Taluka S.S.K. Ltd (supra).

9. We have heard the rival contentions of both the parties and have gone through the materials available on record, orders of the lower authorities below. The AO made addition in the assessment order by taking view that the amount paid /incurred by assessee over and above the SMP determined by Central Government is distribution of profit and not incurred wholly and exclusively the purpose of income. The additions were upheld by learned CIT (A). Before us, both the learned AR and DR agreed that the issues raised in the present appeals are directly covered by the decision of Hon'ble Apex Court in CIT v. Tasgaon Taluka S. S. K. Ltd (supra) where the learned bench of Hon'ble Supreme Court held as under:

> ***9.*** *We have heard learned counsel appearing on behalf of the respective parties at great length.*
> ***9.1*** *A short question which is posed before this Court for consideration is, whether the sugarcane purchase price paid to the cane growers by the assessee-society more than the SMP and is determined under Clause 5A of the Control Order, 1966, can be said to be the sharing of profit/appropriation of profit or is allowable as expenditure?*
> ***9.2*** *While considering the aforesaid issue/question, the mechanism for determining the SMP and SAP under the Control Order, 1966 is required to be referred to and considered. As per Clause 3 of the Control Order, 1966, the Central Government may, after consultation with such authorities, bodies or associations as it may deem fit, by notification in the official Gazette, from time to time, fix the minimum price of sugarcane to be paid by producers of sugar or their agents for the sugarcane purchased by them. While fixing/determining the SMP under Clause 3 of the Control Order, 1966, the Central Government is required to consider the following aspects:*

"(a) the cost of production of sugarcane;

(b) the return to the grower from alternative crops and the general trend of prices of agricultural commodities;

c the availability of sugar to the consumer at a fair price;

d the price at which sugar produced from sugarcane is sold by producers of sugar; and

e the recovery of sugar from sugarcane."

***9.3** As per Explanation, different prices may be fixed for different areas or different qualities or varieties of sugarcane. As per sub-clause 2 of Clause 3, no person shall sell or agree to sell sugarcane to a producer of sugar or his agent, and no such producer or agent shall purchase or agree to purchase sugarcane, at a price lower than that fixed under sub-clause 1 of Clause 3. Clause 5A, which has been inserted in the year 1974 provides for an additional price to be paid for sugarcane purchased on or after 01.10.1974. It provides that where a producer of sugar or his agent purchases sugarcane, from a sugarcane grower during each sugar year, he shall, in addition to the minimum sugarcane price fixed under Clause 3, pay to the sugarcane grower an additional price, if found due in accordance with the provisions of the Second Schedule annexed to the Control Order, 1966. How the additional price under Clause 5A of the Control Order, 1966 is to be determined is provided in the Second Schedule, which reads as under:*

"SECOND SCHEDULE
[See Clause 5-A]

The amount to be paid on account of additional price (per quintal of sugarcane) under Clause 5-A by a producer of sugar shall be computed in accordance with the following formula, namely :

$$X = \frac{R - L + A - B}{2C}$$

Explanation— In this formula.

1 'X' is the additional price in rupees per quintal of sugarcane payable by the producer of sugar to the sugarcane grower.

2 'R' is the amount in rupees of sugar produced during the sugar year excluding the excise duty paid or payable to the factory by the purchaser.

3 'L' is the value in rupees of sugar produced during the sugar year, as calculated on the basis of the unit cost per quintal ex-factory, exclusive of excise duty, determined with reference to the minimum sugarcane price fixed under Clause 3, the final working results of the year and the Cost Schedule and return recommended by the such authority as the Central Government may, specify from time to time.

4 'A' is the amount found payable for the previous year but not actually paid [vide sub-clause (9)].

5 'B' is the excess or shortfall in realisations from actual sales of the unsold stocks of sugar produced during the sugar year, as on 30th day of September [vide item 7(ii) below] which is carried forward and adjusted in the sale realisations of the following year.

6 'C' is the quantity in quintals of sugarcane purchased by the producer of sugar during the sugar year.

7 The amount 'R' referred to in Explanation 2 shall be computed as under, namely:—

i the actual amount realised during the sugar year; and

ii the estimated value of the unsold stocks of sugar held at the end of 30th September, calculated in regard to free sugar stocks at the average rate of sales, namely, during the fortnight 16th to 30th September and in regard to levy sugar stocks at the notified levy prices as on the 30th September.

Explanation.—In this Schedules "Sugar" means any form of sugar containing more than ninety per cent sucrose."

***9.4** At this stage, it is required to be noted that Clause 5A was inserted in the year 1974 on the basis of the recommendations made by the Bhargava Commission. As observed by this Court in the case of Maharashtra Rajya Sahkari Sakkar Karkhana Sangh Ltd.(supra), the Bhargava Commission had recommended payment of additional price at the end of the season on 50:50 profit sharing basis between growers and factories, to be worked out in accordance with Second Schedule to the Control Order, 1966. It is also required to be noted that the additional price is fixed/determined under Clause 5A at the end of the season and as per Second Schedule to the Control Order, 1966. Therefore, at the time when the additional purchase price is determined/fixed under Clause 5A, the accounts are settled and the particulars are provided by the concerned cooperative society what will be the expenditure; what can be the profit etc. It is required to be noted that so far as the SMP determined under Clause 3 of the Control Order, 1966 by the Central Government is concerned, it is at the beginning of the season and while determining/fixing the SMP by the Central Government, the afore-stated things are required to be considered. Therefore, the difference of amount between the SMP determined under Clause 3 and the SAP/additional purchase price determined under Clause 5A has an element of profit and/or one of the components would be the profit. The entire scheme/mechanism while determining the additional purchase price under Clause 5A has been dealt with and considered by this Court in detail in the case of Maharashtra Rajya Sahkari Sakkar Karkhana Sangh Ltd. (supra). In the said decision, it is observed that the additional purchase price/SAP is paid at the end of the season; the Bhargava Commission had recommended payment of additional price at the end of season on 50:50 profit sharing basis between the growers and factories to be worked out in accordance with Second Schedule to the Control Order, 1966; that the additional purchase price comprises of not only the cost of cultivation, but profit as well; the price thus being paid on recovery of canes and profits made from sale of sugar is not minimum but optimum price which is paid to a cane grower. The additional cane price or additional State fixed price are paid as a matter of incentive. The entire price structure of cane is founded on two basic factors, one, the recovery percentage and other the incentive for sharing profit arrived at by working out receipt minus expenditure. Therefore, to the extent of the component of profit which will be a part of the final determination of SAP and/or the final price/additional purchase price fixed under Clause 5A would certainly be and/or said to be an appropriation of profit. However, at the same time, the entire/whole amount of difference between the SMP and the SAP per se cannot be said to be an appropriation of profit. As observed hereinabove, only that part/component of profit, while determining the final price worked out/SAP/additional purchase price would be and/or can be said to be an appropriation of profit and for that an exercise is to be done by the Assessing Officer by calling upon the assessee to produce the statement of accounts, balance sheet and the material supplied to the State Government for the purpose of deciding/fixing the final price/additional purchase price/SAP under Clause 5A of the Control Order, 1966. Merely because the higher price is paid to both, members and non-members, qua the members, still the question would remain with respect to the distribution of profit/sharing of the profit. So far as the non-members are concerned, the same can be dealt with and/or considered applying Section 40A (2) of the Act, i.e., the Assessing Officer on the material on record has to determine whether the amount paid is excessive or unreasonable or not. However, this is not the subject matter in the present appeals. We are restricting the present appeals qua the sugarcane purchase price paid by the society to the cane growers above the SMP determined under Clause 3 and the difference of sugarcane purchase price between the price determined under Clause 3 and Clause 5A of the Control Order, 1966.*

> ***9.5*** *Therefore, the Assessing Officer will have to take into account the manner in which the business works, the modalities and manner in which SAP/additional purchase price/final price are decided and to determine what amount would form part of the profit and after undertaking such an exercise whatever is the profit component is to be considered as sharing of profit/distribution of profit and the rest of the amount is to be considered as deductible as expenditure.*

9.1 Respect fully following the aforesaid decision of the Hon'ble Apex Court and considering the fact that both the parties were agreed to restore the issue to the file of the AO, we restore the issue to the file of the AO to decide the issue afresh in accordance with the decision to Hon'ble Supreme Court and in accordance with law. Needless to direct that before passing the order, the AO will consider the facts already available on record and shall grant an opportunity of hearing to the assessee. The assessee is also directed to provide all the necessary details, evidences and information to the AO in accordance with the direction of Hon'ble Apex Court in the case of Tasgaon Taluka (supra). Hence the ground of the appeal of the assessee is hereby allowed for statistical purposes.

9.2 The other issues raised by the assessee are either consequential or premature to decide. Therefore, the same are being dismissed as infructuous.

9.3 In the result, the appeal of the assessee is partly allowed for statistical purposes.

Coming to ITA No. 507/Ahd/2018 an appeal by the assessee for A.Y. 2014-15.

10. The assessee has raised the following grounds of appeal:

> *All the grounds of appeal in this appeal are mutually exclusive and without prejudice to each other.*
>
> ***<u>Disallowance of Expenditure on Purchase of Sugarcane;</u>***
>
> *1. The learned Commissioner of Income Tax (Appeals)-3, Vadodara ["the CIT(A)"] erred in fact and in law in confirming the action of the learned Deputy Commissioner of Income Tax. Circle-3(l), Vadodara ("the AO") in disallowing the expenditure incurred towards purchase of sugarcane amounting to Rs. 15,84,31,347/-.*

2. The learned C1T(A) erred in fact and in law in confirming the action of the learned AO in disallowing the purchase expenditure incurred b| the Appellant over and above the Statutory Minimum Price (SMP) of sugarcane. without appreciating the fact that the same was an actual expenditure incurred by the Appellant.

3. The learned C1T(A) erred in fact and in law in confirming the action of the learned AO in treating the SMP of the sugarcane as the purchase expenditure incurred despite the Tact that the same was not the final consideration paid by the Appellant.

4. The learned CIT(A) erred in fact and in law in confirming he action of the learned AO in computing the amount of expenditure allowable on ad hoc basis without appreciating the actual expenditure incurred towards purchase of the sugarcane.

5. The learned CIT(A) erred in fact and in law in confirming the action of the learned AO in treating the expenditure, incurred towards purchase of sugarcane as diversion of profits.

6. The learned CIT(A) erred in fact and in law in confirming the action of the learned AO in not appreciating the provisions of section 37(1) of the Income Tax Act, 1961 ("the Act").

7. The learned CIT(A) erred in fact and in law in confirming the action of the learned AO in not appreciating the fact that the excess expenditure incurred by the Appellant is in accordance ||ith the commercial!} accepted business practices and is therefore a genuine business expenditure of the Appellant.

8. The learned CIT{A) erred in fact and in law in confirming the action of the learned AO, in making the disallowance merely on the basis of assumptions, surmises and conjectures.

9. Without prejudice to above, the learned C1T(A) erred in fact and in law in confirming the action of the learned AO in not allowing the deduction of the expenditure incurred in the succeeding year.

Other Grounds;

10. The learned C1T(A) erred in fact and in law in confirming the action of the learned AO in charging interest u/s 234B of the Act.

11. The learned CIT(A) erred in fact and in law in confirming the action of the learned AO in charging interest u/s 234C of the Act.

12. The learned C1T(A) erred in fact and in law in confirming the action of the learned AO in initiating penalty proceedings u/s 27I{1)(c) of the Act.

11. At the outset, we note that the issues raised by the Assessee in its appeal for the AY 2014-15 are identical to the issue raised by the assessee in ITA No. 506/AHD/2018 for the assessment year 2012-13. Therefore, the findings given in ITA No. 506/AHD/2018 shall also be applicable for the year under consideration i.e. A.Y. 2014-15. The appeal of the Assessee for the assessment 2012-13 has been

decided by us vide paragraph no.9 of this order in partly in favour of the assessee for statistical purposes. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2012-13 shall also be applied for the year under consideration i.e. AY. 2014-15. Hence, the grounds of appeal filed by Assessee for the AYs 2014-15 are hereby partly allowed for statistical purposes.

12. In the result, the appeal of the assessee is partly allowed for statistical purposes.

13. In the combine result, both the appeals of the assessee are partly allowed for statistical purposes.

Order pronounced in the Court on 09/11/2022 at Ahmedabad.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

(True Copy)

Ahmedabad; Dated 09/11/2022
Manish