

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'B': NEW DELHI**

**BEFORE,  
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.2410/Del/2016  
(ASSESSMENT YEAR 2011-12)**

The General Manager Kisan Sahkari Chini Mills Ltd., Najibabad, District-Bijnor PAN-AAAAK 1643P	Vs.	ACIT Circle-Najibabad
<b>(Appellant)</b>		<b>(Respondent)</b>

**ITA No.2866/Del/2016  
(ASSESSMENT YEAR 2011-12)**

Dy. CIT Circle Najibabad Najibabad	Vs.	Kisan Sahkari Chini Mills Ltd., Najibabad, District-Bijnor PAN-AAAAK 1643P
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Mr. S.K. Arora, CA
Respondent by	Mr. Vivek Kumar Upadhyay, Sr. DR

Date of Hearing	21/08/2023
Date of Pronouncement	13/09/2023

**ORDER**

**PER M. BALAGANESH AM:**

These cross appeals in ITA No.2410/Del/2016 by Assessee as well as in ITA No.2866/Del/2016 by the Revenue are filed against the common order of Learned Commissioner of Income Tax (Appeals), Moradabad [Ld. CIT(A)], for short], dated 03/03/2016 for Assessment Year 2011-12.

2. Since these are cross appeals, they are taken up together and disposed of by this common order for the sake of convenience.
3. Let us first take up the assessee's appeal.
4. The assessee has raised the following grounds of appeal:

*“1 That the learned Commissioner of Income Tax (Appeal) Moradabad has erred on fact and in law in confirming the action of A.O. in disallowing Rs.1000000.00 as expenses incurred/attributed for earning the interest income of Rs.30468223.00 against the claim U/s 80P(2)(d) of IT Act 1961.*

*2. That the learned CIT(Appeal) Moradabad has also erred on facts and in law in confirming the action of AO in restricting the claim U/S 80P(2)(d) of IT Act 1961 to Rs. 29468223.00 instead of allowing the claim U/s. 80P(2)(d) at Rs.30468223.00 thus allowing the claim short by Rs 1000000.00.*

*3. That the learned CIT (Appeal) Moradabad has also erred on facts and in law in confirming the action of AO in making addition of Rs.1059457.00 in the closing stock of free. levy sugar and molasses on account of education cess and higher education cess on excise duty U/s 145A.*

*4. That the learned CIT(Appeal) Moradabad has also erred on facts and in law in confirming the action of A.O. in not allowing the benefit of education cess and higher education cess on closing stock of free, levy*

*sugar and molasses amounting to Rs.401869.00 paid before the due date of filing the return.*

*Without prejudice to the above the ld.CIT(A) Moradabad has also erred on facts and in law in confirming the action of AO in not allowing the benefit of addition on account of education cess and higher education cess on closing stock of free, levy sugar and molasses amounting to Rs 981560.00 made in A.Y 2010-11.*

*5. The appellant craves to leave, add, alter, amend or vary from the above grounds of appeal at or before the time of hearing.*

5. We have heard the rival submissions and perused the materials available on record. The assessee is a Cooperative Society and engaged in the business of manufacturing & trading of sugar & its by-products. The return of income for AY 2011-12 was filed by the assessee on 27/09/2011 declaring nil income after availing deduction u/s 80(P)(2)(d) to the extent of Rs.63,27,070/-, restricting to the gross total income. Actually the assessee quantified the claim of deduction u/s 80(P)(2)(d) of the Act at Rs.3,04,68,223/- but it restricted the same to the extent of gross total income of Rs.63,27,070/-. The Ld. AO show caused the assessee stating that as per the decision of Hon'ble Allahabad High Court in the case of CIT vs. Dugdh Utpadak Sangh Ltd., reported in 156 taxman 72 (All), the deduction u/s 80(P)(2)(d) of the Act is allowable only on net income and not on gross income. The Ld. AO, accordingly, directed

the assessee to furnish the details of all expenses which can be attributed to earning of interest income in respect of which deduction u/s 80P (2)(d) of the Act is claimed. The assessee responded that it had not incurred single expenditure for earning interest from Co-operative institutions & bank amounting to Rs.3,04,68,223/- and, hence, the deduction would be allowable in its entirety as was allowed to the assessee in earlier years. The Ld. AO, however, ignoring the submissions estimated a sum of Rs.10,00,000/- as expenses attributable for earning the interest income and made disallowance u/s 80P(2)(d) of the Act for Rs.10,00,000/- and restricted the claim of deduction only to Rs.2,94,68,223/- (3,04,68,223-10,00,000). The Ld. CIT(A) upheld the action of the AO.

6. At the outset, we find that the assessee had given loans to three Co-operative Societies and earned interest income thereon. Further the assessee has made certain fixed deposit with District Co-operative Bank and earned interest income thereon. The details of the same are as under:

Sr. No.	Name Of Co-op. Society	Loan made	Interest amount
1.	Kisan Sahkarik Chini Mills Ltd. Ghost	2,50,00,000/-	84,93,380/-
2.	Kisan Sahkari Chini Mills Ltd., Aura	1,00,00,000/-	33,93,112/-
3.	Kisan Sahkari Chini Mills Ltd., Rasa	2,50,00,000/-	84,93,380/-
4.	District Co-operative Bank		1,00,88,351
Total interest			3,04,68,223/-

7. These loans and deposits were carried forward from earlier years. The loan has been given to the above Co-operative Societies by the assessee at the interest rate of cash credit limit on which the bank has given loan to the assessee. It was submitted that assessee has not claimed any exempt income and hence, there is no question of applicability of provisions of section 14A of the Act as was made by the Ld. CIT(A). We have gone through the schedule of income enclosed in the financial statements and we have confirmed this fact. Hence, there cannot be any disallowance expenses u/s 14A of the Act to the extent of Rs.10 lacs. In any case, this disallowance has been made only on estimated basis which has no legs to stand in the eyes of law. There is no scope for reducing the claim of deduction 80P(2)(d) of the Act from Rs.3,04,68,223/- to Rs. 2,94,68,223/-. In any event, the assessee had not claimed

deduction u/s 80P(2)(d) of the Act either for Rs.3,04,68,223/- or for Rs.2,94,68,223/- In the instant case, we find that assessee had restricted its claim u/s 80P(2)(d) of the Act only to the extent of gross total income of Rs.63,27,070/-. Hence, entire exercise carried by the lower authorities in this regard is devoid of merits and purely academic. Accordingly, grounds No.1 & 2 raised by the assessee are allowed.

8. With regard to other grounds of the assessee, the same are concerning addition made u/s 145A of the act.

9. We have heard rival submissions and perused the materials available on record. The assessee as per its accounting policy enclosed in the financial statements had been consistently following the method of valuation of its closing stock as under:

- a. Free Sugar-At cost price or market price whichever is lower
- b. Levy sugar-At cost price or market price whichever is lower
- c. Molasses-At market price
- d. Bagasse- At market price

10. During the year, there is no absolutely change in the method of valuation of closing stock by the assessee. The assessee has valued the closing stock of sugar as on 31/03/2010 as below:

	Qty.	Cost of Production	Market Price	Cost price/market price whichever is lower	Value of closing stock as on 31/03/2010
Free Sugar	202510	2824.50	2950.00	2824.51	571991520.00
Levy Sugar	51688	2824.51	1800.47	1800.47	93476197.00

11. Similarly, there is no change in the method of valuation of closing stock of Molasses. The assessee has been consistently following the method of valuation of stock of molasses at market price since inception. The market price is determined by U.P. Co-op Sugar Factories Federation Ltd, Lucknow on the basis of tendering process. The details of closing stock of Molasses are as under:

Molasses	Qty	Rate	Value
Levy	45385.18	201.00	9122421.18
Free	91621.92	263.00	24096564.96
	137007.10		33218186.10

  

Molasses on process	Qty	Rate	Value
Levy	673.20	201.00	135313.20
Free	1570.80	263.00	413120.40
	2244.00		548833.60

12. The assessee has been consistently following the method of valuation of closing stock of Bagasse at market price since inception. The market price is determined by the U. P. Co-operative

Sugar Factories Federation Ltd., Lucknow on the basis of tendering process. There is no change in the method of valuation of closing stock during the year.

	Qty	Rate	Value
Bagasse	85000.00	262.60	22321000.00

13. The Ld. AO observed that the assessee failed to explain the valuation of closing stock with substantial evidence. According to the Ld. AO, the value of education cess included in the excise duty portion should be included while valuing its closing stock. This was not done by the assessee thereby violating the provisions of section 145A of the Act. Accordingly, the Ld. AO made an addition of Rs.10,59,457/- towards the value of closing stock thereon. The assessee pleaded before the Ld. CIT(A) that out of the education cess component included in the excise duty portion in the value of closing stock of sugar and molasses in the sum of Rs.10,59,457/-, for which addition has been made, a sum of Rs.4,01,869/- has also been paid by the assessee before the due date of filing the return of income and hence, allowable as deduction u./s 43B of the Act. The assessee enclosed the tax remittance challan to prove the same. Further, the assessee also submitted on without prejudice basis,

that similar addition made in AY 2010-11 in the sum of Rs.9,81,560/- was also paid during this year and hence, Rs.9,81,560/- would be allowable as deduction u/s 43B of the Act. The Ld. CIT(A), however, did not heed to the contentions of the assessee and proceeded to uphold the addition made by the Ld. AO with a direction that the resultant value of closing stock after adding the cess on excise duty for the year under consideration should be adopted as the opening stock for AY 2012-13.

14. We find that similar issue had been adopted by this Tribunal for AY 2010-11 in ITA No.1104/Del/2017 dated 13/10/2021, wherein this issue has been remanded back by the Tribunal for factual verification to the file of the Ld. CIT(A). Similar directions are given for this year also and this issue is restored to the file of Ld. CIT(A). Accordingly, the grounds No.3 & 4 raised by the assessee are allowed for statistical purposes.

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

16. Let us take up the Revenue Appeal.

17. The Ground No.1 raised by the Revenue is challenging the deletion of addition of Rs.4,39,19,785/- by the Ld. CIT(A).

18. We have heard the rival submissions and perused the materials available on record. The Ld. AO rejected the books of accounts of the assessee u/s 145(3) and proceeded to estimate the net profit of the assessee @ 4.5% and made addition of Rs.4,39,19,785/-. It was submitted before the Ld. CIT(A) that assessee its accounts have been duly audited by the statutory auditors appointed by the CANE Commissioner of Registrar of all the Co-operatives Mills in UP. The auditors submitted their report on 05/11/2011 and accepted the results shown by the assessee and were satisfied that proper books of account as required by law has been maintained by the Co-operative Society. The main trigger by the Ld. AO resorting to rejection of books of accounts was that the assessee had shown profit of Rs.23,82,04,844/- in the immediately preceding year, whereas during this year, there was a loss of Rs.2,52,06,506/-. The assessee pointed out that the basic reason for the loss in this year is the sale of finished goods brought forward from previous year were actually sold at a price lesser than its cost price due to market conditions. The assessee submitted the factual details to buttress the deficiencies pointed of the by the Ld. AO in its assessment order. All these factual submissions made by

the assessee were subjected to remand proceedings before the Ld. AO at the behest of Ld. CIT(A). The Ld. AO examined the entire submissions of the assessee together with the price of opening stock of finished goods at which they were sold when compared to its cost price. The assessee furnished the entire details of free sale sugar for the year 2009-10 out of the opening stock of sugar on monthly basis together with the sale invoices thereon. The assessee also furnished the cost of production workings for the FY 2009-10 wherein the cost of production as on 31/03/2010 was arrived at Rs.2824.51 per bag. Apart from this, the following details were furnished by the assessee to justify the incurrance of loss during the year:-

<b>Sl. No.</b>	<b>Particulars</b>	<b>Page No.</b>
1	Copy of Schedule "K" duly signed by auditors along with copy of bills, cost of production in support of valuation of stock	52-57
2	Details of sale of sugar of opening stock as on 01.04.2009 sold in 2009-10 along with copy of bills and cost of production	58-84
3	Details of opening stock as on 01.04.2010 sold during the year 2010-11 along with sale bill.	85-96
4	Copy of Profit & Loss Account from F.Y.2007-08 to F.Y.2013-14 in support of the fact that a combined	97-103

	Manufacturing & Trading Account maintained	
5	Details of store consumption with Name of item, amount, place where replace, name of the party from whom purchase alongwith copy of bills.	104-283
6	Copy of schedule "K" along with calculation of stock in sugar in process & copy of Govt. order, cost of production 2010-11, copy of invoice and levy order	284-292
7	Detail of bagasse tender along with letter issued to party & copy note sheet in support of rates approval.	293-311
8	Detail regarding bagasse sale rate of other sugar factory Kisan Sahkari Chini Mills Ltd., Gajraula & Ramala Sugar Mills Ltd., Ramala	312-313
9	Certificate of Physical verification of bagasse duly signed by Lab In-Charge, alongwith copy of annexure L of Tax Audit Report duly signed by auditors and month wise sale of bagasse	314-316
10	Copy of RT 7C and RT 8C	317-329
11	Calculation of closing stock of molasses as on 31 <sup>st</sup> March 2011 along with sale bill & order.	330-343
12	Copy of work order, vouchers bills etc. of Anil Kumar	344-349
13	Copy of Govt. Order regarding Retaining Allowance.	350-351
14	Copy of note sheet duly Approved by Chairman regarding rate of presumed.	352-359
15	Calculation of opening and closing stock of molasses along with order for sale	360-382

	rate fixing by the U.P.Co-op. Sugar Factory Federation Ltd., Lucknow.	
16	Copy of Quantitative details of principal items Sugar molasses bagasse along with quantative details last three years.	383-384
17	Copy of relevant papers of molasses stock register along with letter addressed to Central Excise and Customs and certificate issued by Sub-Inspector of State Excise regarding excess declaration of molasses.	385-387

19. The assessee also submitted that as on 01/04/2009, the value of opening stock of the assessee was as under:

Qty.	Average Rate	Amount	Qty. Sold	Average Rate	Amount
290633	1584.54	460519842.00	290633	2391.18	694956906.00

20. This opening stock as on 01/04/2009 was sold during financial year 2009-10 relevant to AY 2010-11 at Rs.2391.18 per bag resulting in sales realization of 69,49,56,906/-. This excess sale realization has resulted in profit of Rs.23.44 Crores in AY 2010-11, whereas during the year under consideration, the assessee could not sell its opening stock at a price higher than for which it was valued as on 31/03/2010 thereby resulting in loss.

21. All these facts were duly examined by the Ld. AO in the remand proceedings and a remand report was submitted by the Ld. AO, wherein he did not give any adverse comment on the submissions made by the assessee but only stated that these factual details were not submitted by the assessee during the original assessment proceedings despite having ample opportunities. The Ld. CIT(A) deleted the addition made on an estimated basis in the sum of Rs.4,39,19,785/- by observing as under:

*“5.3 The findings of Ld. AO and the averments of Ld. AR have been considered, in principle a depression in profits should not normally trigger a suspicion that book results are not appropriate or the presentation of accounts does not give a true and correct picture of taxable income. By this logic, and assuming consistency of behavior on the Appellant's part, even figures of profits in previous years would not be beyond doubt. With this general observation it is seen that the major loss occurred due to sale of brought forward stock. Apart from this there are increased expenses on salaries, wages, repairs, etc which have had a negative impact on the income. The major heads under a cloud all stand verified with the Ld. AO's report [Supra] and also from the clarifications given by the Ld. ARs. Thus no fault has been found in the sale of brought forward stock at a loss and the increase generally under various expense heads is understandable and beyond doubt. Keeping in view all these factors, the action of Ld. AO in adding Rs.4,39,19,785 by enhancing Net Profit, is deleted.”*

22. From the above, it is very clear that assessee had furnished all the details in support of its contention with factual material. These details were duly subjected to verification by the Ld. AO in the course of remand proceedings. Even in the remand report, the Ld.

AO had not drawn any adverse inference on the said factual submissions made by the assessee with supporting evidences. The only grievance of the Ld. AO is that these details were not submitted by the assessee during the course of assessment proceedings. Anyway we find that the Ld. AO has been given opportunity to examine the details filed by the assessee in the remand proceedings. The Ld. AO, in our considered opinion, cannot have any grievance on this aspect. Hence, we do not find any infirmity in the order of the Ld. CIT(A) granting relief to the assessee by making aforesaid observations. Accordingly, ground No.1 raised by the Revenue is dismissed.

23. Ground No.2 raised by the Revenue is challenging the deletion of disallowance of interest in the sum of Rs.9,39,382/- on loans borrowed by the assessee. The assessee had given interest free loans and advance of Rs.2.89 Crores & 1.07 Crores to UP Cooperative Sugar Factories Federation Ltd. on account of molasses & general account as well as Rs.97.68 lacs to other factories. The Ld. AO observed that the borrowed funds of the assessee had been diverted for giving interest free loans and advance and accordingly, he proceeded to disallow the interest payment made by the assessee

in the sum of Rs.9,39,382/-. It was submitted by the assessee that UP Cooperative Sugar Factories Federation Ltd., Lucknow is an Apex Body of all many sugar factories in UP and advances were given by the assessee in the normal course of its business and for the purposes of its business. Similarly, advance money paid to other factories were also made for the purpose of business only. We find from the balance sheet of the assessee that it has got sufficient own funds of Rs.62.77 Crores as against the borrowings of Rs.12.99 Crores. Since, the own funds are sufficiently available with the assessee, it can be reasonably presumed that interest free advances were given by the assessee out of its own funds and not out of the borrowed funds. Reliance in this regard is placed on the decisions of Hon'ble Bombay High Court in the case of Reliance Utilities and Power Ltd. reported in 313 ITR 340 and in the case of HDFC Bank Ltd reported in 366 ITR 505. In any case, we find that interest free money advanced is also made on account of commercial expediency and in view of the decision of the Hon'ble Supreme Court in the case of SA Builders reported in 288 ITR 01, there cannot be any disallowance of interest. Accordingly, we hold that the Ld. CIT(A)

rightly deleted the disallowance of interest. Accordingly, ground No.2 raised by the Revenue is dismissed.

24. Ground No.3 raised by the Revenue is challenging the deletion of disallowance of Rs.26,22,529/- made on account of repair & maintenance of factory.

25. We have heard the rival submissions and perused the material available on record. The Ld. AO sought for details of expenses debited to the profit and loss account and asked for copy of bill of Rs.26,22,529/- debited on 31/03/2011 in the name of M/s Mohan Trading Corporation. The assessee submitted the same before the Ld. AO. The Ld. AO on perusal on the same held that the said expenditure is incurred for substantial repairs/ overhaul and hence, it has to be construed as capital in nature. Accordingly, the Ld. AO disallowed this expenditure on account of repair & maintenance in the sum of Rs.26,22,589/- in the assessment. The assessee submitted the complete breakup of the said bill before the Ld.CIT(A) which are reproduced herein under:

Sl. No.	Particulars of work	Amount	Remarks
1.	Dismantling of old damaged tarfelt over the godown roof	69006.48	Repairing work done after dismantling of old tafelt and G.C.I. Sheet & tightling of
2.	Supply and laying of tarfelt over the	2545662.60	all losse nut, bolt and washer.

	Sugar godown roof type 3 grade 1 In place of Worn out Tarfelt		
3	Tighting of all loose nut, bolt hook and washer	20000.00	
4	Fixing of G.C.I. Sheet roofing in Place of Worn out G.C.I sheet on roof	13860.00	
5	Dismantling of worn out of G.C.I. Sheets, over the roof of sugar godwon	1829.52	
	Total	2650358.60	
	Less 1.05%	27829.60	
	Net	2622529.00	

26. The assessee submitted that no asset has been brought into existence which would provide any benefit of enduring nature to the assessee. These repair expenses are in the nature of repairing and laying of G.C.I Sheet roofing in place of worn out G.C.I. roof and laying of tarfelt on the roof etc. which were damaged or worn out because of rains, sunlight, duststore etc. It was pleaded that all these expenses are only Revenue in nature. On without prejudice basis, the assessee submitted that the Ld. AO having treated it as capital in nature ought to have granted depreciation on the same. The Ld. CIT(A) considering the entire submissions of the assessee on the decision taken by his predecessor on the same issue in earlier years treated the expenditure as Revenue in nature. We find that this issue was subject matter of the adjudication by this

Tribunal in assessee's own case for AY 2001-02 in ITA No.3634 & 3314/Del/2004 dated 04/05/2007 wherein by following the Tribunal order for AY 2000-01, the repairs & maintenance expenses were allowed as Revenue expenditure. In any event, we find on perusal of the bill that the expenditure incurred are purely revenue in nature and does not confer any benefit of enduring nature in the capital field to the assessee. Hence, the Ld. CIT(A) had rightly deleted the disallowance. Accordingly, ground No.3 raised by the Revenue is dismissed.

27. In the result, appeal of the Revenue is dismissed.

28. To sum up, the appeal of the assessee is allowed for statistical purposes and appeal of the revenue is dismissed.

Order pronounced in the open court on 13<sup>th</sup> September, 2023.

Sd/-

Sd/-

**(CHALLA NAGENDRA PRASAD)**  
**JUDICIAL MEMBER**

**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 13/09/2023

*Pk/sps*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI