

**आयकर अपीलीय अधिकरण “ए” न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“A” BENCH, CHENNAI**

**माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI V. DURGA RAO, JMAND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

**आयकर अपील सं./ ITA No.672/Chny/2023**  
**(निर्धारण वर्ष / Assessment Year: 2016-17)**

**&**

**आयकर अपील सं./ ITA No.673/Chny/2023**  
**(निर्धारण वर्ष / Assessment Year: 2017-18)**

<b>DCIT</b> Central Circle-1 Coimbatore.	<b>बनाम/</b> <b>Vs.</b>	<b>M/s. Sri Arumuga Sugars Ltd.</b> 51, Appusamy Layout, Redfields, Coimbatore-641 045.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. <b>AANCS-4704-M</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी/ <b>Respondent</b> )

अपीलार्थी की ओर से/ <b>Appellant by</b>	:	Shri J. Premanand (CIT) - Ld. DR
प्रत्यर्थी की ओर से/ <b>Respondent by</b>	:	Shri R. Venkata Raman (CA) - Ld. AR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	13-12-2023
घोषणा की तारीख/ <b>Date of Pronouncement</b>	:	30-01-2024

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeals by Revenue for Assessment Years (AY) 2016-17 & 2017-18 arises out of the common order of learned Commissioner of Income Tax (Appeals)-19, Chennai [CIT(A)] dated 29-03-2023 in the matter of separate assessments framed by Ld. Assessing Officer [AO] u/s.143(3) of the Act on 31-12-2018 & 23-12-2019. It is admitted position that facts as well as issues are quite identical in both the years and our

adjudication in any one year would equally apply to the other year also. For the purpose of adjudication, AY 2016-17 has been taken to be the lead year wherein the grounds raised by the revenue read as under:

1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.

2. The Ld.CIT(A) erred in deleting the addition made towards unexplained credits u/s.68 to the extent of Rs.19,22,37,000/- in respect of cash claimed to have been received by the assessee from recovery of farmers' advances earlier granted.

2.1. The Ld. CIT(A) erred in observing that the farmers' advances recovered during the financial year relevant to AY 2016-17 could be the subject matter of enquiry for the assessment year 2017-18, without appreciating that the amounts had been credited in the books of account in the previous year relevant to the assessment year 2016-17 and the assessee had not provided explanation for the source of credits to the satisfaction of the assessing officer.

2.2. The Ld.CIT(A) erred in failing to appreciate that Shri V. Sathish, one of the directors of the company admitted in his sworn statement recorded during the enquiry conducted by Investigation wing that there was no evidence for the collection of cash from the farmers.

2.3. The Ld. CIT(A) failed to note that the assessee had filed ITR and Audit Report only upto AY 2014-15 on the date of enquiry by Investigation wing. Only after demonetization and after the enquiry was made by Investigation wing, the ITRs were filed for AYs 2015-16, 2016-17 and 2017-18. Similarly annual returns before Registrar of Companies were also filed only during April/May 2018 for FYs 2014-15 to 2016-17. Hence, the claim of the assessee that the sources of cash deposits were from advances returned by farmers is clearly an afterthought to accommodate the unexplained cash in the books of account.

3. For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored.

As is evident, the sole substantive issue that arises for our consideration is addition made by Ld. AO u/s 68 for Rs.1922.37 Lacs.

2. The Ld. CIT-DR advanced arguments supporting the assessment framed by Ld. AO whereas Ld. AR supported the impugned order and placed on record various documents and judicial decisions in support of impugned order. The written submissions have also been filed which have duly been considered while adjudicating the appeals. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

### **Assessment Proceedings**

3.1 The assessee being resident corporate assessee is stated to be engaged in manufacturing of sugars. An enquiry u/s 131(1A) was conducted in the business premises of the assessee on 13.03.2017 by Investigation wing, Coimbatore. During the course of enquiry, it was found that the assessee made deposits to the tune of Rs.3978.23 Lacs in demonetized specified bank notes in State Bank of Hyderabad, Chennai during the demonetization period. The assessee filed return of income for AYs 2016-17 and 2017-18 on 12.03.2018 which was picked up for scrutiny assessment and notices u/s 143(2) were issued for both the years. During the course of assessment proceedings, to verify the claim of the assessee that the cash was sourced out of farmers' advances granted earlier which was received back, Ld. AO made due verification through DCIT, Circle-2, Kolhapur by issue of commission and analyzed the details furnished by the assessee. The verification carried by DCIT, Circle-2, Kolhapur substantiated the claim of the assessee to a large extent.

3.2 During the course of assessment proceedings for AY 2016-17, it transpired that the assessee received cash of Rs.2502.32 Lacs during the year which was duly credited in the cash book. To substantiate the same, the assessee was directed to produce financial statements, cash book, bank summary and source for advancing loans / investments. The assessee complied with the notices and filed various documents and submissions in support of source of cash deposit.

3.3 The assessee submitted that it was advancing money to the farmers to ensure the supply of raw sugarcane to the assessee at the

time of harvesting which would be basic raw material for the assessee. Approx. 10 to 12 months advances were lying with farmers and it was revolving in nature. The same was reflected in Balance Sheet as 'receivables'. The assessee further submitted that there was opening cash balance of Rs.25.86 Crores out of which Rs.19.22 Crores was collected during the harvest season through the rearrangement of supply of sugarcanes. The same was used to make the deposit in the bank account.

3.4 During the course of earlier search and survey operations, the assessee had provided a list containing names of the farmers to the Investigation wing, Coimbatore. The said details contained names of farmers, centre name and amount received by the assessee from each of them. However, the assessee did not furnish PAN, address, land holding pattern and proof of possession of land with farmers from whom the assessee was said to have received back the cash. The Ld. AO concluded that mere filing of name of some persons and attributing the source of cash credited in the books of accounts of the assessee to these persons was not acceptable. It was the duty of the assessee to establish the identity of the creditor to the satisfaction of Ld. AO. However, the assessee failed to do. Shri V. Sathish, the director of assessee company, during the course of enquiry u/s 131(1A) on 13.03.2017, stated that the cash was received from sugarcane farmers during the financial years 2014-15, 2015-16 and up-to October 2016. The cash was collected from farmers by Shri N. Subramanian, AGM, who will hand over the cash to Shri V. Sathish along with the list of farmers. He also stated that the cash collected by him would be handed

over to Shri T. Rajkumar in Coimbatore. However, he also stated that there was no material evidence to prove that the cash received for Rs.40.28 Crores was trade receivables from farmers. In sworn statement u/s 131(1A) from Shri T. Rajkumar (another promoter director of assessee who resigned from this post in 2013) similarly stated that there was no evidence for the collection of cash from farmers. The Ld. AO thus concluded that the genuineness of the transaction was not explained by the assessee. In the present case, a sum was found credited in the books of accounts of the assessee and the assessee failed to offer satisfactory explanation regarding creditworthiness of creditors. Except for filing of certain names, the assessee did not provide any details or evidence to substantiate its claim. Mere filing of names would not discharge the assessee from onus that is casted upon it in terms of Sec.68.

3.5 The Ld. AO also observed that the assessee filed Income Tax Returns and Annual Returns for AYs 2015-16 onwards after the demonetization period and after an enquiry was conducted by the Investigation wing. Therefore, filing of Tax Returns and Balance Sheet was merely an afterthought by the assessee to accommodate the unexplained cash received by it.

3.6 The Ld. AO also observed that outstanding loans for AY 2014-15 were only Rs.1.13 Lacs. The same suddenly jumped in AY 2015-16 to Rs.3717.86 Lacs. Therefore, it was a well-planned arrangement by the assessee to accommodate his unexplained demonetized money as received during demonetization period. In the above background, Ld. AO held that the assessee could not substantiate the cash deposit of

Rs.2502.32 Lacs and the same was added to the income of the assessee u/s 68.

3.7 In AY 2017-18, Ld. AO similarly noted that the assessee deposited sum of Rs.40.28 Crores in demonetized notes in the bank account and the same was used to settle the bank loan taken by the assessee. Shri T. Rajkumar and Shri V. Sathish, director explained that the company gave sugarcane advances to cane growers (farmers) during financial years 2009-10 to 2012-13. From 2013-14 onwards, the advances were returned back by the farmers to the company and the money was kept in the custody of Shri T. Rajkumar. During demonetization period, the cash was remitted to the bank.

3.8 During the course of assessment proceedings for AY 2017-18, the assessee produced Balance Sheet details for FYs 2009-10 to 2016-17. The Ld. AO found discrepancies in the same and concluded that the explanation offered by the assessee was not acceptable. The assessee had produced list of farmers with details of payments and confirmation letters from some of them. The list contained 104 numbers of farmers. In order to verify the genuineness of the same, a sample of 48 farmers with repayment of cash in excess of Rs.1.25 Lacs was selected for verification. All these framers were located in Kolhapur, Maharashtra. To verify the same, a request was made to Income Tax Officer at Kolhapur. The DCIT, Circle-2, Kolhapur issued notices to all the 48 farmers to appear before him for verification. It was reported by him that 21 persons appeared and gave confirmation. The details and their signatures were also compared with that of the details furnished by the assessee and the same were matching with each other. The Ld. AO concluded that though

third-party verification had given an affirmative result, it could not be taken that the explanation offered by the assessee was totally correct. Out of 48 framers, confirmations were received from 21 farmers only and accordingly, percentage of confirmation was 43.75%. On the basis of this statistics, Ld. AO proposed to allow 40% of the cash deposited in the bank as explained to be cash received from the farmers and disallowed 60% of the cash deposited by the assessee as unexplained money. Finally, 60% of Rs.4028.23 Lacs i.e., Rs.2416.93 Lacs was added back in the hands of the assessee as unexplained money u/s 69A of the act. The said amount was added protectively in the hands of Shri T. Rajkumar also.

3.9 Aggrieved as aforesaid, the assessee assailed assessment for both the years before learned first appellate authority.

### **Appellate Proceedings**

4.1 The assessee vehemently assailed the additions so made by Ld. AO and filed elaborate written submissions which have been extracted in paras 5.1 to 5.5 of the impugned order. The assessee submitted that to ensure smooth business and to ensure supply of raw material, the assessee advanced money to sugarcane growing farmers. These advances were duly reflected in the financial statements of respective years which were furnished by the assessee to Ld. AO during the course of assessment proceedings. The advances so given were recovered during financial years 2014-15 to 2016-17. Further, the assessee had taken fund based working capital limit of Rs.40 Crores from State Bank of Hyderabad which was under one time settlement (OTS) scheme. Pending OTS settlement, the cash so collected from the farmers was

accumulated by the assessee and subsequently deposited into the loan account to settle the same. The advances to the farmers were sourced out of bank loan availed by the assessee from the bank. During the course of assessment proceedings, the assessee furnished the names, address, holding details of the farmers. Total cash received during AY 2016-17 was Rs.2502.32 Lacs out of which amount of Rs.1922.37 Lacs represent advances recovered from the farmers during this year. For AY 2017-18, the assessee drew attention to the fact that confirmations furnished by the assessee were duly verified which was noted by Ld. AO also in the assessment order and therefore, there could be no occasion to disbelieve the same. The assessee also assailed the applicability of Sec.68 / 69A to the facts of the case. Another plea was that the same amount was taxed twice in two years. Reliance was placed on various judicial decisions in support of various submissions.

4.2 The Ld. CIT(A) duly considered the detailed submissions of the assessee and noted that the source of bank deposit of Rs.40.28 Crores was stated to be recovery of advances from the farmers. The advances so recovered by the assessee and closing cash balance during financial years 2014-15 to 2016-17 was as follows: -

Financial Year	Advances recovered during the year	Closing cash balance
2014-15	17,13,53,500	15,78,34,398
2015-16	19,22,37,000	36,95,09,898
2016-17	3,43,42,491	84,05,861
Total	39,79,32,991	

In the statement made by Shri V. Sathish, Director, it was confirmed that the cash was received from sugarcane farmers to whom the advances were given during financial years 2009-10 to 2012-13 for growing

sugarcane. Another statement was recorded from another director Shri T. Rajkumar on 02.09.2017 wherein he confirmed the statement given by Shri V. Sathish. He also confirmed that the cash was collected from 13 sugarcane centre through Shri Subramaniam, AGM who handed over the cash to him over a period of three years. The cash so collected was not deposited as it might lead to diversion of funds from the company since the company owed State Bank of Hyderabad more than Rs.40 Crores towards loan. Because of demonetization, the assessee opted for one time settlement (OTS) and cash so collected and accumulated was deposited into bank accounts. It was also noted that the pay-in-slips for cash deposits were signed by Shri T. Rajkumar and this fact was accepted by him.

4.3 The Ld. CIT(A) further noted that during the course of assessment proceedings for AY 2017-18, the assessee furnished list of farmers with details of repayment of advances by them and confirmation letters from some of them. The same were verified on sample basis through DCIT, Circle-2, Kolhapur who issued notices to all the 48 framers. Out of 48 framers, 21 persons appeared and gave confirmation. The details furnished by them and their signatures was also compared with that the details furnished by the assessee and the same were found to be matching with each other.

4.4 The assessee, in its written submissions, tabulated the farmer advances for various years as follows: -

<b>Financial Year</b>	<b>Opening Balance</b>	<b>Advances given during the year</b>	<b>Advances recovered during the year</b>	<b>Closing Balance</b>
2013-14	42,18,45,610	81,18,108	--	42,99,63,718
2014-15	42,99,63,718		17,13,53,500	25,86,10,218
2015-16	25,86,10,218		19,22,37,000	6,63,73,218

2016-17	6,63,73,218		3,43,42,491	3,20,30,727
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The assessee also summarized the cash position for financial year 2015-16 which has been extracted in para 6.5.9 of the impugned order as under: -

Total cash received during the year 2015-16		25,02,32,500
<b>SOURCES:</b>		
Withdrawal from Bank		
Axis Bank –CA-913020041436726-CBE	3,25,20,000	
OBC-10441131001677	2,15,32,000	
Axis Bank – CA-090010200038216	9,25,000	
Damaged wet sugar sale A/c (Already offered to income under the head sales in P&L)	30,18,500	
Advance recoveries from farmers	19,22,37,000	
Total of the above		25,02,32,500
Unexplained credit		NIL

The assessee submitted that advances received from the framers during this year was only Rs.1922.37 Lacs whereas entire cash credits appearing in the cash ledger was brought to tax u/s 68 which was completely erroneous. The assessee further submitted that the name of the farmers and details of advances so recovered from them were already available with ADIT (Inv.). The name, address and holding details were entered in the register and recoveries from the farmers were acknowledged through receipts. The counterfoil and register were seized by DIT (inv.) and the same was in their custody. With regard to identity of the farmers, AO confirmed that the investigation wing handed over a box file to AO which contained details of name of farmers, center name and amount received. Since the payees were farmers, their PAN number was not insisted by the assessee at the time of paying advances or at the time of recovering advances from them. The assessee, inter-alia, relied

on the decision of Hon'ble Supreme Court in the case of **CIT vs. Lovely Exports Pvt. Ltd. (216 CTR 195)** to assail invocation of Sec.68 in such a case against the assessee.

4.5 It was also pointed out by the assessee that the only source available to the assessee to receive cash was recovery of farmers' advances. The advances to farmers formed part of the financials of the assessee right upon the beginning which has been accepted by the department. The same was also evident from the assessment framed by Ld. AO u/s 143(3) r.w.s. 147 of the Act for AY 2015-16. The assessee also assailed invocation of Sec.69A for AY 2017-18. The assessee furnished complete summary of cash receipts and payments for FYs 2014-15 to 2016-17 in support of the fact that impugned cash was duly explained by the books of accounts.

4.6 After considering detailed submissions of the assessee, Ld. CIT(A) noted that advancing money to farmers was a regular feature in assessee's business. The total outstanding balance from the farmers as on 31.03.2014 amounted to Rs.4299.63 Lacs which was not disputed by Ld. AO. In AY 2016-17, the assessee received back advances to the extent of Rs.1922.37 Lacs whereas the remaining cash receipts were withdrawal from the bank and sugar sale proceeds whereas Ld. AO made addition for entire amount which was not correct. The Ld. AO did not record any adverse findings in the assessment order in respect of other cash receipts credited in the cash books. The recoveries of farmer's advances were duly reflected in the cash book for FYs 2014-15 to 2016-17. On these facts, the impugned addition made for AY 2016-17

u/s 68 as well u/s 69A for AY 2017-18 was not justified. The substantial adjudication of Ld. CIT(A) was as under: -

**6.6.9** On careful examination of the facts of the case for the instant assessment year as well as the subsequent assessment year 2017-18, it is considered that the addition of the amount of advances recovered from the farmers of Rs.19.22 crores u/s 68 in the assessment order for AY 2016-17 is not justified. It is apparent from the contents of the assessment order for the subsequent AY 2017-18 that the appellant made cash deposits of Rs.40.28 crores in its bank accounts during the demonetisation period and explained the same to be out of recovery made from farmers advances during the previous years relevant to AYs 2015-16, 2016-17 and 2017-18. The AO examined the issue of genuineness of the sources of the said cash deposits in the bank accounts during the course of the assessment proceedings for AY 2017-18 by causing necessary enquiries with the farmers from whom the advances were recovered and arrived at a finding regarding the extent to which the claim of the appellant regarding recovery of advances from farmers during the previous years relevant to AYs 2015-16, 2016-17 and 2017-18 can be accepted as the source for the cash deposits made in the bank accounts during the demonetisation period. To the extent the said claim was not accepted as the source for the cash deposits in the bank accounts, the AO made addition u/s 69A in the assessment order for AY 2017-18. In this regard, I am of the considered view that it is appropriate to examine the issue of genuineness of the recovery of farmers advances in the assessment for AY 2017-18 only, as done by the AO in the assessment order for the said assessment year, since the said amounts were claimed to be the source for the cash deposits made in the bank accounts during the demonetisation period in AY 2017-18. Moreover, since the returns of income for AY 2015-16 and 2016-17 to which part of the recovered farmers advances pertain to were filed only after demonetisation period (The return of income for A Y 2016-17 was filed u/s 139(4) on 12.03.2018 and the return of income for A Y 2015-16 was filed in response to the notice u/s 148), the cash brought into the books of account in respect of recovery of advances from farmers by crediting the cash ledger during the AYs 2015-16 and 2016-17 cannot be the subject matter of addition u/s 68 in the assessments for AY 2015-16 and 2016-17 and the said amounts pertaining to AY 2015-16 and 2016-17 along with the recovery of farmers advances during AY 2017-18 can only be the subject matter of enquiry in the assessment for AY 2017-18 for the purpose of ascertaining unexplained money u/s 69A as they were stated to be sources for the cash deposits made in the bank accounts during the demonetisation period in A Y 2017-18.

**6.6.10** In this connection, it is pertinent to observe that with regard to AY 2015-16, being the first year in which the farmers advances were stated to have been recovered, the AO reopened the assessment by issue of notice u/s 148 dated 31.03.2021 (subsequent to the completion of assessment for AY 2016-17 on 31.12.2018) and completed the re-opened assessment vide order dated 16.02.2022. In the said assessment for AY 2015-16, the AO did not make any addition u/s 68 towards the cash of Rs.17,13,53,500/- credited to the cash book towards recovery of farmers advances. Thus, it is seen that the AO has also taken the view in re-assessment order for AY 2015-16 which is same as the view stated by the undersigned in the preceding paragraph that the recovery of farmers advances shown during the previous years AY 2015-16, 2016-17 and 2017-18 can only be the subject matter of enquiry in the assessment for AY 2017-18 for the purpose of ascertaining unexplained money u/s 69A as such recoveries from farmers were stated to be sources for the cash deposits made in the bank accounts during the demonetisation period in AY 2017-18. Consistent with the same view, the amount of farmers advances recovered during the

financial year relevant to AY 2016-17 could not be the subject matter of addition u/s 68 in the assessment for AY 2016-17. Moreover, no enquiries were made by the AO regarding the genuineness of the recovery of farmers advances during the assessment proceedings for AY 2016-17, whereas the AO made necessary enquiries during the assessment proceedings for AY 2017-18 in respect of the entire amount of recovery of farmers advances pertaining to AYs 2015-16, 2016-17 and 2017-18 since the same were explained to be the sources for the cash deposits made in the bank accounts during the demonetisation period in AY 2017-18.

**6.6.11** In view of the aforesaid discussion, it is held that the addition of the amount of recovery of farmers advances for Rs.19,22,37,000/- u/s 68 of the Act in the assessment order for AY 2016-17 is not sustainable. It has already been held in para 6.6.5 above that the balance addition of Rs.5,79,95,500/- made u/s 68 in the assessment order for A Y 2016-17 represented by the cash withdrawals from bank and the sales proceeds in cash is untenable on facts. Hence, **the AO is directed to delete the addition of Rs.25,02,32,500/- made u/s 68 of the Act. The grounds raised by the appellant on this issue are hereby allowed.**

#### **A.Y 2017-18**

**6.6.11** As already stated above, the appellant made cash deposits of Rs.40.28 crores in its bank accounts during the demonetisation period in AY 2017-18 and explained the same to be out of recovery made from farmers advances during the previous years relevant to AY s 2015-16, 2016-17 and 2017-18. The AO examined the issue of genuineness of the sources of the said cash deposits in the bank accounts during the course of the assessment proceedings for A.Y2017-18 by causing necessary enquiries with the farmers from whom the advances were recovered and arrived at a finding regarding the extent to which the claim of the appellant regarding recovery of advances from farmers during the previous years relevant to AYs 2015-16, 2016-17 and 2017-18 can be accepted as the source for the said cash deposits. To the extent the said claim was not accepted as the source for the cash deposits in the bank accounts, the AO made addition u/s 69A in the assessment order for A Y 2017-18.

**6.6.12** During the course of assessment proceedings, the appellant submitted the list of farmers advances recovered during the previous years relevant to the assessment years 2015-16, 2016-17 and 2017-18 along with confirmation letters in 104 cases. The appellant has discharged the initial onus with regard to the identity, creditworthiness and genuineness of the transactions by producing the relevant details along with 104 confirmation letters before the AO. This year being the year in which the cash so recovered was deposited into the bank accounts and since the appellant had discharged the initial onus cast on it, the parameters such as the identity of the farmers, genuineness of the transactions and creditworthiness of the farmers were subjected to necessary verification by the AO during the assessment proceedings.

**6.6.13** The farmers list containing the details of advances given and recovery made contains more than 10,000 entries ranging from Rs.1250/- to 3,00,000/-. The appellant filed a list of 104 confirmation letters from the farmers during the assessment proceedings, out of which 48 farmers with repayment of advances in cash in excess of Rs.125,000/- were selected for verification by the AO. Since the sugar factory was located in Maharashtra and the advances were made to the farmers located in and around Kolhapur district of Maharashtra, a request was made by the AO to the Deputy Commissioner of Income-tax, Circle-2, Kolhapur to verify the existence and genuineness of the farmers and their confirmations by issuing commission to him.

6.6.14 In pursuance of the same, the Deputy Commissioner of Income-tax, Circle-2, Kolhapur issued notices to all the 48 farmers in the sample selected by the AO to appear before him for verification. Out of the 48 farmers to whom notices were issued, 21 persons appeared before him and submitted confirmations. The details furnished by the said 21 persons appeared before him and their signatures were compared with that of the details furnished by the assessee and the same were found to be matching with each other. This confirms the existence of the advances to the farmers as per the financials and also the recovery from them.

**6.6.15** Since the remaining 27 farmers to whom summons were issued did not respond to the summons, the AO observed that the percentage of non-compliance amounted to 56.25% of the sample size. Having regard to the said percentage of non-compliance of farmers during the course of enquiry, the AO inferred that 60% of the total amount of recovery of farmers advances needs to be considered as non-genuine and not proved. Accordingly, the AO held that 60% of the recovery of farmers advances of Rs.40,28,23,185/- pertaining to more than 10,000 farmers is non-genuine on a proportionate basis. Hence, the AO made addition of 60% of the said amount of total advances recovered, which worked out to Rs.24,16,93,910/- u/s.69A.

**6.6.16** In this factual background, the question that arises for consideration is whether the lack of response from 27 farmers to the notices issued by the DCIT, Circle-2, Kolhapur, out of the 48 farmers to whom such notices were issued, can be the sole basis for concluding that the genuineness of recovery of farmers advances has not been satisfactorily established with regard to the said 27 farmers and whether applying the same on the entire list of recovery of farmers advances on a proportionate basis for making addition u/s 69A is sustainable.

**6.6.17** In this regard, it is considered that the decision of the Hon'ble Apex Court in the case of *CIT vs Orissa Corporation* 159 ITR 78 is relevant to the issue. The Hon'ble Supreme Court held that;

*"In this case the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the revenue that the said creditors were the income-tax assesseees. Their index number was in the file of the revenue. The revenue, apart from issuing notices under section 131 at the instance of the assessee, did not pursue the matter further. The revenue did not examine the source of income of the said alleged creditors to find out whether they were credit-worthy or were such who could advance the alleged loans. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the assessee could not do any further. In the premises, if the Tribunal came to the conclusion that the assessee had discharged the burden that lay on him, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion was based on some evidence on which a conclusion could be arrived at, no question of law as such could arise." The High Court was, therefore, right in refusing to refer the questions sought for.*

**6.6.18** The decisions rendered in the following cases also bring out the obligation on the part of the AO to examine the creditworthiness of the persons who are claimed to have contributed the share capital:

a) The Hon'ble Delhi High Court in the case of *CIT v/s Divine Leasing and Finance Limited* (299 ITR) 268.

The Hon'ble Delhi High Court in the case of *Modi Creations (P) Limited v. Income Tax Officer* (2011) 13 Taxmann.com 114 Delhi)

**6.6.19** It is noticed on going through the assessment order that the AO made a distinction between the 21 farmers who have appeared in response to summons issued by DCIT, Circle-2, Kolhapur and gave their confirmations and the 27 farmers who have not responded to the summons issued for examination. The AO considered the claim of recovery of advances from the 21 farmers as genuine, whereas he considered the claim of recovery of advances from the 27 farmers as unsubstantiated and bogus. In this regard, it is considered that such a conclusion with regard to the 27 farmers is not justified. It is evident that summons was issued only once to the said 27 farmers and it is not appropriate to arrive at an adverse conclusion merely based on issue of summons once. This is particularly relevant when the fact as to whether the summons were properly served on the said 27 persons has not been brought out clearly in the assessment order. Even where the summons has been properly served, there may be genuine reasons for non-compliance by them on a particular date. Any conclusion regarding non-genuine/bogus nature of the claim of the appellant with regard to the said 27 persons can be reached only after ensuring that the summons were properly served and after affording adequate opportunity to the said persons to respond to the summons. The fact that all the 21 persons who responded to the summons have confirmed the correctness of the claim of the appellant regarding the recovery of advances from them, without a single person denying the claim of the appellant, also supports the view that the cases of remaining 27 persons should not be viewed adversely in a premature manner merely on account of non-response to summons issued just once.

**6.6.20** Further, it is surprising to find that the AO has not only treated the claim of recovery of advances from the said 27 farmers amounting to Rs.40,33,000/- as non-genuine but he has proceeded to draw inference that 60% of the total amount of recovery of advances of Rs.40,28,23,185/- pertaining to more than 10,000 farmers is non-genuine on a proportionate basis, since 27 farmers out of a sample of 48 farmers did not respond to the summons which represented non-compliance by 56.25% of the sample size. Accordingly, the AO made addition of 60% of the total amount of advances recovered which worked out to Rs.24,16,93,910/- u/s 69A. The said addition of the AO by making estimation on a proportionate basis based on verification made on a sample basis is wholly unjustified and not acceptable particularly when the appellant had furnished the details of all the farmers to the department and it was the AO who chose to make verification of only 48 persons due to his own constraints. The AO at best can treat the amount of recovery pertaining to the 27 farmers of Rs.40,33,000/- as unsubstantiated as make addition u/s 69A. Even that would not be correct for the reasons stated in the preceding paragraph. The action of the AO in treating the advances recovered to the extent of Rs.24,16,93,910/- (60% of the total advances recovered) as unsubstantiated on a proportionate basis without discharging the onus of bringing adverse evidence on record with regard to them, when the appellant has already discharged the initial onus that lay on him by furnishing the details of all the farmers is not sustainable. It is held that no such addition can be made on the basis of mere presumption.

**6.6.21** In view of this, **the addition of Rs. 24,16,93,910/- made by the AO towards unexplained money u/s 69A of the Act for A.Y 2017-18 is hereby deleted.** Accordingly, the grounds **raised by the appellant on this issue are hereby allowed.**

Aggrieved as aforesaid, the revenue is in further appeal before us for both the years.

### **Our findings and Adjudication**

5. From the facts, it emerges that the assessee is engaged in manufacturing of Sugar and it would require sugarcanes as a raw material to run its business. As part of business practices and to ensure smooth supply of raw material, the assessee regularly made advances to the sugarcane farmers to ensure supply of raw material during harvesting seasons. The advances so given by the assessee were reflected in the Balance Sheet as 'receivables'. These advances have been sourced out of bank loan availed by the assessee from the bank. These advances are reflected by the assessee as 'receivables' in its financial statements of earlier years and the same is not under dispute. The assessee is regularly filing its Income Tax Returns. The return of income so filed from AY 2010-11 onwards has already been tabulated in Para 6.5.22 of the impugned order. The assessee also filed Balance Sheets for FYs 2009-10 to 2016-17 during the course of assessment proceedings for AY 2017-18. No defect could be pointed out by Ld. AO in the same except for making bald allegations that the same were not acceptable. During impugned years, the assessee has received back these advances which have been reflected in the cash book of the assessee. The cash balance has been used to make the deposits in the bank account which has ultimately been used in settling the bank loan as availed by the assessee. Therefore, the claim of the assessee was based on books of accounts and financial statements which could not be negated by Ld. AO.

6. During AY 2016-17, the assessee's total cash receipts are Rs.2502.32 Lacs which has already been tabulated in preceding para 4.4. This amount has been sourced out of cash withdrawals, sugar sale and advance recoveries from the framers. The assessee had recovered farmer advance of Rs.1922.37 Lacs whereas Ld. AO has brought entire cash receipts to tax as unexplained cash credit u/s 68. Therefore, the action of Ld. AO is clearly erroneous one.

7. It could further be seen that the assessee was earlier subjected to enquiries by the investigation wing wherein the assessee provided a list containing names of the said farmers to the investigation Wing which was made available to Ld. AO. The said box file contained details of farmers, centre name and amount so received over various years. Still no independent enquiries were made by Ld. AO to support the impugned addition made u/s 68 for AY 2016-17. It could further be seen that during assessment proceedings for AY 2017-18, certain enquiries, on sample basis were done Ld. AO. In this year, Ld. AO selected, on sample basis, the details of 48 farmers and forwarded them to DCIT, Kolhapur for verification of the same. Out of this list, 21 farmers filed details along with confirmation letters which completely matched with the details furnished by the assessee. The remaining 28 farmers did not appear. However, merely because some farmers did not turn up, no adverse inference could be drawn since the assessee had discharged the primary onus of furnishing the requisite details to Ld. AO and it was onus of Ld. AO to controvert the same. However, there is nothing on record which would show that the details furnished by the assessee were not correct. There

is not material on record to controvert the details furnished by the assessee.

8. We also find that these advances have been given by the assessee in earlier years and recovery of the same has been made by the assessee starting from FYs 2014-15 onwards. The case for AY 2015-16 was reopened by Ld. AO subsequent to the completion of the assessment for AYs 2016-17 and 2017-18 to verify the cash deposits. During the course of assessment proceedings, the assessee submitted requisite cash book and other books of account which were accepted by Ld. AO and finally, the returned income was accepted. Thus, closing cash balance for FY 2015-16 as well as the balance in advance account was found to be correct and no infirmity could be found in the same. Once the debtors balance is accepted, the recovery of the same could not be doubted unless some positive material was brought on record to establish that the cash was not received by the assessee from such debtors. It is also noted that the assessee has made further recoveries during AY 2016-17 and 2017-18 which have duly been credited in the cash book. The cash balance available with the assessee has been deposited in the bank and the same has been used to settle the bank loan taken by the assessee. Thus, the source of cash deposit was cash balance as available with the assessee in the books of accounts. In such a case, the impugned additions as made u/s 68 for AY 2016-17 has no legs to stand. The addition made u/s 69A in AY 2017-18 has also no basis since the cash deposited by the assessee is duly supported by the cash balance as available with the assessee in the cash book. The cash

so deposited could not be termed as unexplained money for the assessee.

9. The stand of Ld. AO is also fallacious since the addition made for Rs.19.22 Crores in AY 2016-17 is a double addition. The same is evident from the fact that the assessee has received aggregate advances of Rs.39.78 Crores from the farmers and deposited the same during demonetized period. Out of this, an amount of Rs.19.22 Crores has been added in AY 2016-17 whereas the Ld. AO has considered the entire amount of Rs.39.78 Crores in AY 2017-18 again for the purpose of making the proportionate addition. The aforesaid amount of Rs.39.78 Crores already includes the amount of Rs.19.22 Crores which has separately been added in AY 2016-17. Therefore, the addition to that extent is clearly a double addition and the impugned addition could not be sustained for AY 2016-17.

10. We are also concur with the observations of Ld. CIT(A) that Ld. AO made artificial distinction between the 21 farmers who have appeared in response to summons issued by DCIT, Circle-2, Kolhapur and gave their confirmations and the remaining 27 farmers who have not responded to the summons issued for examination. The AO considered the claim of recovery of advances from the 21 farmers as genuine whereas he considered the claim of recovery of advances from the 27 farmers as unsubstantiated and bogus one. Such a conclusion is unjustified since Ld. AO is accepting only a part of the explanation offered by the assessee while accepting the fact that the assessee made advances to farmers in earlier years. No adverse conclusion could be drawn against the assessee for non-appearance of remaining farmers since the

assessee had discharged the primary onus by producing confirmation letters from the farmers. The same could be controverted only by bringing on record same positive material which is not the case here.

11. Therefore, considering the entire facts and circumstances of the case as well as in view of our foregoing observations, the impugned order finds our concurrence and we decline to interfere in the same.

12. Both the appeals stand dismissed.

*Order pronounced on 30<sup>th</sup> January, 2024*

**Sd/-**

**(V. DURGA RAO)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

**Sd/-**

**(MANOJ KUMAR AGGARWAL)**

**लेखासदस्य / ACCOUNTANT MEMBER**

चेन्नईChennai; दिनांकDated :30-01-2024  
DS

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF