

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'A', LUCKNOW**

**BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER
AND SHRI SUBHASH MALGURIA, JUDICIAL MEMBER**

ITA No.758/Lkw/2017
Assessment year:2009-10

M/s Kisan Sahkari Chini Mills Ltd. Powayan, Shahjahanpur. PAN:AAAANK1635N (Appellant)	Vs.	Dy.C.I.T., Circle-1, Bareilly. (Respondent)
--	-----	--

Appellant by	None
Respondent by	Smt. Namita S. Pandey, CIT (D.R.)

ORDER

PER ANADEE NATH MISSHRA, A.M.

(A) The present appeal vide I.T.A. No.758/Lkw/2017 has been filed by the assessee against impugned order dated 19/09/2017 of Commissioner of Income Tax (Appeals) ["CIT(A)" for short]. Grounds of appeal are as under:

- "1. *Hon'ble CIT (Appeals) was not justified in confirming the addition of Rs.111521523.00 made by the learned AO on account of Interest u/s 43B as the institutions to whom interest were paid are not covered under the provisions of Sec. 43B of IT Act 1961, by overlooking the facts which were brought to the notice of Hon'ble CIT (Appeals) as well as learned AO.*
2. *The Learned AO was not justified in adding Rs.20106707.00 on account of Excise Duty payable u/s 43B without considering the facts that this is only notional entry passed in books of accounts for properly displaying the liability of excise duty of closing stock and Hon'ble CIT (Appeals) was also not justified while saying that Hon'ble ITAT has not set aside the matter to AO but has allowed the appeal of revenue, where as Hon'ble ITAT*

has allowed the appeal only for statistical purposes which is quite clear from the para 5 of the order.

3. *The Learned AO was not justified in adding Rs.8300475.00 towards suppressed valuation of Closing Stock without considering the system of valuation adopted by the assessee and examining the relevant facts and Hon'ble CIT (Appeals) was also not justified while saying that Hon'ble ITAT has not set aside the matter to AO but has allowed the appeal of revenue, where as Hon'ble ITAT has allowed the appeal only for statistical purposes which is quite clear from the para 5 of the order.*
4. *The learned AO was not justified in adding Rs.18129678.00 on account of said unexplained liabilities whereas full details thereof has been disclosed in Audited Balance Sheet and Hon'ble CIT (Appeals) was also not justified while saying that Hon'ble ITAT has not set aside the matter to AO but has allowed the appeal of revenue, where as Hon'ble ITAT has allowed the appeal only for statistical purposes which is quite clear from the para 5 of the order.*
5. *Confirmation made by Hon'ble CIT (Appeals) were against the facts of the case."*

(B) In this case original assessment order dated 22/12/2011 was passed by the Assessing Officer wherein the assessee's total income was determined at Rs.8,17,15,189/-. The assessee filed appeal against the aforesaid assessment order in the office of the learned CIT(A). Vide order dated 03/02/2015, the learned CIT(A) allowed the assessee's appeal deleting all the additions made by the Assessing Officer. Revenue filed appeal against the aforesaid order dated 03/02/2015 of the learned CIT(A) in Income Tax Appellate Tribunal, vide I.T.A. No.278/Lkw/2015. Vide order dated 12/01/2016, the coordinate Bench of the ITAT, Lucknow disposed of Revenue's appeal. Relevant portion of the aforesaid order dated 12/01/2016 is reproduced as under:

"2. *In this appeal, the Revenue has raised the following grounds:*

- "1. *That the order of the Commissioner of Income Tax (Appeals) is erroneous in law and on facts in deleting the disallowance amounting to Rs.11,15,21,523/- as unpaid interest which the Assessing Officer has rightly disallowed the unpaid interest amounting to Rs.11,15,21,523/- u/s 43B of the I.T. Act, 1961. The CIT (A) has not appreciated the facts and circumstances mentioned by the Assessing Officer and deleted the addition made by the Assessing Officer.*
2. *That the order of the Commissioner of Income Tax (Appeals) is erroneous in law and on facts in deleting the amount of Rs.2,01,06,707/- of excise duty which the Assessing Officer has rightly treated it as income of the assessee from undisclosed sources. During the assessment proceedings, the assessee submitted that the excise duty has not been included in the valuation of closing stock as the duty is not payable on closing stock. The assessee further stated that the goods of closing stock have been kept in warehouse. The submission of the assessee was considered and it is clear that the assessee has violated the provisions Section 145A of IT Act 1961.*
3. *That the order of the Commissioner of Income Tax (Appeals), Bareilly is erroneous in law and on facts in deleting the addition rightly made by the Assessing Officer at Rs.83,00,475/- in closing stock of sugar. During the course of assessment proceedings, the Assessing Officer has observed that the assessee has suppressed the valuation of closing stock of Rs.83,00,475/- when the rate of valuation of free-sugar was available with assessee as on 31.03.2009 @Rs.2000 per quintal of free sugar . This amount has affected the Gross Profit and thereafter the Net Profit for the period under consideration. In these circumstances, the Assessing Officer has rightly made an addition of Rs.83,00,475/- to the income of the assessee from undisclosed sources.*
4. *That the order of the Commissioner of Income Tax (Appeals), Bareilly is erroneous in law and on facts in deleting the addition rightly made by the Assessing Officer at Rs.1,81,29,678/- to the income of the assessee as other liabilities. During the course of assessment proceedings, the assessee has shown*

current liabilities as 'other liabilities' at Rs.1,81,29,678/-. In response of the query, the assessee failed to submit any satisfactory reply or documentary evidences. It clearly seems that these liabilities do not relate to the business activities of the assessee. In absence of proper head and nature of the liability, the Assessing Officer has rightly disallowed the amount of Rs.1,81,29,678/- and added back to the income of the assessee.

5. *That the order of the Commissioner of Income Tax (Appeals), Bareilly is erroneous in law and on facts may be cancelled and the order of the Assessing Officer may be restored."*

3. *Learned D. R. of the Revenue supported the assessment order. As against this, Shri Praveen Kumar, Assistant Accountant of the assessee supported the order of CIT(A). At this juncture, it was pointed out by the Bench that as per the assessment order, the disallowance of interest of Rs.1115.21 lac was on this basis that this amount of interest is in respect of unsecured loans from various State Governments and institutions and therefore, the provisions of section 43B are applicable but as per the facts noted by CIT(A) on page No. 3 of his order, such interest amount is relating to supervisory co-operative societies and State Government. It was pointed out that since the facts as per the assessment order and as per the order of CIT(A) are different without any clear finding of CIT(A) that the facts noted in the assessment order are not correct and since the documents in support of the facts noted by CIT(A) are not produced before us, the matter has to go back to the file of the Assessing Officer for fresh decision on the basis of correct facts. In reply, both the sides agreed to this proposition.*

4. *As per above discussion, we find that the facts noted by the Assessing Officer in the assessment order and the facts noted by CIT(A) in his order are different and the material is not available before us to examine as to whether the facts noted by the Assessing Officer are correct or facts noted by CIT(A) are correct and therefore, we feel it proper that the matter should go back to the file of the Assessing Officer for fresh decision in the light of correct facts. Therefore, we set aside the order of learned CIT(A) and restore the matter back to the file of the Assessing Officer for fresh decision after providing reasonable opportunity of being heard to the assessee."*

(B.1) A perusal of the aforesaid order dated 12/01/2016 of coordinate Bench of the ITAT, Lucknow shows that the aforesaid order dated 03/02/2015 of learned CIT(A) was set aside by ITAT and the disputed issues, including the issue regarding disallowance of interest amounting to

Rs.11,15,21,523/- were restored back to the file of the Assessing Officer for fresh decision after providing reasonable opportunity of being heard to the assessee. The Assessing Officer passed consequential assessment order afresh, dated 27/06/2016, u/s 143(3)/254 of the IT Act. Relevant portion of the assessment order is reproduced below:

"In this case original assessment has been completed on 22/12/2011 u/s 143(3) on total income of Rs. NIL after making additions of Rs.16,53,55,723/- as against returned loss of Rs.8,26,98,739/- on following grounds:-

- 1. Disallowance u/s 43(PF) Rs.63,55,541/-*
- 2. Disallowance u/s 43B Rs.11,15,21,523/-*
- 3. Addition on account of excise duty in closing stock Rs.2,01,06,707/-*
- 4. Addition on account of closing stock of sugar Rs.83,00,475/-*
- 5. Addition on account of other liabilities of Rs.1,81,29,678/-*

The assessee preferred an appeal before the Ld. CIT(A), Bareilly, against the order of A.O. in respect of additions stated above accept addition u/s43(PF) amounting to Rs.63,55,541/-. The Ld. CIT(A), Bareilly, vide his order dated 05.02.2015, allowed the appeal of assessee and deleted the additions made by the A.O. The department preferred an appeal before Ld. ITAT against the order of Ld. CIT(A), Bareilly.

The Ld. ITAT, vide it's order dated 12.01.2016, restored all the issues to the file of A.O. for re-examining the issues in the light of submissions of assessee.

Accordingly, notice u/s 143(2) was issued to the assessee on 23.05.2016 fixing the date of compliance on 03.06.2016. However, the AR of the assessee attended on 27.06.2016 and files a submission on the following issues:-

- 1. Disallowance u/s 43B Rs.11,15,21,523/-*
- 2. Addition on account of excise duty in closing stock Rs.2,01,06,707/-*
- 3. Addition on account of closing stock of sugar Rs.83,00,475/-*
- 4. Addition on account of other liabilities of Rs. 1,81,29,678/-*

The submissions made by the AR of the assessee were gone through and it was observed that the submissions were repeated whatever given earlier. There was no new submission at the part of AR of the assessee.

In these circumstances the additions made by the then assessing officer were found genuine and are being made again after giving appeal effect of order of Ld. CIT(A) Bareilly as under:-

<i>1. Assessed loss after order of Ld. CIT(A), Bareilly (Rs.8,26,98,739 - Rs.63,55,541)</i>	<i>Rs.7,63,43,198/-</i>
<i>Add:- Disallowances u/s 43B</i>	<i>Rs. 11,15,21,523/-</i>
<i>Addition on account of excise duty in closing stock</i>	<i>Rs. 2,01,06,7071-</i>
<i>Addition on account of closing stock of sugar</i>	<i>Rs.83,00,475/-</i>
<i>Addition on account of other liabilities</i>	<i>Rs. 1,81,29,678/-</i>
<i>Total Additions:</i>	<i>Rs. 15,80,58,383/-</i>
<i>Net Income</i>	<i>Rs.8,17,15,185/-</i>
<i>Less:-Carried forward losses</i>	
<i>A. Y. 2002-03</i>	<i>Rs.5,49,38,415/-</i>
<i>A.Y. 2003-04</i>	<i>Rs. 2,67,76,770/-</i>
<i>Total adjusted loss</i>	<i>Rs.8,17,15,185/-</i>
<i>Assessed Income</i>	<i>NIL</i>

(B.2) The assessee filed fresh appeal against the aforesaid assessment order dated 27/06/2016 in the office of the learned CIT(A) who passed the impugned appellate order dated 19/09/2017. In this order, with regard to disallowance of interest u/s 43B of IT Act amounting to Rs.11,15,21,523/-, the learned CIT(A) upheld the disallowance and dismissed assessee's grounds of appeal on this issue, stating as under:

"I have gone through the grounds of appeal as well as the submissions and the assessment order passed by the AO. The Hon'ble ITAT has directed as under:-

"As per above discussion, we find that the fact noted by the Assessing Officer in the assessment order and the fact noted by CIT(A) in his order are different and the material is not available before us to examine as to whether the facts noted by the Assessing

Officer are correct or facts noted by CIT(A) are correct and therefore, we feel it proper that the matter should go back to the file of the Assessing Officer for fresh decision in the light of correct facts. Therefore, we set aside the order of CIT(A) and restore the matter back to the file of the Assessing Officer for fresh decision after providing reasonable opportunity of being heard to the assessee."

The AO in the assessment order has observed as under:-

"The submission made by the AR of the assessee were gone through and it was observed that the submission was repeated whatever given earlier. There was no new submission on the part of the assessee."

The AO made the addition of Rs.11,15,21,523/- on account disallowance Us 43B of the IT Act.

In appellate proceedings as well no fresh explanation was given to counter the findings of the Assessing Officer.

On 17.7.2017 the appellate was asked to produce the confirmation from parties to whom interest was payable but not paid during the year. The case was adjourned to 9.8.2017. None appeared on 9.8.2017. However on 18.9.2017 a written reply was received in DAK and no one appeared. The submission already made before the AO has been reproduced. No confirmation was filed.

In view of the above there is no infirmity in the order of the AO and the same is hereby confirmed. The provisions of Section 43B are clearly attracted in the case of the appellant. This ground is dismissed."

(B.3) As regards remaining additions, the learned CIT(A), in his aforesaid impugned appellate order dated 19/09/2017, dismissed assessee's grounds stating as under:

"As regards ground No. 2,3 & 4 are concerned. The Hon'ble ITAT has not issued any directions and has allowed the appeal of the Revenue. The issue is already settled by the Hon'ble ITAT in favour of Revenue. No adjudication is possible at this stage once the Hon'ble ITAT has decided the issue. In view of the above, the grounds are dismissed.

In the result the appeal is dismissed."

(B.4) The present appeal before us is filed against the aforesaid impugned appellate order dated 19/09/2017 of learned CIT(A).

(C) From time to time hearings were fixed in Income Tax Appellate Tribunal. Vide order sheet dated 26/06/2024, the appellant assessee was given last opportunity and the hearing was fixed on 04/07/2024. However, once again adjournment was sought from the assessee's side on 04/07/2024 and the matter was adjourned to 07/08/2024. At the time of hearing before us on 07/08/2024, there was none present for the appellant assessee. In absence of any representation from the side of the appellant assessee, we heard the learned CIT (D.R.), who appeared for Revenue. She submitted that as far as the aforesaid disallowance of Rs.11,15,21,523/- u/s 43B of IT Act, on account of interest, is concerned, the Assessing Officer and the learned CIT(A) have passed speaking orders. She relied on the orders of the Assessing Officer and learned CIT(A).

(C.1) As regards other grounds, she accepted in response to specific query of Bench, that the learned CIT(A) misinterpreted the earlier order dated 12/01/2016 of the coordinate Bench of the ITAT, Lucknow in I.T.A. No.278/Lkw/2015; by holding that the ITAT had allowed Revenue's appeal on these grounds. She accepted that on these grounds also the issues in disputes were restored back to the file of the Assessing Officer, vide aforesaid order dated 12/01/2016 of the coordinate Bench of the ITAT, Lucknow, to the file of the Assessing Officer for fresh decision in accordance with law after providing reasonable opportunity to the assessee.

(D) We have heard the learned CIT (D.R.) for Revenue. We have perused materials on record. The relevant portion of the assessment order and the impugned appellate order pertaining to the present appeal before us have already been reproduced earlier in this order. We find that the order of the

Assessing Officer and the learned CIT(A) on the disallowance of Rs.11,15,21,523/- u/s 43B of IT Act on account of disallowance of interest is well reasoned, detailed and speaking orders. Relevant part of the orders have already been reproduced earlier in this order; to which we have given due consideration. No material has been brought for our consideration from either side to take a view different from the view taken by the learned CIT(A) and the Assessing Officer on this issue. Therefore, the disallowance of Rs.11,15,21,523/- u/s 43B of IT Act, on account of disallowance of interest, is sustained.

(D.1) As regards the remaining disputes, clearly the learned CIT(A), in his impugned appellate order dated 19/09/2017, erred in holding that the coordinate Bench of the ITAT, Lucknow, in order dated 12/10/2016, had allowed the appeal of the Revenue. Fact is, these issues were also restored to the file of the Assessing Officer for fresh decision in accordance with law after providing reasonable opportunity to the assessee. Relevant part of the order dated 12/01/2016 of co-ordinate Bench of ITAT, Lucknow has already been reproduced earlier in this order. Therefore, we are of the view that the learned CIT(A) misinterpreted the earlier order dated 12/01/2016, and fell short of requirement in not deciding other disputes apart from the aforesaid addition of Rs.11,15,21,523/-. Therefore, on all these issues, apart from the issue regarding disallowance of Rs.11,15,21,523/- already decided by us in foregoing paragraph (D) of this order; we restore the disputes to the file of the learned CIT(A) with the direction to decide the issues through speaking order in accordance with law after providing reasonable opportunity to the assessee.

(E) In the result, the appeal is partly allowed for statistical purposes.

(Order pronounced in the open court on 08/08/2024)

Sd/.
(SUBHASH MALGURIA)
Judicial Member

Sd/.
(ANADEE NATH MISSHRA)
Accountant Member

Dated:08/08/2024
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow

Asstt. Registrar