

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B" :: PUNE

BEFORE MS.ASHTA CHANDRA, JUDICIAL MEMBER AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकरअपीलसं. / ITA Nos.1540/PUN/2024
निर्धारणवर्ष / Assessment Year 2017-18

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| Shri Vitthal Sahakari Sakar Karkhana Ltd., A/p. Gursale, Tal. Pandharpur, Dist. Solapur-413304 Maharashtra | Vs | ACIT Circle1, Solapur |
| PAN-AAAAS3892H | | |
| Appellant/ Assessee | | Respondent / Revenue |

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| Assessee by | Mr. Hanmant Dhavle (AR) |
| Revenue by | Mr.Arvind Desai (DR) Addl.CIT |
| Date of hearing | 21/11/2024 |
| Date of pronouncement | 31/12/2024 |

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the assessee directed against the order of Id.Commissioner of Income Tax(Appeals)[NFAC] u/sec.250 of the Income Tax Act, 1961; dated 30.04.2024 for the A.Y.2017-18.

The Assessee has raised the following grounds of appeal :

"1. On the fact and in the circumstance of the case and in law of the learned National Faceless Appeals Centre (NFAC) Delhi has erred in disallowing and adding back an amount of Rs.4,56,57,548/- on account of Excess Sugar Cane Price

Grounds of Appeal

“1. On the fact and in the circumstance of the case and in law of the learned National Faceless Appeals Centre (NFAC) Delhi has erred in disallowing and adding back an amount of Rs.4,56,57,548/- on account of Excess Sugar Cane Price

2. On the fact and in the circumstance of the case and in law of the learned National Faceless Appeals Centre (NFAC) Delhi has erred in disallowing and adding back an amount of Rs.41,17,967/- on account of Sugar Sold at Concessional Rate

3. On the fact and in the circumstance of the case and in law of the learned National Faceless Appeals Centre (NFAC) Delhi has erred in disallowing and adding back an amount of Rs.2,67,313/- on account of VSI Contribution

4. The appellant craves for the leave, add, alter, amend, modify and delete any or all the above grounds of appeals before or at the time of hearing.”

Findings & Analysis :

2. We have heard both the parties and perused the records. The assessee is a co-operative society, running Sugar factory engaged in the business of manufacture of white crystal sugar as main product. It filed return of Income on 26/10/2017 declaring total income at NIL and showing loss of Rs.40,44,45,617/-

2.1 Ground Number 1: Excess Sugar Cane price:

The Assessing officer noted in the assessment order that during the year the assessee has paid Rs.2510.03 per MT to farmers for purchase of Sugar cane. The Central Government decided FRP for sugar cane for the year at Rs.2762.5 which was inclusive of H&T expenses per Metric Tonne(MT). The AO noted that Assessee has paid the amount of Rs.2510.03 per MT excluding H&T expenses which the assessee has separately incurred. Therefore the AO added the amount of H&T expenses and arrived at a price of Rs.3340.61 per MT (2510.03+830.58). The AO therefore observed that the assessee had paid excess price for Sugar Cane as compared to the FRP. The AO arrived at Rs. 9,13,15,096/- as the difference between

actual price paid for Suar Cane and FRP. The AO held that 50% of the said amount is appropriation of Profit and added Rs.4,56,57,548/- to the Total Income.

2.2 Aggrieved by the same the assessee filed appeal before the Ld.CIT(A). Ld.CIT(A) confirmed the addition as assessee failed to file any submission before the Ld.CIT(A). Aggrieved by the order of CIT(A) the assessee filed appeal before this Tribunal.

It is observed that Section 36 has been amended wef 2016. Sub clause (xvii) has been added to Section 36(1) of the Act. The said sub clause is reproduced here as under :

36 (1)(xvii) the amount of expenditure incurred by a co-operative society engaged in the business of manufacture of sugar for purchase of sugarcane at a price which is equal to or less than the price fixed or approved by the Government..

Thus as per section 36(1)(xvii) the sugar cane price fixed by Government is allowed as deduction . In this case admittedly the assessee has paid more price than the Price fixed by government. Therefore, as per section 36(1)(xvii) only the amount paid as per the price fixed by the government is allowed as deduction . Therefore, the AO was right in making the disallowance of the excess price paid above the price fixed by Government. Accordingly, we uphold the addition made by the AO. Accordingly, the Ground Number 1 is dismissed.

3. **Ground No.2– Sugar sold at concessional rate :**

3.1. The Hon'ble Supreme Court in the case of CIT vs Krishna SSK had directed the Assessing Officer to verify following :

3.2 whether the practice of selling sugar at concessional rate has become practice or customs in the sugar industry or not!

3.3 Whether any resolution passed by the State Government supporting the practice!

3.4 What was the basis for deciding the quantity of sugar to be sold to members.

3.5 On perusal of the Assessment order it is observed that the Assessing Officer as per the directions of Hon'ble Supreme Court has noted in the Assessment order that it is a customary practice to sale sugar at concessional rate , the Government of Maharashtra has directed that 5 kg sugar per month can be sold at concessional rate per member. The AO has noted in the assessment order that Assessee has sold 5 kg per month to its members. However, the AO noted that the Assessee has also sold 5 kg per month sugar at concessional rate to non-members. Therefore, the AO added

Rs.41,17,967/-which was on account of sugar sold at concessional rate to Non-Members. However, AO has not given any reason for

making such addition as admittedly the sale was to non-members. The AO has added the impugned amount u/s 37 of the Act. Section 37 of the Act is about expenses claimed by the assessee. However, the impugned amount is not an expenditure. The amount has not been debited to P&L account. Therefore, the AO had no jurisdiction to add the said amount u/s 37 of the Act. Hence, we direct the AO to delete the addition of Rs. 41, 17,967/-. Accordingly, the ground number 2 is allowed.

4 **Ground Number 3: VSI Contribution :**

In this case the AO in the assessment order has held that it is an allowable expenditure u/s 35(1) of the Act. The AO observed that Assessee has not submitted any evidence of actual payment. In these facts and circumstances, we direct the assessee to file the evidence of payment before the AO. The AO shall verify and if found paid then it shall be allowed as deduction. Accordingly, the ground number 3 is allowed for statistical purpose.

5. In the result appeal of the Assessee is partly allowed.

Order pronounced in the open Court on 31st December, 2024.

Sd/-

(MS.ASTHA CHANDRA)
JUDICIAL MEMBER

Sd/-

(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 31st Dec, 2024/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

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

आदेशानुसार / BY ORDER,

Senior Private Secretary
आयकरअपीलीयअधिकरण, पुणे/ITAT, Pune.