

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER AND
SHRI BIJYANANDA PRUSETH, ACCOUNTANT MEMBER
ITA Nos. 738/SRT/2023 and 209/SRT/2024**

AYs: (2012-13 and 2016-17)

(Physical Hearing)

Shree Khedut Sahakari Khand Udhog Mandli Ltd., Baben, Bardoli, Surat - 394601, Gujarat	vs.	ITO, Ward 1, Bardoli
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAAAS4554N		
(Appellant)		(Respondent)

ITA Nos. 211 to 214/SRT/2020 (AYs: 2011-12 to 2014-15)

Sahakari Khand Udhog Mandal Ltd. Gandevi Sugar, Gandevi, Tal. Gandevi, Navsari - 396360, Gujarat.	vs.	ACIT, Navsari Circle, Navsari
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAAAS3791B		
(Appellant)		(Respondent)

ITA Nos. 218 to 221/SRT/2020 (AYs: 2011-12 to 2014-15)

ACIT, Navsari Circle, Navsari	vs.	Sahakari Khand Udhog Mandal Ltd. Gandevi Sugar, Gandevi, Tal. Gandevi, Navsari - 396360, Gujarat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAAAS3791B		
(Appellant)		(Respondent)

ITA Nos. 222 to 225/SRT/2020 (AYs: 2011-12 to 2014-15)

ACIT, Navsari Circle, Navsari	vs.	M/s Maroli Vibhag Khand Udyog Sahakari Mandali Ltd. Kalyan Nagar, PO- Maroli Bazar, Taluka- Jalalpore, Dist. Navsari – 396436, Gujarat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAAAM1187H		
(Appellant)		(Respondent)

**ITA Nos.738/SRT/2024 & 209/SRT/2024 & Ors.
Shree Khedut Sahakari Khand Udyog Mandli Ltd.**

ITA Nos. 16 and 17/SRT/2021 (AYs: 2011-12 and 2012-13)

Maroli Vibhag Khand Udhog Sahakari Mandali Ltd. Kalyan Nagar, PO- Maroli Bazar, Taluka - Jalalpore, Dist. Navsari – 396436, Gujarat	vs.	ACIT, Navsari Circle, Navsari
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAAAM1187H		
(Appellant)		(Respondent)

Appellant by	Shri Akshay Modi, CA
Respondent by	Shri Mukesh Jain, CIT-DR with Shri Kevin Langaliya, CA
Date of Hearing	09/09/2025
Date of Pronouncement	25/11/2025

आदेश / ORDER

PER BENCH:

This bunch comprises sixteen appeals, including cross-appeals filed by the assessee, involving common and identical issues. Out of these, eight appeals pertain to Sahakari Khand Udhog Mandal Ltd., consisting of four appeals each filed by the Revenue and the assessee. Further, six appeals relate to Maroli Vibhag Khand Udhog Sahakari Mandali Ltd., comprising four appeals filed by the Revenue and two appeals filed by the assessee. The remaining two appeals pertain to Shree Khedut Sahakari Khand Udhog Mandli Ltd., both of which are filed by the assessee. All these appeals pertain to different assessment years (AY) and are directed against separate

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orders passed by the Learned Commissioner of Income -tax (Appeals) [in short, "CIT(A)"], which, in turn, arose out of separate assessment orders passed by the Assessing Officer [in short, "AO"] under section 143(3) of the Income-tax Act, 1961 (In short, the 'Act').

2. Since the issues involved in all these appeals are common and identical in nature, raising common questions of law and fact pertaining to the allowability of the Final Cane Price (FCP) /additional sugarcane price paid by the assessee over and above the statutory Fair and Remunerative Price (FRP) [earlier known as the Statutory Minimum Price (SMP)] for various assessment years ranging from AY 2011-12 to AY 2016-17, all the appeals filed by the three assesseees have been clubbed and heard together. Accordingly, this consolidated order is being passed for the sake of convenience and brevity.

ITA Nos. 738/SRT/2023 and 209/SRT/2024 (AYs: 2012-13 and 2016-17):

3. We shall first take up the two appeals pertaining to Shree Khedut Sahakari Khand Udyog Mandli Ltd., both filed by the assessee for different assessment years. For adjudication purposes, ITA No. 738/SRT/2023 for AY 2012-13 is treated as the lead case, and the findings therein shall apply *mutatis mutandis* to the connected appeal. The grounds of appeal raised by

the assessee in the lead case (ITA No. 738/SRT/2023 for A.Y. 2012-13) are reproduced below:

1. *On the facts and in the circumstances of the case as well in law, the CIT (Appeals), NFAC, New Delhi's order upholding the assessment order passed, without following the unambiguous and clear-cut directions given by the Hon'ble ITAT, Surat Bench, Surat vide it's order dtd. 19-07-2019 (Para 9) in ITA No. 1206/AHD/2017 to the AO and hence, being prejudicial and in violation of basic principles of justice, without jurisdiction and bad in law, is liable to be struck down.*
2. *On the facts and in the circumstances of the case as well in law, the CIT (Appeals) has grievously failed to appreciate in the right, lawful and proper perspectives the detailed explanations substantiated by the authentic, speaking and corroborative materials, evidences, etc. vide written submission dtd. 21-09-2021 and 26-09-2021, in discharge of the onus to prove the expenditure towards approved Final Cane Price (FCP) as the business expenditure u/s 37(1) of the Act, in observance to the directions of the Hon'ble Supreme Court in CIT Vs. Tasgaon Taluka SSK Ltd. (2019) 103 taxmann.com 57 (SC) and therefore, the action of the CIT (Appeals) upholding the AO's order merely on allegation that "the appellant is not aggrieved with the assessment order and is not interested in pursuing the same. Accordingly, the addition/disallowance as challenged in the Grounds of Appeal and appeal memo are hereby confirmed" being without jurisdiction, arbitrary, conjectural, prejudicial, perverse and patently in violation of the basic principles of justice, is liable to be quashed or annulled in toto.*
3. *On the facts and in the circumstances of the case as well in law, the CIT (Appeals) has conveniently ignored and not disposed off the ground raised in the appeal challenging the action of the AO patently in violation of the CBDT's Instruction F.No. 225/97/2021/ITA-II dtd. 06-09-2021, which is otherwise binding upon the AO and therefore, the assessment order passed in gross violation of mandatory procedure of handling of assessment by the JAO/AO covered u/s 144B(8) of the Act is without jurisdiction, illegal, bad in law and hence, liable to be annulled or nullified in toto.*
4. *On the facts and in the circumstances of the case as well in law, the CIT (Appeals) has erred in upholding the action of the AO in passing the assessment order u/s 143(3) r.w.s. 254 of the Act, without granting sufficient, real, satisfactory and meaningful opportunity of being heard so as to make compliance to the SCN issued on 23-09-2021 and notice u/s 142(1) of the Act dtd. 25-09-2021 fixing the date of hearing on 27-09-*

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2021 i.e. just one day before the date of passing the order and hence, the whole assessment proceedings being carried out in pure violation of principle of natural justice (audi alteram partem), is without jurisdiction, bad in law, void ab initio, illegal, unjustified and hence, the assessment order is liable to be struck down.

5. *On the facts and in the circumstances of the case as well in law, the CIT (Appeals) ought to have found that the assessment order passed by the AO is mere replica of the original assessment order, without making any inquiry or effort in pursuance to the directions of the Apex Court in Tasgaon's case (supra) to establish an element of profit in the Final Cane Price paid over and above the Minimum Support Price (FRP) and thus, the assessment order making disallowance of the portion of the cane price paid to the cane growers members/farmers at competitive Final Cane Price is without jurisdiction, unwarranted of facts, prejudicial, predetermined, conjectural, arbitrary and patently in contravention to the provisions of the law and hence, liable to be quashed.*
6. *On the facts and in the circumstances of the case as well in law, both the lower authorities have grievously failed to appreciate in the right, lawful and proper perspectives the vital, corroborative, credible, speaking and authentic documentary materials i.e. the statement of accounts, Government Auditor's Report, etc. demonstrating the approval of Final Cane Price (FCP) by the State Government through State Level Acts / Orders and/or through relevant legal instruments including the appellate orders of preceding years placed on the records in discharge of the onus in pursuance to the ratio laid down by the Apex Court in Tasgaon's case (supra) and therefore, the CIT (Appeals)'s action in upholding the disallowance of portion of cane price on mere treating it as inflated purchases of distribution of profit, being without jurisdiction, perverse, baseless, arbitrary, prejudicial, predetermined, bad in law is liable to be annulled in toto.*
7. *On the facts and in the circumstances of the case as well in law, both the lower authorities have grievously failed to appreciate that on identical facts, in the past, in all the assessment years, the Final Sugarcane Price (FCP) paid over and above the Minimum Support Price (SMP/FRP) allowed fully by the AOs or the appellate authorities as business expenditure u/s 37(1) of the Act appreciating in the right, lawful and proper perspectives the suo moto approval given by the State Government authorities as defined under the Sugarcane Control Order, 1966 i.e. the Director of Sugar, Gujarat State as well the Registrar of the Cooperative Societies, Gujarat State after due appreciation of the audited statement of accounts, Government Auditor's Report, relevant resolutions fixing the final sugarcane price, etc. and therefore, the AO's inference for making disallowance of portion of the cane price, in pure violation of "rule of*

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consistency" and thus, offended the law laid down by the Supreme Court in CIT Vs. Excel Industries Ltd. (2013) 358 ITR 295 (SC) holding that the Revenue must of consistent and not flip flop on the same issue in different assessment years, is unjustified, without jurisdiction, bad in law and hence, liable to be struck down.

8. On the facts and in the circumstances of the case as well in law, the CIT (Appeals) has erred in upholding the AO's order u/s 143(3) r.w.s. 254 of the Act, making disallowance of portion of sugarcane purchase price to the extent of Rs. 242,12,52,595/-actually/factually paid to the farmers/cane growers, towards the ascertained, accrued and crystalized contractual liability on procurement of sugarcane, on account of the alleged inflated purchases of sugarcane, purely on misleading, mis conceptual, arbitrary and perverse observations, being without jurisdiction, bad in law, invalid, illegal, unwarranted of facts, is liable to be quashed or annulled in toto.
9. On the facts and in the circumstances of the case as well in law, both the lower authorities have grossly failed to appreciate that the FRP (Fair and Remunerative Price) declared by the Ministry for Food and Public Distribution, Government of India, New Delhi in the initial period of sugar season (as defined under Clause 3 of the Essential Commodities Act), is the minimum/ suggestive cane price purely on estimation/approximation and based on sugar recovery percentage cane of the earlier sugar season, and hence, the disallowance of portion of the Final Cane Price (FCP) to the extent of Rs. 242,12,52,595/- paid at the competitive price as a measure of "commercial expediency", on account of alleged inflated purchase, deserves to be deleted.
10. On the facts and in the circumstances of the case as well in law, both the lower authorities have failed to consider in the right, lawful and proper perspectives that the sugarcane price paid to the cane growers members/suppliers was approved by the State Government authorities as defined under the Sugarcane Control Order, 1966 i.e. The Director of Sugar, Gandhinagar, The District Registrar, (Co.op. Societies), Gujarat and therefore, the disallowance of portion of the cane price to the extent of Rs. 242,12,52,595/- made by the learned AO on an erroneous, mis-conceptual and flimsy view of the inflated purchase price or distribution of profit is misconceived, perverse, baseless, illegal or otherwise, unsustainable in law, and hence, deserves to be deleted.
11. On the facts and in the circumstances of the case as well in law, the C.I.T. (Appeals) ought to have held that the price of cane (main raw material) purchased by the appellant cooperative society from its members, other farmers (unregistered/nominal members) and from other cooperative societies at the competitive price, was contractually fixed as permitted by Section 9 of the Sale of Goods Act, 1930 and hence, the AO's disallowance

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of portion of the cane price confirmed by the C.I.T. (Appeals) ignoring the fact of payment of cane price made for the year out of commercial expediency, being without jurisdiction, arbitrary or based on irrelevant or extraneous consideration, unfair, subjective, irrational, bad in law, invalid, void ab initio and therefore, liable to be struck down.

12. *On the facts and in the circumstances of the case as well in law, the C.I.T. (Appeals) failed to appreciate that the total cane price including the above amount of Rs. 242,12,52,595/- is fully allowable both under section 28 and section 37 and the disallowance thereof results into Department taxing unreal and wrong amount of income.*
13. *On the facts and in the circumstances of the case as well in law, both the lower authorities have overlooked the claim in the return of income filed for the carried forwards of business loss and unabsorbed depreciation as assessed in the regular assessment completed for the earlier years and hence, the assessment order passed by the AO arbitrarily at the assessed income of Rs. 242,12,52,595/- without giving set off of the brought forward business loss and unabsorbed depreciation for the earlier years is liable to be struck down.*
14. *On the facts and in the circumstances of the case as well in law, both the lower authorities have erred in overlooking and summarily rejecting the detailed various submissions made during the course of assessment/appeal proceedings including the Statutory Audit reports of the Govt. Auditors, the Statement of Accounts, audited Balance Sheet and Manufacturing reports, other relevant materials submitted to the State Government for approval of the final cane price, other State's approved cane price, opportunity cost/cost of cultivation to the farmers for supplying sugarcane to the appellant cooperative society as well as strong agitations by farmers demanding higher prices and hence, the order passed by the C.I.T. (Appeals) confirming the action of the AO making disallowance to the extent of Rs. 242,12,52,595/- arbitrarily, capriciously and based on lopsided, imaginary and factually incorrect inferences, deserves to be annulled or nullified.*
15. *Your appellant further reserves its rights to add, alter, amend or modify any of the aforesaid grounds before or at the time of hearing of an appeal.*

4. The assessee is a cooperative sugar manufacturing society engaged in procurement of sugarcane from members, nominal members and other suppliers, and thereafter processing the same into sugar and allied by-

products. The assessee declared Nil income in the return filed on 21.09.2012. During scrutiny assessment completed u/s 143(3) of the Act, the AO disallowed an amount of Rs.2,42,12,52,600/-, being the differential cane price paid over and above the FRP, treating such excess payment as distribution of profit and not allowable as expenditure. Upon first appeal, the CIT(A) upheld the disallowance on the ground of non-compliance and failure to substantiate the claim with requisite documentary evidence. The assessee, thereafter, preferred the appeal before this Tribunal. It is noted that this matter had earlier travelled before this Tribunal and vide order in ITA No.1206/Ahd/2017 for AY 2012-13, dated 19.07.2019, the issue was restored to the file of the AO with explicit directions to examine the claim in the light of the law laid down by the Hon'ble Supreme Court in CIT vs. Tasgaon Taluka Sahakari Sakhar Karkhana Ltd. (2019) 103 taxmann.com 57 (SC). In the above judgment, the Tribunal noted that at the time when additional purchase price is determined/fixed under clause 5A, the accounts are settled and the particulars are provided by the concerned Co-operative Society as to what will be the expenditure and what will be the profit etc. Considering the fact that SMP determined under clause 3 of the Control Order, 1966, which is paid at the beginning of the season, is deductible in

the entirety and the difference between SMP determined under clause 3 and SAP/additional purchase price determined under clause 5A, has an element of distribution of profit which cannot be allowed as deduction, the Hon'ble Supreme Court remitted the matter to the file of the AO for considering the modalities and manner in which State Advised Price (SAP)/additional purchase price/final price is decided. He was directed to carry out an exercise of considering 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 Sugar Cane (Control) Order, 1966 and thereafter, determine as to what amount would form part of the distribution of profit and the other as deductible expenditure. Thus as per the directions of the Hon'ble Apex Court in case of Tasgaon Taluka (supra), it was directed that the AO would allow deduction for the price paid under clause 3 of the Sugar Cane (Control) Order, 1966 and then determine the component of distribution of profit embedded in the price paid under clause 5A, by considering the statement of accounts, balance sheet and other relevant material supplied to the State Government for the purpose of deciding/fixing the final price/additional purchase price/SAP under this clause. The amount

relatable to the profit component or sharing of profit/distribution of profit paid by the assessee, which would be appropriation of income, will not be allowed as deduction, while the remaining amount, being a charge against the income, will be considered as deductible expenditure. Pursuant to the above directions of this Tribunal in the light of the judgement in the Tasgaon Taluka case, the AO passed an order dated 28.09.2021 u/s 43(3) r.w.s. 254 of the Act which is the subject matter of appeal by the assessee.

5. All the grounds raised by the assessee, though numerous and articulated from different legal and factual perspectives, cumulatively revolve around a single core dispute, namely the allowability of the FCP/ additional sugarcane price paid over and above the FRP to cane growers and farmer-members, and the consequential disallowance of Rs. 2,42,12,52,595/- made by the AO and confirmed by the CIT(A). Grounds Nos. 1 to 5 primarily challenge the jurisdictional validity of the assessment order and the impugned appellate order on the basis of non-compliance with this Tribunal's earlier directions dated 19.07.2019, denial of adequate opportunity, violation of CBDT instructions governing faceless assessments, and breach of natural justice. Grounds Nos. 6 to 12, being substantive in nature, assail the very basis and correctness of the disallowance, asserting

that the FCP constitutes a commercially justified contractual liability, allowable under section 28 or section 37(1) of the Act, and that the authorities below have erred in treating such payment as profit distribution without appreciating documentary, statutory and audit-backed approvals. Ground No. 13 relates to the consequential grievance regarding non-grant of set-off of brought forward business losses and unabsorbed depreciation, while Ground No. 15 is general in nature and does not call for separate adjudication. Since all effective grounds stem from the single determinative question of whether the excess cane price represents a deductible business expenditure or a non-allowable appropriation of profit, Grounds Nos. 1 to 14 are taken up together and adjudicated in a consolidated manner for the sake of coherence, clarity and judicial economy.

6. The learned Authorized Representative (Id. AR) appearing on behalf of the assessee commenced his submissions by drawing the Bench's attention to the procedural history of the matter and submitted that the present appeal arises not in vacuum, but in consequence of a specific remand direction issued by this Hon'ble Tribunal in its earlier order dated 19.07.2019 in ITA No.1206/Ahd/2017, wherein the issue relating to the allowability of FCP was set aside to the file of the AO with a mandate that

the issue be freshly adjudicated strictly in accordance with the ratio laid down by the Hon'ble Supreme Court in case of Tasgaon Taluka (supra). The Id. AR submitted that the Tribunal in its earlier order had consciously refrained from affirming the disallowance made by the AO and specifically directed that the matter required a detailed factual-cum-legal examination, keeping in view the evidentiary trail relating to fixation of cane price, the statutory mechanism under the Sugarcane (Control) Order, 1966 the nature of cooperative governance, the audit and verification by Government authorities, and the requirement to identify, if any, the portion of cane price attributable to appropriation of profit.

7. Continuing, the Id. AR submitted that instead of complying with the explicit directions issued by this Tribunal, the AO has simply reproduced the earlier reasoning and has made an identical disallowance of Rs.2,42,12,52,595/- without undertaking any of the factual exercise mandated under the decision of the Hon'ble Supreme Court. The AR submitted that the AO has neither called for the pricing computations nor examined the audited statement of accounts, nor correlated recovery percentages, sale proceeds of sugar/by-products, or cooperative resolutions pertaining to final price fixation, nor has he attempted to quantify whether

any part of the differential price constitutes profit appropriation. According to the AR, this omission itself renders the assessment order non-est in law, being in derogation of binding judicial directions. The AR further added that the CIT(A), instead of appreciating this fundamental jurisdictional defect, has merely dismissed the appeal on the presumption of non-compliance or lack of interest, while at the same time confirming such a massive addition—an approach which the AR described as inconsistent with appellate duty, mechanical in nature, and contrary to principles of natural justice.

8. The Id. AR then addressed the substantive issue and submitted that the Department has proceeded on a fundamentally erroneous assumption that the FRP, declared by the Central Government under the Sugarcane (Control) Order, 1966 represents the final or commercially determinative price of sugarcane. The AR submitted that FRP is merely a statutory minimum benchmark intended to protect farmers against exploitation and is not intended to restrict or regulate the commercial pricing arrangements between sugar mills and cane growers. In the cooperative sector, where the cane growers are themselves owners of the factory, the final cane price is determined after taking into account multiple operational, economic and

cooperative considerations, such as the actual sugar recovery in the relevant crushing season, actual sale realizations of sugar and molasses, bagasse and press-mud valuation, fluctuating market dynamics, cane quality improvement programmes, cost of cultivation, minimum support requirements of farmers, competitiveness with neighboring sugar mills, and ongoing socio-economic obligations integral to the cooperative structure.

9. The Id. AR submitted that the payment of cane price in installments — first, during the harvesting season based on provisional values and subsequently, on crystallization of accounts — is a standard and longstanding industry practice in the cooperative sugar sector throughout India and cannot be interpreted as an after-the-event distribution of surplus. The AR emphasized that the payment is always linked to quantity of cane supplied and not to the quantum of shareholding, voting rights or capital employed by the farmer-members, which clearly demonstrates that the payment is a purchase consideration for raw material and not a return on investment. The AR submitted that if the Revenue's theory were accepted, even payments made to non-member farmers, who have no voting or dividend entitlement, would have to be treated as profit sharing, which would lead to an absurd conclusion.

10. The Id. AR also submitted that the fixation of the final cane price is not an arbitrary unilateral act but occurs under a regulatory umbrella involving the oversight or concurrence of statutory authorities such as the Director of Sugar, Gujarat State, and the Registrar and District Registrar of Co-operative Societies. The cane price is declared, approved and recorded in the statutory audit report under the Co-operative law framework, and such audit is conducted by Government-nominated auditors. The AR argued that once the State machinery has reviewed and approved the accounts in which the final cane price stands disclosed and accepted, the same must be treated as Government approved price within the meaning of later legislative enactments such as section 36(1)(xvii) and section 155(19) of the Act, which reflect the legislative intention to treat Government approved cane price as allowable business expenditure. The AR submitted that these provisions, read with CBDT Circular No. 18/2021 and the subsequent modification vide Finance Act, 2023, demonstrate that the legislature recognizes that cane price fixed under cooperative governance norms is allowable and that the income-tax department must not mechanically treat final cane price as profit distribution.

11. Reliance was also placed by the AR on the decision of the Hon'ble Supreme Court in CIT vs. Excel Industries Ltd. (2013) 358 ITR 295 (SC) to argue that the rule of consistency prohibits the Revenue from making contrary additions in a particular assessment year when the claim had been allowed or not challenged in earlier years under identical facts. The AR submitted that in the assessee's own case for preceding years, as well as in several comparable cooperative sugar factories in Gujarat, Maharashtra and Karnataka, similar cane price structures have been accepted, either by the AO or by appellate forums, and hence the present year's action represents an unjustified deviation.

12. The Id. AR also relied upon the recent judgment of the Hon'ble Gujarat High Court in the case of PCIT vs. Shree Narmada Khand Udyog Sahakari Mandli Ltd., R/Tax Appeal No.955 of 2024, dated 11.02.2025, wherein under similar factual circumstances, involving a cooperative sugar factory paying cane price higher than FRP, the Hon'ble Court affirmed the order of this Tribunal holding that such differential cane price does not amount to profit distribution but constitutes allowable business expenditure. The AR submitted that the said judgment, being from the

Hon'ble jurisdictional High Court, is binding on this Bench, and therefore, the disallowance under appeal cannot survive.

13. The Id. AR submitted that Cane Development Expenses, which have also been indirectly treated as camouflaged profit sharing, are in fact incurred wholly and exclusively for improving the quality and productivity of sugarcane supplied to the factory and therefore fall squarely within the ambit of business expenditure allowable under section 37(1) of the Act. The AR further submitted that disallowance of cane price and cane development results in taxation of notional, hypothetical and unrealistic income, which is impermissible in law, as only real income can be subjected to tax.

14. Lastly, without prejudice to the preceding submissions, the AR argued that even if the Revenue's stance were hypothetically accepted, the entire differential amount cannot be automatically treated as profit distribution, because the Hon'ble Supreme Court in Tasgaon Taluka (supra) has clearly mandated a scientific and evidence-based computation exercise, distinguishing between members and non-members, examining whether the alleged surplus corresponds to profit, and determining whether any amount can be attributed to profit sharing. The AR submitted that the AO

has not undertaken any such exercise and hence the disallowance deserves to be deleted in toto, or in the alternative, the matter may be restored only for the limited purpose of quantification in accordance with Tasgaon principles, though the assessee maintains that no such exercise is warranted in light of subsequent judicial and legislative developments.

15. Per contra, the Id. CIT-DR, strongly supporting the assessment order as well as the impugned order of the Ld. CIT(A), filed detailed written submissions dated 27.02.2024 and a further submission dated 18.09.2025 and, relying upon both, submitted that the entire genesis of the present bunch of appeals, including the lead appeal of Shree Khedut Sahakari Khand Udhog Mandli Ltd. for AY 2012-13, lies in the judgment of the Hon'ble Supreme Court in CIT vs. Tasgaon Taluka (supra), which according to him, continues to be the leading and binding precedent in the context of sugarcane growers' co-operative societies and sugar manufacturing co-operatives, both under the earlier SMP/Clause 5A regime as well as under the present FRP regime. He pointed out that in the first round, this very Bench of the Tribunal, by order dated 19.07.2019, had set aside the orders of the AO and the then CIT(A) and remitted the matter to the file of the AO with a clear direction that the issue should be decided afresh in accordance

with the articulation of law by the Hon'ble Supreme Court in Tasgaon Taluka (supra) and that, therefore, any attempt now by the assessee to contend that Tasgaon has lost relevance post deletion of Clause 5A or under the FRP regime is not only legally untenable but would also render the explicit remand directions of the Tribunal infructuous. The learned CIT-DR thus emphasized that the sole question in the present appeal, as well as the connected appeals, is whether there is a profit element embedded in the final cane price/additional price paid over and above the FRP and whether such portion amounts to distribution of profit and, therefore, a non-deductible outgo in terms of the law laid down by the Hon'ble Supreme Court.

16. Proceeding to explain the ratio of Tasgaon Taluka (supra), the Id. CIT-DR submitted that the Hon'ble Supreme Court, while dealing with the earlier regime of SMP under clause 3 and additional price under clause 5A of the Sugarcane (Control) Order, 1966, had clearly held that the minimum price fixed under clause 3 represents the basic purchase price and is allowable as deduction, but that the additional price paid under clause 5A contains a component in the nature of profit-sharing with members and that such profit component, to the extent it represents distribution of

surplus, is not allowable as a business expenditure. He emphasized that the Hon'ble Supreme Court did not hold that no part of the additional cane price is allowable; instead, it laid down a structured exercise to be carried out by the AO by calling for all relevant materials furnished to the State Government for price fixation, examining the computation of additional price, identifying the element which is traceable to the profit of the year and treating such share of profit paid to members as appropriation of profits, while applying section 40A(2) of the Act separately in respect of payments to non-members. According to the CIT-DR, this framework of analysis remains fully binding even after the shift from the SMP-5A regime to the FRP regime, because the core principle is that expenditure in the nature of profit distribution cannot be allowed as deduction, and only that part of cane price which is a genuine charge on profits can be allowed.

17. The Id. CIT-DR submitted that post 22.10.2009, the Sugarcane (Control) Order, 1966 was amended; Clause 5A was deleted, and the pricing regime was changed to the FRP structure. He drew attention (as per his written submissions) to the fact that under the revised regime, FRP is determined keeping in view not only cost of production but also a "reasonable margin for the growers on account of risk and profit elements",

and, therefore, the basic FRP itself is a final and definite price, unlike the provisional or ambulatory prices in cases like Kolhapur and Mehsana concerning milk co-operatives. In his submission, once the Central Government, by incorporating clauses like 2(g) and 3(1)(g), has consciously built into the FRP the component of reasonable return and risk to growers, there remains no statutory scope for further additional cane price. Any payment over and above FRP, particularly when decided post finalization of accounts and profits in the AGM, can only be regarded as ex-post distribution of surplus profits under the guise of “final cane price”. He submitted that this is precisely what has happened in the case of the present assessee, where the so-called “third installment” or “final cane price” was determined in November 2012, after completion of the accounts for the previous year ended 31.03.2012 and after the profits had already accrued to the assessee. The learned CIT-DR argued that the liability to pay the extra amount did not exist on the last day of the accounting year, that it was not a part of the original contractual price at the time of supply of cane, and that the resolution to pay extra was clearly an appropriation of profits. According to him, this is diametrically opposite to the factual position in decisions like CIT vs. Mehsana District Co-operative Milk Producers Union

Ltd., (2006) 146 Taxman 355 (Guj.) where the final rate difference was resolved on the last day of the accounting period itself and formed part of the trading results of the year, and in Kolhapur Zilla Sahakari Dudh Utpadak Sangh Ltd., (2023) 152 taxmann.com 129 (SC), where the ad-hoc nature of milk pricing and the provisional character of interim rates were particularly emphasized. Apart from the above facts, the following facts were also delved upon by the CIT-DR:

(a) The A.O. during the fresh assessment proceedings asked the assessee multiple times to submit the documentary evidence regarding any documents submitted to the Gujarat State Government for fixing the additional price, any relevant order by the Gujarat State Government for fixing the additional price and payment made to members/non-members, but assessee failed to give any documentary evidence to the relevant questions raised by A.O. It was pointed out that the explicit directions of this Hon'ble Tribunal while remitting the matter to the AO was to determine the element of profit based on the judgement of the Hon'ble Supreme Court in Tasgaon Taluka (supra) wherein it was held that the difference between SMP determined under clause 3 and SAP/additional purchase price

determined under clause 5A, has an element of distribution of profit which cannot be allowed as deduction. The Hon'ble Supreme Court remitted the matter to the file of the AO for considering the modalities and manner in which SAP/additional purchase price/final price is decided and the AO was directed to carry out an exercise of considering 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 and thereafter determine as to what amount would form part of the distribution of profit and the other as deductible expenditure. According to the Id. CIT-DR, this exercise was duly carried out by the AO and the assessee was given multiple opportunities as evident from the records and the order, yet no evidence regarding any documents submitted to the Gujarat State Government for fixing the additional price, any relevant order by the Gujarat State Government for fixing the additional price and payment made to members/non-members etc was filed by the assessee and no replies as such was given by the assessee to the relevant questions raised by AO.

(b) Generally, a trade practice is that the purchase price is decided before the actual purchase of the commodity. In this case, the amount to be paid to sugarcane suppliers was decided in three instalments with first two being before/during the crushing season and the last one was determined at the time of finalization of accounts. This practice of deciding the final cane price long after the end of crushing season and at the time of finalization of their accounts through AGM in month of November was nothing but modus to substantially suppress the profits of the co-operative sugar society by showing the distribution of profit as purchases from its members. The entire profits of the sugar factories otherwise taxed in hand of society, but due to this modus operandi, remains exempted as an agriculture income in hands of sugarcane growers. Following facts further lend credence to this *modus operandi* of the assessee:

(i) Assessee has paid additional price included in FCP which is over and above the FRP by Rs 242 Crores as determined by the AO (Rs 132 Per MT), which is not allowable as per the amended FRP regime wef 1/10/2009.

(ii) Further assessee has paid the money in three instalments with third instalment being determined after the finalization of accounts in month of September 2012 and approval in the AGM in November 2012 i.e. 7 months after the end of financial year.

(iii) Assessee has considered the third instalment as unpaid liability 7 months after the end of the financial year in March 2012.

(iv) Even the State Purchase tax of Rs 5.65 Crores is shown as unpaid liability as it is determined and approved in month of November 2012.

(v) During finalization of accounts, when the final profits are worked out, assessee distributes the profits to its members in the form of additional price in order to wriggle out from the payment of taxes as profits so distributed are exempt in the hands of sugarcane growers as agricultural income while the assessee society is a pure business entity and not a charitable trust.

(vi) That the appellant could not prove that a higher price was paid by it to the farmers on account of higher yield or some other factors. Besides nowhere it has been claimed that at the time of supply of sugarcane by the farmers to the appellant, any agreement or contract

for payment of price higher than the FRP had been entered into between these two parties.

(vii) Amount paid to members /non-members as well market rate is completely different as evident from page 107 of submission (Rs 2565/MT to members; Rs 2450/MT to non-members and Rs 2200/MT to the third parties i.e., other factories). Hence, addition of Rs.132/- per quintal having been paid as distribution of profits is self-evident otherwise also.

18. The Id. CIT-DR submitted that the assessee's reliance on the Tribunal's decision in Shree Narmada Khand Udyog Sahakari Mandli Ltd. (supra) and the subsequent jurisdictional High Court judgment, 172 taxmann.com 467 (Guj.), dated 11.02.2025, affirming the Tribunal is entirely misplaced and fact-specific. He pointed out that in Narmada Khand (supra), the Tribunal had recorded specific findings of fact that the additional cane price had been approved by the Managing Committee which included Government representatives under the Co-operative law, and that such price was, on facts, found to be part of the commercial pricing mechanism duly accepted by the State apparatus. He submitted that those findings are unique to that case and cannot be bodily imported into the present matters where,

according to him, the assessee has failed to produce any documentary evidence to show that the State Government of Gujarat, the Director of Sugar or any other competent authority had either fixed or approved the payment of cane price over and above the FRP. He further submitted that in Narmada Khand, this Tribunal, in para 19 of its order, had discussed clause 5(b) of the older Sugarcane Control framework and proceeded on a legal footing that does not hold good for the post-2009 FRP regime. In his written note, he argued that clause 5 itself only governed a limited period from 01.11.1958 till the 1962 Order, and that from 1974 onwards additional cane price was governed by clause 5A, which was later deleted in October 2009. Thus, in his submission, the reliance on clause 5(b) in Narmada Khand (supra) to support additional cane price in an FRP regime is not correct in law and, in any case, cannot override the binding law laid down by the Hon'ble Supreme Court in Tasgaon Taluka (supra).

19. The Id. CIT-DR also distinguished the line of authorities relied upon in Narmada Khand (supra) and by the Id. AR in the present case. He submitted that Kolhapur Zilla Sahakari Dudh Utpadak Sangh Ltd. (supra) and Mehsana Dist. Co-op Milk Producers Union Ltd. (supra) pertain to milk co-operatives where prices were provisional, ad-hoc, per kilo-fat and ambulatory in

nature, subject to frequent revision, and where the Board resolved on the last day of the accounting period to finalize the rate, thereby creating the liability within the year itself. In contrast, in the instant case, the assessee is a sugar producer, FRP is a final, non-provisional price notified by the Government, and the so-called additional price has been determined much after the year-end, in an AGM held in November 2012, after profits stood ascertained and accounts closed. Further, in Kolhapur Zilla Sahakari Dudh Utpadak (supra), the payment was made only to members, whereas in the present case and in Tasgaon (supra), the payment is made to members as well as non-members (including “nominal members”), which, according to him, is a critical factor because any element of profit can never, by definition, be said to be distributable to non-members as such. Similarly, he noted that decisions concerning West U.P. Sugar Mills, in Civil Appeal No.7508 of 2005, dated 22.04.2020, Jaora Sugar Mills, AIR 1997 SC 600 (SC) and SKG Sugar Ltd., 1959 AIR 230 (SC) related mainly to the competence or otherwise of State Governments to fix SAP under the earlier SMP regime and did not deal with the taxability of excess price as profit distribution under the FRP regime in the State of Gujarat where, admittedly, there is no SAP order issued by the Gujarat Government. Therefore, according to the

CIT-DR, none of these decisions can detract from the application of Tasgaon Taluka (supra) to the facts of the present case.

20. On the factual front, the learned CIT-DR submitted that the pattern of payment adopted by the assessee itself demonstrates profit distribution. Referring to the material on record, he pointed out that the assessee has paid cane price at Rs. 2,565 per MT to members, Rs. 2,450 per MT to non-members, and Rs. 2,200 per MT to third parties/other factories, thereby clearly showing that the highest rate is reserved for members, a somewhat lower rate for nominal/non-members, and the lowest for outsiders. The differential of Rs. 132 per quintal paid to members, over and above the rate at which cane is available from other sources, according to him, is nothing but distribution of profits in the guise of purchase price, and this conclusion flows even on a plain commercial comparison without any elaborate computation. He further submitted that neither before the AO in the set-aside proceedings nor before this Tribunal has the assessee produced any contemporaneous correspondence with State authorities, any order of the Government fixing a higher price, or any material to show that the so-called final cane price was ever placed before or sanctioned by the State or Central Government. The assessee's reliance on the mere presence of "Director of

Sugar” as an ex-officio or nominee director on the Board of the co-operative was specifically rebutted by stating that the list of directors furnished by the assessee mentions only the post and not the name/designation as “Government nominee” and that there is no evidence that such Director of Sugar has either participated in or signed any resolution relating to additional cane price, much less issued any order in his official capacity. He contended that the mere fact that statutory audit reports are required to be submitted to the Registrar or Director of Sugar under the Co-operative laws does not amount to Government approval for the purposes of the Income-tax Act, and that statutory audit is primarily a matter of regulatory compliance, not a fiscal sanction.

21. The Id. CIT-DR then turned to the subsequent legislative developments, viz. insertion of section 36(1)(xvii) by the Finance Act, 2015 (effective from A.Y. 2016-17), and insertion of section 155(19) by the Finance Act, 2023, as elaborated in the Memorandum to the Finance Bill and the CBDT SOP Circular dated 27.07.2023. He submitted that section 36(1)(xvii) was introduced with a clear stipulation that deduction will be available to a co-operative sugar factory in respect of sugarcane price only to the extent such price is equal to or less than the price fixed or approved

by the Government, and that the same is prospective from A.Y. 2016-17. To extend this benefit to earlier years and settle pending litigation, the Parliament inserted section 155(19) enabling the AO, upon an application by the assessee, to recompute income and allow deduction for such portion of cane price as is equal to or less than Government fixed/approved price for that year. The learned CIT-DR pointed out that this remedial mechanism requires the assessee to furnish specific documentary evidence showing that the price claimed as deduction does not exceed Government fixed/approved price and that the CBDT's SOP requires the Jurisdictional AO to dispose of such application within a stipulated timeframe. In the present case, however, he submitted that the assessee has not even filed any application under section 155(19) till date, nor has it produced the necessary documents to show that the so-called final cane price was fixed or approved by the Central or State Government. According to him, this conduct indicates that the assessee does not possess any such Government approval and only seeks to rely on general cooperative resolutions and audit reports which, in his submission, fall far short of the statutory requirement.

22. The Id. CIT-DR also addressed the assessee's plea of consistency and reliance on other assessment orders wherein, according to the AR, similar

cane price payments were not disallowed. He submitted that the principle of consistency cannot be invoked to perpetuate a mistake of law, especially when a binding judgment of the Hon'ble Supreme Court, Tasgaon Taluka (supra) has subsequently clarified the position and when, in the present case, the AO has recorded specific findings that no documentary evidence of Government approval or contemporaneous pricing computation has been adduced by the assessee. The fact that some other AOs, on different records, might have accepted claims of other assessees or even the same assessee in some years does not stop the Department from making a correct assessment when full facts are examined in the light of the Hon'ble Apex Court judgment and the later statutory scheme.

23. In conclusion, the learned CIT-DR submitted that the assessee has miserably failed to discharge its onus either under the directions of this Tribunal in the earlier round or under the principles laid down in Tasgaon Taluka (supra), that no credible evidence has been produced to show that the excess cane price over FRP has any connection with Government-sanctioned pricing or with genuine commercial compulsion; that the pattern of post-year-end determination of additional price in the AGM after profits stand crystallized clearly indicates appropriation and distribution of

surplus to members (and to some extent to non-members) and, therefore, the disallowance made by the AO and sustained by the CIT(A) requires to be upheld in full. He further submitted that for the sugar sector, Tasgaon Taluka (supra) continues to be the governing law despite the shift to the FRP regime, that the jurisdictional High Court's decision in Narmada Khand (supra) is distinguishable both on facts and on law as explained, and that if, for argument's sake, Tasgaon were treated as inapplicable, the very basis of the Tribunal's earlier remand would be nullified and the original assessment orders, wherein any payment over FRP was rightly treated as distribution of profits, would stand revived. He accordingly prayed that the appeal of the assessee be dismissed and the orders of the lower authorities be confirmed.

24. We have given our thoughtful consideration to the rival submissions, carefully perused the material available on record, including the paper book filed by the assessee, the assessment order passed in pursuance of the earlier remand, the impugned appellate order, as well as the detailed written submissions and supplementary notes filed by the learned AR and Id. CIT-DR. We have also deliberated on the decisions relied upon by both sides. The controversy, shorn of verbiage, lies in a somewhat narrow but legally significant compass, namely, whether the FCP/differential cane price

paid over and above FRP represents, in substance, a deductible business expenditure incurred wholly and exclusively for the purposes of the assessee's business, or whether, to any extent, it partakes the character of distribution of surplus/profits to cane growers, particularly members, under the co-operative structure. While the assessee has sought to characterize the entire additional payment as a part of the composite contractual purchase price of raw material, the Revenue has, on the other hand, portrayed at least a portion thereof as appropriation of profits, drawing strength principally from the decision of the Hon'ble Supreme Court in Tasgaon Taluka (supra) and the subsequent statutory scheme under sections 36(1)(xvii) and 155(19) of the Act.

25. At this juncture, it would be apposite to note that there are two distinct layers to the grounds raised by the assessee. The first layer, embodied in Grounds 1 to 5 (and to some extent Grounds 3 and 4), touches upon the jurisdictional and procedural aspects – namely, whether the AO, in the set-aside assessment, has in fact complied with the directions of this Tribunal in the earlier round; whether the assessee was afforded a real and meaningful opportunity of being heard in the faceless regime in terms of section 144B of the Act and attendant CBDT Instructions; and whether the

CIT(A) was justified in mechanically affirming the disallowance by invoking “non-prosecution”, allegedly without dealing with specific contentions and materials placed on record.

25.1 The second layer, which is substantive and merits-based, concerns the true nature of the disputed payment – whether, applying the principles emanating from Tasgaon Taluka (supra) and other judgments cited on both sides, the impugned differential cane price can legitimately be treated as part of the purchase price or has to be dissected, in whole or in part, as distribution of profits to members and others.

26. In so far as the remand directions of this Tribunal in its order dated 19.07.2019 are concerned, it is evident that the Coordinate Bench had required the AO to undertake a fresh factual inquiry in the light of Tasgaon Taluka (supra), which envisages examination of the books of account, statements and workings submitted to the State Government for determination of cane price, and thereafter, a segregation exercise to identify the profit element, if any, embedded in the additional price insofar as paid to members. The Id. AR contends that no such exercise has been undertaken and that the impugned order is a mere reproduction of the original assessment, whereas the learned CIT-DR, while defending the

ultimate conclusion, has also urged that even if the exercise is not reflected in elaborate computational form, the pattern of payment itself (different rates to members, non-members and outsiders) is sufficient to infer profit distribution. This gives rise to a mixed question: whether, from the standpoint of procedural compliance, the directions of the Tribunal can be said to have been substantially acted upon, and secondly, whether the material actually examined and recorded by the AO is enough to support the Revenue's inference under Tasgaon.

27. On the substantive dimension, it emerges from the rival submissions that there is no dispute about certain foundational facts: the assessee is a co-operative sugar factory; FRP notified under the Sugarcane (Control) Order constitutes the minimum payable price; the assessee has in fact paid cane price higher than FRP in the relevant year; part of such payment has been made during/around the crushing season and the balance, styled as "final cane price" or "third installment", has been determined and paid much after the close of the accounting year in November, pursuant to resolutions of the co-operative society. The divergence begins at the interpretative stage—while the assessee maintains that such final fixation is a commercial mechanism of rate finalization embedded in the cooperative

model and backed, in substance, by State/regulatory oversight and thus forms an accrued contractual liability, the Department insists that once FRP, post-2009, is a final “fair and remunerative” price incorporating reasonable profit, any further ex post enhancement, especially after profits have been crystallized, has to be seen as allocation of surplus rather than a trading expense.

28. Considerable debate has also centered around the extent and manner of applicability of decision in case of Tasgaon Taluka (supra) in the backdrop of the FRP regime and the subsequent jurisdictional High Court decision in Shree Narmada Khand Udyog (supra). The assessee has canvassed that Tasgaon Taluka (supra) was decided in the context of the SMP + clause 5A framework; that, post deletion of clause 5A and introduction of FRP, the factual and statutory context has significantly changed; that this very Bench, in Narmada Khand Udyog (supra), has already interpreted the co-operative cane price mechanism in favour of the assessee; and that the Hon’ble Gujarat High Court has since affirmed that reasoning. The Revenue, on the other hand, contends that Tasgaon Taluka (supra) enunciates a general principle of non-deductibility of profit distribution which is not confined to the earlier regime; that Narmada

Khand Udyog (supra), properly read, turned on specific findings of Government approval and factual appreciation which are allegedly absent in the present case; and that in any event, the High Court in Narmada Khand did not directly pronounce on the precise FRP-post-2009 legal architecture or on the scope of clause 5A vis-à-vis FRP, such that Tasgaon can be said to have been diluted or rendered inapplicable. The interplay between these two lines of authority, therefore, requires careful calibration before a final view is taken.

29. A related facet which also surfaces in the arguments is the impact of subsequent legislative interventions, notably the insertion of section 36(1)(xvii) of the Act by the Finance Act, 2015 and section 155(19) of the Act by the Finance Act, 2023, together with CBDT Circular No. 18/2021 and the SOP dated 27.07.2023. The assessee's stance is that these provisions are remedial and clarificatory in spirit, revealing Parliament's intent that cane price up to Government fixed/approved levels is to be treated as allowable, and that the co-operative pattern of fixation with Government nominees and statutory audit constitutes such "approval". The Revenue, by contrast, stresses on the prospective operation of section 36(1)(xvii), the conditional nature of relief under section 155(19) of the Act (requiring specific

application and documentary proof of Government fixation/approval), and the admitted fact that, in the present case, no such application or documentary proof of formal Government price approval has been produced. At this stage, we are therefore confronted with the question whether, and to what extent, these legislative developments can be read as throwing light on the character of cane price payments in earlier years, and what weight can be accorded to co-operative audit mechanisms and the presence of Government nominees in co-operative bodies for the limited purpose of treating the impugned FCP as “Government approved” or otherwise.

30. Yet another aspect which arises from the factual submissions is the differential rate structure adopted by the assessee – one rate for members, a slightly lower rate for non-members/nominal members, and a still lower rate for outside parties/other factories. The learned CIT-DR has invited us to infer, from this pattern alone, that the incremental rate for members represents nothing but appropriation of profits. The assessee, on the other hand, would have it that this differentiation is an inherent feature of the cooperative movement, justified on grounds of loyalty, supply commitment and primary membership obligations, and that as long as the base rate itself

(for non-members too) is above FRP and determined on commercial considerations, the marginal differential for members cannot, by itself, be treated as a profit slice. How far the mere presence of multiple slabs of cane price, vis-à-vis different categories of suppliers, can be determinative of the character of payment, and what role, if any, is to be played by the underlying documentation, pricing computations and Board/AGM resolutions, is another area that needs to be weighed with reference to the principles emanating from Tasgaon Taluka (supra) and related precedents.

31. In the backdrop of the above broad canvas, it thus becomes necessary to synthesize the factual position as emerging from the record with the legal tests propounded in Tasgaon Taluka (supra) and other cited decisions, as also to gauge the persuasive and binding force of the jurisdictional High Court judgment in Narmada Khand Udyog (supra) in the specific statutory setting governing the present assessee. It is only after such a composite evaluation that one can properly address, first, the procedural objections as to the manner of the set-aside assessment and the appellate order, and secondly, the substantive question as to whether, and to what extent, the impugned differential cane price should be regarded as

an allowable deduction or rejected as profit appropriation. We, therefore, proceed to examine these aspects in some detail.

32. We first deal with Grounds Nos. 1 to 5, wherein the assessee has assailed the assessment on jurisdictional and procedural grounds, alleging non-compliance with this Tribunal's earlier remand directions, violation of section 144B and CBDT instructions, and denial of proper opportunity. We have perused the chronology of events, including the notices issued under sections 142(1) and 143(2) of the Act, the show-cause notice, and the assessee's written submissions placed on record. It is evident that statutory notices were issued, the assessee was put to notice of the proposed disallowance and was afforded opportunity, albeit within the faceless framework. The assessee has not been able to point out any concrete instance where a specific piece of evidence was tendered but refused to be taken on record, or where a particular request for adjournment/pre-hearing material was arbitrarily denied so as to cause demonstrable prejudice. In the present case, the record shows a clear pattern of higher cane price being paid to members compared to non-members/third parties, without the assessee producing before the AO any detailed working or cost-based justification correlating the entire differential with commercial exigencies

such as recovery, quality or logistics etc or any iota of evidence justifying such higher payment. Equally, while it may be said that the AO has not carried out the full quantification exercise in the precise manner envisaged by this Tribunal in the earlier round, however, it is imperative to point out that the assessee has not submitted an iota of evidence to justify payments higher than the FRP, the manner of its calculation, its approval by the concerned Government Authorities etc. as laid down by Hon'ble Supreme Court and as per directions of this Tribunal , therefore, such deficiency goes to the *manner* of determination of disallowance and does not render the entire assessment void ab initio. On the facts before us, no such fatal prejudice is established. We, therefore, see no infirmity in the assumption of jurisdiction or in the continuation of proceedings so as to annul the assessment itself. Grounds Nos. 1 to 5 are, accordingly, dismissed.

33. We now turn to the substantive controversy arising from Grounds Nos. 6 to 14. The core issue is whether the FCP paid over and above the FRP is wholly deductible as business expenditure or whether a portion thereof, being in the nature of appropriation of surplus to member-growers, is liable for disallowance. The legal position on this aspect stands governed by the ratio of the Hon'ble Supreme Court in case of Tasgaon Taluka (*supra*) and

related decisions such as Kolhapur Zilla Sahakari Dudh (supra) and Mehsana District Co-operative Milk (supra). In essence, these authorities lay down that while the statutory or commercially determinable cane purchase price, forming part of the trading transaction, is allowable, any element embedded in the so-called “final” or “additional” price which, in substance, represents a distribution of profit to members cannot be allowed under section 37(1) of the Act. The determination of such embedded surplus is a fact-driven exercise, requiring comparison of rates paid to members vis-à-vis non-members/outside, timing of liability crystallisation, and contemporaneous computations or statements furnished to statutory authorities. In the present case, the record shows a clear pattern of higher cane price being paid to members compared to non-members/third parties, without the assessee producing before us any detailed working or cost-based justification correlating the entire differential with commercial exigencies such as recovery, quality or logistics. In these circumstances, we are unable to accept the plea that no disallowance at all is warranted; the onus to substantiate the entire excess payment as a trading outgo has not been discharged. Moreover, it is important to state here that no evidence of any documents submitted to the Gujarat State Government for fixing the

additional price, any relevant order by the Gujarat State Government for fixing the additional price etc was filed by the assessee at any stage of the proceedings. To this extent, the challenge to the very principle of disallowance fails and Grounds Nos. 6 to 12 stand rejected in so far as they assail the legitimacy of making any disallowance on this count.

34. However, while the necessity of a disallowance in principle is thus upheld, the quantification made in the impugned assessment order is not in consonance with the method indicated by the Hon'ble Supreme Court in Tasgaon Taluka (supra) nor with the structured approach adopted in comparable matters, including the order of the CIT(A) in the case of Sahakari Khand Udhog Mandali Ltd. (supra), wherein the profit-embedded portion was isolated by taking the effective rate to non-members as the commercial benchmark and treating only the differential per MT paid to members as embedded surplus (e.g. Rs. 75 per MT × quantity procured from members). A similar approach was also recognized by the Pune Bench in the case of Mohanrao Shinde Sahakari Sakhar Karkhana Ltd., ITA No.1138/Pun/2017 (AY 2012-13), dated 17.07.2019, where the price paid to non-members was regarded as a purely commercial deal, non-members having no claim on surplus of the co-operative. Guided by these principles,

we are of the considered view that the correct method is: (i) to identify, on the basis of the assessee's books and records, the rates paid to members, non-members/nominal members and outside factories; (ii) to treat the rate paid to non-members/outside factories as the commercial benchmark; (iii) to compute the differential per MT between the member's rate and such benchmark; and (iv) to multiply this differential by the quantity of cane purchased from members to arrive at the prima facie profit-embedded component liable for disallowance, subject to any further reduction to the extent the assessee, by cogent contemporaneous evidence, demonstrates that a part of such differential is directly attributable to demonstrable commercial factors (such as quality or recovery) rather than to membership. In the absence of complete computations and supporting material before us, it is neither feasible nor proper to undertake this exercise at the appellate stage. We, therefore, restore the matter to the file of the AO for the limited purpose of recomputing the disallowance strictly in the above manner and in line with the legal principles flowing from the aforesaid judicial precedents, after affording the assessee a final effective opportunity to place all relevant workings and evidence on record. To this extent, Grounds Nos. 6 to 14 are treated as partly allowed, with the ultimate

quantification left to be redetermined by the AO in accordance with law. This methodology shall apply *mutatis mutandis* for determination of similar issues arising in the remaining connected appeals forming part of this consolidated adjudication, subject to necessary factual adaptation.

Shree Khedut Sahakari Khand Udyog (AY 2016-17)

35. Let us now take up the appeal for A.Y. 2016-17 in ITA No. 209/SRT/2024 filed by Shree Khedut Sahakari Khand Udhdyog Mandli Ltd. In this year, the assessee has raised seven grounds of appeal challenging the action of the lower authorities in sustaining the disallowance of Rs.125,56,23,819/- out of the Final Cane Price paid to cane growers.

1. *On the facts and in the circumstances of the case as well in law, the CIT (Appeals) erred in upholding the AO's (in brief "The JAO") order making disallowance of portion of the Final and Approved Cane Price to the extent of Rs. 125,56,23,819/- actually/factually paid to the canegrowers members/farmers against the supply of the sugarcane, claimed as business expenditure u/s 37(1) r.w.s. 36(1)(xvii) of the Act, being without jurisdiction, patently in contravention to the provisions of the law, illegal, arbitrary and under gross misappreciation of the facts of the case and hence, not justified.*
2. *On the facts and in the circumstances of the case as well in law, both the lower authorities have grievously failed to appreciate in the right, lawful and proper perspectives the fact that the sugarcane price claimed as business expenditure is the price approved by the State Government, duly substantiated by the certificate of approval of Final Cane Price paid to the canegrowers members against supply of the sugarcane and hence, the action of the Revenue authorities to make disallowance of portion of the approved Final Cane Price to the extent of Rs. 125,56,23,819/- under gross misappreciation of facts, misconception and misconstruction of the provisions of Section 36(1)(xvii) of the Act read with the CBDT' Circular No.*

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18/2021 dtd. 25-10-2021 being clarificatory in nature, is without jurisdiction, against the unrebutted documentary evidences, illegal, invalid, bad in law, arbitrary, prejudicial, conjectural and therefore, liable to be quashed or annulled in toto.

- 3. On the facts and in the circumstances of the case as well in law, both the lower authorities have failed to consider in the right, lawful and proper perspectives that the liability to pay cane price being contractual, accrued or arisen immediately as and when sugarcane supplied/delivered at the factory gate by the suppliers/cane growers and the same has been acknowledged before the finalization of books of accounts at the end of the relevant financial year and therefore, there is no justification in the action of the CIT (Appeals) confirming the JAO's inferences in making disallowance of portion of the approved sugarcane purchase expenses to the extent of Rs. 125,56,23,819/- treating it as inflated purchases or distribution of profit, resulting into in pure violation of the letter and spirit of the newly inserted provisions of Section 36(1)(xvii) of the Act and the Explanatory Notes of the CBDT vide its Circular No. 19/2015 and hence, liable to be struck down.*
- 4. On the facts and in the circumstances of the case as well in law, both the lower authorities have conveniently ignored to see and appreciate the assessment orders passed by the high ranked officers of the department, while framing the regular assessment u/s 143(3) of the Act for the relevant assessment years, rightfully allowing the Final Cane Price being approved by the State Government, duly substantiated by the Certificate issued by the State Government authorities, as the business expenditure u/s 37(1) r.w.s. 36(1)(xvii) of the Act and therefore, the order of the CIT (Appeals) upholding the JAO's action making disallowance/denial of the approved Final Cane Price to the extent of Rs. 125,56,23,819/- treating it as inflated purchases, has resulted into in pure violation of "rule of consistency" and hence, not justified.*
- 5. On the facts and in the circumstances of the case as well in law, both the lower authorities have overlooked the claim in the return of income filed for the carried forwards of unabsorbed depreciation as assessed in the regular assessment completed for the earlier years and hence, the assessment order passed by the AO arbitrarily at the assessed income of Rs. 125,56,23,819/- without giving set off of the brought forward of unabsorbed depreciation for the earlier years is liable to be set aside.*
- 6. On the facts and in the circumstances of the case as well in law, both the lower authorities have erred in overlooking and summarily rejecting the detailed submissions with explanations made duly substantiated by the authentic, speaking, corroborative and cogent evidences and hence, the order passed by the CIT (Appeals) confirming addition to the extent of Rs.*

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125,56,23,819/- arbitrarily, capriciously and based on lopsided, imaginary and factually incorrect inferences, deserves to be annulled or nullified.

7. *Your appellant further reserves its rights to add, alter, amend or modify any of the aforesaid grounds before or at the time of hearing of an appeal.*

36. Though the grounds are lengthily drafted, they essentially assert that the impugned amount represents a legitimate business expenditure allowable under section 37(1) read with section 36(1)(xvii) of the Act, that the cane price was duly approved by the competent State Government authority, that the lower authorities misapplied the statute and ignored CBDT Circular No. 18/2021 dated 25.10.2021, that the principle of consistency has been violated, and that the set-off of brought-forward unabsorbed depreciation has been wrongly denied. As all effective grounds (Ground Nos. 1 to 6) emanate from this single composite issue, they are taken up, examined and disposed of together. Ground No. 7 is general and does not require separate adjudication.

37. The Id. AR submitted that unlike the earlier assessment year, the present year stands on a materially different statutory footing with the introduction of section 36(1)(xvii), which specifically governs the deduction of sugarcane purchase price paid by co-operative sugar factories. He submitted that the assessee has placed on record a categorical approval

issued by the Director of Sugar, Government of Gujarat, fixing and approving the Final Cane Price for the relevant crushing season. This approval, according to him, satisfies the statutory requirement that cane price shall be deductible to the extent that it is equal to or less than the price fixed or approved by the Government. He further submitted that such approval is contemporaneous, statutory in character, and forms part of the regulatory framework applicable to co-operative sugar factories in the State of Gujarat. He argued that once the statutory threshold under section 36(1)(xvii) of the Act is fulfilled, no further enquiry under the general provisions of section 37(1) of the Act or under the principles of the Hon'ble Supreme Court's decision in Tasgaon Taluka (supra) remains necessary.

38. The assessee also relied on CBDT Circular No.18/2021 to submit that the legislative intention behind introducing section 36(1)(xvii) was to resolve prolonged litigation in this sector and to provide certainty where the cane price corresponds to government fixation or approval. The AR submitted that the cane price was paid uniformly with reference to quantity supplied and not based on membership, voting rights, or capital contribution, and therefore cannot be characterized as profit distribution. It was further submitted that in preceding and succeeding years under the

same statutory regime, the Department has accepted similar cane price structures without disallowance, and hence the present deviation violates the rule of consistency laid down by the Hon'ble Supreme Court in case of in Excel Industries Ltd. (supra). The assessee also pointed out that although the AO computed the entire disputed amount as income, he failed to allow set-off of unabsorbed depreciation despite there being no statutory or factual bar to such set-off.

39. Per contra, the learned CIT-DR reiterated the reasoning of the AO and submitted that the approval relied upon by the assessee cannot be treated as a Government fixation of price in the statutory sense, and that the so-called final cane price is nothing more than post-profit distribution passed through a co-operative resolution. He argued that the differential price structure, where members receive higher rates compared to non-members and outsiders, indicates an element of patronage benefit akin to surplus distribution. According to him, the principles laid down in Tasgaon Taluka (supra) continue to apply even under the FRP regime, and unless the assessee conclusively demonstrates that the Government has formally fixed or approved the excess over FRP, the same cannot be allowed as a deduction under section 36(1)(xvii) of the Act. He therefore submitted that

the addition made by the AO and sustained by the CIT(A) deserved to be upheld.

40. We have considered the rival submissions and examined the material placed on record. The decisive distinguishing feature in the present assessment year is the fact that the assessee has placed on record a specific and contemporaneous approval issued by the competent State Government authority, i.e., the Director of Sugar, Gujarat, certifying and approving the Final Cane Price payable for the relevant crushing season. This approval stands unrebutted by the Revenue and is directly relatable to the cane price actually paid by the assessee. On these facts, the condition laid down in section 36(1)(xvii) of the Act that the deduction of cane price shall be allowed to the extent such price is equal to or less than the price fixed or approved by the Government stands fully satisfied. Once this statutory requirement is met, the necessity of further forensic segregation of alleged “profit-embedded elements” under Tasgaon Taluka (supa) principles does not arise for this assessment year, because the legislature has carved out an overriding and specific deduction framework for Government-approved cane pricing. The CBDT circular referred to earlier also reinforces this legislative intent.

41. We also find merit in the assessee's contention based on the rule of consistency, as similar pricing models supported by identical forms of Government approval have been accepted in regular scrutiny assessments in adjoining years without disallowance. In the absence of any change in material facts or statutory position, a contrary view in isolation for this year is unwarranted. Further, as regards the computation aspect, we find that the AO has not disputed the availability of brought-forward unabsorbed depreciation and yet has not allowed its set-off while determining the assessed income. The AO is required to compute taxable income strictly in accordance with law and not on estimation or assumption, and therefore the assessee is entitled to such set-off.

42. In view of the above discussion, the disallowance of Rs.125,56,23,819/- sustained by the CIT(A) is deleted. The AO is directed to allow the full deduction of FCP paid and further grant set-off of brought-forward depreciation in accordance with law. Accordingly, all grounds raised by the assessee for AY 2016-17 in ITA No.209/SRT/2024 stand allowed and the appeal is allowed in full.

Sahakari Khand Udhog Mandali Ltd. (AY 2011-12 to 2014-15)

43. We now proceed to adjudicate the next consolidated group of eight appeals pertaining to Sahakari Khand Udhdyog Mandali Ltd. (supra) covering AYs 2011-12 to 2014-15, wherein for each assessment year there exist cross-appeals—one by the Revenue challenging the partial relief granted by the CIT(A), and the corresponding appeal by the assessee contesting the portion of disallowance sustained by the CIT(A). Grounds of appeal are the same for all four assessment years; therefore, for ready reference, the grounds for AY 2011-12 for both the assessee and the Revenue are reproduced below:

ITA No. 211/SRT/2020 (AY 2011-12):

1. *On the facts and in the circumstances of the case as well in law, the C.I.T. (Appeals) erred in confirming the disallowance of the portion of the sugarcane price to the extent of Rs. 7,23,50,683/-actually/factually paid to the registered members supplying their sugarcane, purely on misappreciation of facts, based on misconceptual, presumptive and perverse observations, and hence, being without jurisdiction, bad in law, in-valid, illegal, is liable to be quashed.*
2. *On the facts and in the circumstances of the case as well in law, As per Sr.No. the CIT (Appeals) has grievously failed to appreciate that the 1 above sugarcane purchased during the crushing season from the nominal members at the contractual price at the reduced amount of Rs. 75/- per M.T. as that of final/approved cane price paid to the registered farmer members, was exclusively to meet additional administrative and managerial cost and in the compensatory nature for the recovery of production loss due to different/inferior quality of sugarcane and therefore, the Revenue's inference to treat Rs. 75/- per M.T. as the alleged extra payments as embedded profits in sugarcane price to registered*

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farmer members, being misconceptual, unwarranted of facts, perverse, imaginary, arbitrary, bad in law, illegal, without jurisdiction and hence, liable to be struck down.

3. *On the facts and in the circumstances of the case as well in law, As per Sr.No. the C.I.T. (Appeals) failed to appreciate that the business 1 above expenditure incurred for the total cane price including the above amount of Rs. 7,23,50,683/- was allowable both under section 28 and section 37 and the disallowance of portion of sugarcane price thereof results into Department taxing unreal and wrong amount of income and hence, liable to be struck down.*
4. *On the facts and in the circumstances of the case as well in law, As per Sr.No. 1 above both the lower authorities have erred in ignoring the fact that comparable cane prices paid by the other cooperative sugar societies in other States are in commensurate with the cane price paid to registered members fixed with the approval of the State Government for the year under appeal, were allowed as business expenditure incurred to meet commercial expediency u/s 37(1) of the Act in their assessments and therefore, the action of the tax authorities to treat the portion of final/approved State Price as an element of profit, merely on comparison with final cane price paid to nominal members, being without jurisdiction, in pure contravention to the "Rule of Consistency", arbitrary, prejudicial, subjective, perverse, bad in law and hence, liable to be struck down.*
5. *On the facts and in the circumstances of the case as well in law, both the lower authorities have erred in overlooking and summarily rejecting the detailed various submissions made during the course of assessment/appeal proceedings in discharge of the onus upon the appellant co.op. society including the Statutory Audit reports of the Govt. Auditors, the Statement of Accounts, audited Balance Sheet and Manufacturing reports, other relevant materials submitted to the State Government for approval of the final cane price, other State's approved cane price, opportunity cost/cost of cultivation to the registered farmer members for supplying sugarcane to the appellant cooperative society as well as strong agitations by registered farmer members demanding higher prices and hence, the action to treat the amount of Rs. 75/- per M.T. as an extra payments made to registered farmer members as the alleged profit embedded in the sugarcane price, being arbitrary, capricious and based*

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on lopsided, imaginary and factually incorrect inferences, deserves to be annulled or nullified.

6. *On the facts and in the circumstances of the case as well in law, the C.I.T. (Appeals) failed to appreciate that on identical facts, in the past in all the assessment years, sugarcane price paid to registered members was allowed by various AOs or the Appellate Authorities, and therefore, there was no justification on the part of the Revenue to decide to the contrary, and thus, offended the law laid down by the Supreme Court in CIT Vs. Excel Industries Ltd. - (2013) 358 ITR 295 holding that Revenue must be consistent and not flip-flop on the same issue in different assessment years.*
7. *Your appellant further reserves its rights to add, alter, amend or modify any of the aforesaid grounds before or at the time of hearing of an appeal.*

ITA No.218/SRT/2020 (AY 2011-12):

1. *On the facts and in the circumstances of the case and in Law, the Ld.CIT(A) has erred in deleting the disallowance of Rs.90,13,79,301/- out of Rs.97,37,29,984/- made in the assessment order on account of non business expenditure and transfer of profits effected by payment of Sugarcane purchase price at the rate over and above the Fair and Remunerative Price (FRP) holding that profit element embedded in the sugarcane purchase price paid to the member farmer is Rs.7,23,50,683/- @ Rs.75/- per MT for 9,64,675.77 MT sugarcane purchased from member farmers when deduction of Rs.75, per MT was made on purchase of sugarcane from nominal member farmers.*
2. *On the facts and in the circumstances of the case and in Law, the Ld.CIT(A) has erred in holding that price paid to nominal member farmers has to be taken as commercial deal without appreciating that as against pricing of other goods which are driven by market forces, the pricing of sugarcane is governed by Sugarcane (Control) order, 1966 which determines FRP with a view to protect interest of farmers.*
3. *On the facts and in the circumstances of the case and in Law, the Ld.CIT(A) has failed to appreciate the fact that during the course of the assessment proceedings as well as in the remand proceedings, the assessee did not furnish any details or computations to explain the basis of determination*

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of final cane price on purchase of sugarcane from member farmers as well as nominal member farmers.

4. *It is, therefore, prayed that the order of the Ld.CIT(A) be set aside and that the order of the AO be restored.*
5. *The appellant craves to add, modify or alter any grounds during the course of appeal proceedings.*

44. Since the grounds raised by both parties across all four assessment years are substantially identical and revolve around one core controversy, namely the allowability of cane price paid in excess of the statutory FRP, the appeals are adjudicated together for convenience. The variation in numerical figures year-wise does not alter the nature of the dispute. Accordingly, Ground Nos. 1 to 7 in the assessee's appeals in ITA Nos. 211 to 214/SRT/2020 and Ground Nos. 1 to 5 in the Revenue's appeals in ITA Nos. 218 to 221/SRT/2020 are grouped issue-wise and disposed of in a consolidated manner by the following common discussion.

45. During the hearing, the Id. AR reiterated that no portion of the cane price represents profit distribution and that the differential between members and nominal members was commercially justifiable based on quality parameters, logistical factors, and the co-operative procurement framework. The AR submitted that similar pricing patterns were accepted in earlier years and therefore the rule of consistency applies.

46. In response, the Id. CIT-DR supported the impugned orders and submitted that the assessee could not substantiate the differential pricing with contemporaneous evidence or Government approved orders / approvals. He argued that the CIT(A) adopted a balanced approach by sustaining only the demonstrable differential attributable to members, and such reasoning aligns with the mandate of the Hon'ble Supreme Court in *Tasgaon Taluka (supra)*.

47. We have given our thoughtful consideration to rival submissions and carefully examined the orders of the authorities below. These assessment years fall under the legal regime prior to insertion of section 36(1)(xvii) of the Act. Accordingly, the legal matrix continues to be governed by the ratio laid down by the Hon'ble Supreme Court in *Tasgaon Taluka (supra)*, wherein the Court categorically held that while cane purchase price paid under statutory framework is allowable, any additional amount having the character of profit allocation must be examined and disallowed to the extent it represents distribution of surplus. The Hon'ble Supreme Court further emphasized that the AO must carry out a factual enquiry to determine whether excess price paid bears nexus with cost or represents member-centric benefit not relatable to business exigency.

48. In the present cases, the CIT(A) has carried out a factual exercise based on price structure available on record and observed that while the assessee paid a uniform statutory or minimum price to all suppliers, the additional price component was selectively extended only to registered members of the cooperative society and not to nominal or outside suppliers. The CIT(A) noted that no computation sheet, approval document, pricing formula, cost sheet, or statutory correspondence was furnished demonstrating that such higher rate represented a commercially quantifiable obligation. The assessee's explanation remained broad, general and unsupported by contemporaneous material. In such circumstances, the CIT(A) applied a rational approach by treating the difference in rate per MT between registered and nominal suppliers as representing embedded surplus akin to profit distribution and sustained such portion of the disallowance while granting relief for the balance portion which could be regarded as part of business expenditure. The assessee has not been able to rebut these findings with substantive evidence nor point out perversity or legal infirmity in the approach adopted.

49. At the same time, the Revenue has also not been able to demonstrate that the relief granted by the CIT(A) was excessive or contrary

to law. The Revenue has merely reiterated that the entire payment in excess of FRP ought to be disallowed without furnishing any additional material or computation. In absence of any such supporting record, and keeping in view the judicial mandate requiring proportionate disallowance rather than a blanket approach, we see no justification to interfere with the CIT(A)'s conclusions.

50. The plea of consistency raised by the assessee also cannot be accepted in these years because the Hon'ble Supreme Court has clarified the legal position in Tasgaon Taluka (supra) subsequent to earlier assessments. The CIT(A), having adopted a balanced factual and legal approach, cannot be faulted. Accordingly, the findings of the CIT(A) appear reasonable, well-considered and legally sustainable.

51. In light of the above discussion, the disallowances sustained by the CIT(A) in these four assessment years are upheld. Consequently, the appeals filed by the assessee in ITA Nos.211 to 214/SRT/2020 are dismissed and the corresponding appeals filed by the Revenue in ITA Nos.218 to 221/SRT/2020 challenging the partial relief are also dismissed. All grounds of appeal raised by both sides for AYs 2011-12 to 2014-15 thus stand dismissed.

ITA No.222 to 225/SRT/2020 (AY 2011-12 to 2014-15):

52. We now take up the next set of appeals concerning Maroli Vibhag Khand Udyog Sahakari Mandli Ltd., covering AYs 2011-12 to 2014-15. In this batch, the Revenue has filed appeals for all four assessment years whereas the assessee has filed appeals only for AYs 2011-12 and 2012-13 challenging the portion of disallowance that was sustained by the Ld. CIT(A). The issue involved across these appeals remains identical, namely, whether the excess sugarcane purchase price and cane development expenditure paid by the assessee over and above the statutory FRP constitutes a deductible business expenditure under section 37(1) or represents an appropriation of surplus/profit attributable only to members of the society and therefore liable for disallowance. Since the core facts, pricing pattern, cooperative model and legal considerations are common across all appeals, the same are taken up together and disposed of by this consolidated discussion. For ready reference, Grounds Nos. 1 to 7 in ITA Nos. 16 /SRT/2021 and Grounds Nos. 1 to 5 in ITA Nos. 222/SRT/2020 are reproduced below.

ITA No. 16/SRT/2021 (AY 2011-12):

1. *On the facts and in the circumstances of the case as well in law, the CIT (Appeals) erred in confirming the disallowance to the extent of Rs. 22,38,059/- for the alleged profit element in the payment of sugarcane purchase price and Cane Development exps. actually/factually paid to the registered members supplying their sugarcane, purely on misappreciation of facts, based on misconceptual, presumptive and perverse observations,*

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and hence, being without jurisdiction, bad in law, in-valid, illegal, is liable to be quashed.

2. *On the facts and in the circumstances of the case as well in law, the CIT (Appeals) has grievously failed to appreciate that the sugarcane purchased during the crushing season from the nominal members at the contractual price at the reduced amount of Rs. 11/- per M.T. as that of final/approved cane price paid to the registered farmer members, was exclusively to meet additional administrative and managerial cost and in the compensatory nature for the recovery of production loss due to different/inferior quality of sugarcane and therefore, the Revenue's inference to treat Rs. 13,14,995/- (Rs. 11/- per M.T.) as the alleged extra payments as embedded profits in sugarcane price to registered farmer members, being misconceptual, unwarranted of facts, perverse, imaginary, arbitrary, bad in law, illegal, without jurisdiction and hence, liable to be struck down.*
3. *On the facts and in the circumstances of the case as well in law, the CIT (Appeals) has grievously failed to appreciate that Cane Development exps. incurred for Rs. 9,23,064/- by the appellant society was exclusively for the cultivation of better quality of sugarcane by the registered members and hence, the action of the Revenue to treat the Cane Development exps. being incurred wholly and exclusively for the prime activity of pulling of sugarcane of better quality from the registered members, fully allowable u/s 37(1) of the Act, as the alleged profit/extra payments to the member farmers is without jurisdiction, bad in law, arbitrary, imaginary, perverse, invalid and thus, deserves to be allowed as claimed.*
4. *On the facts and in the circumstances of the case as well in law, the CIT (Appeals) failed to appreciate that the business expenditure incurred for the Cane Development exps. for Rs. 9,23,064/- and total cane price including the above amount of Rs. 13,14,995/- were allowable both under section 28 and section 37 and the disallowance of both the expenditures incurred wholly and exclusively for business purposes results into Department taxing unreal and wrong amount of income and hence, liable to be struck down.*
5. *On the facts and in the circumstances of the case as well in law, both the lower authorities have erred in ignoring the fact that comparable cane prices paid by the other cooperative sugar societies in other States are in commensurate with the cane price paid to registered members fixed with the approval of the State Government for the year under appeal, were allowed as business expenditure incurred to meet commercial expediency u/s 37(1) of the Act in their assessments and therefore, the action of the tax authorities to treat the portion of final/approved State Price as an element of profit, merely on comparison with final cane price paid to nominal members, being without jurisdiction, in pure contravention to the*

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"Rule of Consistency", arbitrary, prejudicial, subjective, perverse, bad in law and hence, liable to be struck down.

6. *On the facts and in the circumstances of the case as well in law, both the lower authorities have erred in overlooking and summarily rejecting the detailed various submissions made during the course of assessment/appeal proceedings in discharge of the onus upon the appellant co.op. society including the Statutory Audit reports of the Govt. Auditors, the Statement of Accounts, audited Balance Sheet and Manufacturing reports, other relevant materials submitted to the State Government for approval of the final cane price, other State's approved cane price, opportunity cost/cost of cultivation to the registered farmer members for supplying sugarcane to the appellant cooperative society as well as strong agitations by registered farmer members demanding higher prices and hence, the action to treat the amount of Rs. 11/- per M.T. as an extra payments made to registered farmer members as the alleged profit embedded in the sugarcane price, being arbitrary, capricious and based on lopsided, imaginary and factually incorrect inferences, deserves to be annulled or nullified.*
7. *On the facts and in the circumstances of the case as well in law, the C.I.T. (Appeals) failed to appreciate that on identical facts, in the past in all the assessment years, the Cane Development exps. and the sugarcane price paid to registered members was allowed by various AOs or the Appellate Authorities, and therefore, there was no justification on the part of the Revenue to decide to the contrary, and thus, offended the law laid down by the Supreme Court in CIT Vs. Excel Industries Ltd. - (2013) 358 ITR 295 holding that Revenue must be consistent and not flip-flop on the same issue in different assessment years.*
8. *Your appellant further reserves its rights to add, alter, amend or modify any of the aforesaid grounds before or at the time of hearing of an appeal.*

ITA No. 222/SRT/2020 (AY 2011-12):

1. *On the facts and in the circumstances of the case and in Law, the Ld. CIT(A) has erred in deleting the disallowance of Rs.23,10,40,214/- out of Rs.23,46,50,203/- made in the assessment order on account of non business expenditure and transfer of profits effected by payment of Sugarcane purchase price at the rate over and above the Fair and Remunerative Price (FRP) holding that profit element embedded in the sugarcane purchase price paid to the member farmer is Rs. 13,14,995/- @ Rs.11/- per MT on purchase of 119544.985 MT sugarcane from member farmers when sugarcane purchase price given to the member farmers @ Rs.2151/- per. MT as compared to nominal member farmers @ Rs.2140 per MT, alongside extra premium payment expenses in the form of cane*

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development expenses of Rs.9,23,064/- paid to member farmers to promote and motivate farmers, aggregating the profit element at Rs.22,38,059/- only.

2. *On the facts and in the circumstances of the case and in Law, the Ld.CIT(A) has erred in holding that price paid to nominal member farmers has to be taken as commercial deal without appreciating that as against pricing of other goods which are driven by market forces, the pricing of sugarcane is governed by Sugarcane (Control) order, 1966 which determines FRP with a view to protect interest of farmers.*
3. *On the facts and in the circumstances of the case and in Law, the Ld.CIT(A) has failed to appreciate the fact that during the course of the assessment proceedings as well as in the remand proceedings, the assessee did not furnish any details or computations to explain the basis of determination of final cane price on purchase of sugarcane from member as well as nominal member farmers.*
4. *It is, therefore, prayed that the order of the Ld.CIT(A) be set aside and that the order of the AO be restored.*
5. *The appellant craves to add, modify or alter any grounds during the course of appeal proceedings.*

53. During the course of hearing, the Id. AR reiterated that the assessee is a cooperative sugar manufacturing society operating under a regulated environment wherein the fixation of final cane price is a dynamic process based on commercial, agronomic and operational considerations. It was submitted that the marginal difference between price paid to registered members and nominal members in earlier years and the payment of cane development expenditure was not distribution of profits but an expenditure incurred wholly and exclusively in the course of business to secure supply of better-quality cane, higher recovery percentage, and stability of procurement. The AR submitted that the Ld. CIT(A) erred in sustaining even

the small portion of disallowance, particularly when in two years (AYs 2013-14 and 2014-15) the CIT(A) accepted that there was no differential pricing and deleted the addition entirely. Reliance was once again placed on judicial precedents including the rulings of the Hon'ble Supreme Court in Excel Industries Ltd. (supra) and various ITAT orders in comparable cooperative sugar sector cases.

54. On the other hand, the Id. CIT-DR supported the findings of the AO in principle but fairly conceded that the Id. CIT(A) had already taken a balanced and fact-based approach by analyzing the differential component and limiting disallowance strictly to amounts demonstrably linked to member-specific benefit, either by way of higher purchase price or cane development assistance. The CIT-DR submitted that in both assessment years where the assessee has filed appeals, namely AY 2011-12 and AY 2012-13, the assessee failed to furnish contemporaneous supporting documents such as computation sheets, pricing approvals, cost justification, or government-based cane pricing calibration. The CIT-DR further added that the requirement imposed by the Hon'ble Supreme Court in case of Tasgaon Taluka (supra) mandates that the Revenue must identify and segregate profit-sharing elements embedded in sugarcane payments made

to members, and therefore the limited disallowance retained by the CIT(A) was not only justified but conservative.

55. We have carefully considered the rival submissions and examined the record. As noted earlier while dealing with the preceding group of appeals, the relevant assessment years fall prior to the insertion of section 36(1)(xvii) of the Act, and therefore the legal position continues to be governed by the binding ratio of the Hon'ble Supreme Court in Tasgaon Taluka (supra). The principle laid down therein obligates the fact-finding authority to segregate business-based cane price from cooperative surplus allocation or membership incentives, while ensuring that only the former qualifies as allowable expenditure.

56. In the instant batch, the Ld. CIT(A), after appreciating the available record, has concluded that while the major portion of the cane purchase price represents commercial expenditure allowable under section 37(1), the differential element paid exclusively to registered members, as well as the cane development expenditure in certain years which was not extended to nominal suppliers, is indicative of member-linked benefit. The CIT(A) has quantified such differential element with precision based on actual price variation per metric ton and documentary invoices rather than assumptions

or flat percentage benchmarks. For AYS 2013-14 and 2014-15, the CIT(A) has recorded that no price distinction existed between registered and nominal suppliers and accordingly deleted the entire disallowance—a finding the Revenue has failed to rebut with contrary evidence.

57. The assessee, despite lengthy submissions, has not furnished any further contemporaneous evidence demonstrating that the retained disallowance in AYS 2011-12 and 2012-13 was based on incorrect appreciation of facts or law, nor produced any pricing formula, mandated government directive, or audit level cane price justification validating the differential. Mere claim of cooperative practice cannot override the Supreme Court's directive mandating factual segregation of profit element.

58. Accordingly, following the consistent approach adopted in the earlier batches, we find that the conclusions reached by the Ld. CIT(A) are well-reasoned, factually supported and legally sustainable. No interference is therefore warranted.

59. In the result, the four Revenue appeals in ITA Nos.222 to 225/SRT/2020 fail and are dismissed and the assessee's appeals in ITA Nos. 16 and 17/SRT/2021 for AYS 2011-12 and 2012-13 also fail and are dismissed. All grounds raised in these six appeals thus stand dismissed.

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60. In the result, all the appeals are disposed of in the manner indicated hereinbefore.

Orders are pronounced under provision of Rule 34 of ITAT Rules, 1963 on 25/11/2025.

**Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER**

**Sd/-
(BIJYANANDA PRUSETH)
ACCOUNTANT MEMBER**

Surat

दिनांक/ Date: 25/11/2025

SAMANTA

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// TRUE COPY //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat