

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'D' NEW DELHI  
BEFORE SHRI R. S. SYAL, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER  
I.T.A .No.3170 /DEL/2013(A.Y 2006-07)  
I.T.A .No.3168 /DEL/2013(A.Y 2007-08)  
I.T.A .No.3169 /DEL/2013(A.Y 2009-10)**

DCIT Circle-Najibabad Najibabad <b>(APPELLANT)</b>	vs	Kisan Sehkari Chinni Mills Ltd. Sneh Road Najibabad AAAAK1634P <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Shri Umesh Chand Dubey, Sr. DR</b>
<b>Respondent by</b>	<b>Sh. S. K. Arora, CA</b>

<b>Date of Hearing</b>	<b>18.10.2016</b>
<b>Date of Pronouncement</b>	<b>21.11.2016</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

These appeals are filed by the Revenue against the order dated 1/3/2013 passed by CIT(A), Bareilly, for Assessment Year 2006-07, 2007-08 & 2009-10 respectively.

2. The grounds of appeal are as under:-

**(ITA No. 3170/Del/2013 (A.Y 2006-07)**

“1. In the facts and circumstances of the case the Ld.CIT(A) has erred in fact in and in law in deleting the addition of Rs.1,15,67,425/- on the ground that such additions had not been made in the earlier years.

2. *In the facts and circumstances of the case the Ld.CIT(A) has erred in fact in and in law in deleting the addition of Rs.1,15,67,425/- without appreciating that the principle of Res-judicata does not apply to Income Tax proceedings.*

3. *In the facts and circumstances of the case the Ld.CIT(A) has erred in fact in and in law in deleting the addition of Rs.1,15,67,425/- without appreciating the fact that, the assessee had failed to produce the vouchers in respect of certain expenses debited to store consumed a/c under the head 'Repair & Maintenance' specifically pointed out by the Assessing Officer in the assessment order.*

4. *Any other grounds raised during the proceedings of appeal.*

3. The grounds of appeal are as under:-

**(ITA No. 3168/Del/2013 (A.Y 2007-08)**

1. *In the facts and circumstances of the case the Ld. CIT (A) has erred in fact in and in law in allowing relief to the assessee by deleting the addition of Rs. 14, 47,180/- rightly made by the Assessing Officer by enhancing the value of closing stock of free sugar for sugar season 2005-06 by applying the prevailing market price of free sugar for the previous year relevant to A.Y. 2007-08.*

2. *In the facts and circumstances of the case the Ld. CIT (A) has erred in fact in and in law in allowing relief to the assessee by deleting the addition of Rs.14,47,180/- rightly made by the AO by enhancing the value of closing stock of free sugar for sugar season 2005-06 without appreciating the fact that the assessee has not followed its own declared method of valuation of opening and closing stock which is at cost price of respective year or prevailing market price whichever is lower.*

3. *In the facts and circumstances of the case the Ld. CIT (A) has erred in fact in and in law in deleting the addition of Rs. 11, 54,439/- and Rs. 15, 55,853 on account of disallowance out of repair & maintenance of factory building and treating the same to be capital in nature and deleting the addition of Rs. 7, 06,366/- on account of disallowance out of repair & maintenance of Plant & Machinery and treating the same to be capital in nature without appreciating that the principle of Res-judicata does not apply to Income Tax proceedings.*

4. *In the facts and circumstances of the case the Ld. CIT (A) has erred in fact in and in law in deleting the addition of Rs. 11, 54,439/- and Rs. 15, 55,853 on account of disallowance out of repair & maintenance of factory building and treating the same to be capital in nature and deleting the addition of Rs. 7, 06,366/- on account of disallowance out of repair & maintenance of Plant & Machinery and treating the same to be capital in nature without appreciating the fact that the expenses have been incurred to create assets of enduring nature and not mere repairs of existing assets.*

5. *In the facts and circumstances of the case the Ld. CIT (A) has erred in fact in and in law in deleting the addition of Rs. 11, 54,439/- and Rs. 15, 55,853 on account of disallowance out of repair & maintenance of factory building and treating the same to be capital in nature and deleting the addition of Rs. 7, 06,366/- on account of disallowance out of repair & maintenance of Plant & Machinery and treating the same to be capital in nature by accepting additional evidence in form of repair certificates issued by assessee's own employees without giving opportunity of rebuttal to the Assessing Officer in violation of Rule 46 A of I.T. Rules, 1961.*

6. *In the facts and circumstances of the case the Ld. CIT (A) has erred in fact in and in law in deleting the addition of Rs. 11, 54,439/- and Rs. 15, 55,853 on account of disallowance out of repair & maintenance of factory building and treating the same to be capital in nature and deleting the addition of Rs. 7, 06,366/- on account of disallowance out of repair & maintenance of Plant & Machinery and treating the same to be capital in nature without giving specific comments for the same.*

7. *Any other grounds raised during the proceedings of appeal.*

4. The grounds of appeal are as under:-

**(ITA No. 3169/Del/2013 (A.Y 2009-10)**

1. *In the facts and circumstances of the case the Ld. CIT(A) has erred in fact in and in law in allowing relief to the assessee by deleting the additions of Rs. 41,54,153/- rightly made by the Assessing Officer by enhancing the value of closing stock of free sugar for sugar season 2006-07 by applying the cost price for the season 2006-07 as declared by the assessee i.e. 1449.40 per quintal as it was lesser than the prevailing market price of free sugar in A.Y. 2009-10 at Rs. 1885/-.*

2. *In the facts and circumstances of the case the Ld. CIT(A) has erred in fact in and in law in allowing relief to the assessee by deleting the addition of Rs. 41,53,153/- rightly made by the AO by enhancing the value of closing stock of free sugar for sugar season 2006-07 without appreciating the fact that the assessee has not followed its own declared method of valuation of opening and closing stock which is at cost price of respective year or prevailing market price whichever is lower.*

3. *In the facts and circumstances of the case the Ld. CIT(A) has erred in fact in and in law in allowing relief to the assessee by deleting the addition of Rs. 41,53,153/- rightly made by the AO by enhancing the value of closing stock of free sugar for sugar season 2006-07 by accepting, without any basis, the plea of the assessee that the stock of free sugar of sugar season 2006-07 was in fact produced in the month of April and May, 2007 hence, its value was liable to be computed by applying the rate of cost of production of F.Y. 2007-08.*

4. *In the facts and circumstances of the case the Ld. CIT(A) has erred in treating the sum of Rs. 1,13,018/- transferred to molasses fund as revenue expenditure whereas the AO has rightly disallowed the same as transfer of a sum to any fund cannot be treated as revenue expenditure.*

5. *Any other grounds raised during the proceedings of appeal.*

5. **ITA. NO. 3170/DEL/2013 (A.Y 2006-07)**

5.1 The assessee filed its return of income for A.Y. 2006-07 declaring a total income of Rs. 21, 15, 41,141 /- in the status of AOP (Cooperative Society) on 19/10/2006. The same was processed u/s 143 (1) on 28/03/2007 determining a refund of Rs. 7, 08,953/-. A revised return of income was furnished on 13/03/2008 declaring a total income of Rs. 21, 43,62,622/-. The assessee derives income from the business of Manufacturing & trading of sugar and its bye-product. Regular assessment was completed u/s 143 (3) of the I.T. Act on 11/12/2008 on a total income of Rs. 23, 04, 73,101/- in the status of AOP (cooperative Society).

5.2 The assessee filed an appeal before CIT (A), Bareilly who vide order dated 01/03/2013 allowed the appeal of the Assessee. The CIT(A) held that

the Assessing Officer made the additions without properly understanding the mercantile system of accounting and framed the assessment order. The CIT(A) further held that the Assessing Officer has not taken note of auditors Note at serial no. 9 which relates to contingent liability and not actual liability for which goods/services has been received by the Mill Society. As regards the disallowance of repair and maintenance expenses to the extent of certain specific expenses debited to store consumed account, the CIT(A) held that the Assessing Officer made the addition by pick and choose of six vouchers for store consumption out of major job without calling for any specific details, pin pointing any defects in any of the vouchers passed for store consumption. The CIT(A) further held that the Assessing Officer failed to properly understand the method of passing the stores consumption vouchers whereas the same has been discussed in detail with him during the course of hearing on 01.12.2008. The details of Plant & Machinery repair passed through stores consumption mentioning name of item repair/replaced, place where replaced/repared, name of party from whom the machinery item has been purchased along with the copy of the journal vouchers, bills, cash memo, material receipt & other details was enclosed for verification that all the expenses for which vouchers for repair & maintenance of plant through store consumption (major job) has been passed were fully verifiable. The CIT(A) observed that the assessee is maintaining a store department through which all the stores required in the mill from time to time were stored as the factory was located in a remote area. As and when any item is required from the store the various departments functioning in the factory issues a requisition slip to the store department for issue of desired material. On the basis of store requisition slip the material was issued to various departments from time to time & consumption voucher for the same is passed from time to time generally at monthly intervals. This is the first year when the Assessing Officer made the disallowance by mentioning that the vouchers passed through stores consumption were not verifiable whereas the same was accepted by the

Assessing Officer in respect of all the expenses debited under the head repair and maintenance of Plant & Machinery in last Assessment Year 2005-06.

5.3 The Ld. DR submitted that the CIT(A) erred in giving finding which is contrary to the records available before the Assessing Officer. The Ld. DR relied on the order of the Assessing Officer.

5.4 The Ld. AR submitted that the CIT(A) has rightly allowed the appeal of the assessee on both the issues as the available record clearly reveals the expenses incurred by the assessee are verifiable from the records. The earlier Assessment Year the Assessing Officer has allowed the said expenses and there is no change in the accounting system by the assessee in the present Assessment Year.

6. We have heard both the parties and perused the records.

6.1 As relates to the first issue relating to disallowance out of provision/liability for expenses debited to Profit and Loss Account to the extent of Rs. 45,43,054/-, Assessing Officer has not taken note of auditors Note at serial no. 9 which relates to contingent liability and not actual liability for which goods/services has been received by the Mill Society. Thus the CIT(A) has rightly deleted the said addition made by the Assessing Officer.

6.2 As relates to second issue relating to the disallowance of repair and maintenance expenses to the extent of certain specific expenses debited to store consumed account, the assessee is maintaining a store department through which all the stores required in the mill from time to time were stored as the factory was located in a remote area. As and when any item is required from the store the various departments functioning in the factory issues a requisition slip to the store department for issue of desired material. On the basis of store requisition slip the material was issued to

various departments from time to time & consumption voucher for the same is passed from time to time generally at monthly intervals. This is the first year when the Assessing Officer made the disallowance by mentioning that the vouchers passed through stores consumption were not verifiable whereas the same was accepted by the Assessing Officer in respect of all the expenses debited under the head repair and maintenance of Plant & Machinery in earlier Assessment Year 2005-06. Thus the CIT(A) has rightly deleted the said additions after verifying the records.

7. In result, the Appeal of the Revenue in ITA No. 3170/DEL/2013 (A.Y. 2006-07) is dismissed.

8. **ITA NO. 3168/DEL/2013 (A.Y 2007-08)**

8.1 The assessee filed its return of income for A.Y. 2007-08 declaring a total income of Rs.5,69,53,167/- in the status of AOP (Cooperative Society) on 26/10/2007. The same was processed u/s 143 (1) on 19/11/2007 determining a refund of Rs. 30, 94,407/-. The assessee derives income from the business of Manufacturing & trading of sugar and its bye-product. Regular assessment was completed u/s 143 (3) of the I.T. Act on 22/12/2009 on a total income of Rs. 6, 16, 89,800/- in the status of AOP (cooperative Society).

8.2 The assessee filed an appeal before CIT (A), Bareilly who vide order dated 01/03/2013 allowed the appeal of the Assessee. As regards to addition of Rs. 14,47,180/- on account of undervaluation of closing stock of free sale sugar for sugar season 2005-06, the CIT (A) held that the method of valuation of closing stock of free sugar at cost price or market price whichever is lower, was followed during the year by the assessee without any change and the same method was always accepted by the department in the past years also. The market price of stock of free sugar for season 2005-06 is Rs. 1340.00 which was less than its cost price of Rs. 1443.60. Accordingly the stock valued at Rs.

1340.00 per Qtls. by the assessee. The CIT(A) deleted the said addition. This was worked out by valuing free sugar for season 2005-06 by adopting the prevailing market price of free sugar in A.Y. 2007-08 at Rs. 1375 per quintal as declared by the assessee as it was lesser than the declared cost price of free sugar for season 2005-06 i.e. Rs. 1443.60 per quintal. The CIT (A) accepted the plea of the assessee and deleted the addition.

8.3 As relates to second issue relating to addition of Rs. 11,54,439/- on account of disallowance out of repair & maintenance of factory building and treating the same to be capital in nature by the Assessing Officer, the CIT (A) accepted the plea of the assessee and deleted the addition by following the order of the earlier Assessment Year 2000-01 in assessee's own case passed by the ITAT, New Delhi.

8.4 As regards to third issue in respect of addition of Rs. 15,55,853/- on account of disallowance out of repair & maintenance of factory building and treating the same to be capital in nature by the Assessing Officer. The CIT (A) accepted the plea of the assessee and deleted the addition by following the order of the earlier Assessment Year 2000-01 in assessee's own case passed by the ITAT, New Delhi.

8.5 In respect of the fourth issue as to addition of Rs. 7,06,366/- on account of disallowance out of repair & maintenance of Plant & Machinery and treating the same to be capital in nature by the Assessing Officer. The CIT (A) accepted the plea of the assessee and deleted the addition by relying upon by following the order of the earlier Assessment Year 2000-01 in assessee's own case passed by the ITAT, New Delhi.

8.6 The Ld. DR relied upon the order of the Assessing Officer. The Ld. DR could not controvert the finding given in the ITAT order dated 04.05.2007 for A.Y. 2001-02.

8.7 The Ld. AR relied upon the order of the CIT(A) and also submitted that

the issues discussed herein are covered by the ITAT, New Delhi order dated 04.05.2007 in ITA No. 3634/DEL/2004 for A.Y. 2001-02 in assessee's own case.

9. We have heard both the parties and perused the records.

9.1 As regards to addition of Rs. 14,47,180/- on account of undervaluation of closing stock of free sale sugar for sugar season 2005-06, the CIT (A) held that the method of valuation of closing stock of free sugar at cost price or market price whichever is lower, was followed during the year by the assessee without any change and the same method was always accepted by the department in the past years also. The market price of stock of free sugar for season 2005-06 is Rs. 1340.00 which was less than its cost price of Rs. 1443.60. Accordingly the stock valued at Rs. 1340.00 per Qtls. by the assessee. The CIT(A) deleted the said addition. This was worked out by valuing free sugar for season 2005-06 by adopting the prevailing market price of free sugar in A.Y. 2007-08 at Rs. 1375 per quintal as declared by the assessee as it was lesser than the declared cost price of free sugar for season 2005-06 i.e. Rs. 1443.60 per quintal. These finding of the CIT(A) are correct and does not require any interference.

9.2 As relates to second, third and fourth issues, the same are covered by the ITAT, New Delhi order dated 04.05.2007 in ITA No. 3634/DEL/2004 for A.Y. 2001-02 in assessee's own case. The same could not be contradicted by the Ld. DR. Hence there is no need of interference in CIT(A)'s order.

9.3 In result, the Appeal of the Revenue ITA No. 3168/DEL/2013 (A.Y. 2007-08) is dismissed.

10. **ITA No. 3169/DEL/2013 (A.Y 2009-10)**

10.1 The return of income for A.Y 2009-10 was filed by the assessee declaring a total income of Rs.1,04,63,108/-. Assessment u/s 143(3) was completed on total income of Rs.1,92,78,600/-.

10.2 The assessee filed an appeal before the CIT (A) Bareilly. The CIT(A) vide order dated 01/03/2013 granted substantial relief to the assessee and partly allowed the appeal.

10.3. The Ld. DR relied on the order of the Assessing Officer and submitted that the CIT(A) has not at all applied its mind.

10.4. The Ld. AR relied upon the order of the CIT(A).

11. We have perused all the records and heard both the sides.

11.1 As relates issue relating to the addition of Rs. 41,54,153/- in the closing stock of free sugar. the Assessing Officer enhanced the value of closing stock of free sugar produced during the year 2006-07 by a sum of Rs. 37,93,882/- by applying the rate of cost of production at Rs. 1449.40 per quintal instead of Rs. 1355.35 per quintal applied by the assessee. The assessee is following the method of the valuation of closing stock of free sugar at cost price or market price whichever is lower since inception which has been followed during the year without any change. The assessee has 40339 Atl. Of free sugar as on 31.03.2009 out of sugar produced in the Financial Year 2007-08 in the month of April & May 2007. The assessee filed copy of RT 7 C & RT 8 C in support of the claim that the production of 88260 qtls. sugar has been made in month of April & May 2007. The cost price of sugar produced in the financial year is Rs. 1355.35 and the market price of sale of sugar as on the last sale close of the year Rs. 1885.00. The cost of production of Rs. 1355.35 being lower than the market price. The assessee has valued the stock of free sugar of 40339 qtl. @ 1355.35 per qtl.

Sugar being excisable commodity the day by day control is exercise by the excise department and no defect was pointed out regarding the excise duty. The Assessing Officer has confused between the sugar year and the Financial year of production. Though the stock pertained to sugar year 2006-07 year yet because it was produced in financial year 2007-08 hence the rate of cost of production of F.Y. 2007-08 would be applied to value the stock. Thus the CIT(A) is right in deleting the said addition.

11.2 Further, the AO had also added a sum of Rs.3,60,271/- being the element of education cess and higher education cess on excise duty while valuing the stock. However, the CIT (A) deleted this addition also. The A.O added a sum of Rs.3,79,243/- being the difference in education cess and higher education cess on excise duty on value of stock of free sugar which comes to Rs. 8,53,918/- but since the assessee had paid Rs. 5,74,675/- before due date of filing of return, only the difference was added. The CIT (A) directed the AO to check the arithmetical error in working out the difference (8,53,918/- 5,74,675/-) and also to allow benefit of similar addition made is immediately preceding year if the same has been sustained in appeal.

11.3 As relates to not allowing transfer of Rs. 1,13,018/- to molasses reserve fund which is a revenue expenditure, the assessee made submission before the Assessing Officer as well as before the CIT(A) that the amount was transferred to molasses Reserve fund as per provision of U.P. Sheera Nyantran (Sanshodhan) Adhyadesh 1964 notification no. 678-E-2/XIII-75 dated 4.5.89 for creating storage facilities. The amount transferred to molasses reserve fund has to be utilized for provision and maintenance of adequate storage facilities for molasses as per instruction to be issued from time to time and the fund should be kept separately in the bank account. The Mill society would not utilize the amount in the fund for any other purpose. Thus it is revenue expenditure. The same was allowed by CIT(A) in assessee's own appeal for A.Y. 2002-03 and A.Y. 2004-2005.

Therefore, there is no need to interfere the findings of the CIT(A).

12. In result, appeals of the Revenue are dismissed.

**The order is pronounced in the open court on 21<sup>st</sup> of November, 2016.**

Sd/-

**(R.S. SYAL)**  
**ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Dated: 21/11/2016

*R. Naheed \**

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	18.10.2016	PS
2.	Draft placed before author	18.10.2016	PS
3.	Draft proposed & placed before the second member	.2016	JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the	21.11.2016	PS/PS

	Sr.PS/PS		
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	21.11.2016	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		