

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI S. S. VISWANETHRA RAVI, JM

आयकर अपील सं. / ITA Nos.1784 & 2227/PUN/2017
निर्धारण वर्ष / Assessment Years : 2014-15 & 2013-14

Padamshree Dr. D. Y. Patil
Sahakari Sakhar Karkhana Ltd.,
Tal. Vesraf Palsamle, P. Aslat,
Tal. Gaganbawada, Kolhapur.

PAN : AAAAS6831N

.....अपीलार्थी / Appellant

बनाम / V/s.

ACIT, Circle-1,
Kolhapur.

.....प्रत्यर्थी / Respondent

Assessee by : Shri M. K. Kulkarni
Revenue by : Shri Deepak Garg

सुनवाई की तारीख / Date of Hearing : 09.06.2021
घोषणा की तारीख / Date of Pronouncement : 26.07.2021

आदेश / ORDER

PER INTURI RAMA RAO, AM:

These are the appeals filed by the assessee directed against the separate orders of Id. Commissioner of Income Tax (Appeals)- 1/2, Kolhapur ('CIT(A)' for short) dated 04.05.2017 and 21.07.2017 for the assessment years 2014-15 and 2013-14 respectively.

2. Since the identical facts and issues are involved in both the appeals, we proceed to dispose of the appeal through this consolidated order for the sake of convenience.

3. First, we take up the appeal in ITA No.1784/PUN/2017 for the assessment year 2014-15.

4. Briefly, the facts of the case are as under :-

The appellant is a cooperative society registered under the Maharashtra Co-operative Society Act. It is engaged in the business of manufacturing of white crystal sugar. The return of income for the assessment year 2014-15 was filed on 30.09.2014 declaring loss of Rs.2,80,33,642/-. Against the said return of income, the assessment was completed by the Assistant Commissioner of Income Tax, Circle-1, Kolhapur ('the Assessing Officer') vide order dated 22.12.2016 passed u/s 143(3) of the Income Tax Act, 1961 ('the Act') at a total income of Rs.8,82,58,740/-. While doing so, the Assessing Officer made an addition of Rs.11,01,53,658/- being the excess price paid to members over and above the minimum remunerative price fixed by Government holding it to be an appropriation of profit. The Assessing Officer also made another disallowance on account of sale sugar at concessional rate to members of Rs.61,38,720/-.

5. Being aggrieved, an appeal was preferred before the Id. CIT(A) who vide impugned order confirmed the addition after adverting to the scheme of fixation of price and purchase of sugarcane and held that the excess price paid is nothing but appropriation of profits. Similarly, the Id. CIT(A) also confirmed the addition on account of sale of sugar at concessional price after referring to the decision of the Hon'ble Supreme Court in the case of CIT vs. Krishna Sahakari Sakhar Karkhana, 211 taxmann.com 109 (SC).

6. Being dissatisfied with the order of the Id. CIT(A), the appellant is before us in the present appeal.

7. It is submitted that Review Petition is pending before the Hon'ble Supreme Court against the decision in the case of CIT vs. Tasgaon Taluka Sahakari Sakhar Karkhana Ltd., 412 ITR 420. It is further submitted that the FRP price fixed by the Central Government in connotation with stake holder. Therefore, it cannot be termed as unreasonable.

8. As regards to the concessional rate of sugar price, the ld. AR argued that the sugar was sold at concessional rate out of the business expediency considerations. Finally, it is submitted that the issue may be restored to the file of the Assessing Officer on the lines of the decision of the Co-ordinate Bench of the Tribunal in the case of Majalgaon Sahakari Sakhar Karkhana Ltd. vs. ACIT in ITA No.308/PUN/2018 vide order dated 14.03.2019.

9. On the other hand, ld. Sr. DR has no serious objection to remand the matter on the lines indicated in the decision of the Co-ordinate Bench of the Tribunal in the case of Majalgaon Sahakari Sakhar Karkhana Ltd. (supra).

10. We heard the rival submissions and perused the material on record. The first issue in the present appeal relates to the allowability of sugarcane price paid over and above FRP price. The Assessing Officer disallowed the excess price so paid by holding it to be the appropriation of profits. This finding of the Assessing Officer was also confirmed by the ld. CIT(A). There can be no quarrel as to the proposition that any appropriation of profit cannot be allowed as a deduction while computing the taxable income of the cooperative society. But the question is, appropriation of profit presupposes the existence of profits, as well as the determination of profits which is a question of fact required to be determined by the Assessing Officer by calling for necessary details such as the balance sheet, profits and loss account and

the details furnished to the State Government Authorities for the purpose of fixing the FRP price. The onus lies on the Department to prove this allegation of appropriation of profit by leading necessary evidence on record by undertaking such an exercise of determining the existence of profit and other condition by reference to the Resolution passed by the Board of Co-operative Society or approval of the State Government to make the payment over and above excessive of FRP price. Apparently, in the present case, the Assessing Officer had not undertaken any such exercise. On perusal of the assessment order, it is clear that the alleged excess price had arisen on account of two factors (i) harvesting of transport expenses and (ii) payments of Rs.5000 per MT against such supply of sugarcane in the earlier years. Prima-facie, it is clear that the appellant society had not paid any excess price for purchase of sugarcane from its members or non-members over and above the FRP price declared by the Central Government. As stated by us earlier, the disparity between the price paid on sugar and the price payable under FRP only on account of above two factors i.e. (i) harvesting and transport expenses and (ii) payment of Rs.5000 per MT against supply made in the earlier years. Therefore, it is bounding duty of the Assessing Officer to examine the facts and circumstances under which the harvesting and transport expenses was paid to the farmers whether the payments were made over and above FRP exclusively for the purpose of business. The Assessing Officer cannot jump to a conclusion that the payments are in the nature of appropriation of profits without examining the facts and circumstances under which the said excess payments were made. The Hon'ble Bombay High Court in the case of CIT vs. Manjara Shetkari Sahakari Sakar Karkhana Ltd., (2008) 301 ITR 191 held that the differential price cannot be disallowed merely on the ground that it is appropriation of profits without giving a finding as to whether there is any resolution passed authoring the society to pay such excess price. Similarly,

the Hon'ble Madras High Court in the case of CIT vs. Aruna Sunrise Hotels Ltd., 93 taxmann.com 361 held that the excess price determined under sugarcane control is to be treated as allowable expenditure exclusively and for the purpose of business. Therefore, the finding of the lower authorities cannot be sustained. In our considered opinion, the matter should be remanded back to the file of the Assessing Officer in order to meet the ends of justice to give a finding whether the excess price paid over and above FRP is out of the business expediency or appropriation of profit. If it is found that the excess payment was paid only out of business expediency consideration and the same should be allowed as deduction. Thus, this ground of appeal is remanded to the file of the Assessing Officer for fresh adjudication on the lines indicated above. Accordingly, this ground of appeal stands partly allowed for statistical purposes.

11. The other ground of appeal relates to the disallowance of sale of sugar at concession rates to the members. The issue of disallowance on account of sale of sugar at concession rate to the members is covered by the decision of the Hon'ble Apex Court in the case of Krishna Sahakari Sakhar Karkhana (supra) wherein the issue was remanded back to the file of the Id. CIT(A) with a direction to address the question raised by the Hon'ble Supreme Court. The Id. CIT(A) though adverted to the decision of the Hon'ble Apex Court in the case of Krishna Sahakari Sakhar Karkhana (supra) had not addressed the question raised therein with reference to material on record. Therefore, this issue also requires to be remanded to the file of the Assessing Officer with a direction to address the question raised by the Hon'ble Apex Court in the case of Krishna Sahakari Sakhar Karkhana (supra) after calling for requisite information from assessee society. Thus, this ground appeal also stands partly allowed for statistical purposes.

12. In the result, the appeal filed by the assessee in ITA No.1784/PUN/2017 for the assessment year 2014-15 is partly allowed for statistical purposes.

13. Since the facts and issues involved in both the appeals are identical, therefore, our decision in appeal of the appellant in ITA No.1784/PUN/2017 for the assessment year 2014-15 shall apply *mutatis mutandis* to the appeal of the appellant in ITA No.2227/PUN/2017 for the assessment year 2013-14. Thus, the appeal of the appellant in ITA No.2227/PUN/2017 for the assessment year 2013-14 is partly allowed for statistical purposes.

14. Resultantly, both the appeals of the assessee are partly allowed for statistical purposes.

Order pronounced on this 26th day of July, 2021.

Sd/-

(S. S. VISWANETHRA RAVI)
न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(INTURI RAMA RAO)
लेखा सदस्य/**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 26th July, 2021.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Kolhapur.
4. The Pr. CIT-1, Kolhapur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.