IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

ITA Nos.2045 & 2046/PUN/2019
निर्धारण वर्ष / Assessment Years : 2014-15 & 2015-16

Sant Tukaram Sahakari Sakhar Karkhana Ltd., Kasarsai Daumbre, Kasarsai, Tal: Mulshi, Dist. Pune-410506 PAN : AACAS2897Q	Vs.	ITO, Ward-2(5), Pune
Appellant		Respondent

Assessee by	Smt. Deepa Khare
Revenue by	Shri M.G. Jasnani
Date of hearing	01-06-2022
Date of pronouncement	01-06-2022

आदेश / ORDER

PER R.S. SYAL, VP :

These appeals by the assessee arise out of two separate orders dated 20.11.2019 passed by CIT(A)-3, Pune in relation to the assessment years 2014-15 and 2015-16. Since some common issues are raised in these appeals, we, therefore, proceeding to dispose them off by this consolidated order for the sake of convenience.

A.Y. 2014-15

2. The first ground raised in this appeal is against disallowance of Rs.2,43,400 sustained u/s 37 of the Income-tax Act, 1961 (hereinafter referred to as „the Act").

3. Briefly stated, the facts of the case are that the assessee debited advertisement expenses amounting to Rs.32,400 towards birthday hoarding of a political leader. The Assessing Officer (AO) disallowed the same. The assessee further debited sums of Rs.5,94,965 and Rs.1,05,330 on account of ceremony expenses and festival expenses. The AO disallowed 30% of these amounts, thereby making total disallowance at Rs.2,42,400. The ld. CIT(A) sustained the same.

4. Having heard the rival contentions and perused the record, it is seen that similar issue came up for consideration before the Tribunal in assessee"s own case for the A.Y. 2006-07. Vide order dated 25.11.2010, the Tribunal in ITA No.47/PN/2010 confirmed the disallowance at 50% of ceremony expenses. The ld. AR fairly conceded that the disallowance made in this year is at a lower level vis-à-vis that sustained by the Tribunal in the earlier year. We, therefore, countenance the same. This ground is not allowed.

5. The second ground is against the confirmation of addition of Rs.11,31,985 towards sale of sugarcane at concessional rate.

6. Succinctly, the facts of the issue are that the assessee is a Co-operative sugar factory engaged in the manufacturing of crystal sugar. A return was filed declaring total loss of Rs.51,66,070. During the course of assessment proceedings, the AO observed that the assessee sold sugar at concessional rate to its members. Such concession amounting to Rs.11,31,985 was added by the AO to the total income. No relief was allowed by the ld. CIT(A). Aggrieved thereby, the assessee has come up in appeal before the Tribunal.

7. We have heard the rival contentions and perused the relevant material on record. It is observed that the issue of sale of sugar at concessional rate and the consequential making of addition has been considered by the Hon‟ble Supreme Court in the case of *CIT Vs. Krishna Sahakari Sakhar Karkhana Limited (2012) 27 taxmann.com 162* (SC). Vide judgment dated 25-09-2012, the Hon‟ble Supreme Court noticed that the difference between the average price of sugar sold in the market and the price of sugar sold by the assessee to its members at concessional rate was taxed

by the Department under the head "Appropriation of profit". The Hon"ble Summit Court remitted the matter to the CIT(A) for considering, *inter alia*,: "whether the abovementioned practice of selling sugar at concessional rate has become the practice or custom in the Co-operative sugar industry?; and whether any Resolution has been passed by the State Government supporting the practice?; The CIT(A) would also consider on what basis the quantity of the final product, i.e. sugar, is being fixed for sale to farmers/cane growers/Members each year on month-to-month basis, apart from others from Diwali?" The issue under consideration can be decided by an appropriate lower authority only on the touchstone of the relevant factors noted in the above judgment. In our considered opinion, it would be just and fair if the impugned order on this score is set aside and the matter is restored to the file of the AO for fresh consideration as to whether the difference between the average price of sugar sold in the market and that sold to members at concessional rate is appropriation of profit or not, in the light of the directions given by the Hon"ble Supreme Court in the case of *Krishna Sahakari Sakhar Karkhana*

Limited (supra). We order accordingly. Needless to say, the assessee will be allowed proper opportunity of hearing by the AO

8. The third issue raised in this appeal is against the confirmation of disallowance of Rs.3,56,28,820 on account of excess sugarcane price paid as compared to Fair & Remunerative Price (FRP).

9. Brief facts relating to the issue under consideration are that during the course of assessment proceedings, the AO observed that the assessee paid excessive sugarcane price, over and above the Fair and remunerative price (FRP) fixed by the Government, to its members as well as non-members. On being called upon to justify such deduction, the assessee gave certain explanation. Not satisfied with the reply, the AO opined that the excessive price paid was not deductible. This is how, he computed the excessive sugarcane price paid at Rs.3,56,28,820 and made addition for the said sum. The ld. CIT(A) echoed the assessment order on this point.

10. We have heard the rival contentions and perused the relevant material on record. We find the issue of payment of excessive price on purchase of sugarcane by the assessee is no more *res*

integra in view of the judgment of Hon‟ble Supreme Court in *CIT Vs. Tasgaon Taluka S.S.K. Ltd. (2019) 103 taxmann.com 57 (SC)*. The Hon‟ble Apex Court has elaborately dealt with this issue. It recorded the factual matrix to the effect that the assessee in that case purchased and crushed sugarcane and paid price for the purchase during crushing seasons 1996-97 and 1997-98, firstly, at the time of purchase of sugarcane and then, later, as per the Mantri Committee advice. It further noted that the production of sugar is covered by the Essential Commodities Act, 1955 and the Government issued Sugar Cane (Control) Order, 1966, which deals with all aspects of production of sugarcane and sales thereof including the price to be paid to the cane growers. Clause 3 of the Sugar Cane (Control) Order, 1966 authorizes the Government to fix minimum sugarcane price. In addition, the additional sugarcane price is also payable as per clause 5A of the Control Order, 1966. The AO in that case concluded that the difference between the price paid as per clause 3 of the Control Order, 1966 determined by the Central Government and the price determined by the State Government under clause 5A of the Control Order, 1966, was in the nature of `distribution of profits‟ and hence not

deductible as expenditure. He, therefore, made an addition for such sum paid to members as well as non-members. When the matter finally came up before the Hon"ble Apex Court, it noted that clause 5A was inserted in the year 1974 on the basis of the recommendations made by the Bhargava Commission, which recommended payment of additional price at the end of the season on 50:50 profit sharing basis between the growers and factories, to be worked out in accordance with the Second Schedule to the Control Order, 1966. Their Lordships 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 Statutory Minimum Price (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 SAP/additional purchase price/final price is decided. He has been 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. The relevant findings of the Hon"ble Apex Court are reproduced as under:-

> *"9.4. ..... Therefore, to the extent of the component of profit which will be a part of the final determination of SAP and/or the final price/additional purchase price fixed under Clause 5A would certainly be and/or said to be an appropriation of profit. However, at the same time, the entire/whole amount of difference between the SMP and the SAP per se cannot be said to be an appropriation of profit.* As observed hereinabove, only that part/component of profit, while determining the final price worked out/SAP/additional purchase price would be and/or can be said to be an appropriation of profit and for that *an exercise is to be done by the assessing officer by calling upon the assessee to produce the statement of 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. Merely because the higher price is paid to both, members and non-members, qua the members, still the question would remain with respect to the distribution of profit/sharing of the profit. So far as the non-members are concerned, the same can be dealt with and/or considered applying Section 40A (2) of the Act, i.e., the assessing officer on the material on record has to determine whether the amount paid is excessive or unreasonable or not.....*
>
> *9.5 Therefore, the assessing officer will have to take into account the manner in which the business works, the modalities and manner*

> *in which SAP/additional purchase price/final price are decided and to determine what amount would form part of the profit and after undertaking such an exercise whatever is the profit component is to be considered as sharing of profit/distribution of profit and the rest of the amount is to be considered as deductible as expenditure."*

11. The extant issue of deduction for payment of excessive price for purchase of sugarcane under consideration is squarely covered by the aforesaid judgment of the Hon"ble Supreme Court. Respectfully following the precedent, we set-aside the impugned order on this score and remit the matter to the file of the A.O for deciding it afresh as per law in consonance with the articulation of the law by the Hon"ble Supreme Court in the aforenoted judgment. 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. At this stage, it is made clear that the distribution of profits can only be *qua* the payments made to the members. In so far as the non-members are concerned, the case will be considered afresh by the AO by applying the provisions of section 40A(2) of the Act, as has been held by the Hon‟ble Supreme Court *supra.* Needless to say, the assessee will be allowed a reasonable opportunity of hearing by the AO in such fresh determination of the issue.

A.Y. 2015-16

12. The first ground is against confirmation of disallowance of Rs.2,94,663 made by the AO at 30% of the Ceremony expenses. Both the sides are in agreement that the facts and circumstances of this ground are *mutatis mutandis* similar to those in immediately preceding assessment year. Following our view taken hereinabove, we confirm the sustenance of disallowance at this level.

13. The second ground is against confirmation of addition of Rs.20,43,050 towards sale of sugarcane at concessional rate. Here again, there is a consensus that the facts and circumstances of this

ground are similar to those in immediately preceding assessment year. Following our view, we set aside the impugned order and remit the matter to the file of the AO to be decided afresh in conformity with our observations given above.

14. In the result, both the appeals are partly allowed for statistical purpose.

Order pronounced in the Open Court on 01st June, 2022.

Sd/-	Sd/-
(SATBEER SINGH GODARA)	**(R.S.SYAL)**
JUDICIAL MEMBER	**VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 01st June, 2022
GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-3, Pune
4. The Pr.CIT-2, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "B" / DR ,,B", ITAT, Pune
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

// True Copy //

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

		Date	
1.	Draft dictated on	01-06-2022	Sr.PS
2.	Draft placed before author	01-06-2022	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

*