

Reserved**AFR****Court No. - 35****Case :- INCOME TAX APPEAL No. - 35 of 2016****Appellant :- Pr. Commissioner Of Income Tax****Respondent :- Kishan Sahkari Chini Mills Ltd.****Counsel for Appellant :- Ashish Agarwal****Counsel for Respondent :- Shakeel Ahmad****Hon'ble Bharati Sapru,J.****Hon'ble Saumitra Dayal Singh,J.****(Delivered by Hon'ble Saumitra Dayal Singh,J.)**

This Income Tax Appeal filed by the Revenue under Section 260-A of the Income Tax Act for the Assessment year 2006-07 arises from the order of the Income Tax Appellate Tribunal, Lucknow Bench "A", Lucknow dated 6.10.2015 whereby the tribunal has allowed the assessee's appeal and deleted the addition of Rs. 1,84,00,096/- on account of valuation of closing stock of sugar. The tribunal accepted the case of the assessee that there was no need to make any addition on account of valuation closing stock of sugar as it has correctly valued the closing stock of sugar at a lower rate, the stock being of levy sugar and not of free sale sugar which rate had been applied by the Assessing Authority while making the original assessment.

The appeal was admitted on the following questions of law:-

“(A) Whether on the facts and in the circumstances of the case, the learned ITAT is justified in deleting the addition of Rs. 1,84,00,096/- on account of valuation of closing stock of sugar as made by the Assessing Officer and confirmed by the Commissioner of Income

Tax (Appeals) ignoring the fact that the assessee failed to produce stock registers and supporting evidences in support of applying different rates for valuation of stock for levy and free sale sugar relating to different years during the course of assessment proceeding.

(B) Whether on the facts and in the circumstances of the case, the learned ITAT was legally justified in ignoring the production of the stock register and supporting evidences while allowing the appeal filed by the assessee or accepting the claim of the assessee.”

Brief facts of the case are that the return of income was filed by the assessee showing net loss of Rs. 6,86,55,130/- on 16.10.2006. The Assessment was completed u/s 143(3) of the I.T. Act, 1961 on 18.12.2007 on a total income of Rs. Nil setting off the losses for the Assessment Year 2002-03 by making the addition / disallowance on account of valuation of closing stock Rs. 1,84,00,096/-

Aggrieved with the order of the AO, the assessee preferred an appeal before the Ld. CIT(A), Bareilly who vide order dated 03.12.2013 passed in Appeal No. 383/ACIT-II/Bly/2008-09 partly allowed the appeal of the assessee. Aggrieved with the order of the Ld. CIT(A), Bareilly, the assessee preferred an appeal before the Hon'ble ITAT, Lucknow.

According to the department the Assessing Officer had noticed that the stock of levy sugar relating to the year 2002-03, 2003-04 and 2004-05 was lying in the closing stock and the assessee has valued the same applying the rate of Rs. 1330.77 per qtls. However, the stock of levy free sugar was valued by the assessee @Rs. 1660/- for stock of 2003-04 lying in the stock,

@Rs. 1600/- for stock of F.Y. 2004-05 lying in the stock and @Rs. 1740/- for stock of F.Y. 2005-06 lying in the stock. The average rate of Rs. 1760.95/- was applied by the assessee as shown by it in Schedule- 'J' enclosed with the Audit Report. Therefore, relying upon the order of the Hon'ble ITAT in the assessee's own case in ITA No. 531/Alld./1994 for the A.Y. 1990-91 the AO made addition on account of valuation of stock of levy sugar at the rates applied for valuation of levy free sugar i.e. Rs. 1,760.95.

Further in appeal by the assessee Income Tax Tribunal vide its impugned order deleted the addition for said valuation after recording the below noted findings.

“We have considered the rival submission. We find force in the submission of Ld. AR of the assessee. As per certificate regarding sanction of sale of sugar at the rate of 100% as free sale quota available at page 25 of the paper book, it is seen that for a period of seven years from the year 1985-86 to 1991-92, the assessee was authorized to sale 100% production as free sale sugar. Hence, in the A.Y. 1990-91, the Tribunal has rightly held that the entire closing stock has to be valued at the selling price of free sale sugar. Now, in the A.Y. 2006-07, the assessee has valued the closing stock of levy sugar for three years lying in stock i.e. the year 2001-03, 2003-04 and 2004-05 at selling price of levy sugar. Under these facts, we are of the considered opinion that no addition is called for because closing stock of levy sugar cannot be valued at sale price of free sale sugar. Hence, the addition made by the AO and confirmed by the CIT(A) by valuing the levy sugar also at the sale price of free sale sugar is deleted. Accordingly, ground No. 1 is allowed.”

We have heard Sri Ashish Agarwal, learned counsel for the Revenue and Sri Shakeel Ahmad, learned counsel for the assessee-respondent as also perused the record.

The assessee is a manufacturer of sugar which is controlled commodity and the manufacturing process whereof is regulated by law. Being commodities subjected to excise duty the record of manufacture is also maintained and verified by the Excise Authorities at different stages. Also, it is a matter of common knowledge and in the particular facts of the case it has been stated by the assessee from the very beginning before all authorities that out of total sugar manufactured by it, levy sugar had been apportioned and fixed quantity of sugar had been set apart to comply with the requirement of levy sugar supplied to the Government for Public Distribution System. Undisputedly, levy sugar price is considerably lower than free sale sugar price by about 40%. While assessee appears to have maintained and produced its books of accounts and certain other records before the Assessing Officer who did not doubt either the figure of total stock of sugar or figure of closing stock of sugar, he made addition to the value of closing stock sugar by disbelieving the contention of the assessee that the said stock had to be valued at lower price than that of free sale sugar (for reason of such sugar stock being levy sugar.)

The Assessing Officer was influenced entirely by the fact that according to him the assessee did not produce the stock register despite opportunity having being granted for that purpose. However, he did not dispute the correctness of the levy sugar price as disclosed by the assessee and in fact choose not to record any finding thereon.

Before the Commissioner appeals the assessee's case was summarized by the Commissioner Income Tax Appeal in respect of the issue at hand and in this regard he has specifically noted.

“The Learned AO has not pinpointed any defect in books of account & records maintained by assessee.”

That various records recording day to day production of sugar as required under Excise Act are maintained by assessee, which were also produced before Learned Assessing Officer during the course of hearing. No adverse comment raising doubts, about correctness of stock register, was made by Learned AO during the course of hearing.

Thereafter, the CIT further noted the written submission made by the assessee as below:-

“The AR for the appellant vide his written submissions stated as under:-

“The Learned AO has made addition of Rs. 1,84,00,096.00 towards alleged under valuation of closing stock of sugar valuing the same @ Rs. 1760.95 per Qtl. disregarding the valuation made by assessee bifurcating its year wise sugar stock valuation and valuation of Levy Sugar made by it.

The assessee is consistently following while making valuation of closing stock of sugar as under (as certified by Tax Auditor in annexure attached to Tax auditor Report, copy enclosed).

Free Sugar At Cost or Market Value which ever is lower

Levy Sugar At Levy Rate fixed by Govt.

(i) The valuation of closing stock of sugar held as on 31st March, 2006 showing season wise bifurcation of sugar held as given in schedule “L” attached to Balance Sheet (copy enclosed)

The summarized position of valuation is given below:-

<u>Free Sugar</u>	<u>Bags</u>	<u>Rate</u>	<u>Amount</u>
Season 2003-04	37893	1660/-	62902380

2004-05	19442	1600/-	31107200
2005-06	<u>157792</u>	1740/-	<u>274558080</u>
	<u>215127</u>		<u>368567660</u>

Levy Sugar

2002-03	16618	1330.77	21981658.86
2003-04	588	1330.77	782492.76
2004-05	<u>1816</u>	1330.77	<u>2416678.38</u>
	<u>19022</u>		<u>25180830.00</u>

Against the Learned AO has adopted a uniform rate of Rs. 1760.95 per bags disregarding the method of valuation of closing stock followed consistently by appellant.

Relevance is placed on following judgment of ITAT High Court relating to valuation of stock.

In the light of above, the addition so made deserves to be deleted.”

The CIT (Appeal) however rejected the contention of the assessee by relying on the earlier order passed by the tribunal in the case of the assessee for the assessment year 1990-91 wherein, from a reading of the order of the tribunal it appears the entire quantity of the sugar stock was free sale sugar only and there was no component of levy sugar in that year.

The tribunal has in the impugned order noted as part of contention made by the assessee that the tribunal's earlier order in ITA No. 531 of 1994 for the assessment year 1991 was not applicable in this assessment year 2006-07 because for the period 1985-86 to 1991-92, under the policy of the Government of India, the assessee was entitled to sell entire quantity of sugar manufactured-by way of free sale sugar. However, subsequently the requirement of levy sugar was enforced against the assessee and, therefore, the order of the tribunal for the assessment year 1990-91 is of no benefit to the revenue because in that year there

was no stipulation on the assessee to supply levy sugar to the Government.

It was, therefore, submitted by the assessee that the levy sugar that was lying in stock for the last three years namely financial year 2002-03, 2003-04 and 2004-05 was correctly valued at a lower price being that of levy sugar. It was further submitted that levy sugar could never be valued by applying the prices applicable to free sale sugar as that would give un-realistic and wrong results.

It is in this background that the tribunal has observed that the closing stock of levy sugar cannot be valued at sale price of free sale sugar and hence it has deleted the addition on that account. While Sri Ashish Agarwal has heavily relied on the observations made in the assessment order as to non production of the stock register, he does not dispute the fact that the production of sugar and actual availability of the sugar stock including the closing stock has been correctly disclosed by the assessee and that there is no dispute on that issue.

On the other hand we find from a perusal of the order passed by the CIT (Appeals) that he had specifically held that the “A.O. has not pinpointed any defect in books of account and records maintained by assessee.” Thus the total stock of sugar stands accepted to the revenue. Further the assessee had claimed to have consistently followed the method of making valuation of closing stock of sugar by apportioned the total stock of sugar between free sugar and levy sugar which was duly certified by the Tax Auditor. This material was placed by the assessee before all the authorities at every stage.

Before the Tribunal the assessee had also brought on record the basis of such apportioned sugar in the shape of communications issued by the Ministry of Consumer Affairs and Public Distribution for supply of sugar to be made by the assessee to the Public Distribution System by creating stock of levy sugar. The evidence in this regard referred to in the order of tribunal has not been disputed and its correctness has not been doubted by the revenue.

Thus it has been established that in the year in question i.e. assessment year 2006-07 the assessee was under an obligation to create stock of levy sugar which was duly certified by the Tax Auditor and according to those reports and certificates the assessee had available with it quantities of levy sugar for the year 2002-03, 2003-04 and 2004-05. This stock of levy sugar could then not have been valued at free sale sugar price in view of the fact that there was a legal obligation on the assessee to supply the such stock of sugar at the controlled levy price through the Public Distribution System.

The fact that in earlier order closing stock had been valued at higher price namely free sale sugar price, is not relevant in the present appeal in view of the finding returned by the tribunal that in the earlier years the assessee had no liability towards levy sugar and the assessee was free to sell its entire sugar stock by way of free sale sugar. The correctness of this finding is again undisputed.

In view of the above, we conclude that the requirement to supply levy sugar for Public Distribution System being a legal obligation governed by directions and orders issued by the Government of India from time to time and such directions

having being shown to exist, to the tribunal, no fault can be found in the reasoning given by the tribunal, to accept the value of closing stock at levy sugar price once it stood established and is not disputed that the levy sugar provisions were applicable to the assessee and such stock was therefore, part of the total sugar stock of the assessee and was valued accordingly. The fact that stock register remained from being examined would be of little consequence inasmuch as the Assessing Officer had never disputed the correctness of the figure of total sugar produced by the assessee and the figure of closing stock of sugar available with it and no defect had been found in the books of account of the assessee which were duly audited and complete.

For the purpose of valuation of the stock it was relevant to examine whether the assessee was under an obligation to provide for levy sugar. This fact has been duly established by the assessee through evidence led both before the CIT appeals as also tribunal that has specifically referred to such evidence.

In view of the above, the questions of law raised in the memo of appeal are answered, against the revenue and in favour of the assessee i.e. in absence of any dispute as to the total stock of sugar and the closing stock of sugar the tribunal was not in error in accepting the value of closing stock of levy sugar in view of the assessee being under an obligation to supply levy sugar.

The appeal, therefore, lacks merits and is accordingly dismissed.

There is no order as to costs.

Order Date :- 03.03.2017

Lbm/-