

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Tax Appeal No. 99 of 2008

With

The Commissioner of Income Tax - I,
Aaykar Bhavan, PMT Building, B Wing,
Shankar Seth Road, Swargate,
Pune - 411 037.

.. Appellant.

versus

Sanjivani (Takli) SSK Ltd.,
A/P. Sahajanandnagar,
Taluka : Kopargaon,
District : Ahmednagar.

.. Respondent.

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*Mr. Alok Sharma, Assistant Solicitor General, for
the appellant.*

Respondent served (Absent).

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Tax Appeal No. 157 of 2008

With

The Commissioner of Income Tax - I,
Aaykar Bhavan, PMT Building, B Wing,
Shankar Seth Road, Swargate,
Pune - 411 037.

.. Appellant.

versus

Padmashri Dr. Vithalrao Vikhe Patil
Sahakari Sakhar Karkhana Ltd.,
A/P. Pravaranagar,
Taluka : Rahata,
District : Ahmednagar.

.. Respondent.

.....

*Mr. Alok Sharma, Assistant Solicitor General, for
the appellant.*

Mr. V.D. Hon, Advocate, for the respondent.

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Tax Appeal No. 158 of 2008

With

The Commissioner of Income Tax - I,
Aaykar Bhavan, PMT Building, B Wing,
Shankar Seth Road, Swargate,
Pune - 411 037.

.. Appellant.

versus

Kopergaon Sahakari Sakhar Karkhana Ltd.,
At Post : Kolpewadi,
Taluka : Kopergaon,
District : Ahmednagar.

.. Respondent.

.....

*Mr. Alok Sharma, Assistant Solicitor General, for
the appellant.*

Mr. R.N. Dhorde, Advocate, for the respondent.

**CORAM : B.P. DHARMADHIKARI
&
SUNIL P. DESHMUKH, JJ.**

**Date of reserving the
judgment : 18th June 2012.**

**Date of pronouncing the
judgment : 10th July 2012.**

JUDGMENT (Per B.P. Dharmadhikari, J.) :

1. Respective parties do not dispute that the question sought to be raised in all these Appeals stands concluded by the judgment dated 10.2.2012, in Tax Appeal No. 25 of 2008 -- *The Commissioner of Income Tax Vs. Shetkari Sahakari Sakhar Karkhana Limited, Killari, Tq. Ausa, District Latur*, delivered by the Division Bench here at Aurangabad. This question formed issue no. 2 in Tax Appeal 25 of 2008. Two issues, as under, were pressed before this Court in that Tax Appeal :-

(1) Whether an amount, for which a provision is made in the books of account by the assessee (a sugar factory), who maintains accounts on the mercantile basis, towards contribution made to a recognised research institute, can be allowed as a

deduction under Section 35(1) of the Income Tax Act, 1961, if the amount is not actually paid in the relevant assessment year ?

(2) Whether the difference between the market price of sale of sugar and price of the sale of a small quantity of sugar made by the assessee (a sugar factory) to it's sugarcane producer members at a concessional rate, can be added in the income of an assessee under Section 40A of the Income Tax Act, 1961 ?

2. The respondent - assessee in Tax Appeal 25 of 2008 was a cooperative sugar factory manufacturing sugar from sugarcane. It purchases sugarcane from it's producer members as well as non-member farmers. Small quantity of the sugar produced is offered for sale at a concessional rate to the farmers (i.e. producer members as well as non-members) supplying sugarcane to the appellant perhaps as an incentive and ensuring adequate supply of raw material required for production of sugar. According to the Income Tax Department the difference between the market price and the sell price of sugar needed to be added as an income of the assessee under Section 40A (2) of the Income Tax Act, 1961 (for the sake of brevity, hereinafter referred to as “the IT Act”). The Division Bench has reproduced Sub-section (2)(a) of Section 40A of the IT Act and then in paragraph 5 conditions necessary to attract it have been narrated. In paragraph 6 the result of the discussion is summed up by observing that --

“The very language of sub-section (2)(a) of Section 40A indicates that it applies only where the assessee is the purchaser of goods or receiver of the services for which he makes or is required to make the payment. It does not apply to a case where the assessee is the seller of goods or provider of services for which it receives or is to receive the payment. In other words, even if the assessee sales any goods or provides any service to a related person specified in clause (b) at a concessional price or rate i.e. at a rate less than the market rate of such goods or services, the difference between the market price and the price at which the goods are sold or services are provided by the assessee would not be dis-allowed as expenses or deduction while computing income of the assessee. The sale of goods or services by the assessee even to a related person is not covered by sub-section 2(a) of Section 40A.”

Decision of the Hon. Apex Court in the case of Deputy Commissioner of Income-Tax Vs. Shri Satpuda Tapi Prarisar SSK Ltd. and others [(2010) 231 CTS (SC) 224] is distinguished by noting that in that case, the sugarcane was sold by its member to the assessee (a sugar factory). In paragraph 7, it is observed that Income Tax Act, being a taxing statute, must be given strict interpretation and if the plain reading favours the assessee, interpretation in favour of the revenue cannot be accepted.

3. In Tax Appeal 99 of 2008 precisely this issue no. 2 is involved, assessment year is 2004-2005 and relief granted by the ITAT on 13.12. 2007 & by CIT(Appeals) is of Rs. 72,63,000/- with tax liability of Rs. 26,00,476/-. In Tax Appeal 157 of 2008 this issue no. 2 is only involved, assessment year is 2004-2005 and relief granted by the ITAT on 30.4.2008 & by CIT(Appeals) is of Rs. 37,67,256/- with tax liability of Rs. 11,55,360/-. In Tax Appeal 158 of 2008 also issue no. 2 is only involved,

assessment year is 2004-2005 and relief granted by the ITAT on 30.4.2008 & by CIT(Appeals) is of Rs. 25,11,300/- with tax liability of Rs. 7,69,150/-.

4. The adjudication in Tax Appeal 25 of 2008 is also followed in Tax Appeal 130 of 2008 decided by same bench on 13.2.2012 & Tax Appeal 90 of 2008 decided by same bench on 27.2.2012.

5. Facts in decided Tax Appeals & 3 Appeals before us are identical. Only 2nd issue in Tax Appeal 25 of 2008 is raised as substantial question of law. The reasons given by the Division Bench in Tax Appeal 25 of 2008 already noted briefly by us above, therefore, clinch the controversy. We therefore find no substantial question of law arising in any of these Appeals. With the result, all three Tax Appeals are dismissed with no orders as to costs.

(SUNIL P. DESHMUKH)
JUDGE

(B.P. DHARMADHIKARI)
JUDGE

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