

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

1 CIVIL APPEAL NO.7014 OF 2012

(Arising out of SLP(C) No. 9263 of 2009)

Commissioner of Income Tax, Coimbatore

....Appellant(s)

Versus

M/s. Bannari Amman Sugars Ltd.

....Respondent(s)

WITH

Civil Appeal No.7015 of 2012 (Arising out of SLP(C) No. 18567/2009), Civil Appeal No.7016 of 2012 (Arising out of SLP(C) No. 19988/2012), Civil Appeal No.7017 of 2012 (Arising out of SLP(C) No. 19989/2012) and Civil Appeal No.7018 of 2012 (Arising out of SLP(C) No. 19990/2012)

1 O R D E R

Leave granted.

This batch of civil appeals is filed by the Department. The said batch concerns Assessment Years 1992-93, 1993-94, 1994-95, 1996-97 and 1997-98.

The following question arises for determination in these civil appeals :

"Whether on the facts and in the circumstances of the case, ITAT was right in holding that closing stock of incentive sugar has to be valued at levy price and not at cost price?"

For the sake of brevity, we have reproduced hereinbelow the facts of Civil Appeal arising out of SLP(C) No. 9263/2009.

Assessee is a company engaged in the business of manufacture and sale of sugar. Assessee filed its return of income for assessment year 1997-98. In its return of income, confined to its Karnataka unit, assessee valued the closing stock of incentive sugar (free sugar) at levy price. The Department valued the closing stock of incentive sugar at cost whereas the assessee claimed that the said stock should be valued at levy price which was less than the cost. This is the basic controversy which arises for determination in these civil appeals.

To answer the above controversy, the following facts are required to be noted. By virtue of the provisions of the Essential Commodities Act, 1955 and the Sugar Control Order read with the Notification issued thereunder, a sugar manufacturer (assessee in this case) was required to sell 40% of his sugar production at the notified levy price to the Public Distribution System. At the relevant time, on an average, the levy price came to be less than the manufacturers' cost of production. Consequently, it was found by the manufacturers that under the above price control regime, the establishment of new sugar manufacturing units was not viable. It was found that even the existing sugar manufacturing units had become unviable and uneconomical. Therefore, an Incentive Scheme was framed, as suggested by the Sampat Committee, which committee was set up to examine the economic viability of establishing new sugar factories and expanding the existing factories. The Sampat Committee gave its Report. Under the Report, an Incentive Scheme was evolved. The said Incentive Scheme provided for an inducement for persons to set up new sugar factories or to

expand the existing one. Under the Scheme, 40% of the total sugar production was permitted to be sold at market price ("Incentive Sugar" for short). However, the Scheme provided that excess amount realized by the manufacturer over the levy price by sale of incentive sugar would be utilized only for repayment of loans taken from the banks/ financial institutions for establishing the new unit(s). In regard to utilization of excess realization towards repayment of loans, the sugar mills were directed to file certificate of chartered accountant subject to which further release orders would be issued by the Directorate of Sugar. This Scheme came up for consideration before this Court in the case of C.I.T. vs. Ponni Sugars and Chemicals Ltd. [306 ITR 392] in which this Court held that the excess amount realized by the manufacturer over the levy price by sale of incentive sugar should be treated as a capital receipt which was not taxable under the Income Tax Act, 1961. In that case, one of the arguments advanced on behalf of the Department, as in this case, was that the excess amount realized by the manufacturer over the levy price should be treated as a revenue receipt. However, that contention of the Department in Ponni Sugars and Chemicals Ltd. (supra) was negated although in the context of another Scheme this Court after examining the Scheme in the case of Sahney Steel and Press Works Ltd. vs. CIT [228 ITR 253] held that the excess amount realized was a revenue receipt. The judgment in Sahney Steel and Press Works Ltd. (supra) was considered in Ponni Sugars and Chemicals Ltd. (supra). Applying the "purpose test" this Court held in Ponni Sugars and Chemicals Ltd. (supra) that there is no straitjacket principle for coming to the conclusion as to whether the excess amount was a revenue receipt or a capital receipt. The Court held that it would depend on the Scheme. The Court also held in Ponni Sugars and Chemicals Ltd. (supra) that the purpose test should be applied on case to case basis. The Court held that it would depend on the purpose of the Incentive Scheme. As stated, the present case, relates to the valuation of the respondent's closing stock of incentive sugar as on 31.3.1997, corresponding to the assessment year 1997-98.

Valuation of opening and closing stock is a very important aspect of ascertainment of true profits. An improper valuation could result in rejection of books of account though all that is needed for rectifying it, is to make an addition or necessary adjustment based on proper valuation. Valuation of stock, whatever be the method, should be consistently followed. Method of valuation is generally at cost or the market value whichever of the two, is lower. However, it is open to the AO to probe the accounts, so as to arrive at the real income [see : Chainrup Sampatram vs. CIT, West Bengal (24 ITR 481)].

Profits of the business could only be ascertained by comparison of assets and liabilities of the business at the opening and closing of the accounting year. The method that an assessee adopts for closing is an integral part of accounting, within the meaning of Section 145. There are different methods of valuation of closing stock. The popular system is Cost or Market, whichever is lower. However, adjustments may have to be made in the principle having regard to the special character of assets, the nature of the business, the appropriate allowances permitted etc. to arrive at taxable profits. In the present case, it is the case of the assessee, that following the judgment of this Court in Ponni Sugars and Chemicals Ltd. (supra) the closing stock of incentive sugar should be allowed to be valued at levy price, which on facts, is found to be less than the cost of manufacture of sugar (cost price). We find merit in this contention. In Ponni Sugars and Chemicals Ltd. (supra), this Court, on examination of the Scheme, held that, the excess realization was a capital receipt, not liable to be taxed and in view of the said judgment, we hold, that the assessee is right in valuing the closing stock at levy price. As stated, in certain cases, adjustments may have to be made having regard to the special character of assets, the nature of the business, the appropriate allowances permitted etc. in order to arrive at taxable profits. The position would have been different, if as in the case of Sahney Steel and Press Works Ltd. (supra) this Court on examination of the relevant scheme in question held that such excess amount was a revenue receipt. This judgment, therefore, is confined to the Sampat Committee Report which has provided incentives in the form of price and duty differentials [see para 13 of the judgment in Ponni Sugars and Chemicals Ltd. (supra)]. In the present case, if the closing stock of incentive sugar was to be valued at any figure, above the levy price, the direct consequence of such a valuation would have been that

the excess amount over the levy price would be reflected as part of business income which would run counter to the judgment of this Court in Ponni Sugars and Chemicals Ltd. (supra). We must keep in mind that the stock valuation of incentive sugar has a direct impact on the manufacturer's revenue or business profits. If we were to accept the case of the Department that the excess amount realized by the manufacturer(s) over the levy price was a revenue receipt taxable under the Act then the very purpose of the Incentive Scheme formulated by Sampat Committee would have been defeated. One cannot have a stock valuation which converts a capital receipt into revenue income.

For the above reasons, the civil appeals filed by the Department are hereby dismissed with no order as to costs.

.....CJI
[S.H. KAPADIA]

.....J.
[MADAN B. LOKUR]

New Delhi,
September 26, 2012.
ITEM NO.1

COURT NO.1

SECTION IIIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).9263/2009

(From the judgement and order dated 21/07/2008 in TA No.976/2008 of The HIGH COURT OF MADRAS)

C.I.T., COIMBATORE

Petitioner(s)

VERSUS

M/S.BANNARI AMMAN SUGARS LTD.

Respondent(s)

With S.L.P. (C) No.18567 of 2009
(With appln(s) for c/delay in filing SLP and office report)

S.L.P. (C) No.19988 of 2012
(With appln(s) for c/delay in filing SLP and office report)

S.L.P. (C) No.19989 of 2012
(With appln(s) for c/delay in filing SLP and office report)

S.L.P. (C) No.19990 of 2012
(With appln(s) for c/delay in filing SLP and office report)
[For Orders]

Date: 26/09/2012 These Matters were called on for Orders today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MADAN B. LOKUR

For Petitioner(s) Mr. R.P. Bhatt, Sr. Adv.

Mr. Arijit Prasad, Adv.
Mr. Rahul Kaushik, Adv.
Mr. Rupesh Kumar, Adv.
Mr. Yatinder Chaudhary, Adv.
Ms. Gargi Khanna, Adv.
Ms. Anil Katiyar, Adv.
for Mr. B.V. Balaram Das, Adv.

For Respondent(s) Mr. S. Ganesh, Sr. Adv.
Ms. Shashi M. Kapila, Adv.
Mr. Vikas Mehta, Adv.
Mr. Pravesh Sharma, Adv.
Mr. Sushil Kumar, Adv.

UPON hearing counsel the Court made the following
O R D E R

Delay condoned.

Leave granted.

The civil appeals filed by the Department are hereby
dismissed with no order as to costs.

[T.I. Rajput]
A.R.-cum-P.S.

[Indu Satija]
Court Master

[Signed order is placed on the file.]