IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

TAX APPEAL NO.18 OF 2004

Purna Sahakari Sakhar Karkhana
Ltd., a Co-operative Society under
the provisions of the Maharashtra
Co-operative Societies Act, 1960
having its registered office at
Basamtnagar, District Parbhani **...APPELLANT**

VERSUS

Puran Lal
Deputy Commissioner of Income-Tax,
Special Range-2, Aurangabad,
Having his Office at Bansilal Nagar,
Aurangabad - 431 001. **...RESPONDENT**

...

Mr. V.D. Hon, Senior Counsel for Appellant.
Mr. Alok Sharma, Standing Counsel for Respondent.

...

CORAM: S.V. GANGAPURWALA AND
A.I.S. CHEEMA, JJ.

DATE : 25TH MARCH, 2015

ORAL ORDER :

1. Heard. The Tribunal has held that the amount collected towards distillery fund is not in the nature of R.R.D., as such the addition made by

the assessing officer is confirmed.

2. Mr. Hon, learned senior counsel for the Appellant contends that the said amount is in the nature of deposit and as such the same cannot be added to the income. The said amount remains in the account of assessee. Learned senior counsel relies on the Judgment of this Court in the case of **Commissioner of Income Tax Vs. Chhatrapati Sahakari Sakhar Karkhana Ltd. & Rahuri Sahakari Sakhar Karkhana Ltd., reported in (2000) 245 I.T.R. 498.** According to the learned senior counsel, this aspect that the said amount is by way of deposit, has not been considered. Even the bye-laws permit the said amount to be kept as deposit.

3. Mr. Sharma, the learned counsel for Respondent relies on the judgment of the Apex Court in the case of **Siddheshwar Sahakari Sakhar Karkhana Limited vs. C.I.T., Kolhapur, reported in 2004(12) S.C.C. 1,** and subm//its that the said

amount is for utilization of the present Appellant for construction of Distillery and as such the addition made of the said amount is proper.

4. The Apex Court in the case of **Siddheshwar Sahakari Sakhar Karkhana Limited**, referred supra, has observed in Para 59 as under:-

> "59. As far as Sugar Cane Development Fund is concerned, the case of the Revenue seems to stand on a stronger footing. In the paper-book, we find a Circular dated 18th August, 1986 in which certain directive principles have been laid down to regulate the expenditure to be incurred out of Cane Development Fund. The items specified in the directive principles are (1) green manuring, (2) lift irrigation schemes, (3) distribution of cane seeds, and (4) construction of new wells or deepening of old wells. The sugar factory is required to make sure that any project which they want to undertake out of the Cane Development Fund is technically and financially sound and to send the proposals in advance to the Directorate of Sugar for requisite sanction. The projects will directly benefit the members and augment the sugarcane production which will incidentally help the Society in its manufacturing operations. The beneficiaries under the scheme are no other than the members of the Sugar Cooperative Society concerned and the

advantage of enhanced production of sugarcane will ultimately be felt by the Society itself. Unlike the Area Development Fund, the monies out of Cane Development Fund are not spent for purposes unconnected with the growth and functioning of the sugar factory. The Tribunal was inclined to view it as a 'compulsory levy' on the depositors collected by the Government through the agency of sugar factory. This approach in our view is wholly unsustainable and is in the realm of surmise. We do not also see any scope for the application of principle of diversion of income at source in the case of collections made towards Cane Development Fund. The amounts realized on this account undoubtedly reach the assessee as its income and is utilized by the assessee for the benefit of itself and its members. As already observed, the supervisory role of the Directorate of Sugar to ensure that the amount si properly utilized to promote the objectives with which the fund was formed, does not make a material difference on the quality and character of the receipt. We are therefore of the view that the deductions made out of the cane price towards Cane Development Fund should be treated as the income of the assessee. We are, of course, not expressing any view whether it is a permissible deduction under the provisions of the Income Tax Act. If any such claim is made, the Tribunal shall examine the same when the matters are taken up by it to consider the issue of tax liability in relation to Area Development Fund."

5. Here in the present matter also it has been observed by the Commissioner as well as the Tribunal that the Distillery Fund is not in the nature of N.R.D. and other fund. No liability is attached to the said fund. The said fund is to be utilized by the assessee for constructing the Distillery and the funds remain within the control of the Appellant.

6. In light of aforesaid discussion, the substantial questions of law is answered accordingly. The Appeal is dismissed. No costs.

[A.I.S.CHEEMA,J.] **[S.V.GANGAPURWALA,J.]**

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