UNREPORTED

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD.

TAX APPEAL NO.48 OF 2007.

The Commissioner of Income
Tax, Aayakar Bhavan,
Near Holy Cross Schoo,
Cantonment, Aurangabad. … Appellant.

Versus

Godavari Dudhna Sahakari
Sakhar Karkhana Ltd.,
Deonandra, Tq.Pathri,
Dist.Parbhani. … Respondent.

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Mr.Alok Sharma, Senior Standing Counsel for the Appellant.
Mr.R.R.Chandak, advocate for the Respnodent.

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

Date : 07.04.2015.

ORAL JUDGMENT (Per S.V.Gangapurwala,J.)

1. Heard.

2. While admitting the appeal, following

substantial questions of law are framed :

“(1) Whether the Respondent can be termed as AOP (Association of Persons) for the purpose of Section 40-A(2)(a) and within the meaning of Section 31 of the Income-tax Act, 1961.?

(2) Whether the payments made by the Cooperative Society (Sugar factory) to its members and non members towards purchase price of sugarcane supplied. In excess of the price as fixed by the Commissioner of Sugar i.e. State Advised Price, is liable to be disallowed under Section 40-A(2) of the Income Tax Act, 1961 and liable to be computed as taxable income of the assessee.?

*(3) Whether the amount paid by Sugar Factory to its H & T Contractors and labours in excess of agreement (**Bakshis**) is liable to be computed as taxable income.?*

(4) Whether ITAT was justified in allowing deduction from taxable income of 20 percent of vehicle higher charges and expenses (Rs.2,03,853/-)?

(5) Whether the Assessing Officer was justified in charging 20 percent of the balance of cane seed advance as taxable income.? If yes, under what provision.?"

3. As far as question Nos.1 and 2 are concerned, the learned counsel for the Appellant and Respondent do not dispute that the same issues are required to be remitted to the Commissioner of Income Tax (Appeals), in view of the judgment of the Apex Court in a case of ***"Dy.C.I.T.Nagpur Etc. Vs. Shri Satpuda Tapi Parisar SSK Ltd. Etc."***

4. As far as question No.3 is concerned, the same is decided by this Court in Tax Appeal No.92/2006, vide order dated 25.8.2008. The said issue as such does not survive and is rightly decided by the Tribunal. As far as question No.4

is concerned, the same is properly discussed by the Tribunal by relying upon earlier decision. As far as question No.5 is concerned, the Tribunal had not discussed how the expenses would increase. It has said that relevant material is perused and so the Tribunal was of the view that expenses would increase with the business of the assessee. While reversing the orders of the Assessing Officer and Commissioner of Income Tax (Appeals), the facts considered by them have not been discussed. In light of that, the findings in respect of question No.5 by the ITAT is also set aside and the matter is remitted to the Commissioner of Income Tax (Appeals).

5. In light of the above, the appeal is partly allowed and the matter is remitted to the Commissioner of Income Tax (Appeals) for deciding the question Nos.1,2 and 5 as framed above. The Tax Appeal is accordingly disposed of. No costs.

(A.I.S.CHEEMA,J.) **(S.V.GANGAPURWALA,J.)**

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