IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

INCOME TAX APPEAL NO. 24 OF 2015

The Commissioner of Income Tax 1,
Pune .. Appellant
Versus
Kopargaon S.S. K. Ltd. Gautamnagar .. Respondent

WITH
INCOME TAX APPEAL NO. 25 OF 2015

The Commissioner of Income Tax 1,
Pune .. Appellant
Versus
Kopargaon S.S. K. Ltd. Gautamnagar .. Respondent

WITH
INCOME TAX APPEAL NO. 26 OF 2015

The Commissioner of Income Tax 1,
Pune .. Appellant
Versus
Kopargaon S.S. K. Ltd. Gautamnagar .. Respondent

WITH
INCOME TAX APPEAL NO. 27 OF 2015

The Commissioner of Income Tax 1,
Pune .. Appellant
Versus
Kopargaon S.S. K. Ltd. Gautamnagar .. Respondent

WITH
INCOME TAX APPEAL NO. 28 OF 2015

The Commissioner of Income Tax 1,

Pune .. Appellant
Versus
Kopargaon S.S. K. Ltd. Gautamnagar .. Respondent

WITH
INCOME TAX APPEAL NO. 29 OF 2015

The Commissioner of Income Tax 1,
Pune .. Appellant
Versus
Kopargaon S.S. K. Ltd. Gautamnagar .. Respondent

WITH
INCOME TAX APPEAL NO. 30 OF 2015

The Commissioner of Income Tax 1,
Pune .. Appellant
Versus
Kopargaon S.S. K. Ltd. Gautamnagar .. Respondent

Shri D. V. Soman, Standing Counsel for the Appellant in all matters.

CORAM : S. V. GANGAPURWALA AND
A. I. S. CHEEMA, JJ.
DATE : 26TH MARCH, 2015.

PER COURT :

. Mr. Soman, the learned counsel for the appellant strenuously contends that, the Commissioner has considered aspect of the funds under the head Area Development Funds and after discussing the same in detail has dismissed the claim of the assessee in respect of addition of the area development fund in the income. The learned counsel submits that, the Tribunal misdirected himself in holding that the amount towards area development funds cannot be included in the income of the assessee. The learned counsel submits that, as per relevant notification and the guidelines issued by the State Government the amount collected by the assessee under head area development fund cannot be utilized for other purposes also and as such the Commissioner was right in contending that the amount collected under said head that is area development fund amounts an income and cannot be excluded.

2. We have considered the submissions canvassed by the learned counsel for the appellant, so also have gone through the judgment delivered by the Commissioner and the Tribunal.

3. The Apex Court in a case of **Siddheshwar S. S. K. Vs. Commissioner of Income Tax, Kolhapur and others** reported in **JT 2004(7) SC 295** has observed as under :

> "57. The **Area Development Fund**, as we see from the various communications placed in the paper-book, is meant to enable the co-operative sugar factories to render socio-economic services in the area of operation. The area development programmes may cover agricultural extension, irrigation facilities, educational and medical services, development of animal husbandry and poultry, drought relief work and so on. By doing so, the sugar cooperatives will be supplementing the efforts of the Government in promoting the socio-economic development of the area. The Board of Directors of the cooperative society are required to pass a resolution specifying the details of expenditure proposed to be

incurred from out of the Area Development Fund. They should obtain the sanction of the Directors of Sugar for incurring such expenditure. Such information is also required to be placed before the General Body of the society and the approval to be obtained from the General Body. On 21st June, 1988, the Agriculture and Co-operation Department of the Government of Maharashtra framed certain directive principles laying down the modalities of utilization of Area Development Funds. The said order was issued in exercise of the power under section 79A of the Maharashtra State Cooperative Societies Act. This order passed during the middle of the last assessment year relevant to these appeals gives statutory basis for the already existing practice. It is difficult to equate this fund to the other categories of funds, as has been done by the Tribunal and affirmed by the High Court. Unlike the other funds like Chief Ministers Relief Fund, the amount collected towards Area Development Fund is retained by the sugar factory itself and utilized as per the guidelines issued by the Government or the National Cooperatives Development Corporation. The collective Body of the Society and its elected representatives take the decision as to how much amount has to be spent and for what purposes. The Director of Sugars or other designated official, no doubt acts in a supervisory capacity to oversee that the funds are properly utilized. On that account, it cannot be said that the collection is made by the Society as an agent of the Government or the proprietary interest in the funds is vested with the Government. The conclusion has been reached by the Tribunal mainly on the basis of requirement of prior sanction of the Director of Sugars for incurring the expenditure. Such restriction prescribed in the larger interest of the Society itself does not in any way detract from the fact that the Societies concerned do exercise dominion over the fund and deal with that money subject of course to the guidelines and restrictions evolved by the Government. The Tribunal failed to approach the question in proper perspective on an analysis of the relevant circulars and orders. The High Court too fell into an error in invoking the theory of diversion of income at source. The crux of the matter is that there has never been a diversion of income to a third party (Government) before it reached the assessee. The receipts in the form of Area Development Fund always remained with the assessee.

58. It could still be contended, as has been contended by learned senior counsel appearing for the assessees, that the realizations made by the assessee towards Area Development Fund are impressed with a specific legal obligation to spend the monies for specified purposes which are unrelated to the business of the sugar factory and therefore such receipts cannot be treated as income of the assessee. The analogy of collection of amounts towards charity, as in the case of ***C.I.T. v. MANU/SC/0308/1979 : Bijlee Cotton Mills (P) Ltd.*** **[1979] 116ITR60 (SC)**, has been invoked to substantiate the argument. It is contended that the realizations towards Area Development Fund would more or less stand on the same footing as deposits. The controversy has not been approached in the light of the above arguments. We do not consider it appropriate to express our view for the first time, especially when the determination thereof may depend on the consideration of certain facts. We, therefore, leave this point open for fresh determination by the Tribunal."

4. The Tribunal in the present case has considered the aspect of utilization of Area Development Fund by the assessee in detail. The Tribunal in its order has observed as under :

"18. Now the question before us is whether this collection made towards "ADF" by the assessee sugar factory is impressed with the specific obligation or assessee hold this money as a trustee as held in the case of Bijlee Cotton Mills (P.) Ltd. (supra)? Our answer is yes. In this case, even if initially it was by way of discretion the Sugar Co-operative factories were collecting the fund and spending the same on the different projects undertaken in the area of operation but subsequently the collection and use of fund was regulated by the intervention of the Govt. by issuing the order u/s. 79A of the Maharashtra Co-operative Society Act. The assessee has maintained the separate account in respect of this fund and as per the statement filed before us it is seen that the assessee sugar factory is utilizing the ADF on different projects as per the approval given in the annual general meeting (AGM). The assessee has to submit the report every year in respect of the collection and utilization of the amount under the ADF to the Government. Nowhere, it is the case of the Revenue that any money is diverted by the assessee sugar factory for any other purpose other than approved in the AGM of the members. Merely because the amount collected is not kept separately in the bank account, the character of the amount will not change as held in the case of Bijlee Cotton Mills (P.) Ltd. (supra). As submitted before us the assessee is required to submit the Auditor's Report to the Director of Sugar, Govt. of Maharashtra each year showing the opening balance of the ADF, amount collected during the year and utilized during the year (Page No. 29 of the Compilation). We, therefore, hold that the collection made by the assessee towards the ADF by way of deduction made from the sugarcane bills payable to the members and non-members is impressed with an obligation to spend the same for the specified purposes and the persons/Members paying contribution to ADF are aware before the deduction is made that for what purpose the assessee Co-operative Factory is collecting the said fund and where the fund will be utilized. In our humble opinion the assessee's role is like a trustee of the "Area Development Fund". We, accordingly, decide this issue inf avour of the assessee. It was submitted before us that the Department has allowed the expenditure incurred by the assessee out of the ADF on the actual basis treating the same as a business

> expenses. As we have held that the amount collected under the ADF is not a trading receipt in the hands of the assessee hence, the deduction given by the Assessing Officer in the respective assessment years towards ADF is to be withdrawn. The Assessing Officer is accordingly direct to exclude fully the amount included towards "Area Development Fund" in the income of the assessee and also to withdraw the amount allowed as a business expenditure towards ADF. Accordingly the assessee succeeds on this issue."

5. The Commissioner has not given any finding that, the fund collected under Area Development fund is not utilized for the purpose for which it was collected. The Tribunal has considered threadbare all the relevant aspects of this matter as was required and as observed by the Apex Court in a case of **Siddheshwar S. S. K. Vs. Commissioner of Income Tax, Kolhapur and others** referred supra. No illegality is committed by the Tribunal in the facts of the present case. No substantial question of law arises. As such, the income tax appeals are dismissed.

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

bsb/March 15