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

TAX APPEAL NO.32 OF 2008

The Commissioner of Income Tax
Aayakar Bhavan, Near Holy Cross
School, Cantonment, Aurangabad. ... APPELLANT

VERSUS

Jai Jawan Jai Kisan Sahakari Sakhar
Karkhana Ltd., At/p Nalegaon,
Tq. Chakur, District Latur ... RESPONDENT

.....
Shri Alok Sharma, Standing Counsel for appellant
.....

CORAM: PRASANNA B. VARALE AND
SUNIL K. KOTWAL, JJ.

DATED : 21st DECEMBER, 2017.

ORAL JUDGMENT (PER PRASANNA B. VARALE, J.):

1. This appeal is filed by the Revenue, in challenge to the order passed by the Income Tax Appellate Tribunal. The Department was assailing the order passed by the Commissioner of Income Tax (Appeals), dated 30.9.2004, pertaining to the assessment year 1999-2000. The Tribunal could not find any favour with the Department. Resultantly, the appeal was dismissed. Present appeal was admitted by this Court by order dated 5.7.2011, on the following questions of law namely :-

(1) Whether the payments made by a cooperative society

(Co-operative sugar factory) to it's members or non-members towards purchase price of sugar cane supplied, in excess of the price as fixed by the Commissioner of Sugar (Registrar of Co-operative Societies representing the State) i.e. State advised price, is liable to be disallowed under Section 40A(2) of the Income Tax Act, 1961 and computed as taxable income of the assessee ?

(2) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that the payments made by the Co-operative Society were not excessive and unreasonable within the meaning of Sec. 40A(2) and 37(1) of the I.T. Act, 1961 ?

2. Though the respondent is duly served, none appears for the respondent. As the appeal is ripe for hearing, the same was posted for final hearing in the cause list. As none appears for the respondent, we are of the view that the respondent is not interested in contesting the appeal. Mr. Alok Sharma, learned Standing Counsel for the appellant submitted that, the substantial questions of law involved in this appeal were identical substantial questions of law involved in Tax Appeal No.55/2009. The Division Bench of this Court, by order dated 3.2.2014, decided the appeal. In the order of the Division Bench, dated 3.2.2014, the judgment of the Hon'ble Apex Court in **SLP (C) No.8590 of 2010 [C.I.T., Bombay V/s Krishna Sahakari Sakhar Karkhana Ltd.)** is referred to. Mr. Sharma submitted

that, there are certain other appeals decided by this Court in view of the Apex Court judgment. Mr. Sharma submitted that, the matters are remitted back to the Commissioner of Income Tax (Appeals), Aurangabad for decision afresh on merits. Perusal of the order dated 3.2.2014, passed by the Division Bench shows that, in view of the judgment of the Apex Court as well as in view of the fact that the orders impugned in the appeals are cryptic in nature, the Division Bench of this Court thought it fit to remit the matter to the Commissioner of Income Tax, so as to assess the matter afresh on its own merits.

3. We see no reason to take any different view than the view adopted by Division Bench of this Court. Resultantly, the Appeal is allowed. The matter is remitted back to the Commissioner of Income Tax (Appeals), Aurangabad for decision afresh on merits and in accordance with law. We hope and trust that the authority concerned namely Commissioner of Income Tax (Appeals), Aurangabad will decide the matter afresh as expeditiously as possible, needless to state, by giving opportunity of hearing to both the parties.

(SUNIL K. KOTWAL)
JUDGE

(PRASANNA B. VARALE)
JUDGE

fmp/