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

INCOME TAX APPEAL NO. 42 of 2015

The Commissioner of Income Tax – I,
Aaykar Bhavan, PMT Bldg., B Wing,
Shankar Seth road, Swargate, Pune - 411037 ...**APPELLANT**

VERSUS

Sangamner Bhag Sahakari Sakhar Karkhana Ltd.,
at post Amrutnagar Taluka Sangamner Dist. Ahmednagar.
...**RESPONDENT**

Mr Alok M.Sharma, Advocate for appellant.
Mr V.R. Dhorde, Advocate for respondent.

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

DATE : 18th December 2017

ORAL ORDER :

Heard Mr Alok Sharma, learned Counsel appearing for the appellant and Mr V.R. Dhorde, learned Senior Counsel appearing for the respondent/sugar factory, against the order passed by the Assessment Officer seeking demand.

2. An appeal was filed before the Commissioner of Income Tax. Commissioner, Income Tax, by order dated 30th January 2009 allowed the appeal partly.

3. Being aggrieved by the same, appeal was preferred before the Income Tax Appellate Tribunal, Pune Bench “A”, Pune. The Appellate Tribunal dismissed the appeal.

4. Being aggrieved by the order of the Appellate Tribunal, the appellant is before us.

5. Mr Alok Sharma, learned Counsel for the appellant, submitted that the issues involved in the present appeal are identical with the issues, which were involved in **Tax Appeal No. 13 of 2011, The Commissioner of Income Tax, Aurangabad Vs. Shetkari Sahakari Sakhar Karkhana Ltd., Latur**, decided by the **Division Bench** of this Court on March 2, 2012. Mr Sharma invited our attention to the said order of the Division Bench of this Court. Perusal of the order shows that the two issues call for consideration before this Court, namely, whether on the facts and circumstances of the case and in law, the Tribunal was justified in holding that the payments made by the respondent-sugar factory in excess of Statutory Minimum Price were unreasonable and cannot be allowed as a deduction in view of the provisions of Section 40A(2) and 37(1) of the Income Tax Act, 1961. The second issue, whether the difference in the market price and the sale price of a small quantity of sugar sold by the respondent-sugar factory to its supplier members at concessional rate, can be added in the income of an assessee under

section 40A(2) of the Income Tax Act, 1961. The Division Bench of this Court in its judgment was pleased to observe that the second issue was already covered by the decision of the Division Bench of this Court in **Tax Appeal No. 25 of 2008** in the matter of the **Commissioner of Income Tax Vs. Shetkari Sahakari Sakhar Karkhana Ltd. Dated 10th February 2012**. This Court decided the issue in favour of the assessee and against the revenue.

6. In so far as the first issue is concerned, the Division Bench of this Court in view of the judgment of the Hon. Apex Court in the case of **Deputy Commissioner of Income Tax Vs. Shri Satpuda Tapi Parisar SSK Ltd. and others {(2010) 231 CTS (SC) 224}** remitted the matter back to the Commissioner of Income Tax (Appeals) for deciding it afresh in the light of the observations of the Hon. Apex Court. Resultantly, the Division Bench in so far as the first issue is concerned, set aside the order and remanded the matter back to the Commissioner of Income Tax for deciding it afresh.

7. Mr. Alok Sharma, learned Counsel appearing for the appellant, submitted that subsequently, the second issue, which was covered by the judgment of the Division Bench of this Court, was for the consideration before the Hon. Apex Court. Thus, he submitted that in bunch of Special Leave Petitions, the Hon. Apex Court also considered the issue of the difference in the market price and sale

price of small quantity of sugar sold by the sugar factory to its supplier members at concessional rate and held that it can be added in the income tax of an assessee. He submitted that in **Tax Appeal No. 58 of 2010** the Division Bench of this Court, on the backdrop of the judgment of the Hon. Apex Court dated 25th September 2012, allowed the appeal and remitted the matter back to the Commissioner of Income Tax (Appeals), Pune, for consideration of the questions set out above, in the light of the judgment of the Hon. Apex Court in the matter of **Commissioner of Income Tax, Bombay Vs. Krishna Sahakari Sakhar Karkhana Ltd. {(2010) 13 SCC 527}.** Perusal of the order of the Hon. Apex Court dated 25th September 2012 shows that the Hon. Apex Court considering the questions and on finding that the issues raised in the proceedings have not been addressed by the Authorities and the Commissioner of Income Tax (Appeals) would be entitled to look into the accounts and verify the basis for sale of sugar at concessional price on month to month basis. As such, keeping all the questions of law and facts open, the matters were remitted back to the Commissioner of Income Tax (Appeals) for denovo consideration.

8. Mr Dhorde, learned Senior Counsel for the respondent, fairly submitted that there cannot be any dispute on the view adopted and taken by the Hon. Apex Court and the Division Bench of this

Court in judgment dated March 2, 2012 in **Tax Appeal No. 13 of 2011** as well as in the judgment of the Division Bench of this Court in **Tax Appeal No. 58 of 2010** dated 1st February 2013.

9. Resultantly, the appeal deserves to be remitted back to the Commissioner of Income Tax (Appeals), Pune, for considering the issue afresh in view of the judgment of the Hon. Apex Court in the matter of **Commissioner of Income Tax, Bombay Vs. Krishna Sahakari Sakhar Karkhana Ltd.**, (cited supra). Accordingly, the appeal is allowed.

10. Judgment and order passed by the Commissioner of Income Tax (Appeals), Pune, and confirmed by the Income Tax Appellate Tribunal, Pune Bench, is quashed and set aside and the matter is remitted back to the Commissioner of Income Tax (Appeals), Pune, for reconsideration, in the light of the judgment of the Apex Court, cited supra.

11. In the facts and circumstances of the case, there shall be no order as to costs.

12. The appeal is disposed of accordingly.

(SUNIL K. KOTWAL)
JUDGE.

(PRASANNA B. VARALE)
JUDGE.

Madkar