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

TAX APPEAL NO.3 OF 2008

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

VERSUS

Shri Tuljabhavani Sahakari Sakhar
Karkhana Ltd., Naldurga, Tq. Tuljapur,
District Osmanabad ... 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 15.10.2004, pertaining to the assessment years ranging 1994-1995, 1999-2000 and 2001-2002. The Tribunal could not find any favour with the Department. Resultantly, the appeals were dismissed. Present

appeal was admitted by this Court by order dated 13.1.2011, on the following questions of law namely :-

(1) Whether the differential payment made by the assessee(s) to the cane growers after the close of the financial year or after the balance-sheet date would constitute an expenditure under Section 37 of the Income Tax Act, 1961; and whether such differential payment would, applying the real income theory, constitute an expenditure or distribution of profits.

(2) Whether in the facts and circumstances of the case, the Tribunal was justified in deleting the addition made by the Assessing Officer in respect of the contribution made by the assessee for Vasant Dada Sugar Institute in the face of the fact that actual contribution/ donation to the said institute is not made and only provision for making such contribution/ donation was made on paper?

(3) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in deleting the addition made on account of sugar sale to members at concessional rate ?

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/