

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

TAX APPEAL NO. 94 OF 2008

The Kopargaon Sahakari Sakhar
Karkhana Ltd., Gautam Nagar,
Post Kopewadi, Tq. Kopargaon,
District Ahmednagar,
Through its Managing Director .. Appellant

Versus

1. The Deputy Commissioner of
Income Tax-1, Ahmednagar
Circle, Ahmednagar, Taluka
and District Ahmednagar
2. The Commissioner of Income
Tax (Appeals)-I, Aurangabad .. Respondents

- WITH -

TAX APPEAL NO.95 OF 2008

Mula Sahakari Sakhar Karkhana,
Sonai, Taluka Newasa,
District Ahmednagar, through
its Managing Director .. Appellant

Versus

1. The Deputy Commissioner of
Income Tax-1, Ahmednagar
Circle, Ahmednagar, Taluka
and District Ahmednagar
2. The Commissioner of Income
Tax (Appeals)-I, Aurangabad .. Respondents

- WITH -

TAX APPEAL NO.100 OF 2008

Sangamner Bhag Sahakari
Sakhar Karkhana Ltd.,
At post Amrutnagar,
Taluka Sangamner,
District Ahmednagar,
Through its Managing
Director .. Appellant

Versus

1. The Deputy Commissioner of Income Tax-1, Ahmednagar Circle, Ahmednagar, Taluka and District Ahmednagar
2. The Commissioner of Income Tax (Appeals)-I, Aurangabad .. Respondents

Mr R.N. Dhorde, Senior Counsel for appellants
Mr Alok Sharma, Standing Counsel for respondents

**CORAM : S.V. GANGAPURWALA &
A.M. DHAVALA, JJ**

Date : 16th March 2018

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

1. Heard Mr Dhorde, learned Senior Counsel for the appellants and Mr Sharma, learned Counsel for respondents.
2. The question of law is about the deduction towards Area Development Fund.
3. The Apex Court in case of **Siddheshwar Sahakari Sakhar Karkhana Ltd., Vs. Commissioner of Income Tax, Kolhapur and ors.**, reported in **JT 2004 (7) SC 295** has observed thus:

“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 Director of Sugars 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 79-A 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 Minister's 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. Vs. Bijlee Cotton Mills* [(1979) 1161 TR60 (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 Commissioner and the Tribunal have not given any finding that the fund collected under the Area Development is not utilised for the purpose, for which it was collected. The Tribunal and the Commissioner were required to consider threadbare the relevant aspects of the matter as observed by the Apex Court in case of Siddheshwar S.S.K.Ltd. Vs. Commissioner (supra).

5. In light of that the impugned orders of the Commissioner of Income Tax (appeals) and the Income Tax Appellate Tribunal are set aside. The parties are relegated before the Commissioner (appeals). The Income Tax Commissioner (appeals), after hearing the parties and considering the case of Siddheshwar S.S.K. Ltd. (supra) shall decide the appeals afresh expeditiously.

6. The parties to appear before the Commissioner on 4th April 2018.

7. Appeals are disposed of accordingly. No costs.

(A.M. DHAVAL, J.)

(S.V. GANGAPURWALA, J.)

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