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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 378 OF 2006
with
INCOME TAX APPEAL NO. 380 OF 2006
with
INCOME TAX APPEAL NO. 381 OF 2006

The Commissioner of Income Tax-IV,
60/61, Praptikar Sadan, Erandwane,
Pune- 411 004. … Appellant.

V/s.

Shri Sidheshwar Sahakar Sakhar Karkhana Ltd.,
A/P- Tikekarwadi, Tal-North Solapur,
Dist. Solapur. … Respondent.

Mr. Sham Walve for the Appellants in all Appeals.
Mr. Ruturaj H. Gurjar for the Respondents.

CORAM : NITIN JAMDAR &
M.S. KARNIK, JJ.

DATE : 16 DECEMBER 2019.

P. C. :

All these Appeals have been admitted on the same substantial question of law and they are disposed of by this common order.

2. Appeal No. 378 of 2006 relates to Assessment Year 2000-01. Appeal No. 380 of 2006 relates to Assessment Year 1999-00. Appeal No. 381 of 2006 relates to Assessment Year 1998-99. These appeals challenge the order of the Income Tax Appellate Tribunal dated 6 January 2006 passed in the appeals arising out the orders passed by the Commissioner of Income Tax (Appeals)

3. The Appeals were admitted on the following substantial question of law :-

> "*Whether on the facts and in the circumstances of the case and in law, the ITAT was correct in holding that the disallowance by the Assessing Officer of excess cane price paid to members and non members was not justified*?"

4. The question of law had arisen in these Appeals as the Respondents who are sugarcane co-operative societies governed by the Maharashtra Co-operative Societies Act, 1960 had paid a price of sugarcane purchased from its members and non-members at a certain rate. The Assessing Officer had disallowed the price paid by the Respondents – Assessees to its members as well as non-members as it was in variance with the minimum ex-factory price fixed by the Central Government under Clause 3(1) in Sugarcane (Control) Order, 1966 as revised from time to time. The Respondent were assessed by the Assessing Officer accordingly. The Respondents – Assessees, being aggrieved by the order passed by the Assessing

Officer had filed the Appeals before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals), following a decision of the Income Tax Appellate Tribunal, Mumbai Special Bench in the case of *DCIT, SR-2, Aurangabad v/s. Manjara Shetkari Sah. Sakhar Karkhana Ltd.* (ITA No.647/PN/96) allowed the Appeals filed by the Respondents – Assessees.

5. Being aggrieved the Appellant – Revenue filed Appeals before the Income Tax Appellate Tribunal. The Tribunal dismissed the said appeals by the impugned orders.

6. The learned Counsel for the parties state that, after the Appeals were filed in the year 2006, there have been judicial pronouncement on the subject and both this Court and the Apex Court have answered the question of law raised in these appeals. First the decision of the Division Bench of this Court in *C.I.T. v. Manjara Shetkari Sahakari Sakhar Karkhana Ltd*[1] is placed on record. Further, the learned Counsel points out that the view taken in this decision came up for consideration of the Supreme Court in a group of Petitions which were disposed of by the Supreme Court in a decision in *Deputy C.I.T. v. Shri Satpuda Tapi Parisar SSK Ltd.*[2] The learned Counsel for the parties also point out decision of the Apex Court in the case of *C.I.T. v. Tasgaon Taluka SSK Ltd.*[3]

1 (2008) 301 ITR 191 (Bom)
2 (2010) 326 ITR 42 (SC)
3 (2019) 412 ITR 420 (SC)

7. The learned Counsel for the parties are *ad idem* that in view of these decisions, the impugned orders passed by the Income Tax Appellate Tribunal and the Commissioner of Income Tax (Appeals) will have to be set aside. The learned Counsel further points out that though the Division Bench of this Court in Income Tax Appeal No.1507 of 2007 (*The Commissioner of Income Tax-I v. Kadwa Sahakari Sakhar Karkhana Ltd.*), in identical circumstances, had set aside the orders passed by the Tribunal and the Commissioner (Appeals) and had remanded the proceedings to the Commissioner of Income Tax (Appeals) for reconsideration, in view of the decision of the Supreme Court in the case of *Tasgaon Taluka SSK Ltd.* wherein the Apex Court had sent the proceedings to the Assessing Officer, they will have to be sent to the Assessing Officer.

8. In view of this consensus at the bar, these appeals filed by the Revenue are allowed. The impugned orders passed by the Income Tax Appellate Tribunal and the Commissioner of Income Tax (Appeals) in these Appeals are quashed and set aside. The proceedings stand restored to the file by the respective Assessing Officers to be considered in the light of the law laid down by the Supreme Court in the cases of Tasgaon Taluka SSK Ltd. and *Shri Satpuda Tapi Parisar SSK Ltd.*

No order as to costs.

M.S. KARNIK, J. **NITIN JAMDAR, J.**