आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI D. KARUNAKARA RAO, AM AND
SHRI PARTHA SARATHI CHAUDHURY, JM

Sl. No.	ITA No./Co.No.	Name of Appellant	Name of Respondent	Asst. Year
1.	176/PUN/2015	Shri Ganesh Sahakari Sakhar Karkhana Ltd. A/p. Rajangaon Khurd, Tal. Rahata, Dist. Ahmednagar, Pin-413 719 PAN:AAEAS0636H	ACIT, Ahmednagar Circle, Ahmednagar	2011-12
2-3	856/PUN/2015 857/PUN/2015	Karmayogi Shankarraoji Patil SSK Ltd. A/p.Mahatma Phule Nagar, Tal. Indapur, Dist. Pune. Pin-413 106. PAN:AAAAU0225N	ITO, Ward-11(3), Pune	2010-11 2011-12
4.	371/PUN/2015	Bhima Sahakari Sakhar Karkhana Ltd. A/p. Takli Sikandar, Tal. Mohol, Dist. Solapur-413 248 PAN:AAAAB0872C	ACIT, Circle-1, Solapur.	2011-12
5.	772/PUN/2015	Vikas Sahakari Sakhar Karkhana Ltd. Vaishalinagar, Nivali, Tal. & Dist. Latur, Pin-413 531 PAN:AAATV2893E	DCIT, Circle-3, Nanded	2010-11
6.	497/PUN/2015	Shri Vridheshwar Sahakari Sakhar Karkhana Ltd. Adinath Nagar, Tal. Pathardi, Dist.Ahmednagar Pin-414 505 PAN:AABCV0782E	ACIT, Ahmednagar Circle, Ahmednagar.	2011-12

7.	965/PUN/2015	Shree Shankar Sahakari Sakhar Karkhana Ltd., Sadashivnagar, Tal.Malshiras, Dist. Solapur Pin-413 111 PAN:AAAAS3735M	ACIT, Circle-1, Solapur.	2011-12
8.	27/PUN/2015	Bhimashankar Sahakari Sakhar Karkhana Limited. A/p. Pargaon, Tal. Ambegaon, Dist. Pune Pin-412 203 PAN:AAAAB0949G	DCIT, Circle 1(1), Pune.	2011-12
9.	1038/PUN/2015	Loknete Baburao Patil SSK Ltd. Laxminagar, A/p. Angar, Tal. Mohol, Dist. Solapur. Pin-413 213 PAN:AAAAL2719C	ACIT, Circle-1, Solapur.	2011-12
10.	899/PUN/2016	Shri Vithal Sahakari Sakhar Karkhana Ltd. A/p. Venunagar, Gurusale, Tal. Pandharpur, Dist. Solapur. Pin-413 304 PAN: AAAAS3829H	ACIT, Circle-1, Solapur.	2012-13
11.	1075/PUN/2015	Shree Siddheshwar Sahakari Sakhar Karkhana Ltd. Kumathe, Tikekarwadi, Dist. Solapur, Pin-413 224 PAN: AAAAS3729F	ACIT, Circle-1, Solapur.	2011-12
12-13	1272/PUN/2016 1273/PUN/2016	Karmaveer Shankarrao Kale Sahakari Sakhar Karkhana Ltd. Gautamnagar, Post. Kolpewadi, Tal. Kopargaon, Dist. Ahmednagar, Pin-423 602 PAN: AAATT3070H	DCIT, Ahmednagar Circle, Ahmednagar	2008-09 2009-10

14.	1247/PUN/2016	PD. DR. Vithalrao Vikhe Patil Sahakari Sakhar Karkhana Ltd. At Post. Pravaranagar, Tal. Rahata, Dist. Ahmednagar, Pin-413 712 PAN: AAAAP0848A	DCIT, Ahmednagar Circle, Ahmednagar.	2007-08
15.	1502/PUN/2016	ACIT, Ahmednagar Circle, Ahmednagar.	Dr. B.B.Tanpure Sahkari Sakhar Karkhana Ltd. A/p. Shivaji Nagar, Rahuri Factory, Tal.Rahuri, Dist. Ahmednagar, Pin-413 706 PAN:AAAAD1287F	2006-07
16.	CO No. 52/PUN/2018	Dr. B.B.Tanpure Sahkari Sakhar Karkhana Ltd. A/p. Shivaji Nagar, Rahuri Factory, Tal.Rahuri, Dist. Ahmednagar, Pin-413 706 PAN:AAAAD1287F	ACIT, Ahmednagar Circle, Ahmednagar.	2006-07
17.	1693/PUN/2016	Dr. B.B.Tanpure Sahkari Sakhar Karkhana Ltd. A/p. Shivaji Nagar, Rahuri Factory, Tal.Rahuri, Dist. Ahmednagar, Pin-413 706 PAN:AAAAD1287F	DCIT, Ahmednagar Circle, Ahmednagar	2006-07
18.	2907/PUN/2016	Dr. B.B.Tanpure Sahkari Sakhar Karkhana Ltd. A/p. Shivaji Nagar, Rahuri Factory, Tal.Rahuri, Dist. Ahmednagar, Pin-413 706 PAN:AAAAD1287F	ACIT, Ahmednagar Circle, Ahmednagar	2012-13
19.	765/PUN/2016	The Shrigonda Sahakari Sakhar Karkhana Ltd. A/p. Shrigonda Factory, Tal. Shrigonda, Dist. Ahmednagar, Pin-413 701 PAN:AAAAS4091E	ACIT, Ahmednagar Circle, Ahmednagar.	2004-05

20.	900/PUN/2016	Shri Makai Sahakari Sakhar Karkhana Ltd. A/p.Bhilarwadi, Jinti, Tal. Karmala, Dist. Solapur. PAN:AAAAS6100N	ACIT, Circle-1, Solapur.	2012-13
21.	2879/PUN/2016	Mula Sahakari Sakhar Karkhana Ltd. At Post. Sonai, Tal. Newasa, Dist. Ahmednagar, Pin-414 105 PAN:AAAAM1145M	ACIT, Ahmednagar Circle, Ahmednagar	2012-13
22.	2905/PUN/2016	The Shrigonda Sahakari Sakhar Karkhana Ltd. A/p. Shrigonda Factory, Tal. Shrigonda, Dist. Ahmednagar, Pin-413 726 PAN:AAAAS4091E	DCIT, Ahmednagar Circle, Ahmednagar.	2012-13
23.	2926/PUN/2016	Shri Sant Damaji Sahakari Sakhar Karkhana Ltd. A/p. Mangalwedha, Tal. Mangalwedha, Dist. Solapur, Pin-413 305 PAN:AAATT5265K	ACIT, Circle-1, Solapur.	2012-13.

Assessee by : Shri Prasanna L. Joshi &
Shri K. Srinivasan

Revenue by : Shri B. Kishor, CIT

सुनवाई की तारीख / Date of Hearing : 09.09.2019
घोषणा की तारीख / Date of Pronouncement : 09.09.2019

आदेश / ORDER

PER BENCH:

These bunch of appeals preferred by the assessees and the Revenue for the various assessment years mentioned in the caption emanates from the orders of Commissioner of Income Tax (Appeals). The assessee has filed cross objection against the appeal filed by the Revenue in ITA No. 1502/PUN/2016.

Since most of the appeals have at least one common issue, we are, therefore, disposing them off by this consolidated order for the sake of convenience.

2. Out of the 23 appeals, one appeal is time barred. We have gone through the reasons given for delay in the affidavit of the appeal with which we are satisfied. As such, the delay in that appeal is condoned and the appeal is admitted for disposal on merits.

3. All the assessees in the present set of appeals are engaged in manufacturing of white sugar. The primary issues raised in these appeals are :

i. Excess cane price paid by the assessees to sugarcane suppliers, i.e. the price over and above the Statutory Minimum Price (SMP) fixed by State Government for purchase of cane.

ii. Addition on account of sale of sugar at concessional rate to the members/shareholders by the assessees.

Apart from the above two primary issues following issues have also emerged in some of the appeals :

i. Disallowance of contribution towards Area Development Fund.

ii. Provision for Vasantdada Sugar Institute (VSI) Contribution.

iii. Disallowance of contribution towards Sakhar Sangh.

iv. Disallowance of vehicle and repair expenditure.

v. Disallowance of advertisement expenditure.

vi. Disallowance of exemption made u/s.80P(a)(iii) of the Act.

4. The Ld. ARs appearing on behalf of the various assessees and Ld. DR representing the Department submitted at the outset that the issues raised in present set of appeals by the assessees and the Revenue have already been considered and adjudicated by the Co-ordinate Bench of Tribunal in bunch of appeals. The facts and issues raised in present appeals are similar. The Ld. DR furnished copy of order of Tribunal dated 14-03-2019 vide which bunch of 162 appeals were disposed of by the Co-ordinate Bench, the lead case being Majalgaon Sahakari Sakhar Karkhana Ltd. Vs. ACIT in ITA No. 308/PUN/2018 for the assessment year 2013-14 and also by the order of Tribunal dated 13.06.2019, the lead case being ACIT Vs. Shri Shankar SSK Ltd. in ITA No.382/PUN/2014 for the assessment year 2010-11, copy of which has also been placed on records.

5. After hearing both the sides and after considering the order of Co-ordinate Bench in the case of Majalgaon Sahakari Sakhar Karkhana Ltd. Vs. ACIT (supra) and also in the case of ACIT Vs. Shri Shankar SSK Ltd. (supra.) etc., we observe that the issues raised in the present set of appeals have already been considered and decided by the Co-ordinate Bench of the Tribunal Pune.

Excess Cane Price Paid to Sugarcane Suppliers :

6. The Co-ordinate Bench after considering the judgment of Hon'ble Supreme Court of India in the case of CIT Vs. Tasgaon Taluka S.S.K. Ltd. reported as 103 taxmann.com 57 has decided this issue as under :

> *"5. We have heard both the sides and gone through the relevant material on record. There is consensus ad idem between the rival parties that the issue of payment of excessive price on purchase of sugarcane by the assesses is no more res integra in view of the recent judgment of Hon'ble Supreme Court in CIT Vs. Tasgaon Taluka S.S.K. Ltd. (2019) 103 taxmann.com 57 (SC). The Hon'ble Apex Court, vide its judgment dated 05-03-2019, has elaborately dealt with this issue. It recorded the factual matrix that the assessee in that case purchased and crushed sugarcane and paid price for the purchase during crushing seasons 1996-97 and 1997-98, firstly, at the time of purchase of sugarcane and then, later, as per the Mantri Committee advice. It further noted that the production of sugar is covered by the Essential Commodities Act, 1955 and the Government issued Sugar Cane (Control) Order, 1966, which deals with all aspects of production of sugarcane and sales thereof including the price to be paid to the cane growers. Clause 3 of the Sugar Cane (Control) Order, 1966 authorizes the Government to fix minimum sugarcane price. In addition, the additional sugarcane price is also payable as per clause 5A of the Control Order, 1966. The AO in that case concluded that the difference between the price paid as per clause 3 of the Control Order, 1966 determined by the Central Government and the price determined by the State Government under clause 5A of the Control Order, 1966, was in the nature of `distribution of profits' and hence not deductible as expenditure. He, therefore, made an addition for such sum paid to members as well as non-members. When the matter finally came up before the Hon'ble Apex Court, it noted that clause 5A was inserted in the year 1974 on the basis of the recommendations made by the Bhargava Commission, which recommended payment of additional price at the end of the season on 50:50 profit sharing basis between the growers and factories, to be worked out in accordance with the Second Schedule to the Control Order, 1966. Their Lordships noted that at the time when additional purchase price is determined/fixed under clause 5A, the accounts are settled and the particulars are provided by the concerned Co-operative Society as to what will be the expenditure and what will be the profit etc. Considering the fact that Statutory Minimum Price (SMP), determined under clause 3 of the Control Order, 1966, which is paid at the beginning of the season, is deductible in the entirety and the difference between SMP determined under clause 3 and SAP/additional purchase price determined under clause 5A, has an element of distribution of profit which cannot be allowed as deduction, the Hon'ble Supreme Court remitted the matter to the file of the AO for considering the modalities and manner in which SAP/additional purchase price/final price is decided. He has been directed to carry out an exercise of considering accounts/balance sheet and the material supplied to the State Government for the purpose of deciding/fixing the final price/additional purchase price/SAP under clause 5A of the Control Order, 1966 and thereafter determine as to what amount would form part of the*

distribution of profit and the other as deductible expenditure. The relevant findings of the Hon'ble Apex Court are reproduced as under:-

> *"9.4. ..... Therefore, to the extent of the component of profit which will be a part of the final determination of SAP and/or the final price/additional purchase price fixed under Clause 5A would certainly be and/or said to be an appropriation of profit. However, at the same time, the entire/whole amount of difference between the SMP and the SAP per se cannot be said to be an appropriation of profit. As observed hereinabove, only that part/component of profit, while determining the final price worked out/SAP/additional purchase price would be and/or can be said to be an appropriation of profit and for that an exercise is to be done by the assessing officer by calling upon the assessee to produce the statement of accounts, balance sheet and the material supplied to the State Government for the purpose of deciding/fixing the final price/additional purchase price/SAP under Clause 5A of the Control Order, 1966. Merely because the higher price is paid to both, members and non-members, qua the members, still the question would remain with respect to the distribution of profit/sharing of the profit. So far as the non-members are concerned, the same can be dealt with and/or considered applying Section 40A (2) of the Act, i.e., the assessing officer on the material on record has to determine whether the amount paid is excessive or unreasonable or not........*
>
> *9.5 Therefore, the assessing officer will have to take into account the manner in which the business works, the modalities and manner in which SAP/additional purchase price/final price are decided and to determine what amount would form part of the profit and after undertaking such an exercise whatever is the profit component is to be considered as sharing of profit/distribution of profit and the rest of the amount is to be considered as deductible as expenditure."*

6. Both the sides are unanimously agreeable that the extant issue of deduction for payment of excessive price for purchase of sugarcane, raised in most of the appeals under consideration, is squarely covered by the aforesaid judgment of the Hon'ble Supreme Court. Respectfully following the precedent, we set-aside the impugned orders on this score and remit the matter to the file of the respective A.Os. for deciding it afresh as per law in consonance with the articulation of law by the Hon'ble Supreme Court in the aforenoted judgment. The AO would allow deduction for the price paid under clause 3 of the Sugar Cane (Control) Order, 1966 and then determine the component of distribution of profit embedded in the price paid under clause 5A, by considering the statement of accounts, balance sheet and other relevant material supplied to the State Government for the purpose of deciding/fixing the final price/additional purchase price/SAP under this clause. The amount relatable to the profit component or sharing of profit/distribution of profit paid by the assessee, which would be appropriation of income, will not be allowed as deduction, while the remaining amount, being a charge against the income, will be considered as deductible expenditure. At this stage, it is made clear that the distribution of profits can only be qua the payments made to the members. In so far as the non-members are concerned, the case will be considered afresh by the AO by applying the provisions of section 40A(2) of the Act, as has been held by the Hon'ble Supreme Court supra. Needless to say, the assessee will be allowed a

> *reasonable opportunity of hearing by the AO in such fresh determination of the issue.*
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> *7. It is noted that in some of the appeals, the assessees have raised an alternate ground for allowing deduction u/s.80P in respect of the addition.*
>
> *8. The ld. ARs, in some of the cases, which were represented by them, were fair enough not to press such ground as it is only an alternate ground and having become infructuous in view of the restoration of the matter to the AO. No argument was advanced in support of such ground in other cases, even where the ld. ARs participated in proceedings before the Tribunal. Therefore, the said alternate ground in all such cases is dismissed."*

7. Thus, in view of the statement made by both the sides that the facts in the present set of appeals are identical, the issue relating to excess sugarcane price paid by the assessee is restored to the file of Assessing Officer with similar directions as above in the case of Majalgaon Sahakari Sakhar Karkhana Ltd. Vs. ACIT (supra). The Assessing Officer shall decide the issue after affording reasonable opportunity of hearing to the respective assessees, in accordance with law.

Sale of Sugar at Concessional rates to the Members/Shareholders

8. The Ld. DR submitted that this issue was decided by the Hon'ble Apex Court in the case of CIT Vs. Krishna Sahakari Sakhar Karkhana Limited reported as 27 taxmann.com 162. In the present bunch of appeals where the issue has been raised, either the orders were passed by the Commissioner of Income Tax (Appeals) prior to the date of judgment of Hon'ble Supreme Court of India in the case of CIT Vs. Krishna Sahakari Sakhar Karkhana Limited (supra) i.e. 25-09-2012 and in some cases where the orders have been passed by the Commissioner of Income Tax (Appeals) subsequent to the date of said judgment, the Commissioner of Income Tax (Appeals) has not considered the judgment rendered by the Hon'ble Apex Court on this issue.

9. We find that the issue of sale of sugar at concessional rates has also been considered by the Co-ordinate Bench in the case of Majalgaon Sahakari Sakhar Karkhana Ltd. Vs. ACIT (supra) and has held as under :

> *"11. Having heard both the sides and gone through the relevant material on record, it is observed that the AO made addition of the difference between the market price and the concessional price at which sugar (final product) was given to farmers and cane growers. In this regard, it is observed that this issue has been considered by the Hon'ble Supreme Court in the case of CIT Vs. Krishna Sahakari Sakhar Karkhana Limited (2012) 27 taxmann.com 162 (SC). Vide judgment dated 25-09-2012, the Hon'ble Supreme Court noticed that the difference between the average price of sugar sold in the market and the price of sugar sold by the assessee to its members at concessional rate was taxed by the Department under the head "Appropriation of profit". The Hon'ble Summit Court remitted the matter to the CIT(A) for considering, inter alia,: "whether the abovementioned practice of selling sugar at concessional rate has become the practice or custom in the Co-operative sugar industry?; and whether any Resolution has been passed by the State Government supporting the practice?; The CIT(A) would also consider on what basis the quantity of the final product, i.e. sugar, is being fixed for sale to farmers/cane growers/Members each year on month-to-month basis, apart from others from Diwali?" The issue under consideration can be decided by an appropriate lower authority only on the touchstone of the relevant factors noted in the above judgment. In our considered opinion, it would be just and fair if the impugned orders on this score are set aside and the matter is restored to the file of AOs, instead of to the CITs(A), for fresh consideration as to whether the difference between the average price of sugar sold in the market and that sold to members at concessional rate is appropriation of profit or not, in the light of the directions given by the Hon'ble Supreme Court in the case of Krishna Sahakari Sakhar Karkhana Limited (supra). Restoration to the AO is necessitated because, following the judgment of the Hon'ble Apex Court in the case of Tasgaon Taluka S.S.K. Ltd. (supra), we have remitted the issue of payment of excessive price to the file of AO, and as such, the instant issue cannot be sent to ld. CIT(A) as it would amount to simultaneously sending one part of the same assessment order to the AO and other to the CIT(A), which is not appropriate. We order accordingly."*

10. Both the sides have stated at the Bar that the issue raised in present set of appeals are identical to the one already decided by the Co-ordinate Bench. Thus, in view of the above order by Co-ordinate Bench this issue is restored back to the file of Assessing Officer for de-novo adjudication in similar terms. The Assessing Officer shall grant reasonable opportunity of hearing to the assessee, in accordance with law.

Disallowance of contribution to Area Development Fund

11. We find that the Co-ordinate Bench has considered this issue and has restored the same to the file of Assessing Officer by observing as under :

> *"13. Having heard both the sides and gone through the relevant material on record, it is seen that similar issue came up for consideration before the Hon'ble Supreme Court in the case of Siddheshwar Sahakari Sakhar Karkhana Limited Vs. CIT and others (2004) 270 ITR 1 (SC). In that case, the Hon'ble Supreme Court observed in para 44 that the receipts in the form of Area Development Fund always remained with the assessee. It also noted the contention of the assessee in para 45 that the realisations made towards the Area Development Fund were impressed with the specific legal obligation to spend the money for specified purposes which were unrelated to the business of the sugar factory and hence, could not be treated as income of the assessee. Eventually, the Hon'ble Supreme Court remitted the matter back for fresh determination. It is noticed that in the appeals under consideration, the ld. CITs(A) have not considered the impact of the judgment of the Hon'ble Supreme Court in Siddheshwar Sahakari Sakhar Karkhana Limited (supra) and decided the issue without taking note of the factors directed to be considered in the aforenoted case. In view of the above decision of Hon'ble Supreme Court, we set-aside such impugned orders and remit the matter to the file of the respective AOs for deciding the issue afresh in conformity with the guidelines laid down by the Hon'ble Apex Court in the above judgment."*

12. Both the sides are unanimous in stating that the issue in present set of appeals is identical to the one already decided by the Co-ordinate Bench. Thus, in view of the order by Co-ordinate Bench this issue is decided in the same terms. Accordingly, the issue is restored back to the file of Assessing Officer. The Assessing Officer shall grant reasonable opportunity of hearing to the assessee, in accordance with law.

Provision for Vasantdada Sugar Institute (VSI) Contribution

13. The Authorised Representatives submitted that the issue of provision for VSI contribution has been decided by the Co-ordinate Bench in favour of the assessees by following the order of Tribunal in the case of Bhima S.S.K. Ltd. in ITA No. 1414/PUN/2000. The ld. DR fairly admitted that this issue

has been considered by the Co-ordinate Bench. The Co-ordinate Bench while deciding this issue in favour of assessees has observed as under :

> *"18. We have heard both the sides and gone through the relevant material on record. It is found that the ld. CIT(A) has determined this issue in favour of the assessee by following the order passed by the Pune Benches of the Tribunal in the case of Bhima S.S.K. Ltd. (supra). No material has been placed on record to show that this order of the Tribunal has been reversed or modified in any manner by the Hon'ble High Court. Respectfully following the precedent, we decide this issue in favour of the assessee."*

14. Thus, in view of the above findings of the Tribunal and submissions of both the sides, the issue is decided in favour of the assessee.

Disallowance of contribution towards Sakhar Sangh.

15. The Ld. AR of the assessee submitted that this issue is covered by the decision of the Co-ordinate Bench of the Tribunal, Pune dated 13.06.2019, the lead case being ACIT Vs. Shri Shankar SSK Ltd. in ITA No.382/PUN/2014 for the assessment year 2010-11. The Tribunal on this issue has held and observed as under :

> *"31. In ITA No. 280/PUN/2017 (at Sr. No. 42) the assessee has assailed addition of Rs.13,35,270/- on account of contribution made to Sakhar Sangh. The contentions of the assessee is that Maharashtra Sakhar Sangh is a federal body of all the sugar factories. The Sangh is rendering various services to all sugar factories such as acting as intermediary for purchase of Gunny bags, making available to sugar factories imported sulphar and other such items required by various sugar factories. The contentions of the assessee is that the contribution to Sakhar Sangh is not voluntary but are in accordance with the instructions issued by Commissioner of Sugar, Maharashtra State. The Assessing Officer disallowed assessee's claim of deduction u/s. 35(1) in respect of contribution made to Sakhar Sangh. The Commissioner of Income Tax (Appeals) in appellate proceedings restored the issue back to the file of Assessing Officer to verify whether the deduction claimed by the assessee u/s. 35(1) is by virtue of any notification by Central Government, if so the same should be allowed to the assessee.*
>
> *We do not find any infirmity in the directions given by the Commissioner of Income Tax (Appeals) in allowing the claim of assessee u/s. 35(1) subject to verification. We further observe that in view of directions given by the Commissioner of Income Tax (Appeals) the ground raised by the assessee assailing disallowance and adding back of*

> *contribution on account of Sakhar Sangh is misconceived. The same is dismissed, accordingly."*

Respectfully following the same parity of reasons rendered by the Tribunal in the decision referred herein above, we dismiss this ground.

Disallowance of vehicle and repair expenditure.

16. The Ld. AR of the assessee submitted that this issue is covered by the decision of the Co-ordinate Bench of the Tribunal, Pune dated 13.06.2019, the lead case being ACIT Vs. Shri Shankar SSK Ltd. in ITA No.382/PUN/2014 for the assessment year 2010-11. The Tribunal on this issue has held and observed as under:

> "*32. Another issue raised in the appeal ITA No. 280/PUN/2017 (at Sr. No. 42) by the assessee is against disallowance of vehicle, repair and fuel expenditure. The assessee has claimed expenditure to the tune of Rs.23,84,981/- towards vehicle fuel expenditure. The Assessing Officer in the absence of complete documentary evidence such as logbook, vouchers etc. disallowed 20% of such expenditure. In First Appellate proceedings the Commissioner of Income Tax (Appeals) estimated disallowance to 10% and restricted the addition to Rs.2,38,498/-. The contention of ld. AR of the assessee is that the books of account of assessee are duly audited and Assessing Officer has not rejected the same, therefore, no disallowance should be made. The expenditure has been made exclusively for the purpose of business. After examining the impugned order and taking into consideration the submissions of assessee, we hold that in the absence proper supporting vouchers/record and complete details of expenditure, some disallowance has to be made. To meet the ends of justice it would be fair and reasonable to restrict the disallowance to 5% of total expenditure claimed under the impugned head. We hold and direct accordingly. The ground is partly allowed in the terms aforesaid."*

Respectfully following the aforesaid decision, we restrict the disallowance to 5% of the total expenditure claimed under this head. We hold and direct accordingly. Thus, this part of ground is partly allowed.

Disallowance of advertisement expenditure.

17. The Ld. AR of the assessee submitted that this issue is covered by the decision of the Co-ordinate Bench of the Tribunal, Pune dated 13.06.2019, the lead case being ACIT Vs. Shri Shankar SSK Ltd. in ITA No.382/PUN/2014 for the assessment year 2010-11. The Tribunal on this issue has held and observed as under:

> *"21. Another issue which has emerged in various appeals is disallowance of advertisement expenditure. The assessee has incurred advertisement expenditure in the form of greetings/Shubhecha to various political leaders. The same has been disallowed by the lower authorities on the ground that such advertisement expenditure is not incurred wholly and exclusively for the purpose of business. The ld. AR has placed reliance on the decision of Hon'ble Bombay High Court in the case of Commissioner of Income Tax Vs. Shri Panchganga S.S.K. Ltd. reported as 258 ITR 119 to contend that advertisement expenditure on account of Subhechcha greetings are allowable.*
>
> *21.1 We have examined the facts with respect to nature of expenditure and have also perused the decision on which the ld. AR has placed reliance. The Tribunal in the case of Commissioner of Income Tax Vs. Shri Panchganga S.S.K. Ltd. (supra) had allowed the advertisement expenditure on account of Subhechcha greetings holding that the expenditure was necessary to maintain cordial relations with the members. The Department assailed the findings of Tribunal before the Hon'ble High Court. The Hon'ble High Court upheld the findings of Tribunal by following the earlier decision rendered in the case of Commissioner of Income Tax Vs. Shri Panchganga S.S.K. Ltd. (250 ITR 772). Since, the issue has already been decided in favour of the assessee by the Hon'ble Jurisdictional High Court, on similar set of facts, the addition upheld by the Commissioner of Income Tax (Appeals) in the present appeals is deleted. Thus, this issue is decided in favour of the assessee."*

Respectfully, following the aforesaid decision, we decide this issue in favour of the assessee and against the Revenue. Thus, this part of ground is allowed.

Deduction u/s.80P on interest and dividend :

18. The Ld. AR of the assessee submitted that this issue is covered by the decision of the Pune Bench of the Tribunal dated 14-03-2019 vide which bunch of 162 appeals were disposed of by the Co-ordinate Bench, the lead case being Majalgaon Sahakari Sakhar Karkhana Ltd. Vs. ACIT in ITA No. 308/PUN/2018 for the assessment year 2013-14, copy of which has been placed on record. The Tribunal on this issue has held and observed as follows:

> "*VIII. DEDUCTION u/s.80P ON INTEREST AND DIVIDEND*
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> *24. In some of the appeals the issue of deduction under section 80P of the Act on interest and dividend income is also involved. The assessee claimed deduction u/s.80P(2)(d) of the Act on interest and dividend received from Co-operative Society on Savings Bank accounts. The AO did not allow such deduction. The ld. CIT(A) overturned the assessment order on this point and granted deduction. The Revenue is aggrieved by such allowing of deduction.*
>
> *25. We have heard both the sides and gone through the relevant material on record. Relevant part of section 80P reads as under : -*
>
>> *"80P. (1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.*
>>
>> *(2) The sums referred to in sub-section (1) shall be the following, namely :—*
>>
>> *(a) to (c)*
>>
>> *(d) in respect of any income by way of interest or dividends derived by the cooperative society from its investments with any other co-operative society, the whole of such income;*
>>
>> *........"*
>
> *26. A cursory look of the above provision deciphers that any amount of interest or dividend derived by a Co-operative Society from its investments with any other Co-operative Society, is deductible under clause (d) of section 80P(2) of the Act. The ld. CIT(A) has given a categorical finding that assessee is a Co-operative Society and the Co-operative Bank from which the above-mentioned income was earned, is also a Co-operative Society duly registered under Maharashtra Cooperative Societies Act. This*

> *contention has not been controverted by the ld. DR with any cogent material or evidence. Thus, it is seen that the case of the assessee is fully covered u/s.80P(2)(d) of the Act. Reliance of the AO on the provisions of sub-section (4) of section 80P is misplaced. Such provision states that : ` The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.' As the assessee under consideration is not a Co-operative Bank, the mandate of sub-section (4) does not extend to it. We, therefore, approve the view taken by the ld. CIT(A) in granting deduction u/s.80P(2)(d) of the Act in respect of interest and dividend income earned by the assessee on such facts."*

Respectfully following the aforesaid decision, we uphold the view taken by the Ld. CIT(Appeals) in granting deduction u/s.80P(2)(d) of the Act in respect of interest and dividend income earned by the assessee on such facts.

19. In the result, all the appeals are fully/partly allowed for statistical purposes in the manner aforesaid as the case may be.

Order pronounced on 09th day of September, 2019.

Sd/-	Sd/-
D. KARUNAKARA RAO	**PARTHA SARATHI CHAUDHURY**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 09th September, 2019.
SB

<u>आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :</u>

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Concerned CIT(Appeals)
4. The Concerned CIT.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "**ए**" बेंच, पुणे / DR, ITAT, "**A**" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	09.09.2019	Sr.PS/PS
2	Draft placed before author	09.09.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		