

(1987) 03 BOM CK 0068

**Bombay High Court****Case No:** Income-tax Reference No. 393 of 1975

Godavari Sugar Mills Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

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**Date of Decision:** March 13, 1987**Acts Referred:**

- Income Tax Act, 1961 - Section 256(2), 4

**Citation:** (1987) 64 CTR 42 : (1988) 169 ITR 541 : (1987) 169 ITR 541 : (1987) 32 TAXMAN 423**Hon'ble Judges:** T.D. Sugla, J; Bharucha, J**Bench:** Division Bench

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**Judgement**

Bharucha, J.

The assessee has sought this reference u/s 256(2) of the Income Tax Act, 1961. The question posed reads thus :

"Whether, on the facts and in the circumstances of the case, the Tribunal erred in law in valuing the sugarcane produced by the assessee in its own farms at Rs. 44, Rs. 45, Rs. 46 and Rs. 47 per ton instead of Rs. 51.75 as claimed by the assessee for the purpose of ascertaining the manufacturing profits for the assessment years 1957-58, 1958-59, 1959-60 and 1960-6 ?"

2. The assessment years with which we are concerned in this reference are the assessment years 1957-58, 1958-59, 1959-60 and 1960-61. The assessee manufactures and sells sugar. During the previous years relevant to the assessment years with which we are concerned, the assessee owned sugarcane farms. During these years, the assessee received supplies of sugarcane for the manufacture of sugar from these farms. It also purchased sugarcane from outside cultivators called Bagaitdars. The Government of Maharashtra had fixed the floor prices for sugarcane at Rs. 44 per ton for the assessment year 1957-58, Rs. 45 per ton for the assessment year 1958-59, Rs. 46 per ton for the assessment year 1959-60 and Rs. 47

per ton for the assessment year 1960-61. This was the price paid by the assessee to the Bagaitdars. For the sugarcane grown by it on its own farms, however, the assessee claimed a higher rate of purchase price, Rs. 51.75 per ton for each of the relevant years.

3. The Income Tax Officer declined to consider, in regard to the sugarcane purchased from its own farms, the assessee's claim to a price of Rs. 51.75 per ton. He permitted only the minimum price fixed as aforesaid by the Government. The assessee appealed. The Appellate Assistance Commissioner upheld the Income Tax Officer's finding. The assessee then went up in further appeal to the Income Tax Appellate Tribunal. The Tribunal for the detailed reasons given by it on December 5, 1970, in an order on an appeal for the assessment year 1961-62, with which it agreed, rejected the assessee's contentions.

4. Mr. Dastur, learned counsel for the assessee, submitted that the order of the Tribunal was faulty in that it was rendered without looking into three aspects that were materially different as compared to the material before the Tribunal when it passed the order dated December 5, 1970. These, Mr. Dastur submitted, were (i) the price differentials that existed in regard to the percentage of purity; (ii) the analysis report made by the assessee; and (iii) the certificate issued by the Deccan Sugar Factories Association.

5. It is relevant to quote the paragraph in the Tribunal's order dated December 5, 1970, which deals with the assessee's contentions :

"(1) We have considered all the facts of the case and the various submissions made by the parties. We have gone through the statements of purity in respect of the assessee's cane and those of others. In our opinion, this does not establish the assessee's claim for superiority in respect of its sugarcane. It had been found by the Appellate Assistant Commissioner that the assessee was growing different varieties and that the assessee's purchases from Bagaitdars were mostly of the same variety and this had not been controverted before us. In this position, a comparison of the purity or the recovery is out of question and would not be proper. Moreover, the average as worked by the assessee will not give the correct position in the absence of the quantity involved. It is further, seen that in some cases the purity percentages in the case of sugarcane supplied by the Bagaitdars are higher, but prices were not regulated with reference to such percentage of purity. If really the purity percentage is higher by 8% in one case and 5% in the other case, it is not comprehensible why the increase would be only one rupee per ton in each case. In our opinion, this differential rate is not based on any data but just some arbitrary amount. But this is not to say that the entire difference should be disallowed. Under the rules, the assessee is entitled to get the "market value" for its own sugarcane. The prices paid to the large number of Bagaitdars can very well represent such market value of sugarcane. It is seen that in the case of Sakharwadi, the average price paid to the Bagaitdars works out to Rs. 52.50 per tonne. In the case of Laxmiwadi, the average

is Rs. 53.64 per tonne. In our opinion, it will be proper and reasonable to accept these averages for the assessee's own sugarcane as representing the market value. We direct the officer to modify the agricultural profit on the above basis."

6. It will be noted that one of the reasons contained in this paragraph is the Tribunal's mystification as to why there would be an increase of only rupee one per ton, if the purity percentage of the sugarcane was higher by 8% in one case and by 5% in the other case. The opinion expressed thereon was that the differential rate was not based on any data. Mr. Dastur submitted that in the present case, the difference was much greater. This was only one of the aspects before the Tribunal and it cannot be said to have required an alteration of the view taken by it earlier.

7. The analysis, the report of which the assessee relies upon, is made by the assessee itself. From what it discloses, the observations of the Tribunal in the paragraph quoted from its order dated December 5, 1970, would squarely apply. The Bagaitdars also produced sugarcane of varying quality. Regardless of the excellence of their sugarcane, a uniform price was paid by the assessee to them. It is not unreasonable that the assessee itself should get credit only for that price.

8. The certificate of the Deccan Sugar Factories Association, which Mr. Dastur relied upon, can carry the matter no further. It appears that a resolution was passed by the Deccan Sugar Factories Association on the subject of fixation of the sugarcane rate for 1955-56 for Income Tax purposes. The resolution is that it should be paid at Rs. 51.12 per ton for that year. It is not explained how this rate is arrived at so as to be made applicable to all the varieties of sugarcane produced by all the sugarcane farms of all the sugarcane factories which were members of the Deccan Sugar Factories Association.

9. In the result, we see no reason whatever for interference with the finding of the Tribunal and answer the question in the negative and in favour of the Revenue.

10. The assessee shall pay to the Revenue the costs of the reference.