

(2002) 01 BOM CK 0114

Bombay High Court

Case No: Income-tax Appeal No's. 1160 and 1226 of 2000

Commissioner of Income Tax

APPELLANT

Vs

Shri Satpuda Tapi Parisar Sahkari
Sakhar Karkhana Ltd. and
Sangamner Bhag Sahkari Sakhar
Karkhana Ltd.

RESPONDENT

Date of Decision: Jan. 7, 2002

Acts Referred:

- Income Tax Act, 1961 - Section 260

Citation: (2002) 174 CTR 38 : (2002) 255 ITR 568

Hon'ble Judges: V.C. Daga, J; J.P. Devadhar, J

Bench: Division Bench

Advocate: R.V. Desai, P.S. Jetley and B.M. Chatterjee, i./b., H.D. Rathod, for the Appellant;
P.Y. Vaidya and S.N. Inamdar, for the Respondent

Final Decision: Partly Allowed

Judgement

V.C. Daga, J.

These two appeals, filed u/s 260A of the Income Tax Act, 1961 (the "income tax Act" for short), are directed against the order passed by the Income Tax Tribunal, Pune Bench, Pune (the "Tribunal" for short), raising substantial questions of law appearing hereunder :

The assessment orders involved in these petitions are for the assessment years 1988-89 and 1989-90. The Assessing Officer, by the said assessment orders, made certain additions in respect of various funds and deposits collected by the respondents out of sugarcane price payable to the cane growers during the course of trading operations. The Commissioner of Income Tax (Appeals) allowed the appeals and set aside the impugned orders impugned therein. The said appellate orders were confirmed by the Tribunal by dismissing the appeals filed by the

Revenue holding that the funds/deposits collected by the respective societies, being out of the purchase price payable to the cane growers, were not trading receipts of the assessee. On the aforesaid canvass of the basic facts, the substantial question of law raised by the Revenue (reframed for the sake of brevity), reads as under :

"Whether, on the facts and circumstances of the cases involved herein, the various funds/deposits ; such as (i) non-refundable deposit ("NRD" for short); (ii) C. M. relief fund; (iii) hutment fund; (iv) area development fund; (v) education fund, some time referred to as Sane Guruji education fund and/ or education fund ; cane development fund; (vi) flood relief fund; (vii) interest on NRD ; collected by the assessee-Karkhana out of sugarcane price payable to the cane growers are trading receipts of the assessee as held by the Supreme Court in the case of [Commissioner of Income Tax, U.P.-II, Lucknow Vs. Bazpur Co-operative Sugar Factory Ltd., Bazpur, Distt. Nainital, ?](#)"

Background facts:

In both appeals, the parties are different but the substantial question of law involved is identical. So a single judgment will dispose of both the appeals. The background facts are taken from I. T. A. No. 1160 of 2000. They are as under:

Unfurling the factual matrix of the case, the appellant herein has narrated that the respondent is the co-operative sugar factory owned by the co-operative society registered under the Maharashtra Co-operative Societies Act, 1960 (the "Act" for short), working of which is controlled and governed by the byelaws of the society framed under the Act and in exercise of the powers conferred by the said Act, the State Government is empowered to issue directions to the society from time to time. The society is obliged to follow the same keeping in view the mandate of the Act to which society owes its existence.

2. The directions in this behalf are generally issued through the Director of Sugar, Maharashtra State, Pune. The cane price is decided by the Government. While determining the cane price to be given to the Karkhana, the Government is required to take into account various factors ; such as, the amount of actual sugar sold during the sugar year including the value of the closing stock of controlled and free sugar prevailing on the last day of the sugar year. In the present case, the Director of Sugar, Maharashtra State, Pune, issued directions to the sugar factory herein while communicating the final cane price of the sugarcane for the crushing season 1988-89, based on the decision taken in the meeting of the Ministers" Committee held on May 2, 1999 (?), to make the deductions from the cane price mentioned in the sale memo. The details of which are as under :

- (1) Sugarcane development fund ;
- (2) C. M. fund ;
- (3) Gharkul scheme for shelterless persons ;

- (4) Small saving scheme ;
- (5) Flood attested (relief) fund ;
- (6) Area development fund ; and
- (7) Educational development fund.

3. In terms of the above directions, various amounts were collected by the Karkhana from the cane growers out of the cane price payable to the cane growers at various rates fixed by the Government.

The issue:

In the above backdrop, the short issue which needs consideration is : Whether the above deposits are taxable as income of the assessee-Karkhana ?

Consideration:

The above question is no longer res integra. The identical question framed hereinabove had been the subject-matter of judicial scrutiny in the case of Commissioner of Income Tax Vs. Chhatrapati Sahakari Sakhar Karkhana Ltd. and Rahuri Sahakari Sakhar Karkhana Ltd., to which one of us (Daga J.) was a party: wherein, this court after detailed judicial scrutiny held that non-refundable deposits constituted trading receipts of the assessee : whereas deposits towards area development, cane development and hutment fund (the principle of diversion of income by overriding title was applied) were held to be not assessable in the hands of the karkhana as the karkhana was obliged to deduct from the cane price the amounts towards the said funds in view of the binding directions, issued by the State Government. This court applying the principles of diversion of income by overriding title, held that income having been diverted at source the same was not assessable in the hands of the assessee. For the same reasons, deductions made by the sugar Karkhana from the cane price on account of C. M. relief fund, education fund were also held not to constitute trading receipts of the Karkhana.

4. Some of the items of deductions involved in the present appeals such as Sane Guruji Education Fund and/or factory education fund, flood relief fund, famine relief fund and natural calamities fund were not the subject-matter of scrutiny in the case of Commissioner of Income Tax Vs. Chhatrapati Sahakari Sakhar Karkhana Ltd. and Rahuri Sahakari Sakhar Karkhana Ltd.. In this view of the matter, the present appeals were entertained and by consent of the parties the same are being decided at the stage of admission itself.

Findings:

The nature of deductions involved in these appeals referred to hereinabove are similar to those which were the subject-matter of debate in the case of Commissioner of Income Tax Vs. Chhatrapati Sahakari Sakhar Karkhana Ltd. and

Rahuri Sahakari Sakhar Karkhana Ltd., like area development fund, hutment fund, cane development fund, which by virtue of the obligation created by the provisions of the byelaws and Act were diverted to the State Government at source by overriding title. Consequently, such deductions were held not to constitute part of the income of the Karkhana. The same would be the parameters applicable to the flood relief, famine relief and natural calamities and/or education funds ; the last one, in some cases, is described as a Sane Guruji Educational or factory education fund though the substantive nature thereof is education fund. The deductions of the items falling under these heads also amount to diversion of income by overriding title. Hence, applying the ratio of the judgment of this court in the case of Commissioner of Income Tax Vs. Chhatrapati Sahakari Sakhar Karkhana Ltd. and Rahuri Sahakari Sakhar Karkhana Ltd., as discussed hereinabove, we are of the same view that the Karkhana acted as agent for and on behalf of the State Government/authorities and the said deductions, therefore, did not constitute part of income of the Karkhana. The said collections never reached the hands of the assessee as income.

Conclusion :

We, for the reasons stated in the case of Commissioner of Income Tax Vs. Chhatrapati Sahakari Sakhar Karkhana Ltd. and Rahuri Sahakari Sakhar Karkhana Ltd., hold that the deductions on account of education fund, flood relief fund, famine relief fund and/or natural calamities fund are not the trading receipts in the hands of the Karkhana/assessee. Thus, for the reasons stated herein, the question is answered in favour of the assessee and against the Revenue. To this extent, the appeals stand dismissed. Whereas, with respect to the question relating to NRD and interest thereon are concerned, we hold that for the reasons recorded in the case of Commissioner of Income Tax Vs. Chhatrapati Sahakari Sakhar Karkhana Ltd. and Rahuri Sahakari Sakhar Karkhana Ltd., the deduction of the non-refundable deposit (NRD) and for the reasons given in Commissioner of Income Tax Vs. Shree Panchaganga Sahakari Sakhar Karkhana Ltd., the deduction of interest on NRD shall constitute trading receipts of the assessee. Accordingly, the aforesaid question, to the extent of these two items of deductions, is answered in favour of the Revenue and against the assessees.

5. In the result, for the reasons stated above, the appeals filed by the Revenue are partly allowed with no order as to costs.