

SUPREME COURT OF INDIA

C.I.T., Nashik

Vs.

Shri Satpuda Tapi Parisar SSK Ltd.

C.A.No.617 of 2010

(S.H. Kapadia and H.L. Dattu JJ.)

20.01.2010

ORDER

1. Delay condoned.
2. Leave granted in special leave petitions.
3. Having heard learned counsel at length on the applicability of Section 40A(2) of the Income Tax Act, 1961, as it stood at the relevant time, we are of the view that large number of questions have remained unanswered in these cases.
4. The applicability of Section 40A(2) of the Income Tax Act, 1961 [‘Act’, for short] is linked to computation under Section 28 and Section 37 of the Act. It is the case of the Department in all these cases that the State Advised Price [S.A.P.] is determined on the basis of the price recommended by the assessee(s) after the finalisation of accounts and, therefore, the differential amount between S.A.P. and S.M.P. would constitute appropriation of profits and not expenditure/expense under Section 37 of the Act. On the other hand, it is the case of the assessee(s) that they are bound to pay to the cane growers the final cane price as per the S.A.P. fixed by the State Government and the mere fact that S.A.P. fixed by the State Government is based on the price recommended by the assessee(s) after finalisation of accounts would not constitute appropriation of profits because appropriation would arise only after the profits are determined and profits can be determined only after all the expenses incurred for the business are deducted from the gross income.
5. On the above contentions, two questions were required to be considered by the Department, which are as follows:

"Whether the above-mentioned differential payment made by the assessee(s) to the cane growers after the close of the financial year or after the balance-sheet date would constitute an expenditure under Section 37 of the Income Tax Act, 1961; and whether

such differential payment would, applying the real income theory, constitute an expenditure or distribution of profits?"

6. In deciding the above questions, the Assessing Officer will take into account the manner in which the business works, resolutions of the State Government, the modalities and the manner in which S.A.P. and S.M.P. are decided, the timing difference which will arise on account of the difference in the accounting years, etc. In a given case, if the assessee has made a provision in its accounts, then the Assessing Officer shall enquire whether such provision is made out of profits or from gross receipts and whether such differential payment is relatable to the cost of the sugarcane or whether it is relatable to the division of profits amongst the members of the Society? One of the points which will also arise for determination by the Assessing Officer will be on the theory of over-riding title in the matter of accrual or application of income. Therefore, in each of these cases, the Assessing Officer will decide the question as to whether the obligation is attached to income or to its source.

None of these questions have been examined by the Authorities below. These questions are required to be examined because, in these case, we are not only concerned with the applicability of Section 40A(2) of the Act but we are primarily required to consider whether the said differential payment constitutes an expense or distribution of profits? Ordinarily, we would not have remitted these matters, particularly when they are for Assessment Year 1992-1993, but, for the fact that this issue is going to arise repeatedly in future. It will also help the assessee(s) in a way that they will have to re-write their accounts in future depending upon the outcome of this litigation. Therefore, in the interest of justice, we remit these cases to the concerned Commissioner of Income Tax (Appeals). We make it clear that both the parties are given liberty to amend their pleadings before the Commissioner of Income Tax (Appeals) takes up the matter for final hearing. We express no opinion on the merits of the case. The parties are at liberty to argue their respective points uninfluenced by any observations made in the impugned judgements on the applicability of Section 28 or Section 37 of the Act.

7. The civil appeals filed by the Department, accordingly, stand disposed of with no order as to costs.