

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).36249/2012
(Against the judgment and order dated 16.12.2011 by the High Court of
Judicature at Bombay in ITA No. 675 of 2011)

COMMISSIONER OF INCOME TAX-III PUNE Petitioner(s)

VERSUS

SH CHHATARATI SAHAKARI SAKHAR KARKHANA Respondent(s)

(With appln(s) for c/delay in filing SLP and office report)

Date: 14/01/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE D.K. JAIN
HON'BLE MR. JUSTICE MADAN B. LOKUR

For Petitioner(s) Mr. Mohan Jain, ASG
Mr. D.K. Thakur, Adv.
Mr. Arijit Prasad, Adv.
Ms. Namrata Bhatia, Adv.
Mrs Anil Katiyar, Adv.

For Respondent(s) Mr. Chinmoy Khaladkar, Adv.
Mr. Vimal Chandra S. Dave, Adv.

UPON hearing counsel the Court made the following
O R D E R

Delay condoned.

The special leave petition qua question No. 'C' is
dismissed.

Leave granted in respect of Question Nos. 'B,D and E. to
be tagged along with C.A. 8890 of 2012.

Leave granted qua Question No. 'A'; the appeal is allowed
to the extent mentioned in the signed order.

Resultantly, the appeal is partly disposed of.

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 302 OF 2013
(arising out of SLP(C) No. 36249 of 2012)

| Commissioner of Income Tax-III, Pune |.. Appellant(s) |

Versus

| Sh. Chhatarti Sahakari Sakhar Karkhana |.. Respondent(s) |

O R D E R

In this special leave petition, preferred by the revenue, against the judgment rendered by the High court of Judicature at Bombay in ITA No. 675/2011, the following questions, stated to be substantial questions of law, have been framed:

"A. Whether the Hon'ble High court was justified in law in upholding the decision of the Ld. ITAT with respect to the deletion of Rs. 86,40,273 on account of difference between the market price of sugar and the concessional price at which sugar was sold to the cane growers, from the income of the Respondent?

B. Whether the Hon'ble High Court erred in holding that excess cane price paid to members and non members could not be disallowed under sections 37(1) and 40A(2)(b) of the Income Tax Act, 1961?

C. Whether the Hon'ble High Court was correct in law in holding that the Khodki charges deducted by the Respondent from its total income are permissible?

D. Whether in the present case, the Hon'ble High court was justified in holding that the amount paid under various heads is expenditure and not distribution of profits?

: 2 :

E. Whether the Hon'ble High Court was justified in not reverting the case back to the CIT for further inquiry in accordance with the judgment of this Hon'ble Court in CIT v. Satpuda Tapi Parisar SSK Ltd. (2012) 13 SCC 527?"

As regards question No. 'C', admittedly, the special leave petition preferred by the Revenue on the same issue already stands dismissed. Consequently, the special leave petition qua the said question is dismissed.

Insofar as the issue proposed to be raised in question Nos. 'B,D and E' is concerned, the same stands referred to a larger Bench in C.A. No. 8890 of 2012 @ SLP(C) No. 30452 of 2010 and connected matter. In that view of the matter, we grant leave in respect of the said Questions and direct tagging with C.A. No. 8890 of 2012.

Regarding question No. 'A', the same issue came up for consideration before this Court in SLP(C) No. 8590 of 2010 along with other connected special leave petitions. Vide order dated 25th September, 2012 after grant of leave, all these appeals were disposed of and the matter was remitted to the Commissioner of Income Tax (Appeals) for fresh adjudication on the question whether or not the difference between average price of sugar sold in the market and price of sugar sold by the assessee(s) to its

..3/-

: 3 :

Members at concessional rate could be brought to tax as an 'Appropriation of Profit'.

In light of the said order, we grant leave qua Question No.'A'; allow the appeal to that extent and remit the matter back to the Commissioner of Income Tax (Appeals) to examine the issue de novo, as already directed vide aforesaid order dated 25th September, 2012. Permission to lead additional evidence, before the Commissioner of Income Tax (Appeals), if so advised, is granted to the parties.

Resultantly, the appeal is partly disposed of.

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[D.K. JAIN, J.]

.....
[MADAN B. LOKUR, J.]

NEW DELHI,
JANUARY 14, 2013.

ITEM NO. In chambers

SECTION IIIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NO. 302 of 2013
(arising out of SLP(C) No. 36249 of 2012)

COMMISSIONER OF INCOME TAX-III PUNE

Petitioner(s)

VERSUS

SH CHHATRAPATI SAHAKARI SAKHAR KARKHANA LTD.

Respondent(s)

Date: 22/01/2013 This appeal was taken up in chambers.

CORAM :

HON'BLE MR. JUSTICE D.K. JAIN
HON'BLE MR. JUSTICE MADAN B. LOKUR

O R D E R

The cause title in order dated 14th January, 2013, shall be read as "Commissioner of Income Tax-III, Pune vs. Sh. Chhatrapati Sahakari Sakhar Karkhana Ltd."

| Court Master | [Charanjeet Kaur] | | [Kusum Gulati] | |

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 302 OF 2013
(arising out of SLP(C) No. 36249 of 2012)

| Commissioner of Income Tax-III, Pune | .. Appellant(s) |

Versus

O R D E R

The cause title in order dated 14th January, 2013, shall be read as "Commissioner of Income Tax-III, Pune vs. Sh. Chhatrapati Sahakari Sakhar Karkhana Ltd."

[D.K. JAIN, J.]

.....
[MADAN B. LOKUR, J.]

NEW DELHI,
JANUARY 22, 2013.