2019 INSC 309

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 8890 OF 2012

C.I.T. BOMBAY ..APPELLANT

VERSUS

TASGAON TALUKA S.S.K.LTD. ..RESPONDENT

WITH
CIVIL APPEAL NO.2485 OF 2019
(Arising out of SLP (C) No.1279/2009)

CIVIL APPEAL NO.2484 OF 2019
(Arising out of SLP (C) No.1281/2009)
CIVIL APPEAL NO.2482 OF 2019
(Arising out of SLP (C) No.1278/2009)

CIVIL APPEAL NO.2483OF 2019
(Arising out of SLP (C) No.1282/2009)

CIVIL APPEAL NO.2486 OF 2019
(Arising out of SLP (C) No.5700/2009)

CIVIL APPEAL NO. 4801 OF 2014
CIVIL APPEAL NO. 8891 OF 2012
CIVIL APPEAL NO. 4549 OF 2013

CIVIL APPEAL NO.2487 OF 2019
(Arising out of SLP (C) No.6412/2011)

CIVIL APPEAL NO. 302 OF 2013

J U D G M E N T

M.R. SHAH, J.

Leave granted in all the special leave petitions.

2. As common question of law arises in this group of appeals, all these appeals are being disposed of together, by this common judgment and order.

3. For the sake of convenience, Civil Appeal No. 8890 of 2012 (Commissioner of Income Tax, Bombay vs. Tasgaon Taluka Sahakari Sikhar Karkhana Limited) is treated and considered as a lead case, and therefore, the facts from the said appeal are narrated and considered.

3.1 The assessee (respondent herein) is a Co-operative Society engaged in the business of production of sugarcane and sale thereof. The assessee filed its return of income for the Assessment Year 1998-99 declaring 'NIL; income. In the return, the assessee computed carry forward loss of Rs.40,00,339/- and unabsorbed depreciation of Rs.1,67,26,665/-. The return was processed under Section 143(1) (a) of the Income Tax Act, (hereinafter referred to as the 'Act'), making adjustment of Rs.2,02,242-/ relatable to Section 40A (3) of the Act. Thereafter the assessee filed a revised return wherein business loss was shown to the tune of Rs.3,32,42,426/-.

3.2 A notice under Section 143(2()/142(1) of the Act was issued to the assessee. The assessee was having manufacturing activities of

white sugar. It had shown the income from business of manufacturing sugar, petrol pump station and also interest under the head “income from other sources”.

3.3 After scrutiny of final accounts details along with return of income and details furnished during the course of assessment proceedings, an issue arose with respect to disallowance under Section 37(1) of the Act for excessive and unreasonable cane purchase price paid to the members of the sugarcane.

3.4 It was noticed that during the year under consideration, the assessee had crushed 189736.220 metric tones sugarcane. The assessee had paid Rs.615/- and Rs.720-/ for crushing seasons 1996-97 and 1997-98 respectively per metric tone at the time of purchase of cane and the balance amount was paid later on, as per contracted price increase of sugarcane on contract basis and as per Mantri Committee Advice in case of purchase of sugarcane from members and others. It has found as under:

Particulars	Quantity in MT	Rate payable	Rate paid (Rs.)
Sugar Season 96-97 from members	8,307.520	537.700	875.000
From non-members	1,652.653	537.700	875.000
Total	9,960.173		
Sugar Season 97-98 from members	129,108.966	537.700	875.000
From	50,667.081	537.700	875.000

non-members			
Total	179,776.047		

3.5 It was noticed that the production of sugar was covered by the Essential Commodities Act, 1955 and the Government had issued the Sugar Cane (Control) Order, 1966 (hereinafter referred to as the 'Control Order, 1966'), which deals with all aspects of production of sugarcane and sale thereof including the price to be paid to the cane growers. It was noticed that Clause 3 of the Control Order, 1966 authorises Government to fix minimum cane price. It was also noticed that in addition to this, additional cane price is also payable as per Clause 5A of the Control Order, 1966.

3.6 It was noticed that in the case of the assessee, the price paid by the assessee to the sugarcane growers, most of those are its members, was in excess than what was payable as per the above Order and accordingly the assessee was asked to furnish details of payments made for the purchase of sugarcane and also payment made later on. The assessee was also asked to explain whether the payment made later on is made at the request of the assessee or not.

3.7 It appears that the assessee furnished details of payment made, wherein it was found that the price paid for purchase of sugarcane at the rate of Rs.875/- PMT for sugarcane seasons 1996-97

and 1997-98. It was further stated that the cane price payable as per Clause 3 and Clause 5A of the Control Order, 1966, comes to Rs.537.70 for sugarcane season 1996-97 and Rs.646.50 for sugarcane season 1997-98. Therefore, the assessee was given an opportunity to explain why price paid by it to members/non-members for purchase of sugarcane, in excess of what was payable as per Clause 3 and Clause 5A of the Control Order, 1966, be not held as excessive.

3.8 In response thereto, the assessee filed written submissions. It claimed that the payment has been made as per the rate fixed by Commissionerate of Sugar, Maharashtra State, Pune, and the same is as per guidelines given by the Mantri Committee. With regard to the purchase made from non-members and members, it was the case of the assessee that payment has been made as per price agreed to at the time of purchase. It was submitted that a contract for the purchase of sugarcane has been entered into at the time of start of sugarcane and since the price is agreed at the time of purchase itself, the same is required to be allowed as deduction. It was, therefore, claimed that no disallowance be made either under Section 40A (2) of the Act or otherwise.

4. The Assessing Officer did not agree with the submissions on behalf of the assessee. The ultimate conclusion of the A.O. was 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 (and consequently paid by the assessee to the cane growers) can be said to be a distribution of profit, as in the price determination under Clause 5A of the Control Order, 1966, there is an element of profit and therefore the price paid to the cane growers determined by the State Government is excessive and therefore it is not deductible as expenditure, and is required to be included in the income of the assessee.

4.1 While holding so, the Assessing Officer considered and observed as under:

> "...The Sugar cane control order, 1966, provides for the price to be paid to the cane growers. The initial price which is fixed as per clause 3 of this order takes into account the following facts.
>
> a The cost of production of sugarcane.
> b The return to the growers, alternative crops and general tread of process of Agricultural commodities.
> c The availability of sugar to the consumer at a fair price.
> d The price at which sugar produced from sugarcane is sold by producer of sugar.
> e The recovery of sugar from sugarcane.
>
> In addition to this, additional cane price is also payable to the growers of sugar cane as per clause 5A. This clause take into account the profitability of actually on the basis of price paid to grower of sugarcane as per clause 3 of the Control order. As per this Clause, the profit earned by the factory is shared by grower of sugarcane and producer of sugar. The prices under clause 3 are fixed by Central Govt. the total price payable to grower of sugarcane will be different on the basis of profitability of each units. In the State of Maharashtra, since 90% of sugar producing factories are in co.op sector, being

aided by Govt., the Govt. has also appointed a committee known as Mantri Committee for the purpose of fixing state advisory Price of sugarcane. As per this, the initial price to be paid to the grower of sugarcane is fixed on the basis of price fixed by central Govt. as per clause 3 of the Control order. However, final price is fixed on the basis of profitability of each units and in the State of Maharashtra, entire profit is distributed among growers of sugarcane. The Commissionerate of Sugar Fixes the final prices accordingly, this, however, is done at the specific request of the assessee.
It is worthwhile to mention here that the society sends proposals to the Commissioner of Sugar for fixation of final cane payment. If there is higher profit available society proposes for higher payments. If available profit is less. Then proposed payment is accordingly less. This makes it clear that final payment of cane price includes profit of the society which gets distributed among the members in the form of additional cane price. The arguments of the society that regarding state advised price, it is mandatory for them to follow the same as correct to a limited extent which means that for the society it is must to pay initial advance' price which is fixed by the Commissioner of Sugar irrespective of actual profits. However, after the end of the season, it is the society "who sends the statement of surplus to the Commissioner of Sugar in which cost of the cane is taken on the basis of initial advance price and remaining surplus is proposed to be distributed on the basis of total cane quantity purchases in the season. On being proposed by society, the Commissioner of Sugar gives consent to it and, therefore, the submission is not correct because it is the society who propose for such additional cane purchase price by way of appropriation of profits…"

4.2 The Assessing Officer also did not agree with the submission on behalf of the assessee that the minimum cane price notified by the Central Government is minimum and not actual cost and therefore any payment in excess of the minimum price should not be treated as an application of income by observing that the Statutory Minimum Price (hereinafter referred to as the 'SMP') is further

increased by additional price on the basis of actual yield and if such adjusted price is more than initial advance price only such adjusted price is considered as allowable deduction instead of initial advance price. The Assessing Officer also noted that the additional cane price is calculated after the end of the accounting year and it represents the entire surplus or income earned by the sugar cooperative society in the whole year and it is the surplus profit of income which is distributed and, therefore, it cannot be treated as a legitimate deductible expenditure. Consequently, the Assessing Officer held that the price paid by the assessee as per Clause 3 & 5A of the Control Order, 1966 is the fair price and therefore anything paid to the members as well as non-members above the price determined and paid by the assessee as per Clause 3 & 5A of the Control Order, 1966 will be unreasonable and excess price to its members in the form of additional cane purchase price and therefore such excess payments are not allowed under Section 37 of the Act. The chart of the calculation is as under:

Particulars	Quantity	Price paid per MT	SMP + 5A (excluding harvesting and transport)	Difference	Addition
Season 96-97 Members	8307.520	875.000	537.700	337.300	2,802,126.00

Season 97-98 Members	129,108.966	875.000	646.500	228.500	29,501,399.00
	1,37,416.486				32,303,,525.00

4.3 Alternatively, the Assessing Officer also held that the excess cane price paid to the cane growers over the SMP is disallowable as per Section 40A(2)(a) of the Act by observing that purchase price paid is excessive and unreasonable.

4.4 Accordingly, the Assessing Officer finalised the return and making additions of the amount paid by the society to its members/non-members above the SMP price/price determined under Clauses 3 & 5A of the Control Order, 1966, as income.

5. On an appeal, the learned Commissioner of Income Tax (Appeals), relying upon and considering the decision of a Special Bench, Mumbai ITAT in the case of *Manjara Shetkari Sakhar Karkhana Limited dated 19.08.2004* allowed the appeal preferred by the assessee and held that the price actually paid for the procurement of the sugarcane is to be allowed as business expenditure. The learned CIT(A) also observed and held that the excess payment of cane price as fixed by the State Government (SAP) over and above SMP for sugarcane to members and non-members cannot be disallowed either under Section 40A(2)(b) of the Act, despite the fact that profit is one of the component in asserting the price. The CIT(A) observed that just

because profit is one of the component in asserting the price, it cannot be said that profit is separately distributed in the guise of additional price. The learned CIT(A) observed that the amount paid by the assessee – cooperative society to the sugarcane growers is considered for the procurement of the sugarcane and it cannot be construed to be appropriation of profits. Consequently, the learned CIT(A) deleted the addition made by the Assessing Officer.

6. The learned ITAT confirmed the order passed by the learned CIT(A), which has been further confirmed by the High Court, by the impugned judgment and order. By the impugned judgment and order, the High Court has dismissed the appeal preferred by the department by observing that the question is covered by the judgment of the High Court in the case of *Commissioner of Income Tax vs. Manjara Shetkari Sahakari Sakhar Karkhana Limited*, reported in (2008) 301 I.T.R. 191 (Bom.). Hence, the present appeals by the department.

6.1 In some of the cases, some of the assesses – societies seem to have paid the cane purchase price to the members/non-members even in excess/above the price determined under Clauses 3 & 5A of the Control Order, 1966. Therefore, the question which is posed for consideration before this Court is,

(i) Whether any amount of sugarcane purchase price paid by the assessee-society to its members/non-members above the SMP

determined under Clause 3 of the Control Order, 1966, may be paid as per the price determined by the State Government under Clause 5A of the Control Order, 1966, can be said to be the sharing of profit and therefore is to be included in the return of income?; and

(ii) Whether any amount of sugarcane purchase price paid by the society to its members/non-members above/beyond the price even determined as per Clauses 3 & 5A of the Control Order, 1966, and which is found to be unreasonable and in excess of the fair market value, can be said to be the sharing of the profit and is required to be included in the total income of the assessee?

7. Shri Arijit Prasad, learned counsel appearing on behalf of the department has vehemently submitted that in the facts and circumstances of the case, as such, the Assessing Officer was justified in treating and considering the difference between the SMP, determined under Clause 3 of the Control Order, 1966, and the SAP determined by the State Government under Clause 5A of the Control Order, 1966 as sharing of profit, and therefore, the same was rightly ordered to be included in the income of the assessee.

7.1 It is vehemently submitted by the learned counsel appearing on behalf of the department that cogent reasons have been given by the assessing officer to treat the aforesaid difference as sharing of profit, after detailed analysis of the manner and method in which the

sugarcane purchase price is determined under Clauses 3 & 5A of the Control Order, 1966.

7.2 It is vehemently submitted by the learned counsel appearing on behalf of the department that there are different considerations/criterias to be applied while determining the sugarcane purchase price at the stage of Clause 3 and at the stage of Clause 5A. It is submitted that even the stages are also different while determining the sugarcane purchase price at the stage of Clause 3 and determined at the stage of Clause 5A.

7.3 It is vehemently submitted by the learned counsel appearing on behalf of the department that while determining the sugarcane purchase price under Clause 5A of the Control Order, 1966, firstly, it is at the conclusion of the financial year and when the accounts are settled, and secondly, there is an element of profit. It is submitted that one of the components while dealing with the sugarcane purchase price under Clause 5A is the profit, and whatever is paid to the cane growers under Clause 5A is therefore sharing of profit.

7.4 It is further submitted by the learned counsel appearing on behalf of the department that how and in what manner the sugarcane purchase price is determined under Clause 5A has been considered by this Court in detail in the case of *Maharashtra Rajya Sahkari Sakkar Karkhana Sangh Limited vs. State of Maharashtra*, reported in 1995

Supp. (3) SCC 475. It is vehemently submitted by the learned counsel that as observed by this Court in the aforesaid decision, the additional price determined under Clause 5A is at the end of the season. It is submitted that as observed, the Bhargava Commission had 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 Schedule II to the Control Order, 1966. It is submitted that the additional purchase price determined under Clause 5A comprises of not only cost of cultivation but profit as well. It is submitted that as observed by this Court in the case of *Maharashtra Rajya Sahkari Sakkar Karkhana Sangh Limited (supra)*, the price (additional price determined under Clause 5A) thus being paid on recovery of cane and profits made from sale of sugar is not minimum but optimum price which is paid to a cane grower. It is submitted that the entire price structure of cane is founded on two basic factors, one, the recovery percentage and other the incentive for sharing profit arrived at by working out receipt minus expenditure. It is submitted that therefore the difference between the SMP and the SAP is nothing but sharing of profit, and therefore, is liable to be included in the return of income under Section 37 of the Act.

7.5 It is further submitted by the learned counsel appearing on behalf of the department that in many cases it is found that the

assessee-society has paid the sugarcane purchase price to its members/non-members is excessive and much more than the market price and/or even beyond the SAP. It is submitted therefore that even considering Section 40A (2) of the Act, such excessive and unreasonable amount paid is not allowable to be deductible. It is submitted therefore that the High Court has materially erred in holding that the price actually paid by the society for the procurement of the sugarcane is to be allowed as business expenditure.

7.6 It is further submitted by the learned counsel appearing on behalf of the department that in view of the above facts and circumstances, the High Court was not justified in holding that the excess amount of expenditure on sugarcane purchase price was a charge of profit, i.e., diversion of profit and appropriation of profit.

7.7 Making the above submissions, it is prayed to allow the present appeals and set aside the impugned judgments and orders passed by the High Court and consequently the orders passed by the ITAT as well as CIT(As) and to restore the respective orders passed by the assessing officers.

8. Shri P. Chidambaram, learned senior advocate, Shri Shekhar Naphade, learned senior advocate have appeared on behalf of respective assesses.

8.1 Learned counsel appearing on behalf of the respective

assesses have vehemently submitted that as rightly observed and held by the High Court, merely because there is an element and/or one of the components while determining the SAP under Clause 5A of the Control Order, 1966 is profit, it cannot be said that there is a sharing of profit.

8.2 It is vehemently submitted by the learned counsel appearing on behalf of the respective assesses that under the Control Order, 1966, a sugarcane society has no other alternative but to pay to the cane growers the sugarcane purchase price as determined by the Central Government and the State Government, as the case may be. It is submitted that even if the society would be incurring the loss, the society has to pay the additional purchase price (final price) determined by the State Government. It is submitted therefore that whatever is paid by the assessee-society to the cane growers towards sugarcane purchase price is an allowable expenditure which is required to be deducted.

8.3 Learned counsel appearing on behalf of the respective assesses have also relied upon Section 9 of the Sale of Goods Act. It is further submitted by the learned counsel that as such the higher/additional price is paid by the society to both members and non-members and therefore anything paid above or more than the SMP *per se* cannot be said to be a sharing of profit.

8.4 It is further submitted by the learned counsel that even the State Government is also 10% share holding and nothing is paid to the State being a shareholder. It is further submitted by the learned counsel that even as per the Bye-laws, the society has to pay the difference between the SMP and the SAP. It is submitted therefore the difference between the SMP and the SAP, by no stretch of imagination, can be said to be a sharing of profit and as such whatever is paid while purchasing the sugarcane is deductible as expenditure incurred.

8.5 Making the above submissions., it is prayed to dismiss the present appeals preferred by the department.

9. We have heard learned counsel appearing on behalf of the respective parties at great length.

9.1 A short question which is posed before this Court for consideration is, whether the sugarcane purchase price paid to the cane growers by the assessee-society more than the SMP and is determined under Clause 5A of the Control Order, 1966, can be said to be the sharing of profit/appropriation of profit or is allowable as expenditure?

9.2 While considering the aforesaid issue/question, the mechanism for determining the SMP and SAP under the Control Order, 1966 is required to be referred to and considered. As per Clause 3 of the Control Order, 1966, the Central Government may,

after consultation with such authorities, bodies or associations as it may deem fit, by notification in the official Gazette, from time to time, fix the minimum price of sugarcane to be paid by producers of sugar or their agents for the sugarcane purchased by them. While fixing/determining the SMP under Clause 3 of the Control Order, 1966, the Central Government is required to consider the following aspects:

> "(a) the cost of production of sugarcane;
> (b) the return to the grower from alternative crops and the general trend of prices of agricultural commodities;
> c the availability of sugar to the consumer at a fair price;
> d the price at which sugar produced from sugarcane is sold by producers of sugar; and
> e the recovery of sugar from sugarcane."

9.3 As per Explanation, different prices may be fixed for different areas or different qualities or varieties of sugarcane. As per sub-clause 2 of Clause 3, no person shall sell or agree to sell sugarcane to a producer of sugar or his agent, and no such producer or agent shall purchase or agree to purchase sugarcane, at a price lower than that fixed under sub-clause 1 of Clause 3. Clause 5A, which has been inserted in the year 1974 provides for an additional price to be paid for sugarcane purchased on or after 01.10.1974. It provides that where a producer of sugar or his agent purchases

sugarcane, from a sugarcane grower during each sugar year, he shall, in addition to the minimum sugarcane price fixed under Clause 3, pay to the sugarcane grower an additional price, if found due in accordance with the provisions of the Second Schedule annexed to the Control Order, 1966. How the additional price under Clause 5A of the Control Order, 1966 is to be determined is provided in the Second Schedule, which reads as under:

"SECOND SCHEDULE
[See Clause 5-A]

The amount to be paid on account of additional price (per quintal of sugarcane) under Clause 5-A by a producer of sugar shall be computed in accordance with the following formula, namely :

$$X = \frac{R - L + A - B}{2C}$$

Explanation— In this formula.

1 'X' is the additional price in rupees per quintal of sugarcane payable by the producer of sugar to the sugarcane grower.
2 'R' is the amount in rupees of sugar produced during the sugar year excluding the excise duty paid or payable to the factory by the purchaser.
3 'L' is the value in rupees of sugar produced during the sugar year, as calculated on the basis of the unit cost per quintal ex-factory, exclusive of excise duty, determined with reference to the minimum sugarcane price fixed under Clause 3, the final working results of the year and the Cost Schedule and return recommended by the such authority as the

Central Government may, specify from time to time.

4 'A' is the amount found payable for the previous year but not actually paid [vide sub-clause (9)].

5 'B' is the excess or shortfall in realisations from actual sales of the unsold stocks of sugar produced during the sugar year, as on 30th day of September [vide item 7(ii) below] which is carried forward and adjusted in the sale realisations of the following year.

6 'C' is the quantity in quintals of sugarcane purchased by the producer of sugar during the sugar year.

7 The amount 'R' referred to in *Explanation* 2 shall be computed as under, namely:—

i the actual amount realised during the sugar year; and

ii the estimated value of the unsold stocks of sugar held at the end of 30th September, calculated in regard to free sugar stocks at the average rate of sales, namely, during the fortnight 16th to 30th September and in regard to levy sugar stocks at the notified levy prices as on the 30th September.

Explanation.—In this Schedules "Sugar" means any form of sugar containing more than ninety per cent sucrose."

9.4 At this stage, it is required to be noted that Clause 5A was inserted in the year 1974 on the basis of the recommendations made by the Bhargava Commission. As observed by this Court in the case of *Maharashtra Rajya Sahkari Sakkar Karkhana Sangh Limited (supra),* the Bhargava Commission had recommended payment of additional price at the end of the season on 50:50 profit sharing basis between growers and factories, to be worked out in accordance with Second

Schedule to the Control Order, 1966. It is also required to be noted that the additional price is fixed/determined under Clause 5A at the end of the season and as per Second Schedule to the Control Order, 1966. Therefore, at the time when the additional purchase price is determined/fixed under Clause 5A, the accounts are settled and the particulars are provided by the concerned cooperative society what will be the expenditure; what can be the profit etc. It is required to be noted that so far as the SMP determined under Clause 3 of the Control Order, 1966 by the Central Government is concerned, it is at the beginning of the season and while determining/fixing the SMP by the Central Government, the afore-stated things are required to be considered. Therefore, the difference of amount between the SMP determined under Clause 3 and the SAP/additional purchase price determined under Clause 5A has an element of profit and/or one of the components would be the profit. The entire scheme/mechanism while determining the additional purchase price under Clause 5A has been dealt with and considered by this Court in detail in the case of *Maharashtra Rajya Sahkari Sakkar Karkhana Sangh Limited (supra).* In the said decision, it is observed that the additional purchase price/SAP is paid at the end of the season; the Bhargava Commission had recommended payment of additional price at the end of season on 50:50 profit sharing basis between the growers and factories to be

worked out in accordance with Second Schedule to the Control Order, 1966; that the additional purchase price comprises of not only the cost of cultivation, but profit as well; the price thus being paid on recovery of canes and profits made from sale of sugar is not minimum but optimum price which is paid to a cane grower. The additional cane price or additional State fixed price are paid as a matter of incentive. The entire price structure of cane is founded on two basic factors, one, the recovery percentage and other the incentive for sharing profit arrived at by working out receipt minus expenditure. 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. However, this is not the subject matter in the present appeals. We are restricting the present appeals qua the sugarcane purchase price paid by the society to the cane growers above the SMP determined under Clause 3 and the difference of sugarcane purchase price between the price determined under Clause 3 and Clause 5A of the Control Order, 1966.

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.

10. In view of the above and for the reasons stated above, the

question of law is answered accordingly, partly in favour of the department and partly in favour of the assessee. The impugned orders passed by the High Court, ITAT, CIT(A) as well as the assessing officers are hereby quashed and set aside and the matters are remitted to the respective assessing officers to undertake the exercise as stated hereinabove and after giving an opportunity to the respective assesses.

11. All these appeals stand disposed of in terms of the above.

.....J.
[A.K. SIKRI]

.....J.
[S. ABDUL NAZEER]

NEW DELHI;
MARCH 05, 2019.

.....J.
[M.R. SHAH]