

PART-HEARD

ITEM NOS.1, 40-44,61 COURT NO.2 SECTION IIIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).11930/2008

(From the judgement & order dated 14/08/2007 in DBITA No.264/2007
of The HIGH COURT OF BOMBAY)

Dy. C.I.T., NASHIK Petitioner(s)

VERSUS

SHRI SATPUDA TAPI PARISAR SSK LTD. Respondent(s)

(With appln(s) for c/delay in filing SLP and permission to file
additional documents)
[For Final Disposal]

With S.L.P. (C) No.28203 of 2008
(With appln(s) for c/delay in filing SLP and office report)
[For Final Disposal]

S.L.P. (C) No.28206 of 2008
(With appln(s) for c/delay in filing SLP and office report)

S.L.P. (C) No.28208 of 2008
(With appln(s) for c/delay in filing SLP and office report)

S.L.P. (C) No.28220 of 2008
(With appln(s) for c/delay in filing SLP and office report)

S.L.P. (C) No.4764 of 2009
(With appln(s) for c/delay in filing SLP and office report)
[For Final Disposal]

S.L.P. (C) No.4751 of 2009
(With appln(s) for c/delay in filing SLP)
[For Final Disposal]

S.L.P. (C) No.6427 of 2009
(With appln(s) for c/delay in filing SLP and office report)

S.L.P. (C) No. 7495 of 2009
(With appln(s) for c/delay in filing SLP and office report)
[For Final Disposal]

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S.L.P. (C) No.8337 of 2009
(With appln(s) for c/delay in filing SLP and office report)

S.L.P. (C) No.7501 of 2009
(With appln(s) for c/delay in filing SLP and office report)
[For Final Disposal]

S.L.P. (C) No.8125 of 2009
(With appln(s) for c/delay in filing SLP and office report)
[For Final Disposal]

S.L.P. (C) No. 8127 of 2009
(With appln(s) for c/delay in filing SLP and office report)
[For Final Disposal]

S.L.P. (C) No.8131 of 2009
(With appln(s) for c/delay in filing SLP and office report)
[For Final Disposal]

S.L.P. (C) No.8132 of 2009
(With appln(s) for c/delay in filing SLP and office report)
[For Final Disposal]

S.L.P. (C) No.8130 of 2009
(With appln(s) for c/delay in filing SLP and office report)
[For Final Disposal]

S.L.P. (C) No.8895 of 2009
(With office report)
[For Final Disposal]

S.L.P. (C) No.7757 of 2009
(With office report)
[For Final Disposal]

S.L.P. (C) No.7489 of 2009
(With appln(s) for c/delay in filing SLP and office report)
[For Final Disposal]

S.L.P. (C) No.9280 of 2009
(With office report)
[For Final Disposal]

S.L.P. (C) No.9281 of 2009
(With office report)
[For Final Disposal]

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S.L.P. (C) No.9285 of 2009
(With office report)
[For Final Disposal]

S.L.P. (C) No.9286 of 2009
(With office report)
[For Final Disposal]

S.L.P. (C) No.9287 of 2009
(With office report)
[For Final Disposal]

S.L.P. (C) No.9284 of 2009
(With office report)
[For Final Disposal]

S.L.P. (C) No.9132 of 2009
(With appln(s) for c/delay in filing SLP and office report)
[For Final Disposal]

S.L.P. (C) No.12122 of 2009
[For Final Disposal]

S.L.P. (C) No.13047 of 2009
(With office report)
[For Final Disposal]

S.L.P. (C) No.13049 of 2009
(With office report)
[For Final Disposal]

S.L.P. (C) No.13048 of 2009
(With office report)
[For Final Disposal]

S.L.P. (C) No.9275 of 2009
(With appln(s) for intervention and office report)
[For Final Disposal]

S.L.P. (C) No.12132 of 2009
[For Final Disposal]

S.L.P. (C) No.12127 of 2009
[For Final Disposal]

S.L.P. (C) No.22114 of 2008
(With appln(s) for c/delay in filing SLP and office report)
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S.L.P. (C) No.15947 of 2009
(With appln(s) for c/delay in filing SLP and office report)
[For Final Disposal]

S.L.P. (C) No.15638 of 2009
(With appln(s) for c/delay in filing SLP, c/delay in refiling
SLP and office report)
[For Final Disposal]

S.L.P. (C) No.15996 of 2009
(With office report)
[For Final Disposal]

S.L.P. (C) No.15634 of 2009
(With office report)
[For Final Disposal]

S.L.P. (C) No.7816 of 2009
(With office report)
[For Final Disposal]

S.L.P. (C) No.15898 of 2009
(With appln(s) for c/delay in filing SLP)
[For Final Disposal]

S.L.P. (C) No.18044 of 2009
(With appln(s) for c/delay in filing SLP)
[For Final Disposal]

S.L.P. (C) No.18753 of 2009
(With appln(s) for c/delay in filing SLP and office report)

S.L.P. (C) No.17420 of 2009
(With appln(s) for c/delay in filing SLP, c/delay in refiling
SLP and office report)
[For Final Disposal]

S.L.P. (C) No.18752 of 2009
(With appln(s) for c/delay in filing SLP)

S.L.P. (C) No.18022 of 2009
(With appln(s) for c/delay in filing SLP)
[For Final Disposal]

S.L.P. (C) No.17813 of 2009
(With office report)
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S.L.P. (C) No.18524 of 2009
(With appln(s) for c/delay in filing SLP and office report)
[For Final Disposal]

S.L.P. (C) No.18430 of 2009
(With office report)
[For Final Disposal]

S.L.P. (C) No.18006 of 2009
(With appln(s) for c/delay in filing SLP and office report)
[For Final Disposal]

S.L.P. (C) No.19662 of 2009
(With office report)
[For Final Disposal]

S.L.P. (C) No.19663 of 2009
(With office report)
[For Final Disposal]

S.L.P. (C) No.19830 of 2009
(With office report)
[For Final Disposal]

S.L.P. (C) No.19831 of 2009
(With appln(s) for c/delay in filing SLP and office report)
[For Final Disposal]

S.L.P. (C) No.19415 of 2009
(With office report)
[For Final Disposal]

S.L.P. (C) No.28523 of 2008
(With appln(s) for c/delay in filing SLP and office report)
[For Final Disposal]

S.L.P. (C) No.28524 of 2008
(With appln(s) for c/delay in filing SLP and office report)

S.L.P. (C) No.27929 of 2008
(With appln(s) for c/delay in filing SLP and office report)

S.L.P. (C) No.20176 of 2009
(With appln(s) for c/delay in filing SLP)
[For Final Disposal]

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S.L.P. (C) No.2624 of 2009
(With appln(s) for c/delay in filing SLP and office report)
[For Final Disposal]

S.L.P. (C) No.1486 of 2009
(With appln(s) for c/delay in filing SLP and office report)
[For Final Disposal]

S.L.P. (C) No.5172 of 2009
(With appln(s) for c/delay in filing SLP and office report)
[For Final Disposal]

S.L.P. (C) Nos.20384-20385 of 2009
(With appln(s) for c/delay in filing SLPs, c/delay in refiling
SLPs and office report)
[For Final Disposal]

S.L.P. (C) Nos.20387-20397 of 2009
(With office report)
[For Final Disposal]

S.L.P. (C) No.2619 of 2009
(With appln(s) for c/delay in filing SLP and office report)
[For Final Disposal]

S.L.P. (C) No.21776 of 2009

(With office report)

S.L.P. (C) No.1318 of 2009

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

[For Final Disposal]

S.L.P. (C) Nos.24014-24015 of 2009

(With appln(s) for c/delay in filing SLPs, c/delay in refiling SLPs and office report)

S.L.P. (C) No.2860 of 2009

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

S.L.P. (C) No.2862 of 2009

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

S.L.P. (C) No.2861 of 2009

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

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S.L.P. (C) No.1397 of 2009

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

[For Final Disposal]

S.L.P. (C) No.30253 of 2009

(With office report)

S.L.P. (C) No.30704 of 2009

(With office report)

[For Final Disposal]

S.L.P. (C) No.31384 of 2009

(With office report)

[For Final Disposal]

S.L.P. (C) No.19636 of 2008

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

[For Final Disposal]

S.L.P. (C) No.8160 of 2009

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

[For Final Disposal]

S.L.P. (C) No.32047 of 2009
(With office report)

S.L.P. (C) No.32048 of 2009
(With office report)

S.L.P. (C) No.32049 of 2009
(With office report)

S.L.P. (C) No.32049 of 2009
(With office report)

S.L.P. (C) No.2862/2009
(With appln(s) for c/delay in filing SLP, c/delay in re-filing
SLP and office report)

S.L.P. (C) No.32986/2009
(With appln(s) for c/delay in filing SLP and office report)

S.L.P. (C) No.32984/2009
(With appln(s) for c/delay in filing SLP and office report)

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S.L.P. (C) No.32983/2009
(With appln(s) for c/delay in filing SLP and office report)

S.L.P. (C) No.27427/2008
(With appln(s) for c/delay in filing SLP and office report)
[For Final Disposal]

S.L.P. (C) No.33745/2009
(With office report)

S.L.P. (C) No.34098/2009
(With office report)

S.L.P. (C) No.34739/2009
(With office report)

S.L.P. (C) No.34738/2009
(With office report)

S.L.P. (C) No.34749/2009
(With office report)

S.L.P. (C) No.34748/2009
(With office report)

S.L.P. (C) No.35947/2009
(With office report)

S.L.P. (C) No.35607/2009
(With office report)

S.L.P. (C) No.35609/2009
(With appln(s) for c/delay in filing SLP and office report)

S.L.P. (C) No.35611/2009
(With appln(s) for c/delay in filing SLP and office report)

S.L.P. (C) No.35612/2009
(With appln(s) for c/delay in filing SLP and office report)

S.L.P. (C) No.7572/2009

S.L.P. (C) No.10489/2009
(With office report)

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S.L.P. (C) No.10491/2009
(With office report)

S.L.P. (C) No.10492/2009
(With office report)

S.L.P. (C) No.10494/2009
(With appln.(s) for c/delay in filing SLP and office report)

S.L.P. (C) No.10497/2009
(With office report)

S.L.P. (C) No.10498/2009
(With office report)

S.L.P. (C) No.634/2010

S.L.P. (C) No.664/2010
(With office report)

S.L.P. (C) No.662/2010
(With office report)

S.L.P. (C) No.663/2010
(With office report)

S.L.P. (C) No.1120/2010
(With office report)

S.L.P. (C) No.1706/2010
(With office report)

S.L.P. (C) No.6742/2009
(With appln.(s) for c/delay in filing SLP, prayer for interim relief office report)
[for Final Disposal]

S.L.P. (C) No.6994/2009
(With appln.(s) for c/delay in filing SLP and office report)
[For Final Disposal]

S.L.P. (C) No.7003/2009
(With office report)
[For Final Disposal]

S.L.P. (C) No.7006/2009
(With office report)
[For Final Disposal]

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S.L.P. (C) No.7007/2009
(With appln.(s) for c/delay in filing SLP and office report)
[For Final Disposal]

S.L.P. (C) No.12209/2009
[For Final Disposal]

Date: 20/01/2010 These Matters were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE S.H. KAPADIA
HON'BLE MR. JUSTICE H.L. DATTU

For Petitioner(s) Mr. Parag P. Tripathi,ASG.

Mr. Vivek Tankha,ASG.
Mr. H. Raghavendra Rao,Adv.
Mr. Varun Sarin,Adv.
Mr. Arijit Prasad,Adv.
Mr. Rahul Kaushik,Adv.
Mr. D. Mohta,Adv.
Mr. Amey Nargolkar,Adv.
Mr. Anuj Bhandari,Adv.
Mr. T.A. Khan,Adv.
Mr. B.V. Balaram Das,Adv.

Mr. K.K. Chaithanya,Adv.
Mr. S. Sukumaran,Adv.
Mr. Anand Sukumar,Adv.

For Respondent(s) Mr. S.K. Dholakia,Sr.Adv.
Mr. U.U. Lalit,Sr.Adv.
Mr. R.F. Nariman,Sr.Adv.
Mr. Chinmoy Khaladkar,Adv.
Mr. Vimal Chandra S. Dave,Adv.
Ms. Neha Sharma,Adv.

Mr. Uday B. Dube,Adv.
Mr. Kuldip Singh,Adv.

Ms. Aruna Gupta,Adv.

Mr. U.U. Lalit,Sr.Adv.
Mr. Bhargava V. Desai,Adv.
Mr. Rahul Gupta,Adv.
Mr. Nikhil Sharma,Adv.

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Mr. Sudhanshu S. Choudhari,Adv.

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

S.L.P. (C) Nos.30704/2009, 7572/2009, 10489/2009,
10490/2009, 10491/2009, 10492/2009, 10494/2009,
10497/2009 and 10498/2009:

De-tag these petitions and list tomorrow,
i.e., 21st January, 2010, subject to over-night

part-heard, if any.

Rest of the matters:

Delay condoned.

Leave granted in the special leave petitions.

The civil appeals filed by the Department are disposed of with no order as to costs.

[T.I. Rajput] [Madhu Saxena]
A.R.-cum-P.S. Court Master

[Signed order is placed on the file]
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.617 OF 2010
(Arising out of S.L.P. (C) No.11930 of 2008)

Dy. Commissioner of Income Tax, Nashik ...Appellant(s)

Versus

Shri Satpuda Tapi Parisar SSK Limited ...Respondent(s)

With Civil Appeal No.618/2010 @ S.L.P. (C) No.9280/2009,
Civil Appeal No.620/2010 @ S.L.P. (C) No.2862/2009,
Civil Appeal No.621/2010 @ S.L.P. (C) No.28203/2008,
Civil Appeal No.622/2010 @ S.L.P. (C) No.28206/2008,
Civil Appeal No.623/2010 @ S.L.P. (C) No.28208/2008,
Civil Appeal No.624/2010 @ S.L.P. (C) No.28220/2008,
Civil Appeal No.625/2010 @ S.L.P. (C) No.4764/2009,
Civil Appeal No.626/2010 @ S.L.P. (C) No.4751/2009,
Civil Appeal No.627/2010 @ S.L.P. (C) No.6427/2009,
Civil Appeal No.628/2010 @ S.L.P. (C) No.7495/2009,
Civil Appeal No.629/2010 @ S.L.P. (C) No.8337/2009,
Civil Appeal No.630/2010 @ S.L.P. (C) No.7501/2009,

Civil Appeal No.631/2010 @ S.L.P. (C) No.8125/2009,
Civil Appeal No.632/2010 @ S.L.P. (C) No.8127/2009,
Civil Appeal No.633/2010 @ S.L.P. (C) No.8131/2009,
Civil Appeal No.634/2010 @ S.L.P. (C) No.8132/2009,
Civil Appeal No.635/2010 @ S.L.P. (C) No.8130/2009,
Civil Appeal No.636/2010 @ S.L.P. (C) No.8895/2009,
Civil Appeal No.637/2010 @ S.L.P. (C) No.7757/2009,
Civil Appeal No.638/2010 @ S.L.P. (C) No.7489/2009,
Civil Appeal No.639/2010 @ S.L.P. (C) No.9281/2009,
Civil Appeal No.640/2010 @ S.L.P. (C) No.9285/2009,
Civil Appeal No.641/2010 @ S.L.P. (C) No.9286/2009,
Civil Appeal No.642/2010 @ S.L.P. (C) No.9287/2009,
Civil Appeal No.643/2010 @ S.L.P. (C) No.9284/2009,
Civil Appeal No.644/2010 @ S.L.P. (C) No.9132/2009,
Civil Appeal No.645/2010 @ S.L.P. (C) No.12122/2009,

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Civil Appeal No.646/2010 @ S.L.P. (C) No.13047/2009,
Civil Appeal No.647/2010 @ S.L.P. (C) No.13049/2009,
Civil Appeal No.648/2010 @ S.L.P. (C) No.13048/2009,
Civil Appeal No.649/2010 @ S.L.P. (C) No.9275/2009,
Civil Appeal No.650/2010 @ S.L.P. (C) No.12132/2009,
Civil Appeal No.651/2010 @ S.L.P. (C) No.12127/2009,
Civil Appeal No.652/2010 @ S.L.P. (C) No.22114/2008,
Civil Appeal No.653/2010 @ S.L.P. (C) No.15947/2009,
Civil Appeal No.654/2010 @ S.L.P. (C) No.15638/2009,
Civil Appeal No.655/2010 @ S.L.P. (C) No.15996/2009,
Civil Appeal No.656/2010 @ S.L.P. (C) No.15634/2009,
Civil Appeal No.657/2010 @ S.L.P. (C) No.7816/2009,
Civil Appeal No.658/2010 @ S.L.P. (C) No.15898/2009,
Civil Appeal No.659/2010 @ S.L.P. (C) No.18044/2009,
Civil Appeal No.660/2010 @ S.L.P. (C) No.18753/2009,
Civil Appeal No.661/2010 @ S.L.P. (C) No.17420/2009,
Civil Appeal No.662/2010 @ S.L.P. (C) No.18752/2009,
Civil Appeal No.663/2010 @ S.L.P. (C) No.18022/2009,
Civil Appeal No.664/2010 @ S.L.P. (C) No.17813/2009,
Civil Appeal No.665/2010 @ S.L.P. (C) No.18524/2009,
Civil Appeal No.666/2010 @ S.L.P. (C) No.18430/2009,
Civil Appeal No.667/2010 @ S.L.P. (C) No.18006/2009,
Civil Appeal No.668/2010 @ S.L.P. (C) No.19662/2009,
Civil Appeal No.669/2010 @ S.L.P. (C) No.19663/2009,
Civil Appeal No.670/2010 @ S.L.P. (C) No.19830/2009,
Civil Appeal No.671/2010 @ S.L.P. (C) No.19831/2009,
Civil Appeal No.672/2010 @ S.L.P. (C) No.19415/2009,
Civil Appeal No.674/2010 @ S.L.P. (C) No.28523/2008,

Civil Appeal No.675/2010 @ S.L.P. (C) No.28524/2008,
Civil Appeal No.676/2010 @ S.L.P. (C) No.27929/2008,
Civil Appeal No.677/2010 @ S.L.P. (C) No.20176/2009,
Civil Appeal No.678/2010 @ S.L.P. (C) No.2624/2009,
Civil Appeal No.679/2010 @ S.L.P. (C) No.1486/2009,
Civil Appeal No.680/2010 @ S.L.P. (C) No.5172/2009,
C.A. Nos.681-682/2010 @ S.L.P. (C) Nos.20384-85/2009,
C.A. Nos.683-693/2010 @ S.L.P. (C) Nos.20387-97/2009,
Civil Appeal No.694/2010 @ S.L.P. (C) No.2619/2009,
Civil Appeal No.695/2010 @ S.L.P. (C) No.21776/2009,
Civil Appeal No.696/2010 @ S.L.P. (C) No.1318/2009,
C.A. Nos.697-698/2010 @ S.L.P. (C) Nos.24014-15/2009,
Civil Appeal No.699/2010 @ S.L.P. (C) No.2860/2009,
Civil Appeal No.700/2010 @ S.L.P. (C) No.2861/2009,
Civil Appeal No.701/2010 @ S.L.P. (C) No.1397/2009,
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Civil Appeal No.702/2010 @ S.L.P. (C) No.30253/2009,
Civil Appeal No.704/2010 @ S.L.P. (C) No.31384/2009,
Civil Appeal No.705/2010 @ S.L.P. (C) No.19636/2008,
Civil Appeal No.706/2010 @ S.L.P. (C) No.8160/2009,
Civil Appeal No.707/2010 @ S.L.P. (C) No.32047/2009,
Civil Appeal No.708/2010 @ S.L.P. (C) No.32048/2009,
Civil Appeal No.709/2010 @ S.L.P. (C) No.32049/2009,
Civil Appeal No.710/2010 @ S.L.P. (C) No.32986/2009,
Civil Appeal No.711/2010 @ S.L.P. (C) No.32984/2009,
Civil Appeal No.712/2010 @ S.L.P. (C) No.32983/2009,
Civil Appeal No.713/2010 @ S.L.P. (C) No.27427/2008,
Civil Appeal No.714/2010 @ S.L.P. (C) No.33745/2009,
Civil Appeal No.715/2010 @ S.L.P. (C) No.33760/2009,
Civil Appeal No.716/2010 @ S.L.P. (C) No.34098/2009,
Civil Appeal No.717/2010 @ S.L.P. (C) No.34739/2009,
Civil Appeal No.718/2010 @ S.L.P. (C) No.34738/2009,
Civil Appeal No.719/2010 @ S.L.P. (C) No.34749/2009,
Civil Appeal No.720/2010 @ S.L.P. (C) No.34748/2009,
Civil Appeal No.721/2010 @ S.L.P. (C) No.35947/2009,
Civil Appeal No.722/2010 @ S.L.P. (C) No.35607/2009,
Civil Appeal No.723/2010 @ S.L.P. (C) No.35609/2009,
Civil Appeal No.724/2010 @ S.L.P. (C) No.35611/2009,
Civil Appeal No.725/2010 @ S.L.P. (C) No.35612/2009,
Civil Appeal No.731/2010 @ S.L.P. (C) No.634/2010,
Civil Appeal No.732/2010 @ S.L.P. (C) No.664/2010,
Civil Appeal No.733/2010 @ S.L.P. (C) No.662/2010,
Civil Appeal No.734/2010 @ S.L.P. (C) No.663/2010,
Civil Appeal No.735/2010 @ S.L.P. (C) No.1120/2010,

Civil Appeal No.736/2010 @ S.L.P. (C) No.1706/2010,
Civil Appeal No.737/2010 @ S.L.P. (C) No.6742/2009,
Civil Appeal No.738/2010 @ S.L.P. (C) No.6994/2009,
Civil Appeal No.739/2010 @ S.L.P. (C) No.7003/2009,
Civil Appeal No.740/2010 @ S.L.P. (C) No.7006/2009,
Civil Appeal No.741/2010 @ S.L.P. (C) No.7007/2009 and
Civil Appeal No.744/2010 @ S.L.P. (C) No.12209/2009.

O R D E R

Delay condoned.

Leave granted in special leave petitions.

Having heard learned counsel at length on the applicability of Section 40A(2) of the Income Tax Act,

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1961, as it stood at the relevant time, we are of the view that large number of questions have remained unanswered in these cases.

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.

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

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the Income Tax Act, 1961; and whether such differential payment would, applying the real income theory, constitute an expenditure or distribution of profits?"

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

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

.....J.
[S.H. KAPADIA]

.....J.
[H.L. DATTU]
New Delhi,
January 20, 2010.