

Circular No. 14 of 2023

F. No.370133 /8/2023-TPL
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Direct Taxes)
(TPL Division)

Dated: 27th July, 2023

Sub: Standard Operating Procedure (SOP) for making application for recomputation of total income of a co-operative society engaged in the business of manufacture of sugar, as provided for in the sub-section (19) of section 155 of the Income-tax Act, 1961 - reg.

Sugar factories operating in the co-operative sectors in certain States of India pay to sugarcane growers a final amount, often referred to as Final Cane Price (FCP) which is over and above the Statutory Minimum Price (SMP) fixed by the Central Government under the Sugarcane Control Order, 1996.

2. The payment of FCP by the co-operative sugar factories over and above the SMP for purchase of sugarcane had resulted into tax litigation. The co-operative sugar factories were claiming this excess payment as business expenditure whereas the same has been disallowed in the assessment on the ground that the excess price paid for purchase of sugar cane over and above SMP is in the nature of appropriation/distribution of profit and hence not allowable as deduction.

3. In order to provide certainty in this matter and to encourage co-operative movement in sugar sector, a new clause (xvii) was inserted to amend sub-section (1) of section 36 of the Income-tax Act (hereinafter referred to as 'Act') to provide that the amount paid for purchase of sugarcane by the co-operative societies engaged in the manufacture of sugar at a price which is equal to or less than the price fixed by or fixed with the approval of the Government shall be allowed as deduction for computing business income of the sugar co-operative factories. The said amendment came into force through the Finance Act 2015 w.e.f. 01.04.2016 and was applicable from A.Y. 2016-17 onwards. Pending demands and litigation still persisted in respect of AYs prior to 2016-17.

4. Therefore, to conclude the matter logically and to extend the benefit of the abovementioned relief to all the applicable years, section 155 of the Act has been amended to insert a new sub-section (19) vide Finance Act, 2023, w.e.f. 01st April 2023. It provides that in the case of a sugar mill cooperative, where any deduction in respect of any expenditure incurred for the purchase of sugarcane has been claimed by an assessee and such deduction has been disallowed wholly or partly in any previous year commencing on or before the 1st day of April, 2014, the Assessing Officer shall, on the basis of an application made by such assessee in this regard, recompute the

total income of such assessee for such previous year. The Assessing Officer shall allow such deduction to the extent such expenditure is incurred at a price which is equal to or less than the price fixed or approved by the Government for that previous year. Also, it provides that the provisions of section 154 of the Act shall, so far as may be, apply thereto, and the period of four years specified in sub-section (7) of said section 154 shall be reckoned from the end of previous year commencing on the 1st day of April, 2022.

5. In order to standardize the manner of filing application to the Jurisdictional Assessing Officer under sub-section (19) of section 155 of the Act and its disposal by the Jurisdictional Assessing Officer under the said section, following SOP has been outlined.

(a) The applicant must be a “co-operative society”, as defined in sub-section (19) of section 2 of the Income-tax Act, engaged in the business of manufacturing of sugar. The co-operative society (referred to as “such co-operative society” hereinafter) seeking relief under sub-section (19) of section 155 of the Act should file an application to the Jurisdictional Assessing Officer.

(b) The application by such co-operative society can be filed for AY 2015-16 or any earlier assessment year (AY).

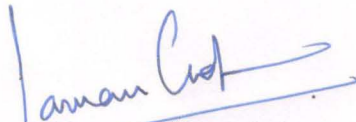
(c) The Jurisdictional Assessing Officer may seek the following documents for the purpose of recomputation under sub-section (19) of section 155 of the Act:

- i) Computation of tax, audit report u/s. 44AB of the Act, audited Profit & Loss Account and Balance Sheet.
- ii) Assessment Order/Appellate Order(s) of various appellate fora, as applicable, with respect to the disallowance made on account of excess price paid for purchase of sugarcane above the Statutory Minimum Price (SMP).
- iii) Notice of Demand issued under section 156 of the Act.
- iv) Challan of taxes paid, if any.
- v) Copy of Order(s)/Other legal instrument(s) regarding price fixation by Government based on which excess price was paid for purchase of sugarcane over and above Statutory Minimum Price (SMP).
- vi) Documentary evidence regarding registration of co-operative society under State/Central Act.
- vii) Any other document as considered necessary by the Jurisdictional Assessing Officer for the purposes of recomputation of total income under sub-section (19) of section 155 of the Act.

(d) The Jurisdictional Assessing Officer shall recompute the total income of such co-operative society under the provisions of sub-section (19) of section 155 read with section 154 of the Act. Further, the rectification under sub-section (19) of section 155 r.w.s. 154 of the Act can only be made till 31.03.2027.

(e) The Jurisdictional Assessing Officer shall pass an order under s. 155(19) r.w.s. 154 of the Act within a period of six months from the end of the month in which the application is received by him.

6. Hindi version to follow.


(Raman Chopra)
Joint Secretary (TPL)-II

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Joint Secretary (TPL)-II