HC-KAR
CNR: KAHC010437462026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF OCTOBER, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

INCOME TAX APPEAL NO. 105 OF 2026

BETWEEN:

1. THE PR. COMMISSIONER OF
INCOME-TAX CENTRAL
3RD FLOOR
C.R. BUILDING
QUEEN'S ROAD
BENGALURU - 560 001

2. THE DEPUTY COMMISSIONER
OF INCOME-TAX
CENTRAL CIRCLE-3(2)
BENGALURU - 560 001

…APPELLANTS

(BY SRI E.I. SANMATHI, ADVOCATE)

Digitally signed by VEERENDRA KUMAR K M
Location: High Court of Karnataka

AND:

1. M/S. NSL SUGARS LIMITED
NO.60/1, 2ND CROSS
MUSEUM ROAD
BENGALURU - 560 025

…RESPONDENT

(BY SMT. TANMAYEE RAJKUMAR, ADVOCATE)

THIS ITA IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, PRAYING TO ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE INCOME-TAX APPELLATE TRIBUNAL, BENGALURU IN IT(TP)A NO.2615/Bang/2024 DATED 08.01.2026 FOR ASSESSMENT YEAR 2021-2022 ANNEXURE-A AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE -3(2) BENGALURU & ETC.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MRS. JUSTICE K.S. HEMALEKHA

ORAL JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. The Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 [**the Act**] assailing the order dated 08.01.2026 passed by the learned Income Tax Appellate Tribunal [**ITAT**] in IT(TP)A No.2615/Bang/2024 preferred by the respondent, M/s NSL Sugar Limited [**the Assessee**], in respect of the assessment year [**AY**] 2021-22.

2. The Revenue has projected the following questions for consideration of this Court:

"1. Whether under the facts and circumstances of the case and in law, the Tribunal is right in directing the TPO to accept the transfer price of bagasse adopted by the respondent assessee, without considering that the CERC tariff order for Financial Year 2021-22 was based on contemporaneous market data and demand-supply analysis?

2. Whether under the facts and circumstances of the case and in law, the Tribunal has not erred in taking a self-contradictory approach in directing the TPO to accept the ALP of bagasse based on KERC tariff order for Financial Year 2018 while rejecting the CERC tariff order for Financial Year 2021 without establishing the greater comparability of KERC tariff as per the provisions of section?

3. Whether under the facts and circumstances of the case and in law, the Tribunal is right in disregarding the CERC tariff order, which is a credible and authoritative benchmark for fuel cost of bagasse, and instead relying upon the computation made based on FRP of sugarcane, which is only an estimate?

4. Whether under the facts and circumstances of the case and in law, the Tribunal is right in accepting the transfer price of the respondent, despite the TPO having relied on credible, authoritative, and contemporaneous data?

5. Whether under the facts and circumstances of the case and in law, the Tribunal ought to have carried out a fresh analysis as per the provisions of section 92 to 92C of Income Tax Act, 1961 and Rule 10B and 10C of Income Tax Rules, 1962 in the case of the respondent assessee?

6. Whether under the facts and circumstances of the case and in law, the Tribunal is right in holding that the write-off of loans/advances to the

Ghanaian subsidiary constituted expenditure for commercial expediency allowed the deduction u/s 37 of the Act, when the payments were made to vendors of the subsidiary and bore no nexus to the assessee's own business?

7. Whether under the facts and circumstances of the case and in law, the Tribunal is right in holding that the write-off of loans/advances to the Ghanaian subsidiary constituted expenditure for commercial expediency allowed the deduction u/s 37 of the Act, when the amounts were recorded as loans/advances, evidencing financial support rather than business expenditure?

8. Whether under the facts and circumstances of the case and in law, the Tribunal is right in holding that the write-off of loans/advances to the Ghanaian subsidiary constituted expenditure for commercial expediency allowed the deduction u/s 37 of the Act, when the assessee failed to secure RBI approval, rendering the write-off procedurally deficient?

9. Whether under the facts and circumstances of the case and in law, the Tribunal is right in holding that its earlier decision in ITA No.772/Bang/2019 (AY 2013-14) had attained finality, merely because no further appeal was filed, despite the fact that non-filing was only due to low tax effect and not acceptance of the merits?

10. Whether under the facts and circumstances of the case and in law, the Tribunal is right in holding that the harvesting and transportation charges paid by the assessee to harvesters/contractors does not constitute payments under a contract attracting deduction of tax at source under Section 194C of the Income-tax Act?

11. Whether under the facts and circumstances of the case and in law, the Tribunal is right in treating harvesting charges paid to contractors as part of

> purchase cost of sugarcane, when in law such charges are distinct contractual payments and cannot be merged with purchase cost payable to farmers?"

3. The first five questions relate to transfer price adjustment, which, according to the learned Transfer Pricing Officer [**TPO**], was required in respect of the specified domestic transactions.

4. Questions No.6, 7 and 8 relate to the write-off of loans and advances to the Assessee's Ghanaian Subsidiary under Section 37 of the Act.

5. Questions No. 10 and 11 relate to whether the Assessee was required to deduct tax at source under Section 194C of the Act in respect of payments made to harvesters and transporters for harvesting and transportation of sugar cane purchased by the Assessee.

6. These questions arise in the following context.

6.1 The Assessee is a company, inter alia, engaged in manufacturing sugar. It also generates electricity for its captive use and exports the balance power to electricity

distribution companies under the Power Purchase Agreements [**PPA**] entered into between them.

6.2 The Assessee filed its return of income for the AY 2021-22 on 11.03.2022 declaring the total income as Nil. It had returned business income of ₹31,13,34,484/-, but it claimed brought forward loss of ₹12,42,03,008/- and also claimed deduction of ₹18,71,31,476/- under Chapter VI-A of the Act.

6.3 Initially, the Assessee's return was processed under Section 143(1) of the Act, and its total income was adjusted to ₹74,76,43,780/-. The Assessee had claimed deduction under Section 80-IA of the Act to the extent of ₹18,71,31,476/-. However, the Centralised Processing Centre [**CPC]** admitted the same to the extent of ₹8,78,03,700/- as reflected in the original Form 10CCB filed by the Assessee.

6.4 The Assessee filed an appeal against the intimation dated 22.09.2022 before the Commissioner of Income Tax (Appeals) [**CIT(A)**]. The CIT(A) allowed the same by an order dated 29.02.2024.

6.5 In the meanwhile, the return filed by the Assessee was selected for scrutiny and Assessing Officer **[AO]** issued a notice dated 28.06.2022 under Section 143(2) of the Act. Since there was a specified domestic transaction involving the supply of Bagasse from the sugar manufacturing unit to the electricity generation unit, the AO made a reference to the TPO for determination of the arm's length price [**ALP**] of the specified domestic transaction. The learned TPO passed an order dated 27.10.2023 under Section 92CA of the Act, determining the transfer pricing adjustment at ₹30,77,53,817 in respect of the specified domestic transaction. The AO accordingly added the said amount and passed a draft assessment order under Section 144-C of the Act.

6.6 The AO made an addition of ₹3,79,70,871/-, which was the amount reflected as loan/advances extended by the Assessee to its wholly owned subsidiary in Ghana, NSL Sugars & Industries Ltd. **[the Ghana Subsidiary**].

6.7 The Assessee had written off the said loans in its profit and loss Account. However, the AO disallowed the same on the

ground that the Assessee had failed to establish that the same was only for the purposes of its business.

6.8 In addition to the above, the learned AO also disallowed an amount of ₹12,39,31,392 under Section 40(a)(ia) of the Act being 30% of the amount of ₹41,31,06,305/-, which was paid by the Assessee towards harvesting and transportation charges for sugarcane.

6.9 The AO found that the Assessee had not deducted any tax at source [**TDS**] under Section 194C of the Act. Thus, according to the AO, 30% of the harvesting and transportation charges debited to the profit and loss account was liable to be disallowed under Section 40(a)(ia) of the Act.

6.10 The Assessee filed objections before the Dispute Resolution Panel [DRP] against the transfer pricing adjustment which was premised on the rate of raw material as notified by the Central Electricity Regulatory Commission [**CERC**] for determining the transfer price. The DRP did not accept the

Assessee's contention and held that the Assessee failed to substantiate that adopting the Bagasse fuel price as determined by CERC skewed the cost of production of sugar. Accordingly, the DRP directed the TPO to adopt the Bagasse fuel price adopted by CERC for determining the ALP.

6.11 In respect of the write-off of loans to the Ghana Subsidiary, the DRP rejected the Assessee's objection on the ground that the Assessee had not paid the amounts, which were written off, as investment in the form of equity, but had paid the said amounts directly to the vendors of the subsidiary. The said payments were in the nature of professional charges, accountancy charges, audit fees, and guest house rent, etc., and there was no commercial expediency in paying the said amounts to the vendors of the Ghana Subsidiary. The DRP also rejected the Assessee's objection regarding disallowance of the amounts paid by the Assessee as harvesting and transportation charges, on the ground that the Assessee had not been consistent in its stand and had

failed to produce documentary evidence to establish that TDS had been deducted on the said payments.

6.12 The Assessee preferred an appeal before the learned ITAT which was partly allowed. The learned ITAT held that adopting the CERC tariff to determine the transfer price of bagasse from the sugar division to the power division would lead to an unrealistic picture of the cost of production. The learned ITAT accepted that the price of ₹1,500/- per ton adopted by the Assessee was reasonable and satisfied the arm's length basis.

6.13 In regard to the write off of the loans and advances, the learned ITAT held that the write-off of ₹3,79,70,871/- representing the loans and advances given to the Ghana Subsidiary was a business loss incurred on account of commercial expediency and thus, was allowable as a deduction under Section 37(1) of the Act.

6.14 The learned ITAT also accepted the Assessee's contention that the disallowance of the amount of ₹12,39,31,392/-

under Section 40(a)(ia) of the Act, in respect of the amount of ₹41,31,06,305/- paid as harvesting and transportation charges, did not arise as the said amounts were not claimed as a separate expenditure in the profit and loss account but were adjusted against the purchase price of sugarcane and were treated as a part of the cane purchase cost. The learned ITAT held that the Assessee had merely facilitated such payments on behalf of the farmers and the same were ultimately adjusted against the price of sugarcane payable to the farmers.

7. The Assessee also raised other issues before the learned ITAT; however, the same are not relevant for the purposes of the present appeal. As noted at the outset, the questions projected by the Revenue are confined (i) to determination of ALP of bagasse for transfer pricing adjustment, if any; (ii) write-off of loans and advances to the Ghana Subsidiary; and (iii) disallowance of amounts paid for harvesting and transportation charges.

Transfer pricing adjustment for supply of Bagasse

8. The Assessee had charged ₹1,500/- per ton of bagasse which was supplied to the power division. It claimed that the said price was on an arm's length basis. The Assessee had also sold bagasse to a third party at the rate of ₹1,200/- per ton. The learned TPO did not accept the said contention and determined the ALP on the basis of the CERC tariff order, which had specified the fuel cost of bagasse at ₹2,274/- per ton for the states other than the seven specified states and at ₹2,632/- per ton for the State of Maharashtra. The learned TPO adopted the rate of ₹2,274/- per ton for the bagassee supplied by the Aland unit in Karnataka and ₹2,632/- per ton for the bagasee supplied by the Jay Mahesh Unit in Maharashtra. Accordingly, the learned TPO directed an addition of ₹30,77,53,817/- to the total income of the Assessee as an adjustment on account of transfer pricing adjustment. The sales made by the Assessee to a third party were not considered for benchmarking the specified domestic transaction because the said sales were effected on only two dates. The learned TPO found that the said sales were not reliable.

9. The Assessee had produced the study by the Energy and Resources Institute under the aegis of the Maharashtra Electricity Regulatory Commission, which recognised the following six possible methods for determining the value of bagasse: (i) coal equivalent method; (ii) alternate fuel GCV equivalent method; (iii) market value method; (iv) split-off cost method; (v) preferential tariff-based calculation; and (vi) production cost method. The learned ITAT accepted that the price of bagasse would vary with the method adopted, and that the ALP would involve judgment based on the facts of the present case.

10. Bagasse is a by-product arising from the manufacture of sugar. This by-product is generated in-house and consumed by the co-generation power unit. The Assessee obtained quotations from unrelated third parties, and the learned ITAT found that they demonstrated that bagasse was available in the open market at the price adopted by the Assessee. The learned ITAT also noted that the Karnataka Electricity Regulatory Commission [**KERC**], while determining the tariff, had accepted the cost of bagasse of ₹1,161.28 per ton. The learned TPO rejected this cost on the

ground that the KERC's tariff order was made in 2018. The learned ITAT faulted the learned TPO for rejecting it on that ground. Although the tariff order was passed in 2018, the prescribed price of ₹1,161.28 per ton was duly adjusted for the variation in the relevant financial year. Thus, the fact that KERC had passed the tariff orders a few years earlier was not relevant, considering that the price of bagasse as used was the projected price for determining the tariff applicable for the relevant year.

11. Additionally, the Assessee presented calculations based on the 'Fair and Remunerative Price' **[FRP]** of sugarcane. The FRP for the financial year 2020-211 was ₹2,850/- per ton, and it is found that about 280 to 300 kgs. of bagasse is generated from one ton of sugarcane. On this basis, the learned ITAT reasoned that the cost of bagasse would be approximately ₹855/- per ton, and the transfer price of ₹1,500/- was significantly higher.

12. Concededly, in so far as the Aland unit situated in the State of Karnataka is concerned, the CERC tariff may not be relevant, as the tariff fixed by the KERC applies. The bagasse price of ₹2,274/- per ton was used by CERC in calculating the tariff for the rest of

India, excluding seven States (including Maharashtra) for which separate prices were used. However, the KERC tariff was applicable to the State of Karnataka.

13. The learned ITAT's decision to accept the transfer price of ₹1,500/- per ton of bagasse is supported by cogent material. The learned ITAT's finding that the price of bagasse used by CERC for tariff determination cannot be considered determinative of ALP, in light of the material produced by the Assessee, cannot be faulted. There is no ground to hold that the learned ITAT's decision disregards the principles for determining ALP under the Act or the Rules made thereunder. Thus, no substantial question of law arises from the learned ITAT's decision to accept ₹1,500/- per ton as the ALP of bagasse.

Addition of ₹3,79,70,871/- on account of loans and advances written off

14. The Assessee had made payments to various vendors of the Ghana Subsidiary during the financial year 2012-13. Concededly, the said payments were made on behalf of the Ghana subsidiary, and included professional charges, charges for accounting

services, audit fees, guest house rent and other such payments. The Assessee wrote off the said amount as it had become irrecoverable. The Assessee explained that its Ghana subsidiary was incurring losses from its inception and thus was finally wound up. The learned AO did not accept that the said payments were on account of any commercial expediency and accordingly added the amount which was written off to the Assessee's total income.

15. As noted above, the Assessee is in the business of manufacturing sugar. It explained that to extend its business overseas, it incorporated a wholly owned subsidiary in Ghana. The Assessee had supported the operations in the initial years by making payments directly to consultants, professionals, and other vendors of the Ghana Subsidiary. The Assessee explained that these payments were for its business, as the Ghana Subsidiary was its extended arm. The Ghana Subsidiary had incurred continuous losses and finally closed its operations and was wound up. The amounts thus spent by the Assessee in the initial years, which were reflected as loans and advances given to the Ghana Subsidiary had become irrecoverable. Accordingly, the Assessee

claimed that this was a business loss under Section 37(1) of the Act. The DRP had rejected the Assessee's claim on the ground that the Assessee had not made investments in the form of equity in its subsidiary, but had made payments to the vendors of the Ghana Subsidiary. The DRP concluded that this was not a case of investment in the Ghana Subsidiary and, therefore, inferred that there was no commercial expediency for the parent company to pay the subsidiary's vendors directly. The relevant extract of the DRP's order is set out below:

> "**3.3** On perusal of the submissions of the assessee and the comments of the AO in the remand report and the rejoinder filed by the assessee, the Panel is of the opinion that the as the assessee has not directly made investments in the form of equity in its subsidiary but has paid to the vendors of the subsidiaries and the payments are in the nature of professional charges, accountancy charges, Audit fees and guest house rent. It is not a case of investment in the subsidiary and hence it can be inferred that there is no commercial expediency for the Parent company to pay off the vendors of the subsidiary directly. Hence the assessee's contention that it is a business loss is not acceptable. **Grounds rejected**."

16. Plainly, the DRP's reasoning is unsustainable. Although the Assessee had made payments directly to vendors of the Ghana Subsidiary, there is no dispute that the said payments were on

behalf of the Ghana Subsidiary. Therefore, the amounts were reflected in the books of the Assessee as loans and advances to the Ghana subsidiary and not booked in the profit and loss account. The conclusion that, because payments were made directly to the vendors of the Ghana Subsidiary, there was no commercial expediency for the Assessee to make the payments is without basis. The principal question is whether the Ghana Subsidiary was an extension of the Assessee's business, as claimed, and whether the amounts were paid to support that business. The Ghana Subsidiary was incorporated to manufacture sugar, which is the core business of the Assessee. There is no material on record which indicates that the said payments were made for reasons other than to support the Ghana Subsidiary. The learned ITAT had rightly referred to the decision of the Co-ordinate Bench of this Court in **ACE Designers Limited vs. Additional Commissioner of Income Tax**[1] and accepted the Assessee's contention. In that decision, the Court accepted that loss of investment in a wholly owned subsidiary related to its business operations was a business loss.

[1] [2020] 120 taxmann.com 321 (Karnataka)

17. In **S.A. Builders Ltd. vs. Commissioner of Income-tax (Appeals), Chandigarh[2],** the Supreme Court had explained as under:

> "22. In our opinion, the decisions relating to Section 37 of the Act will also be applicable to Section 36(1)(*iii*) because in section 37 also the expression used is "for the purpose of business". It has been consistently held in decisions relating to section 37 that the expression "for the purpose of business" includes expenditure voluntarily incurred for commercial expediency, and it is immaterial if a third party also benefits thereby.
>
> 23. Thus in *Atherton* v. *British Insulated & Helsby Cables Ltd.* (1925) 10 TC 155, it was held by the House of Lords that in order to claim a deduction, it is enough to show that the money is expended, not of necessity and with a view to direct and immediate benefit, but voluntarily and on grounds of commercial expediency and in order to indirectly facilitate the carrying on of the business. The above test in *Atherton's case,* (*supra*) has been approved by this Court in several decisions e.g. *Eastern Investments Ltd.* v. *CIT* [1951] 20 ITR 1, *CIT* v. *Chandulal Keshavlal & Co.* [1960] 38 ITR 601, etc.
>
> 24. In our opinion, the High Court as well as the Tribunal and other income-tax authorities should have approached the question of allowability of interest on the borrowed funds from the above angle. In other words, the High Court and other authorities should have enquired as to whether the interest-free loan was given to the sister company (which is a subsidiary of the assessee) as a measure of commercial expediency, and if it was, it should have been allowed.

[2] [2007] 288 ITR 1 (SC)

> 25. The expression "commercial expediency" is an expression of wide import and includes such expenditure as a prudent businessman incurs for the purpose of business. The expenditure may not have been incurred under any legal obligation, but yet it is allowable as a business expenditure, if it was incurred on grounds of commercial expediency."

18. In **Principal Commissioner of Income-tax vs. Vaibhav Global Ltd.[3],** the Division Bench of the Rajasthan High Court upheld the diminution in value of wholly owned subsidiary as a business loss under Section 37 of the Act.

19. The decision of **Vaibhav Global Ltd. (*supra*)** was followed by the Rajasthan High Court in a subsequent decision relating to the same assessee[4]. The Revenue preferred a special leave petition against the said decision, which the Supreme Court dismissed in **Principal Commissioner of Income-tax vs Vaibhav Global Ltd.[5]**

20. The learned ITAT had also referred to the decision of the Bombay High Court in **Commissioner of Income-tax vs. Colgate**

[3] [2022] 138 taxmann.com 506 (Raj.)
[4] [2023] 151 taxmann.com 114 (Rajasthan)
[5] [2023] 151 taxmann.com 115 (SC)

Palmolive (India) Ltd.[6] In the said case, the court had upheld the decision of the learned ITAT in allowing the losses from the sale of shares held by the assessee in its wholly owned subsidiary as a business loss.

21. Question No. 6, as projected by the Revenue, assumes that the payments made to the vendors of the subsidiary bore no nexus with the Assessee's business. This assumption is not supported by any material on record. On the contrary, the Assessee had explained that the Ghana Subsidiary was an extension of its business. It had established its wholly owned overseas subsidiary to extend its business overseas. It also explained that, in the initial period, it made payments directly to the vendors of the Ghana Subsidiary to support the subsidiary. There is no material to doubt the Assessee's claim that it had made the said payments for and on behalf of the Ghana Subsidiary for the purpose of its business.

22. In view of the above, we find no flaw in the learned ITAT's decision to allow the write off of loans and advances to the Ghana

[6] [2015] 59 taxmann.com 139 (Bombay)

Subsidiary under Section 37(1) of the Act. The question Nos.6, 7 & 8 are thus answered in the affirmative.

₹41,31,06,305/- paid towards harvesting and transportation charges

23. So far as questions No.10 and 11 are concerned, they relate to whether the Assessee was liable to deduct tax at source under Section 194C of the Act in respect of harvesting and transportation charges paid by the Assessee to the harvesters or the contractors.

24. According to the Revenue, the learned ITAT erred in treating the said charges as a part of the purchase cost of sugarcane, as the said payments were distinct contractual payments and could not be merged with the purchase costs payable to farmers.

25. The Assessee has produced the sample document reflecting the agreement with the farmers. The said document indicates that the concerned farmer had agreed to pay the harvesting charges to the harvester and had authorised the Assessee to deduct such payments from the amounts payable for supply of sugarcane.

26. The learned counsel appearing for the Assessee points out that it has never been the case of the Revenue that the charges paid to the contractors and harvesters were not a part of the purchase cost of sugarcane payable to the farmers. However, this is contested by the learned counsel for the Revenue. He submits that no enquiries were conducted in this regard as the Assessee had deducted tax at source in some cases. He submits that the question of whether the amounts paid to the transporter and the harvester were part of the purchase costs of sugarcane was not fully examined.

27. Concededly, if the amounts paid to the transporter and the harvester were part of the purchase cost of sugarcane payable to the farmers and were deducted from the payments made to the farmers, there would be no obligation on the part of the Assessee to deduct tax under Section 194C of the Act.

28. In the aforesaid view, we consider it apposite to remand the matter to the AO to examine whether the Assessee had, in fact, deducted the amounts paid to the contractors and the harvesters from the purchase price of sugarcane payable to the farmers.

29. If the AO concludes that the amounts paid to the transporter and harvester were not part of the purchase cost of sugarcane, the AO may also examine whether the Assessee deducted tax at source on the said payments, as claimed by the Assessee.

30. The appeal is disposed of in the aforesaid terms.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(K.S. HEMALEKHA)
JUDGE

KMV/AHB
List No.: 1 Sl No.: 4