

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “A” BENCH**

**(BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
& SHRI WASEEM AHMED, ACCOUNTANT MEMBER)**

आयकर अपील सं./I.T.A. No. 293/AHD/2014
(निर्धारण वर्ष / Assessment Year : 2009-10)

M/s. Frontline Corporation Ltd., 4 th Floor, Nehru Bridge Corner, Ashram Road, Ahmedabad – 380 009	बनाम/ Vs.	ACIT, Circle – 4, Ahmedabad.
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आयकर अपील सं./I.T.A. No. 999/AHD/2015
(निर्धारण वर्ष / Assessment Year : 2010-11)

DCIT, Circle – 2(1)(1), Ahmedabad.	बनाम/ Vs.	M/s. Frontline Corporation Ltd., 4 th Floor, Shalin Building, Ashram Road, Ahmedabad.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACF 2403 M		
(अपीलार्थी/ Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by :	Shri P. F. Jain, A.R.
Revenue by:	Shri S. K. Dev, Sr. D.R.

सुनवाई की तारीख/ Date of Hearing	07/08/2018
घोषणा की तारीख / Date of Pronouncement	15/10/2018

आदेश / O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeals have been filed at the instance of the assessee and Revenue against the separate orders of the Commissioner of Income Tax (Appeal)-VIII & 2, Ahmedabad [CIT(A) in short] vide appeal no. CIT(A)-VIII/DCIT/Cir.4/311/11-12 & CIT(A)-2/DCIT/Cir. 4/89/13-14 dated 13.11.2013 & 27.01.2015 arising in the matter of

- 2 -

assessment order passed under s.143(3) of the Income Tax Act, 1961(here-in-after referred to as "the Act") dated 12.12.2011 & 22.03.2013 relevant to Assessment Years (AYs) 2009-10 & 2010-11.

First we take up the appeal of the assessee in ITA No. 293/Ahd/2014 pertaining to the A.Y. 2009-10:

2. The grounds of appeal raised by the assessee are as under:-

- “1. *The learned CIT(A) has erred in law and on facts in upholding the disallowance of Rs.95,00,179/- from the expense relating to freight, Trip Bhattha & diesel without properly appreciating the facts, submission of the appellant having bearing for this year.*
2. *On the facts no such disallowance ought to have been made.*
3. *The appellant craves leave to add/ to alter and/ or modify and ground of appeal.”*

3. The only issue raised by the assessee is that Id CIT(A) erred in confirming the disallowance of Rs. 95,00,179/- on ad-hoc basis for the expenses relating to freight, Trip Bhatta and Diesel expenses.

4. Briefly stated facts are that the assessee is a limited company and engaged in the business of transportation, generation of power, trading of auto components and coal, manufacturing of refectories bricks. The assessee during the year has claimed following expenses:

Diesel Expenditure	Rs. 7,81,14,791/-
Trip Bhatta	Rs. 3,69,10,602/-
Freight payment	Rs. 17,62,65,264/-

- 3 -

4.1 The AO during the assessment proceedings observed that in earlier years the ITAT has confirmed the disallowance of the above expenditure @3.33% amounting to Rs. 95,00,179/- only. Accordingly, the AO proposed to make the disallowance of expenditure @3.33% in the year under consideration for the expenses as discussed above.

4.2 The assessee in compliance to it submitted that its books of accounts were duly audited by the Branch auditor/statutory auditor and tax auditors. There was no disallowance made on account of such expenses.

4.3 The assessee also claimed to have filed that the copy of account of diesel expenses and trip bhatta expenses for the verification along with sample copies of the supporting vouchers.

4.4 The assessee also submitted that the expense incurred on diesel has been increased mainly on account of hike in the rates by the Government. Therefore the diesel expenses were increased due to hike in the Government rate.

4.5 The expenses incurred on trips bhatta and freights were increased on account of two reasons, *firstly* hike in diesel price and *secondly*, there was no escalation clause in the agreement made with the parties.

- 4 -

4.6 The assessee further submitted that there is a decline in freight and trip bhatta expenses in terms of the ratio to the total transport operation income. The assessee in support of his claim produced a chart depicting the freight/ trip expenses in relation to transport operation income which is reproduced as under:

F. Y.	TRANSPORT OPERATION INCOME	Freight Payment	Trip Bhatta	Total Expenses	RATIO of expense to transport income (%)
2006-07	26,98,00,595	15,88,70,955	96,82,227	16,85,53,182	62.47
2007-08	20,40,75,260	11,11,67,564	1,14,80,023	12,26,47,587	60.10
2008-09	37,84,62,082	17,62,65,264	3,69,10,602	21,31,75,866	56.33

4.7 The assessee also submitted that the decline in the freight/ trip bhatta expenses in relation to transport operation income has resulted higher GP ratio. Accordingly, the assessee contended that disallowance of Rs. 68,98,956/- (written in the Assessment Order Rs. 70,98,756/-) will be on a very much higher side.

4.8 However, the AO disregarded the contention of the assessee by observing as under:

- i. There were only self generated vouchers signed by the driver, cleaners etc. There was no corroborative independent evidence in support of the expenses as discussed above. In most of the cases the expenses were incurred in cash.
- ii. The vouchers made for the diesel expenses did not contain the details of the number of kilometers travelled out of such diesel expenses.

- 5 -

- iii. In the year under consideration there is less number of trips in comparison to the earlier year. Accordingly, the expenses on trip bhatta should have come down substantially rather it has increased.
- iv. There was a great fall in the transportation income of the assessee. Accordingly the diesel expenses should have decreased.

In view of above, the AO made the disallowance @3.33% of freight/ trip bhatta expenses and diesel expenses amounting to Rs. 95,00,179/- and added to the total income of the assessee.

5. Aggrieved, assessee preferred an appeal to Id. CIT(A). The assessee before the Id. CIT(A) submitted as under:

- i. The AO has made the disallowance on ad-hoc basis for the expenses as discussed above. The aforesaid expenses were essential for the business of transport. Therefore no disallowance of such expenses can be made without any reasonable finding or cogent material.
- ii. There was not provided reasonable opportunity of being heard to the assessee before making the disallowance of the expenses as discussed above. Therefore, these expenses have been disallowed without any base, cogent material and finding. As such, all these expenses were incurred exclusively for the purpose of the business.
- iii. It is a fact on record that similar expenses were disallowed in the earlier years but that cannot be a basis to make the disallowance in each and every year. The situations of the business changes every year. Therefore, the same amount of percentage cannot be applied on blanket basis every year. The assessee in this regard further submitted that the expenses on

- 6 -

freight/ bhatta and diesel has comedown drastically and these factors have not been considered by the AO during the assessment proceedings.

- iv. It is settled law that once, the direct expenses reduce then the gross profit ratio increases in comparison to the gross receipts. As the GP ration has improved in the year under consideration on account of the decline in the expenses, then there is reason to make the further disallowance of the similar expenses.

However, the Id CIT(A) disregarded the contention of the assessee and confirmed the order of AO by observing as under:

“I have carefully considered the facts of the case, the assessment order and the written submission of the appellant. It is noted that the AO has made a disallowance of 3.33% of the trip bhatta and diesel expenses as it was noted by him that the expenses were incurred in cash and the vouchers prepared have no documentary evidence. It was also noted by the AO that similar disallowance made in earlier years were upheld by honourable ITAT at the rate of 3.33%. During the course of appellate proceedings, the appellant has given similar submission that has been given before the AO by mentioning that the ratio of diesel expenses and trip bhatta expenses have gone down. The AO has considered the submission of the appellant but since there was no proper documentary evidence in support of those expenses the disallowance was made.

After carefully considering all the aspects and facts it is noted that the facts remain the same as the nature of expenses and the evidence in support of the expenses are also similar in nature. The appellant could not put forward any reliable corroborative evidence to substantiate the expenses and to show that the vouchers prepared were genuine. Most of the payments were cash payments and diesel expenses are also not supported by linking it with the Kilometers travelled. In earlier years the disallowances were made on similar lines and the honorable ITAT, after considering all the facts and circumstances, restricted the disallowance to 3.33% of the expenses. The AO has made a disallowance of 3.33% which is judicial and in accordance with the direction of honorable ITAT. The disallowance made by the AO is therefore, upheld.

- 7 -

The ground of appeal is accordingly, dismissed.”

Being aggrieved by the order of Id. CIT(A) assessee is in appeal before us.

6. The Id AR before us filed a paper book which is running from pages 1-82 and submitted as under:

“This issue has arisen in earlier years and every time the findings of CIT(appeals) has been upheld and appeal of the assessee and of Department has been dismissed . In A.Y. 2010-11 the CIT(appeals) has modified the disallowance from 3.3% to 1.11%. The finding of the ITAT for various years is summarized below:

- *AY.2001-02 and 2004-05 - ITA No. 1091/And/2005 and ITA No.4258/Ahd/2007:-*

In AY.2001-02 There was disallowance of Rs.2,00,000/- out of Diesel Expenses out of Rs.9,44,717/- out of Trip and Bhatta upheld by the CIT(A) restricted disallowance to Rs.2,00,000/- out of total of 4,00,044/-and disallowance of Rs.9,44,717/- @10% of total expenditure was upheld by the CIT(A) which was upheld by the ITAT. (relevant paper book page no.15to 17)

For AY.2004-05 the CIT(A) restricted the disallowance to 1/3 (3.33%) of the total disallowance towards Diesel, Trip and Bhatta expenses as against 10% disallowed by the AO. The finding of the CIT(A) upheld and appeals of assessee and revenue dismissed by the ITAT. refer to page no. 17,18 and finding on page 20 (para 22 of order of ITAT).

- *The AY.2003-04 : There was disallowance of Rs.29,68,000/- out of Diesel Expenses and Trip, Bhatta Expenses which was restricted to Rs. 10,00,000/- by the CIT(A) (2.70%). Both the assessee and department filed appeal. The disallowance by the AO was 8% of the total expenses and the order of CIT(A) upholding disallowance to the extent of 2.70% was confirmed by the ITAT and both the appeals dismissed, (refer to paper book page no.37, para 7 of order of ITAT for AY.2003-04)*

- 8 -

- *AY.2006-07 : Appeal by department against order of CIT(A) restricting addition to @3.33% as against 10% made by the AO. The appeal of the department dismissed and finding of CIT(A) confirmed.*
- *AY.2008-09 : The appeal by the assessee against the order of CIT(A) restricting the disallowance @3.33% as against 10% made by the AO was dismissed, distinguishing the disallowance of 1.11% sustained in AY.2010-11 by the CIT(A). (refer to paper book page no.54 & 55)*
- *AY.2010-11 : CIT(A) modified the disallowance 1.11% against which appeal has been filed by the department. Finding of the CIT(A) recorded in para 5.3-page no.10 to 12 of the order of CIT(A).*

7. On the other hand, the Id. DR submitted that similar disallowance was made in the earlier years by the authorities below and the same was confirmed by the Hon'ble ITAT. Therefore the same disallowance should be sustained. The Id DR vehemently supported the orders of authorities below.

8. We have heard the rival contentions and perused the materials available on record. In the instant case, the disallowance was made by the AO of the expenses as discussed above @3.33% on the ground that similar disallowance was made in the earlier years which was subsequently confirmed by the Hon'ble ITAT. The view taken by the AO was also confirmed by the Id CIT(A).

From the details filed by the Assessee we note that there is decline in the expenses incurred on freight/ trip bhatta expenses in relation to the transport income as evident from the chart discussed above. It is beyond

- 9 -

doubt that the direct expenses in relation to transport income in terms of the ratio are decreasing on year to year basis resulting the better GP ratio to the assessee.

8.1 There is no statutory provision under the statute to make the disallowance of the expenses if these were disallowed in the earlier years. In the case before us the disallowance has been made due to following reasons.

- i. ITAT has confirmed the disallowance in the earlier year.
- ii. There was no external supporting vouchers/ evidences in support of freight/ trip bhatta expenses.
- iii. There was no detailed mention on the voucher of diesel expenses with regard to the number of kilometer travelled/ covered out of such diesel expenses.
- iv. The expenses were incurred in cash.
- v. In the given facts and circumstances we are of the view that on many occasion the corroborative expenses in support of the expenditure claimed by the assessee are not available, specially in the case of freight/ trip bhatta expenses. It is because these expenses include the payment made to the drivers for their foods and lodging expenses which are supposed to be incurred during the journey. In such kind of cases, the external supporting expenses might not be available. Therefore, there cannot be a permanent parameter for making the disallowance of such expenses.

8.2 It is undisputed fact that the GP ration of the assessee has increased/ improved in comparison to the earlier years which implies that the direct expenses of the assessee have come down. Therefore if further

- 10 -

disallowance is made for the aforesaid expenses will certainly result loss to the assessee.

8.3 Moreover, there is no statutory provision prescribed under the Act to make the disallowance of the expenses at the same rate at which these were disallowed in the preceding assessment years on year to year basis. As in the case before us the situation has changed i.e. the gross profit of ratio of the assessee has increased on account of declined in the cost of the direct expenses. Therefore we are reluctant to apply the same rate of disallowance made in the earlier years which was subsequently confirmed by the Id CIT(A). Considering the fact in totality, we are also of the view that the possibility of leakage from the expenses as discussed above in the absence of documentary evidence cannot be ruled out. Thus in the interest of the justice we are of the view that the disallowances @1.11% of the aforesaid expenditure will be just and reasonable in the given facts and circumstances. Accordingly we direct the authorities below to make the disallowance @1.11% of the expense as discussed above. Hence the ground of appeal of the assessee is **partly allowed**.

**Now we take up the appeal of the revenue in ITA No. 999/Ahd/2015
pertaining to the A.Y. 2010-11:**

9. Revenue has raised following grounds of appeal:

- 11 -

- “1. The learned CIT(A) has erred in law and on facts in restricting the disallowance (on diesel, Freight, Trip and Bhatta charges) to 1-11% of Total Expenses instead of the 3.33% made by the AO.
2. On the facts and in the circumstances of the case, the ld CIT(A) ought to have upheld the order the AO.
3. It is therefore, prayed that the order of the Ld CIT(A) may be set aside and that of the AO may be restored to the above extent.”

10. The only issue raised by the Revenue in this appeal is that ld CIT(A) erred in reducing the disallowance made by the AO from 3.33% to 1.11% of the expenses namely diesel, freight/ trip bhatta charges.

11. At the outset, we note that in the identical facts and circumstances we have confirmed the disallowances made by the AO @1.11% in ITA No.293/Ahd/2014 vide para no. **8-8.3** of this order. Respectfully, following the same we do not want to disturb the finding of the ld CIT(A). Hence, the ground of appeal of the Revenue is dismissed.

12. In the result, appeal filed by the assessee is **partly allowed** and filed by the revenue is **dismissed**.

This Order pronounced in Open Court on

15/10/2018

Sd/-

**(RAJPAL YADAV)
JUDICIAL MEMBER**

Sd/-

**(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated 15/10/2018
Priti Yadav, Sr.PS

- 12 -

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-VIII & 2, Ahmedabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण / DR, ITAT,
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

True Copy

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad