

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**RAJKOT BENCH, RAJKOT**

[Conducted through E-Court at Ahmedabad]

**(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER  
& SHRI WASEEM AHMED, ACCOUNTANT MEMBER)**

**ITA. No: 154 & 243/RJT/2015  
(Assessment Year: 2009-10)**

<b>M/s. Gujarat Sidhee Cement Ltd., Sidheegram, Veraval-Kodinar Road, veraval-362276</b>	<b>V/S</b>	<b>The Joint Comm. of Income tax, Junagadh Range-1, Junagadh</b>
<b>The ACIT, Junagadh Circle, Junagadh</b>	<b>V/S</b>	<b>M/s. Gujarat Sidhee Cement Ltd., Sidheegram, Veraval-Kodinar Road, veraval-362276</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

**ITA. No: 119/RJT/2016  
(Assessment Year: 2011-12)**

<b>M/s. Gujarat Sidhee Cement Ltd., Sidheegram, Veraval-Kodinar Road, veraval-362276</b>	<b>V/S</b>	<b>The Joint Comm. of Income tax, Junagadh Range-1, Junagadh</b>
	<b>V/S</b>	
<b>(Appellant)</b>		<b>(Respondent)</b>

**ITA. No: 408/RJT/2016  
(Assessment Year: 2013-14)**

<b>The Dy. Comm. of Income</b>	<b>V/S</b>	<b>M/s. Gujarat Sidhee</b>
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<b>tax, Junagadh Circle, Junagadh</b>	V/S	<b>Cement Ltd., Sidheegram, Veraval-Kodinar Road, veraval-362276</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

**ITA. No: 470/RJT/2016**  
**(Assessment Year: 2014-15)**

<b>The Dy. Comm. of Income tax, Junagadh Circle, Junagadh</b>	V/S	<b>M/s. Gujarat Sidhee Cement Ltd., Sidheegram, Veraval-Kodinar Road, veraval-362276</b>
<b>(Appellant)</b>	V/S	<b>(Respondent)</b>

**PAN: AAACG 8057G**

<b>Appellant by : Shri Jitendra Kumar, CIT/DR</b>
<b>Respondent by : Shri Vimal Desai</b>

**(आदेश)/ORDER**

Date of hearing : 26-03-2019  
Date of Pronouncement : 25-04-2019

**PER MAHAVIR PRASAD, JUDICIAL MEMBER**

1. These five cross appeals have been filed by the Assessee and the Revenue against each other. First we would like to take up appeal in ITA No. 154/Rajkot/2015 for Assessee's appeal. The assessee has taken following grounds of appeal:

1. *The learned Assessing Officer has erred in law as well as on facts in making disallowance of Rs. 14,36,355/- out of gift expenses on account of alleged non business purpose and the CIT(A) has erred in confirming the same to the extent of Rs. 5,02,725/-.*
2. *The learned Assessing Officer has erred in law as well as on facts in making disallowance of foreign travelling expenses of Rs. 26,30,000/- on account of alleged non business purpose and the CIT(A) has erred in confirming the same.*
3. *The learned Assessing Officer has erred in law as well as on facts in making disallowance of Rs. 33,53,416/- out of machinery repairs by considering it as capital expenditure and the CIT(A) has erred in confirming the same.*
4. *The learned Assessing Officer has erred in law as well as on facts in making disallowance of Rs. 71,02,289/- out of Sales Promotion Expenses on account of alleged non business purpose and the CIT(A) has erred in confirming the same to the extent of Rs. 47,87,879/-.*

2. Facts of the case are that appellant is public limited company. It is engaged in the business of manufacturing of cement and clinker.
3. The appellant company filed its combined return of income and return of fringe benefits electronically on 29.09.2009 declaring total income at Rs. Nil after adjustment of brought forward business losses. As the company was sick industrial company as on 31.03.2009, no tax was payable as per MAT provisions u/s. 115JB.

**Disallowance out of Gift Expenses - Rs. 14,36,355/-**

4. The appellant has incurred and claimed gift expenses of Rs. 14,36,355/- comprising of Diwali Gift Expenses of Rs. 11,64,570/- and Gift Articles of Rs. 2,71,785/- for the year under appeal.
5. During the course of assessment proceedings, the A.O. asked the appellant to furnish the details of such gift expenses and also to justify its allowability as business expenditure.

6. In response, the appellant furnished complete details of gift expenses along with supporting evidences and justified its allowability as under vide submission dated 16.12.2011:

*"The assessee company has already furnished details along with supporting evidences relating to gift expenses of Rs. 14,36,355/- vide para 2 & 3 of our submission dated 18/07/2011.*

*It is further submitted that aforesaid gift expenses are in the nature of customary gifts which are given to customers, suppliers, bankers, statutory authorities etc. at the time of their visit by / to the company officials and at other occasions like marriage / birthday of employee or their relatives. The said expenditure has been incurred by the company wholly and exclusively for the purpose of business in the normal course of its business. It may be appreciated that the expenditure so incurred is customary in the nature in the corporate business of this magnitude and hence the same is allowable as business expenditure.*

*Without prejudice to the above, it is submitted that the assessee company has paid FBT on the aforesaid gift expenses as evident from the return of income in Form No. ITR-1 and therefore in case any disallowance is made out of such expenses, the corresponding credit thereof should be given to the assessee in the computation of FBT as per the CBDT Circular No. 8/2005 dated 29/08/2008. "*

7. Without appreciating the above facts, the A.O. disallowed gift expenses of Rs. 14,36,355/- on the contention that the appellant has not submitted the list of the articles gifted, the list of recipients and not stated the business purpose served by such expenditure.
8. The A.O. has failed to understand that the gifts were customary in nature which were distributed on festival and other occasions. The ledger account furnished to A.O. clearly showed description of items gifted. Further, the recipients were employees, dealers, customers, suppliers etc. and therefore practically it is not possible to furnish their list. The A.O. has made the disallowance in a very summary manner and on surmises.

9. In appeal before the ld. CIT(A) he decided matter on the basis of earlier year and ITAT order in assessee's own case and restricted the disallowance to 35% of the total gift item expenditure. Thus, in parity with the ITAT order, we decline to interfere in the order passed by the ld. CIT(A). Therefore, this ground of assessee is dismissed.

**Disallowance out of Foreign Traveling Expenses - Rs. 26,30,000/-**

10. The appellant has claimed foreign travel expenses on the tours by its directors and others. During the course of assessment proceedings, the A.O. asked to furnish details and to substantiate the claim that these expenses have been incurred for business purpose.
11. In response, the appellant furnished some details of foreign travelling expenses along with supporting evidences and stated as under vide submission dated 18.07.2011
12. In appeal, ld. CIT(A) confirmed the action of the ld. A.O. when Bench asked for the justification of the Foreign Travel, ld. A.R. could not substantiate its claim in support of foreign travelling expenses. Therefore, this ground of appeal is also dismissed.

**Disallowance of Rs. 31,94,820- out of General Repair Expenses, Rs. 8,22,760/- out of Repairs & Maintenance Expense.**

13. The appellant furnished justification in respect of each and every expenditure above Rs. 1 Lac and it was explained that expenses incurred are routine repairing expenses which are recurring in nature and neither any new asset has come into existence nor any enduring nature benefit has accrued by incurring

such expenses. It was further submitted that some of the repairing expenses were incurred in rented premises and therefore were allowable as revenue expenditure u/s. 30(a)(i).

14. The A.O. however did not completely agree with all the justifications / explanations furnished by the appellant and accordingly considered certain expenses out of following heads as capital expenditure and disallowed the same.

Sr. No.	Particulars	Amount Considered as Capital Expenses (Rs.)
(i)	General Repairs & Maintenance	31,94,820
(ii)	Repairs & Maintenance - Others	8,22,760
(iii)	Repairs & Maintenance - Plant & Machinery	33,53,416
	Total...	73,70,996

15. The appellant does not desire to burden this statement of facts with the details of such individual items of aforesaid repairs which would be furnished in the course of the hearing of the appeal.

16. Without prejudice to the fact that the expenses disallowed by the A.O. are of revenue nature, the A.O. failed to allow corresponding depreciation on the expenditure considered by him as capital expenditure.

17. In appeal, ld. CIT(A) who partly allowed the appeal of the assessee.
18. In this case, it is seen that these expenses have been incurred in respect of preheater bypass duct which had fallen down and damaged. The payment has been made to Padhiyar Hitech P. Ltd. A preheater bypass duct is a channel for passing the preheated air and is a specific structure requiring very high level of sophistication and expertise in its construction. Ld. A.O. held this expenditure in the nature of capital expenditure and ld. CIT(A) also confirmed the action of the A.O. However, alternate ground of depreciation for above said capital expenditure was allowed by the ld. CIT(A). Therefore, this ground of appeal is dismissed.

**Disallowance out of Sales Promotion Expenses - Rs. 71,02,289/-**

19. The appellant has claimed to incur Sales promotion expenses of Rs. 3,44,73,319/- for the year under appeal on the ground that such expenses were incurred mainly on the dealers for promoting sale of products of the appellant company.
20. During the course of assessment proceedings, the appellant furnished all the relevant details along with proofs in justification of its claim of sales promotion expenses vide submission dated 28.07.2011.
21. The appellant vide letter dated 16.12.2011 further submitted that there are large number of payees in respect of these expenses who happen to be dealers, customers, suppliers, bankers and many other persons with whom the assessee carries on its business activities.

22. Without appreciating to the above, the A.O. has made the disallowance of Rs. 71,02,289/- out of sales promotion expenses contending that such expenses have not been incurred for the purpose of business.
23. In appeal, ld. CIT(A) who partly allowed the appeal of the assessee.
24. We have gone through the relevant record and impugned order. Ld. CIT(A) disallowed the Sales Promotion Expenses of Rs. 71,02,289/- on account of that expenditure was incurred on the foreign trips by Shri Mehta and Mr. Srivastava. But assessee could not substantiate any documentary evidence in support of foreign trip that how this trip has benefitted the business of the assessee. And apart from that assessee has also incurred expenditure of Rs. 1,60,000/- on purchase of cricket match ticket. We just fail to understand that how cricket match ticket has benefitted the business of the assessee. In our considered opinion, ld. CIT(A) has passed reasoned order. Therefore, we are not inclined to interfere in the order passed by the ld. CIT(A). Thus, this ground of appeal is dismissed.
25. In the result, the appeal filed by the Assessee is dismissed.
26. ITA No. 243/Rajkot/2015 for Revenue's appeal for A.Y. 2009-10. The revenue has taken following grounds of appeal:
1. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in law and on facts in deleting the disallowance of Rs. 9,33,632/- out of gift expenses.*
  2. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in law and on facts in deleting the disallowance of Rs. 1,21,743/- out of club expenses being personal in nature.*
  3. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in law and on facts in deleting the disallowance of Rs. 31,94,820/- out of general*

*repair and maintenance expenses and Rs. 8,22,760/- out of repair and maintenance-Others.*

*4. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in law and on facts in deleting the disallowance of Rs. 23,14,410/- out of sales promotion expenses.*

27. So far ground no. 1 is concerned with regard to deleting the disallowance of Rs.9,33,632/- out of gift expenses.

28. In connecting appeal ITA No. 154/Rjt/2015, we have confirmed the action of Id.CIT(A). Therefore, this ground of appeal of the revenue is dismissed.

29. Now we come to next ground relating to deleting the disallowance of Rs. 1,21,743/- out of Club expenses being personal in nature.

**Disallowance out of Club Expenses - Rs. 1,21,743/-**

30. The appellant has incurred club expenses of Rs. 1,21,743/- during the year under appeal. During the course of assessment proceedings, the appellant vide letter dated 18.07.2011 furnished details of club expenses and justified its allowability by submitting as under:

*"As per Annexure F of the Tax Audit Report, the assessee company has incurred following expenditure amounting to Rs. 1,21,743/- at clubs:*

*Sports & Natural Club - Rs. 7,333/-*

*Club26-Rs. 1,912/-*

*The Bombay Presidency Radio Club Ltd. - Rs. 1,17,498/-*

*Copies of above ledger accounts are enclosed.*

*The assessee, being a big corporate house, is a member of various business associations. This expenditure is incurred at clubs as membership and other charges viz. entrance fees, subscription, cost of club services and facilities in the normal course of business on the company officials at the association of businessmen / industrialists /prospective customers etc. "*

31. The appellant further submitted sample supporting vouchers along with bills in respect of expenses incurred at Bombay Presidency Radio Club vide submission dated 28.07.2011.
32. Without appreciating the above submission, the A.O. disallowed club expenses of Rs. 1,21,743/- considering it as alleged personal expenditure on the contention that it is incurred for personal entertainment. The A.O. has failed to consider the fact that the appellant being a public limited listed company is incapable of incurring any 'personal' expenditure.
33. In support of its contention, ld. A.R. cited a judgment of Madras High Court in the case of Sundaram Industries Ltd. 240 ITR 335 wherein Hon'ble High Court has held that subscription paid to club on behalf of its Director is allowable expenditure and in that judgment a decision of Bombay High Court in the case of Otis Elevator Company (1992) (1) 195 ITR 682, held that a payment to the club was made to enable the assessee to increase its business relation and prospects and held that expenditure is allowable expenditure. Thus, respectfully following the aforesaid judgment, we hold that ld. CIT(A) has passed reasoned order and same does not require any kind of interference at out end. Therefore, this ground of appeal of the Revenue is dismissed.
34. Now we come to next ground relating to deleting the disallowance of Rs. 31,94,820/- out of general repair and maintenance expenses and Rs. 8,22,760/- out of repair and maintenance and Rs. 33,53,416/- out of machinery repairs.
35. The appellant furnished justification in respect of each and every expenditure above Rs. 1 Lac and it was explained that expenses incurred are routine

repairing expenses which are recurring in nature and neither any new asset has come into existence nor any enduring nature benefit has accrued by incurring such expenses. It was further submitted that some of the repairing expenses were incurred in rented premises and therefore were allowable as revenue expenditure u/s. 30(a)(i).

36. The A.O. however did not completely agree with all the justifications / explanations furnished by the appellant and accordingly considered certain expenses out of following heads as capital expenditure and disallowed the same.

Sr. No.	Particulars	Amount Considered as Capital Expenses (Rs.)
(i)	General Repairs & Maintenance	31,94,820
(ii)	Repairs & Maintenance - Others	8,22,760
(iii)	Repairs & Maintenance - Plant & Machinery	33,53,416
	Total...	73,70,996

37. The appellant does not desire to burden this statement of facts with the details of such individual items of aforesaid repairs which would be furnished in the course of the hearing of the appeal.

38. Without prejudice to the fact that the expenses disallowed by the A.O. are of revenue nature, the A.O. failed to allow corresponding depreciation on the expenditure considered by him as capital expenditure.
39. Out of general repair expenses amounting to Rs. 31,94,820/- expenses amounting Rs. 12479839/- have been incurred on a rented premises. Therefore, same cannot be considered as capital expenditure. In view of the decision of Delhi High Court in the case of CIT vs. Hi Line Pens (P.) Ltd. 306 ITR 182 wherein it was held that the such expenses are allowable as revenue expenses. Therefore, respectfully considering the same, we hold such expenses are allowable expenses. And ld. CIT(A) has passed reasoned order and same does not require any kind of interference at our end.
40. In the result, this ground of appeal of the Revenue is dismissed.
41. Now we come to next ground relating to deleting the disallowance of Rs. 23,14,410/- out of sales promotion expenses.
42. Since in connecting appeal in ITA No. 154/Rjt/2015, we have confirmed the action of the ld. CIT(A). Thus, in parity with the connecting appeal, we dismiss this ground of appeal of the revenue.
43. In the result, the appeal filed by the Revenue is dismissed.
44. ITA No. 191/Rajkot/2016 Assessee's appeal for A.Y. 2011-12. The assessee has taken following grounds of appeal:
1. *The learned Assessing Officer has erred in law as well as on facts in making disallowance of Gift Expenses of Rs. 97,14,705/- on account of alleged non*

*business purpose and the CIT(A) has erred in confirming the same to the extent of Rs. 34,00,147/-.*

*2. The learned Assessing Officer has erred in law as well as on facts in making disallowance of Rs. 1,44,75,246/- out of Foreign Travelling Expenses on account of alleged non business purpose and the CIT(A) has erred in confirming the same.*

*3. The learned Assessing Officer has erred in law as well as on facts in making disallowance of Rs. 7,47,840/- out of Business Promotion Expenses on account of alleged non business purpose and the CIT(A) has erred in confirming the same.*

45. Now we come to first ground relating to deleting the disallowance of gift expenses to the extent of Rs. 34,00,147/-.

46. In connecting appeal in ITA No. 154/Rajkot/2015 for assessment year 2009-10, we have confirmed the action of the ld. CIT(A). Thus, this ground of appeal is dismissed.

47. Now we come to next ground relating to disallowance of Foreign Travel Expenses of Rs. 1,44,75,246/- u/s. 37(1) of the Act.

48. In connecting appeal in ITA No. 154/Rajkot/2015 we have dismissed same ground of appeal. Therefore, in parity with the said order, we dismiss this ground of appeal.

49. Now we come to next ground relating to disallowance of Business Promotion Expenses to the extent of Rs. 7,47,840/-.

50. In connecting appeal of the Assessee in ITA No. 154/Rjt/2015, we have dismissed same ground of the assessee for assessment year 2009-10. Therefore, in parity with the said appeal, we dismiss this ground of appeal of the Revenue.

51. In the result, appeal of the Assessee is partly allowed.

52. ITA No. 408/Rajkot/2016 Revenue's appeal for A.Y. 2013-14. The revenue has taken following grounds of appeal:

- 1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in law and on facts in restricting the disallowance of Rs.1,03,93,322/- to Rs.36,37,663/- and deleting the balance of Rs.67,55,659/-. The Id. CIT(A) ought to have upheld the same*
- 2. The learned CIT(A) has erred on facts in deleting the club expenses of Rs.37,462/-*
- 3. Any other ground that the revenue may raise before or during the proceeding before the Hon'ble I.T.A.T.*
- 4. On the facts of the case and in law, the Ld. C.I.T.(A) ought to have upheld the assessment order of the A.O.*
- 5. It is, therefore, prayed that the order of the C.I.T.(A) may be set aside and that of the A.O. be restored to the above extent.*

53. First of all, we would deal with ground relating to deleting the disallowance of Rs. 67,55,659 out of gift expenses of Rs. 1,03,93,322/-.

54. Since in connecting ITA No. 154/Rajkot/2015, we have confirmed the action of the Id. CIT(A). Thus, in parity with the same, we dismiss this ground of appeal of the revenue.

55. Now we come to next ground relating to disallowance of club expenses of Rs. 37,462/-.

56. We have given relief to the assessee by allowing club expenses in ITA No. 154/Rajkot/2015. Therefore, in parity with the said appeal, we dismiss this ground of appeal of the revenue.

57. In the result, appeal filed by the Revenue is dismissed.

58. ITA No. 470/Rajkot/2017 Revenue's appeal for A.Y. 2014-15. The revenue has taken following grounds of appeal:

- 1. On the facts and circumstances of the case and in law, the Ld, CIT(A) has erred in law and on facts in restricting the disallowance of Rs. 1,46,44,884/- to Rs.51,25,709/- and deleting the balance of Rs.95,91,175/-. The Id. CIT(A) ought to have upheld the same*
- 2. The learned CIT(A) has erred on facts in restricting the disallowance of Rs.30,87,396/- to Rs.15,43,698/- i.e. to 7.5% from 15% disallowed by the AO in respect of expenses incurred for conveyance/vehicle/hired tax expenses without appreciating the facts narrated in the assessment order by the A.O.*
- 3. Any other ground that the revenue may raise before or during the proceeding before the Hon'ble I.T.A.T.*
- 4. On the facts of the case and in law, the Ld. C.I.T.(A) ought to have upheld the assessment order of the A.O.*
- 5. It is, therefore, prayed that the order of the C.I.T.(A) may be set aside and that of the A.O. be restored to the above extent.*

59. First ground is relating to deleting the disallowance of Rs. 95,91,175/- out of total gift expenses of Rs. 1,46,44,884/-.

60. Similar expenses were allowed by the Tribunal in earlier year and on the basis of that we allowed 65% of gift expenses in connecting appeal in ITA No. 154/Rjt/2015. Thus, in parity with the connecting appeal, we dismiss this ground of appeal of the revenue.

61. Now we come to next ground relating to deleting the disallowance of Rs. 15,43,698/- out of conveyance/vehicle/hired tax expenses is concerned, Id.A.O. made disallowance on the ground that appellant was not able to establish that the expenses were exclusively incurred for business purpose. The appellant explained that such expenses are inherent to incur in their business for the purpose of travelling by the employees and that the A.O. made lump-sum disallowance in ad-hoc manner without there being anything adverse on

record. The appellant also submitted that there cannot be any personal expenses in the case of company who is a corporate entity and A.O. disallowed 15% of total expenses claimed by the assessee.

62. In appeal before the ld. CIT(A) granted relief of 50% and directed to A.O. to restrict the disallowance to 7.5% of the total expenses. We do not find any reason to interfere in the order passed by the ld. CIT(A) and therefore this ground of appeal of the Revenue is dismissed.

63. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in Open Court on	25 - 04- 2019
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Sd/-

**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER True Copy**  
Ahmedabad: Dated 25/04/2019

Sd/-

**(MAHAVIR PRASAD)**  
**JUDICIAL MEMBER**

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar  
ITAT,Ahmedabad