IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT – RAJKOT BENCH

BEFORE SHRI WASEEM AHMED,ACCOUNTANT MEMBER
&SMT. MADHUMITA ROY, JUDICIAL MEMBER

आयकरअपीलसं.ITA Nos.333&399/Rjt/2016

निर्धारणवर्ष/Asstt. Year: 2011-12

ACIT Gandhidham Circle, Gandhidham-Kutch	Vs.	**M/s. Swaminarayan Vijay Carry Trade (P) Ltd.** SVTC House, Bhuj-Mirzapar Highway, Bhuj-Kutch-370001 PAN:AAD CS0 141 C
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by	:	**Smt. Namita Khura, Sr. DR**
Revenue by	:	**Shri Vimal Desai, AR**

सुनवाईकीतारीख/Date of Hearing : 18/06/2019
घोषणाकीतारीख/Date of Pronouncement: 26/06/2019

आदेश/O R D E R

PER MADHUMITA ROY- JM:

Both the appeals filed by Revenue are directed against the order dated 24.06.2016 passed by the Ld. CIT(A), Jamnagar arising out of the order dated 28.03.2014 passed by the Ld. JCIT, Gandhidham under section 143(3) of the Income Tax Act, 1961and against the order dated 30.08.2016 passed by the CIT(A)-3, Rajkot under sec. 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') arising out of the order dated 22.09.2014 passed by the Ld. JCIT, Gandhidham respectively, both for Financial Year 2011-12.

2. Since both the matters relate to the same assessee and co-related both the matters are heard analogously and are being disposed of by a common order.

ITA No. 333/Rjt/2016 A.Y. 2011-12(Revenue's Appeal):-

Ground No. 1:-

3. The order passed by the Ld. CIT(A) in deleting the addition made on account of disallowance of Diesel Expenses of Rs. 1,41,91,412/- has been challenged before us.

The assessee engaged in Goods Transport, Stevedoring, Electricity Generation, Material and Mining Contract, Vessel Operator and real Estate developers filed its return of income on 28.09.2011 showing income at 4,13,58,599/-.

During the course of assessment proceeding it was found from the Profit and Loss account of the assessee company that huge expenses under the head 'Diesel Expenses' was booked. Explanation was called for justifying such large increase in diesel expenses in comparison to previous year. In replywhereof the assessee submitted month wise diesel consumption.

MONTHS	*Transactions*		*Closing Balance*
	Debit	*Credit*	
April	*12,315,319*	*610,160*	*11,705,159*
May	*5,809,614*	*6,987,491*	*10,527,282*
June	*5,345,226*	*1,518,829*	*14,353,679*
July	*6,056,589*	*2,940,000*	*17,470,267*
August	*2,356,593*	*2,602,308*	*17,224,552*
September	*2,021,096*	*1,947,179*	*17,298,470*
October	*483,781*	*371,745*	*17,410,505*
November	*416,660*	*29,929*	*17,797,236*
December	*474,581*	*72,374*	*18,199,443*
January	*349,634*	*8,450*	*18,540,627*
February	*1,893,066*		*20,433,693*
March	*6,102,848*	*180,241*	*26,356,300*
Total	***43,625,006***	***17,268,706***	***207,317,215***

The main contention of the assessee is this that such higher consumption of the diesel for the month of April 2010 was mainly due to transportation of lignite where diesel of Rs. 94.94 lakhs was purchased from Indian Oil Corporation, Abhay Petroleum and Bhumi Petroleum, Mankuva; it was mostly recovered from the parties in the month of May 2010. Further that transportation of clinker, chinaclay and coal was the other reason for such higher consumption of diesel for which the assessee does not depend upon the outside transporters. Further that bills of Rs. 28.60 lakhs were debited to diesel account provided by Sanghi Cement Limited for their commercial comfort which was subsequently deducted from their total billing. However, submissions made by the assessee was not found suitable by the Ld. AO and he ultimately restricted the diesel expenses to 4.19% as compared to 2.52% during the previous year and disallowed 3% of transportation receipt totally to Rs. 1,41,92,412/-. In appeal the same was deleted by the Ld. CIT(A). Hence, the instant appeal before us.

4. At the time of hearing of the appeal Ld. Counsel appearing for the assessee submitted before us that the income shown by the appellant from transportation and job-work activity was better than the previous year. Such income was increased by deploying own trucks and also by sub-contracting the transportation work to others. In former, diesel expense was to be borne by the appellant whereas in later, the same was to be borne by the sub-contractor. The appellant use to pay the charges to sub-contractor which was debited under the head “freight, transport and job-work expense”. The total transportation income of the appellant more than Rs. 47 lakh was earned from both type of transportation of job-work income whereas the diesel expense debited in Profit and Loss account was only in respect of own transportation. Further thatdetailsof entire diesel expenses were duly submitted beforethe Ld. AO showing that the figures were prepared from ledger account of diesel expenses based on purchases booked and after taking into consideration the recoveries made from the sub-contractors. It was further contended by the Ld. AR that the Ld. AO failed to appreciate the nature of business of the assessee. When the assessee has been able to justify the reasonability of diesel expenses with reference to working of reduction in expenses and better GP ratio in the year under appeal as compared to the other years where the assessments were also framed under sec. 143(3) of the Act,the disallowance

made by the Ld. AO is not permissible. Hence he relied upon the order passed by the Ld. CIT(A). However, the Ld. DR relied upon the order passed by the Ld. AO.

5. Heard the respective parties and perused the relevant materials available on record. It appears that the Ld. CIT(A) while deleting such addition made by the Ld. AO observed as follows:-

"Decision:

4.3 I have carefully considered the submission of the appellant and alsogone through the discussion made in the assessment order.

On due consideration of rival stands, I am of the view that the disallowance made by the A.O. is improper and unjustified. In the assessment proceedings, the A.O. noticed sharp increase in diesel expenses as compared to preceding year as mentioned on page 8 in para 5.6 of the assessment order. The same is reproduced hereunder:

F.Y.	*Dieseland other Exp.*	*Transportation receipt*	*Ratio*
2009-10	*1,24,21,946/-*	*49,38,15,104/-*	*2.52%*
2010-11	*3,38,31,684/-*	*47,03,08,399/-*	*7.19%*

This was the beginning point of his probe in the matter and the said probe ultimately resulted into disallowance of diesel expenses to the tune of Rs. 1,41,92,412/-. However, I find that the beginning point itself of the A.O. is erroneous. It clearly appears that the A.O. has failed to understand the nature of business and change in business pattern of the appellant in the year under appeal as compared to preceding year. The appellant is in the business of transportation and job-work mainly in port area. For this activity, the appellant deployed own trucks and dumpers and also sub-contracted the work through sub-contractors/hired vehicles. In case of own transportation, the .diesel expenses were to be borne by the appellant which were debited to P&L account. In case of sub-contracted work, the diesel expenses were to be borne by the sub-contractor and the appellant was to pay the sub-contractor which expense were booked under the head "freight, transportation and job-work" expense in the P&L account. In the year under appeal, the appellant purchased new vehicles to the tune of 7,37,40,259/- which fact is evident from the schedule of fixed asset in the balancesheet. Due to this, in the year under appeal, the quantum of own transportation work had increased and subcontracted work had decreased as compared to previous year. The comparative expenses in relation to this two are tabulated hereunder:

Sr. No.	*Assessment year*	*Diesel Expense*	*Freight, Transportation and job-work Expense*
1	*2010-11*	*1,24,21,946/-*	*34, 07,22, 913/-*
2	*2011-12*	*3,38,31,684/-*	*26,66,74,192/-*

The above comparison clearly shows the change in business pattern in the year under appeal. However, the A.O. focused only on diesel expense without simultaneously verifying the decrease in freight, transportation and job work expenses. In my view, such isolated view with respect to one particular expense does not yield logical results. The reason for increase in diesel expense was thus obvious and acceptable.

The ratio calculation done by the A.O. is also erroneous. The A.O. has adopted gross transportation receipt as denominator. This gross transportation receipt included work got done through sub-contractor and the same had no co-relation with the diesel expenses. The diesel expense debited in P&L account was only in respect of own transportation work. In view of this anomaly, I agree with the appellant that the numerator and denominator of the ratio were not matching and co-related with each other and hence, the ratio derived by the A.O. was not logical.
The proper course of action was to work out the ratio of diesel expenses respect to income from own transportation and job-work. However, in thisregard the appellant has submitted that it is not feasible on its part to bifurcate the gross receipts into own work and sub-contracted work since in case of many work, both own vehicles and hired vehicles are simultaneously deployed depending upon requirement and comfort level and due to such complex nature, the exact figures of each type of receipts are not feasible to derive and it is burdensome and ineffective in terms of cost and resources to maintain records in this regard. However, the appellant submitted that the indirect verification of the figures clearly suggest that there was no infirmity in the expenses or overall book result as compared to previous year. In this regard, the appellant submitted that the diesel expenses and freight, transportation and job-work expenses together as a percentage of gross receipts were decreased from 71.51% in previous year to 63.90% in the year under appeal. The appellant further submitted comparative gross profit chart of five years in respect of transportation and job-work activity. It is seen that the Gross profit in the year under appeal was highest at the rate of 22.53%. The appellant also submitted that the gross profit of 16.83% and 10.96% was accepted in the assessment u/s 143(3) for A.Y. 2009-10 and A.Y. 2013-14 respectively. In view of this, the appellant submitted that the huge disallowance made by the A.O. in respect of diesel expense merely on isolated comparison, illogical ratios and without appreciating the better book result was unjustified. Had there been any manipulation in diesel expenses, the percentage of expense would not have decreased and GP ratio would not have increased. On careful consideration, I am inclined to accept the submissions of the appellant. Though the direct verification of diesel expense with respect to own transportation work is not feasible in the absence of exact figures, the indirect verification of expenses and over all better book result clearly suggest that there was no discrepancy in diesel expenses as assumed by the A.O. The contention's and working of the A.O. are found to be erroneous and in disregard of facts and pattern of business. The A.O. ought to have adopted the holistic view of the case rather than isolated view in respect of diesel expenses.

The appellant has also explained the rest of the contentions of the A.O. in para 6 of its submission. The appellant has furnished reconciliation to explain difference in figures in two submissions before, the A.O. which was mainly on account of different presentation. The appellant has put forward convincingreasons for non-matching of month wise diesel expenses and month wise income and difference in month wise consumption of diesel. In respect of purchase from sister concern, the appellant placed on records return of income, relevant part of tax audit report and annual accounts of sister concern and convincingly submitted that the sister concern has maintained complete quantitative details and it is also assessed at the same rate of tax without any benefit of any loss or deduction and therefore, adverse inference drawn by the A.O. without any real adverse finding was improper. I am of the view that the appellant is right in its stand. When the sister concern is also paying the tax at the same rate on controlled commodity of diesel for which complete quantitative details are maintained, it is not open to the A.O. to doubt the same without having any adverse finding of any kind of manipulation. The appellant also clarified that it has not maintained any diesel register as it

is not feasible and no such impracticable requirement was insisted upon it in past assessments. Thus, the appellant has explained all the contentions of the A.O. raised in the assessment order. On careful consideration, I find substantial merits in the explanations of the appellant as these explanations are convincing, duly supported and verifiable.

In view of the above discussion, I am of the view that the disallowance of diesel expenses of Rs.1,41,92,412/- made by the A.O. without appreciating change in pattern of business and on the basis of isolated view and erroneous working of ratios is untenable and unsustainable. The appellant has been able to justify the reasonability of diesel expenses with reference to working of reduction in expenses and better GP ratio in the year under appeal as compared to other years the assessments of which were also framed u/s.143(3) of the Act. I therefore delete the disallowance of Rs.1,41,92,412/- made by the A.O. This ground of appeal is allowed."

6. We find that while deleting such addition the Ld. CIT(A) took into consideration the business pattern of the assessee particularly the diesel expenses which were to be borne by the sub-contractor and also purchase of new vehicles to the tune of Rs. 7,37,40,259/- made by the assessee in the year under consideration. Thus quantum of own transportation work had increased and sub-contracted work had decreased as compare to the previous year which the Ld. AO failed to appreciate. Hence, taking into consideration the entire aspect of the matter we find no reason to interfere with order impugned passed by the Ld. CIT(A). We thus, find no merit in the appeal preferred by the Revenue. The same is hereby dismissed.

7. **2nd Ground:-** Deletion of addition made under sec. 14A amounting to Rs. 7,59,540/- was also under challenged before us.

During the course of assessment proceeding it was found from the balance sheet that the assessee was having investments of Rs. 1,23,01,224/- in shares of Kenson Manufacturer Private Limited, SVCT Private Limited-JV and Gold coins. However, no expenses have been allocated by the assessee for the same. The assessee failed to provide any direct nexus between interest free funds andinvestments, the Ld. AO was of the view that the assessee was having more than 20 crores of secured loans and about 61.70 lakhs for unsecured loans on which the assessee needs to pay interest. Ultimately the Ld. AO applying Rule 8D calculated such expenses towards such investments which worked into Rs. 7,59,540/- added to the total income of the assesseewhich was in turn deleted by the Ld. CIT(A). Hence, the instant appeal before us.

8. At the time of hearing of instant appeal the Ld. Advocate appearing for the assessee submitted before us that the Ld. AO disallowed Rs. 7,59,540/- under sec. 14A on the contention that the appellant had made investment in the shares the income from which was exempt. The AO applied the provisions of Rule 8D for the said disallowance. It was further contended by the Ld. AR that from the audited accounts, it was very much evident that the investments were not made in the year under assessment. Since the assessee has not claimed any exempt income, disallowance is not permissible. He also relied upon the judgment passed by jurisdictional High Court in the matter of Corrtech Energy Pvt. Ltd. vs. DCIT (45 taxmann.com 116) in support of his argument. He, therefore, prayed for confirmation of the order of the Ld. CIT(A).

9. However, the Ld. DR relied upon the order passed by the Ld. AO.

Heard the parties and perused the relevant materials available on record. It appears that while deleting the addition made by the Ld. AO the Ld. CIT(A) observed as follows:-

> *"**Decision:***
>
> *7.1. I have carefully considered the submission of the appellant and also gone through the discussion made in the assessment order.*
>
> *The appellant has not claimed any exempt income in the year under appeal which fact is evident from the return of income and computation of income filed in the paper book. The AO has also not recorded any opposite findings in this regard. The jurisdictional Gujarat High Court in case of Corrtech Energy (P) Ltd. (45 taxmann.com 116) held that if there is no claim of any exempt income, the disallowance under sec. 14A cannot be made. The judgment of jurisdictional High Court has binding force. I therefore hold that in the absence of any exempt income claimed by the appellant, the disallowance u/s. 14A made by the AO is unsustainable. The same is hereby deleted. In view of deletion of disallowance u/s. 14A, the alternative argument of the appellant in respect of quantification of disallowance is not required to be adjudicated upon. This ground of appeal is allowed."*

We have also gone through the judgment passed by the Hon'ble jurisdictional High Court in the matter of Corrtech Energy Pvt. Ltd. vs. DCIT (45 taxmann.com 116) where it is held that in the absence of any exempt income earned by the assessee the disallowance under sec. 14A is not permissible.Relying on the ratio laid down by

the Hon'ble jurisdictional High Court we find no infirmity in the order passed by the Ld. CIT(A) so as to warrant interference. Thus, the orders passed in the affirmative i.e. in favour of the assessee and against the Revenue. Hence, the Revenue's appeal is dismissed.

10. In the result, Revenue's appeal is dismissed.

ITA No. 399/Rjt/2016 A.Y. 2011-12 (Revenue's Appeal):-

11. In this appeal the Revenue has challenged the order in deleting penalty as levied upon the assessee by the order dated 22.09.2014 passed by the Ld. DCIT, Gandhidham. The impugned order passed by the Ld. CIT(A) was on the basis of the quantum additions deleted by the Ld.CIT(A), Jamnagar dated 24.06.2016 which according to us is just and proper.

Further that once the said order of deleting quantum has been upheld by us in ITA No. 333/Rjt/2016 this appeal becomes infructuous. Hence, dismissed as infructuous.

12. In the result, Revenue's appeal is dismissed.

[Order pronounced in the Court on 26-06-2019.]

Sd/-		Sd/-
(**WASEEM AHMED**)		(**MADHUMITA ROY**)
ACCOUNTANT MEMBER	TRUE COPY	**JUDICIAL MEMBER**

Ahmedabad; Dated 26/06/2019
TANMAY

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to:

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. संबंधितआयकरआयुक्त/ Concerned CIT
4. आयकरआयुक्त(अपील) / The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण/ DR, ITAT,
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, अहमदाबाद / ITAT, Rajkot