IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH, AHMEDABAD

BEFORE SHRI A.D. JAIN, VICE PRESIDENT
AND WASEEM AHMED, ACCOUNTANT MEMBER

ITA No.2348/Ahd/2012
Assessment Year: 2008-09

Income Tax Officer, Patan Ward – 3, Mehsana. (Appellant)	vs.	M/s. Siddhi Vinayak Transport, 07, Krishnanagar Society, Kukarwada – 382 823. [PAN – AAZFS 0365 B] (Respondent)

Appellant by	:	Shri Subhash Bains, CIT (D.R.)
Respondent by	:	Shri M.J. Shah, A.R.
Date of hearing	:	17.06.2019
Date of pronouncement	:	23.07.2019

O R D E R

PER A.D. JAIN, VICE PRESIDENT:

This is Department's appeal against learned CIT(A)'s order dated 02.07.2012 passed for the assessment year 2008-09.

2. The grounds raised by the Department in its appeal are as under:

> ***"1. The learned CIT(Appeals) has erred in law and on facts in deleting the addition of Rs.5,29,171/-made by the AO u/s. 40(a)(ia) of the Act on account of non deduction of TDS on interest paid by the assessee.***
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> ***2. The learned CIT(Appeals) has erred in law and on facts in deleting the addition of Rs.1,66,000/- made by the AO on account of non charging of interest.***
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> ***3. The learned CIT(Appals) has erred in law and on facts in deleting the addition of Rs.3,01,56,009/- made by the AO u/s.40(a)(ia) on account of non deduction of TDS on cartage/labour payment.***
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> ***4. The learned CIT(Appeals) has erred in law and on facts in deleting the addition of Rs.34,19,884/- made by the AO on account of unexplained current liabilities."***

3. Apropos ground no.1, the Assessing Officer noted that interest of Rs.2,71,743/- had been paid to TATA Motors Limited and Rs.2,57,428/- had been paid to GE Capital; that the loan was obtained and interest had been paid; that it is a private finance company; that on interest payment, the TDS is required to be deducted; that however, in this case no TDS was deducted; and that therefore, the provisions of Section 40(a)(ia) of the Income Tax Act, 1961 are applicable in this case. Vide reply dated 29.11.2010 the assessee had submitted that the provisions of section 194A of the Act are not applicable. He had availed finance vehicle

loan from these companies for purchase of truck and paid financial charges for such loan amount. As per sub-section(3) of section 194A, tax is not required to be deducted if interest payments are made to certain entity or in certain circumstances. Their case is covered under the said section and, therefore, they were not liable to deduct tax from financial payment made to the above mentioned companies. The assessee had also stated that TDS provisions are not applicable to such financial charges, as such payment covered by section 194A(3)(iii)(b) of the Act, being payment made to financial corporation established by or under a Central, State or Provincial Act. Said companies are established under central act as non banking financial company and its lending activity is governed and regulated by RBI. So there is no liability of tax deduction of finical charges paid to said lender companies. The A.O. observed that the provisions of Sec.194A(3)(iii)(b) are in respect of income credited or paid to any financial corporation established by or under a central, state or provincial act; that the lender companies are formed/registered under the Indian Companies Act; that they are not established under any Central or State Act; that the contention of the assessee had no basis; that the provisions of Sec.194A of the Act are clearly applicable in the case of payment of interest; and that accordingly, the reply of the assessee was not acceptable. The amount of Rs.5,29,171/- was thus disallowed and added to the total income of the assessee under section 40(a)(ia) of the Act.

4. The learned CIT(A), deleting the addition, has observed as under :-

> *"I have gone through the factual aspects of the contention. On examination of details of payment of instalments and details of interest paid and claimed; prima facie it appears to be true that the amounts in question have already been paid before 31st March, 2008. However, the AO is directed to verify it independently while giving effect to this order. In this situation where the fact is that the amount in question relevant to the expenditure claimed are paid during the year, and no amount remained payable at the end of the year; following the judicial discipline, as the Special Bench decision of the Hon'ble ITAT in the case of Merilyn Shipping & Transports – 20 Taxan.com 244 is in favour of the appellant and there is no decision of any High Court on the issue in my knowledge; I hold that once the payments are made and no amount is payable as on 31/3 of the relevant previous year, no disallowance u/s 40(a)(ia) can be made. I have also noted that the honourable jurisdictional ITAT, i.e., Ahmedabad 'D' Bench in the case of NK Jewellers, in its recent order dated 27.04.2012 in ITA No.638/Ahd/2005-06 has followed the Special Bench order cited above. In the light of this, as these expenditure is already paid before the end of the year (subject to the verification by the AO as directed earlier), no disallowance is called for; and the grounds of appeal no.1 is allowed."*

5. The learned Departmental Representative has contended that the learned CIT(A) has erred in law and on facts in deleting the addition of Rs.5,29,171/- made by the Assessing Officer u/s. 40(a)(ia) of the Act on account of non-deduction of TDS on interest paid by the assessee. Strong reliance has been placed by the ld. D.R. on the assessment order.

6. The learned Counsel for the assessee, per contra, has submitted that, 'Merilyn Shipping & Transports' (supra) has been overruled by the Hon'ble jurisdictional High Court of Gujarat in the case of 'CIT vs. Sikandar Khan Tanwar', vide order dated 02.05.2013, passed in Tax Appeal No.905/2012 (copy filed); and that so, the matter may be remitted to the Assessing Officer for fresh adjudication in accordance with law. Reliance in this regard has also been placed on 'ITO vs. Shri Parasmal Manekchand Jain', order dated 22.11.2013, passed in ITA No.2690/Ahd/2012, for A.Y. 2008-09, by the Ahmedabad Tribunal. A copy thereof was also filed.

7. The learned CIT(A) has held that the amounts in question stood already paid before 31st March of the relevant A.Y. and that in view of "Merilyn Shipping & Transports", 146 TTJ 1 (Vizag) (SB), no disallowance under section 40(a)(ia) could have been made.

8. In "Sikandar Khan Tanwar" (supra), overruling "Merilyn Shipping & Transports" (supra), the Hon'ble jurisdictional High Court also held that section 40(a)(ia) of the Act covers not only amounts payable as on 31st March of a particular year, but also those payable at any time during the year.

9. The learned CIT(A) did not have the benefit of 'Sikandar Khan Tanwar' (supra), as it was passed on 02.05.2013, whereas the impugned order is dated 02.07.2012. Be that as it may, the impugned order is not sustainable in view of 'Sikandar Khan Tanwar' (supra). Accordingly, the matter is remitted to the Assessing Officer to readjudicate it by ascertaining the amounts payable at any time during the A.Y., after considering the amendments made by the Finance Act, 2012, that if the assessee pays the tax on the amount paid by the assessee to him by showing the receipts as its income, then no disallowance of expenditure can be made in the hands of the assessee under section 40(a)(ia) of the Act. The Assessing Officer shall provide due opportunity of hearing to the assessee. The assessee shall, no doubt, fully co-operate in the readjudication proceedings of the matter.

10. So far as regards ground no.2, the Assessing Officer observed that the assessee had given advance of Rs.10 lakhs to Deepak Cement and Chemical Limited, Rs.25 lakhs to Sumraj Holdings Limited, Rs.5 lakhs to Karnawati Ispat Limited, Rs.5 lakhs to Om Bileshwar Sales Pvt. Ltd., Rs.30,000/- to Dharmishtaben Dilipbhai Patel, Rs.5,50,000/- to Polard Trading Company. On these advances, no interest was charged; and that on the one hand, the assessee is paying interest and on the other, no interest is charged. The Assessing Officer disallowed a total of Rs.3,37,000/- as interest expenses not allowable.

11. The learned CIT(A) has deleted the disallowance concerning Rs.1 Lakh to Deepak Cement and Chemicals Limited and Rs.66,000/- to Polard Trading Company.

12. The learned Departmental Representative has contended that the learned CIT(A) has erred in law and on facts in deleting the addition of Rs.1,66,000/- made by the A.O. on account of non-charging of interest.

13. The learned counsel for the assessee has relied on the impugned order.

14. Regarding Deepak Cement and Chemicals Limited, the assessee states that Rs.10 lakh was paid to Deepak Cement and Chemicals Limited way back in assessment year 2006-07. Thus, the amount of Rs.10,00,000/- is the opening balance in assessment year 2008-09. The assessee further submits that the said company has paid Rs.1,00,000/- in assessment year 2009-10 to the assessee for the amount of Rs.10,00,000/- given by the assessee to it for the purpose of business. Further, the said company has given new business from which the assessee has earned Rs.2,07,843/- in assessment year 2009-10. The debtor in this case is undoubtedly a cement company. The line of business of the assessee is transportation of cement on large scale. Security deposits are generally given and taken in this line. There is no close relationship of the party with the assessee otherwise. In the entirety of the circumstances, the amount is held to be for business expediency, notwithstanding the fact that the income actually was generated subsequent to this year only.

15. Thus, the assessee effectively established business expediency in making the advances on which interest was correctly not charged. The Department has not successfully rebutted the CIT(A)'s findings which remain firm.

16. Regarding payment of advance to Polard Trading Company, as per the assessee, Polard is a promoter company of Saurashtra Cement Co., with whom, the assessee has been doing business since a very long time, this amount of Rs.5,00,000/- has been given by the assessee way back in 1997. A confirmation from Polard Trading Co. confirming that an amount of Rs.5,00,000/- was given by the assessee purely on business considerations and the said company was connected with Saurashtra Cement Limited, with whom the assessee has business relations and their business relations fructified into a turnover of Rs.1.98 crores with the assessee company, has also been filed. Here also, business expediency stands established, as advance was paid to a promoter company of a major client of the assessee.

17. In the above view of the matter, the learned CIT(A)'s action of deleting the amount of Rs.1,66,000/- representing interest disallowance, is confirmed. Ground no.2 is rejected.

18. Coming to ground no.3, the Assessing Officer disallowed, under section 40(a)(ia) of the Act, an amount of Rs.3,21,84,435/-, being 20% of total freight payment of Rs.16,09,22,175/-. The assessee had shown its inability before the Assessing Officer to furnish party-wise payment details. The assessee had stated that truck-wise details had

been filed. However, the Assessing Officer observed that payment is to be made to a person and not to a truck; and that Form No.15-I had also not been obtained for every transaction; and that as per the provisions of section 194C of the Act, the assessee was required to deduct TDS against the freight payment. The Assessing Officer observed that the assessee, in its reply dated 19.11.2010, had stated that it had debited its octroi and labour account for carting charges paid to different persons for transportation of goods through their trucks and had also debited other charges, like loading and unloading charges, octroi, etc; that it had utilised other persons' trucks as per availability of trucks at the time of requirement, for mostly single trips, at average transport rent paid of Rs.10,000/- to Rs.12,000/- to a single person for a single trip and as the carting rent paid was less than the basic limit for deduction of tax, the assessee had not deducted tax on such payment; that wherever the payment was covered by the provisions of section 194C,it had deducted tax from payments; that as per the provisions of the Income Tax Act, it had obtained declaration in Form 15-I from certain persons for non-deduction of tax from payments made to them, which were filed in the office of the CIT, Gandhinagar; and that a copy of Form No.15-I, containing such details was being filed with the reply.

19. The Assessing Officer observed that there was no acknowledgement of the learned CIT, Gandhinagar regarding submission of Form No.15-J within the due date; that as per the provisions of section 194C of the Act, the assessee has to submit Form No.15-J within the due date, to the concerned CIT; that as per Rule 29D of the Income Tax Rules, FormNo.15-J is to be filed in the office of the CIT, so designated by the CCIT, within whose area of jurisdiction the office of the contractor is situated, on or before 30th June following the financial year; and that in the assessee's case, Form No.15-J had not been submitted on or before 30th June, 2008. The Assessing Officer observed that in the absence of evidence of submission of Form No.15-J to the concerned CIT, the contention of the assessee was not acceptable.

20. Regarding Form No.15-I, the Assessing Officer observed that the amount of payment made to parties who had furnished Form No.15-I, was amounting to Rs.1,29,07,390/- only, out of total freight payment of Rs.16.09 crores; that Form No.15-I is to be furnished by truck owners who own two trucks only; that the assessee had assumed that the recipient of freight owned upto two trucks; that accordingly, as per the assessee's claim, it was required to obtain Form No.15-I in all cases and to file the same within the Department, which had not been done; that further, Form No.15-I has to be filed with RC Book; and that however, no RC Book had been produced for verification of the ownership of trucks.

21. The Assessing Officer further observed that regarding the freight payment to other parties, to whom the single payment/lorry receipt was of less than Rs.50,000/- and the total payment during the year was of less than Rs.50,000/-, the assessee had failed to furnish

party-wise freight payment details, despite several opportunities, when the assessee's turnover was exceeding Rs.20 crores and the assessee was well supported by qualified staff; and that thus, since the assessee had not complied with the provisions of section 194C of the Act, disallowance under section 40(a)(ia) of the Act was required to be made.

22. The Assessing Officer concluded by observing that out of freight payment of Rs.16.09 crores, the assessee had obtained Form No.15-I for the amount of Rs.1.29 crores, and no declaration had been obtained for the remaining amount of Rs.14.80 crores; that the assessee had stated that all other trucks were independently owned; that if that were so, there would be at least 2800 independent truck owners to justify non-deduction of TDS; and that however, for these 2800 truck owners, Form No.15-I was compulsory, or the identity proof of such 2800 owners was to be established.

23. In this manner, the Assessing Officer, invoking the provisions of section 40(a)(ia) of the Act, made disallowance of Rs.3,21,84,435/-, being 20% of the total payment claimed.

24. Before the learned CIT(A), the assessee filed voluminous additional evidence. The learned CIT(A) asked the assessee to explain as to why this evidence was not filed before the Assessing Officer and to show cause as to why it should be admitted by the learned CIT(A). The assessee stated that there was shortage of time for collecting and compiling such extensive details; that the details, comprising the party-wise list of total freight/carting payments amounting to Rs.13,82,36,105/-, were collected after getting them verified from the concerned RTO; that this took time; that these details could have been called for from the RTO directly by the Assessing Officer; that however, it was the assessee who had collected them and had furnished them for a just decision of the appeal by the learned CIT(A); that the additional evidence comprised, inter alia, Form No.15-I, collected by the local staff of the various depots of the assessee at seven different places all over the state; that all these forms and administrative work used to be looked after by one Shri Jagdishbhai M. Patel, partner of the assessee firm, who expired at the age of 35 years, due to Rabies; that further, the new office building, where the assessee had shifted on 14.06.2007, remained sealed by the AMC till 23.08.2010; that all these forms remained in the new office; that since it used to be looked after by Shri Jagdishbhai M. Patel, it came to knowledge only recently, that these many Forms No.15-I had been collected by the assessee's various depots and that these forms had remained from being given to the tax authorities; that thus, the assessee had remained prevented by sufficient cause from producing this evidence, which was very relevant for the decision of the matter before the A.O; and that the time provided by the Assessing Officer for filing details of party-wise and truck-wise payments made by the assessee was very short and the extensive facts collected by the assessee were not possible to have been collected in such a short time.

25. The learned CIT(A), vide letter dated 24.01.2012, forwarded the additional evidence filed by the assessee, with its aforesaid submissions, to the Assessing Officer, for examination, enquiries and comments, including comments on the admissibility of the additional evidence.

26. The assessee had also submitted before the learned CIT(A) that the correct amount of freight/cartage payment made by the assessee to truck owners was Rs.15,14,97,972/-, and not Rs.16,09,22,175/-, as held by the Assessing Officer in the Assessment Order. The assessee had filed explanatory charts in this regard before the learned CIT(A), in the form of Exhibit-C, furnished along with its submissions. The bifurcation of the amount of Rs.15,14,97,972/-, was given at the assessee's Paper Book nos.19 to 20 filed before the learned CIT(A). The assessee has filed an identically paginated Paper Book before us. The assessee had given before the learned CIT(A), at the assessee's paper book no.20, details of instances where TDS had been made by the different companies, for shortage and damage having occurred during transportation. This amounted to Rs.21,18,360/-; as shown at the assessee's Paper Book page No.20. The total freight/carting paid, on which no TDS was made thus, as per the assessee, came to Rs.13,82,36,105/-. The assessee demonstrated before the learned CIT(A), through detail at the Assessee's Paper Book page no.21, that it had deducted TDS on an amount of Rs.1,11,43,487/-. The party-wise and truck-wise payment details were shown at the assessee's Paper book page nos.22 to 96. These submissions of the assessee and the concerned details filed were also forwarded by the learned CIT(A), vide his aforesaid letter dated 24.01.2012, to the Assessing Officer, for his report. However, though he had been asked to do so by 02.03.2012, the Assessing Officer did not furnish any report till 02.07.2012, i.e., till the date of the passing of the impugned order.

27. The learned CIT(A), taking into consideration and accepting the explanation of the assessee for not having furnished the evidence before the Assessing Officer, admitted the additional evidence filed by the assessee, holding that the assessee had indeed been prevented by sufficient cause from producing such evidence before the Assessing Officer and that the evidence was necessary for a fair adjudication of the issue.

28. The learned CIT(A) found it to be correct that the amount of freight and carting payment made by the assessee to truck owners was Rs.15,14,97,972/-, as shown by the assessee, and not Rs.16,09,22,175/- as held by the Assessing Officer. The details filed by the assessee in this regard, as above, were accepted by the learned CIT(A) as correct, on examination of the accounts.

29. Apropos the Assessing Officer's finding qua Form No.15-J, the assessee contended before the learned CIT(A) that the Assessing Officer was factually incorrect in holding that

the assessee had not submitted such forms before 30.06.2008, as the position could be verified from the assessee's Paper Book page nos. 97 to 105, wherein, the stamp of the Income Tax Department showed that the forwarding letter with these forms had been submitted well within time, on 30.05.2008. On examination of the details, the learned CIT(A) found this contention of the assessee to be correct. The learned CIT(A) held that since the Form 15-J had been filed with the Department in time, the assessee having no liability to make TDS, no disallowance of expenses under section 40(a)(ia) of the Act was called for.

30. Then, noting from the evidence that the active and working partner of the assessee firm had expired young, that the office had been sealed and shifted, and that the Forms No.15-I are collected at different branches, the learned CIT(A) held that under such obtaining extra-ordinary circumstances, the assessee might have failed to collect and submit the same. The learned CIT(A) held that decision on deductibility of tax on payment made to sub-contractor is to be taken at the time when the contractor is releasing payments to sub-contractors and it is at that point of time that the second proviso to section 194C(3) would come into play and when Forms No.15-I are submitted by the sub-contractors to the contractor, the contractor is not required to deduct tax form such payments, that once deductibility of tax depends on submission or non-submission of Forms No.15-I from the sub-contractors to the assessee, then non-compliance of the third proviso to section 194C(3), i.e., submission of Forms No.15-J to the Commissioner, becomes merely technical, without affecting, in substance, deductibility or non-deductibility of tax on payments made by the assessee to the sub-contractors, that in view of this, tax was not liable to be deducted from payments made to the sub-contractors on account of their submitting Form No15-I to the assessee and, therefore, no addition under Section 40(a)(ia) could be made; and that disallowance of these expenses was not justified.

31. The learned CIT(A) followed, inter alia, 'Valibhai Khankbhai Mankand vs. DCIT', 139 TTJ 70 (Ahd).

32. The assessee further submitted before the ld. CIT(A) that the assessee had also made efforts and gathered information from the RTO to find out the owner of the truck vis-à-vis truck number and had prepared a list, which was annexed at pages 329 to 379 of the paper book, from which, it became very clear that none of the payments was exceeding Rs.20,000/- at one go, nor was the aggregate payment exceeding Rs.50,000/- in the entire year, that the total of these payments is Rs.7,45,71,246/-; that the condition precedent for deduction of TDS, as per section 194C, is that the deduction of TDS is not required to be made if the payment does not exceed Rs.20,000/- and if it does exceed Rs.20,000/-, but the overall aggregate payment does not exceed Rs.50,000/-; and that so, no disallowance under section 40(a)(ia) was called for on these freight expenses.

33. The learned CIT(A) held as under :

> *"On prima facie verification of the details the contentions of the appellant appear correct. However, there were certain payments where the name of the owners could not be obtained by the appellant. The reason given is that they could not collect it from different RTOs fully despite all their efforts. I appreciate that the information was to be collected from large number of places and for numerous trucks and many trucks were very old. However, there is possibility that some of the trucks with different numbers are owned by same person and the sum total of the payments to these trucks exceed Rs.50,000/-. There is probability that the provisions of TDS deduction may have been violated in respect of some of them. The total payable/paid to such trucks (where name of owners is not there) was got summarised from the paper books submitted and forwarded; and the figure is Rs.1,63,75,532/-. The amount remaining payable on 31.03.2008 is Rs.39,30,789/-. The amount of expenses already paid are held not disallowable in view of the Special Bench decision of the Hon'ble ITAT in the case of Merilyn Shipping & Transports – 20 Taxman.com 244 is in favour of the appellant and the decision on the issue as decided in para 5.2 of this order. There is possibility of violation of TDS norms and non-deduction and non-payment with respect to the amount remaining payable on 31.03.2008. Considering such probability a reasonable 20% of the expenses remaining payable i.e. Rs.7,86,158/- is held disallowed under section 40a(ia)."*

34. The learned CIT(A) thus confirmed the disallowance of Rs.20,28,426/- out of total disallowance of Rs.3,21,84,435/- made by the Assessing Officer and deleted the disallowance of Rs.3,01,56,009/-.

35. Apropos the issue regarding Form No.15-I, 'Valibhai' (supra) stands confirmed by the Hon'ble jurisdictional High Court in "CIT vs Valibhai Khanbhai Mankad" 261 CTR 538 (Guj). A copy of this decision has been filed by the learned counsel for the assessee. Their Lordships have held that where the assessee has fulfilled the requirement of the second proviso to section 194C(3) of the Act, disallowance of payment for sub-contractor cannot be made on the ground that the assessee had not furnished form No.15-J before the due date, as required under Rule 29D of the Income Tax Rules, 1962.

36. No contra decision has been cited before us. Therefore, in deference to the judgement of the Hon'ble jurisdictional High Court, the deletion of disallowance qua Rs.2,96,88,288/- representing payments made to sub-contractors without TDS, on which Form No.15-I were obtained, is confirmed.

37. As regards the amount of Rs.1,63,75,532/- paid/payable to truck owners, where the learned CIT(A) confirmed disallowance of Rs.7,86,158/-, the learned CIT(A) relied on "Merilyn Shipping & Transports" (supra). Since "Merilyn Shipping & Transports" (supra) stands overruled by "Sikandar Khan Tanwar (supra)", as observed hereinabove, while dealing with ground no.1, this issue is also remitted to the file of the Assessing Officer, to readjudicate the matter by ascertaining the amounts payable at any time during the assessment year, after considering the amendments made by the Finance Act, 2012, that if the assessee pays the tax on the amount paid by the assessee to him by showing the

receipts as its income, then no disallowance of expenditure can be made in the hands of the assessee under section 40(a)(ia) of the Act. The Assessing Officer shall provide due opportunity of hearing to the assessee. The assessee shall, no doubt, fully co-operate in the readjudication proceedings of the matter.

38. So far as regards the remaining amount of Rs.84,04,822/-, the assessee, before the learned CIT(A), admitted violation of TDS norms qua Rs.12,42,268/-, as the payable amount of Rs.71,62,554/- was stated as already paid. Reference was made to the assessee's Paper Book page nos.327 to 328. The learned CIT(A) confirmed the disallowance of Rs.12,42,268/-. The amount of Rs.71,62,554/- was held not disallowable, as already paid at the end of the assessment year, relying, once again, on "Merilyn Shipping & Transports" (supra). This issue concerning Rs.71,62,554/- is also remitted to the Assessing Officer for decision afresh with similar directions as above.

39. Turning to ground no.4, the Assessing Officer disallowed Rs.34,19,884/-, as unexplained investment, treating 10% of current liability as unexplained, holding as under :-

> *"In the return of income current liability of Rs.3,41,98,844/- has been shown for expenses. The details of liability for unpaid expenses were called for, looking to the volume of transaction and nature of business. The unpaid expenses shown by the assessee is on very higher side as transporters having less than two trucks and the transporters with whom transaction during the year is less than Rs.50,000/- are not in position to keep the freight payment unpaid for more than two months. On verification of payment details of such liability, it is noticed that assessee had made the payment in books of account during the six months. Vide this office notice dated 24.11.2010, assessee was requested to file copy of account with confirmation and payment proof of next year. Also assessee was requested to prove genuineness of current liability. Vide this office order sheet entry dated 03.12.2010, assessee was requested to provide party wise name and address for the amount outstanding exceeding Rs.45,000/- duly confirmed.*
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> *Vide its replies the assessee has submitted that payments are made on lorry receipt (LR). The truck owner brings the LR and on the LR itself a stamp is put up and payment is made. Addresses of the current liability are not available. In few cases, the confirmation of payment is filed.*
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> *Replies filed by the assessee are carefully considered but the same are not fully acceptable. In this case there is current liability of Rs.3,41,98,844/-. The accounts are duly audited and the same are certified by the auditor. Complete name and address of the persons were not furnished. Assessee say details are kept truck wise. However, it has to be noted that payments are made to the persons. The assessee must have some basis relying on which the amount of current liability is computed.*
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> *In the absence of complete names and address, genuineness of current liability cannot be accepted. As per assessee, all freight payment are of below Rs.20,000/-. The transporters having less than two trucks and the transporters with whom transaction during the year is less than Rs.50,000/-, are never in position to keep the freight payment unpaid for more than two months. It is noticed that assessee has made the payments in books during next ix months.*

On the basis of facts available, the unpaid liability cannot be accepted genuine as assessee fail to give confirmation for the parties regarding said liability and proof of their payment in next year. Since assessee has not furnished complete addresses, this office cannot conduct independent inquiries also by issue of notice u/s 133(6) of the I.T. Act.

Assessee has furnished few confirmations. On going through the same it is noticed that simply name of the truck owner is given. There is no date on the confirmation. No identity proof is furnished. On going through the copy of LR of assessee, it is seen that on the LR itself, a stamp of "paid" is put up. There is no date of the payment.

Regarding the payment of the freight charges, assessee has not furnished the payment receipt having revenue stamp for each payment which is more than Rs.5,000/-. Assessee has not furnished any voucher prepared by assessee himself nor any documents of the party is available. Therefore, genuineness of the current liability is not acceptable as there is no payment date also.

In the cases of transporters, no individual truck owner's payment remains outstanding. All the confirmation and address are not brought on record. Therefore, the assessee has failed to prove genuineness of the entire current liability. 10% of current liability is treated as unexplained. In view of this, the amount of Rs.34,19,884/.- is added to the total income being unexplained investment."

40. The learned CIT(A) deleted the disallowance, holding as under :-

"8.1 I have gone through the facts of the case, the contentions of the AO and the submissions. The AO has disallowed 10% of the amount outstanding to trade creditors including freight payables to truck owners at the end of the year. This amount outstanding was Rs.3,41,98,844/-. Out of the said amount, an amount of Rs.3,22,23,997/- pertains to pending freight payment, which have been shown to have been made by the assessee in the immediate 3 months of the next Financial Year i.e. in April, May and June 2008. The rest of the pending payment of Rs.19,74,847/- pertains to expenditure incurred by the assessee in its business and all these payments have been shown to have been made by cheque in the next Financial Year.

The truck numbers were specifically available to the AO. LRs which are fully maintained and which were submitted before the Assessing officer are definitely very substantial and verifiable evidence of the expenditure. These demonstrates that the expenditure has been incurred by the assessee because it has the truck number, address of the party at whose premise the goods have been transported and delivered, and the stamp of receipt of goods of the party to whom the goods have been delivered. He has not made any enquiries from the truck owners to prove that any of the payments was not pending as claimed. Not only the truck numbers were available but the names and addresses were also available in many cases 15-I forms submitted or also in additional evidences remanded to the AO. Even otherwise to shift the onus back to the assessee he could have called these details from the Transport Authorities. Not a single evidence has been brought on record against the expenses claimed. The entire discussion of the AO is on conjectures. The total amount outstanding was around expenditure incurred in 3 months on an average. In any business where the revenue realisation is late it cannot be said to be unusual or improbable. This system of payment has been followed in earlier years and throughout the previous year relevant to the assessment year under appeal. Doubting the expenditure, that too only related to the amount outstanding at the end of the year; and making an addition totally on conjectures is not called for in the totality of circumstances. The disallowance is unjustified and is directed to be deleted."

41. The Department's objection is that, in the absence of enquiry by the Assessing Officer from the truck owners, the learned CIT(A) ought to have himself directed such enquiry. The learned counsel for the assessee has placed reliance on the impugned order.

42. It remains undisputed that truck numbers, names and addresses of the parties and stamps concerning receipt of goods, stood furnished by the assessee before the Assessing Officer. The Assessing Officer, however, brought no evidence against the expenses claimed. In numerous instances, Form No.15-I stood filed by the assessee before the learned CIT(A). No remand report was furnished by the Assessing Officer. The Assessing Officer had made the disallowance merely on conjectures and surmises. In such a case, the learned CIT(A) cannot be faulted for deleting the disallowance made without any evidence against the assessee. It is not challenged, either that the total amount outstanding was around expenses incurred in three months on an average, or that the assessee's business concerns late revenue realisation, or even that such system of payment consistently follows. In such circumstances, finding no error in the action of the learned CIT(A), the deletion of disallowance of Rs.34,19,884/- is upheld. Ground no.4 is rejected.

43. In the result, the Department's appeal is partly allowed. Pronounced in the open Court on this 23rd day of July, 2019.

Sd/-	***Sd/-***
Waseem Ahmed	**A.D. Jain**
(Accountant Member)	(Vice President)

Ahmedabad, the 23rd day of July, 2019

*PBN/**

Copies to:	*(1)*	*The appellant*	*(2)*	*The respondent*
	(3)	*Commissioner*	*(4)*	*CIT(A)*
	(5)	*Departmental Representative*	*(6)*	*Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad