

आयकर अपीलअ अधकरण, राजकोट ँयायपीठ, राजकोट ।
**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT**

**BEFORE SHRI RAJPAL YADAV,
HON'BLE JUDICIAL MEMBER
AND
SHRI WASEEM AHMED
HON'BLE ACCOUNTANT MEMBER**

ITA.No.66 and 67/RJT/2015

अधकरण वर्ष/Asstt.Year : 2008-09 and 2010-11

Jayesh P. Dhuker – HUF P.J.P. Chamber, Officer No.9 Plot NO.70, 9/C, N.H. Road Gandhidham.	Vs	ITO, Ward-1 Gandhidham.
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अपीलाथ/ (Appellant)		अयथ/ (Respondent)
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Assessee by :	Shri Chetan Aggarwal, AR
Revenue by :	Shri Anil Kumar Das, DR

सुनवाई क तारख/Date of Hearing : 16/09/2019

घोषणा क तारख /Date of Pronouncement: 17/09/2019

आदेश/O R D E R

PER RAJPAL YADAV, JUDICIAL MEMBER

Present two appeals are directed at the instance of the assessee against orders of the Id.CIT(A)-3, Rajkot dated 6.1.2015 for the assessment years 2008-09 and 2010-11.

2. Since common issues are involved in both the years, therefore, we heard both appeals together and deem it appropriate to dispose of them by this common order.

3. Grounds taken by the assessee are not in consonance with the Rule 8 of the Income Tax (Appellate Tribunal) Rules, 1963 - they are descriptive and argumentative in nature. The first common grievance in both the years is

what expenditure is required to be disallowed on estimate basis out of transport expenses.

4. Brief facts of the case are that the assessee has filed its return of income on 15.9.2008 declaring total income at Rs.4,63,410/- in the Asstt.Year 2008-09. In the Asstt.Year 2010-11, he has filed such return on 13.10.2010 declaring total income at Rs.3,33,306/-. Assessment in the A.Y.2008-09 was framed under section 143(3) r.w.s. section 148 and 144 of the Income Tax Act, whereas in the Asstt.Year 2010-11, it was framed under section 143(3). The assessee was engaged in the business of transportation of goods at the relevant time under the name and style of its proprietorship concern i.e. M/s.Surya Cargo Movers. A perusal of the accounts, it revealed to the AO that he has shown expenses/purchases of Rs.1,75,81,274/- and Rs.2,09,12,140/- in the Asstt.Year 2008-09 and 2010-11 respectively. On an estimate basis the AO has disallowed 3% of the total expenses in the Asstt.Year 2008-09, whereas such disallowance has been at 15% in the Asstt.Year 2010-11. The Id.CIT(A) did not interfere in the Asstt.Year 2008-09 and confirmed the disallowance at 3% whereas in the Asstt.Year 2010-11, the Id.CIT(A) has reduced such disallowance to 5%. Thus, the assessee is impugning disallowance of expenditure out of transportation expenses at 5% in the Asstt.Year 2010-11 and 3% in the Asstt.Year 2008-09.

5. The Id.counsel for the assessee submitted that though both disallowances have been made on an estimate basis, but while quantifying the expenditure, the Id.AO has not adopted any yardstick rather estimated the expenses in a very unscientific manner which is evident from the fact that variation of 3% to 15% has been made between two assessment years. It itself suggested that there is no scientific method considered by the AO. He

prayed that this disallowance be reduced to reasonable amount which is at the most 1% of the total expenditure.

6. On the other hand, the Id.DR contended that assessee failed to submit complete details i.e. bills and vouchers etc. Therefore, the AO is justified in estimating the disallowance.

7. On due consideration of the above facts, we are of the view that in the absence of complete details for verification of the expenditure, it is but natural to construe that assessee might have inflated its expenditure in order to reduce quantum of income assessable to tax. On the other hand, it is also true that even for best judgment assessment, the AO is required to look into surrounding circumstances, nature of expenditure claimed by other assessees in similar line of business. In other words, what is ratio of expenditure vis-à-vis the turnover in this line of business claimed by other transporters and history of the assessee, no such circumstances have been considered by both the authorities below. It is also discernible that GP achieved by the assessee in the Asstt.Year 2008-09 was Rs.7.56% as against 3.71%. Hence, there is an increase in the GP as compared to earlier years. If this one factor is kept in mind, then also it will reveal that adhoc expenditure disallowed out of transportation expenses at 3% is on the higher side. Therefore, we set aside both the orders on this issue in both these assessment years and direct the AO to restrict such disallowance at 1.5% of the total expenditure debited by the assessee in both the years. In other words, the expenditure will be at 1.5% of Rs.1,80,86,616/- in the Asstt.Year 2008-09 and Rs.2,09,12,140/- in the Asstt.Year 2010-11. Thus, this ground is partly allowed in both the years. There is no other grounds raised in the Asstt.Year 2010-11, hence, this appeal is treated as partly allowed.

8. In the Asstt.Year 2008-09 i.e. ITA No.66/RJT/2015, there is one more ground of appeal wherein the assessee has pleaded that the Id.CIT(A) has erred in confirming the addition of Rs.10,24,095/-.

9. Brief facts of the case are that the assessee has shown transportation receipt of Rs.1,80,86,616/-. However, as per the 26AS the transport receipts of the assessee were Rs.1,91,10,711/-. There was a mismatch of Rs.10,24,095/-. The stand of the assessee is that he had executed transport contract with Kutch Chemical Industries P.Ltd. The bills for the month of March were raised in the first week of April, and therefore, the income of Rs.10,24,095/- was booked in the next year i.e. in the Asstt.Year 2009-10. The AO did not accept this contention of the assessee by observing that since he is following mercantile system of accounting and income would accrue at the point of time when the final bills is raised, therefore, he should have recognized this income in this year when the payer has deducted the TDS. Accordingly, he made the addition. On appeal, the Id.CIT(A) has concurred with the AO in principle, but directed the AO to rectify assessment year 2009-10 and exclude this receipt from the taxable income. The Id.counsel for the assessee contended that the department has not rectified assessment year 2009-10 and this exercise would give cascading effect in all subsequent years - better, if it is excluded from the Asstt.Year 2008-09. On the other hand, the Id.DR contended that credit of TDS has been taken during this assessment year, therefore, the assessee should have offered the income also during this assessment year.

10. We have duly considered rival contentions and gone through the record carefully. The stand of the assessee is that it has raised the bill in the first week of April. The right to receive is accrued when the bill is raised by the assessee. Payer might have made provision in its accounts in anticipation and

deducted the TDS. But even under the mercantile method of accounting the right to receive this income was not accrued to the assessee upto the end of the present accounting year. The income arose to the assessee in the assessment year 2009-10 which has already offered. There should not be double tax on the same receipt. This receipt has already offered by the assessee for taxation in the Asstt.Year 2009-10, and it should not have been included in this year. We allow this ground and delete the impugned addition.

11. In the result, both the appeals of the assessee are partly allowed.

Order pronounced in the Court on 17th September, 2019 at Rajkot.

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Rajkot; Dated 17/09/2019