

**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT**
**BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

(through web-based video conferencing platform)

ITA No. 370/Rjt/2014

निर्धारणवर्ष/Assessment Year: 2008-09

The ACIT, Circle-1, Junagadh	Vs.	M/s. Gujarat Sidhee Cement Ltd., Sidhigram, Veraval Kodinar Road, Veraval PAN : AAACG 8057 G
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Revenue by :		Shri Shramdeep Sinha, CIT-DR
Assessee by :		Shri Vimal Desai, AR

सुनवाई की तारीख/Date of Hearing : 06.11.2023
घोषणा की तारीख /Date of Pronouncement: 10.11.2023

आदेश/ORDER

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER:

Present appeal has been filed by the Revenue against the order passed by the Ld. CIT(A) u/s 250(6) of the Act dated 27.03.2014 pertaining to Assessment Year 2008-09.

2. Earlier, the appeal was adjudicated by the ITAT vide its order dated 11.09.2019; but subsequently on a Miscellaneous Application filed by the Revenue, the appeal was recalled for adjudicating afresh Ground No.4 raised by the Revenue vide order passed by the ITAT in MA No.33/Rjt/2020 dated 06.10.2023. The ITAT noted that the issue raised in the said ground had been adjudicated following the decision in assessee's own case for AY 2009-10, but found that there was no parity in the said two cases. Accordingly, noting this mistake in the order of the ITAT, the appeal was recalled for adjudicating Ground No.4 raised by the Revenue in its appeal in No. 370/Rjt/2014 which pertained to the issue of disallowance of business

promotion expenses. The relevant portion of the order of the ITAT in the Miscellaneous Application at paragraph Nos. 4 to 6 reads as under:-

"4. As regards second issue, the ld. Departmental Representative submitted that the Tribunal dismissed this ground of appeal of Revenue stating the CIT(A) made disallowance of 35% on total sales promotion expenses on the principle of consistency and on the basis of order of Tribunal in assessee's own case for assessment year 2006-07. However, no addition under the under business promotion expenses is made by the Assessing Officer in assessment year 2006-07. Further, while adjudicating the ground of appeal taken by the assessee in respect of disallowance out of business promotion expenses confirmed to the tune of Rs. 58,65,250/- by the CIT(A), the Tribunal held that we disallowed to the tune of Rs. 58,65,250/-. The ld. Departmental Representative submitted that in the order of the Tribunal in ITA 154 and 253/Rjt/2015 for assessment year 2009-10, the Tribunal observed that the Assessing Officer made disallowance of Rs. 71,02,289/- out of the total sales promotion expenses. The Id. Departmental Representative submitted that to reconsider decision of disallowing 35% of amount of Rs. 58,65,250/- as the same is not in parity with Tribunal order in ITA Nos. 154/Rjt/2015 dated 25-04-2019 of the Tribunal order in assessee's own case for assessment year 2006-07.

5. The ld. Authorized Representative submitted that though the facts are not discussed for assessment year 2008-09 in order dated 11-09-2019, the Department cannot ask for rectification in the assessee's appeal through the present Miscellaneous Application is filed in Revenue's appeal. The ld. Authorized Representative relied upon the order dated 11-09-2019.

6. We have heard both the sides and perused the materials on record. It appears that the Tribunal in para 6 though expressed that in parity with the order in assessment year 2009-10 but the finding is not in consonance with the said order dated 25-04-2019. Therefore, there is mistake apparent on record and we are recalling the order dated 11-09-2019 to the extent of the ground of appeal in respect of ITA 370/Rjt/2014 filed by the Revenue regarding the issue of disallowance out of business promotion expenses to the extent of Rs. 58,61,250/-. The order dated 11-09-2019 is recalled for specific issue stated hereinabove. The Registry is directed to place ITA No. 370/Rjt/2014 for fresh hearing on 06-11-2023."

3. Accordingly, Ground No.4 was taken up for adjudication afresh by us. Ground No.4 in the present appeal of the Revenue is reproduced hereunder:-

"4. On the facts and in the circumstances of the case the ld. CIT(A) has erred in law and on facts in deleting the disallowance of Rs.1,52,14,337/- u/s. 37(1) of the I.T. Act out of Business Promotion Expenses."

4. The issue relates to the disallowance of business promotion expenses which was deleted by the ld. CIT(A) to the tune of Rs.1.52 crores; aggrieved by which, the Revenue raised the present ground in its appeal. We have noted from the order of the ITAT that this ground of the Revenue was dismissed on the basis that the ground raised by the assessee on this issue in its connected appeal for the same A.Y in ITA No.320/Rjt/2014 was adjudicated by the ITAT confirming the action of the ld. CIT(A). The relevant portion of the order of the ITAT at paragraph No.11 is as under:-

"11. Since in connected appeal in ITA No.320/Rjt/2014, we have confirmed the action of the ld. CIT(A). Thus, in parity with the said order, we dismiss this ground of appeal of the Revenue."

5. Further, the ITAT has specifically dealt with this issue at paragraph Nos. 17 & 18 of its order in the Revenues appeal as under:-

"17. Now we come to next ground relating to deleting the disallowance of Rs.1,52,14,337/- u/s. 37(1) of the Income Tax Act out of Business Promotion Expenses.

18. Ld. CIT(A) made disallowance of 35% of the total Sales Promotion Expenses on the principle of consistency and on the basis of ITAT Rajkot Bench order in assessee's own case in the year 2006-07. Thus, we do not find any infirmity in the order passed by the ld. CIT(A)."

6. In the connected appeal of the assessee in ITA No.320/Rjt/2014, the grounds raised by the assessee relating to disallowance of business promotion expenses was in Ground No.2 which reads as under:-

"2. The learned Assessing Officer has erred in law as well as on facts in making disallowance of Rs.2,10,79,587/- out of Business Promotion Expenses

on account of alleged non-business purpose and the ld. CIT(A) has erred in confirming the same to the extent of Rs.58,65,250/- "

7. The ITAT dealt with this ground at paragraph Nos. 5 & 6 of its order which reads as under:-

"5. Now we come next ground relating to Business Promotion Expenses on account of alleged non business purpose and ld. CIT(A) has erred in confirming the same to the extent of Rs.58,65,250/-.

6. At the outset, ld. AR cited an order of our bench in ITA No.154 & 243/Rjt/2015 wherein 35% of the similar expenses were disallowed. Thus, in parity with the said order, we disallow 35% of the amount of Rs.58,65,250/-."

8. Thus, what emanates from the above is that, in the facts of the case, the business promotion expenses to the tune of Rs.2,10,79,587/- was disallowed by the Assessing Officer, and when the matter was come up in appeal before the ld. CIT(A), he restricted the disallowance to Rs.58,65,250/- deleting the balance of Rs.1,52,14,337/-. Against the disallowance confirmed by the ld. CIT(A), the assessee went in appeal before the ITAT and against the disallowance deleted, the Revenue challenged the same before the ITAT. Thus, both the assessee and the Revenue challenged the action of the ld. CIT(A) on the issue of disallowance of business promotion expenses before the ITAT.

9. The ITAT first dealt with the assessee's appeal confirming the action of the ld. CIT(A) following its order in ITA Nos. 154 & 243/Rjt/2015 in the case of the assessee, as find mentions in paragraph No.6 of the order of the ITAT in assessee's appeal in ITA No.320/Rjt/2014 reproduced above by us. Having so adjudicated the issue of disallowance of business promotion expenses in the case of the assessee's appeal, it applied the same ratio to the ground raised by the Department in its appeal in ITA No.370/Rjt/2014 which is now before us.

10. Therefore, the ITAT adjudicated the issue of disallowance of business promotion expenses, both in the assessee's appeal and in the Department's appeal before it following its decision in another case relating to the assessee; but before us, only the ground raised by the Revenue in its appeal is up for fresh adjudication. In the Miscellaneous Application filed by the Revenue, it has pointed out mistake in the order of the ITAT only with respect to its own appeal, in adjudicating the issue following its order in the case of the assessee in another decision of the ITAT. Therefore, identical decision of the ITAT on the issue of business promotion expenses in assessee's appeal has not been recalled. With the identical decision of the ITAT on this issue of disallowance of business promotion expenses remaining and standing in assessee's appeal, no cause of action for taking a different view arises in the Revenue's appeal on this issue. The ITAT has categorically mentioned while adjudicating this ground in the Revenue's appeal that it is following its decision on the issue in assessee's appeal, and since the adjudication of the ITAT on this ground in the assessee's appeal still stands, there is no scope for taking any different view on this issue on recall. There is no possibility and scope of two different views being taken on an issue.

11. In view of the same, since the ground raised by the Revenue pertaining to business promotion expenses is linked to the ground raised by the assessee in its appeal in ITA Nos. 320/Rjt/2014 wherein the ITAT has held that the issue is covered by its decision in the case of the assessee in ITA Nos. 154 & 243/Rjt/2015, where 35% of the similar expenses were disallowed, the said ratio still applies to the ground raised by the Revenue also on this issue. Following which we hold that the decision rendered by the ITAT in assessee's own case in Assessment Year 2006-07 in ITA Nos. 154

& 243/Rjt/2015 on the issue of business promotion expenses will apply to the said ground raised by the Revenue. Ground No.4 of the Revenue is adjudicated accordingly.

12. This order forms part of the original order dated 11.09.2019 passed in ITA No.370/Rjt/2014

Order pronounced in the open Court on 10/11/2023 at Ahmedabad.

Sd/-

**(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER**

Ahmedabad; Dated 10/11/2023

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आदेश की प्रतिलिपि अग्रपिठ/ 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)-
5. विभागीय प्रतिनिधिअधिकरण अपीलीय आयकर , /DR,ITAT, Rajkot,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

TRUE COPY

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Rajkot