

**आयकर अपीलीय अधिकरण “डी” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“D” BENCH, MUMBAI**

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
**(Hearing Through Video Conferencing Mode)**

1. आयकरअपील सं./ I.T.A. No.614/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2013-14)  
&  
2. आयकरअपील सं./ I.T.A. No.615/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2014-15)

<b>Shri Madhav Prasad Aggarwal</b> Matulya Center, A-2, GF Senapati Bapat Marg Mumbai- 400 013	<b>बनाम/ Vs.</b>	<b>ACIT – 21(2)</b> Piramal Chambers 4 <sup>th</sup> floor, Lower Parel Mumbai-400 013
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. <b>AABPA-6137-H</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Shri S. L. Jain, Ld. AR
<b>Revenue by</b>	:	Shri Bharat Andhale, Ld. Sr. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	03/06/2021
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	03/06/2021

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeals by assessee for Assessment Years (AY) 2013-14 & 2014-15 contest common order of Learned Commissioner of Income-Tax (Appeals)-33, Mumbai [CIT(A)], dated 06/12/2018 *qua* confirmation of certain expense disallowance as well as depreciation disallowance. Both the appeals are recalled matter since the same were

disposed-off by the Tribunal ex-parte qua the assessee vide order dated 13/03/2020. However, the assessee moved miscellaneous application and the order was recalled. Accordingly, the appeals have come up for fresh hearing before this bench.

2. Having heard rival submissions and after going through material on record, our adjudication to the appeals would be as under.

3. The assessee being resident individual stated to be engaged in export of chemicals was assessed for AY 2013-14 u/s 143(3) on 23/03/2016. It transpired that the assessee debited expenses of Rs.31.50 Lacs under postage/telephone, travelling, sales promotion etc. In the absence of satisfactory documentary evidences forthcoming from assessee, Ld. AO estimated disallowance of 15% against the same. The second disallowance was with respect to depreciation on Motor Car. It transpired that the assessee had purchased the Motor Car in AY 2012-13 in the name of one of its employee and it was held in that year that depreciation would not be allowable since the Motor Car was not owned by the assessee. Taking the same view, depreciation of Rs.1.85 Lacs was disallowed in this year.

4. Upon further appeal, Ld. CIT(A) restricted the expense disallowance to 10%. Regarding depreciation disallowance, the assessee filed copy of bank statement of its proprietorship concern to demonstrate that the payment for purchase of car was made by the assessee. However, Ld. CIT(A) chose to confirm the disallowance in view of the fact that the assessee could not produce any corroborative evidences like log book to prove that the car was used for business purposes. The assessee also did not submit the designation and nature of work handled by the employee in whose name the Motor Car was

registered. Therefore, the disallowance was confirmed. Aggrieved, the assessee is in further appeal before us.

5. So far as the expense disallowance is concerned, upon careful consideration of material on record, we find that the assessee's books were duly audited and no specific defect has been pointed out by Ld. AO in the books of accounts. The Ld. AR has submitted that majority of the expenditure was paid through account payee cheque and sufficient details were furnished before lower authorities with respect to all the expenditure. Keeping in view the same, we restrict the expense disallowance to 5% as against 10% as confirmed by Ld. CIT(A) in the impugned order. This ground stand partly allowed.

6. Regarding depreciation on Motor Car, we are of the opinion that registered ownership was one of the relevant factor while granting depreciation. However, another relevant factor was that the Motor Car should have been used for assessee's business to make assessee eligible to claim depreciation on the same. It could be noted that Ld. AO has not disallowed Motor Car running expenses and the Motor Car forms part of 'block of assets'. The payment of the Motor Car has been made through assessee's bank account. Therefore, to put an end to litigation, we direct Ld. AO to restrict the depreciation disallowance to 10% of depreciation claim of Rs.1,85,897/- to account for personal element in the usage of car. This ground also stand partly allowed. The appeal stand partly allowed.

7. In AY 2014-15, the assessee has suffered disallowance of 5% against travelling / conveyance and telephone expenses. The second disallowance is depreciation disallowance. Both the disallowances have been confirmed by Ld. CIT(A). Following our decision in AY 2013-14, the

expenses disallowance of 5% stand confirmed. The depreciation disallowance stand restricted to 10%. The appeal stand partly allowed.

8. Both the appeals stand partly allowed.

*Order pronounced on 03<sup>rd</sup> June, 2021.*

**Sd/-  
(Mahavir Singh)**

**उपाध्यक्ष / Vice President**

**Sd/-  
(Manoj Kumar Aggarwal)**

**लेखा सदस्य / Accountant Member**

मुंबई Mumbai; दिनांक Dated : 03/06/2021  
*Sr.PS, Jaisy Varghese*

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**