

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH “D”, MUMBAI**

**BEFORE AMIT SHUKLA (JUDICIAL MEMBER)  
AND  
MS. PADMAVATHY S. (ACCOUNTANT MEMBER)**

**I.T.A. No.599/Mum/2023  
(Assessment year : 2019-20)**

Shri Mehul Prakash Mehta 16, Akash Building, 90 Ft.Road Nathpai Nagar, Ghatkopar (East) Mumbai <b>PAN : AGHPM8335M</b>	vs	DCIT, Central Circle 3(2), Mumbai Room No.1913, 19 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai- 400 021
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee represented by	Shri Vallabhdas Parmar
Department represented by	Smt. Mahita Nair (Sr.Ar.CIT)

Date of hearing	10-05-2023
Date of pronouncement	17-05-2023

**ORDER**

**PER : MS PADMAVATHY S. (AM)**

This appeal is against the order of the Commissioner of Income-tax (Appeals)-51, Mumbai dated 28/12/2022 for the assessment year 2019-20. The assessee raised the following grounds of appeal:-

- On facts and circumstances of the case and in law Ld.CIT(A) erred in confirming Disallowance of expenses of diesel charges and loading unloading charges – Rs.19,35,558/-*

2. *On facts and circumstances of the case and in law Ld.CIT(A) erred in confirming Disallowance of expenses of Rs.19,35,558/- without appreciating the fact that these expenses are properly supported by bills and vouchers and such expenses are allowed in earlier years and also after date of survey and were in conformity of gross profit rate of business of earlier years and subsequent year and trade practice in assessee 's line of business."*

3. The assessee is an individual, filed the return of income for A.Y. 2019-20 on 09/10/2020 declaring an income of Rs.14,76,240/-. The return was processed under section 143(1) of the Income-tax act, 1961 (in short, 'the Act' ). The assessee is proprietor of M/s Tirupati Enterprises and M/s Tradein Logistics. There was a survey under section 133A that was carried out in the business premises of the assessee on 27/09/2018. During the course of survey proceedings, on examination of cash book maintained by the assessee, discrepancies were noticed in the cash in hand as per books as on 27/09/2018 and the physical cash available with the assessee. The cash balance as per cash book as on the date of survey was as under:-

(1) Tirupati Enterprises	Rs. 47,36,001/-
(2) Tradein Logistics	Rs. 31,61,839/-

The physical cash found during the survey proceedings was Rs.2,450/-. A notice under section 143(2) was served on the assessee and the details were called upon by the Assessing Officer. During the course of assessment proceedings on examination and reconciliation of cash book produced with the cash found during the course of survey proceedings, the Assessing Officer noticed that there is a change in the cash in hand as shown in the cash book found during survey. As

such, it has resulted in claiming expenses in financial year 2017018 which have been booked after the date of survey as per details given below:-

Particulars	Opening cash in hand as on 01.04.2018		Expenses booked after the date of survey in F.Y. 2017-18
	As per the cash book found during survey	As per cash book filed in assessment proceedings	
M/s Tirupati Enterprises	38,59,406	73,981	37,85,425
M/s Tradein Logistics	14,16,839	40,784	13,76,055
<b>TOTAL</b>			<b>51,61,480</b>

4. On perusal of cash book, the Assessing Officer noticed that the assessee had claimed Rs.19,35,558/- as expenses pertaining to the period upto the date of survey which were not recorded in the cash book found during the course of survey and the same have been booked and thereafter in the cash book produced during the assessment proceedings. The assessee submitted that the cash book was not updated as on the date of survey though the assessee had incurred expenses from the first date of the financial year upto the date of survey and that post the survey, the assessee had updated the cash book. The assessee also submitted that these are genuine expenses incurred by the assessee during the course of business in relation to mainly transportation expenses, petrol charges and other office related expenses. The assessee also produced vouchers with regard to these expenses. The Assessing Officer did not accept the submissions of the assessee and made an addition of Rs.19,35,558/- towards the expenses booked in the cash book upto the date of survey treating the expenses as not genuine and that the evidences produced in the form of vouchers could not be accepted. The Assessing Officer also made an addition under section 41(1) in respect of certain creditors since there was no

liability to pay and that the liability ceased to exist to the tune of Rs.16,82,284/-. Aggrieved, the assessee filed appeal before the Ld.CIT(A). The Ld.CIT(A) deleted the addition made under section 41(1) but sustained the addition made towards expenses by holding that –

**“9.3** *The contentions made by the appellant have been carefully considered. The argument of the appellant that expense vouchers were not found at the time of the Survey u/s 133A because the books of accounts are prepared by his CA / regular accountants in their office, is a meaningless argument. Even if the vouchers were lying in the office of the CA/Accountant at the time of the Survey u/s 133A, it was the duty of the assessee to get these vouchers from wherever these were lying and produce them before the Survey Party. If for any reason, the vouchers could not be produced at the time of the Survey, they should have been produced before the Authorized Officer/AO within a reasonable period of one or two days. However, in the instant case, the assessee has conveniently chosen to produce the relevant vouchers after a lag of more than three years from the date of the Survey i.e at the time of the assessment proceedings. The AO has thus rightly treated the expenses claimed vide these expense vouchers as bogus. Moreover, coming to the genuineness of these vouchers,, the AO has pointed out number of defects in these vouchers which again make them liable for rejection. The AO has pointed out very categorically that only Xerox copies were furnished and no the original vouchers were produced. While most of these vouchers had been prepared against 'diesel charges' and all were for an\* amount below Rs.20,000/-, the bills issued by petrol pumps towards diesel charges were not attached. Also the vouchers purported to be towards 'loading and unloading charges' were also not supported by the details of the labour employed for the specific job. Thus, the AO has rightly not accepted the expenses claimed through these vouchers as genuine expenses. In view of the above, the disallowance made by the AO of Rs. 19,35,558/- as bogus expenditure is upheld. Accordingly, **this ground of appeal is dismissed.**”*

5. Before us, the Ld.AR submitted that the assessee is having two proprietary concerns, viz., Triupati Enterprises for manufacturing of chemicals and Tradein Logistics for doing transportation of chemicals using its own vehicles. The Ld.AR

submitted that the survey happened in the middle of the financial year and the books were not updated though the assessee had been incurring expenses towards normal course of business. The Ld.AR submitted that the books were updated post the survey and the assessee had, during the course of assessment proceedings, submitted the books along with vouchers supporting the claim of expenses. The Ld.AR also submitted that considering the nature of business of the assessee, the expenses incurred are towards loading and unloading charges, petrol, etc. towards which the assessee could not produce proper invoices but had submitted vouchers before the Assessing Officer. Therefore, the Ld.AR submitted that the expenses booked in the books of account are genuine expenses and because of the timing delay in booking the expenses cannot be the reason for treating them as non genuine and making addition towards the claim.

6. The Ld.DR, on the other hand, submitted that vouchers cannot be treated as proper evidences without bills and that the assessee could not substantiate the claim of expenses properly and, therefore, the lower authorities have rightly treated the expenses as bogus.

7. We heard the parties and perused the materials on record. During the course of hearing, the bench called upon the Ld.AR to produce the cash expenses incurred by the assessee for financial years relevant to AYs 2016-17, 2017-18 and 2019-20 in order to analyse the trend of expenses which have been incurred in the similar way as in the year under consideration. The Ld.AR submitted details of cash expenses, the P&L Account and the cash book for the above assessment years which have been taken on record. On perusal of the said details, we notice that the expenses claimed by the assessee towards transportation and other office expenses

are in line with the earlier years and subsequent years to the year under consideration. We further notice that assessee has made a statement before the lower authority that these expenses are incurred during the course of business and considering the nature of the business of the assessee, he could not substantiate the said expenses with supporting evidences. We notice that the Assessing Officer has disallowed the expenses from the first day of financial year to the date of survey for the reason that the expenses have been subsequently booked post the date of survey but the expenses for the rest of the year have been allowed by the Assessing Officer. We, therefore, are unable to appreciate the view taken by the Assessing Officer that no expenses / the expenses incurred from first day of financial year to the date of survey are bogus when the expenses of similar nature that are booked post the date of survey are genuine and allowable according. The assessee is doing regular business throughout the year and there cannot a situation where no expenses are incurred from the first of the financial year till the date of search. Considering the details submitted and the nature of business of the assessee, in our considered view, the expenses booked by the assessee upto the date of survey cannot be treated as bogus only for the reason that the same are accounted in the books of account subsequent to the date of search. We, therefore, delete the disallowance made by the Assessing Officer and allow the appeal in favour of the assessee.

8. In the result, the appeal is allowed.

**Order pronounced in the open court on 17 /05/2023.**

Sd/-

sd/-

<b>(AMIT SHUKLA)</b>	<b>(PADMAVATHY S)</b>
<b>JUDICIAL MEMBER</b>	<b>ACCOUNTANT MEMBER</b>

Mumbai, Dt : 17<sup>th</sup> May, 2023  
Pavanan

**प्रतिलिपि अग्रेषित Copy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

Asstt. Registrar / Senior Private Secretary  
**ITAT, Mumbai**