

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI
BEFORE SHRI S. V. MEHROTRA, ACCOUNTANT MEMBER
AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER**

**I.T.A .No. 586 /Del/2012
(Assessment Year:- 2006-07)**

Dr. Ramesh Arora C-35, Sector-39 Noida AAAPA1250F (APPELLANT)	VS	ACIT Circle Noida (RESPONDENT)
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Appellant by	Sh. Ajay Kumar Sharma, ADV
Respondent by	Ms. Kesang Y. Sherpa, Sr. DR

Date of Hearing	03.05.2016
Date of Pronouncement	30.05.2016

ORDER

PER CHANDRA MOHAN GARG, JM

This appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-Ghaziabad dated 24/11/2011 passed in First Appeal No. 102/2008-09/gzb/Noida for Assessment Year 2006-07.

2. The grounds raised by the assessee read as under:

- “1. *That, the appellant is a Medical Doctor specialist in Cardiology. The return of the Assessment Year 2006-07 was filed in Circle, Noida.*
2. *That, the Appellant has declared the income from pension, Profit and Gain from Business/Profession, Capital Gain and Income from Other Sources.*
3. *That, this return was picked up for scrutiny and the assessment was completed under the provisions of Section 143(3) of Income –tax Act.*

3. Briefly stated the facts raised to this appeal are that the Assessing Officer selected the case for scrutiny and completed the assessment u/s 143 (3) of the Income-tax Act 1961 (for short the Act) on 21/11/2008 at total taxable income of Rs.14,61,750/- as against the return income of Rs.9,87,160/- by making certain disallowances pertaining to expenditure incurred in availing the professional services of the husband of the appellant, disallowance of depreciation and disallowance of certain expenses incurred in performing professional activities. The aggrieved assessee preferred an appeal before the Ld.CIT(A) which was also dismissed. Now, the empty handed assessee is before this Tribunal with the grounds reproduced hereinabove.

Ground No.1

4. Apropos Ground, No.1, the Ld. Counsel of the assessee submitted that the assessee made payment to her husband towards professional assistance given by him. The Ld. AR further pointed out that the husband of the assessee is a retired engineer from Seimens’s Co. and he devoted full time to assist professional activities of the assessee through the entire period under consideration and this

expenditure was claimed by the assessee and allowed by the Revenue in the earlier and subsequent assessment years also.

5. Replying to the above, the Ld. Departmental Representative (DR) submitted that, there is no big establishment of the assessee for which the assessee need administrative and professional support from her husband and there was no need of administrative work nor there was any trade of medical equipments by the assessee which requires services of her husband. Therefore, payment towards so called professional assistance as claimed by the assessee was not justified which was rightly disallowed by the A.O and the said conclusion was rightly upheld by the Ld.CIT(A).

6. On careful consideration of the rival submissions, at the very outset we observe that neither the A.O nor the CIT (A) has controverted this fact that the husband of the assessee is a retired engineer who has full time to devote towards professional assistance for her wife in her professional career as a medical practitioner. The Ld. DR could not controvert this fact that the similar expenditure was allowed to the assessee for earlier and subsequent assessment year.

7. From the facts noted by the CIT(A) in Para 2 it is clear that the assessee enjoys income from pension and medical practice in the field of Cardiology and the assessee also refers patient to various hospitals and had disclosed professional fees of Rs. 19,60,509/- which is not a minor income. We further observe that as per contention of the Ld. AR towards earning such huge professional income, the assessee paid Rs.3,60,000/- to her husband Shri Pradeep Arora, which is a retired engineer from M/s Seimens Ltd. and has a vast

knowledge in the field of medical profession and its administration. Therefore, this payment of professional charges made by the assessee cannot be held as unreasonable or bogus. We cannot forget this fact that similar claim of the assessee has been allowed by the Revenue during the earlier and subsequent assessment year and we are unable to see any valid reason to make such disallowance which has been established by the assessee by way or proper explanation that the professional charges paid to her husband has been incurred against professional assistant extended by him (her husband Shri Pradeep Arora) to her after his retirement from an administrative managerial post. In this situation, we decline to accept disallowance made by A.O and upheld by the CIT(A) and thus we demolish the same. In view of our forgetting discussion, the A.O is directed to delete the addition and to allow the claim of the assessee in this regard. Consequently, Ground No. 1 of the assessee is allowed.

GROUND NO.2

8. Apropos Ground No.2, the Ld. Counsel of the assessee, the AR pointed out that the Assessing Officer has erred in disallowing the depreciation claimed in the return on purchase of Honda City to Rs.51, 492/- and that new car of Rs. 8,625/- with facts and circumstances of the case. The Ld. Counsel of the assessee pointed out that the Assessing Officer made disallowance by taking into consideration irrelevant and incorrect facts. Therefore, the disallowance made by the A.O and upheld by the CIT (A) may kindly be dismissed.

9. Replying to the above, the Ld. DR supported the action of the A.O and submitted that the A.O in para 4 has went into detail examination of the assessee

and rightly held that the "Honda City Car" was purchased on 31/3/2006 and the utilization thereof for professional activities and for stand by parties does not exist. Therefore, he rightly made disallowance of Rs.51, 492/-. The Ld. D.R also pointed out that the assessee placed incorrect calculation and depreciation in regard to Maruti Swift (therefore, the excess claim of deprecation worked out at Rs. 8,625/- was rightly disallowed by the A.O and CIT(A) was quite justified in upholding the same.

10. On careful consideration of above rival submissions, we note that after reproducing assessment order, the CIT(A) decided the issue in para 5.2 and arrived at the conclusion that the assessee, a medical practitioner does not need two cars to operate of her profession and the explanation of the assessee in this regard is not acceptable. On this issue, the main contention of the Ld. Counsel of the assessee is that there is no restriction of number of cars to be kept by a medical practitioner as per provisions of the Act. From the relevant operative para 4 of the assessment year we observe that the Assessing Officer reduced sale consideration of old car from the cost of new Maruti Swift and then worked out the deprecation @ 7.5%. We are not in agreement with the calculation made by the A.O in this regard as for calculation of cost of acquisition of a new car the sale consideration of old car may be deducted from but for calculation of deprecation the total cost of a new car has to be taken into consideration and thus, disallowance made by the A.O of Rs.8,625/- was not called for and we dismiss the same. So far as, the depreciation claimed by the assessee on new Honda City Car is concerned the A.O wrongly noted that the car was purchased on 31/3/2006 whereas per list of dates and events the Honda City Car was purchased on 21/3/2006 as per submissions of the assessee. We are not inclined to accept

contention of the A.O that the utilization of Honda City Car from professional activity and for stand by purpose does not exist. At the same time, we are not agreement with the explanation of the assessee submitted during the assessment proceedings that the job of the assessee who is a Cardiologist Medical Practitioner is of emergent in nature and some time if one car is showing some trouble so that the assessee has to keep a small car stand by to fulfill her responsibility of the professional work. Therefore, disallowance of depreciation made by the A.O and upheld by the CIT(A) on newly purchase Honda City is not called for and we direct the A.O to allow the same. Accordingly, Ground No. 2 of the assessee is allowed.

GROUND NO. 3

11. Apropos Ground No. 3, the Ld. Counsel of the assessee pointed out that the Assessing Officer also made ad-hoc and arbitrary disallowance of Rs.54,475/- @ 20% of expenses debited under the head car repair maintenance, car running and maintenance as there was no element of personal use by the assessee. Replying to the above, the Ld. DR vehemently supported the action of the A.O and submitted that the personal use of car cannot be ruled out until and unless the assessee, established that there was a separate car for personal use. The Ld. DR further pointed out that when the assessee is claimed depreciation against her professional income for both the cars and there is no other car then the element of personal use cannot be ruled out and in this situation disallowance of 20% of car repair, maintenance and running expenses was quite justified and reasonable.

12. On careful consideration of above submissions, we may point out that the assessee has claimed depreciation on both the cars and we are unable to see that the assessee has any other car for personal use, in this situation, the element of personal use of a car cannot be ruled out and the use of cars for personal use has to be presumed in this situation disallowance has to be made regarding personal use of car towards car running maintenance and repair expenses. In the present case, the Assessing Officer made disallowance of 20% all expenses which has been upheld by the CIT (A). In our considered opinion, while the assessee herself and her husband has a Retired Senior Citizens then the element of personal use cannot be taken @ 20% of total expenditure and to meet the ends of justice we direct the A.O to make disallowance of 10% car running maintenance and repair expenses on account of personal use by the assessee. Accordingly, Ground No. 3 of the assessee is partly allowed in the manner as indicated above.

13. In the result, appeal of the assessee is partly allowed.

Order pronounced in the Open Court on 30/05/2016

Sd/-

(S.V.MEHROTRA)
ACCOUNTANT MEMBER

Sd/-

(C. M. GARG)
JUDICIAL MEMBER

Dated: 30/05/2015

R. Naheed

Copy forwarded to:

1. Appellant
2. Respondent

3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	24.05.2016	PS
2.	Draft placed before author	25.05.2016	PS
3.	Draft proposed & placed before the second member	.2016	JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	30.05.2016	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	30.05.2016	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		

