

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER**

I.T.A. No. 995/HYD/2016

Assessment Year: 2008-09

Sri Anant Kabra, HYDERABAD [PAN: AEOPK6878C]	Vs	Income Tax Officer, Ward-4(3), HYDERABAD
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(Appellant)

(Respondent)

For Assessee	:	Shri A. Srinivas, AR
For Revenue	:	Shri M. Sitharam, DR

Date of Hearing	:	24-05-2018
Date of Pronouncement	:	08-06-2018

ORDER

PER B. RAMAKOTAIAH, A.M. :

This is an appeal by assessee against the order of the Commissioner of Income Tax (Appeals)-1, Hyderabad, dated 28-01-2016.

2. Briefly stated facts are that, assessee an individual, returned income from commission earned on insurance business being an agent with Max New York Life Insurance Co., Ltd. Against the commission received, assessee has claimed various expenditure in the P&L A/c. Assessing Officer

(AO) disallowed various amounts in the assessment order which was contested before the Ld.CIT(A). CIT(A) while allowing some grounds, did not allow three of the items. Hence the present appeal. The grounds raised by assessee are as under:

“1. The Appellate Commissioner ought not to have sustained an amount of Rs. 56,895/-, being 30% of salary debited to profit & loss account.

2. The Appellate Commissioner ought not to have sustained an amount of Rs. 1,99,404/- being gifts debited to profit & loss account.

3. The Appellate Commissioner ought not to have confirmed an addition of Rs. 3,13,112/-, made by the A.O being sale of old car and which has been reduced from the block of assets”.

Ground No. 4 is general in nature.

3. Ground Nos. 1 & 2 are claims of expenditure in the P&L A/c. AO noticed that assessee has claimed amongst various expenditures - an amount of Rs. 1,89,650/- towards salaries and Rs. 6,64,680/- towards gift. Since the proof of expenses were not furnished, AO disallowed 30% of the above amounts. It was the contention before the CIT(A) that expenditures were vouched and genuine and payments were through bank. Ld.CIT(A) in the brief order, however, did not agree stating that no evidence was submitted regarding these amounts.

3.1. It was the submission of Ld. Counsel that salaries are very meagre, paid to the staff employed for helping him and showed the entries from the bank account that amounts

are paid through Bank. Like-wise, he has shown the debit entries of purchase of gift vouchers and items to the customers which were debited in the account, either through cheques or through the credit cards.

3.2. Considering the above nature of expenditure, we are of the opinion that assessee deserves to get full allowance of salaries. The amount of Rs. 56,895/- disallowed out of the salary amount is allowed.

3.3. Coming to the gifts, it may be true that assessee might be passing on the gifts to the customers but as seen from the orders of the AO and CIT(A), there is no proof of passing on the gifts to the parties. Since AO has allowed more than 70% of the amount involved, we are of the opinion that on the given facts of the case, the disallowance is warranted. Ground No. 1 is allowed and Ground No. 2 is dismissed.

4. Ground No. 3 pertains to the issue of addition on account of being sale of old car. Assessee has sold an old car and adjusted the sale price in the depreciation schedule. For the reasons best known to the AO, he considered the receipt of sale of car as income, but added as 'disallowance of sale of old car'.

4.1. Before the Ld.CIT(A) it was submitted that Opel Astra car was sold for the above amount and the same was reduced from block of assets before claiming depreciation.

Ld.CIT(A), however, dismissed the ground stating that assessee has not filed any proof of sale of car.

4.2. After considering the rival contentions and perusing the Paper Book in which the depreciation schedule was placed, we are of the opinion that both AO and CIT(A) erred in treating the amount as 'income of assessee'. As seen from the depreciation schedule, assessee has shown sale of car in the deductions and the opening WDV was reduced by that extent. The consequent deprecation was also less to that extent. Since the amount was adjusted in the block of the assets, the same cannot be considered as income again. Moreover, sale of personal car does not become income and there is no allegation that the above amount was not recorded in the books of account. Why the AO treated the same as income could not be understood and it is equally perplexing why the CIT(A) confirmed, even though the same was explained that the said amount was adjusted in the block of assets. We allow the ground and direct the AO to delete the addition.

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

Order pronounced in the open court on 8th June, 2018

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated 8th June, 2018

TNMM

Sd/-
(B. RAMAKOTIAH)
ACCOUNTANT MEMBER

Copy to :

1. Sri Anant Kabra, 2-4-941 & 942, "DEWAS", Kachiguda, Hyderabad.

2. Income Tax Officer, Ward-4(3), Hyderabad.

3. CIT(Appeals)-1, Hyderabad

4. Pr.CIT-1, Hyderabad.

5. D.R. ITAT, Hyderabad.

6. Guard File.