

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI**

Before Sh. N. S. Saini, Accountant Member

ITA No. 6917/Del/2018 : Asstt. Year : 2015-16

Krishan Chand Jain, Prop. M/s Haryana Auto Agency, Opposite Air Force School, Old Delhi Road, Gurugram-122001	Vs	Income Tax Officer, Ward-2(3), Gurugram
(APPELLANT)		(RESPONDENT)
PAN No. AAUPJ2668P		

**Assessee by : Sh. Saurav Rohtagi, CA
Revenue by : Sh. S. L. Anuragi, Sr. DR**

Date of Hearing: 10.04.2019	Date of Pronouncement: 26.04.2019
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ORDER

This is an appeal filed by the assessee against the order of Commissioner of Income Tax (Appeals)-1, Gurgaon dated 16.08.2018.

2. Ground Nos. 1 & 2 of the appeal of the assessee reads as under:

"1. That the impugned order is unsustainable in law as well as on merits.

2. That the impugned order is without jurisdiction."

3. At the time of hearing, the Authorized Representative of the assessee submitted that he has not pressing the above ground nos. 1 & 2 raised in the appeal. Hence, they are dismissed for want of prosecution.

4. Ground No. 3 of the appeal of the assessee reads as under:

"3. That under the facts and circumstances of the case, the Id. CIT(A) grossly erred in law as well as on merits in

sustaining the addition of Rs.11,09,634/- for 50% of insurance expenses and RC expenses.”

5. The brief facts of the case are that during the course of assessment proceedings, the Assessing Officer observed that assessee had shown sundry debtors at Rs.38,83,207/-. The Assessing Officer required the assessee to furnish the details of expenses. For verification of the details furnished by the assessee, the Assessing Officer issued noticed u/s 133(6) of the Act and recorded the statement of one of the debtors, Sh. Krishan Kumar. The Assessing Officer also verified the bill issued by the assessee to Sh. Krishan Kumar. From the statement of the debtors, Sh. Krishan Kumar, the Assessing Officer concluded that debtors shown by the assessee were not genuine and that the assessee has debited bogus expenses for registration charges and insurance charges. The Assessing Officer asked the assessee to furnish the details of free insurance expenses of Rs.14,27,232/- and registration charges of Rs.7,92,036/-. It was submitted by the assessee that to boost the sale, the assessee had given free insurance and registration to the customers as an incentive and part of these expenses have been reimbursed by the supplier. The Assessing Officer was not satisfied with the explanation of the assessee by referring to the copy of bill issued to Sh. Krishan Kumar as provided by the assessee. He observed that the bill was for an amount of Rs.6,20,000/- and that this amount was different from Rs.6,40,000/- mentioned in the invoice and observed that the assessee is actually issuing bills to customers in the invoice manner by billing for all charges i.e. insurance, registration etc. but maintaining different record for business purposes. The Assessing Officer observed that in spite of opportunities being allowed to the assessee, the assessee failed to produce copy of all the bills for purchase and sale and also complete books of accounts during the assessment proceedings. The Assessing Officer also noted from the discussion with the assessee that during the festive season most of the dealers give discount like RC and insurance

and this contention of the assessee had some weight. Accordingly, the Assessing Officer held that part of the expenses claimed under this head were allowable and accordingly disallowed 75% of the expenses and made addition of Rs.16,64,454/-.

6. On appeal, the Commissioner of Income Tax (Appeals) observed that from documents filed by the assessee although it can be seen that there were some payments made by the supplier to the assessee under the incentive scheme but the assessee failed to establish the direct nexus between the suppliers under these heads. Therefore, he opined that the appellant had incurred some expenses under these heads but the assessee failed to establish the genuineness of the claim of the total amount claimed under these heads. Therefore, he restricted the disallowance to 50% of the expenses claimed by the assessee.

7. Being aggrieved the assessee is in appeal before me.

8. I have heard the rival submissions and perused the orders of the lower authorities and materials available on record. In the instant case, the assessee is in the business of selling two wheelers and tractors of new Holland Flat India. The Assessing Officer found that in the profit and loss account, the assessee has deducted Rs.14,27,232/- under the head insurance free expenses and Rs.7,92,036/- under the head registration charges. The Assessing Officer issued notice u/s 133(6) of the Act to examine the expenses. One person by name Sh. Krishan Kumar appeared before the Assessing Officer in response to the notice and submitted that he had paid for insurance and registration charges to the assessee separately for vehicle purchase by him. From this statement, the Assessing Officer inferred that the expenses claimed by the assessee under the head insurance free charges and registration charges are not

genuine. The assessee contended that he paid insurance free charges and registration charges for the vehicle sold by him and a part of the same was reimbursed to him by the supplier. It was submitted that the insurance free charges and registration charges has been debited by him in the profit and loss account and simultaneously amount received towards reimbursement from these expenses from supplier has been credited in the profit and loss account. Thus, all the receipts and expenditure has been accounted by him in this manner and the net excess expenditure incurred by the assessee under these heads has been claimed as deduction from the income. The Assessing Officer was not satisfied with the explanation of the assessee and therefore, made an estimated disallowance of 75% of the expenses claimed under the two heads added Rs.16,64,454/- to the income of the assessee.

9. On appeal, the Commissioner of Income Tax (Appeals) restricted the disallowance to 15% of the expenses under the two heads claimed by the assessee.

10. Before me, the Authorized Representative of the assessee reiterated the submissions made before the lower authorities. The Authorized Representative of the assessee from the profit and loss account for the year ending 31.03.2014 filed before us pointed out that the assessee has shown income for incentive receipt at Rs.8,41,845/- and has claimed deduction for expenses for insurance expenses of Rs.9,29,759/- and thus, it was his submission that the assessee had debited the actual expenditure in the profit and loss account and credited the receipt in the profit and loss account and in this way, net expenditure has been claimed deduction from the income of the assessee. Therefore, it was his submission that the

estimated disallowance at 50% of the expenses claimed by the assessee was not justified.

11. On the other hand, the Id. Departmental Representative supported the orders of the lower authorities.

12. In this background of the case, I find that neither before the Assessing Officer or Commissioner of Income Tax (Appeals), the assessee could demonstrate by filing evidence that for which of the vehicles sold by him, the assessee has borne the expenses under the head insurance and registration charges. The Assessing Officer and the Commissioner of Income Tax (Appeals) has made disallowance for this reason. Even before me, the Authorized Representative of the assessee could not show the nexus between the expenses incurred and the vehicles sold by him. That being so, I find no good reason to interfere with the order of the Commissioner of Income Tax (Appeals) and therefore, I confirm, the order of the Commissioner of Income Tax (Appeals) and dismiss the ground of appeal of the assessee.

13. In the result, the appeal of the assessee is dismissed.
(Order pronounced in the Court on 26th day of April, 2019
at New Delhi)

Sd/-
(N. S. Saini)
Accountant Member

Dated: 26/04/2019

Subodh

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(Appeals)
- 5.DR: ITAT

ASSISTANT REGISTRAR