Docket: 2016-3127(IT)I

BETWEEN:

HIRUT MEBERATU,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on September 21, 2017, at Toronto, Ontario

Before: The Honourable Justice David E. Graham

Appearances:

Agent for the Appellant:	Jagama Gobena
Counsel for the Respondent:	Brad Bechard

JUDGMENT

The appeal of the Appellant's 2010, 2011 and 2012 taxation years is allowed without costs and the matter referred back to the Minister of National Revenue for reassessment on the basis that the Appellant had additional employment expenses of $120 in 2010, $120 in 2011 and $404 in 2012.

Signed at Ottawa, Canada, this 20th day of October 2017.

"David E. Graham"

Graham J.

Citation: 2017 TCC 211
Date: 20171020
Docket: 2016-3127(IT)I

BETWEEN:

HIRUT MEBERATU,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Graham J.

[1] In 2010, 2011 and 2012, Hirut Meberatu was employed as a personal support worker. When she filed her tax returns for those years, Ms. Meberatu deducted various expenses from her employment income. The Minister of National Revenue denied the deduction of some of those expenses. Ms. Meberatu appealed the denial of a number of expenses but, at trial, chose to limit her appeal to expenses relating to the operation of a motor vehicle and the use of a cell phone.

[2] The sole issue in this appeal is whether those denied expenses should be allowed or not.

Motor Vehicle Expenses

[3] I will deal first with Ms. Meberatu's claim for motor vehicle expenses. Ms. Meberatu deducted $6,069.95, $5,986.59 and $6,041.07 in motor vehicle expenses in her 2010, 2011 and 2012 tax years respectively.

[4] Ms. Meberatu worked for a company called Prohome Health Services in 2010 and 2011. Prohome was purchased by We Care Health Services LP in 2012 and Ms. Meberatu continued working for We Care. In 2012, Ms. Meberatu also worked for an employer named S.R.T. Med-Staff.

[5] I accept that Ms. Meberatu was required to use her personal car when working for her employers. She testified that her employment required her to visit clients at their homes. She explained that she would leave her home each morning, drive directly to a client's home, and then move on from there to visit additional clients before finally returning to her own home at the end of the day. She testified that she only drove to her employers' places of business about once a month.

[6] Ms. Meberatu explained that Prohome / We Care paid her a motor vehicle allowance of $0.20 / km and that S.R.T. Med-Staff did not pay her a motor vehicle allowance.

[7] I will deal with Ms. Meberatu's motor vehicle expenses in respect of each employer separately.

Prohome / We Care

[8] Paragraph 8(1)(*h.1*) of the *Income Tax Act* specifically prevents an employee from deducting motor vehicle expenses if the employee has received an allowance in respect of those expenses and that allowance has not been included in the employee's income.

[9] The Minister made an assumption of fact that Ms. Meberatu did not include the allowance in her income. I find that Ms. Meberatu has failed to demolish that assumption. Ms. Meberatu testified that the motor vehicle allowance that she received from Prohome / We Care was included in her income. For the reasons set out in more detail below, I did not find Ms. Meberatu to be a reliable witness. I am not prepared to rely on her oral testimony on this point without further support. Ms. Meberatu did not provide copies of her T4s from Prohome / We Care nor did she call anyone from Prohome / We Care to testify on her behalf. Accordingly, I find that the allowance was not included in Ms. Meberatu's income.

[10] Subparagraph 6(1)(*b*)(vii.1) requires an employee to include a motor vehicle allowance that is not reasonable in income. Ms. Meberatu's agent argued that the allowance that Ms. Meberatu received was not a reasonable allowance. He therefore reasoned that, if I found that the allowance had not already been included in Ms. Meberatu's income, I should find that, because it was unreasonable, it should have been included in her income under subparagraph 6(1)(*b*)(vii.1) and thus that paragraph 8(1)(*h.1*) should not prevent Ms. Meberatu from deducting her motor vehicle expenses to the extent that they exceeded the allowance.

[11] Ms. Meberatu's agent argued that the allowance Ms. Meberatu received was not reasonable because it was considerably lower than the rates that the Minister accepts as reasonable. He referred to regulation 7306 of the *Income Tax Regulations* as evidence that the Minister considered $0.53 / km for the first 5,000 km and $0.47 / km thereafter to be a reasonable rate in 2012. While I accept that the allowance paid to Ms. Meberatu was lower than what the Minister would consider to be a reasonable allowance, in the circumstances, there is no evidence upon which I could conclude that the allowance paid to Ms. Meberatu was unreasonable.

[12] A document prepared by Prohome / We Care was entered into evidence. It indicates that Ms. Meberatu was reimbursed for driving 5,655 km, 6,446 km and 4,891 km for employment purposes in 2010, 2011 and 2012 respectively. By contrast, when she filed her tax returns for those years, Ms. Meberatu claimed to have driven 22,950 km, 22,950 km and 22,500 km for employment purposes. Her only explanation for these very large discrepancies is that she drove a less direct route from each client's home to the next client's home than the route used by her employer to calculate her mileage. This explanation is highly improbable. I do not accept it. I find it extremely unlikely that Ms. Meberatu drove an average of four times the distance that Prohome / We Care calculated was necessary. I find that the figures used by Prohome / We Care are more reliable and conclude that those figures are the number of kilometers that Ms. Meberatu drove when working for Prohome / We Care.

[13] Ms. Meberatu's tax returns indicate that her vehicle was driven 25,500 km, 25,500 km and 25,000 km in total in 2010, 2011 and 2012 respectively. Ms. Meberatu's tax returns set out the total operating expenses for the vehicle for each year. As described in more detail below, I am not convinced that the vehicle expenses reported by Ms. Meberatu were accurate. However, if I were to assume that those expenses were accurate and that the total mileage that she reported on her return for the vehicle for each year was correct, Ms. Meberatu would have incurred expenses of approximately $0.26 for each kilometer that her vehicle was driven each year.[1] Her employer reimbursed her $0.20 / kilometer. In the circumstances, given that I am unsure what Ms. Meberatu's actual expenses were, I

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[1] 2010: $6,744.38 total expenses / 25,500 km total driving = $0.2645 / km
2011: $6,651.77 total expenses / 25,500 km total driving = $0.2609 / km
2012: $6,712.30 total expenses / 25,000 km total driving = $0.2685 / km

find that an allowance that covers approximately 76% of what Ms. Meberatu claims were her actual expenses is not an unreasonable allowance.[2]

[14] Even if I had found that the motor vehicle allowance that Ms. Meberatu received was unreasonable, I am not satisfied that she incurred motor vehicle expenses for employment purposes in an amount that exceeded the allowance she received. I reach this conclusion for a number of reasons:

a) Ms. Meberatu based her claims on her assertion that the vehicle was used 90% for business purposes. I do not accept this allocation for three reasons.

    i. First, as set out above, I find the mileage recorded by Prohome / We Care to be more reliable than the mileage stated by Ms. Meberatu in her returns.

    ii. Second, Ms. Meberatu's explanation of her employment usage of her car has significantly expanded over time. In a letter to the Minister in February 2016, she described herself as travelling to visit three or four clients per day. In a second letter, written one month later, she described herself as travelling to visit an average of six clients per day. Ms. Meberatu repeated this figure in her Notice of Appeal. On direct examination, she testified that she visited nine or ten clients per day. When these discrepancies were put to her on cross-examination, she stated that she saw six to ten clients per day. This wide variation in her story causes me to question her reliability as a witness.

    iii. Finally, the vehicle that Ms. Meberatu used for employment purposes was her family's only car. Ms. Meberatu's husband is a taxi driver, so I accept that he would not have used the vehicle for work purposes. However, there would clearly have been a need for personal use of the vehicle by either Ms. Meberatu or her husband for household and social purposes. Furthermore, in the years in question, Ms. Meberatu had two children who were 13 years old or less. Presumably those children would have needed rides to and from various locations. The employment-related mileage recorded by Prohome / We Care is much more consistent with the use of the vehicle by Ms. Meberatu during the day and by the family at night

[2] $0.20 paid by employer / $0.2646 average cost over three years = 75.58%

and on weekends than is the 90% employment use claim put forward by Ms. Meberatu in her tax return.

b) Ms. Meberatu claimed amounts in respect of car washes and repairs and maintenance on her vehicle but did not provide any explanation of how those amounts were calculated or any documents supporting them.

c) Ms. Meberatu claimed capital cost allowance in respect of her vehicle but did not provide any evidence to support how that amount was determined.

d) Ms. Meberatu did not have copies of her receipts for her gas purchases. Instead, she entered reproductions of her bank statements into evidence. Those bank statements showed payments to gas stations. Ms. Meberatu also entered copies of her gas receipts for more recent tax years into evidence. A review of those gas receipts indicates that Ms. Meberatu regularly purchases lottery tickets at the same time that she purchases gas. Both purchases appear on the same receipts.[3] On the assumption that this same pattern was present in the years in question, it is difficult to rely on the amounts shown on Ms. Meberatu's bank statements as payments to gas stations as being an accurate representation of her gas expenses.

[15] Even if I were to find that the allowances were unreasonable and that Ms. Meberatu incurred motor vehicle expenses in excess of those allowances, I would still not have allowed the deduction of the motor vehicle expenses relating to Ms. Meberatu's employment with Prohome / We Care in 2010 and 2011. Pursuant to subsection 8(10) of the *Income Tax Act*, an employee is only entitled to deduct motor vehicle expenses if the employee has obtained a signed T2200 form from his or her employer certifying that the conditions necessary for claiming those expenses have been met. The form must have been in the employee's possession when he or she filed his or her return (*Leith v. The Queen*[4]). Two different versions of the Prohome / We Care T2200s were entered into evidence. There were significant differences between the versions. One version refers to a motor vehicle allowance of $0.20 / km being paid each year. That version was not signed until 2016, well after the returns in question were filed. The other version neither indicates that a motor vehicle allowance was paid nor indicates that Ms. Meberatu was required to incur motor vehicle expenses. The copies of this

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[3] My quick review of the 21 receipts found on the first six pages of receipts indicates that approximately 14% of the purchases were purchases of lottery tickets, not gas.

[4] 2015 TCC 314.

alternative version for 2010 and 2011 are undated. No one from Prohome / We Care was called to testify to explain the discrepancies between the two versions of the T2200s or to confirm when the undated forms were signed. I am not prepared to rely on Ms. Meberatu's statement that the alternative versions of the forms were signed and given to her before she filed her 2010 and 2011 tax returns.

[16] Based on all of the above, I am not prepared to allow Ms. Meberatu any deductions in respect of her motor vehicle expenses for her work with Prohome / We Care. I find that she received a reasonable allowance and that that allowance was not included in her income.

S.R.T. Med-Staff

[17] As indicated above, Ms. Meberatu also worked for S.R.T. Med-Staff in 2012. A T2200 form for that employer was entered into evidence. It was signed prior to the date when Ms. Meberatu filed her 2012 tax return. This employer did not pay Ms. Meberatu a motor vehicle allowance. I have no evidence to show how many kilometers Ms. Meberatu drove for this employer but I accept that she must have done some work-related driving. Ms. Meberatu's employment income increased by approximately 29% from 2011 to 2012. Based on the evidence before me, I am prepared to accept that Ms. Meberatu drove her car an additional 1,420 km when working for this second employer (being 29% of the kilometers that I have accepted were driven by Ms. Meberatu in 2012 for Prohome / We Care). Applying what I have found to be the reasonable $0.20 / km rate used by Prohome / We Care to that additional mileage indicates that Ms. Meberatu would have incurred $284 in motor vehicle expenses relating to her employment with S.R.T. Med-Staff. In the circumstances, I am prepared to allow Ms. Meberatu a deduction for that amount. Given the uncertainty that I have concerning the expenses that she incurred, I feel this is a fair, if not generous, allocation.

Cell Phone Expenses

[18] Ms. Meberatu claimed cell phone expenses of $877.22, $903.21 and $917.54 in 2010, 2011 and 2012 respectively. I accept that Ms. Meberatu used her cell phone to contact clients before arriving at their homes, to notify clients if she was going to be late, and to report to her employers. I also accept that her employers required her to have a cell phone for this purpose and did not reimburse her for the costs of that phone. Based on the foregoing, I conclude that Ms. Meberatu is entitled to a deduction for cell phone expenses in each year.

[19] That said, Ms. Meberatu did not enter any cell phone bills into evidence. She relied on payments to cell phone companies shown on her bank statements as proof of these expenses. Given what appears to have been a gross exaggeration of her employment use of her vehicle on her tax returns, I am not prepared to simply accept that the declaration of her employment-related cell phone use that she made when filing her tax returns is accurate. Given her variable explanations of the number of clients that she visited each day, I do not have a reliable indication of the number of calls that she made each day. Ms. Meberatu did not provide any evidence as to the amount of personal use that she made of her cell phone. Given the size of her monthly cell phone bills, I would expect that they included charges for data usage. Ms. Meberatu did not provide any examples of how she would have used data in the course of her employment.

[20] In the circumstances, I have two choices. I can either not allow Ms. Meberatu any cell phone expenses on the basis that she has not proven that she incurred those expenses or I can acknowledge that she must have incurred some cell phone expenses and make a conservative estimate of those expenses. The second option seems more equitable. I will accordingly allow Ms. Meberatu $120 per year in cell phone expenses, being $10 per month. This amount is a conservative estimate of Ms. Meberatu's actual costs. I am not prepared to reward her failure to produce documents and provide a reliable breakdown of her employment-related cell phone use by using a middle or high estimate. If Ms. Meberatu wanted her income to be determined accurately, she should have provided a means for me to do so.

Conclusion

[21] Based on all of the foregoing, the appeal is allowed and the matter referred back to the Minister of National Revenue for reassessment on the basis that Ms. Meberatu was entitled to additional employment expenses of $120 in each of her 2010 and 2011 tax years and additional employment expenses of $404 in her 2012 tax year.

[22] Given the mixed success of the parties, no costs are awarded.

Signed at Ottawa, Canada, this 20th day of October 2017.

“David E. Graham”

Graham J.

CITATION:	2017 TCC 211
COURT FILE NO.:	2016-3127(IT)I
STYLE OF CAUSE:	HIRUT MEBERATU v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	September 21, 2017
REASONS FOR JUDGMENT BY:	The Honourable Justice David E. Graham
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APPEARANCES:

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