

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "H", MUMBAI**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND  
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.3145/2014  
Assessment Year: 2001-02**

Dr. Huseina Dawoodi, 324, Magba Apts, Wadia Compound, Grant Road, Mumbai – 400 007 <b>PAN: AAHPD 2590F</b>	Vs.	ITO-16(2)(4), Mumbai - 400007
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Sanjiv M. Shah, A.R.  
Revenue by : Shri Amit Kumar Singh, D.R.

Date of Hearing : 14.03.2016  
Date of Pronouncement : 16.03.2016

**ORDER**

**Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 14.02.2011 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2001-02.

2. The assessee has taken the following grounds of appeal:

“Your Petitioner respectfully begs to submit:

1. The Learned ITO has erred in law as well as fact of the case in:
  - a) Passed order u/s 144 rws 147.
  - b) Added income of Rs.1800000/-
  - c) levying tax and interest u/s 234 a and b of Rs.1268692/-
  
2. That the findings of the learned ITO are erroneous and are utter disregard of fact and circumstances and materials produced and on record given submission to Hon. CIT and learned ITO as such question of addition of income and levying tax and interest u/s 234 a and b of Rs.1268692/- does not arise.
  
3. That the learned I.T.O. failed to consider that the fees were paid from his father's non resident account as such question of payment of capitation fees or fact that D. Y. Patil Group filed settlement petition before the settlement commission

and not accepting Hon CIT(A) 28 order copy is not received and arrived on conclusion as the appellant has concealed particulars cannot arise.

4. That the learned ITO ought to have considered all facts and circumstances and on proper appreciation thereof and evidence and materials on record and submission and explanation given ought to have:-

- a) Not Passed order u/s 144 rws 147.
- b) Not Added income of Rs. 1800000/-.
- c) Not levied tax and interest u/s 234 a and b of Rs.1268692/-

5. That your petitioner pray accordingly and craves leave to add to or to alter or amend the above grounds of appeal as and when occasions arises.”

3. The brief facts of the case are that a search action under section 132 of the Income Tax Act was conducted on M/s D.Y. Patil group of concerns on 20.07.2005 by the Investigation Wing of the Department and it was found that the assessee along with many other persons have given donation to the said education society for admission to the courses conducted by the group. The name of the assessee's son Shri Sunny Dawoodi was found in the list of students of D.Y. Patil Group of College and it was noted that a sum of Rs.18,00,000/- was paid as donation/ capitation fee by Smt. Huseina F. Dawoodi for admission of her son in MBBS course in the said M/s Ramrao Adik Education Society. On the strength of the evidences collected by the Investigation Wing and information passed on to the Assessing Officer, a satisfaction was recorded and the case of the assessee was reopened under section 147 of the Act. The assessee explained that she had not given any money/capitation to the institution as has been alleged by the Department. However, the Assessing Officer (hereinafter referred to as the AO) did not agree with the submissions of the assessee and held that the assessee had failed to furnish explanation/source in relation to payment of Rs.18 lakhs for admission of her son. He accordingly assessed the said amount in the hands of the assessee as unexplained expenditure under section 69 of the Act. Being aggrieved by the order of the AO, the assessee preferred appeal before the Ld. CIT(A).

4. However, the Ld. CIT(A) confirmed the addition so made by the AO. The assessee has, thus, come in appeal before us.

5. The Ld. A.R. of the assessee has explained that her husband who is an NRI had in fact paid an amount of Rs.6 lakhs from his account to the institution as admission fees for his son. The said amount was paid out of the bank account and through banking channel and was fully accounted for. No capitation fee as alleged by the Revenue has ever been paid by the assessee. The Ld. A.R. has further invited our attention to the judgments of the co-ordinate benches of the Tribunal in relation to the identical additions made in case of other students. In the case of “Vinay Kumar vs. ITO” in ITA No.2181/M/2011 for A.Y. 2001-02 vide order dated 21.02.14, the Tribunal in the identical facts and circumstances and relating to the same search action in case of another student, who was admitted in a college run by M/s. D.Y. Patil Group of Companies, has noted that except that the name of the assessee appeared in the diary entries maintained by the account clerk of the institute, no other evidence had been found to show that the assessee had ever made any payment in cash to the institution. The Tribunal, therefore, held that in the absence of any material placed on the record, there was no basis for making the impugned addition. Similarly, in the case of “ITO vs. Dr. Radhakishan Ramjivan Bhootra” in ITA No.3203/Ahd/2008 for A.Y. 2000-01, the Ahmedabad Bench of the Tribunal in identical facts relating to the same group of institute, has held that additions cannot be made on the basis of diary entries only in the absence of any corroborative evidence and in that case the Tribunal upheld the finding of the Ld. CIT(A) in deleting the additions. The Ld. D.R. could not bring out any differentiating fact in this case. Hence, respectfully following the findings of the co-ordinate benches of the Tribunal on the identical facts and circumstances, in our view, additions in this case only on the basis of entries in a diary without any corroborative evidence can not be held to be justified. It is pertinent to mention here that in this case the

statement of the assessee was recorded by the AO and specific questions were put regarding the diary entry/capitation fee. However, the assessee has specifically denied regarding making of any cash payment to the institute and the AO has failed to bring any evidence on the file to show that the statement made by the assessee before him was wrong. In view of this, the additions made by the lower authorities in this case do not seem to be justified and the same are accordingly ordered to be deleted.

6. In the result, the appeal of the assessee is hereby allowed.

**Order pronounced in the open court on 16.03.2016.**

**Sd/-  
(Rajesh Kumar)  
ACCOUNTANT MEMBER**

**Sd/-  
(Sanjay Garg)  
JUDICIAL MEMBER**

Mumbai, Dated: 16.03.2016.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.