

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER

ITA No. 5505/MUM/2014
(Assessment Year : 2008-09)

Legal heir of Mrs. Jyoti Umesh Shetty,
1301, Shree Sumukh Heights,
Anand Nagar, Near Heera Pana Mall,
Oshiwara, Mumbai 400 012.
PAN: AMQPS 6247M

... Appellant

Vs.

The Income Tax Officer, Ward 20(1)(3),
Piramal Chambers,
Mumbai.

.... Respondent

Appellant by : Shri Sanjay Shah
Respondent by : Shri Ravi Kiran
Date of hearing : 12/10/2015
Date of pronouncement : 30/10/2015

ORDER

PER G.S. PANNU,AM:

The captioned appeal is preferred by the assessee and is directed against the impugned order dated 23/06/2014 of CIT(A)-31, Mumbai, pertaining to the assessment year 2008-09, which in turn has arisen from an order passed by the Assessing Officer dated 30/12/2010 under section 143(3) of the Income Tax Act, 1961(in short "the Act").

2. In this appeal the grievance of the assessee is against the action of the CIT(A) in affirming the addition of Rs.3,45,500/- out of the total addition of Rs.4,42,000/-, made by the Assessing Officer on account of unexplained cash deposits in the bank account.

3. In brief, the relevant facts are that the assessee individual was deriving income from tuitions, etc. and for the assessment year under consideration she filed a return of income declaring a total income of Rs.2,43,500/-, which was subject to scrutiny assessment. In the course of assessment proceedings, it was noticed that there were cash deposits to the tune of Rs.12,00,600/- in the saving bank account maintained by the assessee with Bharat Co-operative Bank Ltd. The assessee was asked to explain the source of such deposits. After considering the explanation, the Assessing Officer treated the deposits to the extent of Rs.7,64,000/- as explained and the balance of Rs.4,42,000/- was treated as unexplained and added to the returned income. Before the CIT(A), assessee reiterated her submissions that the deposits were out of her tuition income, transfer of Rs.1,60,000/- from her husband's account and that various cash withdrawals made during the year were subsequently deposited in the bank account. The explanation furnished by the assessee was partly accepted by the CIT(A) in as much as he deleted the addition to the extent of Rs.96,500/- and retained the balance addition of Rs.3,45,500/-. Against such addition, assessee is in further appeal before the Tribunal.

4. Before me, Ld. Representative for the assessee has made a preliminary submission to the effect that the Assessing Officer as well as CIT(A) have considered the cash withdrawals and cash deposit entries in the bank account on a selective basis. According to the Ld. Representative for the assessee, if the summary of cash deposits and withdrawals of the entire year are considered there would not remain any unexplained cash deposits and in this context he has referred to the details of cash summary placed at pages 7 to 8 of the Paper Book. In

particular, it has been contended that cash withdrawal of Rs. 2,00,000/- on 10/09/2007, Rs.1,30,000/- on 11/9/2007, Rs.42,000/- on 19/9/2007, Rs.1,00,000/- on 5/10/2007 and Rs.95,000/- on 11/10/2007 have not been taken into consideration while holding that the deposits in the bank account are unexplained. Apart therefrom, Ld. Representative for the assessee pointed out that the assessee's claim that Rs.1,60,000/- was received from her husband has been unjustly rejected. In support, a confirmation from her husband and also cash summary of the bank account of her husband has also been placed in the Paper Book at pages 9 to 19 to demonstrate that such amount was available.

5. On the otherhand, Ld. Departmental Representative appearing for the Revenue has primarily reiterated the stand of the CIT(A) in support of the case of the Revenue.

6. I have carefully considered the rival submissions. A perusal of the material on record clearly establishes a primary fallacy in the approach of the lower authorities in appraising the source of the cash deposits in the bank account. The date-wise summary of cash withdrawals and cash deposits of the bank account has been placed by the assessee at pages 7 to 8 of the Paper Book, which was very much before the CIT(A), who had called for a remand report from the Assessing Officer also. The aforesaid summary clearly establishes that there was no shortfall at any stage to justify an inference that the cash deposits in the bank account was out of unexplained sources. Moreover, in my view, the amount of Rs.1,60,000/- claimed to have been received by the assessee from her husband has also been unfairly

rejected by the income tax authorities. Apart from furnishing a confirmation from her husband, i.e Mr. Umesh Shetty, assessee has also furnished a date-wise cash summary of her husband for the relevant period to show the flow of money to the assessee. The aforesaid explanation of the assessee has been merely disbelieved and it is not a case where such explanation has been found to be untrue. Therefore, considering the entirety of facts and circumstances, in my view, there is no justification for sustaining the addition of Rs.3,45,500/- as unexplained cash deposits. As a consequence, I set-aside the order of CIT(A) and direct the Assessing Officer to delete the addition of Rs.3,45,500/-.

7. In the result, the appeal of the assessee is allowed as above.

Order pronounced in the open court on 30/10/2015.

Sd/-

(G.S. PANNU)

ACCOUNTANT MEMBER

Mumbai, Dated 30/10/2015

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)

ITAT, Mumbai

Vm, Sr. PS