

*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "SMC" KOLKATA*

Before **Shri S.S, Godara, Judicial Member**

ITA No.2031/Kol/2018 Assessment Year:2009-10
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Dipti Mehta 161/1 M.G. Road, Ground Floor, Kokata-700007 [PAN No.AESPM 0353 A]	<u>बनाम /</u> V/s.	Income Tax Officer Ward-45(2), 3, Govt. Place,Kolkata-101
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Anikesh Banerjee, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri Smt. Madhumalti Ghosh Addl. CIT-SR-DR
सुनवाई की तारीख/Date of Hearing	23-01-2019
घोषणा की तारीख/Date of Pronouncement	30-01-2019

आदेश /O R D E R

This assessee's appeal for assessment year 2009-10, arises against the Commissioner of Income-tax (Appeals)-13, Kolkata's order dated 02.07.2018 passed in case No. 22/CIT(A)-13/W-45(2)/Kol/2015-16 involving proceedings u/s. 147 of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. I come to former issue of validity of re-opening in question. This assessee had filed her return for the impugned assessment year on 28.07.2009 declaring taxable income of ₹3,99,390/-. The same stood summarily processed. The Assessing Officer thereafter formed reasons to believe as per the investigation wing's report that the assessee had taken a loss entry from M/s Mahasagar Group. This alleged loss entry involved an amount of ₹2,71,500/-. The Assessing Officer issued sec. 148 notice dated 03.02.2014. The assessee in turn requested to treat her original return as the one filed in furtherance to sec. 148 proceedings. The Assessing Officer thereafter completed re-assessment on 28.02.2015 disallowing the sum in question of ₹28,891/- u/s 14A r.w.s. Rule 8D(2) in the nature of direct and administrative expenditure to the tune of

₹2,048/- and ₹26,843/-; respectively in relation to exempt income of ₹29,911/-. The CIT(A) has declined assessee's both grounds challenging validity of re-opening as well as correctness of above stated disallowance(s) on merits.

3. I have given my thoughtful consideration to rival submissions. The assessee's former substantive ground challenges validity of re-opening. It transpires during the course of hearing that the Assessing Officer had re-opened the assessee's case recording that she had availed an accommodation entry of loss amounting to ₹2,71,500- whereas he disallowed the amount in question of ₹28,891/- only during the course of re-assessment (supra). Hon'ble Mumbai high court's decision in *CIT vs. Jet Airways (I) Ltd* (2011) 331 ITR 236 (Bom)., *Ranbaxy Laboratories vs. CIT* (2011) 366 ITR 136 (Del) and *ACIT vs. Major Deepak Mehta* (2012) 336 ITR 136 (Chhattisgarh) hold that such a re-assessments not making any addition *qua* the specified reasons of re-opening but on other issues are not sustainable. I therefore quash the impugned re-assessment for this sole reason.

3. This assessee's appeal is allowed.

Order pronounced in open court on 30/01/2019

Sd/-
(S.S. Godara)
Judicial Member

Kolkata,
*Dkp/Sr.PS

दिनांक:- 30/01/2019 कोलकाता

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-Dipti Mehta, 161/1 M.G. Road, Ground Fl, Kolkaata-007
2. प्रत्यर्थी/Respondent-ITO Wrd-45(2), 3, Govt. Place, Kolkata-101
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, कोलकाता ।