



IN THE INCOME TAX APPELLATE TRIBUNAL

"SMC" BENCH, MUMBAI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

ITA no.1726/Mum./2018
(Assessment Year : 2010-11)

Smt. Lila Sharma
36/1, Solicitors Bungalow
Rani Sati Marg, Malad (E)
Mumbai 400 097
PAN – ASYPS3124M

..... Appellant

v/s

Income Tax Officer (Exemp.)
Range-30(2)(2), Mumbai

..... Respondent

Assessee by : Shri G.P. Mehta
Revenue by : Shri Chaitanya Anjaria

Date of Hearing – 19.08.2019

Date of Order – 06.11.2019

ORDER

This is an appeal by the assessee directed against order dated 29th December 2017, passed by the learned Commissioner (Appeals)-41, Mumbai, pertaining to the assessment year 2010-11.

2. The issue raised is, the learned Commissioner (Appeals) erred in upholding the validity of re-opening and confirming the addition of ₹ 10,68,000.

3. In this case, this Tribunal has disposed off the assessee's appeal by the ex-parte order dated 8th October 2018. Later on, in Miscellaneous Application, this order was recalled and consequently this appeal has been heard.

4. Brief facts upon merits are, the assessee is earning income from tuition fees. The Assessing Officer proceeded to examine the cash deposit of ₹ 10,68,000, in the bank account. Assessee's explanation that the same was received on account of tuition fee, small gifts from relatives and receipt from sundry creditors, was rejected by the Assessing Officer in a bland manner without bringing even the details of submission of the assessee in the assessment order. He proceeded to estimate that the assessee can make a saving of ₹ 1,00,000, hence, he disallowed the deposit of ₹ 10,68,000, as unexplained.

5. Upon assessee's appeal, the learned CIT(A) dismissed the appeal on the ground that none appeared on behalf of the assessee.

Against this order, the assessee is in appeal before the Tribunal.

6. Upon careful consideration on the merits of the case, I note that the Assessing Officer has considered the deposit in bank as unexplained by summarily dismissing the assessee's explanations. The Assessing Officer has not even brought on record the details of

assessee submission. He has summarily in a bland manner dismissed the assessee submissions. The learned CIT(A) has further dismissed the assessee's appeal for non-prosecution. It is settled law that learned CIT(A) cannot dismiss the appeal for non-prosecution. Law mandates that the learned CIT(A) should pass a speaking order on merits. The orders of authorities below are not sustainable. Accordingly, in the background of aforesaid discussion, in my considered opinion, the addition in this case is not at all sustainable in law. Consequently, I delete the addition in this case.

7. Since the issue on merits has been decided in favour of the assessee, the adjudication of re-opening is only of academic interest. Hence I am not engaging into the same.

8. In the result assessee's appeal stands partly allowed.

Order pronounced in the open Court on 06.11.2019

Sd/-
SHAMIM YAHYA
ACCOUNTANT MEMBER

MUMBAI, DATED: 06.11.2019

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai