



**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"SMC" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA no.2520/Mum./2019  
(Assessment Year : 2009-10)

Dimple Deepak Geruja  
A-202, Neelkanth Dhara  
Opp. Dhanwatri Hospital  
N.S. Road, Mulund (West)  
Mumbai 400 080  
PAN - AJNPG4618G

..... Appellant

v/s

Income Tax Officer  
Word-18(1)(4), Mumbai

..... Respondent

Assessee by : None  
Revenue by : Shri Sanjay J. Sethi

Date of Hearing - 24.11.2020

Date of Order - 08.12.2020

**ORDER**

The aforesaid appeal has been filed by the assessee challenging the order dated 31<sup>st</sup> January 2019, passed by the learned Commissioner of Income Tax (Appeals)-48, Mumbai, pertaining to the assessment year 2009-10.

2. When the appeal was called for hearing, no one was present on behalf of the assessee to represent the case. There is no application seeking adjournment either. Considering the nature of dispute, I proceed to dispose off the appeal ex-parte qua the assessee after

hearing the learned Departmental Representative and on the basis of material available on record.

3. The dispute in the present appeal is confined to the addition of an amount of ₹ 10,17,850, as unexplained cash credit under section 68 of the Income Tax Act, 1961 (for short "*the Act*").

4. Brief facts are, the assessee is an individual. For the assessment year under dispute, the assessee had filed her return of income on 19<sup>th</sup> September 2009, declaring income of ₹ 9,22,265. Subsequently, on the basis of some information received indicating that income chargeable to tax has escaped assessment, the Assessing Officer re-opened the assessment under section 147 of the Act. In response to the notice issued under section 148 of the Act, the assessee appeared in the assessment proceedings and in the course of assessment proceedings the assessee filed another return of income offering additional income of ₹ 3,38,451, being net cash deposit in the personal saving bank account with ICICI Bank. On the basis of information available on record, the Assessing Officer found that during the year under consideration, the assessee had made cash deposit in the aforesaid savings bank account amounting to ₹ 10,17,850. Therefore, he called upon the assessee to explain the nature and source of such cash deposit. In response, the assessee submitted that the cash

deposit was out of other income and cash withdrawn from the bank account. Subsequently, the assessee also submitted that the cash deposit made was out of receipts from household business of buying and selling dress material. Further, it was submitted by the assessee that since the said business was being carried on at small scale, no records have been maintained. The Assessing Officer was not impressed with the explanation of the assessee. He observed, when the assessee is having a semi-wholesale cloth business the turnover of which during the year is ₹ 1.88 crore and the accounts are audited, it is not believable that the cash deposits were made from household business of buying and selling dress material. Therefore, he held that cash deposit in the savings bank account is to be treated as undisclosed investment under section 69 of the Act. Accordingly, he added back the amount to the income of the assessee.

5. Though, the assessee challenged the aforesaid addition before the first appellate authority. However, she was unsuccessful.

6. Heard the learned Departmental Representative and perused the material on record. On a reading of the assessment order, I find that though the Assessing Officer has held that the cash deposit made in the savings bank account with ICICI Bank is to be treated as undisclosed investment under section 69 of the Act, however, in the

computation of income, he has made the addition of such cash deposit by treating it as unexplained cash credit under section 68 of the Act. Therefore, it appears that the Assessing Officer himself was uncertain about the nature of the cash deposit and the provision under which it has to be treated as income of the assessee. The learned Commissioner (Appeals) has held that the amount has to be brought to tax under section 69 of the Act. She has further observed that the amount can also be added under section 69A of the Act. Thus, the aforesaid observations of the Departmental Authorities clearly establish the uncertainty prevailing over the nature of income in the minds of the Departmental Authorities.

7. Be that as it may, before the Assessing Officer, the assessee had submitted that the cash deposits were made out of the house hold business and earlier withdrawals made. In support of such contention, the assessee had also submitted summary of cash statement. As it appears, neither the Assessing Officer nor learned Commissioner (Appeals) have properly examined assessee's claim. It is not disputed that the assessee is having regular business activity with huge turnover. In fact, assessee's accounts are also audited. In the aforesaid scenario, the claim of the assessee that the cash deposit was out of the earlier withdrawals and some household business requires examination. Therefore, I am inclined to restore the issue to the

Assessing Officer for fresh adjudication after providing reasonable opportunity of being heard to the assessee.

8. In the result, appeal is allowed for statistical purposes.

Order pronounced in the open court on 08.12.2020

**Sd/-  
SAKTIJIT DEY  
JUDICIAL MEMBER**

**MUMBAI, DATED: 08.12.2020**

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