

आयकर अपीलीय अधिकरण
मुंबई पीठ "एस एम सी" , मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 7554/मुं/2019 (नि.व.2009-10)
ITA NO.7554/MUM/2019 (A.Y.2009-10)

Smita Anil Kamthe
Building No.A-205, Parivar CHS Ltd.
P.G. Godbole Marg,
Negru Nagar, Kanjurmarg (E),
Mumbai-400042.
PAN: **ATJPK9096J**

..... अपीलार्थी /Appellant

बनाम Vs.

ITO 23(1)(4)
109, Matru Mandir,
Tardeo, Grant Rod,
Mumbai-400007.

..... प्रतिवादी /Respondent

अपीलार्थी द्वारा/ Appellant by : Sh. Bhadresh Doshi

प्रतिवादी द्वारा/Respondent by : Sh. Sanjay J. Sethi

सुनवाई की तिथि/ Date of hearing : 01/07/2021

घोषणा की तिथि/ Date of pronouncement : 24/09/2021

आदेश/ ORDER

PER VIKAS AWASTHY, J.M:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-40, Mumbai [hereinafter referred to as 'the CIT(A)'] dated 30/09/2019 for the assessment year 2009-10.

2. Sh. Bhadresh Doshi appearing on behalf of the assessee submitted that the solitary addition which is subject matter of appeal is under section 69A of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'] in respect of cash deposits in the bank account in joint names of assessee and her husband Sh. Anil Kamthe.

3. The Id. AR pointed at the outset that in the impugned order, certain wrong and contradictory facts have been recorded. In para-4 of the impugned order, the CIT(A) has mentioned that the assessee does not have any PAN and has not filed any return of income for AY 2009-10 under section 139(1) of the Act. Similar fact has been recorded in the assessment order. Whereas, the assessee is having PAN and the assessee had filed regular return of income. Admittedly, the assessee has not filed return of income in response to the notice under section 148 of the Act. Further, the Assessing Officer (AO) completed the assessment by invoking the provisions of section 144 of the Act. Admittedly, the assessee could not appear and furnish the details as sought by the AO on the date fixed on 18.08.2014, however, the husband of assessee represented the assessee before the AO and attended the proceedings on 28.07.2014 and explained the transactions in the bank account. It was categorically stated before the AO that the bank account is in the joint names of Sh. Anil Kamthe, husband of the assessee and the assessee. Sh. Anil Kamthe is running coaching institute, the cash deposited in the aforesaid bank account is the fees received from various students taking tuitions from Sh. Anil Kamthe. Sh. Anil Kamthe has filed his return of income for the AY 2009-10 and has disclosed the cash deposits in the said bank account. The return filed by Sh. Anil Kamthe has been accepted. The Id. AR pointed that all these facts were

explained to the CIT(A) as well, however, without taking note of all these facts, the AO passed the assessment order under section 144 of the Act and the CIT(A) dismissed appeal of the assessee. The Id. AR pointed that the cash deposits in the bank that has been added as unexplained money under section 69A of the Act in the hands of the assessee, has already been accounted and offered to tax in the return of income of Sh. Anil Kamthe. The Id. AR prayed that if the issue can be restored back to the file of AO, the assessee can demonstrate that the amounts deposited in bank account have been offered to tax.

4. Per contra, Sh. Sanjay J. Sethi representing the Department vehemently defended the impugned order. The Id. DR submitted that the assessee never participated in assessment proceedings, therefore, the AO was constrained to complete the assessment under section 144 of the Act. However, the Id. DR stated that he has no objection, if the issue is being restored to the file of AO for verification of the facts.

5. Submissions made by both sides heard and orders of the authorities below perused. The solitary issue raised in the appeal is against the addition of Rs. 14,45,730/- under section 69A of the Act in respect of unexplained cash deposits in the bank account of the assessee with Karnataka Bank Ltd., Mulund West, Mumbai. The contention of the assessee is that the cash deposits in the aforesaid bank account are tuition fees deposited by various students taking tuitions from Sh. Anil Kamthe, husband of the assessee. The aforesaid bank account is in the joint name of assessee and Sh. Anil Kamthe. Sh. Anil Kamthe has purportedly offered the fees deposited in the aforesaid bank account to tax in his return of income for AY 2009-10. The contentions raised by the

assessee are factual, hence require verification. Taking into consideration entirety of facts, I deem it appropriate to restore this issue to the file of AO for de novo adjudication after considering the relevant documents furnished by the assessee in this regard. The AO shall grant reasonable opportunity of hearing to the assessee, in accordance with law.

6. The impugned order is set-aside and the appeal of assessee is allowed for statistical purpose, in the terms aforesaid.

Order pronounced in the open court on **Friday**, the **24th** day of September, 2021.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Dated: 24/09/2021

SK, PS

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai