

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

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER  
ITA No. 4223/Mum/2015  
(Assessment Year : 2011-12)

Smt. Manasi Mahendra Pitkar,  
2-A, 18, Ramkrishna CHS Ltd.,  
Chery Hospital, Off Eastern Express-  
Highway, Service Rd., Thane – 400 604 ..... Appellant  
PAN: APHPP5322A

Vs.

The Income Tax Officer 1(2),  
Thane 1(2). .... Respondent

ITA No. 4224/Mum/2015  
(Assessment Year : 2011-12)

Shri. Mahendra Chintaman Pitkar,  
2-A, 18, Ramkrishna CHS Ltd.,  
Chery Hospital, Off Eastern Express-  
Highway, Service Rd., Thane – 400 604 ..... Appellant  
PAN: APHPP5322A

Appellants by : Shri Devendra Jain  
Respondent by : Shri A.K.Kardam

Date of hearing : 15/07/2016  
Date of pronouncement : 12/08/2016

**ORDER**

The captioned are two appeals pertaining to assessment year 2011-12, preferred by husband and wife. In both the appeals the dispute is common, which revolves around treating cash deposits made in the joint bank account to the extent of Rs.27,36,500/- as unexplained cash credits within the meaning of section 68 of the Income Tax Act, 1961( in short 'the Act').

2. In the case of the husband, i.e. Shri Mahendra Chintaman Pitkar, the amount has been assessed on substantive basis, while in the hands of the wife i.e. Manasi Mahendra Pitkar, the same has been assessed on protective basis. In view of the aforesaid, the appeal in the case of Shri Mahendra Chintaman Pitkar vide ITA No.4224/Mum/2015 is taken as the lead case in order to appreciate the controversy.

### **ITA No.4224/Mum/2015**

3. This appeal pertaining to assessment year 2010-11 is directed against an order passed by CIT(A)-1, Thane dated 29/05/2015, which in turn arises out of an order passed by the Assessing Officer under section 143(3) of the Act dated 28/03/2014. In this appeal assessee has raised the following Ground of appeal:-

*“On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition under section. 68 made by the Ld. A.O in respect of cash deposits only to the extent of Rs.27,36,500/- as against the claim of appellant that entire addition of Rs.29,53,500/- may please be deleted. The said addition was made on substantive basis in the hands of the appellant and on protective basis in the hands of appellant’s wife i.e. Smt. Manasi Mahendra Pitkar.”*

4. At the time of hearing, Ld. Representative for the assessee pointed out that assessee has raised an Additional Ground of appeal, which reads as under:-

*“The learned CIT(A) has erred in upholding the addition made by the A.O under section. 68 in respect of cash deposits in the bank account disregarding the Jurisdictional High Court decision in the case of Bhaichand Gandhi [1983-(141)ITR -0067-BOM} in which it is held that,*

*“The pass book supplied by the bank to the assessee could not be regarded as a book of the assessee, that is, a book maintained by the assessee or under his instructions.”*

4.1 It is sought to be pointed out that the Additional Ground of appeal involves a legal issue, for which the relevant facts are already on record and, therefore, it should be admitted for adjudication. The Ld. Departmental Representative has not opposed the plea for admission of the aforesaid Additional Ground.

5. I find that the Additional Ground of appeal preferred by the assessee is based on a legal position enunciated by the Hon'ble Bombay High Court in the case of Bhaichand Gandhi (supra) and it involves a pure point of law for which the necessary facts are already on record. Therefore, the Additional Ground of appeal deserves to be admitted in the light of the judgment of the Hon'ble Supreme Court in the case of National Thermal Power Company Ltd., vs. CIT, 229 ITR 383(SC). Accordingly, at the time of hearing, it was pointed out that the Additional Ground of appeal is being admitted for adjudication. As a consequence, both the sides have been heard on merits of the Additional Ground of appeal also.

6. Briefly put, the relevant facts are that the appellant is an individual, who was employed with the Municipal Corporation of Greater Mumbai. The Assessing Officer noted that during the year under consideration cash was deposited on various dates totalling to Rs.29,53,500/- in the joint bank account held with his wife in Thane Janata Sahakari Bank. On being asked to explain the nature and

source of such deposits, assessee pointed out that the amounts were received from his father, father-in-law, son and various other relatives & friends that such amounts were in-turn used for the treatment of his wife. It was explained that assessee's wife was bedridden and suffering from the disease of 'multiple sclerosis', which required a costly medical treatment. It was further explained that the medicines required were being imported and for that purpose payments by cheques were made to the dealer, who was having import licence. It was pointed out that the monthly expenditure on this count was nearly Rs. 2.50 lacs i.e. Rs.30.00 lacs a year. The assessee being a salaried employee with limited resources, the said amounts were received from family members, relatives and friends for the purpose of the medical treatment of his wife. The Assessing Officer has not accepted the explanation furnished by the assessee and instead treated the amount of cash deposits of Rs.29,53,500/- as unexplained cash credit within the meaning of section 68 of the Act. Before CIT(A), assessee reiterated similar submissions and also referred to the cash withdrawals made by his father, father-in-law and son to explain the portion of the cash deposits. The balance was also explained as having been received from friends and relatives. The CIT(A) gave relief of Rs.2,70,000/- with respect to the withdrawals found in the bank account of assessee's father and accordingly, he confirmed the balance of the addition of Rs.27,36,500/- as an unexplained cash credit under section 68 of the Act. Against such an addition, the assessee is in further appeal before the Tribunal.

7. Before me, the first and foremost plea of the assessee is that the explanation of the assessee has been unjustly rejected in as much as the said fact-situation is unassailable . In support, an affidavit of the assessee averring the reasons for the impugned cash deposits has also been furnished at the time of hearing, the relevant contents of which are as under:-

*"1. I was working as deputy chief engineer with Municipal corporation of Greater Mumbai and retired in the year 2014.*

*2. During the financial year 2010-11, I had deposited cash of Rs.29,53,500/- in the joint account of myself and my wife held with Thane Janata Sahakari Bank.*

*3. My wife is undergoing treatment of multiple sclerosis. 'Multiple Sclerosis' is a long- lasting disease which affects one's brain, spinal cord, and the optic nerves In one's eyes It causes problems with vision, balance, muscle control, and other basic body functions. It is a very rare kind of disease.*

*4. She is bedridden for last many years. The treatment involves a substantial medical expenditure. The medicines to the above disease are purchased from outside India which are very costly. The injection which is to be taken daily costs around Rs 6000/-. All these medicines require refrigeration at a particular temperature. Kantilal Chhaganlal Sec. Pvt. Ltd is having import licence which provides medicines through Time & Temperature courier. The monthly expenditure is nearly Rs. 2.5 Lakhs Le Rs. 30 Lakhs a year.*

*5. I am attaching herewith the photographs from which one can have an idea about her illness.*

*6. I was a salaried employee having taxable income of Rs. 7 ,48,290/- and had no other source of income. Hence, I had to take the funds from parents, in-laws, other relatives and also from friends and colleagues.*

*7. There were numerous relatives, friends and well wishers who were helping our family by giving small contributions on humanitarian grounds. Since the payment for medicines to Kantilal Chhaganlal Sec. Pvt. Ltd was required to be made by cheque, it became inevitable for me to keep the funds ready in one single*

*account to keep the track of the payments. Hence. the amounts were withdrawn from the bank accounts relatives and the same were deposited in the said joint account to avoid the delay.*

*8. In the income tax assessment for the said year, the Assessing officer made the addition on the ground that I could not prove the genuineness of the transactions. It is not feasible for me to prove the same with documentary evidence as I had taken small amounts from various relatives and that too on many occasions.”*

7.1 In support of the affidavit, a reference has also been made to the Paper Book filed, wherein is placed the copies of papers relating to the treatment of ‘multiple sclerosis’ disease of assessee’s wife. Ld. Representative for the assessee also pointed out that all the payments made for purchase of medicines are by way of account payee cheques and the same is evident from the copy of the bank statement itself, which has also been placed in the Paper Book filed before me. Apart from reiterating the explanation rendered before the lower authorities, the Ld. Representative for the assessee vehemently pointed out that the invoking of section 68 of the Act, in the present case is not justified in view of the judgment of the Hon'ble Bombay High Court in the case of Bhaichand Gandhi (supra). Therefore, it is contended that the addition made by invoking the provisions of section 68 of the Act is not justified at all.

8. On the other hand, Ld. Departmental Representative has defended the order of the CIT(A) by pointing out that the explanation of the assessee of having received money from relatives and friends is not supported by any corroborative evidence and, therefore, the same has been rightly rejected. In this manner, the order of the CIT(A) is sought to be defended.

9. I have carefully considered the rival submissions. In the present case the addition has been made by the income tax authorities by treating the cash deposits in the bank account as an unexplained cash credit within the meaning of section 68 of the Act. The legal point raised by the assessee is to the effect that the bank Pass Book is not an account book maintained by the assessee so as to fall within the ambit of section 68 of the Act. Under section 68 of the Act, it is only when an amount is found credited in the account books of the assessee for any previous year that the deeming provisions of section 68 of the Act would apply in the circumstances mentioned therein. Notably, section 68 of the Act would come into play only in a situation "*where any sum is found credited in the books of an assessee .....*". The Hon'ble Bombay High Court in the case of Shri Bhaichand Gandhi (supra) has approved the proposition that a bank Pass Book maintained by the bank cannot be regarded as a book of the assessee for the purposes of section 68 of the Act. Factually speaking, in the present case, assessee is not maintaining any books of account and section 68 of the Act has been invoked by the Assessing Officer only on the basis of the bank Pass Book. The invoking of section 68 of the Act has to fail because as per the judgment of the Hon'ble Bombay High Court in the case of Shri Bhaichand Gandhi (supra), the bank Pass Book or bank statement cannot be construed to be a book maintained by the assessee for any previous year as understood for the purposes of section 68 of the Act. Therefore, on this account itself, the impugned addition deserves to be deleted. I hold so.

9.1 Even otherwise, I find that the explanation rendered by the assessee has been merely disbelieved without establishing any credible infirmity or fallacy in the same. Ostensibly, the circumstances in which the cash deposits have been made and the purpose for which such monies have been utilized is emerging from record and in any case, there is no material found by the Assessing Officer to dis-prove the same. Of course, the assessee could not produce any formal corroborative evidence of having received respective amounts from friends and relatives, so however, it is to be appreciated that section 68 is a rule of evidence; and, the Assessing Officer is expected to consider the explanation rendered in the context of the circumstances of each case. Be that as it may, since I have already held that the addition is unsustainable following the ratio of the judgment in the case of Shri Bhaichand Gandhi (supra), I do not deal with the instant aspect any further. In the result, the order of the CIT(A) is set-aside and the Assessing Officer is directed to delete the addition of Rs.27,36,500/- made under section. 68 of the Act .

9.2 Resultantly, appeal of the assessee in ITA No.4224/Mum/2015 is allowed.

10. The other appeal by Smt. Manasi Mahendra Pitkar is directed against the order of CIT(A) -1, Mumbai dated 29/05/2015, which in turn arises out of an order passed by the Assessing Officer under section 143(3) of the Act dated 28/03/2014.

10.1 In this case, the addition has been made by the Assessing Officer on protective basis, whereas the same addition dealt with by me in the

earlier appeal had been made on substantive basis. Since the addition has been found to be unsustainable on account of inapplicability of section 68 in the case of Shri.Mahendra Chintaman Pitkar(supra) in the earlier paras, the protective addition made in the hands of the instant assessee is also held to be unsustainable. I hold so.

11. Resultantly, the captioned appeals are allowed, as above.

Order pronounced in the open court on 12/08/2016

Sd/-  
(G.S. PANNU)  
ACCOCUNTANT MEMBER

Mumbai, Dated 12/08/2016

Vm, Sr. PS

**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**