

**IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH “C”,MUMBAI
BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER**

ITA No.3067/Mum/2013

(Assessment Year : 2009-10)

Umesh Chadha legal heir of Omkumari Joginder Kumar Chadha, C/o Eastern Overseas Corporation, Ground Floor, Josephine, 44 St. Andrews Road, next to Bandra Gymkhana, Bandra West, Mumbai-400050. PAN: AADPC1806H	Vs.	ACIT Range-17(2), Piramal Chambers, Lalbaug, Mumbai-400012.
(Appellant)		(Respondent)

ITA No.3462/Mum/2013

(Assessment Year : 2009-10)

ACIT-20(2), Room No. 217, 2 nd Floor, Piramal Chambers, Lalbaug, Parel, Mumbai-400012.	Vs.	Late Omkumari Joginderkumar Chadha through legal heir Umesh Chadha, 15/16, Kismet, 48 Carter Road, Mumbai-400050. PAN: AADPC1806H
(Appellant)		(Respondent)

Assessee by : Shri Milind V. Sahasrabudhe
(AR)

Revenue by : Shri M.C.Omi Ningshen
(DR)

Date of hearing : 24.08.2016

Date of Pronouncement : 05.10.2016

ORDER

PER PAWAN SINGH, JM:

1. These two cross appeal are directed against the order of CIT(A)-29,Mumbai, dated 11.02.2013 for AY-2009-10. As both the appeals are arising out of the same order, hence, both the appeals were clubbed together, heard and are being decided by a common order.
2. During the pendency of the appeal, the assessee died on 24.09.2015. Shri Umesh Chadha claiming as her sole surviving son filed application in the form of affidavit dated 08.03.2016 informing that assessee died on 24.09.2015. Affidavit further disclosed that he is the only legal heir of the assessee. The copy of death certificate of the assessee dated 01.10.2015 is filed on record. Amended Form-36 has been filed by the legal heirs of the assessee. In Cross Appeal, the Revenue has also placed on record the amended Form-36 on 31.05.2016. Thus, in both the appeal Shri Umesh Chadha was substituted as a legal heir of assessee.
3. Brief facts of the case are that the assessee filed return of income for relevant Assessment Year (AY) on 30.07.2009 declaring total income of Rs. 1,00,46,366/-. The Return of income was selected for scrutiny. On the basis of AIR information the AO issued notice to the assessee that on 31.03.2009 assessee had deposited a sum of Rs. 17,50,000/- in cash in Standard Chartered Bank and Rs. 26,84,000/- in Corporation Bank on 25.03.2009. The assessee was asked to give the evidence of source of cash deposit. The assessee filed her reply dated 14.10.2011 and contended that she had withdrawn Rs. 20,00,000/- from Corporation Bank, Kandivali and deposited Rs. 26,84,000/- in the said Bank during the year. The assessee has an opening balance of cash of Rs. 7,32,861/-. This cash was kept by her as husband Shri Joginder Kumar was critically ill for last two-three years and was being treated in Leelavati Hospital, Bandra, who ultimately passed away on 06.06.2008. The assessee further contended that the extract of cash-book for the year ended on 31.03.2009 for transaction of cash with Standard Chartered Bank which shown Rs. 2,00,000/- withdrawal from Standard Chartered Bank and deposit of Rs. 17,50,000/- in the account during

the year. There was transaction of account from the account of her husband of Rs. 17,68,630/-, as her husband expired on 06.06.2008. The AO again vide letter dated 01.11.2011 asked the assessee to submit the date wise details of cash withdrawal and cash deposit in the bank account along with details of cash in hands for last three years. The assessee further submitted her reply dated 11.11.2011, wherein the assessee repeated the same contention. The contention of assessee was not accepted by AO. The AO concluded that the assessee was unable to explain the source of cash credit in her cash-book and added Rs. 44,34,000/- in the hand of assessee u/s 68 of the Act. Aggrieved by the order of AO, the assessee filed appeal before the CIT(A), wherein the assessee was granted a partial relief of Rs. 22,00,000/- out of total addition of Rs. 44,34,000/-. Aggrieved by the order of AO, the assessee filed the present appeal before us challenging the addition of Rs. 6,84,000/- of cash deposit in Corporation Bank and Rs. 15,50,000/- in Standard Chartered Bank. And the Revenue has filed the Cross Appeal against the deletion of Rs. 22,00,000/-.

4. We have heard the Authorized Representative (AR) of assessee and the Id. Departmental Representative (DR) for Revenue and perused the material available on record. At the outset, the Id. AR of assessee argued that the appeal filed by the Revenue, being ITA No. 3462/Mum/2013 is not maintainable in view of the Circular No. 21/15 dated 10.12.2015, wherein the Revenue is precluded from filing the appeal before the Tribunal, wherein the tax effect does not exceed the amount of Rs. 10,00,000/-. The Id. DR for Revenue has not disputed the tax effect in Revenue's appeal, thus the Revenue's appeal (ITA No. 3462/Mum/2013) is dismissed as not maintainable.
5. For ITA No. 3067/Mum/2013, the Id. AR of the assessee argued that the assessee has deposited in Corporation Bank a cash of Rs. 26,84,000/- on various dates between 8th September 2008 to 25th March 2009 and deposited cash of Rs. 17,50,000/- in Standard Chartered Bank during the year ended on 31.03.2009. The AO wrongly mentioned the date of deposit as 25.03.2011 instead of 25.03.2009. The husband of assessee who was sick from last two-three years and was treated in Leelavati Hospital, Bandra passed away on 06.06.2008. The

husband of assessee executed a Will dated 24.04.2008, wherein all the assets was bequeathed in favour of assessee. The Probate of Will was granted by Hon'ble High Court of Bombay. After Probate all assets of husband of the assessee including the cash was transferred from the Account of his husband to the assessee. The assessee made the withdrawal from one bank and deposited in the other bank. It was further argued that neither the AO nor the Id. CIT(A) appreciated the fact properly. On the other hand, the Id. DR for Revenue relied upon the order of authorities below.

We have considered the rival contentions of the parties and perused the material available on record. The AO made the addition of Rs. 44,34,000/- in the income of assessee u/s 68 of the Act. Addition of Rs. 17,50,000/- was made on the basis of cash deposit in Standard Chartered Bank and Rs. 26,84,000/- in Corporation Bank. While making addition, the AO observed that the cash-book submitted by the assessee from 01.04.2005 to 31.03.2009 reveals that the cash withdrawal Rs. 10,00,000/- on 17.07.2008 and Rs. 10,00,000/- on 12.12.2008, the withdrawal is after the death of assessee's husband. The reasons explained for cash withdrawal by assessee for the treatment of her husband was not accepted by AO holding that not a single rupee was spent during the year. The cash-book of Shri Joginder Kumar for 01.10.2007 to 31.03.2009 furnished by assessee, it was noticed by AO that there is a cash withdrawal of Rs. 15,00,000/- for the period 02.02.2008 to 17.04.2008 and there is opening balance of Rs. 2,68,630/- as on 01.10.2007. It was further observed by AO that in the Will of Shri Joginder Kumar there is no reference of cash amount. The Id. CIT(A) while considering this ground accepted the cash withdrawal of Rs. 2,00,000/- from Standard Chartered Bank and remaining Rs. 15,50,000/- out of husband's cash balance was not accepted. Ld. CIT(A) hold that the husband of assessee died on 06.06.2008 and cash was deposited in the bank after nine month of her husband death. The claim of receiving cash as per the Will is not proved. As there is no mention of any amount of cash available with the husband, thus, sustained the addition of Rs. 15,50,000/-. In respect of addition of Rs. 26,84,000/- the Id. CIT(A) observed that the assessee has explained the source of Rs. 20,00,000/-

as the same was withdrawn from the same Bank. However, for remaining Rs. 6,84,000/- it was observed that no explanation has been given by assessee about the source of such amount and confirmed the same.

6. We have seen the copy of certified Will dated 24.04.2008 of Shri Joginder Kumar duly attested by Registrar (original side) High Court of Bombay (page 14 to 23 of PB) wherein at para 5 of the Will executants as referred as many as 23 FD's in Corporation Bank showing maturity value of several crores. As para 6 of the Will all movable and immovable property were bequeathed in favour of assessee. The AR of the assessee is claiming that Probate of Will was granted by Hon'ble High Court, and the said amount was transferred in the account of assessee after the order of Hon'ble High Court. The cash flow can be found from the cash statements of the assessee as well as of her husband. The assessee is further claiming that she was having sufficient cash balance in his hand. In these circumstances, we deem it appropriate to restore the case to the file of AO to examine cash flow statement of assessee and his husband and the amount transferred from the account of his husband and grant the assessee appropriate relief in accordance with law. With these observations, both the grounds of appeal raised by assessee are allowed for statistical purpose.
7. In the result, ITA No. 3067/Mum/13 filed by Assessee is allowed for statistical purpose and ITA No. 3462Mum/13 filed by the Revenue is dismissed as not maintainable.

Order pronounced in the open court on this 5th October, 2016.

Sd/-

(R.C.SHARMA)

ACCOUNTANT MEMBER

Mumbai; Dated 05/10/2016

S.K.PS

Sd/-

(PAWAN SINGH)

JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT

5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

(Asstt.Registrar)
ITAT, Mumbai