

Donor's affidavit doesn't prove sanctity of gift without examining identity and creditworthiness of donor

Summary – The Mumbai ITAT in a recent case of Anuj Jayendra Shah, (the Assessee) held that where Assessing Officer accepted gift received by assessee merely on basis of affidavit of donor without making further enquiry or verification, assessment order was erroneous and prejudicial to interest of revenue

Facts

- As per AIR information the assessee had made investment in the mutual funds to the tune of Rs. 1.57 crores which was stated to be made out of gift crores received by the assessee from his NRI maternal uncle out of his foreign income. The assessee had filed an affidavit during the course of assessment proceedings executed by his maternal uncle, whereby the donor had stated that he had made the said gift to the assessee out of natural love and affection.
- The Assessing Officer accepted the said gift and the returned income of the assessee.
- Thereafter, the Commissioner initiated proceedings under section 263 on ground that the Assessing Officer had not examined the gift with regard to the identity, creditworthiness and genuineness of the gift. He accordingly set aside the assessment order for examination of the said gift and directed the Assessing Officer to examine all the aspects of the gift as claimed by the assessee and reframe the assessment.
- On appeal to the Tribunal:

Held

- The amendment to section 263 with effect from 1-6-2015 by insertion of *Explanation 2* to section 263 is declaratory in nature and is inserted to provide clarity on the issue as to which orders passed by the Assessing Officer shall constitute erroneous and prejudicial to the interest of revenue whereby it is provided *inter alia*, that if the order is passed without making inquiries or verification by the Assessing Officer which should have been made or the order is passed allowing any relief without inquiring into the claim, the order shall be deemed to be erroneous and prejudicial to the interest of revenue. The Supreme Court in the case of *Malabar Industrial Co. Ltd. v. CIT* [\[2000\] 243 ITR 83/109 Taxman 66](#) held that if the Assessing Officer has accepted the entry in the statement of account filed by the taxpayer without making enquiry, the said order of the Assessing Officer shall be deemed to be erroneous and prejudicial to the interest of the revenue. It is now established principle that with respect to cash credit appearing in the books of the assessee, the assessee has to establish three ingredients, *i.e.*, identity and creditworthiness of the creditor and the genuineness of the transaction as appearing in the books of account as per mandate of section 68 which is a primary onus cast by law on the assessee.

- In the instant appeal, during the course of the assessment proceedings, the assessee has submitted an affidavit of the donor to establish the identity and creditworthiness of the donor and to prove the genuineness of the gift and the Assessing Officer merely accepted the same without making any further enquiry or verification. The facts of the case of the assessee are similar to the facts in the case of *Malabar Industrial Co. Ltd. (supra)* whereby no enquiry/verification is made by the Assessing Officer while submissions of the assessee were simply accepted. Moreover, now *Explanation 2* to section 263 is inserted in the statute which is declaratory in nature to provide clarity on the issue whereby if the Assessing Officer failed to make any enquiry or necessary verification which should have been made, the order becomes erroneous and prejudicial to the interest of revenue.
- Regarding the contention of the assessee that the Commissioner is not clear about the section 68 or section 56 to be invoked, whereby the income is to be brought to tax from other sources and in case the assessee has received any sum from the close relatives, section 56 grants exemption for bringing into tax such income under the head income from other sources. But, however, section 68 contemplates that with respect to any credit in the books, it is an obligation cast upon the assessee to explain the credit as appearing in the books of the assessee to the satisfaction of the Assessing Officer by establishing the identity and creditworthiness of the creditors and genuineness of the transaction. This initial and primary burden is cast upon the assessee under section 68 to establish the identity and creditworthiness of the donor and to substantiate that the transaction is genuine. Thus, both the sections *viz.* sections 56 and 68 operate in different fields, whereas section 56 deals with computation of the income of the tax payer under the head 'Income from other sources' which provides relief in case of receipts from close relatives as defined under section 56, section 68 is placed under Chapter VI which deals with 'Aggregation of income and set off or carry forward of loss' and section 68 cast primary onus on the assessee to explain nature and source of cash credit as appearing in the books of the assessee to the satisfaction of the Assessing Officer and failure to explain the cash credit to the satisfaction of the Assessing Officer shall lead to computation of income from undisclosed sources under the head 'Income from other sources'. Thus, based on the facts as emanating from the records, the Assessing Officer has not made any enquiry or verification before accepting the gift received by the assessee from his maternal uncle, and has merely accepted the submissions of the assessee with respect to receipt of said gift and the Commissioner has rightly invoked the provisions of section 263 directing the Assessing Officer to make proper enquiry and reframe the assessment.