

Due to failure to substantiate monetary ability of brother to make substantial gift, sec. 68 additions upheld

Summary – The High Court of Kerala in a recent case of Sunil Thomas, (the Assessee) held that where donor (creditor) who was assessee's brother, apart from furnishing his employment particulars and confirming gift, couldn't explain genuineness of transactions or his creditworthiness by proving his monetary ability to make such gifts of substantial amount, gift amount was to be treated as undisclosed income

Facts

- The Assessing Officer found that the assessee had shown income from other sources as 'nil' claiming deduction under section 56(2) in respect of gift received from his brother, an NRI employed in Dubai and thus, he proceeded to add the same as the undisclosed income of the assessee, on the ground that same was not real and genuine.
- The said order was confirmed by the Commissioner (Appeals) and the Tribunal by dismissing the appeals filed by the assessee.
- On appeal:

Held

- The assessee claimed benefit of exemption under section 56(2). A reading of section 56 shows that, it deals with income from other sources. As per this section, income from every account which is not to be excluded from total income shall be chargeable to income-tax under the head, income from other sources, if it is not chargeable to income-tax under any of the heads specified in items A to E of section 14. Sub-section (2) enumerates the incomes that are chargeable to income-tax under the head income from other sources. However, in the proviso to sub-section (2), the legislature has declared that section 56(2) shall not apply to any sum of money received from persons enumerated in clauses (a) to (g). Clause (a) provides that section 56(2) does not apply to any sum of money received from any relative. Therefore, the benefit of the proviso is available to any sum received from the brother of an assessee, and such exclusion from assessment can be claimed by an assessee only if he satisfies the requirements of section 68.
- Section 68 provides that where any sum is found credited in the books of the assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by the assessee is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.

- Bearing in mind these principles, it is obvious that though the assessee had established the identity of the creditor, *viz.* his own brother, the assessee has not succeeded in establishing either the genuineness of the transactions, the capacity or creditworthiness of the creditor. The genuineness of the transaction and the creditworthiness of the creditor ought to have been proved by the assessee by producing necessary documents with respect to the monetary ability of the creditor to make such substantial gifts to the assessee. Although it is seen from the records that, assessee and his brother had at different points of time promised to make available documents to prove these requirements of section 68, such documents were not made available at any stage of the proceedings. In fact, even in the affidavit by the assessee's brother, apart from furnishing his employment particulars and confirming the gift that he made and also furnishing the details of the utilisation of the amounts by the assessee, he has not made any endeavour to explain the genuineness of the transactions or his creditworthiness. In such circumstances, there was no illegality in the order of the Assessing Officer, confirmed by the first appellate authority and the Tribunal, in assessing the sum as the income of the assessee.