

Sec. 68 additions justified as assessee failed to justify huge cash gift received from nephew being a salaried person

Summary – The High Court of Madras in a recent case of Narendra Kumar Sakaria, (the Assessee) held that where assessee failed to place on record relevant material before Assessing Officer to prove creditworthiness and capacity of his nephew, who was a salaried person, to advance a gift of huge cash amount to assessee who was an affluent businessman, addition made under section 68 in respect of such gift amount was to be confirmed

Facts

- During year, the assessee had received gift of cash of huge amount from his nephew who was a resident of U.S.A. The Assessing Officer treated the gift and loan received from the assessee's nephew as unexplained credits under section 68 and added the same to the total income on ground that probability of a salaried nephew giving a gift to this uncle, who was an affluent businessman was hard to believe.
- The assessee's case before the Commissioner (Appeals) was that, he received a gift from his nephew and the gift was treated as a capital receipt and credited to the capital account of the assessee, the gift was received through banking channels from an NRO account with global trust bank of the donor and the gift deed was also placed before the Assessing Officer. It was a further case of the assessee that the Assessing Officer opined that the donor did not have adequate creditworthiness by referring to his wage slips and omitted to consider the income earned by the donor functioning as a consultant of a company at UAE. The assessee had discharged the onus of the source of the gift by furnishing the details of the donor, the mode of receipt, the confirmation by way of a gift deed and copy of the bank account of the donor. Thus, it was contended that the addition made by the Assessing Officer was merely based on suspicion, surmises and conjunctures. The Commissioner (Appeals) allowed the assessee's appeal on the ground that the genuineness of the transaction not being doubted, there was no reason to make an addition in respect of a gift by merely citing human probability and based on suspicion.
- On appeal, the Tribunal restored the additions made by the assessee holding that no particulars were produced regarding the assessee's nephew's income. The letter produced by assessee purported to be written by the company in UAE stating that the company had given him 2 lakhs USD was not produced before the Assessing Officer. No enquiry was made by the Commissioner (Appeals) when the assessee claimed that the donor was earning a sum of 2 lakhs USD, which was nearly double the amount of his salary for 4 years and this aspect was not investigated. Further, the Tribunal held that the amount of gift and loan was transferred out of the NRO account of the donor at global trust bank, and the credit of this sum into the bank was through telegraphic transfer and the source of transfer was not established as to how it was relatable to the donor. The communication sent by the Assessing Officer to the donor was unanswered. The donor was closely related to the assessee, as he was his nephew. There was lack of probability that the nephew of the

assessee, who was a salaried person, would grant a gift to his uncle, who was having business spread over several cities in India of an amount which beyond his known source of income. Thus, the Tribunal held that the alleged gift was liable to be quashed not only on account of lack of human probability but, also on account of un proved creditworthiness of the donor.

- On appeal to the High Court:

Held

- The first aspect of the matter, which is proposed to be considered is whether the Commissioner (Appeals) was justified in accepting the documents, which were not produced before the Assessing Officer. Rule 46A of the rules provides for an opportunity to the assessee to produce documents. However, there are conditions, which are required to be fulfilled, before the Appellate Authority accepts such documents. Firstly, the burden of proof is on the assessee to show sufficient cause for not having been able to produce the documents before the Assessing Officer. Upon the Commissioner (Appeals) being satisfied that the assessee for *bona fide* reasons could not produce document, then the Assessing Officer has to be given an opportunity to submit the report. The report is referred as the remand report from the Assessing Officer. This procedure has not been adhered to by the Commissioner (Appeals) in the case on hand. Thus, on this ground, we would be well justified in confirming the order of the Tribunal thereby, interfering with the order passed by the Commissioner (Appeals). The Assessing Officer addressed the donor and this communication remained unanswered either by the donor or by the assessee. The reliance placed on the order passed by the Tribunal in the appeal arising out of the penalty proceedings could have no impact on the present proceedings arising out of the regular assessment. Therefore, the assessee cannot fall back on the said order of the Tribunal.
- In the case on hand, the Assessing Officer as well as the Tribunal have analysed the materials available, then examined as regards the probabilities of a nephew, a salaried person in United States, extending a gift to assessee his uncle in India, who has extensive business throughout the country with several branches would probablise the theory of gift.
- Furthermore, the assessee did not place any material before the Commissioner (Appeals) as to why the alleged additional income earned by the donor by doing consultancy work for a company in UAE was not produced by him before the Assessing Officer. The Pre-requisite for accepting a new document at the first appellate stage is that the assessee should show sufficient cause and this is lacking in the instant case. Had the assessee produced the document before the Assessing Officer in all probabilities, an investigation would have been conducted. Considering the income of the donor, a salaried person in United States, the Assessing Officer rightly concluded that the probability of a salaried nephew giving a gift to his uncle, who is an affluent business man is hard to believe. In cases, such as the present one preponderance of probability play a vital role. Thus, the theory of gift was not established by the assessee. The so called transfer through an NRO account was also self-serving because, the amount was transferred through telegraphic transfer and the source of transfer

was not established as to how it was relatable to the donor. In such circumstances, the Tribunal was well justified in reversing the order passed by the Commissioner (Appeals).