

Additions u/s 68 is justified in respect of 'gifts' where some 'donors' stated these were arranged for a commission & other donors denied the gifts

Facts of the case: P.R. Ganapathy v. Deputy Commissioner of Income-tax Officer, Central Circle II(1)

It was averred by the Appellant / Assessee that consequent to the search conducted at his residence on 29.09.1995 under Section 132 of the Income Tax Act, 1961 (in short 'the IT Act, 1961), he was called upon to file a return in Form 2B and the Appellant filed the return indicating his undisclosed income as Rs.35,38,743/-. However, the reply submitted by the Appellant was not accepted by the Assessing Officer on the ground that evidences available on record prove otherwise. The Appellant further averred that the amount of Rs.46,44,150/- received from Non-Resident Indian as gifts was not accepted by the Assessing Officer in respect of his undisclosed income for the reason that the Assessee had not established the genuineness of the NRI gifts.

Decision of the case:

- It is no doubt true that only through search, the evidence has been collected by the respondent (Revenue) and the appellant-Assessee had not voluntarily disclosed on his own volition about the receipt of gifts from donors. The plea raised by the appellant-assessee that the nature of payment with regard to gifts was established through affidavits filed by donors and therefore, duty is cast upon the respondent to prove the onus, cannot be accepted for the simple reason that the Assessee (who was residing in Tamil Nadu) had received gifts from 29 persons hailing from Kerala and there was no acceptable explanation as to the nature of relationship he had with those persons in the course of business transaction.
- Had the appellant given a convincing and believable explanation/reply to the respondent(Revenue), the question of charging additional tax would not have arisen.
- That apart, no gifts would be extended to a person after receipt of commission by the donors and the exchange of gifts must be warm-hearted and not out of compulsion or demand.
- The case of the appellant / assessee regarding receipt of gifts does not fall in anyone of the 5 categories mentioned in section 56(2)(x) as such, the burden is automatically shifted to the assessee to rebut the same.
- That apart, as per the exact dictionary meaning of the word 'gift' is, something voluntarily transferred by one person to another without compensation. A literal meaning of 'commission' is, 'money that one gets for selling something'. On enquiry with two donors, namely, P.I.Joy and David Mathew, by the respondent, the former had deposed about the arrangement of gifts to the assessee on receipt

of commission, whereas the latter had stated that no gift was proffered by him to the assessee.

- Thus, it is very obvious that the purported gifts received by the assessee are not at all gifts in its real sense. Hence, we are of the view that the order of the Tribunal is perfectly valid and is liable to be upheld.