

**(2008) 06 KL CK 0059**

**High Court Of Kerala**

**Case No:** Income Tax A. No. 24 of 2004

Sanil K.M.P.

APPELLANT

Vs

The Commissioner of Income  
Tax

RESPONDENT

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**Date of Decision:** June 4, 2008

**Acts Referred:**

- Income Tax Act, 1961 - Section 260A, 269(ss), 68

**Citation:** (2008) 3 KLJ 223 : (2008) 3 KLT 786 : (2009) 177 TAXMAN 481

**Hon'ble Judges:** V.K. Mohanan, J; C.N. Ramachandran Nair, J

**Bench:** Division Bench

**Advocate:** C.K. Kochunny Nair and Dale P. Kurien, for the Appellant; George K. George (SC for IT), for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

C.N. Ramachandran Nair, J.

Heard counsel for the appellant and standing counsel for the respondent. The only question raised for decision is whether the Tribunal was justified in sustaining addition of cash credits u/s 68 of the I.T. Act. The loan creditors shown in the accounts are admittedly close relatives of the assessee. The case of the assessee before the Tribunal as well as before this Court in this appeal is that some of the loan creditors have confirmed transaction by appearing before the assessing officer, and so much so, loan credit stands proved and therefore addition is not justified u/s 68 of the Act. We notice from the Tribunal's order that Tribunal rejected the claim because except giving confirmation letters, none of the loan creditors proved their source before the assessing officer. In fact no effort is seen made to establish that the loans are advanced by close relatives to the assessee. We are in complete agreement with the finding of the Tribunal because close relatives are prone to help the assessee in the income tax proceedings and unless they prove their source, credits claimed by them cannot be accepted. We are not told the reason why the

source of funds could not be explained by the assessee's relatives in whose name credits were shown in the account. Want of source of fund affects the genuineness of the transaction and unless source is proved, the loan creditors cannot be said to have discharged the duty of proving that the loans shown in the accounts were genuinely advanced by them to the assessee. The Tribunal also noticed that no proof was produced regarding repayment of loan credits. Section 269(ss) of the Act provides for payment and repayment of loans in excess of Rs. 20000/- through account payee cheques. There is no proof produced before the Tribunal to show that loans taken were through account payee cheques or were repaid through such instruments in accordance with statutory provisions. In the circumstances, we find no ground to interfere with the order of the Tribunal. There is no scope for entertaining additional evidence at this distance of time in this Court in appeal proceedings u/s 260A of the Act. We therefore dismiss the appeal.