

**(2013) 11 MAD CK 0191**

**Madras High Court**

**Case No:** Tax Case (Appeal) No. 513 of 2013

K. Sivakumar

APPELLANT

Vs

The Assistant Commissioner of  
Income Tax, Business Circle V

RESPONDENT

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**Date of Decision:** Nov. 26, 2013

**Hon'ble Judges:** T.S. Sivagnanam, J; Chitra Venkataraman, J

**Bench:** Division Bench

**Advocate:** P.B. Sampath Kumar, for the Appellant; M. Swaminathan for Income Tax  
Department, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Chitra Venkataraman, J.

The assessee seeks admission of the Tax Case (Appeal) on the following questions of law:

1. Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal is right in holding that the assessee has to produce the cash flow statement of the donor and prove the capacity, credit worthiness and genuineness of the donor who donated a sum of Rs. 7,50,000/- to the assessee?
2. Whether on the facts and the circumstances of the case the Assessing Officer is right in invoking the provisions of Section 68 of the Income Tax Act merely on the doubt whether the donor has the capacity to donate?
3. Whether on the facts and circumstances of the case, the Department is right in demanding the proving of the credit worthiness of the donor notwithstanding the fact that such a donor is an assessee and the said gift is allowed in the assessment of the donor?
4. Whether on the facts and in the circumstances of the case the Assessing Officer is right in shifting the onus of proving the gift is genuine after the assessee has proved

the existence of all the ingredients of a gift?

5. Whether on the facts and in the circumstances of the case, the addition u/s 68 of the Income Tax Act in the hands of the assessee would not result in double taxation especially when the gift is made out of the taxed income of the donor?

The assessment year under consideration is 2008-2009. The assessee is an individual carrying on business in share trading. It is seen from the facts stated that, the accounts of the assessee reflected receipt of Rs. 7,50,000/- as gift received from his brother one K. Shridhar. On further verification, it was found that the said brother had an income of Rs. 1,61,913/- from business and profession and the total income was Rs. 10,89,134/-, which included a sum of Rs. 90,000/- received as salary from the assessee's wife. The Authorized Representative was asked to prima facie prove the above gift, capacity of the donor who gave Rs. 7,50,000/-, the genuineness of the transaction by producing statement of affairs, cash flow statement, return of income with computation of the said K. Shridhar. Evidently, the assessee could not produce the statement of cash flow to show that the gift was genuine one. It was further seen that the said donor had a liability of Rs. 25,09,921/- during the financial year 2007-2008. In the absence of any compelling reason and materials to show as regards the genuineness of the gift, the said amount was sought to be assessed u/s 68 of the Income Tax Act, 1961. Apart from the said fact, the assessee had debited a sum of Rs. 1,55,234/- towards car maintenance. The assessee was asked to substantiate the above claim that, the car was running exclusively for the purpose of the business by producing the details of the travel, the clients visited, the vehicle service maintenance record, fuel bill, repair bills, etc. Since no evidence was produced by the assessee to that end, the assessment was completed giving benefit of doubt to the assessee that 50% of the above expenditure was used as relatable to the business. Thus 50% of the above expenditure be held added back to the total income of the assessee.

2. Aggrieved by the same, the assessee went on appeal before the Commissioner of Income Tax (Appeals), who agreeing with the findings of the Assessing Officer dismissed the appeal. Aggrieved by this, the assessee went on further appeal before the Income Tax Appellate Tribunal, who found as a matter of fact that the assessee had not placed any material before the Authority to substantiate the receipt of Rs. 7,50,000/- as gift from his brother, in the context of the query raised by the Officer on the cash flow statement of the donor. This was necessitated to prove the credit worthiness of the person to make such a gift. Thus finding that the assessee had not produced any of the material as sought for, the assessment was confirmed u/s 68 of the Income Tax Act, 1961.

3. As regards the claim of the assessee, on the maintenance of car, the Income Tax Appellate Tribunal once again confirmed the order of the Assessing Officer restricting 50% of the expenditure on the ground that the assessee had not substantiated his claim, by producing supporting documents that the expenditure

was towards his business purposes. In the circumstances, we do not find any substantial question of law arising out of this Tax Case (Appeal) for consideration. Accordingly, the Tax Case (Appeal) is dismissed at the admission stage itself. No costs.