

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 22ND DAY OF MAY 2018 / 1ST JYAISHTA, 1940

WP(C) .No. 3485 of 2018

PETITIONER :

SUNRISE ACADEMY OF MEDICAL SPECIALITIES (INDIA) PRIVATE
LIMITED VII/528C, SEA PORT AIRPORT ROAD,
KOCHI - 682 030. REPRESENTED
BY ITS MANAGING DIRECTOR, SMT. PARVEEN HAFEEZ.

BY ADVS. SRI. ANIL D. NAIR
SRI. R. SREEJITH
SRI. P. JINISH PAUL
KUM. MEKHALA M. BENNY
SRI. ASISH MOHAN
SRI. G. KRISHNAKUMAR (MALLYA)
SMT. MARY JOSSY

RESPONDENT :

INCOME TAX OFFICER
CORPORATE WARD 2(1), RANGE - 2,
KOCHI - 682018.

BY SRI. P. K. R. MENON, SR. SC
BY SRI. JOSE JOSEPH, SC,

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 22-05-2018, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

bp
23/5/2018

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1 TRUE COPY OF THE NOTICE UNDER SEC. 143(2) DATED 02.08.2017.

EXHIBIT P2 TRUE COPY OF REPLY TO NOTICE DATED 17.08.2017 FILED BY PETITIONER.

EXHIBIT P3 TRUE COPY OF LETTER DATED 11.11.2017 FORWARDED BY PETITIONER.

EXHIBIT P4 TRUE COPY OF THE NOTICE DATED 13.12.2017 ISSUED BY RESPONDENT.

EXHIBIT P5 TRUE COPY OF THE REPLY LETTER DATED 19.12.2017 FILED BY THE PETITIONER.

EXHIBIT P6 TRUE COPY OF THE ORDER DATED 26.12.2017 ISSUED BY RESPONDENT.

EXHIBIT P7 TRUE COPY OF CBDT INSTRUCTIONS NO. 7/2014.

EXHIBIT P8 TRUE COPY OF CBDT INSTRUCTIONS NO. 20/2015.

EXHIBIT P9 TRUE COPY OF CBDT INSTRUCTIONS NO. 5/2016.

RESPONDENT(S) ' EXHIBITS

ANNEXURE A COPY OF THE REASON FOR SELECTION OF SCRUTINY THROUGH CASS.

ANNEXURE B COPY OF THE NOTICE U/S.142(1) DATED 04.08.2017.

//TRUE COPY//

P.S. TO JUDGE

bp
23/5/2018

P.B.SURESH KUMAR, J.

W.P.(C) No. 3485 of 2018

Dated this the 22nd day of May, 2018

JUDGMENT

Petitioner, a company incorporated under the Companies Act, is an assessee under the Income Tax Act (the Act) on the rolls of the respondent. The petitioner filed return under the Act for the assessment year 2015-'16 disclosing nil income. During the relevant year, the petitioner has received in the form of share premium a sum of Rs.2,13,92,000/- on allotment of shares of face value of Rs.100/- each at a premium of Rs.291/- per share. The return filed by the petitioner was taken up for limited scrutiny and the petitioner was issued Ext.P1 notice under Section 143(2) of the Act. In terms of Ext.P1 notice, the

petitioner was informed that the issue identified for scrutiny is whether the funds received by the petitioner in the form of share premium are from disclosed sources and whether the same have been correctly offered for tax. In response to Ext.P1 notice, the petitioner submitted Ext.P2 reply stating that the funds received by them in the form of share premium are from disclosed sources and that the same have been correctly offered for tax. Later, the petitioner was issued Ext.P4 notice by the assessing officer stating that the fair market value of the share of the petitioner can only be Rs.100/- and that therefore, the share premium received by the petitioner amounting to Rs.2,13,92,000/- is liable to be assessed as income from other sources as provided under under section 56(2)(viib) of the Act. In terms of the said notice, the petitioner was called upon to furnish objections, if any, against the said proposal. The petitioner disputed the stand taken by the assessing officer in Ext.P4 notice that the fair market value of the share of the petitioner can be reckoned only as Rs.100/-. Ext.P5 is the reply sent by the petitioner to the assessing officer in response to Ext.P4

notice. Later, after affording the petitioner an opportunity of hearing, the assessment of the petitioner for the relevant year was revised in terms of Ext.P6 order. Ext.P6 order is though appealable under the Act, the petitioner challenges the same in this proceedings under Article 226 of the Constitution on the ground that the same is one issued without jurisdiction.

2. Heard the learned counsel for the petitioner as also the learned Standing Counsel for the respondent.

3. The learned counsel for the petitioner submitted that the case of the petitioner was one taken for a limited scrutiny on the issue as to whether the funds received in the form of share premium by the petitioner are from disclosed sources and whether the same have been correctly offered for tax. According to the learned counsel, the assessing officer, in the circumstances, cannot examine any other issue in the matter of completing the assessment without the approval of the Principal Commissioner of Income Tax. It is pointed out by the learned counsel for the petitioner that the assessment now made under Section

56(2)(viib) of the Act in terms of the impugned order is beyond the scope of the issue identified for examination in terms of Ext.P1 notice and against the directions issued by the Central Board of Direct Taxes as per Exts.P7 to P9 circulars and hence without jurisdiction as the said circulars are binding on the assessing officers.

4. Per contra, the learned Standing Counsel for the respondent submitted that Ext.P6 order has been issued strictly in accordance with the circulars issued by the Central Board of Direct Taxes including Exts.P7 to P9 circulars, and no issue other than the issue mentioned in Ext.P1 notice has been dealt with while completing the assessment of the petitioner for the relevant year in terms of the impugned order.

5. In so far as the impugned order is appealable under the Act and since the petitioner is challenging the order as one issued without jurisdiction for non-compliance of the directions contained in Exts.P7 to P9 circulars, the only issue to be examined is as to whether the assessing officer has acted beyond the scope of the issue mentioned

in Ext.P1 notice in the matter of passing the impugned order.

6. Section 56 of the Act only defines various incomes to be assessed under the head “income from other sources”. Clause (viib) of sub-section (2) of Section 56 deals with one among them. The said clause provides that where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares is liable to be assessed as income from other sources. In other words, the issue whether the funds received by a company in the form of share premium have been correctly offered for tax has to be determined and assessed in accordance with the said provision. As noted above, the issue identified for examination in the case of the petitioner as mentioned in Ext.P1 notice reads thus :

“Whether the funds received in the form of share premium are from disclosed sources and have been correctly offered for tax.”

The aforesaid issue consists of two parts, (i) whether the funds received in the form of share premium are from disclosed sources and (ii) whether the same have been correctly offered for tax. According to me, the issue as to whether the funds received by the assessee in the form of share premium have been correctly offered for tax, is an issue to be examined with reference to Section 56(2)(viib) of the Act and if it is found that the share premium have not been correctly offered for tax as provided therein, the assessee has to be assessed in accordance with the said provision. As such, in a case of this nature, the assessee cannot be heard to contend that the assessing officer has exceeded its jurisdiction in the matter of passing the impugned order merely for the reason that the funds received by them in the form of share premium have been assessed as provided for under Section 56(2)(viib) of the Act. The circulars relied on by the petitioner have no application to the facts of this case and the same would apply only in cases where the assessing officer needs to take the case of the assessee for a comprehensive scrutiny

on a finding that there is potential escapement of income on other issues. In the said view of the matter, the writ petition is without merits and the same is accordingly, dismissed without prejudice to the right of the petitioner to challenge Ext.P6 order in appeal under the statute.

Sd/-

**P.B.SURESH KUMAR,
JUDGE**

vps 17/4

/True Copy/

PS to Judge