

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.104/PUN/17
निर्धारण वर्ष / Assessment Year : 2012-13

DCIT, Circle-6,
Pune

Vs.

M/s. Sheeba Kuries Ltd.,
41-A, Sheeba Corporate House,
Bhau Patil Road, Bopadi,
Pune – 411 020
PAN : AACCS3860R

(Appellant)

(Respondent)

Appellant by

Shri Rajesh Gawali

Respondent by

Shri C.H. Naniwadekar

Date of hearing

07-05-2019

Date of pronouncement

08-05-2019

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the Revenue arises out of the order for the Assessment year 2012-13 passed by the Id. CIT(A)-4, Pune on 25-09-2016 deleting the addition of Rs.1,35,20,000/- made by the Assessing Officer (AO).

2. Briefly stated, the facts of the case are that the assessee company raised share application money amounting to

Rs.1,35,20,000/-. On being called upon to prove the creditworthiness of the persons contributing such share application money, the assessee failed to furnish any evidence except names and amounts. Even no confirmations etc. were filed on behalf of the assessee. The AO made addition of Rs.1,35,20,000/- and inadvertently mentioned it as having been made u/s.41 of the Income-tax Act, 1961 (hereinafter also called 'the Act'). The Id. CIT(A) deleted the addition by simply holding that the provisions of section 41 were not attracted in this case. He did not bother to go into the merits of the genuineness of share application money. The Revenue has come up in appeal before the Tribunal.

3. We have heard both the sides and gone through the relevant material on record. It is apparent from the assessment order that the AO specifically required the assessee to furnish confirmations, bank statements and other corroborative evidence to prove the genuineness of share application money shown to have been received by the assessee at Rs.1,35,20,000/-. The assessee, except for filing names and amounts, could not lead any evidence whatsoever to prove the genuineness of the amount. The mere fact that the AO

mentioned a wrong section cannot take away his jurisdiction when he was otherwise examining the issue from the angle of genuineness of the transaction in terms of section 68 of the Act. It is a trite law that mere mentioning of a wrong section does not take away jurisdiction of the AO if his action is otherwise in accordance with law. The Hon'ble Andhra Pradesh High Court in *AWARE vs. Dy. CIT (2003) 263 ITR 13 (AP)* has held that :
'Thus, mere mentioning of a wrong provision itself would not be fatal to the assessment proceedings when the AO was justified in his action under some other provisions of the Act.'
As the Id. CIT(A) deleted the addition simply on the ground that the AO mentioned wrong section in the order without considering the substance of the matter, in our considered opinion, he erred in deciding the issue in this manner. Considering the totality of the facts and circumstances of the instant case and the further fact that the assessee could not produce any evidence before the AO at the assessment stage to prove the genuineness of the receipt of share application money, in our considered opinion, as agreed by the Id. AR as well, it would be in the fitness of the things if the matter is sent back to the AO for deciding it afresh. We order accordingly. The impugned order is, therefore, set-aside to this extent.

Needless to say, the assessee will be given opportunity of putting up its case before the AO in such fresh proceedings.

4. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the Open Court on 08th May, 2019.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 08th May, 2019.
सतीश

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) /
The CIT (Appeals)-4, Pune
4. The Pr.CIT-3, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय
अधिकरण, पुणे "ए" / DR 'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	07-05-2019	Sr.PS
2.	Draft placed before author	07-05-2019	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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