

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

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.846/PUN/2015
निर्धारण वर्ष / Assessment Year : 2008-09

ITO, Ward-2 (1), Jalgaon	Vs.	Sant. Satramdas Infrastructure Pvt. Ltd., 63, Sadbhavna Bhavan, Sindhi Colony, Near Station Road, Chalisingaon, Dist. Jalgaon PAN : AAKCS1083N
Appellant		Respondent

Assessee by
Revenue by

Smt. Deepa Khare
Shri Ajay Dhoke

Date of hearing

11-12-2019

Date of pronouncement

12-12-2019

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the Revenue is directed against the order passed by the CIT(A)-2, Nashik on 03-03-2015 in relation to the assessment year 2008-09.

2. It is a recalled matter in as much as the earlier order passed by the Tribunal was subsequently recalled vide is later order dated.11-02-2019.

3. The only issue raised in this appeal is against the deletion of addition of Rs.20.00 lakh made by the Assessing Officer (AO) on account of Share Application Money.

4. Briefly stated, the facts of the case are that the AO observed that the assessee received share application money of Rs.20.00 lakh for issuing 2000 shares @100/- each to two of its directors. Since the share application money so received was not converted into allotment of shares, which event actually took place in the financial year 2012-13, the AO made the addition of Rs.20.00 lakh u/s.41(1)/68 of the Act. The ld. CIT(A) deleted the addition.

5. We have heard the rival submissions and gone through the relevant material on record. In so far as the consideration of the applicability of section 68 is concerned, it is seen that the assessee did not receive such amount in the previous year relevant to the year under consideration as it emanates from the reasons recorded by the AO for framing the instant assessment u/s.147, a copy of which has been placed at page 112 of the paper book, reading as under :

“In the case, scrutiny assessment u/s.143(3) has been finalized on 02-12-2010 determining loss at Rs.6,06,442/-. It is seen from the Balance Sheet that an amount of Rs.20 lakhs is kept as Share Application Money, however, there is not a single

share with the assessee to be allotted against that money. When there is no share with the assessee, there is no question of invitation of application for shares so that this pertained to that application. *Since, it is outstanding from previous year* and if it is an old applied money, it should have been returned by this time under the Company Law. Under these circumstances, it is clear that the income is taken to the Balance Sheet and kept it as share application money so that it is not taxed. Therefore, it should have been taxed as unexplained cash credits u/s.68 of I.T. Act, 1961. In view of the above, I have reason to believe that income of Rs.20 lakhs has escaped assessment for the year under consideration within the meaning of section 147 of I.T. Act, 1961.”

6. It can be seen from the above reasons that the AO has affirmatively found that the amount of Rs.20.00 lakh shown in the balance sheet is itself from previous year. Thus, it is apparent from the reasons itself that the amount of Rs.20.00 lakh was received by the assessee in the form of share application money in the earlier year. This fact also gets fortified from the copies of account of the directors from whom the said amount of Rs.20.00 lakh was received at Rs.10.00 lakh each on 31-12-2006. Since the instant amount of Rs.20.00 lakh was actually received by the assessee on 31-12-2006, which falls in the assessment year 2007-07, section 68 cannot apply to such amounts in the assessment for the assessment year 2008-09 under consideration.

7. As regards the case of the AO for application of section 41(1), we find that the same is not attracted to loans and advances received

by the assessee. Further, there can be no question of cessation or remission of liability as the shares were admittedly issued in a succeeding year.

8. We, therefore, approve the view taken by the Id. CIT(A) in deleting the addition of Rs.20.00 lakh.

9. In the result, the appeal is dismissed.

Order pronounced in the Open Court on 12th December, 2019.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

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

पुणे Pune; दिनांक Dated : 12th December, 2019
सतीश

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-2, Nashik
4. The CIT-2, Nashik
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे
“बी” / DR ‘B’, 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	11-12-2019	Sr.PS
2.	Draft placed before author	11-12-2019	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.		

*