

AO couldn't be said to have exceeded his jurisdiction while taxing excess share premium; HC dismissed SLP

Summary – The High Court of Kerala in a recent case of Sunrise Academy of Medical Specialities (India) (P.) Ltd., (the Assessee) held that Order passed by Assessing Officer to effect that share premium received by assessee on issue of shares was liable to be assessed as 'income from other sources' under section 56(2)(viib), could not be challenged on ground that Assessing Officer had exceeded his jurisdiction while passing of aforesaid order

Facts

- The assessee filed its return disclosing *nil* income. During the relevant year, the assessee had received certain amount on allotment of shares of face value of Rs.100/- each at a premium of Rs.291/- per share.
- The Assessing Officer opined that the fair market value of the share of the assessee would only be Rs.100/- and that therefore, the share premium received by assessee was liable to be assessed as income from other sources as provided under section 56(2)(viib) of the Act.
- The assessee filed instant petition contending that impugned order passed by the Assessing Officer was without jurisdiction.

Held

- Section 56 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.
- The issue involved in case of assessee 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. The issue as to whether the funds received by the assessee in the form of share premium had been correctly offered for tax, was an issue to be examined with reference to section 56(2)(viib) and if it was found that the share premium had not been correctly offered for tax as provided therein, the assessee had 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 had 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.

- In the said view of the matter, the writ petition is without merit and the same is accordingly, dismissed without prejudice to the right of the assessee to challenge order in appeal under the statute.