

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.03.2018

DELIVERED ON : 06.08.2018

CORAM

THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

Tax Case (Appeal) No.246 of 2017

M/s.V.R.Global Energy Pvt. Ltd.,
(formerly known as TTGS Consolidates Pvt. Ltd.)
No.5, T.V. Street, Chetpet,
Chennai – 600 031. .. Appellant

Vs.

The Income Tax Officer,
Corporate Ward 3(4),
Chennai – 600 034. .. Respondent

PRAYER: Appeal under Section 260A of the Income Tax Act, 1961
against the order of the Income Tax Appellate Tribunal, Madras "C"
Bench, Chennai, dated 01.09.2016 passed in I.T.A.No.871/Mds/2016.

For Appellant

: Mr.R.Vijayaraghavan
for M/s.Subbaraya Aiyar
Padmanabhan

For Respondent

: Mr.M.Swaminathan
Standing Counsel

JUDGMENT

Ms.Indira Banerjee, Chief Justice

This appeal is against an order dated 01.9.2016 passed by the Income Tax Appellate Tribunal "C" Bench, Chennai, dismissing the appeal being I.T.A.No.871/Mds/2016 filed by the appellant assessee, M/s.V.R.Global Energy Private Limited, against an order dated 25.02.2016 passed by the Commissioner of Income Tax (Appeals) - 11, Chennai.

2. The appellant assessee is a Company carrying on business of manufacture of Wind Electric Generators and parts of Wind Electric Generators.

3. The appellant assessee filed its return of income for the assessment year 2012-13 on 30.9.2012 declaring income of Rs.40,46,570/-.

4. In the balance sheet, the assessee showed Rs.90,18,00,000/- as share premium as against "Nil" in the immediately previous year ending on 31.3.2011. The assessee had also introduced share capital

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of Rs.16,70,000/-.

5. It appears that during the aforesaid assessment year, the appellant assessee had issued share capital of total value of Rs.90.34 Crores, out of which, the paid up value of shares allotted was Rs.16.7 lakhs. The balance of Rs.90.18 Crores was shown in the share premium account. The entire share premium and the paid up value was apparently by book adjustment.

6. According to the appellant assessee, one Smt. Vathasala Ranganathan was a partner holding 50% share in the firm M/s.Shriram Auto Finance, which had paid various advance amounts to banks and other institutions on behalf of the companies as per the particulars given below:

<u>Name of the Company</u>	<u>Amount</u>
Century Wood Limited	8.52
TTG Industries Limited	34.15
Other	18.00

7. In the books of accounts of M/s.Shriram Auto Finance, a total amount of Rs.60.67 crores was shown as receivable from the companies named above. This was reflected in the balance sheet of M/s.Shriram Auto Finance as on 1.3.2012.

8. The above said companies assigned their liability payable to M/s.Shriram Auto Finance to the appellant assessee by an agreement dated 1.3.2012. Therefore, in the book of accounts, the appellant assessee had shown the amounts as due from the various companies and corresponding amount as payable to M/s.Shriram Auto Finance.

9. Smt. Vathsala Ranganathan retired from the partnership of M/s.Shriram Auto Finance. On retirement of Smt. Vathsala Ranganathan, M/s.Shriram Auto Finance assigned the said amount of Rs.60.67 Crores payable by the appellant assessee to M/s.Shriram Auto Finance to Smt. Vathsala Ranganathan. Consequently, in the books of accounts of the appellant assessee, the said amount was shown as due to Smt. Vathsala Ranganathan.

10. On retirement of Smt. Vathsala Ranganathan from M/s.Shriram Auto Finance, in all, a sum of Rs.65.95 Crores became payable by the appellant assessee to Smt. Vathsala Ranganathan. The appellant, therefore, decided to allot its shares to Smt. Vathsala Ranganathan in settlement of the amount due to her. The appellant assessee allotted 1,19,000 shares with face value of Rs.10/- at a premium of Rs.5400/- and, therefore, the allotment of shares by the

appellant to Smt.Vathsala Ranganathan was in settlement of the pre-existing liability of the appellant to Smt.Vathsala Ranganathan.

11. It is stated that the shares were allotted against the liability that had accrued to the appellant assessee from transfer to it of the assets being receivables and preference shares of equal value and correspondingly there was a liability created in favour of the transferors, viz., M/s.Shriram Auto Finance. It is further stated that the apportionment between the paid up capital and the share premium was on the basis of the agreement between the shareholders and the company and hence there is no scope for addition under Section 68 of the said Act.

12. It is stated that when liability has been created equal to amount of assets transferred and shares allotted in settlement of this liability, there can be no addition under Section 68 of the said Act as unexplained cash credit.

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13. It is stated that the transactions have been confirmed by those companies and, therefore, the liability of the appellant assessee to the said companies was genuine and had accrued on transfer by the three persons of the assets by way of receivables/shares of equal

value and, therefore, the conversion of these liabilities into share capital account cannot be assessed as unexplained credit.

14. The return filed by the appellant assessee was selected for scrutiny and notice was issued under Section 143(2) of the Income Tax Act, 1961, hereinafter referred to as "*the said Act*". The scrutiny assessment was duly completed under Section 143(3) of the said Act on 31.3.2015 determining the total income of the appellant assessee for the assessment year 2012-13 at Rs.91,06,12,134/-.

15. The Assessing Officer, vide the assessment order dated 31.3.2015, added the share premium and the share capital for the fresh allotment of 167000 shares and treated the same as unexplained cash credits under Section 68 of the said Act, while holding that the method of valuation was not acceptable and that the share premium of Rs.5400/- was unreasonable. The Assessing officer held that the assignment agreement furnished by the appellant assessee was only a purported agreement without any substance and the transaction was a mere book adjustment.

16. Aggrieved by the order of assessment, the appellant assessee appealed to the Commissioner of Income Tax (Appeals)-11,

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who, by order dated 25.2.2016, held that the appellant assessee had not shown any convincing reason as to how the share with a face value of Rs.10/- could be valued at Rs.5,400/- per share, despite several opportunities granted to it, and that the appellant assessee had not submitted the particulars of its net worth. In effect, the Commissioner of Income Tax (Appeals)-11 held that the appellant assessee had not proved the genuineness and credit worthiness of the credit entries in its books of accounts. Thus, Appellate Commissioner upheld the addition of share premium and share capital as unexplained cash credit under Section 68 of the said Act and dismissed the appeal of the appellant assessee.

17. On further appeal, the learned Appellate Tribunal, by order dated 1.9.2016 made in I.T.A.No.871/Mds/2016, held that by way of introducing cash credit in the name of share premium and share capital, the appellant assessee is making attempts to reduce the tax liability. The learned Tribunal further held that when the Assessing Officer found credit in the books of account and the appellant assessee could not offer any satisfactory explanation, then the entire found in the books have to be treated as income of the appellant assessee and, thus, dismissed the appeal by confirming the orders passed by the authorities below.

18. Assailing the said order, the appellant assessee has filed the present appeal raising, inter alia, the following questions of law:

(i) Whether the learned Tribunal erred in confirming the valuation of shares allotted in settlement of the pre-existing liability taxable as unexplained cash credit?

(ii) Whether the learned Tribunal erred in holding that value of shares allotted to individuals would amount to unexplained cash credit?

19. The learned counsel for the appellant assessee contended that shares were allotted to Smt. Vathasala Ranganathan and others in settlement of pre-existing liability and, therefore, it will not amount to unexplained cash credit.

20. Counsel argued, and rightly, that when there was no cash involved in the transaction of allotment of shares, provisions of Section 68 of the said Act treating it as unexplained cash credit are not attracted.

21. Learned counsel for the appellant assessee emphatically

argued that inasmuch as the source of credit in which shares were allotted was clearly explainable, the same cannot be treated as unexplained cash credit. Moreover, the identity of the share holders and the liability of the company to shareholders has been established and, therefore, the allotment of shares cannot be treated as unexplained cash credit.

22. In *Commissioner of Income Tax v. Electro Polychem Ltd.*, reported in (2007) 294 ITR 661, cited on behalf of the appellant, a Division Bench of this Court held that in case of cash credit of share application money, even if it were to be assumed that the subscribers to the increased share capital were not genuine, the amount of share capital would in no circumstances be regarded as undisclosed income of the company.

23. In *Commissioner of Income Tax v. Steller Investment Ltd.*, reported in (2001) 251 ITR 263, also cited on behalf of the appellant, the Supreme Court held that even if the subscribers to the increased share capital of assessee-company were not genuine, the amount could not be regarded as undisclosed income of the company.

24. The question of whether the learned Tribunal erred in

confirming the valuation of shares allotted in settlement of the pre-existing liability taxable as unexplained cash credit, does not involve any question of law, far less any substantial question of law.

25. However, the second question is answered in favour of the assessee and against the Revenue by the judgment of the Division Bench of this Court in *Commissioner of Income Tax v. Electro Polychem Ltd.*, supra, and *Commissioner of Income Tax v. Steller Investment Ltd.*, supra.

26. This case is distinguishable from the case of *C.I.T. v. Lovely Expos Pvt. Ltd.*, reported in 216 CTR 195, in that the transactions were only book transactions, and there was no cash receipt. The decisions in (i) *Commissioner of Income Tax v. Focus Exports Pvt. Ltd.*, reported in (2014) 90 CCH 0105 (Delhi); (ii) *Commissioner of Income Tax v. Globus Securities & Finance Pvt. Ltd.*, reported in (2014) 264 CTR 481 (Delhi); (iii) *Onassis Axles Private Limited v. Commissioner of Income Tax*, reported in (2014) 364 ITR 53 (Delhi); (iv) *Olwin Tiles India (P) Ltd. v. Deputy Commissioner of Income Tax*, reported in (2016) 382 ITR 291 (Gujarat); (v) *B.R.Petrochem Pvt. Ltd. v. The Income Tax Officer*, (Order dated 24.4.2017 in T.C.(A) No.1498 of 2007; and (vi) *Rajmandir Estates Private Limited v. Principal Commissioner of Income*

Tax, reported in (2016) 386 ITR 162 (Calcutta), cited on behalf of the respondent are distinguishable, in that the cash credits towards share capital were admittedly only by way of book adjustment and not actual receipts which could not be substantiated as receipts towards share subscription money.

28. The appeal is, thus, allowed and the judgment and order of the learned Tribunal dated 1.9.2016 is set aside, for the reasons discussed above. Additions under Section 68 of the 1961 Act are also set aside. The questions of law are answered against the Revenue. No costs. Consequently, CMP No.9496 of 2017 is closed.

(I.B., CJ.)

(A.Q., J.)

Index : No
Internet : Yes
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To:

1. The Registrar
Income Tax Appellate Tribunal
"C" Bench, Chennai.
2. The Commissioner of Income Tax (Appeals)-11
Chennai.
3. The Income Tax Officer
Corporate Ward-3(4), Chennai.

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THE HON'BLE CHIEF JUSTICE
AND
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