

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 17.02.2021**

**CORAM**

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNAM**  
and  
**THE HONOURABLE MS.JUSTICE R.N.MANJULA**

Judgment Reserved On 02.02.2021	Judgment Pronounced On 17.02.2021
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**T.C.A.No.875 of 2018**

Principal Commissioner of  
Income Tax, Central I,  
No.108, Mahatma Gandhi Road,  
Chennai.

.. Appellant/Appellant

-VS-

M/s.SRM Systems and Software P. Ltd.,  
No.120, G.N.Chetty Road,  
T.Nagar, Chennai-600 017.  
PAN:AAB CS 5118 D

सत्यमेव जयते

Respondent/Respondent

Appeal under Section 260A of the Income Tax, 1961 against the order dated 13.06.2016, made in I.T.A.No.1635/Mds/2013 on the file of the Income Tax Appellate Tribunal 'D' Bench, Chennai, for the assessment year 2006-07.

For Appellant : Mr.T.R.Senthil Kumar,  
Senior Standing Counsel

For Respondent : Mr.G.Baskar

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### JUDGMENT

*T.S.Sivagnanam, J.*

This appeal, by the appellant/Revenue, filed under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), is directed against the order dated 13.06.2016, passed by the Income Tax Appellate Tribunal 'D' Bench, Chennai (for brevity “the Tribunal”), in I.T.A.No.1635/Mds/2013 for the assessment year 2006-07.

2.The appeal was admitted on 06.12.2019, on the following substantial questions of law:-

“1.Whether on the facts and circumstances of the case, the Appellate Tribunal is correct in law in shifting the responsibility of proving genuineness of share application money to the Assessing Officer even though a prima facie evidence against the assessee lies and the

assessee failed to discharge his initial burden on this account?

2.On the facts and circumstances of the case, whether mere furnishing list of person who have claimed to have advanced towards share capital thus constitute sufficient compliance on the part of the assessee? and

3.Whether the Appellate Tribunal is correct in giving relief to the assessee even after the assessee defaulted in filing return of income in time and thereby took self advantage of his own action, by restricting the scope of enquiry through delay of return of income and non compliance?”

3.The assessee is engaged in the business of development of software. For the assessment year under consideration AY 2006-07, the assessee claimed expenses of Rs.7,40,55,450/- under various heads. The assessee was called upon to produce books of accounts, bank statements etc. The assessee disclosed share capital advance to the tune of Rs.6,17,81,000/- and they were directed to furnish names and addresses of the persons, who contributed the advance share capital. The assessee, by reply dated

15.12.2010, stated that the advance towards share capital is Rs.5,65,96,723/- however, did not furnish any details with regard to their names, addresses, Permanent Account Numbers (PAN), proof in respect of their credit worthiness and proof in respect of genuineness. In the absence of any documents, the Assessing Officer added the said amount to the returned income as undisclosed income in the assessment order dated 31.12.2010, under Section 143(3) read with Section 147 of the Act. Aggrieved by such order, the assessee preferred appeal before the Commissioner of Income Tax(A) (C)-II, Chennai (for brevity, "the CIT(A)").

4.The CIT(A) after referring to the remand report, which was called for, held that the transaction of share capital advances were through banking channel, the assessee furnished Form No.2 prescribed in Section 75(1) of the Companies Act, 1956, in respect of the return of allotment of 88,24,200 shares having face value of Rs.10/- per share amounting to Rs.8,82,42,000/- and the shares were allotted in the subsequent financial year on 03.10.2006. Further, the CIT(A) pointed out that the assessee has enclosed list of the allottees as well as Form No.5 and evidence of payment of Rs.18,00,500/-

for increase in authorized share capital of the company from Rs.3,00,00,000/- to Rs.36,00,00,000/-. Further, after referring to the earlier decision of the Tribunal and the decision of this Court in **CIT vs. Electro Polychem Ltd., [(2007) 294 ITR 661 (Madras)]**, partly allowed the appeal filed by the assessee. Aggrieved by the same, the Revenue preferred appeal before the Tribunal.

5.The Tribunal rejected the appeal filed by the Revenue by observing that there is no allegation that the share application money emanated from the corpus of the assessee and that the assessee has filed names and addresses of the share applicants and merely because the share applicants are from Andhra Pradesh that cannot be a reason to disallow the claim of the assessee. Aggrieved by the same, the Revenue has filed this appeal.

6.We have elaborately heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel for the appellant/Revenue and Mr.G.Baskar, learned counsel appearing for the respondent/assessee.

7.From the remand report dated 30.04.2013, we find that the same was wholly adverse to the interest of the assessee. The Assessing Officer has stated, in no uncertain terms, that the assessee has not produced any details such as confirmation letter, bank account evidencing the receipt of share application money, the list contains 290 persons, who have given their addresses in Andhra Pradesh, the assessee has not produced any one person to verify the genuineness of the receipt of the share application money and therefore, the assessee's claim that the advance share capital received by cheque may not be entertained. To decide the correctness of the order passed by the Tribunal confirming the order of the CIT(A), we need to take note of Section 68 of the Act, which reads as follows:-

**“Section 68:-**

*Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.”*

8. In terms of the above provision, if the assessee offers no explanation about the nature and source of the amounts found credited in their books or the explanation offered by the assessee is not in the opinion of the Assessing Officer, satisfactory, the same so credited, may be charged to income tax, as the income of the assessee of that previous year. Therefore, to establish, the assessee was required to produce the creditworthiness of various persons, who are said to have made the share capital advance. Therefore, what is required to be established is the identity of the person, who has made the share capital advance, his creditworthiness and genuineness of the transaction. The onus is on the assessee to establish these factors and mere furnishing of the list of persons, who have claimed to have advanced towards share capital, will not constitute sufficient compliance of the onus placed on the assessee.

9. The CIT(A) has brushed aside the remand report submitted by the Assessing Officer, which would clearly indicate that the assessee failed to establish the genuineness of the amounts received as advance towards share capital. The CIT(A) has made an observation that the assessee has

produced Form No.2, which is under under the provisions of the Companies Act and as rightly submitted by the learned Senior Standing Counsel, the same will not contain the PAN numbers of the persons, who are said to have advanced monies.

10.In *Principal Commissioner of Income Tax, Central I vs. NRA Iron & Steel Pvt. Ltd., [(2019) 103 taxmann.com 48 (SC)]*, the issue, which fell for consideration, was whether the share capital/premium credited in the books of accounts of the assessee-company, the onus of proof is on the assessee to establish by cogent and reliable evidence of the identity of the investor companies, the creditworthiness of the investors and genuineness of the transaction to the satisfaction of the Assessing Officer. While answering the said issue, the Hon'ble Supreme Court held that it is for the assessee to prove by cogent and credible evidence that the investments made in share capital are genuine borrowings, since the facts are exclusively within the assessee's knowledge. After referring to several decisions, the principles, which emerged there from, were summed up in paragraph 11 of the judgment on the following terms:-

*“11. The principles which emerge where sums of money are credited as Share Capital/Premium are :*

*i. The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and credit-worthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the AO, so as to discharge the primary onus.*

*ii. The Assessing Officer is duty bound to investigate the credit-worthiness of the creditor/subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of name-lenders.*

*iii. If the enquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack credit-worthiness, then the genuineness of the transaction would not be established. In such a case, the assessee would not have discharged the primary onus contemplated by [Section 68](#) of the Act.*

11.The Review application filed against the above decision was dismissed by a speaking order as reported in **(2020) 117 taxmann.com 752 (SC)**.

12.From the facts of the case, which we have set out in the preceding paragraphs, it is clear that the assessee has not discharged the legal obligation cast upon them to prove the genuineness of the transaction, the identity of the creditors and creditworthiness of the investors, who should have the financial capacity to make the investment in question to the satisfaction of the Assessing Officer so as to discharge the primary onus. Since the assessee did not discharge the primary onus cast upon them, the question of the Assessing Officer to investigate the creditworthiness of the creditors/subscribers would not arise in the case on hand. Therefore, the above decision is a clear answer to the assessee's case, which would necessitate us to decide the same in favour of the Revenue.

13.We may also refer to the decision of the High Court of Calcutta in *J.J.Development Private Ltd., vs. CIT, Calcutta IV [(2018) 100 taxmann.com 101 (Cal.)]* wherein, it was held that when there was no plausible explanation that was furnished by the assessee to discharge the onus cast upon them and the identities of the alleged share applicants having not been established and the documents of the alleged share applicants

carried by the assessee before the Assessing Officer did not reveal the investments that the assessee claimed such alleged applicants had made in the assessee, there was no reason to interfere with the order of the Assessing Officer. The Special Leave Petition filed by the assessee therein was dismissed by the Hon'ble Supreme Court in the decision reported in **(2018) 100 taxmann.com 102.**

14. In the decisions referred to by Ms.G.Baskar in the case of **CIT vs. Gopi Textiles Ltd., [(2007) 294 ITR 663 (Madras)]** and the decision of the Hon'ble Supreme Court in **CIT vs. Lovely Exports (P.) Ltd., [(2008) 216 CTR 195 (SC)]**, the stand taken by the assessee was accepted as the Court found that the assessee had furnished full information thereby discharging the onus cast upon him and once the onus is discharged by the assessee, it is for the Assessing Officer, who has to prove the contrary. In the case on hand, we find that the initial onus, which has been cast on the assessee has not be discharged by them. Reference to a statutory form prescribed under the Companies Act is of little avail, as it does not reveal the PAN numbers of the alleged investors.

15.In the light of the above facts, we have no hesitation to conclude that the Tribunal erred in confirming the order passed by the CIT(A) by observing that merely because the share applicants are from Andhra Pradesh that cannot be a reason to disallow the claim of the assessee. The factual position being, the Assessing Officer did not do so, but disallowed the same on the ground that the assessee has not furnished any details, viz., the names and addresses of the persons, who paid the share capital advances, the cheque numbers, the name of the bank, PAN numbers etc. Thus, the order passed by the Tribunal calls for interference.

16.Accordingly, the Tax Case Appeal is allowed, the order passed by the Tribunal is set aside and the substantial questions of law are decided in favour of the Revenue. No costs.

WEB COPY (T.S.S., J.) (R.N.M., J.)  
17.02.2021

Index: Yes  
Speaking Order : Yes

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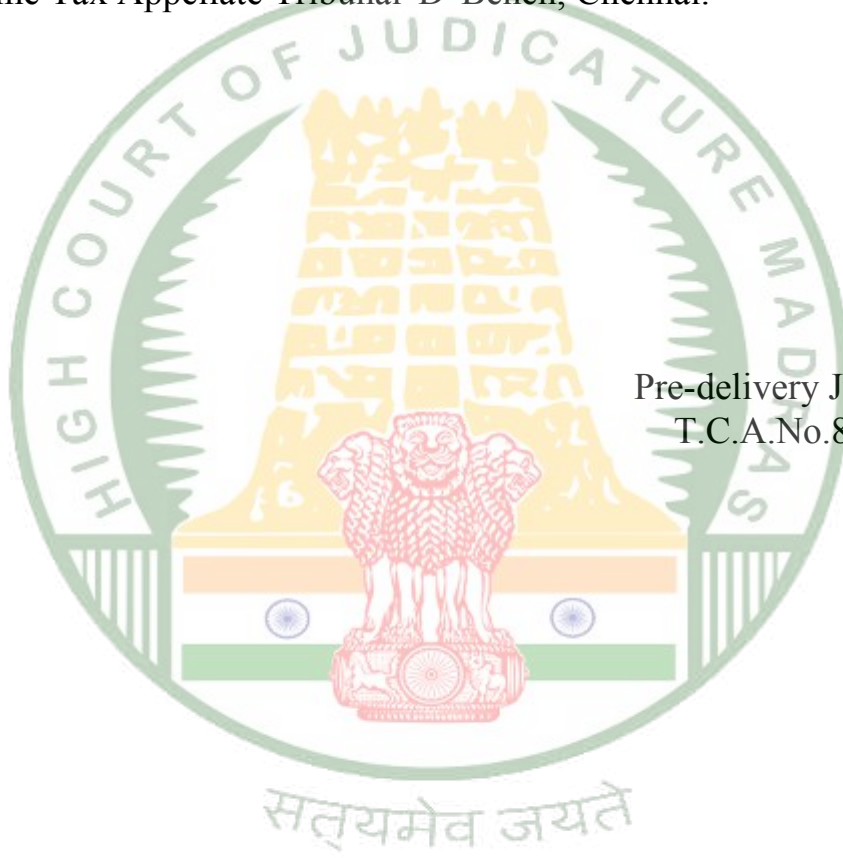
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T.S.Sivagnanam, J.  
and  
R.N.Manjula, J.

(abr)

To

The Income Tax Appellate Tribunal 'D' Bench, Chennai.



Pre-delivery Judgment in  
T.C.A.No.857 of 2018

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