

**IN THE INCOME TAX APPELLATE TRIBUNAL  
 "F" BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, JUDICIAL MEMBER &  
 SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.688/Mum/2021 (A.Y 2015-16)**

Viral Corporation India Pvt. Ltd., 106, Damji Shamji Udyog Bhavan, Veera Desai Road, Mumbai (W), Mumbai - 400 058	Vs.	Asst. Commissioner of Income Tax, Circle- 11(3)(2), Room No. 427, 4 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai 400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. :AADCV6566G		
Appellant	..	Respondent

Appellant by :	Shri Satish Mody
Respondent by :	Shri Achal Sharma

Date of Hearing	19.01.2022
Date of Pronouncement	25.02.2022

आदेश / O R D E R

**PER AMARJIT SINGH, AM:**

The present filed by the assessee is directed against the order passed by the Pr. CIT, Mumbai-3, which in turn arises from the assessment order passed by the A.O u/s 143(3) of the Income Tax

Act, 1961, dated 18.12.2017 for A.Y. 2015-16. The assessee has assailed the impugned order on the following grounds before us:

- “(1) The Learned Principal Commissioner of Income-tax-3, Mumbai has erred in facts and in law in passing an order under 263 to set aside the order made u/s 143(3) of the Income Tax Act, 1961 on 18/12/2017 so as to examine the issue of cessation of liability u/s 28 (iv) and 41(1) and taxability of premium of Rs 4 crores received by the assessee in the light of provisions of section 56(2)(viib) of the Income Tax Act, 1961.*
- (2) The Appellant reserves the right to add., alter or amend the above grounds of appeal as and when found necessary.”*

2. The fact in brief is that return of income declaring total income of Rs.3,29,32,550/- was filed on 25.09.2015. The case was subject to limited scrutiny assessment. The assessment u/s 143(3) of the act was finalized on 18.12.2017 accepting the income as per return of income filed by the assessee of Rs.3,29,32,550/-.

Subsequently, the ld. Principle CIT, Mumbai-3 has issued notice u/s 263, dated 12.02.2020 asking the assessee to show cause as to why the assessment order u/s 143(3) of the I.T. Act, 1961, dated 18.12.2017 is not held as erroneous as far as it is prejudicial to the interest of the revenue. The ld. Pr. CIT on verification of the assessment record observed that assessee has credited Rs.4 crores to share premium account, however, there was no increase in the share premium during the year under consideration. During the course of assessment proceedings it was submitted that at the time of conversion of partnership firm to private limited company in 2011, the capital of the partners were

converted into 10 lac equity shares of the company having face value of Rs.10 at a premium of Rs. 40 per shares. The ld. Principle CIT stated that this was not shown in the share premium account in the assessment year 2012-13 and the ledger entry was passed for correction of this mistake in the year under consideration i.e 2015-16. It was also stated by the ld. Pr. CIT that unsecured loan were reduced and share premium was increased by amount of Rs.4 crore. The Pr. CIT stated that the submission of the assessee that the loan amount has been converted by the assessee to share premium account was an afterthought. He was of the view that loan amount of Rs.4 crore has been waived off by the assessee company without any consideration and directly credited to the capital reserve account without making entries in the profit and loss account. The ld. Pr. CIT has also stated that liability of the assessee in the form of unsecured loan has ceased to exist during the year under consideration to be taxed u/s 28 (iv) of the I.T. Act and it was not a trading liability.

The ld. Pr. CIT stated that A.O has not carried out necessary verification/inquiry in respect of conversion of unsecured loan into share premium account of Rs.4 crore in view of the provision of Sec. 28(iv) and Sec. 56(2)(viib) of the Act, while passing order u/s 143(3) dated 18.12.2017. Therefore, the ld. Pr. CIT stated that assessment order passed u/s 143(3) is erroneous insofar as it is prejudicial to the interest of the revenue within the meaning of Sec. 263 of the Act.

3. During the course of appellate proceedings before us the ld. Counsel contended that during the Financial Year 2011-12 the provision of Sec. 11UA was not applicable. The ld. Counsel submitted that during the course of assessment proceedings the assessing officer has thoroughly verified this issue and assessee has submitted the relevant detail along with supporting material. In this regard, the ld. Counsel has referred page no. 5 of the paper book pertaining to letter dated 29.11.2017 submitted before the assessing officer in response to notice u/s 142(1) of the Act, dated 01.11.2017 wherein the assessee has specifically brought to the notice of the assessing officer that share premium of Rs.4 crore was received and Sec. 56(2)(viib) of the Act was not applicable to the case of the assessee since the assessee-company was incorporated on 16.05.2011. The assessee has also brought to the notice of the Assessing Officer vide the aforesaid submission that entry for premium on allotment of equity shares on incorporation of the company on 10.05.2011 was remained to be passed in financial year 2011-12 and the said entry of share premium was passed during financial year 2014-15. The assessee has also submitted the detail of journal entry passed for Rs.4 crore along with certificate of incorporation of the company and memorandum of article of association of company along with ledger account of share premium for reference before the assessing officer. The ld. Counsel has also referred page no. 7 and para No. 9 of the paper book pertaining to detailed submission filed before the Assessing Officer on the issue of increased in the share premium account during the year. The ld.

Counsel has also referred other pages of the paper book pertaining to copies of certificate of incorporation of the company, copies of memorandum of article of association and detail of shareholders etc.

On the other hand, the ld. D.R contended that assessee has not given the break-up of loan in the balance sheet and also place reliance on the decision of ld. Pr. CIT.

4. Heard both the sides perused the material on record. Without retreating the facts as elaborated above in this order, the ld. Pr. CIT held vide order u/s 263 of the Act, dated 30.03.2021 that assessing officer had passed assessment order u/s 143(3) dated 18.12.2017 without proper verification/examination of the issue of cessation of liability u/s 28(iv) and Sec. 41(1) and taxability of premium received by the assessee in the light of the provision of Sec. 56(2)(viib) of the Act. The ld. Pr. CIT stated that at the time of conversion of partnership firm to private limited company in 2011 the capital of the partners were converted into 10 lac equity shares of the company having face value of Rs. 10 at a premium of Rs.40 per share and same was not shown in the share premium account in the assessment year 2012-13. In this regard, after perusal of the material on record it is noticed that during the course of assessment proceedings the assessing officer has specifically verified and examined the issue of share premium received by the assessee company on its incorporation on 10.05.2011. In response to the query raised by the assessing officer during the course of

assessment proceedings by issuing of notice u/s 142(1) the assessee has explained that entry for premium or allotment of equity shares on incorporation of the assessee-company on 16.05.2011 remained to be passed in financial year 2011-12 and the said entry was passed during the financial year 2014-15. The assessee has also enclosed the detail of share premium received during financial year 2011-12 on and after incorporation of the company on 16.05.2011. The assessee has also submitted before the assessing officer that it has only passed journal entry by reducing unsecured loan received from shareholder and transferred the share premium of Rs.4 crore to the respective account during the assessment year 2015-16. During the course of assessment, the assessee has also enclosed the copy of journal entry for Rs.4 crore, copy of incorporation of the assessee company, certificate of incorporation of the assessee company the memorandum of article of association of the company and ledger of share premium. The assessee has also furnished copies of form no. 2 & 3 filed before the Registrar of the company with detail of share allotted at premium at along with copies of special resolution passed during the course of assessment proceedings. During the course of assessment in its submission dated 24.11.2017 the assessee has also submitted before the assessing officer that the share premium was relating to the financial year 2011-12 and the same was not related to assessment year 2015-16, therefore provision of Sec. 56(2)(viib) was not applicable to the assessee for the year under consideration. During the course of appellate proceedings before us vide letter

dated 08.12.2021 the assessee has also filed the copies of balance sheet and profit and loss account of the assessee company as on 31.03.2012. As per note 4 of the account under the head unsecured loan the assessee has also filed the detail about the loan from shareholder outstanding in its books of account. In the light of the above facts and material on record, the share premium and share capital was issued by conversion of the capital and loan balance of the partnership firm i.e Viral Corporation. The assessee has explained all these facts before the assessing officer and submitted during the course of assessment proceedings itself that it was inadvertent mistake and the shareholders to whom the shares were allotted in assessment year 2012-13 were remained the same and submitted copies of the audited financial statement from financial year 2011-12 to financial year 2015-16 before the assessing officer. Considering the aforesaid detail and submission we are of the view that Id. Pr. CIT is not justified in holding that order passed u/s 143(3) dated 18.12.2017 was passed without proper verification/examination on the issue of applicability of provision of Sec. 56(2)(viib) of the Act. Therefore, we consider that order passed u/s 263 of the Act is not justified and same is quashed, therefore, the appeal of the assessee is allowed.

5. Resultantly, the appeal of the assessee is allowed.

Order pronounced in the open court on 25.02.2022

Sd/-

(Amarjit Singh)  
 Judicial Member

Sd/-

(Amarjit Singh)  
 Accountant Member

Place: Mumbai  
Date 25.02.2022  
Rahul Sharma, Sr. P.S.

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण/ ITAT, Bench,**  
**Mumbai.**