

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI MAHAVIR SINGH (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 9/MUM/2017
Assessment Year: 2012-13**

ITO 14(1)(1), Room No. 431,
4th floor, Aayakar Bhavan,
M.K. Road, Mumbai-400020.

Vs. Abacus Real Estate Pvt. Ltd.
101, Kalpatru Synergy, Opp.
Grand Hyaat Santacruz East,
Mumbai-400055.

Appellant

**PAN No. AAGCA4865L
Respondent**

Revenue by : Mr. Anadi Varma, CIT- DR &
Ms. Kavita Kaushik, DR

Assessee by : Ms. Vasanti B. Patel, AR

Last Date of Hearing : 27/09/2019
Date of pronouncement : 20/12/2019

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the Revenue. The relevant assessment year is 2012-13. The appeal is directed against the order of the Commissioner of Income Tax-22, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal read as under:

1. On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting an amount of Rs.35 crores to total income treating the premium received on preferential shares as unexplained cash credit u/s 68 of the IT Act.
2. On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in allowing the assessee's appeal on the ground that the invested company M/s Prime Property Pvt. Ltd. had its own funds to make investments in the assessee- company.

3. Briefly stated, the facts of the case are that the assessee filed its return of income for the assessment year (AY) 2012-13 on 21.08.2012 declaring total income of Rs. Nil. During the course of assessment proceedings, the Assessing Officer (AO) observed that the assessee had received share premium of Rs.35,00,00,000/- from one party viz. M/s Prime Properties Pvt. Ltd. From the bank statements of M/s Prime Properties Pvt. Ltd filed by the assessee, the AO observed that there were certain credits which were followed by equivalent debits in the bank statements, leaving a meagre balance at the end of the year. The AO has reproduced those details in the assessment order, which read as under :

Date	Value Date	Withdrawals	Deposits	Balance (Rs.)	
08.12.2011	08.12.2011	0	830	223226.80	cr.
22.12.2011	22.12.2011	0	1650000000	1650223226.80	cr.
22.12.2011	22.12.2011	950000000	0	700223226.80	cr.
22.12.2011	22.12.2011	700000000	0	223226.80	cr.
23.12.2011	23.12.2011	0	350000000	350223226.80	cr.
23.12.2011	23.12.2011	350000000	0	223226.80	cr.
23.12.2011	23:12.2011	100000	0	123226.80	cr.
26.12.2011	26.12.2011	0	700000	823226.80	cr.

28.12.2011	28.12.2011	0	1000000	1823226.80	cr.
28.12.2011	28.12.2011	652373	0	1170853.80	cr.
28.12.2011	28.12.2011.	825000	0	345853.80	cr.
28.12.2011	28.12.2011	0	5084.83	350938.63	cr.
29.12.2011	29.12.2011	0	1000000000	1000350938.63	cr.
30.12.2011	30.12.2011	1000000000	0	350938.63	cr.
30.12.2011	30.12.2011	27575	0	323363.63	cr.
30.12.2011	30.12.2011	0	350000000	350323363.63	cr.
30.12.2011	30.12.2011	350000000	0	323363.63	cr.

Thus observing that as per the bank statement of M/s Prime Properties Pvt. Ltd., the amounts have been credited in the bank account and on the same date, the said amounts have been transferred to other accounts, leaving a meagre balance and therefore, the genuineness of the transaction is not proved, the AO made an addition of Rs.35,00,00,000/- u/s 68 of the Act.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that *vide* order dated 31.10.2016, the Ld. CIT(A) observed that (i) there is no dispute amount the identity of M/s Prime Properties Pvt. Ltd., (ii) as per the return of income of M/s Prime Properties Pvt. Ltd., it has shown income of Rs.1,54,55,550/- for AY 2012-13, (iii) the investment in the assessee-company was explained to be out of its own advances received in the course of business and disclosed as liabilities in its balance sheet ; perusal of the balance sheet shows that under the head "Other Liabilities" an amount of Rs.200,31,41,720/- has been shown under the sub-head "Deposits" as on 31.03.2012 as against Rs.45,50,000/- as on 31.03.2011; this shows that M/s

Prime Properties Pvt. Ltd. had sufficient funds for making investment of Rs.35,00,00,000/- in the shares of the assessee-company during the year, (iv) the payments were made through normal banking channels and are reflected in the balance sheet of M/s Prime Properties Pvt. Ltd. and the assessee-company, (v) the investment is also reflected in the balance sheet of M/s Prime Properties Pvt. Ltd. (vi) copies of Form 2 and Board's resolution for addition to share capital are also on record.

Observing as above, the Ld. CIT(A) noted that the assessee had sufficiently discharged its onus of establishing not only the identity but also the creditworthiness as well as the genuineness of the transaction as required u/s 68 of the Act.

Referring to the decision of the Hon'ble Delhi High Court in the case of *CIT v. Value Capital Services P. Ltd.* 307 ITR 334 (Del), wherein it is held that unless the Department is able to show that the amount received towards share capital actually emanated from the coffers of the assessee-company, no addition can be made in the hands of the assessee u/s 68 of the Act, the Ld. CIT(A) deleted the addition of Rs.35,00,00,000/-.

5. Before us, the Ld. Departmental Representatives (DRs) rely on the decision in *PCIT v. NRA Iron & Steel (P.) Ltd.* (2019)103 taxmann.com 48 (SC); *CIT v. Youth Construction (P.) Ltd.* (2014) 44 taxmann.com 364 (Delhi); *CIT v. Independent Media Pvt. Ltd.* (ITA No. 456/2011) by Delhi High Court; *Rajmandir Estates (P.) Ltd. v. PCIT* (2016) 386 ITR 162 (Cal); *Pragati Financial Management (P.) Ltd. v. CIT* (2017) 394 ITR 27 (Cal) and *M/s Gaurav Pigments Pvt. Ltd. v. CIT* (ITA No. 61/LUC/2000) by ITAT Lucknow.

Referring to the above decisions, the Ld. DRs submit that the source of source can be examined.

6. On the other hand, the Ld. counsel for the assessee relies on the decision in the case of *Pr. CIT v. Aditya Birla Telecom Ltd.* (2019) 105 taxmann.com 206 (Bombay) and submits that the order passed by the Ld. CIT(A) be affirmed.

7. We have heard the rival submissions and perused the relevant materials on record. The reasons for our decisions are given below.

We begin with the case laws for relied on by the Ld. DR. In the case of *NRA Iron & Steel (P.) Ltd.* (supra), the issue for consideration is where share capital/premium is credited in the books of account of the assessee-company, the onus of proof is on the assessee to establish by cogent and reliable evidence the identity of the investor companies, the creditworthiness of the investors and genuineness of the transaction to the satisfaction of the Assessing Officer. The Hon'ble Supreme Court held :

“14. The practice of conversion of un-accounted money through the cloak of Share/Premium must be subjected to careful scrutiny. This would be particularly so in the case of private placement of shares, where a higher onus is required to be placed on the Assessee since the information is within the personal knowledge of the Assessee. This Assessee is under a legal obligation to prove the receipt of share capital/premium to the satisfaction of the AO, failure of which, would justify addition of the said amount to the income of the assessee.”

In *Youth Construction (P.) Ltd.* (supra), the Hon'ble Delhi High Court held that :

“There can be no dispute that Section 68 applies equally to share application monies received by an assessee and, therefore, the burden is on the assessee to prove the nature and source thereof, to the satisfaction of the Assessing Officer. It involves three ingredients, namely, the proof regarding identity of the share applicants, their creditworthiness to purchase the shares and the genuineness of the transaction as a whole. The Tribunal failed to keep in mind these aspects of the matter and has chosen to dispose of the appeal on the limited question of the identity of the share holders. A Division Bench of this Court in the case of CIT vs. Nova Promoters and Finlease P. Ltd. (2012) 342 ITR 169 pointed out the circumstances in which the ratio of the judgment of the Supreme Court in *Lovely Export* (supra) can be applied and the circumstances where the ratio cannot be applied.”

In *Independent Media Pvt. Ltd.* (supra), the Hon'ble Delhi High Court held that :

“11. The Revenue is aggrieved by the aforesaid order of the Tribunal and has filed the present appeal. We are unable to uphold the view of the Tribunal that it is incumbent upon the Assessing Officer, on the facts and circumstances of the case, to establish with the help of material on record that the share monies had come or emanated from the assessee's coffers. Section 68 of the Act casts no such burden upon the Assessing Officer. This aspect has been considered more than 50 years back by the Supreme Court in the case of *A. Govindarajulu Mudaliar v. CIT*, (1958) 34 ITR 807 where precisely the same argument was advanced before the Supreme Court on behalf assessee. The argument was rejected by the Court. Venkatarama Iyer, J. speaking for the Court observed as under (page 810 of the report): -

‘Now the contention of the appellant is that assuming that he had failed to establish the case put forward by him, it does not follow as a matter of law

that the amounts in question were income received or accrued during the previous year, that it was the duty of the Department to adduce evidence to show from what source the income was derived and why it should be treated as concealed income. In the absence of such evidence, it is argued, the finding is erroneous. We are unable to agree. Whether a receipt is to be treated as income or not, must depend very largely on the facts and circumstances of each case. In the present case the receipts are shown in the account books of a firm of which the appellant and Govindaswamy Mudaliar were partners. When he was called upon to give explanation he put forward two explanations, one being a gift of Rs.80,000/- and the other being receipt of Rs.42,000/- from business of which he claimed to be the real owner. When both these explanations were rejected, as they have been it was clearly upon to the Income-tax Officer to hold that the income must be concealed income. There is ample authority for the position that where an assessee fails to prove satisfactorily the source and nature of certain amount of cash received during the accounting year, the Income-tax Officer is entitled to draw the inference that the receipt are of an assessable nature. The conclusion to which the Appellate Tribunal came appears to us to be amply warranted by the facts of the case. There is no ground for interfering with that finding, and these appeals are accordingly dismissed with costs.'

A similar view was taken by the Supreme Court in CIT v. Devi Prasad Vishwanath Prasad, (1969) 72 ITR 194 (SC).

12. In the light of the aforesaid exposition of the legal position the view taken by the Tribunal cannot be upheld. The Tribunal, however, may be justified in directing the Assessing Officer to afford an opportunity to the assessee of cross-examining the persons who had allegedly given statements before the Investigation Wing implicating the assessee in the modus operandi adopted by them, namely, giving of accommodation entries for commission. The Assessing Officer had in his show-

cause notice referred to these statements and the fact that the assessee had been named therein as one of the beneficiaries to whom entries to the extent of Rs.2,20,00,000/- have been provided for commission. The assessee appears to have sought cross-examination of those persons but that opportunity was not given by the Assessing Officer as found by the Tribunal, a position not disputed before us on behalf of the Revenue. However, in the fresh round of proceedings it will be open to the Assessing Officer to make the addition in the hands of the assessee-company in case it appears to him, after complying with the directions of the Tribunal, that the explanation adduced by the assessee with regard to the identity and creditworthiness of the subscriber-companies and the genuineness of the transactions is not acceptable for valid reasons which must be clearly spelt out. He will not, however, be under any duty to further show or establish that the monies emanated from the coffers of the assessee company. To place such a burden on him, an impossible one at that, would be quite contrary to the judgments of the Supreme Court cited above. We may only state that the Assessing Officer shall act in accordance with law. The directions of the Tribunal, quoted above are modified to this extent.”

In *Rajmandir Estates (P.) Ltd.* (supra), the Hon’ble Calcutta High Court held that the submission that the source of source is not a relevant inquiry does not appear to be correct. Again the Hon’ble Calcutta High Court in the case of *Pragati Financial Management (P.) Ltd.* (supra) held that source of source can be relevant inquiry.

In *Gaurav Pigments Pvt. Ltd.* (supra), the Tribunal, referring to the judgment of the Hon’ble Supreme Court in the case of *CIT v. Biju Patnaik* (1986) 160 ITR 674 (SC) held that source of source is also required to be established by the assessee because primarily the onus of proving the creditworthiness of the lender lies on the assessee.

7.1 Now we discuss the case-law relied on by the Ld. counsel. In the decision *Aditya Birla Telecom Ltd.* (supra), the assessee-company was engaged in telecommunication services. It required sufficient funds and investment was made by US based global private investment group through P5AHIML, a specially constituted Mauritius based company. The assessee-company issued 19.25 lakhs preference shares, each of the face value of Rs.10 to P5AHIML at Rs.10.890 per share. Thus the assessee-company received the share amount of Rs.19.25 lakhs. The assessee received huge total premium of Rs.2.96 crores. The Assessing Officer found that the assessee used only a sum of Rs.7.31 crores for its own operation. The huge balance amount was transferred to its holding company or a group company for the purpose of other investment. According to the AO, the assessee received huge share capital from P5AHIML; that there was no reason as to why P5AHIML transferred huge amount to the assessee without any apparent return ; that the assessee failed to produce the assessment order of P5AHIML; that the assessee opened a bank account only for receipt of funds which was closed shortly after transfer of fund. According to the AO, subscription of the preference shares by P5AHIML was colourable device and not genuine transaction. The AO made addition u/s 68 of the Act in the hands of the assessee. On appeal, the CIT(A) upheld the order of the AO. On further appeal, the Tribunal concluded that P5AHIML was a company belonging to the Providence Equity Partners, a global private investment group. P5AHIML registered itself as a Foreign Venture Capital Investor (FVCI) with SEBI. The investment in holding company of the assessee was made after P5AHIML registered as a FVCI with SEBI and the assessee obtained the necessary approvals from the Foreign Investment Promotion Board (FIPB). In

connection with the issue of holding company, the assessee submitted all the relevant details in the course of assessment proceedings. The Tribunal held that all the three ingredients of section 68 i.e. identity, genuineness and creditworthiness of investor were duly established, thus deleted the addition made by the AO. On further appeal by the revenue, the Hon'ble Bombay High Court held that :

“8. In its decision, the Tribunal noted that the investment made by P5AHIML was done registering itself with SEBI and after obtaining necessary approvals from Ministry of Finance. The application made to the Ministry of Finance contained full details of the investment, the background of the transaction, the terms of the agreement, identity of the investor and the investor group. The Tribunal noted that P5AHIML was an investment arm of Providence Equity Partners and the Tribunal had perused the financial statements which disclosed the flow of funds in the said P5AHIML. The Tribunal further recorded that while making such investment, the investor not only looks for dividend or interest but also expects return on such investment as capital appreciation, when the investment finally gets converted into equity shares. The Tribunal found that this was the reason why P5AHIML had made the investment in assessee company. In the opinion of the Tribunal merely because there were multiple entities involved in such investment process, would not enable the Assessing Officer to draw an adverse inference on the financial capacity of P5AHIML. The Tribunal noted that during the assessment, the Assessing Officer had called for all necessary details which were supplied by the assessee. In view of such materials, it was not open for the Assessing Officer to invoke Section 68 of the Act. The Tribunal further noted that information was also sought from Foreign Tax Division with regard to the genuineness of the investment made by Providence Equity Partners in P5AHIML. Necessary information was also received. During the course of hearing of the appeal, the Commissioner had called for remand report from the Assessing Officer on the additional evidence produced on record. In the

report, the Assessing Officer had made remark suggesting that the transactions were genuine. The Tribunal also verified the necessary permissions for remittances of the funds and other relevant documents.

9. It can, thus be seen that at every stage, the full inquiry of source of funds and other relevant factors in relation to the investment in question was carried out. The Assessing Officer himself carried out a detailed inquiry. His initial suspicion or in other words starting point of inquiry on the basis that apparently the investor was investing huge amount which may prima facie appear to be without adequate possible returns, may be fully justified. However, when all the relevant factors are properly explained, including the fact that the payment of dividend was not the sole attraction for the investor and that the investor could expect a fair return on the investment, of course, subject to vagaries of the any business decision, the Assessing Officer had to advert to all such materials on record in proper perspective. As noted by the Tribunal, all necessary permissions and clearances were granted by the Government of India and other government authorities for such investment. The source of the funds in the hands of P5AHIML was also verified. Merely because multiple corporate bodies may have been involved in the entire process of collecting funds in P5AHIML and then investing the same in the assessee company, by itself would not be sufficient to establish a sham transaction or colourable device.”

7.2 The instant case, the assessee-company has during the year under consideration offered right issue to its existing equity shareholders and also issued convertible preference shares. It issued and allotted 3,50,000 (0.10%) optionally convertible preference shares at a face value of Rs.10/- each at a premium of Rs.990/- per share aggregating to Rs.35,00,00,000/- to Prime Properties Pvt. Ltd. on 19.01.2012.

The AO has mentioned in the assessment order, the bank statement of M/s Prime Properties Pvt. Ltd. We produce below the said bank statement (A/c No. 000405002748 with ICICI Bank) :

Date	Value Date	Particulars	Location	Chq. No.	Withdrawals	Deposits	Balance (Rs.)
01.12.2011		B/F	RPC Mumbai		0.00	0.00	3,22,898.80 Cr
03.12.2011	03.12.2011	Arjan Lal 010204 BOI	RPC Mumbai		0.00	2,316.00	3,25,214.80Cr
05.12.2011	05.12.2011	BIL/0002733588 04/IDTAX/63904 8105122011	Nariman Point		20,285.00	0.00	3,04,929.80Cr
07.12.2011	07.12.2011	Kalpatru Heritage Coop Premis	Nariman Point	756779	1,00,000.00	0.00	2,04,929.80Cr
07.12.2011	07.12.2011	BIL/0002740358 16/DTAX/63903 4007121108	Nariman Point		1,522.00	0.00	2,03,407.80Cr
08.12.2011	08.12.2011	Narbheram 710369 BOB	RPC Mumbai		0.00	3,950.00	2,07,357.80Cr
08.12.2011	08.12.2011	Jaico Book H 000051 BOB	RPC Mumbai		0.00	10,759.00	2,18,116.80Cr
08.12.2011	08.12.2011	Jaico Book H 000052 BOB	RPC Mumbai		0.00	4,280.00	2,22,396.80Cr
08.12.2011	08.12.2011	Manghanjham 420768 SCB	RPC Mumbai		0.00	830.00	2,23,226.80Cr
22.12.2011	22.12.2011	RTGS- KKBKH11356815 322-AGILE Real Estate Pvt.	RPC Mumbai		0.00	1,65,00,00,000.0	1,65,02,23,226.80Cr
22.12.2011	22.12.2011	INF/0000045103 36/IFT-KRVPL/0	Nariman Point		95,00,00,000.00	0.00	70,02,23,226.80Cr
22.12.2011	22.12.2011	INF/0000045104 65/IFT-KRVPL/0	Nariman Point		70,00,00,000.00	0.00	2,23,226.80 Cr
23.12.2011	23.12.2011	RTGS- HDFCH11357387 072-AGILE Real Estate Pvt.	RPC Mumbai		0.00	35,00,00,000.00	35,02,23,226.80Cr
23.12.2011	23.12.2011	TRFR TO: ABACUS	Backbay Reclamation	756784	35,00,00,000	0.00	2,23,226.80Cr
23.12.2011	23.12.2011	Cash Paid : Self	Backbay Reclamation	756780	1,00,000.00	0.00	1,23,226.80Cr
26.12.2011	26.12.2011	TRFR Form : Kanani Properties P. Ltd.	Mumbai-Vakola		0.00	7,00,000.00	8,23,226.80Cr
28.12.2011	28.12.2011	TRFR Form : Kanani Properties P. Ltd.	Mumbai-Vakola		0.00	10,00,000.00	18,23,226.80Cr
28.12.2011	28.12.2011	MCGM	Lokhandwala	756776	6,52,373.00	0.00	11,70,853.80 Cr
28.12.2011	28.12.2011.	Kalpatru Heritage Coop Premi	Lokhandwala	756786	8,25,000.00	0.00	3,45,853.80Cr
28.12.2011	28.12.2011	/003/911136/B	RPC Mumbai		0.00	5,084.83	3,50,938.63Cr

		OB					
29.12.2011	29.12.2011	INF/0000045348 93/IFT-Prime/0	Nariman Point		0.00	1,00,00,00,000.00	1,00,03,50,938.63Cr
30.12.2011	30.12.2011	RTGS: Kalpatru Retail Ventures Pvt./KKBK	Backbay Reclamation	756791	1,00,00,00,000.00	0.00	3,50,938.63Cr
30.12.2011	30.12.2011	MGB and Co.	Nariman Point	756778	27,575.00	0.00	3,23,363.63Cr
30.12.2011	30.12.2011	INF/0000045375 78/IFT-Prime/0	Nariman Point		0.00	35,00,00,000.00	35,03,23,363.63Cr
30.12.2011	30.12.2011	RTGS: Kalpatru Retail Ventures Pvt./KKBK	Backbay Reclamation	756792	35,00,00,000.00	0.00	3,23,363.63Cr
30.12.2011	30.12.2011	By Cash - Nariman Point	Nariman Point		0.00	1,00,000.00	4,23,363.63.00

It is seen that on 08.12.2011 there is a balance of Rs.2,23,226.80. On 22.12.2011 there is a deposit of Rs.1,65,00,00,000/- in the above account. On the same date there is withdrawal of Rs.95,00,00,000/- and Rs.70,00,00,000/-, thus leaving same balance of Rs.2,23,226.80. On 23.12.2011 there is a deposit of Rs.35,00,00,000/-. On the same date there is withdrawal of the above amount of Rs.35,00,00,000/-, leaving the same balance of Rs.2,23,226.80.

Similar pattern we find in the bank account of the assessee-company, (A/c No. 000405100292 with ICICI Bank) which is as under :

Date	Value Date	Particulars	Location	Chq. No.	Withdrawals	Deposits	Balance (Rs.)
01.12.2011		B/F	Mumbai Vakola		0.00	0.00	0.00
22.12.2011	22.12.2011	TRFR From : Kalpatru	Mumbai Vakola		0.00	30,00,00,000.00	30,00,00,000.00 Cr
22.12.2011	22.12.2011	TRFR To : Kiah Properties	Mumbai Vakola	636926	30,00,00,000.00	0.00	0.00
23.12.2011	23.12.2011	TRFR From : Prime	Backway Reclamation		0.00	35,00,00,000.00	35,00,00,000.00 Cr
23.12.2011	23.12.2011	TRFR To : Kalpatru	Backway Reclamation	636927	35,00,00,000.00	0.00	0.00
29.12.2011	29.12.2011	RTGS-KKBK 11363862613-Abacus Real Estate	RPC		0.00	9,90,00,000.00	9,90,00,000.00 Cr
29.12.2011	29.12.2011	INF/000004534731/I FT-KL/0	Nariman Point		9,90,00,000.00	0.00	0.00
Page Total					74,90,00,000.00	74,90,00,000.00	0.00

As can be seen from the above, the balance as on 01.12.2011 is Nil. There is a deposit of Rs.30,00,00,000/- on 22.12.2011. On the same date there is withdrawal of Rs.30,00,00,000/-. On 23.12.2011, there is a deposit of Rs.35,00,00,000/- and on the same date equal amount has been withdrawn leaving zero balance.

Considering the above aspects of the deposit and withdrawal of the same amounts, leaving meagre balance in the account of M/s Prime Properties Pvt. Ltd. and no balance in the accounts of the assessee-company, we are of the considered view that the genuineness of the transactions need verification. In such a situation, the present case of the assessee is distinguishable from the decision in *Aditya Birla Telecom Ltd.* (supra), relied on by the Ld. counsel.

We find that as per the 'Notes to financial statements' of Prime Properties Pvt. Ltd. (at page 135 of the *Paper Book*), the assessee i.e. Abacus Real Estate Pvt. Ltd. is one of the 'other related parties'.

In *NRA Iron & Steel Pvt. Ltd.* (supra), the Hon'ble Supreme Court has held that the practice of conversion on unaccounted money through the cloak of share capital/premium must be subjected to careful scrutiny and this would be particularly so in the case of private placement of shares, where a higher onus is required to be placed on the assessee, since the information is within the personal knowledge of the assessee. It is further held that the assessee is under a legal obligation to prove the receipt of share capital/premium to the satisfaction of the AO, failure of which would justify addition of the said amount to the income of the assessee.

Proving the genuineness of transaction is one of the ingredients of section 68 of the Act. We may again refer to the judgment of the Hon'ble Supreme Court in *NRA Iron & Steel (P.) Ltd.* (supra), wherein their Lordships, at para 11, have held :

“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.”

7.3 As mentioned earlier, there are deposit and withdrawal of the same amounts, leaving meagre balance in the account of M/s Prime Properties Pvt. Ltd. and no balance in the accounts of the assessee-company. Therefore, relying on the ratio laid down by the Hon'ble Supreme Court in *NRA Iron & Steel (P.) Ltd.* (supra), we set aside the order of the Ld. CIT(A) and restore the matter to the file of the AO to make an order afresh, after giving reasonable

opportunity of being heard to the assessee. We direct the assessee to file the relevant documents/evidence before the AO.

8. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open Court on 20th December, 2019

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 20/12/2019

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai