

**IN THE INCOME TAX APPELLATE TRIBUNAL,**

**MUMBAI BENCH "B", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND  
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

**ITA No.217/M/2019  
Assessment Year: 2010-11**

M/s. BLA Power Holding Pvt. Ltd., 84, Maker Chamber III, Nariman Point, Mumbai - 400 021 <b>PAN: AADCB 3577H</b>	Vs.	Income Tax Officer, Circle - 3(1)(2), Room No.607, 6 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Madhur Agarwal, A.R.  
Revenue by : Shri H.N. Singh, D.R.

Date of Hearing : 03.06.2019  
Date of Pronouncement : 10.07.2019

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the assessee against the order dated 14.12.2018 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2010-11.

2. The various grounds raised by the assessee are as under:

"1. On the facts and circumstances of the case, The Ld. CIT(A) legally erred in confirming the assessment order passed u/s 143(3) r.w.s 147 of the Act which is invalid, without jurisdiction, bad in law and void ab initio.

1.1 On the facts and circumstances of the case, the Ld. CIT(A) legally erred in confirming reopening the assessment u/s 148 of the Act which was purely done by relying on the unsubstantiated information and that too without verifying the contents of the information. The impugned order being bad in law as the basis of the reopening is on the borrowed satisfaction.

1.2 On the facts and circumstances of the case, the Ld, CIT(A) legally erred in confirming the assessment order passed which is bad in law as the statement relied on of the alleged parties, were never supplied to the appellant. The appellant asked for the copies of the statement and cross examination of the parties vide letter dated 20/12/2017 filed on 21/12/2017, hence on that count itself, in absence of natural justice the order is bad in law.

2. On the facts and circumstances of the case, the Ld. CIT(A) erred in confirming the addition of Rs. 18,00,00,000 as unexplained cash credit u/s 68 of the Act made during the re-assessment proceedings. The amount was received by account payee cheque(s) on account of the share capital; the Ld. CIT(A) erred in ignoring the judgment of the **Hon'ble Apex Court in Lovely Exports Pvt Ltd [216 CTR 195]** and host of other judgments including **Jurisdictional High Court judgment in the case of Creative World Telefilms Ltd.[333 ITR 100] and Paradise Inland Shipping Pvt Ltd. (unreported)**

3. On the facts and circumstances of the case, the Ld. CIT(A) legally erred in confirming the addition of Rs.18,00,000 being 1% of the share capital money raised (not share application) u/s 69C of the Act made by the AO during the re-assessment proceedings.

4. On the facts and circumstances of the case, the Ld CIT(A) legally erred in confirming the charging interest u/s 234B of the Act.

5. On the facts and circumstances of the case the Ld. CIT(A) legally erred in dismissing the penalty initiated under sec. 271(l)(c) of the Act on the ground being premature.

6. Your appellant craves leave to alter, modify, amend or delete any of the above grounds of appeals or to add one or more additional ground(s), at or before the hearing of the appeal, as may be necessary."

3. The issue raised in ground No.1 is against the order of ld CIT(A) upholding the order of the AO in re-opening the assessment of the assessee and thus challenges the jurisdiction of the AO which was exercised without fulfilling the conditionalities precedents to issuing notice u/s 148 of the Act.

4. The facts in brief are that the assessee filed the return of income on 28.09.2010 declaring a loss of Rs.7,16,956/- which was processed under section 143(1) of the Act. Thereafter, the

assessment was reopened u/s 147 of the Act by issuing notice under section 148 of the Act dated 21.03.2017. The reasons recorded by the AO for reopening the assessment proceedings are reproduced as under:

"1. The assessee filed its return of income for A.Y. 2010-11 dated 20.09.2010 declaring total income at Rs. NIL which has been processed u/s. 143(l) of the Act on 17.04.2011.

2. In this case, an information has been received from ADIT(Inv.), Unit -3(4), Mumbai vide letter no. ADIT-3(4)/BLA Power Holding/2016-17 dated 08.03.2017 regarding investment in shares of BLA Power Holdings Pvt. Ltd. of Rs. 3,00,00,000/- by M/s. Lifetime Financial Services Ltd which appears to be a paper/fake company set up for the purpose of routing funds.

3. As per the information from Investigation Wing, the account of M/s. Lifetime Financial Services Ltd. (A/c. No, 909020043666920) was opened at Axis Bank, Diamond Harbour Branch in the month of December, 2009 with the initial funding of Rs.1,00,000/-. Since then this account is frequently credited with high value funds received through various modes like clearings, inter-branch transfer and RTGS, Subsequently, the entire money is getting moved out of the account on the same or succeeding days. The information has been received in respect of 4 entities, including M/s, BLA Power Holdings P Ltd. regarding high value of transfer transactions with the account of M/s Lifetime Financial Services Ltd.

4. It is observed that M/s. Lifetime Financial Services Ltd. is the Principal Company. M/s. Lifetime Financial Services Ltd. has invested in shares of the companies, including an amount of Rs. 3,00,00,000/- in shares of M/s. BLA Power Holding Pvt. Ltd. as on 31.03.2010 (3,00,000 shares Rs. 100 each). It had also advanced loans, on which it is earned interest income of Rs. 1,95,740/- during the F.Y. 2009-10. Apart from this interest income, M/s. Lifetime Financial Services Ltd. has no other business income. Hence, the huge investment in shares made by M/s. Lifetime Financial Services Ltd. is not justifiable. Also, M/s. Lifetime Financial Services Ltd. had not filed any details with regard to shareholders or other relevant information to substantiate the source of funds in its hand.

5. In view of above, it is clear that M/s. Lifetime Financial Services Ltd. is paper/fake company set up for the purpose of routing funds to M/s. BLA Power Holdings Pvt. Ltd. Under these circumstances, I have reasons to believe that the transaction to the tune of Rs. 3,00,00,000/- made by M/s. BLA Power Holdings P. Ltd. with M/s. Lifetime Financial Services Ltd. or any other income chargeable to tax. which comes to my notice subsequently in the course of proceedings for reassessment has escaped assessment within the meaning of section 147 of the Income Tax Act, 1961. Accordingly, this is a fit case to reopen the assessment by issue of notice u/s. 148 of the Income Tax Act, 1961."

The assessment was finally framed by the AO by rejecting the contentions of the assessee challenging the validity of re-opening the assessment and consequently making an addition of Rs. 18.00 Cr to the income of the assessee vide order dated 30.12.2017 towards share capital and share premium raised during the year.

5. The assessee has challenged the validity of notice issued under section 148 of the Act by AO on the ground that the conditions as required to be satisfied under section 147 read with section 148 of the Act have not been fulfilled. It is clear from the perusal of reasons recorded that AO has reopened the assessment of the assessee on the basis of information received from ADIT (Inv.), Unit -3(4), Mumbai in respect of alleged transactions of purchase of preference shares by M/s. Lifetime Financial Services Pvt. Ltd in the assessee company. In the reasons recorded, the AO noted that the said investor M/s. Lifetime Financial Services Pvt. Ltd. opened a bank account with Axis Bank Ltd. in the month of December 2009 with initial deposit of Rs.1 00,000/- and subsequently the said account was credited with high value transactions received through various modes such as clearing ,inter branch transfer and RTGS and the entire money was transferred to other entities on subsequent dates. The AO noted that the assessee is one of the four entities with whom these high value transactions were made. According to the AO, the investment by M/s. Lifetime Financial Services Pvt. Ltd. in the shares of assessee company to the tune of Rs.3 crores is not justifiable. The AO also noted that the said investor had also advanced unsecured loans on which interest of

Rs.1,95,740/- was earned during financial year 2009-10 and citing all these circumstances, the AO came to believe on the basis of reasons that transactions of Rs.3 crore in the assessee company by M/s. Lifetime Financial Services Pvt. Ltd. or any other income chargeable to tax which may come to the notice of the AO subsequently in the course of proceedings of assessment have escaped assessment within the meaning of section 147 read with section 148 of the Act. In other words, the AO formed the belief on the basis of information received from investigation wing to the effect that M/s. Lifetime Financial Services Pvt. Ltd. was a paper company/fake company and was only set up for the purpose of routing funds to the assessee which has resulted into escapement of income. Whereas in contrast the facts of the case of the assessee are totally different, the assessee has allotted 6% non cumulative, non comfortable redeemable preference shares during the year as per details below:

Sr. No.	Party Name	No. of Preference Shares	Amount (Rs.) Face Value {Rs.10 each}	Premium Amount (Rs.) {Ra.90 each}	Total Amount (Rs.)
1	Masantoshi International Limited	4,00,000	40,00,000	3,60,00,000	4,00,00,000
2	Sharadraj Tradefin Limited	3,00,000	30,00,000	2,70,00,000	3,00,00,000
3	Blueprint Securities Limited	2,00,000	20,00,000	1,80,00,000	2,00,00,000
4	Konark Commerce & Industries Limited	4,00,000	40,00,000	3,60,00,000	4,00,00,000
5	Impex Services Limited	2,00,000	20,00,000	1,80,00,000	2,00,00,000

6	Lifetime Financial Services Limited	3,00,000	30,00,000	2,70,00,000	3,00,00,000
		18,00,000	1,80,00,000	16,00,00,000	18,00,00,000

The said shares were issued at face value of Rs.10/-at premium of Rs.90/- each for the purpose of raising the funds from the investors in order to make further investment in the subsidiary company, BLA Power Pvt. Ltd. which was engaged in the execution of power projects in the state of Madhya Pradesh.

6. The assessee challenged the re-assessment proceedings before the first appellate authority on the ground of jurisdiction. However, the Ld. CIT(A) dismissed the grounds raised by the assessee against the reopening of assessment proceedings under section 147 read with section 148 by holding that the AO has reopened the assessment proceedings on the basis of specific information received from investigation wing that M/s. Lifetime Financial Services Pvt. Ltd. has invested in the preference shares of assessee company a sum of Rs.3 crore and the AO has recorded a reason to believe on the basis of the said information received to the effect that the transactions by the investor M/s. Lifetime Financial Services Pvt. Ltd. in the assessee company was entered into primarily for the purpose of re-routing of the funds of the assessee and thus justified the reason to believe by the AO and justified the reopening of assessment on that basis. While dismissing the appeal of the assessee on reopening of assessment, the Ld. CIT(A) distinguished various case laws relied upon by the assessee from page No.12 to 25 of the appellate order. The Ld. CIT(A) relied on the decision of the Hon'ble Bombay High Court in the case of ECGC vs. Additional

CIT(A) (WP No.502 of 2012) order dated 11.01.2013 wherein the Hon'ble Bombay High Court has held that escapement of income is not required to be proved at the stage of issuing notice under section 148 of the Act, if there is a reasonable inference by the AO that income has escaped assessment on the basis of material available. Thus the Id. CIT(A) dismissed the appeal of the assessee on jurisdictional point by observing and holding as under:

“Thus, it shall be seen that the Hon'ble Bombay High Court has clearly held in this order that at the stage of issuing notice u/s 148, the AO is not required to establish escapement beyond any doubt at all. It is enough if at the stage of initiation of re-assessment proceedings, a reasonable inference can be drawn based on the material available that any income has most likely escaped assessment. Indeed, if the escapement is already established beyond doubt, where is the question of conducting any assessment proceedings at all! The whole assessment or re-assessment exercise shall be superfluous. This cannot obviously be the intention of Legislature. There cannot be of course any arbitrary issuance of re-assessment notices. But, that does not mean that the AO shall be a mute spectator with his hands tied behind looking at a tax-evasion waiting for the strong evidence to fall in his possession somehow. It is like stopping a policeman from acting on a complaint of murder or theft by a person on the ground that the complainant has not given any solid evidence beyond doubt against the suspected murderer or the suspected thief and it is better that instead of going after the suspected murderer or thief forthwith, the policeman should first confront this and that with this person and that person and spend time in leisurely theorizing sitting in his cabin in Police station, lest some conduct rules get violated in the process.

3.2.24 Not only this, it is also worth-mentioning here that in this case, no assessment was ever made by the department. The return filed was only processed u/s 143(1) of the Act. No scrutiny assessment was made. So, when no scrutiny assessment was ever made, there is no question of any change of opinion. So, when there is no change of opinion, there cannot be any objection to re assessment proceedings. There are any number of case laws on this point, the most important being ACIT Vs Rajesh Jhaveri Stock Brokers Pvt Ltd 164 Taxman 318 (SC).

3.2.25 I may further add that the **Hon'ble Gujarat High Court in the case of Amit Polyprints Pvt Ltd Vs DCIT, 94 Taxmann.com 393**, has clearly held that a piece of information from the Investigation Wing shall constitute reasons to believe. The same judgement was again given by **Hon'ble Gujarat High Court in the case of Aaspas Multimedia Ltd Vs DCIT, 83 Taxmann.com 82**, when the assessment was re-opened on the basis of an information supplied by the Investigation Wing. The re-opening was held to be valid. Further, **the Hon'ble Gujarat High Court in the case of Ankit Financial Services Ltd Vs DCIT, 78 Taxmann.com 58** has held a case

of suspected bogus share application money through accommodation entries, re-opening is entirely justified.

3.2.26 Without prejudice to the above, I think aloud here that under the present scheme of assessment and re-assessment in the Act, no credible powers have been given to the AO for making enquiry or compel the production of books of accounts or other documents or record statement on oath etcetc, unless the case has either been selected for scrutiny or has been re-opened by issue of notice u/s 148. If the AO starts making enquiries etc in other than scrutiny cases or re-opened cases, he is most likely to face allegations of misuse of powers. So, in such a scheme of things, one wonders as to how the AO before conducting assessment proceedings can come to a definitive conclusion armed with all the evidence of precise escapement of income , as is being asked by the appellant.

3.2.27 In view of the above unambiguous view of judicial authorities with regard to re-opening of assessments, I do not find any merit in the contentions of the appellant for this ground of appeal. Therefore, reopening of assessment is sustained and this ground of appeal is dismissed.”

7. The Ld. A.R. vehemently argued before the Bench that the assessment was wrongly and invalidly reopened by issuing notice under section 148 of the Act as the reasons recorded for issuing notice under section 148 of the Act do not give any belief that income of the assessee has escaped the assessment in any way whatsoever. The reasons recorded by the AO after receiving information from the ADIT(Inv) wing refer to two facts namely; (a) opening of bank account by M/s. Lifetime Financial Services Pvt. Ltd. and (b) subscription in the shares of assessee company by M/s. Lifetime Financial Services Pvt. Ltd. The Ld. A.R. submitted that the conclusion of the AO that M/s. Lifetime Financial Services Pvt. Ltd. is a paper company/fake company is totally fallacious and without any basis as there was no material to justify or indicate that the said investor was a fake company. The Ld. A.R. submitted that the opening of the bank account is a routine transaction and similarly the share subscription in the assessee company can not be construed that M/s. Lifetime



Financial Services Pvt. Ltd. is a paper company or a fake company. The Ld. A.R. also submitted that the information received by the AO from the investigation wing has not been provided to the assessee either along with the reasons as recorded or at the time of assessment proceedings and the said action of the AO is contrary to the decision of Hon'ble Delhi High Court in the case of Saba Infrastructure Ltd. vs. ACIT 398 ITR 198 (Delhi). The Ld. A.R. also submitted that the material as referred to by the AO in the assessment order such as statements of certain persons namely Shri Subash Agarwal, Shri Pravin Agarwal as relied by the AO did not refer to M/s. Lifetime Financial Services Pvt. Ltd. The Ld. A.R. stated that though the AO has referred to the various paper companies in the statements of the above persons, however no reference was made at all to M/s. Lifetime Financial Services Pvt. Ltd. as being one of the companies being controlled by these individuals and thus the AO had no reason to believe even on the basis of information received as extracted in the assessment order that there is any escapement of income on the basis of transaction with M/s. Lifetime Financial Services Pvt. Ltd. The Ld. A.R. submitted that M/s. Lifetime Financial Services Pvt. Ltd. is a registered Non Banking finance Company (hereinafter referred to as NBFC) which has been granted certificate of registration by the Reserve Bank of India on 12.10.2001 a copy of which is filed at page No.269 of paper book 2. The Ld. A.R. therefore contended that allegation in the reasons recorded by the AO that the said company has been set up to do transactions with the assessee is factually incorrect as the company was already a registered NBFC from 2001 whereas the transaction with the

assessee was made in 2010 and thus the allegation of the AO that the said registered NBFC is a fake/paper company is also without any basis. The Ld. A.R. also referred to the page No.2 of the audited annual accounts of M/s. Lifetime Financial Services Pvt. Ltd. a copy of which are filed at page No.257 to 267 of paper book 2 to show that the said investor has capital and reserves of more than Rs.34,00,00,000/- at the beginning as well as at the end of the year and contribution in the preference shares of the assessee company was made out of the capital and reserves and thus controverted the conclusion and findings given by the AO in the assessment order.

8. The Ld. A.R. also referred to the reopening of assessment in A.Y. 2010-11 in the case of M/s. Lifetime Financial Services Pvt. Ltd. on the ground that the said company had received a share premium of Rs.30.94 crores without substantiating the source or credit of such share premium. However, the AO accepted the returned income filed by the said company while framing assessment under section 143(3) read with section 147 of the Act vide order dated 30.11.2017 a copy of which is filed at page No.251 to 252 of the paper book 2. The Ld. A.R. therefore submitted that in the assessment order of said company there was no such allegation to the effect that the said company was a paper company or fake company or not a bonafide company. The status of the said company was accepted as company which was following mercantile system of accounting as resident in India. The Ld. A.R. therefore contended that the AO was not having any basis for formation of belief with respect to investment by M/s. Lifetime Financial Services Pvt. Ltd. as being

a fake company or paper company and thus the reasons recorded are completely unsustainable in law. The Ld. A.R. also submitted that AO of the investor company has accepted the investments made by the said company out of its share capital and premium in the assessee company and not out of unexplained deposit as no additions have been made in the assessment order of M/s. Lifetime Financial Services Pvt. Ltd. in A.Y. 2010-11. The Ld. A.R. further argued that once steps have been taken against the shareholder of the assessee company, then AO could not have reasons to believe that income chargeable to tax have escaped assessment on account of subscription of the shares by M/s. Lifetime Financial Services Pvt. Ltd. In defence of his argument the Ld. A.R. relied on a couple of decisions namely; CIT vs. Lovely Exports Pvt. Ltd. 216 CTR 195 (SC) and CIT vs. Gagandeep Infrastructure Pvt. Ltd. 394 ITR 680 (Bom). The Ld. A.R. also relied on the decision of Jurisdictional High Court in the case of PCIT vs. Shodiman Investment Pvt. Ltd. 93 taxman.com 163 wherein the Hon'ble Bombay High Court after following the decision of the Apex Court in the case of S. Narayanappa vs. CIT(1967) 63 ITR 219 (SC) and ITO vs. Lakhmani Marvel Dass (1976) 103 ITR 407(SC) held that reasons to believe must have a rational connection with or have relevant bearing on formation of belief that income chargeable to tax has escaped assessment. In other words there must be live link of the material coming to the notice of the AO and formation of belief regarding escapement of income. The Ld. A.R. contended that if these requirements are not met which are pre-conditions for issuing notice u/s 148 of the Act then reopening is done without any lawful jurisdiction and is invalid

and deserved to be quashed. In the present case, the Ld. A.R. contended that the material in the possession of the AO was only with respect to opening of a bank account and subscription of shares which by itself was not having any link to alleged reasons recorded by the AO that M/s. Lifetime Financial Services Pvt. Ltd. is a fake/paper company leading to escapement of income in the hands of the assessee and therefore reasons as recorded by the AO clearly do not give him any belief that income has escaped assessment.

9. The Ld. D.R., on the other hand controverting the arguments of the Ld. A.R. submitted that the assessment in the present case was framed under section 143(1) of the Act and not under section 143(3) of the Act. The AO has reopened the assessment of the assessee on the basis of specific information received from the investigation wing during the year to the effect that the M/s. Lifetime Financial Services Pvt. Ltd. has opened an account with a meager amount of Rs.1.00 lakh and was followed by heavy transactions of high value of which the assessee was one of the beneficiaries. The Ld. D.R. submitted that the assessee has entered into these transactions with M/s. Lifetime Financial Services Pvt. Ltd. in order to route the undisclosed income. The Ld. D.R. submitted that in the said investing company there was hardly an income and income was only of Rs.8,185/- during the year. The AO has ex facie formed opinion by due application of mind that income of the assessee company has escaped by reason of these transactions made by M/s. Lifetime Financial Services Pvt. Ltd. with the assessee

company. In defence of his argument the Ld. D.R. relied on a series of decisions as under:

1. Avirat Star Homes Ventures Pvt. Ltd. vs. ITO (2019) 102 taxman.com 60 (Bom.)
2. Rajat Import Export Pvt. Ltd. vs. ITO 341 ITR 135
3. Aradhana Estate Pvt. Ltd. vs. DCIT 254 Taxman 1 (Guj.)
4. Khatu Shyam Processor Pvt. Ltd. vs. DCIT 94 taxman.com 429

Besides the Ld. D.R. submitted before the Bench that the decisions as relied upon by the Ld. A.R. are distinguishable on facts and not applicable to the case of the assessee. The Ld. D.R. submitted that in the case of Pr CIT vs. Shodiman Investment Pvt. Ltd. (supra), there was no material before the AO whereas in the present case there was specific information in the possession of the AO qua the bank account through which the transactions had taken place. Finally, the Ld. D.R. prayed before the Bench that the grounds raised by the assessee against the reopening of assessment under section 147 read with section 148 of the Act may be dismissed in view of the foregoing facts and ratio laid down by the various courts.

10. In the rebuttal, the Ld. A.R. distinguished the decisions of Hon'ble Bombay High Court in the case of Avirat Star Homes Ventures Pvt. Ltd. vs. ITO (supra) by pointing out that in that case the information received from the investigation wing about certain companies being involved in giving accommodation entries to several beneficiaries and assessee was one of them and on the basis of information received from the investigation wing it was found that assessee was beneficiary of the said entries whereas in the present case there is no such information

available with the AO from the investigation wing or AO further unearthed during the course of previous assessment proceedings. Further, there is no reference in the statements recorded by the investigation wing, as extracted by the AO in the assessment order, to the investor company M/s. Lifetime Financial Services Pvt. Ltd. and thus the facts are completely different. Similarly, in the case of Rajat Import Export Pvt. Ltd. vs. ITO (supra) the information was received from the investigation wing that assessee had received accommodation entries which assessee could not deny at the time of recording of reasons and thus the notice under section 148 was issued whereas in the present case M/s. Lifetime Financial Services Pvt. Ltd. has not been referred to as a bogus company by any of the alleged entry provider whose statements were referred to in the assessment order. Similarly, in the other two cases Aradhana Estate Pvt. Ltd vs. DCIT (supra) and Khatu Shyam Processor Pvt. Ltd. vs DCIT (supra) information was received with respect to accommodation entry provider being a shell company on the basis of which assessment was completed whereas in the present case no such information was received by the AO. The Ld. A.R. therefore submitted that the reassessment proceedings are bad in law and liable to be quashed.

11. We have heard the rival submissions of both the parties and perused the material on record including the decisions cited by the rival parties in their respective defense. We observe from the facts before us that the AO received information from the investigation wing that a bank account has been opened by M/s.

Lifetime Financial Services Pvt. Ltd. with a deposit of Rs.1,00,000/- followed by heavy transactions in the said bank account out of which a transaction of Rs.3 crore was made by the said company with the assessee company in the form of purchase of 6% non cumulative, non comfortable, redeemable preference shares of face value of Rs.10/- each at a premium of Rs.90/-. The AO recorded the reasons on the basis of information received that income has escaped in the hands of the assessee referring to the opening of the bank account by M/s. Lifetime Financial Services Pvt. Ltd. and subscription to the shares of assessee company by investing Rs.3 crores as the said company being a fake/paper company the income of the assessee has escaped assessment. We observe that the investing company M/s. Lifetime Financial Services Pvt. Ltd. is a registered NBFC as the Reserve Bank of India has granted certificate of registration in 2001 to the said company whereas the investment in the assessee company was made in 2010. We further observe that the said company was having sufficient share capital and reserves out of which it had invested Rs.3 crores in the preference shares of the assessee company. We have also examined and perused the assessment order passed in the case of investor company M/s. Lifetime Financial Services Pvt. Ltd. passed by the AO in reassessment proceedings which was done on the ground that company had received share premium of Rs.30.94 crores source of which was not proved. We note that the AO has accepted the returned income without any addition being made towards the said share premium as is apparent from perusal of the copy of assessment order a copy of which is filed at page No.251 and 252 of the paper book No.2.

All these documents/information before us proved that the investor is not a fake company or paper company but a NBFC duly registered with the Reserve Bank of India. Further the information received from the investigation wing has not been provided by the AO to the assessee either at the time of supplying reasons or during the course of assessment proceedings which is contrary to the decision of Delhi High Court in the case of Saba Infrastructure Ltd. vs. ACIT (supra). Once the steps have been taken against the shareholder of the assessee company, then AO could not have reasons to believe that any income chargeable to tax has escaped on account of subscription of share in the assessee company by the said investor company. The case of the assessee is supported by the decision of CIT vs. Lovely Exports Pvt. Ltd. (supra) and also by the decision of Jurisdictional Hon'ble Bombay High Court in the case of CIT vs. Gagandeep Infrastructure Pvt. Ltd. (supra) wherein the Hon'ble Courts have held that once the steps have been taken by the Revenue against the shareholder no action lies against the company on the ground that income has escaped assessment by the reason of investments/subscription in the share of the assessee company by the investors whose cases have been taken up by the Revenue in order to verify the transactions. We find merit in the arguments of the Ld. A.R. that there has to be live link between the material coming to the possession of the AO and formation of belief regarding escapement of income and is squarely covered by the ratio laid down by the jurisdictional High Court in the case of Pr. CIT vs. Shodiman Investment Pvt. Ltd. (supra). We have perused the decision relied upon by the Revenue and found that they have



been rendered on the different facts and are not applicable to the present case. We, therefore, in view of the aforesaid facts and ratio laid down by the various judicial forums hold that reopening as made by the AO is not proper and without valid jurisdiction and accordingly we set aside the order of Ld. CIT(A) on this issue. Accordingly we hold that the re-assessment proceedings u/s 147 of the Act are without any valid jurisdiction invalid and is quashed. Ground No.1 is allowed.

12. In ground No.2 assessee has challenged the upholding the addition of Rs. 18.00 Cr by Ld. CIT(A) as made by the AO under section 68 of the Act as unexplained cash credit.

13. The facts in brief are that assessee during the year raised share capital and share premium from six parties by issuing 6% non cumulative, non comfortable redeemable preference shares. According to the AO the assessee has failed to prove and justify the identity, creditworthiness of the investors and genuineness of the transactions and accordingly held that the amount raised of Rs.18 crores by way of share capital and share premium to be unexplained cash credit and consequently added the same to the income of the assessee. It is also factually correct that in arriving at such conclusion, the AO has referred to the statements of the alleged entry providers which have not been provided to the assessee and even cross examination was not allowed at any point of time.

14. The Ld. CIT(A) in appellate proceedings confirmed the order of AO on the addition of Rs.18 crores by observing and holding as under:

“3.3.24 However, in the instant case, the assessee has not been in a position to discharge its primary onus by producing the said share holders and / or giving their confirmations. Even the current addresses of the share holders, contact details, etc., have not been furnished to the AO. Also, the statement recorded in the case of Praveen Agarwal and subhash kumar agarwal revealed that there were no genuine business being carried on by any of these concerns and they were all engaged in the business providing bogus share application money to other money (in return of cash). The companies operated by the respective directors were receiving commission for all these entities. Therefore, the ratio of the decision of the Hon'ble Supreme Court in the case of Lovely Exports P Ltd (supra) cannot be applied to the facts of the case of the assessee.

3.3.25 The assessee has produced scrutiny assessment orders in the cases of some of these companies as passed by the AOs based in Kolkata. This is hardly any evidence. The cases for scrutiny are selected through computer assisted scrutiny selection system, also called CASS and any individual AO does not have any role to play in the same. Once the return is picked up for scrutiny, an assessment order has to be necessarily passed in such a case by the AO. There is no choice left. Non-passing of assessment order in a scrutiny case shall get noticed in the on-line system and may invite adverse criticism of the AO concerned. As such, he does pass a non-descript order. Further, there is no point making addition in these cases, as the real beneficiaries are someone else and, they have only received commission. The real beneficiaries are already being taken care of by their respective AOs or the officers of Investigation Wing etc etc So, just like PAN, a scrutiny assessment order passed per se doesnot help the appellant.

3.3.26 In view of the above detailed discussion, I have no hesitation in confirming the action of the AO in adding the alleged share application money of Rs4,00,00,000/- from Masantoshi International Ltd., Rs 3,00,00,000/- from Sharadraj Trade fin Ltd., Rs.2,00,00,000/- from Blue Print Securities Ltd., Rs.4,00,00,000/- from Konark Commerce Industries Ltd., Rs.2,00,00,000/-from Impex Services Ltd and Rs.3,00,00,000/- from Lifetime Financial Services Ltd., totally aggregating to Rs 18,00,00,000/-.

3.3.26 The AO has also made an addition of Rs 18,00,000/- being the estimated unaccounted payment made by the assessee for availing of accommodation entries. This amount has been estimated @ 1% for the total accommodation entries availed of Rs 18,00,00,000/- for the relevant year. As discussed in the preceding paragraphs, there is no doubt that the assessee has availed of accommodation entries in the form of share application money from the paper concerns. Therefore, the action of the AO of estimating the unaccounted expenses incurred by the assessee to avail accommodation entries @1% is on a reasonable footing. Accordingly, the said addition made by the AO of Rs 18,00,000/- is also confirmed.”

15. The Ld. A.R. submitted before the Bench that the persons who gave the statements were not the directors of the investor

companies. The Ld. A.R. submitted that the assessee has filed all the documents to prove the identities and creditworthiness of the investors and genuineness of the transactions such as share application forms, bank statements reflecting the payment to the assessee, PAN cards, ITRs, assessment order of the investor companies, list of directors, ROC master data, audited financial statements and details of registration with the stock exchanges etc. The Ld. A.R. submitted that these companies were having sufficient financial resources in the form of share capital and reserves which justified the investments in the assessee company. The Ld. A.R. submitted that the said money was raised in order to invest in the subsidiary company M/s. BLA Power Pvt. Ltd. which was executing a power of project in Madhya Pradesh. The Ld. A.R. also filed a project report with respect to the power plant to be set up by the subsidiary company on the strength of which the bank sanctioned Rs.300 crores to BLA Power Private Ltd and thus submitted that the doubts of the AO qua the genuineness of the transactions in issuing preference shares at a premium are without any basis and are based on surmises and conjunctures. The Ld. A.R. submitted that the assessee has proved beyond doubt the identity and creditworthiness of the transactions, and genuineness of the investors and AO could not find any evidences to be false or fabricated or to the effect that assessee's money was ploughed back through these transactions. In reply to the AO's reference in the assessment order to notices issued under section 133(6) of the Act being returned and unserved, the Ld. A.R. submitted that same was never put confronted or before the assessee during the course of assessment proceedings so the

fact is not known to the assessee as to how and why the notices under section 133(6) of the Act were not served upon the investors. Even the repeated requests by the assessee seeking the inspection of assessment of records was denied which were sought in order to verify the existence of such notices issued under section 133(6) of the Act/ whether the same were sent on the correct address/ whether the sufficient time was given to the investors by the AO to reply the same. The Ld. A.R. submitted that in absence of any such information and refusal to give copies of the notices, adverse inference may be drawn against the Revenue. The Ld. A.R. submitted that AO has relied on the statements of certain persons alleged to be entry providers, copies whereof were never given to the assessee and no cross examination was ever provided either by the AO or by the Ld. CIT(A) and therefore the addition as made by the AO needs to be struck down on this score also. In defence of his arguments, the Ld. A.R. relied on the decision of the Hon'ble Bombay High Court in the case of HR Mehta vs. ACIT 387 ITR 561 wherein the Court has held that AO is duty bound to provide material used against the assessee and an opportunity to cross examine the deponent whose statement was relied upon to justify the addition and in absence of the same, such material can not be relied. Moreover, the Ld. A.R. also referred to the decision of Hon'ble Supreme Court in the case of CIT vs. Kishan Chand Challa Ram 125 ITR 713 (SC) wherein it has been held that unless those materials which are relied by the AO for making addition are confronted to the assessee, no adverse inference can be drawn from the said material against the assessee. The Ld. A.R. therefore submitted that no addition can be made based upon

the said statements. The Ld. A.R. further submitted that out of these investor companies, 5 are listed on the recognised stock exchange at the relevant point of time and one company was registered as NBFC and as per the list of directors available at that time, none of these persons who have given statements were directors of the said companies. The Ld. A.R. argued that it is not clear as to on what basis such statements were given by those persons and in what capacity. The Ld. A.R. submitted that since assessee has discharged his primary burden of establishing identities and creditworthiness of the investors and genuineness of the transactions, therefore addition under section 68 of the Act could not have been made. The Ld. A.R. submitted that the conclusion of Ld. CIT(A) in upholding the said addition on the ground that these transactions were not genuine merely because substantial income was not offered by these companies is fallacious and without any basis. The Ld. A.R. submitted that Ld. CIT(A) has given findings contrary to the facts of record and without proving as to how material submitted by the assessee were incorrect and inaccurate. In defense of his arguments, the Ld. A.R. relied on the decision of Hon'ble Bombay High Court in the case of CIT vs. Gagandeep Infrastructure Pvt. Ltd. (supra) to submit that once the primary onus is discharged by the assessee to prove the identity, creditworthiness and genuineness and where the revenue is of the view that the shareholders are bogus who has invested in the assessee, it is for the AO to re-open the assessment of those shareholders in accordance with law and revenue can not add the same to the income of the assessee. The Hon'ble court as held that the proviso to section 68 of the Act as was introduced

by the Finance Act 2012 w.e.f. 1.4.2013 is effective from AY 2013-14 and not to the year under consideration. The Ld. A.R. also relied on the decision of Pr. CIT vs. Aditya Birla Telephone Ltd. 105 taxman.com 206 wherein the Hon'ble Jurisdictional Bombay High Court has distinguished Pr CIT Vs NRA Iron and Steel (P) Ltd and held that the source of source is not required to be proved and merely because there is huge investments of funds in the assessee by various multiple corporate entities itself would not be sufficient to brand the impugned transactions as sham. However, the assessee has sufficiently proved the source of investments for all these companies to be out of share capital and reserves and therefore no addition is justified under section 68 of the Act. The Ld. A.R. also submitted that the decisions referred to by the Revenue in the case of PCIT vs. NRI Iron and Steel Pvt. Ltd. 103 taxman.com 48 is distinguishable on facts. In the said case the AO has issued summons to those parties who did not attend before the AO and the AO, after carrying out field enquiry with respect to identity and creditworthiness of the parties, came to the conclusion that none of the investor companies could justify making investment at high premium and some of the investors were found to be non existent. None of these companies could produce bank accounts to establish the source of funds for making these investments and only on these facts Hon'ble Supreme Court held that provisions of section 68 are applicable. In the present case, genuineness of the transactions was proved by submitting detailed project report with respect to power plant being set up by subsidiary company which was not disputed by the Revenue Authorities. Further, bank statements of these parties have been produced which

have not been disputed by the AO, no summons were issued or field enquires were conducted by the AO to verify the creditworthiness of these parties. Even the assessment proceedings have been concluded on some of these parties and copies of the assessment orders are filed in the paper books. The Ld. A.R. submitted that facts in the present the case are completely different from the facts in NRI Iron and Steel Pvt. Ltd. (supra) and therefore ratio in the said decision is not applicable. In the present case, the AO, who was duty bound to carry out the investigation, has not done the same. Therefore, the order passed by Ld. CIT(A) upholding the order of AO confirming the addition on merit is bad in law and may be reversed.

16. The Ld. D.R., on the other hand, relied on the order of authorities below by submitting that Pravin Kumar Agarwal and Subash Kumar Agarwal have revealed during the course of search that there was no genuine business being carried out by any of these concerns and that they were all engaged in the business of providing bogus share capital to other concerns in return of cash. The Ld. D.R. submitted that assessee has failed to prove the identities, creditworthiness of the investors, and genuineness of the transactions. The Ld. D.R. submitted that the investor companies were only paper companies and were primarily set up to provide accommodation entries. The Ld. D.R. while referring to the annual accounts of the said investors pointed out that the investors were hardly having any income. The Ld. D.R. argued that mere submission of confirmations, IT returns, PANs, bank statements etc. would not automatically prove the genuineness of the transactions and creditworthiness

of the investors. The Ld. D.R. argued that the assessee is required to discharge his primary onus by establishing identity and creditworthiness of the investors and genuineness of the transactions which was not done in the present case. The ld DR heavily relied on the decision of the hon'ble apex court in the case of Pr CIT Vs NRA Iron and Steel Pvt Ltd.(supra) in support of his arguments. The Ld. D.R. finally prayed before the Bench that the order of Ld. CIT(A) may be upheld as the same is passed by following various judicial decisions and is a very reasoned and speaking order.

17. We have heard the rival submissions of both the parties and perused the material on record. We observe that in this case the assessee has filed the necessary evidences in the form of share application forms, bank statements of the investors, their PAN cards, ITRs, assessment orders, list of directors, ROC master data, audited financial statements and also the details of registration with stock exchanges in case of some of the investors. We further note that the funds were raised by the assessee in order to finance the power project being set up by the subsidiary company i.e. BLA Power Pvt. Ltd. and for the purpose of setting up the said project, the banks have even lent Rs.300 crores to the said company. We further note that fact of notices sent under section 133(6) to these parties having been returned unserved was never confronted to the assessee during the assessment proceedings. Even the repeated requests by the assessee to inspect the assessment records have not been denied to the assessee which was sought to verify the truth of existence of such notices issued under section 133(6) of the Act



or whether the said notices were sent on the correct address sufficient time was allowed to the investors to respond to the same. Under these facts and circumstances, we are in agreement with the arguments of the Ld. A.R. that no adverse inference could be drawn. We further find that the statements of Shri Pravin Kumar Agarwal and Shri Subash Agarwal which were used by the AO to make the addition have never been provided to the assessee nor any cross examination of these persons was ever provided which is in clear violation of the ratio laid down by the jurisdictional High Court in the case of H.R. Mehta vs. ACIT (supra) and also of the Hon'ble Supreme Court in the case of CIT vs. Kishan Chand Challa Ram (supra). We further find that out of the said 6 investor companies 5 were listed in the recognised stock exchange and one company was registered as NBFC. Further Shri Pravin Kumar Agarwal and Shri Subash Agarwal were never directors on these companies and in what capacity they have given their statements is not known. In our opinion, the assessee has discharged its onus by filing all the necessary evidences and thus proved the identities, creditworthiness of the investors and genuineness of these transactions. Therefore addition under section 68 of the Act can not be sustained. The case of the assessee is also supported by the decision of the Hon'ble Jurisdictional Bombay High Court in the case of CIT vs. Gagandeep Infrastructure Pvt. Ltd. (supra) wherein it has been held that once the primary onus is discharged by the assessee by proving the identity of the shareholder, no addition can be made in the hands of the assessee and it was further held that proviso to section 68 of the Act as amended by Finance Act 2012 w.e.f. 1.4.2013 is effective

from assessment year 2013-14 and thus not applicable to the year under consideration. The assessee has proved the source of investments by the investors to be out of share capital and reserves and source of source is not to be proved. Similarly in the case of PCIT vs. Aditya Birla Telephone Ltd. (supra) it has been held source of source is not required to be proved. In the present case, the AO has not conducted any enquiries with respect to identities and creditworthiness of the investors and genuineness of the transactions despite the fact that assessee has filed all the evidences with the AO. The facts of the assessee's case are clearly distinguishable from the facts in the case of PCIT vs. NRA Iron and Steel Pvt Ltd. (supra) and therefore the ratio laid down by the Hon'ble Supreme Court is not applicable as the AO has not investigated the matter despite assessee having filed all the evidences. In view of the aforesaid facts and circumstances and the ratio laid down by the various decisions we are not in agreement with the conclusion drawn by the Ld. CIT(A) on this issue. Accordingly, we hold that the addition as confirmed by the Ld. CIT(A) under section 68 of the Act is wrong and consequently can not be sustained. Hence, the order of Ld. CIT(A) is set aside and AO is directed to delete the addition.

18. Since the issue on merit is decided in favour of the assessee, Ground No.3 becomes infructuous and needs no adjudication.

19. In Ground No.4 & 5 the issues are consequential and require no adjudication.

20. In the result, the appeal of the assessee is allowed.

**Order pronounced in the open court on 10.07.2019.**

**Sd/-**  
**(Ram Lal Negi)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(Rajesh Kumar)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated:10.07.2019.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.