

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“DB” BENCH, AGRA**

**BEFORE HON’BLE SHRI SATBEER SINGH GODARA, JM**  
**AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

**1. आयकरअपील सं. / ITA No.130/Agr/2024**  
**(निर्धारणवर्ष / Assessment Year: 2017-18)**

**&**

**2. आयकरअपील सं. / ITA No.131/Agr/2024**  
**(निर्धारणवर्ष / Assessment Year: 2018-19)**

DCIT 1st Floor, Aaykar Bhawan Sanjay Place, Agra - 282001	<b>बनाम/</b> Vs.	M/s Prabhu Infradevelopers Pvt. Ltd. 1/354, Transport Nagar Agra
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. <b>AAHCP-2659-J</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकीओरसे/ <b>Appellant by</b>	:	Shri Sukesh Kumar Jain – Ld. CIT DR
प्रत्यर्थीकीओरसे/ <b>Respondent by</b>	:	Shri Anurag Sinha (Advocate) – Ld. AR

सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	21-02-2025
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	28-03-2025

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeals by revenue for Assessment Years (AY) 2017-18 & 2018-19 have identical issues. First, we take up appeal for AY 2017-18 which arises out of an order of learned Commissioner of Income Tax (Appeals), Kanpur [CIT(A)] dated 03-01-2024 in the matter of an assessment framed by Ld. DCIT / ACIT, Central Circle, Agra u/s 143(3) r.w.s. 153A of the Act on 31-12-2019. Having heard rival

submissions and upon perusal of case records, the appeal is disposed-off as under. The sole issue that arises for our consideration is addition of unsecured Loans.

### **Assessment Proceedings**

2.1 During assessment proceedings, pursuant to search action in the case of BNR group on 26-09-2017, notice u/s 153A was issued to the assessee. It transpired that the assessee raised unsecured loan of Rs.187.05 Lacs from M/s L.S. Automobiles and Finance Co. Ltd. Since the assessee failed to produce the director of that entity to confirm the transactions, Ld. AO doubted the genuineness of the same. Going by the enquiry report of DDIT (Inv.)-1, Agra, Ld. AO alleged that the lender entity was not engaged in any business activity and therefore, the same was added to the income of the assessee u/s 68.

2.2 The assessee raised another loan of Rs.700 Lacs from alleged paper company by the name M/s Maa Bhagwati Enterprises (Prop. Shri Paras Kumar Parashar). Going by the admission made by proprietor of that entity, Ld. AO alleged that the assessee received accommodation entry of Rs.700 Lacs and accordingly, the same was added to the income of the assessee u/s 68.

### **Appellate Proceedings**

3.1 The substantive findings of Ld. CIT(A) with respect to addition of Rs.187.05 Lacs are contained in para 7.20 onwards of the impugned order. It was noted by Ld. CIT(A) that this entity furnished Income Tax Return, bank statement, ledger extracts, confirmation letter confirming the loan transactions and also filed audited financial statements. By

furnishing these evidences, the assessee had duly discharged the primary onus of proving the said transaction as required u/s 68 of the act. In response to summon issued by DDIT (Inv.), the lender furnished confirmation of loan along with its Income Tax Return, Audited financial statement. Merely because the lender company was not doing any business and disclosed low income, the same could not be a ground to make the addition. The conclusion of Ld. AO was on mere presumption rather than on factual ground. The assessee was under no obligation to prove the source of source in the bank account of the creditors. Reliance was placed on various judicial decisions including the decision of jurisdictional High Court in the case of **CIT vs. S. Kamaljeet Singh (147 Taxman 18)**; the decision in **Banarsi Prasad Vs CIT (304 ITR 239)** to arrive at such a conclusion. Finally, the impugned addition was deleted in para 7.45 by holding that the assessee had proved the identity, creditworthiness of the creditors as well as the genuineness of the transaction. The burden as required to be discharged u/s 68 was fully satisfied.

3.2 With respect to loan as obtained from M/s Maa Bhagwati Enterprises, the assessee's submissions were subjected to remand proceedings. The Ld. CIT(A) noted that this entity preferred settlement before Hon'ble Interim Board of Settlement-VII, Chennai (IBS) u/s 245D(4) of the Act and an order was passed therein on 26/27-09-2023 wherein Hon'ble IBS considered the genuineness of existence of that entity and accepted that this entity was doing trading of edible oils for which purchases were made from M/s BN Agritech Ltd. and M/s BN

Enterprises. The funds so received by the assessee were originated from M/s BN Agritech Pvt. Ltd. Therefore, in terms of order of Hon'ble IBS, the impugned addition was deleted against which the revenue is in further appeal before us.

### **Our findings and Adjudication**

4. We find that Ld. CIT(A) has rendered pertinent factual findings in its order. With respect to loan taken from M/s L.S. Automobiles and Finance Co. Ltd., it could be seen that DDIT (inv.) carried out detailed enquiry. In response to the same, that entity furnished its Income Tax Return, bank statement, ledger extracts, confirmation letter confirming the loan transactions and audited financial statements. It could be well said that by furnishing these evidences, the burden as casted on the assessee stood discharged and the onus was on Ld. AO to disprove the same. However, except for mere presumptions, there is no evidence before Ld. AO to support the impugned addition. There is nothing on record to suggest that assessee's own money stood routed in the guise of loan transactions. In such a situation, the conclusion of Ld. CIT(A) in accepting the loan transaction by placing reliance on plethora of judicial decisions could not be faulted with. We concur with the same and accordingly, dismiss this ground of revenue's appeal.

5. The adjudication of loan as obtained from M/s Maa Bhagwati Enterprises is based on the order of Hon'ble IBS wherein it has been accepted that this entity was engaged in trading of edible oils for which purchases were made from M/s BN Agritech Ltd. and M/s BN Enterprises. The funds so received by the assessee were originated

from M/s BN Agritech Pvt. Ltd. Therefore, as rightly held, the same could not be added in the hands of the assessee u/s 68. The adjudication of Ld. CIT(A) could not be faulted with. The corresponding ground as well as the revenue's appeal stand dismissed.

6. Facts in AY 2018-19 are quite identical. The sole grievance of the revenue is deletion of addition of Rs.260 Lacs as made by Ld. AO u/s 68 on account of loan taken from M/s Sun Moon Vision Infra Developers P. Ltd. The findings of Ld. CIT(A) are contained in para 7.20 onwards. It was noted that the assessee furnished Income Tax Returns, copies of bank statements, ledger extracts confirming the transaction and audited financial statements to support the loan transactions. The enquiry made in December, 2019 was directed at wrong address. The amount so received by the assessee was sourced from M/s BN Agritech Pvt. Ltd. The lender entity declared revenue of Rs.8.18 Crores and also paid taxes. The status of this entity on MCA portal was shown as an 'active company'. The amount so advanced to the assessee was duly reflected in the financial statements of that entity. The lender had shareholders funds of Rs.37.12 Crores. Under these circumstances, there was no basis for impugned addition. Accordingly, the same was deleted against which the revenue is in further appeal before us.

7. We find that the factual findings as rendered by Ld. CIT(A) remain uncontroverted before us. From the impugned order, it could be ascertained that the assessee had duly discharged the primary onus of Sec.68 and the onus was on Ld. AO to disprove the same.

However, no such evidences have been brought on record. It is trite law no addition could be made on the basis of suspicion, conjectures or surmises. Therefore, the adjudication of Ld. CIT(A) could not be faulted with. We order so.

8. Both the appeals stand dismissed.

*Order pronounced u/r 34(4) of Income Tax (Appellate Tribunal) Rules, 1963.*

*Sd/-*  
**(SATBEER SINGH GODARA)**  
न्यायिक सदस्य / JUDICIAL MEMBER

*Sd/-*  
**(MANOJ KUMAR AGGARWAL)**  
लेखा सदस्य / ACCOUNTANT MEMBER

Dated: 28-03-2025

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

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF

ASSISTANT REGISTRAR

ITAT AGRA