

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. आयकरअपीलसं./ ITA No.128/Agr/2024
(निर्धारणवर्ष / Assessment Year: 2017-18)**

&

**2. आयकरअपीलसं./ ITA No.129/Agr/2024
(निर्धारणवर्ष / Assessment Year: 2018-19)**

DCIT 1sr Floor, Aayakar Bhawan Sanjay Place, Agra-282002.	बनाम/ Vs.	M/S NBC Agri International Pvt. Ltd. Flat No.359, Block C4C, Pocket-14 Ground Floor, Janakpuri New Delhi
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAFEN-1488-D		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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

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

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. The facts as well as issues in captioned appeals of the revenue are substantially the same. First, we take up revenue’s appeal for Assessment Year (AY) 2017-18 which arises out of an order of learned Commissioner of Income Tax (Appeals), Kanpur-4 [CIT(A)] dated 03-01-2024 in the matter of an assessment framed by Ld. AO u/s 143(3) r.w.s. 153A of the Act on 31-12-2019. The sole grievance of the

revenue is deletion of additions of Rs.360 Lacs and Rs.115 Lacs as made by Ld. AO invoking the provisions of Sec.68. Having heard vehement arguments of both the sides, the appeal is disposed-off as under.

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.360 Lacs from an entity by the name M/sSun Moon Vision Infra-Developers Pvt. Ltd. (SVIPL). Accordingly, the assessee was required to satisfy the primary ingredients of Sec.68. The assessee furnished ledger account, Income Tax Returns, Bank Statements, PAN details etc. with respect to that entity.

2.2 The Ld. AO doubted the creditworthiness of this entity on the ground that the assessee did not file any confirmation letter and also failed to produce directors of this entity to confirm the same. Notices u/s 133(6) to confirm the transactions yielded no response. The field enquiries revealed that no such company by the name M/s Sun Moon Vision Infra-Developers Pvt. Ltd. existed at the given address. Accordingly, Ld. AO alleged that the said entity was merely a paper entity and the impugned loan of Rs.360 Lacs was added u/s 68.

2.3 The assessee had received another loan of Rs.115 Lacs from M/s Maa Bhagwati Enterprises which was also added u/s 68 on similar findings. Finally the assessment was framed after adding both the loans to the income of the assessee.

Appellate Proceedings

3.1 The assessee assailed each of the findings of Ld. AO by way of elaborate written submissions which are already extracted in the impugned order. The same were subjected to remand proceedings wherein the assessee furnished various documents in support of its claim. The Ld. AO referred to the field enquiries and justified the impugned additions. On the other hand, the assessee relied on plethora of judicial decisions holding the field in assessee's favour.

3.2 The Ld. CIT(A), considering the provisions of Sec.68, noted that the assessee had filed various documents with respect to SVIPL to establish the primary ingredients of Sec.68. These documents were - (a) Confirmation duly signed by the Director of lender entity for AY 2017-18 confirming the Loan transaction; (b) Acknowledgement of Income Tax Return of that entity for AY 2017-18; (c) Copy of Bank Statement of lender for AY 2017-18 confirming transfer of impugned amounts to the assessee on various dates; (iv) Audited Balance Sheet for the year ended 31.03.2017 of SVIPL.

3.3 The Ld. CIT(A), in para 7.22, observed that this entity was a body corporate and it was marked as an 'active company' on MCA portal. This entity was regularly assessed to Income Tax as well as registered with GST authorities. No efforts were made by Ld. AO to conduct field enquiries as per addresses as given on MCA portal and he simply relied on the findings given in earlier assessment order. The Hon'ble Delhi High Court in the case of **CIT Vs Kamdhenu Steel & Alloys Ltd. [2012] 19 Taxmann.com 26 (Delhi)** held that the conclusion about

non-existence of the Company cannot be formed without making enquiry from the Registrar of Companies (ROC). Had any such enquiry been made from the ROC, the conclusion as arrived by the AO regarding non-existence of the Company would not have been reached. Thus, the conclusion arrived by the AO could not be sustained. From financial statements of SVIPL, it was quite evident that this entity had sufficient share capital for Rs.37.07 Crores, The income declared was Rs.101.58 Lacs and that entity paid tax of Rs.4.74 Lacs for this year. The amount so lent to the assessee was duly reflected in the audited financial statements. Therefore, there was no basis to doubt the creditworthiness of this entity. In subsequent years also, this entity was in existence and it had huge Balance Sheet size of Rs.393 Crores. Upon perusal of statement of Shri Badan Singh (director of SVIPL) as recorded on 27-12-2017, it was noted that there was no reference of SVIPL and no question was posed to Sh. Badan Singh regarding 'SVIPL' or affairs of 'SVIPL'. Considering all these facts and in the light of various judicial decisions, Ld. AO was directed to delete the impugned addition of Rs.360 Lacs.

3.4 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 SVIPL. These findings remain uncontroverted before us. We find that the assessee had furnished sufficient documentary evidences to satisfy the primary ingredients of Sec.68. In our considered opinion, by furnishing these documents, the primary onus of the assessee stood discharged and it was the onus of Ld. AO to controvert the same. However, except for mere allegation, there is no concrete evidence to support the fact that the assessee's own unaccounted money had flown back into its accounts in the grab of loans. Pertinently, the loans advanced to the assessee are preceded by credits through banking channels and there is no cash deposit in the books of the lender entity. The assessee, as per settled position of law, is not required to prove the source of the source of loan in this year. It is trite law that no addition could be made merely on the basis of suspicion, conjectures or surmises. The case laws as cited by Ld. CIT(A) in the impugned order duly supports the case of the assessee and the same would lead to an inescapable conclusion that the impugned addition would not be sustainable in law. The assessee had duly furnished plethora of documents to establish the identity of the

lender, the genuineness of the transaction as well as the creditworthiness of the lender. Therefore, we concur with the adjudication of Ld. CIT(A) so far as the addition with respect to SVIPL is concerned.

5. We find that 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.

Assessment Year 2018-19

6. In AY 2018-19, Ld. AO made addition of unsecured loans of Rs.1184.25 Lacs as taken from SVIPL on similar reasoning. The adjudication of Ld. CIT(A) is on similar lines. Facts being pari-materia the same as in AY 2017-18 qua this entity, we concur with the adjudication of Ld. CIT(A) with respect to this entity. The corresponding grounds as raised by the revenue stand dismissed.

7. The assessee obtained another loan of Rs.372 Lacs from M/s Sam Enterprises Pvt. Ltd. (SEPL). More or less similar findings were rendered by Ld. AO with respect to this entity and the loan so obtained by the assessee was added u/s 68. However, Ld. CIT(A) deleted the same on the ground that this entity had sufficient creditworthiness and

the loans to the assessee were preceded by credits through banking channels. The assessee furnished sufficient documentary evidences to establish the primary ingredients of Sec.68 and accordingly, the addition was deleted by Ld. CIT(A) against which the revenue is in further appeal before us. Since facts for this entity is substantially the same as for SVIPL, applying the same logic and reasoning, we confirm the impugned order, on this issue. The corresponding grounds as raised by the revenue stand dismissed.

8. The assessee obtained another loan of Rs.345 Lacs from M/s Gryfon Commodities which was added to the income of assessee by Ld. AO on more or less similar findings. The Ld. CIT(A), in para 7.36, considered the documentary evidences as furnished by the assessee and arrived at a conclusion that the assessee had duly discharge the primary burden of Sec.68. The loans to the assessee were preceded by credits through banking channels. Therefore, this addition was also deleted against which the revenue is in further appeal before us.

9. We find that Ld. CIT(A) has rendered pertinent factual findings in its order with respect to M/s Gryfon Commodities. These findings remain uncontroverted before us. We find that with respect to this lender, the assessee had furnished sufficient documentary evidences to satisfy the primary ingredients of Sec.68. In our considered opinion, by furnishing these documents, the primary onus of the assessee stood discharged and it was the onus of Ld. AO to controvert the same. However, except for mere allegation, there is no concrete evidence to support the fact that the assessee's own unaccounted

money had flown back into its accounts in the grab of loans. Pertinently, the loans advanced to the assessee are preceded by credits through banking channels and there is no cash deposit in the bank account of the lender entity. The assessee, as per settled position of law, is not required to prove the source of the source of loan in this year. It is trite law that no addition could be made merely on the basis of suspicion, conjectures or surmises. The case laws as cited by Ld. CIT(A) in the impugned order duly supports the case of the assessee and the same would lead to an inescapable conclusion that the impugned addition would not be sustainable in law. Therefore, we concur with the adjudication of Ld., CIT(A). The corresponding grounds as well as the appeal stands dismissed.

Conclusion

10. Both 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)

लेखासदस्य / 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