

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

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

**1. आयकरअपीलसं./ ITA No.133/Agr/2024  
(निर्धारणवर्ष / Assessment Year: 2017-18)**

**&**

**2. आयकरअपीलसं./ ITA No.134/Agr/2024  
(निर्धारणवर्ष / Assessment Year: 2018-19)**

<b>DCIT</b> 1sr Floor, Aayakar Bhawan Sanjay Place, Agra-282002.	<b>बनाम/ Vs.</b>	<b>M/S Basant Infracon Pvt. Ltd.</b> 1/354, Transport Nagar, Agra.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. <b>AAECB-7861-P</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकीओरसे/ <b>Appellant by</b>	:	Shri Sukesh Kumar Jain CIT – Ld. 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. 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 addition of Rs.583.83 Lacs and Rs.60 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.583.83 Lacs from an entity by the name M/s L.S. Automobile and Finance Co. Pvt Ltd. (LSAFCL) which was held by Ld. AO to be accommodation entry. The assessee was alleged to have received another accommodation entry of Rs.60 Lacs through its directors Shri Ajay Kumar Agrawal & Shri Anubhav Agrawal (Rs.30 Lacs from each of the director) in the form of Share Capital routed from its paper concern M/s Maa Bhagwati Enterprises (Prop. Shri Paras Kumar Parashar). The assessee was accordingly required to establish the satisfaction of primary ingredients of Sec.68.

2.2 With respect of LSAFCL, the assessee furnished ledgers extract, Income Tax Return acknowledgement of that entity, bank statement and PAN details. However, the assessee failed to produce the director of lender entity to confirm the transaction. Notice issued u/s 133(6) as well as field enquiries u/s 131(1)(d) did not elicit any positive response. Upon perusal of financial statements of that entity, Ld. AO held that it had meagre share capital with no business. After perusal of bank statements, it was alleged by Ld. AO that LSAFCL was being used for

accommodation entries. Finally, the impugned loan was added u/s 68 by relying on various judicial decisions.

2.3 With respect to M/s Maa Bhagwati Enterprises, the assessee submitted that the source of payment to Shri Anubhav Agrawal and Shri Ajay Kumar Agrawal was M/s BN Agritech Ltd. The directors transferred these amounts to the assessee against purchase of shares of M/s GPL Housing Pvt. Ltd. The assessee furnished flow chart supporting the same. However, going by the investigation findings in the case of M/s Maa Bhagwati Enterprises, Ld. AO added the amount of Rs.60 Lacs u/s 68 r.w.s. 115BBE and framed the assessment.

### **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 addition. 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 LSAFCL 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 LSAFCL.

3.3 The Ld. CIT(A), in para 7.21 observed that in compliance to the summons, reply was received from LSAFCL which was signed by its director. The source of income for that entity was financing activity. That entity filed copy of Income Tax Returns for AY 2017-18 and 2018-19 along with audited financial statements. That entity also filed bank statements and ledger extract supporting the impugned transactions. That entity reflected loans to various parties and merely because it was allegedly not doing any business, the same could not be a ground to make the addition. The observation that LSAFCL facilitated accommodation entries was on mere presumption. The Ld. AO did not dispute the financial worth of LSAFCL which was demonstrated by the assessee and also reflected in the financial statements of that entity. That entity had unsecured loans of Rs.823.70 Lacs out of which further loans were advanced by that entity. The allegation that this entity lacked creditworthiness could not be accepted. The Hon'ble Supreme Court in the case of **CIT vs. Daulatram Rawatmal (87 ITR 349)** held that onus of proving what was apparent is not real is on the party who claims it to be so. There should be some direct nexus between the conclusion of facts arrived at by the authorities concerned and the primary facts upon which the conclusion is based. Use of extraneous or irrelevant material in arriving at the conclusion would vitiate the conclusion of fact because it is difficult to predicate to what extent the extraneous and irrelevant material had influenced the authority in

arriving at the conclusion of fact. The assessee was under no obligation to prove the source in the bank account of the creditor nor the origin of origin after the assessee established the real source of such receipts as loans. Once the assessee explained the credit entry and bring on evidence to show that the entry is related to a third-party and third-party also owes the credit, the burden would shift on AO to disprove the same. This onus was not discharged by Ld. AO in the present case. The immediate source of impugned loan was credits received in the bank account of the lender. Finally, Ld. CIT(A) held that the assessee had proved the identity of the lender, the creditworthiness of the lender and genuineness of the loan transactions. The assessee was under no obligation to prove further source of availability of amount with such creditor. The assessee had fully discharged the onus as required to be discharged u/s 68 and accordingly the impugned addition against this entity was deleted.

3.4 On the issue of addition of Rs.60 Lacs, it was observed that this amount was received from two directors against purchase of shares of M/s GPL Housing Pvt. Ltd. This amount was sourced from M/s BN Agritech Pvt. Ltd. and the immediate source was that entity which was not alleged to be paper entity by Ld. AO. Therefore, the source stood sufficiently explained by the assessee. Further, M/s Maa Bhagwati Enterprises approached Interim Board of Settlement (IBS) wherein Hon'ble IBS admitted that this entity was doing trading of oil. Therefore, the credit so received by the assessee stood fully explained and

accordingly, the impugned addition of Rs.60 Lacs was also deleted. Aggrieved, 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 both the entities. These findings remain uncontroverted before us. We find that with respect to LSAFCL, 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 additions 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 against LSAFCL is concerned.

5. So far as the addition of Rs.60 Lacs is concerned, it is undisputed fact that this amount has been received by the assessee from two of its directors, who, in turn, has received these amounts from M/s BN Agritech Pvt. Ltd. who is not alleged to be a paper entity. This being the case, the source of impugned credit stood explained and this addition has rightly been deleted by Ld. CIT(A). The appeal of the revenue stand dismissed.

#### Assessment Year 2018-19

6. In AY 2018-19, Ld. AO made addition of Rs.543.64 Lacs for unsecured loans as received from M/s LSAFCL on similar reasoning. The Ld. CIT(A) deleted the same on the ground that the ingredients of Sec.68 stood fully satisfied. Aggrieved, the revenue is in further appeal before us. Since facts as well as issue qua this entity are quite identical as in AY 2017-18, our adjudication as above shall *mutatis mutandis* apply for this entity. The corresponding grounds stand dismissed.

7. In AY 2018-19, Ld. AO made another addition of Rs.330 Lacs for unsecured loans received from another entity by the name M/s Sam Enterprises Pvt. Ltd. (SEPL). During the course of assessment proceedings, the assessee duly furnished ledger extracts, copy of Income Tax Returns, Bank statement of that entity to satisfy the primary ingredients of Sec.68. However, rejecting the same, Ld. AO added the same u/s 68 and framed the assessment. The Ld. CIT(A),

considering the provisions of Sec.68, noted that the assessee had filed various documents with respect to SEPL to establish the primary ingredients of Sec.68. These documents were - (a) Confirmation duly signed by the Director of SEPL for AY 2018-19 confirming the Loan transaction; (b) Acknowledgement of Income Tax Return of SEPL for AY 2018-19; (c) Copy of Bank Statement of SEPL for AY 2018-19 in evidence of transfer of credits aggregating to Rs.330 Lacs on various dates; (iv) Audited Balance Sheet for the year ended 31.03.2018 of SEPL. The Ld. CIT(A), in para 7.22, observed that SEPL 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 SEPL, it was quite evident that this entity had sufficient share capital, long terms liabilities and current liabilities which aggregated to more than Rs.33.65 Crores. This entity made advances including loans to assessee which were reflected in its

financial statements. Thus, this entity had sufficient creditworthiness to make loans and Ld. AO erred in rejecting the same. Pertinently, prior to advancing loan to the assessee, there was credit in the bank account of that entity for Rs.10.66 Crores and there were no cash deposits. That entity filed Income Tax Return of Rs.50.76 Lacs and paid Income Tax of Rs.12.77 Lacs during AY 2023-24. The allegation that there was no fixed asset had nothing to do with the creditworthiness of the creditor. Upon perusal of statement of Shri Badan Singh (director of SEPL) as recorded on 27-12-2017, it was noted that there was no reference of SEPL and no question was posed to Sh. Badan Singh regarding 'SEPL' or affairs of 'SEPL'. Considering all these facts, Ld. AO was directed to delete the impugned addition of Rs.330 Lacs against which the revenue is in further appeal before us.

8. We find that Ld. CIT(A) has rendered pertinent factual findings in its order with respect to SEPL. 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) and seen no reason to interfere in the same. The appeal stands dismissed.

### Conclusion

9. 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