

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER
[Through Video Conferencing]**

ITA No.4037/Del/2013
Assessment Year: 2009-10

DCIT, Central Circle-4, New Delhi	Vs.	Ambreen Projects & Infrastructure (P) Ltd., B-53, B-1, Community Centre, Janak Puri, New Delhi
PAN :AAHCA3248C		
(Appellant)		(Respondent)

Appellant by	Sh. Sunil Arora, CA
Respondent by	Sh. Satpal Gulati, CIT(DR)

Date of hearing	17.11.2021
Date of pronouncement	24.11.2021

ORDER

PER O.P. KANT, AM:

This appeal by the Revenue is directed against order dated 19/03/2013 passed by the Learned Commissioner of Income-tax (Appeals)-XXXIII, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2009-10 raising following grounds:

1. *On the facts and in the circumstances of the case, the CIT(A) has erred in deleting the addition of Rs.13.80 crores made by the Assessing Officer on account of undisclosed investment in the property at Mohali under section 69B of the Income Tax Act, 1961.*
2. *On the facts and in the circumstances of the case, the CIT(A) has failed to appreciate the facts of the case that the confessional*

surrender of Rs.13.80 crores on this account was made voluntarily by the Chairman of HBN Group and director of the assessee company, Sh. H.S. Saran in his statement recorded under Section 132(4) of the Income Tax Act.

3. *On the facts and in the circumstances of the case, the CIT(A) has erred in deleting the addition of Rs.13.80 crores made by the Assessing Officer on account of gain arising from release from indebtedness.*
4. *The order of the CIT(A) is erroneous and is not tenable on facts and in law.*
5. *The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.*

2. Briefly stated facts of the case, as culled out from the order of the lower authorities and submission of the assessee, are that:

- (i) The assessee company, i.e., M/s Ambreen Projects and Infrastructure Private Limited was incorporated on 07/03/2008. The share capital of company was subscribed by two shareholders, namely, Sh. Gursimaran Singh and Smt. Amritpal Kaur. Subsequently, in the previous year corresponding to assessment year under consideration, all the shares of the company were acquired by the "HBN Group" concerns "and" "Saran" family members and the company came under control of "HBN Group". Thereafter, a land measuring 8.4 Acre at Mohali (Punjab) was acquired by this company from individual landowners (erstwhile directors of the assessee company), the sale agreement of which were registered on 22/01/2009 and 30/01/2009 for sale consideration of ₹ 14 Crores.

- (ii) For the year under consideration, the original return of income in terms of section 139(1) of the Act was filed.
- (iii) A search and seizure action under section 132 of the Income-tax Act, 1961 (in short 'the Act') was carried out at the premises of "HBN Group" on 20.11.2009 and various incriminating documents were seized, including documents belonging to the assessee company. One such document, which has been inventorised by the search team as page No. 1 of Annexure A-8 seized from B-53 , B-1, Community Centre, Janak Puri, New Delhi, reflects payment of Rs. 14 crores by way of cheque and ₹ 13.80 by way of cash against "Ambreen Mohali". Other documents, including MOU between the erstwhile directors of the assessee company and Sh. H S Saran on behalf of the 'HBN' Group made were also seized. During search proceedings, Sh. Anil Mahajan, Chief of Real Estate division, 'HBN' Group admitted that for 'Mohali Real Estate' project of M/s Ambreen Projects Private Limited, the cash payment of Rs.13.80 Crores was made by 'HBN' Group. The chairman of 'HBN' Group, Sh Harmender Singh in his statement recorded on 22.11.2009 during search proceedings, admitted that ₹ 13.80 crores, which was paid in cash for Mohali project in financial year 2008-09, represented undisclosed investment and agreed to offer the same for taxation in the assessment year 2009-10.

- (iv) The Assessing Officer after recording due satisfaction under the provisions of the Act, issued notice under section 153C of the Act, asking the assessee to file return of income for assessment year under consideration. In response, the assessee filed return of income on 05/12/2011, declaring total income of ₹ 1,980/-. In the return of income filed by the assessee company, no income against undisclosed investment was offered in respect of Mohali Project.
- (v) During assessment proceeding, the assessee submitted that cash payment of ₹ 13.80 crores has been made out of the cash withdrawal from bank account of M/s HBN Dairies and Allied Ltd and, therefore, source of the same stands from disclosed sources of income, thus no surrender/addition in the case of the assessee was warranted.
- (vi) In the assessment order passed on 28.12.2011 under Section 153C read with section 143(3) of the Act, the Assessing Officer made addition for unexplained investment of Rs.13.80 crores in view of the observations that the assessee cannot be allowed to retract from the confessional surrender made under section 132(4) of the Act as it was voluntary surrender and not under any duress. According to him, the total amount expended on making investment in Mohali Property is Rs.27.80 crores, whereas amount recorded in books of account of the assessee is only Rs. 14 crores. The explanation of the assessee that ₹ 13.80

crores stands recorded in the books of accounts of HBN Dairies and Allied Ltd was rejected and additions under section 69B of the Act was made observing as under:

“7.7 The explanation furnished by the assessee is not satisfactory one. Assessee has tried to explain that the said property is appearing in the books of accounts of both the concerns and both have proportionate independent right in the said land. The entire property, belongs to the Assessee M/s Ambreen Projects & Infrastructure PM Ltd. As per assessee’s own submission the entire development work has also been carried out by the assessee only. An amount of Rs. 3.79 crore has been incurred by the assessee company for further development work on the said land. The submissions of the assessee that M/s HBN Dairies & Allied Ltd have proportionate right on land are without any basis. The mere fact that M/s HBN dairies & Allied Ltd has also recorded the investment of Rs 13.80 crores in its Books of accounts has no relevance. Similarly the fact that the said property has been recorded in the Books of accounts of the assessee at Rs. 14 crores does not come in the Way of determining the exact nature of the transaction. The simultaneous entry of an asset in the books of accounts of M/S HBN Dairies & Allied Ltd is a sham. When the asset is owned by the assessee in entirety, the question of any other person owning a part of the same does not arise. It is totally inconceivable how someone could own a portion of what is owned in entirety by someone else. The explanation furnished by the assessee cannot be termed as satisfactory one.

7.8 The accounting entries are not determinative of the true character of an income or an outgoing. The law is settled in this regard. The Hon’ble Apex Court in the landmark judgment in the case of Kedarnath Jute Manufacturing Company Ltd Vs CIT (1971) 82 ITR 363 (SC) has laid down that accounting entries in the books are not decisive of the character of a receipt or outgoing. The observations of the Hon’ble Apex Court in the case of Sutej cotton Mills Ltd Vs CIT (1979) 116 ITR 1 (SC) are also to this effect.

7.9 The investment is the exclusive property of the assessee; the assessee is entitled to enjoy all the fruits of the investment. There is no legal or contractual liability binding the assessee to share either the property or its fruits. The amount actually expended in making such investment exceeds the amount recorded in the books of

accounts. I have to apply my discretion after considering all the circumstances encompassing the transaction including the intention of the parties to the transaction at the time of entering into the transaction. There is no disputing the fact that cash payment of equal amount was settled in advance. The cash payment has in fact been made. The same was not recorded in the Books of accounts of the assessee at any point of time. At the time of search the same was also not recorded in the Books of account of M/s HBN Dairies & Allied Ltd. The books of accounts of M/s HBN Dairies & Allied Ltd for the Financial Year 2008-09 were finalized after search only. It was at that point of time that the surrender of undisclosed income on account of unrecorded investment in the purchase of Mohali Property was made. The surrender was made by the Chairman of the HBN group who was exercising absolute control over the functioning of all the group companies including the assessee company. In fact the agreements or to be more precise MOU's referred to in earlier paras were executed by Sh H.S Sran only. His confessional statement was also seen by Sh Amandeep Singh Sran, his son and Director in various HBN Group companies including the assessee company. The undisclosed investment hitherto remained undisclosed. The same has not been disclosed in the return of income."

- (vii) The Learned Assessing Officer also supported the addition in view of discharge of indebtedness as under:

*"9. **Income from discharge of indebtedness-** The present case also springs up as a case of release from indebtedness. In the present case there is a total release from indebtedness to the extent of Rs 13.80 crores. The assets are more than the liabilities. Liabilities are restricted to the extent of amount legally owned. The amount of Rs 13.80 crores, received in cash even if from HBN Dairies & Allied Ltd is not legally repayable. No liability whether real or imaginary to that extent exists. In the circumstances net worth test is applicable. The net worth test has been applied by the US Supreme court in the landmark judgment in the case of **United States Vs Kirby Lumber Co. 284 US 4 (1931)**. The Hon'ble US Supreme court upheld the IRS argument that definition of income includes income from all sources not otherwise excluded. In that case liabilities decreased more than the decrease in assets. The Hon'ble Court noted that the net worth of the company has gone up.*

The similar principle of law has also been upheld by the Hon'ble Apex Court in the case of C.I.T. v. G.R. Karthikeyan, 1993 Supp (3) SCC 222. The Honble Apex Court had made the following observation;

“Para 7. It is not easy to define income. The definition in the Act is an inclusive one. As said by Lord Wright in Kamakshya Narayan Singh v. CIT [(1943) 11 ITR 513 (PC)] “income ... is a word difficult and perhaps impossible to define in any precise general formula. It is a word of the broadest connotation”. In Gopal Saran Narain Singh v. CIT [(1935) 3 ITR 237 (PC)] the Privy Council pointed out that “anything that can properly be described as income is taxable under the Act unless expressly exempted”. This Court had to deal with the ambit of the tax expression ‘income’ in Navinchandra Mafatlal v. CIT [AIR 1955 SC 58]. The Indian Income Tax and Excess Profits Tax (Amendment) Act, 1947 had inserted Section 12(B) in the Indian Income Tax Act, 1922. Section 12(B) imposed a tax on capital gains. The validity of the said amendment was questioned on the ground that tax on capital gains is not a tax on ‘income’ within the meaning of Entry 54 of List 1, nor is it a tax on the capital value of the Mohini Thapar (Dead) by L.R.S. v. C.I.T. (Central) Calcutta assets of individuals and companies within the meaning of Entry 55 of List 1 of the Seventh Schedule to the Government of India Act, 1935. The Bombay High Court repelled the attack. The matter was brought to this Court. After rejecting the argument on behalf of the assessee that the word ‘income’ has acquired, by legislative practice, a restricted meaning - and after affirming that the entries in the Seventh Schedule should receive the most liberal construction -the Court observed thus: ‘What, then, is the ordinary, natural and grammatical meaning of the word ‘income’? According to the dictionary it means ‘a thing that comes in’. In the United States of America and in Australia both of which also are English speaking countries the word ‘income’ is understood in a wide sense so as to include a capital gain. In each of these cases very wide meaning was ascribed to the word ‘income’ as its natural meaning. The relevant observations of learned Judges deciding those cases which have been quoted in the judgment of Tendolkar, J. quite clearly indicate that such wide meaning was put upon the word ‘income’ not because of any particular legislative practice either in the United States or in the Commonwealth of Australia but because such was the normal concept and connotation of the

ordinary English word 'income'. Its natural meaning embraces any profit or gain which is actually received. This is in consonance with the observations of Lord Wright to which reference, has already been made.... The argument founded on an assumed legislative practice being thus out of the way, there can be no difficulty in applying its natural and grammatical meaning to the ordinary English word income'. As already observed, the word should be given its widest connotation in view of the fact that " it occurs in a legislative head conferring legislative power.

8. Since the definition of income in Section 2(24) is an inclusive one, its ambit, in our opinion, should be the same as that of the word income occurring in Entry 82 of List I of the Seventh Schedule to the Constitution (corresponding to Entry 54 of List I of the Seventh Schedule to the Government of India Act).

10further, even if a receipt does not fall within sub-clause (ix), or for that matter, any of the sub-clauses in Section 2(24), it may yet constitute income. To say otherwise, would mean reading the several clauses in Section 2(24) as exhaustive of the meaning of 'income' when the statute expressly says that it is inclusive. It would be a wrong approach to try to place a given receipt under one or the other sub-clauses in Section 2(24) and if it does not fall under any of the sub-clauses, to say that it does not constitute income. Even if a receipt does not fall within the ambit of any of the sub-clauses in Section 2(24), it may still be income if it partakes of the nature of the income. The idea behind providing inclusive definition in Section 2(24) is not to limit its meaning but to widen its net. This Court has repeatedly said that the word 'income' is of widest amplitude, and that it must be given its natural and grammatical meaning

In the present case, net worth test appropriately applies. The net worth of the assessee has gone up by an amount of Rs. 13.80 crores. The gains accruing to the assessee from release of indebtedness are not specifically exempt under any provisions of the act, thus falls within the inclusive definition of section 2(24) of the Act and are chargeable to tax under the provisions of Indian Income Tax Act."

2.1 The Ld. CIT(A) deleted the addition, observing as under:

"Findings:-

I have considered the assessment order, written submission of Ld. AR and various arguments of Ld. AR. This is undisputed fact that total investment in Mohali land is Rs. 27.80crores out of which Rs. 14crore has been made by way of cheque and Rs. 13.80 crore by way of cash. Entire payment was made M/s HBN Dairies and Allied LTD. for Rs. 14 crores payment made by cheque, M/s HBN Dairies and Allied Ltd has shown in its Balance Sheet, as loan and advance and a Rs. 13.8 crores is shown as investment in M/s Abmreen Projects and Infrastructure (P) Ltd. The entire details of cash payment is mentioned in the seized material. For the source of cash payment is cash withdrawl form bank accounts of M/s HBN Dairy & Allied Ltd. Details of cheque no. alongwith date and amount are mentioned in the seized material. All these details were informed by the appellant company including reference to seized material to the Assessing Officer. The Assessing Officer has not given any adverse comment in this regard.

In view of the above facts, the source of cash payment to the extent of Rs. 13.8crores is fully explained from the books of accounts of company M/s HBN Dairy & Allied Ltd.(flagship company of HBN Group). These details are contained in the seized material. The Assessing Officer has given the reason for non accepting the same is that M/s HBN Dairy and Allied Ltd. has filed return for A.Y. 2008-09. Subsequent to the search is not convincing. Once the source of cash payment is by way of withdrawal from bank account of M/s HBN Dairy and Allied Ltd, and the said Bank Account is already” declared in the balance sheet, then at the most, the entries in such bank account has to be examined in the hands of M/s HBN Dairy and Allied Ltd. The addition can not be made in the hands of the appellant company.

Coming to another issue, i.e. statement u/s 132(4) by sh. H.S. Sran disclosing the said Rs. 13.8crores as undisclosed income in the hands of appellant company, appellant argued before the A.O. and as well as before the undersigned that the said disclosure was on wrong facts and without examining the complete seized documents. When the complete seized documents were perused and analysed, Sh.H.S.Sran informed to the Investigation Wing vide letter dt 26.3.2010 that there is a wrong disclosure of income on this issue of Rs. 13.8crores. There is no rebuttal either by the Investigation Wing or the Assessing Officer on the mistakes pointed by the appellant that the source of cash payment of Rs. 13.8crores is withdrawl from bank account of M/s HBN Dairy and Allied Ltd. and the details are contained in the seized material. Therefore, such retracted statement cannot justify addition when facts proved that the disclosure was wrong.

Next issue raised by the Assessing Officer is the applicability of Sec 69B. To the extent of Rs. 13.8crores value of course the property is not reflected in the books of the appellant company. The appellant company has explained the source as discussed earlier. The Assessing Officer has not accepted such explanation and added the same u/s 69B. In my considered view that the discretion for not accepting the explanation on the basis of proven facts is not proper. The appellant has explained very logically the source of cash payment of Rs. 13.8crores emanating from seized material, therefore, the same should have been accepted by the Assessing Officer.

Finally , the Assessing Officer view that networth of the assessee has gone up by Rs. 13.8 crore, therefore, gain is the accruing to the appellant company. I do not agree to the view of assessing officer. It may be mentioned that the appellant is a group company of HBN Group and the flagship company is M/s HBN Dairy and Allied Ltd. The entire investment in Mohali land is made by M/s HBN Dairy & Allied Ltd., though the land is purchased in the name of the appellant company. Therefore, these are the business decision of group as to how to finance any project and to conduct business including sharing of profit, After considering entire facts and circumstances of the case, when source of cash payment of Rs. 13.8crore is explained properly, the addition made u/s 69B is not proper. Accordingly, I direct the Assessing Officer to delete the addition of Rs. 13.8 crores. This ground of appeal is allowed.”

2.2 Aggrieved with the finding of the learned CIT(A), the Revenue is in appeal before the Tribunal, raising the grounds as reproduced above.

3. Before us, the parties appeared through Videoconferencing facility. The assessee filed a paper-book containing 169 pages and other documents through email as well as physically.

4. Before us, the Learned DR submitted that there is no dispute on the investment value of the Mohali property at ₹ 27.80 crore. He submitted that ownership title of the property lies with the assessee and in its books of accounts investment of only ₹ 14 crore is recorded on asset side of balance sheet and on liability side, a loan of ₹ 14 crore from M/s HBN Dairies and allied Ltd is

recorded. The investment of remaining ₹ 13.8 crores is neither appearing on asset side nor on liability side of the balance-sheet of the assessee. Thus, according to Ld DR source of ₹ 13.8 crore is not explained in the hands of the assessee. Secondly, on the issue of discharge of indebtedness, the Learned DR relied on the order of the Assessing Officer and submitted that the assessee has received property worth Rs.27.80 crore against payment of ₹ 14 crore in its books of accounts. The balance Rs. 13.80 crores which has been paid by M/s HBN dairies and Allied Ltd to the seller of the property, has not been shown by the assessee as loan from HBN Dairies and allied Ltd. The cash payment of Rs. 13.80 crores has been made against purchases of the property, which is owned by the assessee. According to him, recording of Rs. 13.80 crores by M/s HBN dairies and allied Ltd as investment in "Ambreen Projects" has no relevance as far as the assessee is concerned. The assessee has been benefited by ₹ 13.80 crores and if same is not recorded as loan from M/s HBN then it becomes a kind of gift in the hands of the assessee company, which is anyway taxable in the hands of the assessee company in terms of section 56 of the Act.

5. The Learned Counsel of the assessee, on the other hand, submitted that surrender of ₹ 13.80 crore was retracted before the Assistant Director of Income Tax (Investigation) on 26/03/2010, explaining evidence in support of the source and being mistaken surrender made under section 132(4) of the Act. According to him provisions of section 69B of the Act are not attracted in the case of the assessee as source and nature of the payment of ₹ 27.80 crore has been duly explained before the

Assessing Officer. The learned Counsel submitted that said sum of Rs. 13.80 has been paid by M/s HBN dairies and Allied Ltd. in assessment year 2009-10, which has been duly recorded in the books as “investment in Ambreen Project” under the head investment. He referred to page 38 to 72 of the paper-book as financial statement of M/s. HBN dairies and Allied Ltd. He submitted that section 69B of the Act is not attracted as the assessee has not made any investment nor is found to be the owner of any bullion, jewelry or other valuable article. He submitted that the property at Mohali constitutes “stock in trade” for the assessee company and same is recorded in its books of accounts at value of ₹ 17,70,58,850/-, out of which is Rs. 14 crores represents the amount paid by the assessee company for acquisition of the land at Mohali and Rs. 3.70 crores constitute sum incurred by it towards development and other related activity. The learned Counsel submitted that addition cannot be made merely on the basis of the statement recorded under section 132(4) of the Act without any corroborating evidence. In support of his contention he relied on the decision of the Hon’ble Delhi High Court in the case of **CIT Vs Sunil Aggarwal (2015) 64 taxmann.com 107 (Delhi)**.

6. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. During the year, the assessee has purchased a property, namely, Mohali Property from sellers i.e. Sh. Gursimran Singh, Ms Amrit Pal Kaur, Ms Satwant Kaur and others. These persons were holding shares in the assessee company prior to take over of the company by the present share holders belonging to the HBN group in year

under consideration. The registered sale deed of the property has been executed on 22/01/2009 and 30/01/2009. As per registered deeds, the property has been acquired by the assessee company against a sale consideration of Rs. 14.00 crores. During the course of search, a document has been seized (which has been inventorised as page 1 of Annexure A-8 seized from B-53 Janakpuri, Delhi i.e corporate office of HBN Group) , which indicates that actual payment of Rs. 27.80 crores has been paid for purchase of the 'Mohali Property', which consist of Rs. 14.00 crores by cheque and Rs. 13.80 crores by way of cash. The Chief (Real Estate) of the Group, i.e., Sh Anil Mahajan during the search proceeding in his statement u/s 132(4) of the Act on 21.11.2009 admitted the fact of cash payment of Rs. 13.80 crores. During the search other documents including memorandum of understanding (MOU) for acquiring of this property through other company of the HBN group are found and seized, however, ultimately, the property has been purchased in assessee company and hence the effect of transaction of purchase has to be seen in the assessee company only.

6.1 As far as investment of ₹ 27.80 crores in purchase of "Mohali property" is concerned, there is no dispute between the parties. It is also undisputed that the assessee company has made payment of ₹ 14 crore by cheque to the seller of property. The source of this cheque money in the hands of the assessee company is by way of a loan from M/s HBN Dairy and allied Ltd. Further, cash payment of ₹ 13.80 crore has been made to the sellers of the property, which is appearing in seized document and the Chief (Real Estate) of the Group and Chairman of the HBN

Group Sh. Harminder Singh Saran has admitted this cash payment. During search proceeding, this payment was accepted by the group chairman as undisclosed, however, at the time of filing return of income, no such undisclosed income was offered. The contention of the assessee that entire cash of Rs. 13.80 crores has been withdrawn from bank account of another group concern, namely, HBN Dairy and Allied Ltd. and, therefore, source being explained, it is not undisclosed and thus statement made u/s 132(4) was retracted. Hence, no addition can be made on the basis of statement recorded u/s 132(4) of the Act. On merit, the contention of assessee that source of amount of Rs. 13.80 crores stands explained in the books of account of M/s HBN Dairy and Allied Ltd as investment in 'Ambreen Project', thus no addition can be made u/s 69B of the Act.

6.2 Thus, before us there are two issues for adjudication. First, whether any addition can be made merely on the basis of statement made u/s 132(4) of the Act. Secondly, whether, the addition u/s 69B as unexplained investment is justified despite source of payment explained in the hands of sister concern. As far as first issue is concerned, the Assessing Officer noted as under:

“6.2 Keeping in view the above settled legal position, the assessee cannot be allowed to retract from the confessional surrender made u/s 132(4) of the Act. Since the assessee has failed to disclose the income surrendered in the statement recorded u/s 132(4) of the Act, I am making an addition of Rs. 13.80 crores to the income of the assessee company on account of undisclosed investment in the property at Mohali.”

6.3 The Ld. CIT(A) decided the issue in favour of the assessee observing as under:

“Coming to another issue, i.e. statement u/s 132(4) by sh. H.S. Sran disclosing the said Rs. 13.8crores as undisclosed income in the hands of appellant company, appellant argued before the A.O. and as well as before the undersigned that the said disclosure was on wrong facts and without examining the complete seized documents. When the complete seized documents were perused and analysed, Sh.H.S.Sran informed to the Investigation Wing vide letter dt 26.3.2010 that there is a wrong disclosure of income on this issue of Rs. 13.8crores. There is no rebuttal either by the Investigation Wing or the Assessing Officer on the mistakes pointed by the appellant that the source of cash payment of Rs. 13.8crores is withdrawal from bank account of M/s HBN Dairy and Allied Ltd. and the details are contained in the seized material. Therefore, such retracted statement cannot justify addition when facts proved that the disclosure was wrong.”

6.4 We find that in the case of in **Sunil Aggarwal** (supra), during the course of the search, the assessee admitted under section 132(4) of the Act that cash amount of ₹ 86 lakh seized from his employees belonged to him and it represented undisclosed income, however two weeks later the assessee retracted the admission and explained that said cash amount was from the undisclosed sales of the disclosed purchases, which were verified from the records in the books of accounts. In the circumstances, the Hon’ble Delhi High Court held as under:

“15. In the present case, the Assessee had an explanation for not retracting the statement earlier. He also furnished an explanation for the cash that was found in the hands of his employee and this was verifiable from the books of accounts. In the circumstances, it was unsafe for the AO to proceed to make additions solely on the basis of the statement made under Section 132(4) of the Act, which was subsequently retracted.”

6.5 As far as ratio that any addition cannot be justified merely on the basis of statement recorded under section 132(4) of the Act, it is undisputed addition in the case of the assessee also cannot be made merely on the basis of statements of Sh. Anil Mahajan or Sh. Harminder Singh.

6.6 The Tribunal in the case of **Subash Sharma in ITA No. 1573/Del/2012** for assessment at 2007-08 also held that no addition can be made merely on the basis of surrender without existence of any corroborative evidence found against the assessee. In view of the above, we reject the reasoning by the AO to make unexplained investment merely on the basis of statement under section 132(4) of the Act. Thus, the first issue is decided in favour of the assessee.

6.7 We find that in the instant case, the Assessing Officer has decided the issue on merit also in addition to relying on the statement made under section 132(4) of the Act.

6.8 As far as second issue of addition under section 69A of the Act on merit is concerned, the assessee has referred to page 44 of the paper-book and submitted that said amount of Rs. 13.80 crores is appearing as “investment in Ambreen Project” in balance sheet of M/s HBN Dairy and Allied Ltd. Further, the assessee has referred to pages 47 to 51 paper-book, which is a ledger account of “investment in Ambreen Project” in the books of M/s HBN Dairy and Allied Ltd. According to this ledger account, total payment of ₹ 13.80 crore has been withdrawn from various bank accounts of M/s HBN Dairy and Allied Ltd from 26/11/2008 to 29/01/2009. A Cash payment of rupees two crores as appearing in seized document (page No. 4 of annexure A-24) also has been reconciled with this ledger statement. Thus the undisputed position is that cash payment of ₹ 13.80 crore has been made to the seller parties out of the cash withdrawn from bank accounts of the company, M/s HBN dairy and allied Ltd , which has been recorded in the books of accounts of HBN Dairy and Allied Ltd as

“investment in the Ambreen Project”. The assessee has made payment of ₹ 14 crore through cheques to the seller party, and said purchase of the property has been recorded in the books of accounts of the assessee as stock-in-trade (land) of Rs. 14.00 crores. The source of said investment in the hands of the assessee is out of loan from M/s. HBN Dairy and Allied Ltd. The Assessing Officer has invoked section 69B of the Act. According to the Assessing Officer, the amount expended on making investment in Mohali property is Rs. 27.80 Crores, whereas the amount recorded in books of account of the assessee is merely ₹ 14 crore and therefore, the amount expended on making such investment exceeds the amount recorded in this behalf in the books of accounts of the assessee by Rs. 13.80crores, which the assessee was required to explain. The assessee explained before the Assessing Officer that the assessee has made investment of ₹ 14 crore in Mohali Property which is appearing as stock in trade in the books of the assessee, whereas ₹ 13.80 crores have been incurred by M/s HBN Dairy and Allied Ltd which is appearing as investment in Ambreen Project. According to the assessee, both the assessee and M/s HBN Dairy and Allied Ltd have proportionate independent right in the said land. This explanation of the assessee has been rejected by the Assessing Officer observing as under:

“7.7 The explanation furnished by the assessee is not satisfactory one. Assessee has tried to explain that the said property is appearing in the books of accounts of both the concerns and both have proportionate independent right in the said land. The entire property, belongs to the Assessee M/s Ambreen Projects & Infrastructure PM Ltd. As per assessee’s own submission the entire development work has also been carried out by the assessee only. An amount of Rs. 3.79 crore has been incurred by the assessee company for further

development work on the said land. The submissions of the assessee that M/s HBN Dairies & Allied Ltd have proportionate right on land are without any basis. The mere fact that M/s HBN dairies & Allied Ltd has also recorded the investment of Rs 13.80 crores in its Books of accounts has no relevance. Similarly the fact that the said property has been recorded in the Books of accounts of the assessee at Rs. 14 crores does not come in the Way of determining the exact nature of the transaction. The simultaneous entry of an asset in the books of accounts of M/S HBN Dairies & Allied Ltd is a sham. When the asset is owned by the assessee in entirety, the question of any other person owning a part of the same does not arise. It is totally inconceivable how someone could own a portion of what is owned in entirety by someone else. The explanation furnished by the assessee cannot be termed as satisfactory one.

7.8 The accounting entries are not determinative of the true character of an income or an outgoing. The law is settled in this regard. The Hon'ble Apex Court in the landmark judgment in the case of Kedarnath Jute Manufacturing Company Ltd Vs CIT (1971) 82 ITR 363 (SC) has laid down that accounting entries in the books are not decisive of the character of a receipt or outgoing. The observations of the Hon'ble Apex Court in the case of Sutlej cotton Mills Ltd Vs CIT (1979) 116 ITR 1 (SC) are also to this effect.

7.9 The investment is the exclusive property of the assessee; the assessee is entitled to enjoy all the fruits of the investment. There is no legal or contractual liability binding the assessee to share either the property or its fruits. The amount actually expended in making such investment exceeds the amount recorded in the books of accounts. I have to apply my discretion after considering all the circumstances encompassing the transaction including the intention of the parties to the transaction at the time of entering into the transaction. There is no disputing the fact that cash payment of equal amount was settled in advance. The cash payment has in fact been made. The same was not recorded in the Books of accounts of the assessee at any point of time. At the time of search the same was also not recorded in the Books of account of M/s HBN Dairies & Allied Ltd. The books of accounts of M/s HBN Dairies & Allied Ltd for the Financial Year 2008-09 were finalized after search only. It was at that point of time that the surrender of undisclosed income on account of unrecorded investment in the purchase of Mohali Property was made. The surrender was made by the Chairman of the HBN group who was exercising absolute control over the functioning of all the group companies including the assessee company. In fact the agreements or to be more precise MOU's referred to in earlier paras were executed by Sh H.S Sran only. His confessional statement was also seen by Sh Amandeep Singh Sran, his son and Director in various HBN Group companies including the assessee company. The

undisclosed investment hitherto remained undisclosed. The same has not been disclosed in the return of income.”

6.9 The Ld. CIT(A) has accepted the explanation of the assessee and deleted the addition of observing as under:

“Next issue raised by the Assessing Officer is the applicability of Sec 69B. To the extent of Rs. 13.8crores value of course the property is not reflected in the books of the appellant company. The appellant company has explained the source as discussed earlier. The Assessing Officer has not accepted such explanation and added the same u/s 69B. In my considered view that the discretion for not accepting the explanation on the basis of proven facts is not proper. The appellant has explained very logically the source of cash payment of Rs. 13.8crores emanating from seized material, therefore, the same should have been accepted by the Assessing Officer.

Finally , the Assessing Officer view that networth of the assessee has gone up by Rs. 13.8 crore, therefore, gain is the accruing to the appellant company. I do not agree to the view of assessing officer. It may be mentioned that the appellant is a group company of HBN Group and the flagship company is M/s HBN Dairy and Allied Ltd. The entire investment is Mohali land is made by M/s HBN Dairy & Allied Ltd., though the land is purchased in the name of the appellant company. Therefore, these are the business decision of group as to how to finance any project and to conduct business including sharing of profit, After considering entire facts and circumstances of the case, when source of cash payment of Rs. 13.8crore is explained properly, the addition made u/s 69B is not proper. Accordingly, I direct the Assessing Officer to delete the addition of Rs. 13.8 crores. This ground of appeal is allowed.”

6.10 For ready reference, the section 69B of the Act is reproduced as under:

“Amount of investments, etc., not fully disclosed in books of account.

69B. *Where in any financial year the assessee has made investments or is found to be the owner of any bullion, jewellery or other valuable article, and the Assessing Officer finds that the amount expended on making such investments or in acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in this behalf in the books of account maintained by the assessee for any source of income, and the assessee offers no*

explanation about such excess amount or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the excess amount may be deemed to be the income of the assessee for such financial year.”

6.11 Thus, as per section 69B of the Act, wherever, assessee has made investment in relevant financial year, and value of such investment exceeds the amount recorded in books of accounts **maintained by the assessee for his source of income**, then if the explanation offered by the assessee is not satisfactory, in the opinion of the Assessing Officer, the excess amount may be deemed to be the income of the assessee.

6.12 In the instant case, value of the investment in 'Mohali property' at ₹ 27.80 crore has not been disputed between the parties. The dispute is regarding the amount recorded in books of accounts. The assessee has recorded only ₹ 14 crore in its books of accounts and source of which is a loan from M/s HBN Dairy and Allied Ltd. The Assessing Officer has not disputed this investment. The Assessing Officer has disputed the amount which exceeds the amount recorded in books of accounts of the assessee. The provision of section are evident that source of the value of the investment has to be recorded in the books of account maintained by the assessee. Thus, the contention of the assessee that provisions of Section 69B are not applicable are without merit as fact of investment in 'Mohali property' by the assessee is not disputed. In the instant case, source of Rs. 13.80 crores, is not appearing in the books of accounts of the assessee and it is recorded only in the books of accounts of another sister concern. On perusal of the registered sale deed of the property,

also it is evident that it is registered in the name of the assessee only and no ownership of any kind or any right has been granted in favour of M/s HBN Dairy and Allied Ltd. In the books of accounts of M/s HBN Dairy and Allied Ltd the amount of ₹ 13.80 crore is appearing as investment in Ambreen Project, but no corresponding investment by M/s HBN Dairy and Allied Ltd is appearing in the books of accounts of the assessee. In our opinion, in reality the nature of this transaction is also appearing to be a loan transaction by M/s HBN Dairy and Allied Ltd to the Assesee, and the investment and loan of Rs. 13.80 crores should have been appeared in the books of account/balance-sheet of the assessee. We don't know what are the reasons, why the assessee has not accepted this as cash loan received of Rs. 13.80 crores and invested in cash in purchase of the property. In absence of any such entry of cash loan, the Assessing Officer also could not invoked section 269SS of the Act. We agree with the Assessing Officer that claim of proportionate right in the land by M/s HBN Dairy and Allied are without any basis and without any supporting evidence. The Assessing Officer has correctly played reliance on the decision of the Hon'ble Supreme Court in the case of **Kedarnath Jute Manufacturing Company limited** (supra) to hold that the accounting entries are not determinative of the true character of the income or outgoing. The finding of the Ld. CIT(A) that source of the cash payment of Rs.13.80 ctrores is explained and therefore section 69B should not be invoked, is not correct appreciation of provision. The provisions require that source of investment should be explained from the books of accounts maintained by the assessee i.e. a requirement which has not been

fulfilled by the assessee. On the observation of the Assessing Officer that net worth of the assessee has gone up by ₹ 13.80 crores, the Ld. CIT(A) has noted that entire investment in Mohali Land is made by M/s HBN Dairy and Allied Ltd and therefore it is the business decision of the group as how to the finance project and how to conduct business including sharing of the profit. We do not agree with the above observation of the Ld. CIT(A). As far as provisions of Income Tax Act are concerned, each person (i.e. company) is separately taxed and there is no group concept of taxing the entities of the group together otherwise than under status of Association of Persons (AOP) or partnership etc. In the instant case, obviously the entire project has been financed by M/s HBN Dairy and Allied Ltd. The investment of ₹ 14 crore has been financed by HBN Dairy and Allied Ltd as loan transaction, then we do not understand as why, the cash investment has also not been treated as loan given by M/s HBN Dairy and Allied Ltd to the assessee. But accepting such cash loan may invite penalty for violation of section 269SS of the Act. The assessee in its balance-sheet has shown this property in the form of stock-in-trade (land), value of which is undisputed Rs. 27.80 crores but in its books of account the only source is of ₹ 14 crore by way of loan from M/s. HBN dairy and Allied Ltd., and therefore, it was the responsibility of the assessee to explain the source of ₹ 13 crore either by way of the loan from HBN dairy and Allied Ltd or by way of gift. But the assessee has not shown the source of this investment of Rs.13.80 crores either as loan or income in the form of gift. The assessee cannot take shelter that another person has declared the sum of ₹ 13.80 crore in their books of accounts. In the case of CIT Vs

Naresh Khattar HUF (supra) the Hon'ble High Court has held that to invoke the provision of section 69B of the Act, the burden is on the revenue to prove that real investment exceeds the investment shown in the books of accounts of the assessee. In the instant case, there is no dispute on the real amount of investment of Rs. 27.80 Crores but in the books of account of the assessee investment of ₹ 14 crore has only been shown. The assessee has shown amount of ₹ 14 crore paid to the sellers as loan amount received from M/s HBN Dairy & Allied Ltd. but this cash out of Rs. 13.80 crore has not been shown as loan. Reason is obvious. The assessee will be in default for receiving cash loan and for violation of section 269SS of the Act. The assessee is trying to explain this amount of Rs.13.80 crores as recorded in the books of accounts of M/s. HBN Dairy & Allied Ltd. as investment in 'Ambreen Project'. We do not understand how cash payment made to the seller of the 'Mohali property', becomes investment in 'Ambreen project', when it is not paid to M/s. Ambreen Project and Infrastructure P Ltd (i.e. the assessee). By way of making accounting entries in books of accounts of M/s. HBN Dairy and Allied Ltd., the assessee is camouflaging the real character of the transaction just to avoid penalty for cash loan to the assessee. Though the ultimate source of Rs.13.80 crores is coming from the bank account of M/s HBN but payment is towards a property owned by the assessee and in which M/s. HBN Dairy & Allied Ltd. cannot enforce any legal ownership just by recording in its books of accounts as investment of ₹ 13.80 in Ambreen projects. In the instant case there is no dispute in the value of the property at Rs. 27.80 crores. The assessee itself admitted in the written

submission filed before us. In para 1(ii) of said submission it is submitted that assessee company acquired the Mohali Land for total consideration of ₹ 27.80 crores. The assessee was required to record this value in its books of accounts. The Revenue has discharged its onus of showing real value of the property at ₹ 27.80 crores and thereafter the onus shifted on the assessee to explain as why investment in the property has not been shown at Rs. 27.80 crores in its books of account. In our opinion, the Assessing Officer is justified in making addition under section 69B of the Act in view of the value of the investment exceeded the amount recorded in books of accounts maintained by the assessee.

7. In view of the above discussion, we set aside the order of the Ld. CIT(A) and restore the order of Assessing Officer. The grounds of the appeal of the Revenue are accordingly allowed

8. In the result, the appeal of the Revenue is allowed.

Order pronounced in the open court on 24th November, 2021

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 24th November, 2021.

RK/-(DTPDC)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi