

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री आकाश दीप जैन, उपाध्यक्ष एवं श्री विक्रम सिंह यादव, लेखा सदस्य
BEFORE: SHRI. AAKASH DEEP JAIN, VP & SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं. / ITA NO. 488/Chd/2023
निर्धारण वर्ष / Assessment Year : 2017-18

The DCIT Central Circle-2, Ludhiana	बनाम	Bishnu Kumar Goyal 54, Homeland Enclave, Bathinda, Punjab-151001
स्थायी लेखा सं. / PAN NO: ACEPK0429R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA NO. 487/Chd/2023
निर्धारण वर्ष / Assessment Year : 2017-18

The DCIT Central Circle-2, Ludhiana	बनाम	Hemant Jindal 18, Chanderlok Enclave, Pitampura, Saraswati Vihar, New Delhi, New Delhi-110034
स्थायी लेखा सं. / PAN NO: ABOPJ4645B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से / Assessee by : Shri Sudhir Sehgal, Advocate
राजस्व की ओर से / Revenue by : Shri Rohit Sharma, CIT DR

सुनवाई की तारीख / Date of Hearing : 18/06/2024
उद्घोषणा की तारीख / Date of Pronouncement : 13/09/2024

आदेश / Order

PER VIKRAM SINGH YADAV, A.M. :

These are two appeals filed by the Revenue against the separate orders of the Ld. CIT(A)-5, Ludhiana each dt. 03/05/2023, pertaining to A.Y 2017-18.

2. Since common issues are involved in both the above appeals and were heard together, they are being disposed of by this consolidated order for the sake of convenience and brevity.

3. With the consent of both the parties, the appeal of the Revenue in ITA No. 488/Chd/2023 was taken as a lead case wherein the Revenue has taken the following grounds of appeal:

"1. That the Ld.CIT erred in deleting the addition of Rs.4.00 Crore made by the AO without considering the MoU seized during the search,

2 That the Ld. CIT(A) was not justified in deleting the addition of Rs. 4.00 crore made u/s 69A r.w.s. 115BBE of the Income Tax Act 1961 on account of unexplained money receivable from Shri Bishnu Kumar Goyal (to be read as unexplained money payable to Shri Hemant Jindal) on account of sale of Goodwill as evidenced by the hand written MoU found and seized from the premises of Sh.Kapil Romana.

3 That the Ld. CIT(A) has erred in ignoring the fact that the amount of Rs. 4.00 crore was decided between Sh. Bishnu Kumar Goyal and Sh. Hemant Jindal Group (led by Sh. Hemant Jindal) for purchase of goodwill at the time of restructuring of firm AB Chem India and a written document was prepared and signed by the parties for the same.

4 The Ld. CIT(A) has erroneously disregarded the document seized during the search and has purely relied on assessee submission.

5 The Ld. CIT(A) has erred in appreciating the fact that the denial of execution of MoU signed by the both the parties is merely because a transaction appear to have been settled outside the books of accounts and the stand that MOU was not executed would help both the parties in saving themselves from tax liabilities.

6 The Ld. CIT(A) has erred in not appreciating the fact that since it was an established & running business; no independent party would have exited partnership business without receiving premium or goodwill at the time of leaving firm.

7 The appellant craves leave to add, amend, modify, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal."

4. Briefly the facts of the case are that the assessee belongs to Homeland Group, Mohali where a search and seizure operation u/s 132 was carried out on 26/02/2020. During the course of search operation, various incriminating documents were found and seized from the various business and residential premises of the group. Thereafter notice under section 153A dt. 28/03/2021 was issued to the assessee and in compliance, the assessee submitted that original return declaring income of Rs. 3,60,550/- filed on 26/01/2018 may be treated as return in response to notice under section 153A of the Act. Thereafter notice under section 143(2) and 142(1) was issued. During the course of assessment proceedings, the AO stated that during the course of search, a handwritten signed Memorandum of Understanding (MOU) was seized from the premises of Shri Kapil Romana. It was stated that the MOU was between the respective key persons of the Goyal group and Jindal

group and was the evidence of separation of joint business ventures of the members of the two groups. It was further stated that at point no. 3 of the said MOU, AB Chem India which was a partnership between Bishnu and Hemant Group stands purchased by the Bishnu Group for Rs. 4.00 Crores. It was further stated by the AO that as the restructuring of AB Chem India as envisaged by the MOU has subsequently been undertaken, thus, it established that for the purchase of the same, a goodwill of Rs. 4.00 Crores was paid by the assessee i.e; Shri Bishnu Goyal to Hemant Group led by Shri Hemant Jindal which is apart from the repayment of capital to the Hemant Group. Accordingly, a show cause was issued to the assessee as to why the amount of Rs. 4.00 Crores paid by the assessee should not be considered as his unexplained money under Section 69A of the Act and brought to tax in terms of Section 115BBE of the Act.

5. In response to the show cause, the assessee submitted that no transaction of Rs. 4.00 Crores has actually took place and as per mutual understanding between the Bishnu Group and Hemant Group, a fresh partnership cum retirement deed was executed which was registered with the Competent authority in the State of Jammu & Kashmir. It was further submitted that an amount of Rs. 23.73 Crores being the partner capital of Hemant Group family was paid back to them and copy of the ledger account evidencing the said transaction were submitted as part of the written submission.

6. The submissions so filed by the assessee were considered by the AO. As per AO, on 20/01/2017, M/s AB Chem India was reorganised and same was thereafter under full control of Bishnu Group and as per the retirement cum partnership deed dt. 20/01/2017, two persons of Jindal Group namely Shri Umang Jindal & Smt. Renu Jindal have retired and share of profit has been divided among the persons of Bishnu Goyal Group. However, the assessee in his reply submitted that the total partners capital of Hemant Jindal Group family was paid back to them amounting to Rs. 23.73 Crores. It was stated by the AO that as the restructuring of AB Chem India as envisaged in the MOU

has actually been undertaken, it is established that for the purchase of the same, the goodwill of Rs. 4.00 Crores was paid by the assessee i.e; Shri Bishnu Goyal to Hemant Group led by Shri Hemant Jindal over and above Rs. 23.73 Crores as this amount was the capital share of the Hemant Jindal Family Group which was withdrawn after execution of the retirement cum partnership deed. It was stated by the AO that the said MOU was signed with intent to separate the common holding of the two groups and to settle the disputes that had arisen between the two groups and the above stated transaction of Rs. 4.00 Crores as outlined in the MOU was executed and completed. Further, the AO held that the assessee failed to prove the channel through which the said amount was transferred, no transaction entry / bank account details have been provided by the assessee to ascertain his claim hence it was concluded by the AO that the amount of Rs. 4.00 Crores is to be treated as unexplained money under section 69A r.w.s 115BEE of the Act and the same was accordingly brought to tax and added to the income in the hands of the assessee.

7. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) and various legal as well as ground on merits of the case were taken challenging the findings of the AO. And in support thereof written submission were filed during the course of appellate proceedings. Further, the Ld. CIT(A) during the appellate proceedings called for the additional information/documentation as well as explanation of the assessee. Thereafter in Para 5 of the impugned order, he has recorded his detailed findings as to why the addition so made by the AO cannot be sustained and the same were accordingly deleted.

8. Against the said findings and the directions of the Ld. CIT(A), the Revenue is in appeal before us.

9. During the course of hearing, the Ld. CIT/DR submitted that it is a matter of record that a written MOU has been found and seized during the course of search from the premises of Shri Kapil Romana. It was submitted

that during the course of assessment proceedings, the assessee has been duly confronted with the copy of the MOU and his explanation was sought and thereafter the AO has proceeded and has made the addition under section 69A r.w.s 115BBE of the Act. It was submitted that from perusal of the MOU, it is apparent that the amount of Rs. 4.00 Crores was decided between the assessee, Shri Bishnu Kumar Goyal and Shri Hemant Jindal Group led by Shri Hemant Jindal for purchase of Goodwill at the time of restructuring of the firm AB Chemical India . It was submitted that the fact that the restructuring has since happened and executed in terms of fresh partnership cum retirement deed, it is clear that being an established and running business, no party would have exited the business without receiving premium or goodwill at the time of leaving the firm. It was accordingly submitted that an amount of Rs. 4.00 Crores as mentioned in the MOU was therefore actually paid by the assessee to Hemant Jindal Group and it is over and above the repayment of capital. It was submitted that the denial of execution of MOU is merely because of the fact that the transactions appeared to have been settled outside the books of account and therefore, entries in the books of account reflects only repayment of actual capital and not the amount of goodwill which has been paid at the time of leaving the firm. It was accordingly submitted that the order so passed by the Ld. CIT(A) be set aside and that of the AO be sustained.

10. In his submissions, the Id AR supported the order and findings of the Id CIT(A) and submissions made before the lower authorities were reiterated. It was submitted that the alleged Memorandum of Understanding was found from the premises of Sh. Kapil Romana. It is also an admitted fact that the said MOU was a merely a draft Memorandum and in no way can be considered as actual document or any incriminating document on the basis of which any addition can be made by the Assessing Officer. There is nothing contained in the MOU which can prove or conclude that any transaction has been undertaken by the assessee or his group cases outside the books of accounts. In actual, the said MOU contains various terms and conditions for

separation of Joint Business Ventures between the members of Mr. Hemant Jindal Group (H.J. Group) and Mr. Bishnu Goyal Group (B.J. Group). But it is nowhere stated that any transaction has been done in cash outside the books of accounts. So, in any case, the said MOU cannot be said to be any incriminating document in the hands of the Assessee. Further, it has been held by various Hon'ble Courts that no addition can be made in 153A proceedings, when no case is pending, unless any incriminating material has been found in the case of the Assessee. In the present case, ITR u/s 139 was filed by the assessee on 26.01.2018 and time limit for completion of assessment u/s 143(3) has already expired on 31/12/2019, therefore the present assessment is treated as a completed assessment on the date of search i.e. on dated 26/02/2020. Hence present assessment u/s 153A is required to be made on the basis of incriminating seized material as held by the Hon'ble Delhi High Court in the case of Kabul Chawla 380 ITR 573 and it was accordingly submitted that the entire basis for making the addition in the case of the Assessee is wrong as there was no incriminating material found from the premises of the Assessee or from even a third party which could really be held as an incriminating document against the assessee which can lead to any addition in the proceedings u/sec 153A of the Act undertaken on the assessee.

11. It was further submitted that on the basis of MOU, the Assessing Officer held that the AB Chem India (which is a Partnership Firm having partners Sh. Bishnu Kumar, Sh. Deepak Goyal, Smt. Renu Jindal and Sh. Umang Jindal) stands purchased by the Bishnu Group and an amount of Rs. 4 Crores has been paid by the Assessee i.e Sh. Bishnu Goyal to Sh. Hemant Jindal from an account of sale of Goodwill of the above firm apart from the regular Partners' capital balance of the family members of the Sh. Hemant Jindal which amount was Rs. 23.73 Crores.

12. It was submitted that the assessee was never shown/provided the original copy of the said Memorandum of Understanding. It is observed that a Hand written photocopy of the same MOU was seized from the premises of

Sh. Kapil Romana, as part of Annexure A-4 of seized documents from his premises. It is a well settled law that presumption U/s 292-C of the I.T. Act, in respect of seized documents can be used against the person who has been subjected to search. Such search documents cannot be used against the other person unless such documents are confronted to other person along-with an opportunity to cross examine the author of the seized documents is provided to the other person. In the case of the Assessee, the original MOU was never confronted to the Assessee and the even no opportunity to cross examination of Sh Kapil Romana was given to the Assessee. Admittedly, the aforesaid document being the so called hand written MOU was not found from the premises of the assessee, hence there is no presumption u/s 132(4A) of the I.T. Act against the assessee nor there is any primary burden on the appellant to explain this document. The department has not produced any evidence which can prove that an amount of Rs. 4 Crores has been passed on between the two parties and under such circumstances, the addition is totally based on assumptions and imaginations of the Assessing Officer. It is also a matter of fact that no question regarding the said MOU was asked either from the Assessee or Mr Hemant Jindal in the irrespective statements recorded at the time of search. The copy of the statements of the Assessee and Mr Hemant Jindal as recorded at the time of search is enclosed in the paper book at Page- 117-138 and at 23-81. The department has even not given any opportunity to cross examine Mr. Kapil Romana, from whose premises the copy of alleged drafted MOU was found. Not only this, the person, Sh. Kapil Romana from whom this photocopied document has been claimed to have been found by the department has very categorically in Q.No 65, Q.No 66 and Q.No 67 of his statement dated 26.02.2020 (Copy of the statement is enclosed in the paper book at page 82-116 relevant pages-102-103) as recorded at the time of search has stated as under:

"Q.No 65. I am confronting page no 1-110 of Annexure 4 regarding settlement deed/MOU for takeover of Mgt and transfer of shares between Hemant Jindal & others and Vishnu Kumar and others which are unsigned. Please explain how it relates to you?"

Ans. These are draft copies of settlement between Hemant Jindal Group and Vishnu Kr group for full and final settlement of their ownership and transfer of shares in respective

Companies/ Firms etc. These were in the possession of Shri Vishnu Kr who had given to me.

Q.No 66. I am confronting page no 111-122 of Annexure A-4 copies of MOU on dated 09.12.2016 handwritten and duly signed by Vishnu Goyal and Hemant Group by Mr Hemant Jindal & Vishnu Goyal and Mr. Rajinder Mittal regarding FLC & CC limits of various Companies owned by both group. Please explain these?

Ans. These documents were also given by Sh Vishnu ji to me along with pages 1 to 110 of Annexure A-4 for safe custody.

Q.No 67. The commitments made in this agreement was fulfilled or not?

Ans.As per my knowledge all commitments have not been fulfilled."

13. It was submitted that the person from whom the said copy of the MOU has been recovered says that the MOU could not be executed. No effort is made by the Department at that point in time to raise any question about the said MOU from Sh. Bishnu Kumar or Sh. Hemant Jindal as is clear from the copies of their respective statements recorded at the time of the search. Not only this, even in the post search enquiries/ investigations, no question is raised about the said document to Sh. Kapil Romana whereas Sh. Kapil Romana has suo moto submitted his reply dated 18.12.2020 before the Investigation Wing Ludhiana (Copy of the reply is enclosed in the paper book at Page-139-140) stating as under:

"iii) Regarding hand written MOU forming part of Annexure-A4, this document is not in my handwriting and neither I am a signatory to the same. However, on perusal of the same, this document appears to be a memorandum of discussion between Sh. Bishnu and SH Hemant Jindal and part of which may have been executed, but as there were various disputes, the complete settlement could not be arrived at."

14. Then again vide reply dated 22.12.2020, it was again submitted before the Investigation Wing Ludhiana (Copy of the reply is enclosed in the paper book at Page-141-142) stating as under:

"3. I have already submitted in the previous reply that there were certain disputes between Sh. Bishnu Ji and Sh. Hemant Jindal Ji in respect of which the MOU was drafted and discussions were undertaken between them. However, the complete settlement could not be arrived at."

15. In the post search proceedings, when a query was raised by the Department to Sh. Bishnu Kumar ('the assessee') about this document then he submitted vide reply dated 18.01.2021 (Copy of the reply is enclosed in the paper book at Page-143-146) as under:

"1. At the outset, I wish to clarify that Bishnu Group i.e. me, my family members and our various business entities on the one hand and Hemant Group, his family members and various business entities were carrying on our businesses together in the earlier years, however, due to various unavoidable circumstances, a lot of differences had arisen between us and the same was adversely affecting our businesses and more importantly our peace of mind. We were looking to settle our disputes and the subject MoU dated 09.12.2016 was the first attempt to come at some sort of understanding with the help of a common mediator namely Sh. Rajinder Mittal. I wish to further submit that as we had started to execute the terms agreed upon in the MoU, more differences cropped up and thus, the settlement could not be completed and further differences and disputes arose and then again various meetings were held from time to time and which is evidenced by a number of draft MoU's of subsequent dates as forming part of the seized material and in the light of this background and discussions, my response to the remaining queries is being given in the points below.

4. Regarding the documentary evidence of purchase of the share in partnership firm namely M/s AB Chem India, I wish to clarify that no transaction of Rs. 4 crores actually took place. The said firm was co-owned by Bishnu Group and Hemant Group and as per mutual understating a fresh partnership cum retirement deed was executed on 02.01.2017 which is a duly registered deed with the competent authority in the state of J&K as per copy of the same enclosed as per Annexure-III. The total partners' capital of Hemant Group family was paid back to them total amounting to about Rs. 23.73 crores and the copies of the relevant ledger account evidencing the said transactions are attached as per Annexure-IV."

16. It was accordingly submitted that right from the start till the end of search and even in post search proceedings, not a single party involved in this search ever admitted the contents of this MOU in its entirety and moreover the parties purported to be executing the transaction have never been confronted about this MOU and when the Assessee was confronted, he has duly explained that there were various versions of the MOU and final settlement could not be arrived at due to multiplicity of disputes and negotiations were going on. Not only this, the AO has himself accepted these submissions for all the transactions and has somehow concluded on an imaginary basis that in respect of Ab Chem India, the transaction of 4 crores between the assessee and Sh. Hemant Jindal has taken place. Further, even

otherwise, nowhere in the alleged MOU, is it written that an amount of Rs. 4 Crores has been paid in cash by the Assessee. It has been repeatedly submitted during the course of assessment proceedings that the alleged MOU was a draft document and the events/acts as stated in the MOU had not fully taken place. The dispute between the two groups still persisted and thereby the settlement as per MOU was not fully materialised. The transaction which had taken place was only through banking channels and not otherwise. Since, there were multiple businesses and multiple disputes between the assessee and Hemant Jindal Group, there were infact multiple meeting and multiple MOUs were drawn up but every time some or the other differences of opinion would crop up & thus the complete understanding could not be achieved between the two groups and it is common in these circumstances that outside third parties try to take advantage of such situations and create mistrust and misunderstandings and it is very easy for any person to create fake documents and thus no credibility can be given to such information without the AO having some concrete evidence in his possession.

17. It was submitted that the Assessing Officer had issued a detailed show cause notice dated 24.09.2021 wherein the AO had tried to prove that the facts as per the MOU are true and the events had occurred as per the said MOU settlement. It is submitted that the Assessee had duly given a detailed reply to each and every point as per show cause notice and the same is reiterated as follows:

Relevant Point of Show cause notice of the AO	Relevant reply as given by the Assessee during the Assessment proceedings.
<p>page-1 to 9 of the SCN it is stated that MOU contain the transfer shareholding in the following entities by the Hemant Jindal Group to BishnuGoyal Group for Goodwill of Rs. 6 crores.</p> <p>GH Crop Science Pvt Ltd AB Crops Pvt Ltd AB Chemicals India Pvt Ltd AB World Trade Pvt Ltd AB Infra Investments Pvt Ltd</p>	<p>The first issue which has been raised on page 10 of the SCN is that since the MoU mentions an amount of Rs. 6 crores to be paid to Hemant Group as goodwill, why the amount of Rs. 6 crores paid by you should not be considered as unexplained money and added to your income.</p> <p>1 Regarding alleged payment of Rs. 6 crores goodwill paid to Hemant Group, I wish to clarify that in respect of the company M/s GH Crop Science Pvt. Ltd., the total number of shares belonging to Sh. Hemant Jindal and his family i.e. 4605000 shares were purchased by myself and my daughter-in-law Smt. Samita Goyal @ Rs. 13.85 per share and a total payment of Rs. 6,37,79,250/- was made through account payee cheques on different dates in the year 2017 and the evidence is attached herewith. Besides the</p>

	<p>above, no other payment has been made to Hemant Group. If your goodself believes that there is some additional payment of 6 Crores, please provide us the evidence for making such allegation. Annexure-1 Pg-191-192.</p>																					
<p>page-10 para 2, it has been stated by the AO that the partnership Firm AB Chem India stands purchased by Bishnu group and the goodwill of Rs. 4cr was paid by Bishnu Kumar to Hemant Jindal.</p>	<p>The second issue which has been raised on page 10 of the SCN is that the goodwill of Rs. 4 crores was paid for the purchase of M/s A B Chem India and why the amount of Rs. 4 crores should not be considered as my unexplained money.</p> <p>1 Regarding the documentary evidence of purchase of the share in partnership firm namely M/S AB Chem India, wish to clarify that no transaction of Rs. 4 crores actually took place. The said firm was co-owned by Bishnu Group and Hemant Group and as per mutual understanding a fresh partnership cum retirement deed was executed on 02.01.2017 which is a duly registered deed with the competent authority in the State of J&K as per copy of the same enclosed. The total partners' capital of Hemant Group family was paid back to them total amounting to about Rs. 23.73 crores and the copies of the relevant ledger accounts evidencing the said transactions are attached herewith.</p> <p>Annexure-2 Pg-193-198.</p>																					
<p>Page-10 Para 3, it has been that total amount of Rs. 37.51cr was receivable by Bishnu Kumar.</p>	<p>Regarding the third issue which has been raised on page 10 of the SCN is that the amount of Rs. 37.51 crore was outstanding from Hemant Group to Bishnu Group and I have been asked to explain that why Rs. 37.51 crore be not treated as my unaccounted money invested in Hemant Group.</p> <p>1 Regarding documentary evidence of recoverable amount of Rs. 37.51 crores from Hemant Group, I wish to clarify that a total amount of Rs. 37.98 crores was outstanding to our various group companies from Hemant Group and his companies and the copies of the ledger accounts of the concerned period i.e. FY 2016-17 are enclosed herewith. Subsequently, part of the amount has been received by our companies; however, major portion is still outstanding as per our books of accounts. ANNEXURE-3 Pg-199-204.</p> <p>2 The details of the amounts outstanding at the time of execution of MoU are as under:</p> <table border="1" data-bbox="721 1251 1383 1766"> <thead> <tr> <th data-bbox="721 1251 837 1346">Sl. No.</th> <th data-bbox="837 1251 1013 1346">Name of the concern of my group</th> <th data-bbox="1013 1251 1227 1346">Name of the concern of Hemant Jindal group</th> <th data-bbox="1227 1251 1383 1346">Amount</th> </tr> </thead> <tbody> <tr> <td data-bbox="721 1346 837 1430"></td> <td data-bbox="837 1346 1013 1430">Chem India</td> <td data-bbox="1013 1346 1227 1430">Diamond Traexim Pvt. Ltd.</td> <td data-bbox="1227 1346 1383 1430">7 crores</td> </tr> <tr> <td data-bbox="721 1430 837 1514"></td> <td data-bbox="837 1430 1013 1514" rowspan="4">Industries</td> <td data-bbox="1013 1430 1227 1514">Diamond Traexim Pvt. Ltd.</td> <td data-bbox="1227 1430 1383 1514">9 crores</td> </tr> <tr> <td data-bbox="721 1514 837 1598"></td> <td data-bbox="1013 1514 1227 1598">Jindal Oil & Fats Ltd.</td> <td data-bbox="1227 1514 1383 1598">crores</td> </tr> <tr> <td data-bbox="721 1598 837 1682"></td> <td data-bbox="1013 1598 1227 1682">Continental Trade Ltd.</td> <td data-bbox="1227 1598 1383 1682">1 crores</td> </tr> <tr> <td data-bbox="721 1682 837 1766"></td> <td data-bbox="1013 1682 1227 1766">Global Trade Pvt. Ltd.</td> <td data-bbox="1227 1682 1383 1766">1 crores</td> </tr> </tbody> </table>	Sl. No.	Name of the concern of my group	Name of the concern of Hemant Jindal group	Amount		Chem India	Diamond Traexim Pvt. Ltd.	7 crores		Industries	Diamond Traexim Pvt. Ltd.	9 crores		Jindal Oil & Fats Ltd.	crores		Continental Trade Ltd.	1 crores		Global Trade Pvt. Ltd.	1 crores
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18. It was submitted that from the facts as stated above, it is clear that the Assessing Officer has arbitrarily taken value of one transaction as stated in the drafted MOU and has assumed that the said transaction must have already been taken place outside the books of accounts. The Assessing Officer has not taken any adverse inference on the other transactions as stated in the drafted MOU. The Assessing Officer has assumed that the AB Chem India (which is a Partnership Firm having partners Sh. Bishnu Kumar, Sh. Deepak Goyal, Smt. Renu Jindal and Sh. Umang Jindal) stands purchased by the Bishnu Group and an amount of Rs. 4cr has been paid by the Assessee i.e Sh. Bishnu Kumar to Sh. Hemant Jindal on account of sale of Goodwill. It was submitted that the Assessing Officer has got completely confused while trying to decipher a document which actually is nothing but only a MOU containing various discussions while the dispute was ongoing between the parties. There are references/ discussions of many other transactions/events/ understandings to be arrived at between the parties and which kept changing from time to time and under such circumstances, the AO has simply adopted his own presumptuous theory somehow come to an erratic conclusion that Sh. Hemant Jindal has received the Rs. 4 crores odd amount from Sh. Bishnu Goyal for an entity where Hemant Jindal has no locus standi in individual capacity and thus the conclusion drawn by the AO and the addition so made is completely devoid of any logic and merits.

19. It was further submitted that entire capital lying credited in the capital account of partners belonging to the family of Sh. Hemant Jindal Group i.e. Smt. Renu Jindal and Sh. Umang Jindal in the firm M/s. AB Chem India, has been received back by the above partners through banking channels in due course of time (the relevant details are enclosed in the PB at Page-160-164 in the form of Audited Balance Sheet as on 31.03.2017 wherein there is Partner's Capital account balance as on the date of retirement along with the copies of accounts wherein the balance as on the date of the retirement has been paid off to the Partners). It is a fact on record that the capital account of any partners has not been credited on account of valuation of goodwill of the

said firm. As per the accounting practice, if goodwill is valued in a Partnership Firm, then capital account of all the partners are credited in proportion to their P & L ratio and simultaneously, goodwill account is debited in the Balance Sheet. So, in nutshell there is nothing in the form of goodwill which has been passed on between the two groups. Infact it was practically very difficult for the Hemant Jindal family to liquidate their entire capital from the firm, as in a running business, it is usually difficult to take out so much liquidity in a short time and still be able to run the firm in a profitable manner. Sh Hemant Jindal was only instrumental in persuading the other partners in the said firm to pay back the rightful capital of his family members locked in the business of AB Chem India and under such circumstances, there is no question of charging any goodwill when the assessee was facing difficulty in recovering his family capital and more so because of the prevailing multiplicity of disputes and negotiations between the two parties. Thus, the concept of human probability heavily relied upon by the Assessing Officer rather works in favour of the appellant and his family.

20. It was further submitted that the execution of Partnership Deed/ Retirement deed in the state of Jammu & Kashmir is done like a Property Registration Deed i.e. the deed happens through registration before the office of the Sub-Registrar of the relevant jurisdiction which in the present case was Samba. The Assessing Officer in his order in para 5.9 has referred to the restructuring of the Firm AB Chem India vide deed dated 20.01.2017 and has tried to co-relate the payment of goodwill of Rs. 4cr as stated in the drafted MOU. But again, it is stated that whatever amount has been paid by one to the other has been done only vide banking channels and there is no evidence with the Assessing Officer which can prove that the amount of Rs. 4 cr has been paid outside the books of accounts. Further, it has been held by various Hon'ble Courts that an incomplete document/photocopied document cannot be relied upon for making an addition unless there is any evidence to contradict a registered document which defines the consideration being exchanged between the parties or the terms of the

settlement. The judgment of the Hon'ble Supreme Court in the case of KP Varghese vs ITO 131 ITR 597 (SC) is being relied upon and further reliance is being placed on the judgments in the case of Smt. Darshan Kaur Vs The Amritsar Primary Cooperative Agricultural Development Bank Ltd. (2010) (2) PLR 289 in which it was held that "Photo copy of mortgage deed brought on record is no proof of execution of document. Photo copy of document is neither a primary nor secondary evidence.", Bhagwan Sri Balasaibaba Central Trust vs ACIT in ITA No. 22/Hyd/2011 vide order dated 04.07.2012 and CIT vs Ved Parkash Choudhary 305 ITR 245 (Del HC).

21. Referring to the provisions of section 69A of the Act, it was submitted that in the case of the Assessee, the department has not found any money, bullion, jewellery or other valuable article. The Assessing Officer has made the addition only on the basis of a draft MOU which has not even found from the premises of the Assessee. The Assessee during the course of assessment proceedings has even explained in detail and proved that the acts/events as stated in the said MOU are hypothetical and cannot be relied upon. Reliance in this regard is being placed on the following Judgments wherein on similar facts and circumstances, additions as made by the AO have been deleted by the Hon'ble Courts in case of Pradeep Amrut lal Runwal vs Tax Recovery Officer 47 taxmaan.com 293 (Pune Trib), CIT vs Santlal 118 taxmann.com 432 (Del HC) and CIT vs Vivek Aggarwal 56 taxmann.com 7 (Del HC). It was accordingly submitted that there was no basis for the addition as made by the Assessing Officer on the basis of draft MOU and the same has been rightly deleted by the Id CIT(A) after appreciating the facts and circumstances of the case.

22. We have heard the rival contentions and perused the material available on record. Through the various grounds of appeal, the Revenue's effective grievance against the order and findings of the Id CIT(A) is that he had deleted the addition of Rs 4 crores without considering and appreciating the contents of the MOU seized during the course of search. In this regard, we have gone through the order of the Id CIT(A) and find that he has duly

considered the MOU seized during the course of search as well as fresh partnership cum retirement deed and has passed a well reasoned and speaking order dealing with each and every aspect of the transaction and thereafter, has recorded his findings and it would be relevant to refer to his findings.

23. As per the Ld. CIT(A), the issue involved in the case arises from a photocopy of handwritten MOU which has been seized from the premises of Shri Kapil Romana, who was one of the parties, searched in the Homeland Group of cases. It was stated that the MOU purportedly states the terms and condition of the division of business between the Hemant Jindal Group and Bishnu Goyal Group and the entities connected with the said two groups of persons. The said MOU discusses about the planned ownership changes in a number of companies and firms. At para 3 of the said MOU, it is stated that the ownership of AB Chem India is being transferred from Hemant Group to Bishnu Group. The Ld. CIT(A) further stated that the MOU so seized was confronted to Shri Kapil Romana and in his statement recorded at the time of search, he has stated that these are draft copies of settlement between the two groups, that Shri Bishnu Kumar had given these documents to him and that the commitments made in the said MOU have not been fulfilled. The Ld. CIT(A) has further stated that during the course of search proceedings, the said MOU was not confronted either to the assessee or to the other parties namely Shri Hemant Jindal. The Ld. CIT(A) thereafter referred to the post search inquiry and investigation wherein Shri Kapil Romana again stated that there were various disputes between the two parties and he was not a signatory to the said document. He further confirmed that the complete settlement between the parties could not be arrived at.

24. The Ld. CIT(A) further referred to the reply submitted by the assessee dt. 18/01/2021 wherein the assessee has stated that various discussions were taking place between the two groups and there were various disputes and multiple MOU and he has categorically denied having paid any amount of Rs. 4.00 Crores to Hemant Jindal Group. The Ld. CIT(A) further referred to the

fact that Shri Hemant Jindal was never confronted or questioned on this MOU.

25. The Ld. CIT(A) thereafter given detailed findings regarding the MOU so found and the contents thereof, the other MOUs seized during the course of search, the show cause issued by the AO and the reply submitted by the assessee and also the fact that all the replies submitted by the assessee have been accepted by the AO except for the subject issue without giving any supporting reasons and also the fact that no addition on the basis of the impugned MOU has been made in the case of any of the entities mentioned in the said MOU and thereafter given his findings and we deem it appropriate to reproduce the same as under:

"Details of specific transactions

a) In the present case, the specific transaction under question related to change in ownership of AB Chem India. The Ld. AR has brought on record the registered Retirement cum partnership deed dated 02.01.2017 which is a duly registered document in the State of Jammu & Kashmir in terms of which the outgoing partners namely Sh. Umang Jindal & Smt. Renu Jindal had to be paid their respective capital balances as on date of their retirement and the remaining partners to continue the business in the said firm. The said document is placed at page 151 to 163 of paper book filed during the appellate proceedings.

b) It is noted from the reply of the AR that the above outgoing partners have been paid a total sum of Rs. 23.73 Crores by the firm and this is duly supported by the audited balance sheet placed by the appellant in the Paperbook.

c) From above facts and circumstances, it is seen that the actual transaction had taken place between the partners of the firm and the same is recorded in the registered deed clearly mentioning that an amount of Rs. 23.73 crores was paid.

d) Thus, the onus was on the AO to prove if there is any amount of Rs. 4 Crores over and above the said amount that has been paid by the assessee Sh. Bishnu Kumar to Sh. Hemant Jindal. The conclusion drawn by the AO that amount of Rs. 4 Crores is goodwill price paid by Sh. Bishnu Kumar to Sh. Hemant Jindal over and above the amount of Rs. 23.73 Crores is based on suspicion. In fact the actual transaction between the partners of the firm to the extent of Rs. 23.73 crores has been duly recorded in the books of accounts.

e) Also, the appellant has placed all the evidences to support his submission with regard to the actual transaction pertaining to M/s. AB Chem India.

There is no evidence of any money being paid by Sh. Bishnu Kumar to Sh. Hemant Jindal outside of any books of account and neither there is mention of any cash in the draft MOU. The AO has not considered to either call the assessee or the other person namely Sh. Rajinder Mittal who has been appointed as a Mediator in the MOU and thus the reasoning stated by the AO to make the addition is at best a presumption of a transaction. The AO has accepted the reply of the assessee on all other issues barring the transactions happening in AB Chem India. The AO has not been able to establish as to how the addition was

liable to be made in the case of the appellant, once the appellant has clearly established that there were multiple MOUs under discussion and the MOU was a draft document and there are various discrepancies in the MOU versus the actual transactions and each of the transactions stated in the MOU have been explained with factual and documentary evidences and once this has been done, there was onus on the AO to prove it otherwise. The various judgments relied upon by the appellant in his written submissions duly support his case.

Actual transactions vs. transactions mentioned in the impugned MOU

During the course of appellate proceedings, the AR was directed to provide details of the transactions as mentioned in the impugned MOU viz. a viz. actual transactions recorded in the books of accounts. The said information is tabulated below for ready reference:

S.No.	Particulars as per MOU dated 09.12.2016	Actual Transaction which took place supported by the books of accounts	Remarks
1	<ul style="list-style-type: none"> Reference of five Companies namely G H Crop Science Pvt. Ltd, AB Crops Pvt. Ltd, AB Chemicals India Pvt. Ltd, AB World Trade Pvt. Ltd and AB Infra Investments Pvt. Ltd., which has been stated to be the Companies belonging to Hemant Group. it has been stated that all the Directors of Hemant group and their shareholding will be transferred in the name of Bishnu Group. Further it has also been stated that an amount of Rs. 6 cr as goodwill will be paid to Hemant Group on this account. 	<ul style="list-style-type: none"> Actual transaction took place in the Company namely G H Crop Science I Pvt. Ltd. Hemant group transferred their respective shareholdings in GH Crop Science Pvt Ltd to Bishnu Group for a consideration of Rs. 6,37,79,250/-. The said transaction of sale of shares by the members of Hemant Group is duly declared in AY 2019-20 under the head Capital Gains by the respective sellers of shares of Hemant Jindal family. (Details are enclosed in the PB-I at page-202). 	<ul style="list-style-type: none"> The AO has accepted the version of the assessee with regard to the same and has not assumed that any transaction of goodwill has been undertaken outside the books of accounts. The AO has accepted the transfer of shareholding that took place only in the Company namely GH Crop Science Pvt. Ltd.
2	Reference of AB Cotspin India Limited wherein it has been stated that Shares of Bishnu Group stands purchased by Hemant Group at a price of 4cr.	The facts are that the entire shareholding has not been transferred to the members of Hemant Jindal Group. So, to this extent, alleged MOU has been partially executed. Only, 2,50,000 shares @ Rs. 60/- per share i.e. for Rs. 1.5 crores has been transferred on 27.01.2017 in favour of Sanya Jindal, for which consideration of Rs. 90 lacs and 60 lacs was respectively paid to Mr. Deepak Goyal and Rahul Goyal (both sons of Sh. Bishnu Goyal)	<p>The AO has accepted the version of the assessee with regard to amount of Rs. 4 cr and has not assumed that any amount has been passed on outside the books of accounts.</p> <p>The AO has duly accepted the transactions which took place regarding the change in shareholding.</p>
3	AB Chem india (which is a Partnership Firm having partners	Actual transaction of 23.73 cr has taken place. The	The AO has made the addition by assuming that 4 cr has been paid by Bishnu

	Sh. Bishnu Kumar, Sh. Deepak Goyal, Smt. Renu Jindal and Sh. Umang Jindal) stands purchased by the Bishnu Group and an amount of Rs. 4 cr mentioned as Goodwill.	transaction is duly backed by registered Partnership deed and banking transactions.	Kumar to Hemant Jindal. The AO has not raised any doubt with regard to the actual transaction of 23.73cr that took place.
4	Amount of Rs. 37,51 cr is receivable from Hemant Group. That entry will be credited to Hemant Group in lieu of his shares in this company.	It was duly stated during the Investigation proceedings of Sh. Bishnu Kumar that, amount of Rs. 37.98 was recoverable in total from Hemant Group and in the due course of time some amount was duly recovered but the major portion was still outstanding. (Relevant reply already enclosed in the PB at page-147-150 -Hemant Jindal)	The AO has accepted the version of the assessee with regard to the same.
5	Approximately 5.5cr will be mortgaged from Ganganagar in order to replace the guarantee of Sh. Navdeep Garg and others	The properties of Sh. Navdeep Garg were mortgaged with Bank of Baroda against the credit facility of M/s AB Chem India which was released on 27.12.2016 and the personal guarantee was also waived against properties of Rs. 5.69cr of the Group.	The AO has accepted the version of the assessee with regard to the same.

From the above discussion, it is clear that majority of the issues mentioned in the MOU have been accepted by the AO and no addition has been made on other transactions mentioned in the said MOU. Adverse inference has been drawn only with respect to transaction mentioned at Serial No. 3 of the above table. It is pertinent to point out that the actual transaction in the said matter has been recorded in the books of accounts to the extent of Rs. 23.73 crores and the said transaction is duly supported by the registered partnership deed and banking transactions. Whereas, the addition made by the AO is based only on the figures mentioned in the draft MOU.

Partner vs. Firm

Finally, it is relevant to point out here that the actual transactions as per the registered deed took place between the partners of the firm AB Chem India. Sh. Hemant Jindal to whom the alleged payment is said to have been made is not even a partner in the said concern! Hence, the contention of the AO that the transaction took place between Sh. Hemant Jindal and Bishnu Kumar is not based on any paper evidence as the actual transaction has been duly recorded in the books of accounts to be happening between the actual partners of the said concern.

Analysis

From above discussion, it appears as under:

- a) That the MOU was a draft.*
- b) The said draft MOU was not found in the possession of the Assessee or even from the other party.*
- c) No statement of Mr. Rajinder Mittal/Mediator has been ever recorded.*
- d) There is no reference to any original document in the assessment order that bears the signature of the Assessee or the other party. The said fact has been highlighted by the AR during the assessment proceedings before the AO.*

- e) *The person found to be in the possession of the said photocopied document has himself stated that this was a draft MOU.*
- f) *A number of other draft MOUs were also seized during the course of search which shows that the discussions were ongoing and finality had not been reached.*
- g) *The actual transactions happening between the two groups have been duly recorded in the books of accounts and the Assessing Officer has accepted the version of the assessee in all transactions barring one transaction which is part of the present appeal.*
- h) *There are multiple anomalies in the facts stated in the MOU versus the actual transactions that have taken place.*
- i) *The addition made on the basis of the draft photocopy of MOU is more on the basis of suspicion.*
- j) *The said draft MOU is an unregistered document."*

26. The Ld. CIT(A) further stated that the addition has been made in the hands of the assessee under section 69A of the Act though the transaction had happened between the partners of the firm. It has been further stated by the Ld. CIT(A) that the said addition has been made on the suspicion that the amount mentioned in the impugned MOU was actually transacted despite the fact that the real transaction regarding the change in ownership in AB Chem India is recorded in a registered partnership deed and there is no corroborative evidence in support of the said action on the part of the AO and has relied upon the decision of the Hon'ble Supreme Court in case of PCIT vs Nishant Constructions reported in 101 taxmann.com 180, Hon'ble Punjab and Haryana High Court in case of CIT vs Ravi kumar reported in 168 taxman 150 and various other authorities on the subject. It has been further stated by Ld CIT(A) that given the fact that the documents has not been seized from the premises of the assessee but from the premises of a third person, in such circumstances, the strength of the evidence required to make such an addition becomes all the more important. The Ld. CIT(A) has further referred to the decision of Hon'ble Punjab & Haryana High Court in case of C.S. Atwal Vs. CIT, Ludhiana reported at [2015] 59 taxmann.com 359 wherein the High Court has upheld the view that the registered document shall carry the legal backing rather than an unregistered photocopy of the document.

27. We therefore find that the Id CIT(A) has duly considered the MOU seized during the course of search and thereafter, has recorded his findings that the addition has been made by the AO on presumptions and suspicion, that the onus was on AO to prove that amount of Rs 4 crores has been paid by Shri Bishnu Kumar Goyal to Shri Hemant Jindal which has not been discharged as there is no evidence that was brought on record that any money was actually paid by Shri Bishnu Kumar Goyal to Shri Hemant Jindal outside the books of accounts, that the MOU being only a draft photocopy and there is no reference to any original document which bears the signature of the assessee and the other party, that there are number of other draft MOUs and multiple anomalies versus the actual transactions, that the actual transactions having been undertaken between partners of the firms and duly recorded in the books of account, that Sh. Hemant Jindal to whom the alleged payment is said to have been made is not even a partner in the said firm, that the quantum of transaction mentioned in the registered documents (Rs. 23.73 Crore) being much more than the amount mentioned in the draft MOU i.e; Rs. 4.00 Crores, that the addition being made on the basis of an unregistered document against the registered document brought on record, that the actual transaction duly recorded in the books of accounts and supported by the registered partnership deed dated 20/01/2017 and banking transactions well before the date of search which was carried out on 26/02/2020, the addition so made by the AO invoking provisions of section 69A was held not sustainable and same was rightly deleted. Nothing has been brought on record and highlighted during the course of hearing to rebut the findings so recorded by the Id CIT(A). We accordingly uphold the order and findings of the Id CIT(A) and the grounds of appeal so taken by the Revenue are dismissed.

28. In ITA No. 487/Chd/2023, both the parties fairly submitted that the facts and circumstances of the case are exactly identical as in ITA No. 488/Chd/2023 except the fact that it is case of Hemant Jindal who is alleged to have received the amount of Rs 4 crores from Bishnu Kumar Goyal. In light

of our discussions and findings in ITA 488/Chd/2023, we upheld the order and findings of the Id CIT(A) and grounds of appeal taken by the Revenue are dismissed.

29. In the result, both the appeals filed by the Revenue are dismissed.

Order pronounced in the open Court on 13/09/2024

Sd/-

आकाश दीप जैन
(AAKASH DEEP JAIN)
उपाध्यक्ष / VICE PRESIDENT

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar