

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL,  
INDORE BENCH, INDORE  
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND SHRI MANISH BORAD, ACCOUNTANT MEMBER**

ITA No.925/Ind/2016  
Assessment Year: 2011-12

Shri Laxmi Narayan Soni Khandwa (Appellant)	Vs.	Income Tax Officer Khandwa (Respondent )
PAN No.ATQPS 2130Q		

Appellant by	Shri S.N. Agrawal & Shri Pankaj Mogra
Respondent by	Shri B.K. Boricha
Date of Hearing	08.02.2018
Date of Pronouncement	15.02.2018

**O R D E R**

**PER MANISH BORAD, AM**

This appeal filed by the assessee pertaining to Assessment Year 2011-12 is directed against the order of Id. Commissioner of Income-tax (Appeals)-22 (holding concurrent jurisdiction of CIT(A), Indore-2) dated 17.6.2016 which is arising out of the order u/s 143(3)/147 of the Income Tax Act dated 10.12.2013 framed by the ITO, Khandwa.

2. The assessee has raised the following grounds of appeal :-

*“(i) That on the facts and in the circumstances of the case, the ld. CIT(A) erred in assessing the total income of the appellant of Rs. 11,43,440/- on the basis of revised computation even when no revised return was filed and the appellant has disputed then same during the course of assessment itself and also in the first appeal without properly appreciating the facts of the case and submission made before him.*

*(ii) That on the facts and in the circumstances of case, the ld. CIT(A) erred in restricting the agricultural income of Rs.1,10,000/- in place of agricultural income originally declared of Rs.6,48,241/- on the basis of revised computation of income even when no revised return was filed by the appellant.*

*(iii) That on the facts and in the circumstances of the case, the ld. CIT(A) erred in not deciding the ground of appeal challenging the charging of interest u/s 234A of Rs. 23,032/- and Rs.97,886/- u/s 234B of the Act.”*

3. Briefly stated, the facts, as culled out from record, are that the assessee is an Individual deriving income from agricultural operations and also earned interest on loans provided on short term basis. The survey was conducted at the business premises on 7.1.2011 u/s 133A of the Act. During the course of survey, the assessee surrendered Rs. 10 lacs under various heads to be offered to tax for the A.Y. 2011-12 and the brother of the assessee Mr. Manoj Soni surrendered Rs. 10,18,000/-. The surrender made by the assessee consisted of cash of Rs.5,85,000/- and advance of Girvi at rs.4,15,000/-. Subsequently, the assessee filed return of income on 31.3.2012 disclosing income at Rs. 3,93,440/- and agricultural income at Rs. 6,48,247/-. Thereafter, notices u/s 143(2) and 143(2) of the act were duly served upon the assessee. During the course of assessment proceedings the assessee filed revised computation of income declaring income at Rs.11,43,440/- in place of Rs. 3,93,400/- shown in the return of income and similarly agricultural income was also revised in the revised computation at Rs. 1,10,000/- which was originally declared at Rs.6,48,241/-. However, the assessee did not file any revised return of income. The learned AO during the course of assessment

proceedings further came across various details of sale of agriculture produce, cash income received from sale of buffalos, cash deposits in various bank accounts totaling to Rs. 7 lacs. He accordingly completed the assessment in the light of the revised computation of income filed by the assessee as well as other information gathered and assessed the income at Rs.18,43,440/- and agricultural income at Rs. 1,10,000/-. While assessing the income, the learned Assessing Officer took the basis of the revised income shown in the computation at Rs. 11,43,440/- and further added unaccounted income of Rs. 7 lacs towards unexplained cash deposited in the bank.

4. Aggrieved, the assessee preferred appeal before the Id. CIT(A) and partly succeeded wherein the CIT(A) deleted Rs. 7 lacs by applying the findings made in the case of brother of the assessee, Shri Manoj Soni and also the fact that the cash of Rs. 5.85 lacs and advance on Girvi at Rs. 4.15 lac was treated as explained. The learned CIT(A), however, made no specific finding on the grounds relating to assessing the agricultural income as well as the ground challenging the action of the Assessing Officer adopting the

returned income at Rs.11,43,440/- even when no revised return of income was filed.

5. Aggrieved, the assessee has come up in appeal before the Tribunal.

6. Before us, the learned counsel for the assessee commonly submitted for ground nos. 1 and 2 that the assessee's main source of income is from agriculture and income is earned through cheque as well as cash so much that during the year under appeal the gross receipts from sale of agricultural produce was Rs.28.78 lacs which, inter alia, included receipt of Rs.8.11 lacs from the sale of Soyabean, Arbi, Bhusi, etc. He contended that the assessee did not file any revised return of income and the revised computation of income was filed in the wrong belief as the assessee was not well verse with the taxation laws.

7. The learned counsel for the assessee further contended by referring to paper book pages 94 to 97 wherein a chart has been prepared for the availability of cash jointly in the hands of the assessee and his brother as per which, on the date of survey, there was cash balance of Rs.20,03,400/- and this statement did not

include any agricultural income earned in cash. The details mentioned in this chart are only for the withdrawals made from bank accounts. The cash balance of Rs. 20,03,400/- on the date of survey i.e. 7.1.2011 itself takes care of the surrendered income of Rs. 20,18,000/-. He, therefore, submitted that no addition should have been sustained by the learned CIT(A).

8. On the other hand, the learned DR submitted supporting the order of the CIT(A) and further added that the assessee has himself given the revised computation of income and paid due taxes thereon and the plea taken by the assessee before the CIT(A) as well as before the Tribunal is just an after-thought.

8. We have heard the rival contentions and perused the record placed before us. The assessee's grievance in ground nos. 1 and 2 relates to the order of the CIT(a) confirming the action of the Assessing Officer assessing the income at Rs. 11,43,440/- as against the income declared by the assessee at Rs.3,93,440/- thereby making addition of Rs.7,50,000/- and further assessing the income from agriculture at Rs.1,10,000/- against the originally declared agricultural income of Rs. 6,48,241/-. From perusal of the

submissions of the learned counsel for the assessee during the course of hearing, findings of the CIT(A) as well as the paper book running from page 1 to 97 the following facts emerge out :-

- (i) *The assessee owns agricultural land admeasuring 36 acres at Gram Kundia and is regularly earning agricultural income.*
- (ii) *During the year total revenue from sale of agricultural produce disclosed by the assessee during the assessment proceedings is Rs.28.78 lacs.*
- (iii) *The assessee is also engaged in the business of earning interest on short term loans and advances*
- (iv) *As per the statement filed from page 94 to 96 which depicts availability of cash withdrawn by the assessee and his brother from 16.4.2009 till the date of survey and also deposits of cash in bank, leaves the net figure of Rs.20,03,400/- which, as pleaded by the learned counsel for the assessee, was cash in hand with the assessee and his brother and, therefore, the alleged surrender is duly explained.*

9. On the other hand, the learned CIT(A) while adjudicating the grounds raised by the assessee mixed the facts and figures of the assessee and his brother. No specific finding on the issue of agricultural income has been given. There is no discussion about the availability of cash jointly in the hands of the assessee, the source of which is from withdrawal and bank account and the cash income earned from agriculture is over and above the cash balance. Looking this factual matrix, a question was posed to both the parties as to why not to send the issues raised in this appeal to the file of the CIT(A) for *de novo* adjudication to which no party objected.

10. We, therefore, in the given facts and circumstances of the case and looking to the factual matrix and the facts mentioned by the learned counsel for the assessee in the course of hearing with reference to paper book, are of the considered opinion that the issue raised in this appeal needs to be readjudicated by the learned CIT(A) and if necessary remand report can be called for from the Assessing Officer. We also direct the assessee to appear before the CIT(A) with all the documentary evidence including details

submitted in the paper book without taking unnecessary adjournment unless otherwise required. Needless to mention that the assessee will be provided adequate opportunity of being heard.

11. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in open Court on 15<sup>th</sup> February, 2018.

Sd/-

sd/-

(KUL BHARAT)  
JUDICIAL MEMBER  
February 15<sup>th</sup> , 2018

(MANISH BORAD)  
ACCOUNTANT MEMBER

Copy to : Appellant/Respondent/CIT/CIT(A)/DR

Dn/-

By order

**Private Secretary/DDO, Indore**

1. Date of dictation : 8.2.2018
2. Date on which the typed draft is placed before the Dictating Member : 9.2.2018
3. Date on which approved draft comes to the Sr.P.S./P.S: 10.1.2018
4. Date on which the fair order is placed before the dictating Member for pronouncement:
5. Date on which the fair order comes back to the Sr.P.S./P.S.:
6. Date on which the file goes to the Bench Clerk:
7. Date on which the file goes to the Head Clerk:
8. The date on which the file goes to the Assisstant Registrar for signature of the order.
9. Date of Despatch of the Order:

