

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND**

**SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA Nos.312/Ind/2015  
Assessment Year: 2010-11**

Shri Sunil Sojatia, 34, Prabhat Plaza, Yasoda Mata Mandir Road, Rajwada, Indore (Appellant)	<u>बनाम/</u> Vs.	The ACIT Circle-2(1) Indore  (Revenue )
P.A. No.AGTPS5842F		

**ITA Nos.310/Ind/2015  
Assessment Year: 2010-11**

Shri Prabhat Sojatia, 34, Prabhat Plaza, Yasoda Mata Mandir Road, Rajwada, Indore (Appellant)	<u>बनाम/</u> Vs.	The ACIT Circle-2(1) Indore  (Revenue )
P.A. No.AEAPS5313L		

Appellant by	Shri Ashish Goyal & Shri N.D. Patwa, A.Rs
Respondent by	Shri P.K. Mitra, DR
<b>Date of Hearing:</b>	<b>24.09.2018</b>
<b>Date of Pronouncement:</b>	<b>23.10.2018</b>

**आदेश / O R D E R**

**PER KUL BHARAT, J.M:**

**ITA No.312/Ind/2015:**

Appeal by the assessee is directed against the order of CIT(A)-1, Indore dated 19.1.2015 pertaining to the assessment year 2010-11. The assessee has raised following revised grounds of appeal:

- 1. The Ld. CIT(A) upheld the assessment order without entertaining/admitting/considering the submissions of the appellant. It is not based on the facts on records and it is contrary to the provisions of law and justice.*
- 2. The Ld. CIT(A) is not justified in maintaining the addition of Rs.4,17,500/- on account of low withdrawals.*
- 3. Ld. CIT(A) is not justified in maintaining the addition of Rs.7,25,000/- on account of transfer expenses of agricultural land sold.*
- 4. The Ld. CIT(A) is not justified in maintaining the addition of Rs.35,46,018/- on account of disallowing the exemption claimed u/s 54B for sale of agricultural land.*
- 5. The Ld. CIT(A) is not justified in maintaining the addition of Rs.3,70,000/- u/s 68 on account of loan taken from three minor children.*
- 6. The Ld. CIT(A) is not justified in maintaining the addition of Rs.9,38,756/- on account of disallowing of interest paid to bank on term loan and enhancing the interest income on term loan against FD to Rs.5,20,303/-.*

7. *The Ld. CIT(A) is not justified in maintaining the addition of Rs.2,00,000/- on account of disallowing the claim of agricultural income.*
8. *The Ld. CIT(A) is not justified in maintaining the addition of Rs.3,30,000/- on account of non accepting the deposits received from two persons. (Rs.1.65 lakhs each) against flat booking.*
9. *The Ld. CIT(A) is not justified in maintaining the addition of Rs.17,78,552/- on account of non acceptance of Gift from mother Smt. Kanta Sojatia.*
10. *The Ld. CIT(A) is not justified in maintaining the addition of Rs.42,461/- on account of interest received from bank Rs.1,18,383/- and declared at Rs.75,922/-*
11. *The Ld. CIT(A) was not justified in confirming the addition of Rs.17,01,000/- on account of unexplained cash deposit in bank.*
12. *The Ld. CIT(A) is not justified in maintaining initiation of penalty u/s 271(1)(c).*
13. *The Ld. CIT(A) is not justified in maintaining charging of interest u/s 234B and 234C.*

2. Case of the assessee was selected by Computer Assisted Scrutiny Selection (CASS) for scrutiny assessment. The assessment proceedings were initiated by issuing notice u/s 143(2) of the Income Tax Act, 1961 (hereinafter called as 'the Act'). In response thereto, the assessee made representation before the Assessing officer and filed the requisite details. However, the A.O. made addition on account of lower withdrawal of Rs.4,80,000/-

and further made addition of Rs.2,05,383/- in respect of insurance premium paid and Rs.7,25,000/- in respect of transfer expenses and sale of agricultural land. The A.O. also made addition by invoking the provisions of section 50C of the Act of Rs.35,46,018/-. The A.O. made addition of Rs.3,70,000/- in respect of the loans taken from his children. Further, the A.O. made disallowance of interest paid on term loan of Rs.9,38,756/-, disallowance of agricultural income of Rs.2 lakhs, cash deposited in the bank of Rs.7 lakhs, purchase of shares of Rs.17,78,522/- and further, the difference in disclosing the interest income of Rs.42,461/-.

3. Aggrieved, assessee preferred an appeal before Ld. CIT(A) who partly allowed the appeal. In respect of the lower withdrawals, the Ld. CIT(A) reduced the addition to Rs.4,17,500/-, deleted addition made on account of insurance premium paid and confirmed the addition of

Rs.7.25 lakhs claimed as transfer expenses. The Ld. CIT(A) affirmed the disallowance of deduction u/s 54B of the Act, confirmed the addition made on account of loan received from children and also confirmed the addition on the expenses in respect of interest paid to ICICI home term loan. He further confirmed the addition made on account of agricultural income being income from other sources and in respect of the addition made on account of booking advances of Rs.7 lakhs. The Ld. CIT(A) gave partial relief of Rs.3,70,000/- and sustained the addition of Rs.3,30,000/-. Further, the Ld. CIT(A) sustained the addition in respect of bank deposits and also confirmed the addition made in respect of the gift received from mother of Rs.15 lakhs. Apropos to Ground Nos.1 to 13, the Ld. Counsel for the assessee reiterated the submissions as made in the written submissions of the assessee, which are reproduced below:

**Sunil Sojatia, Indore**  
**A.Y 2010-11**  
**Appeal No. ITA No. 312/IND/2015**

**SYNOPSIS**

Source : Salary from Divya Prabhat Publications Pvt Ltd., House Property Income, Capital Gains, Interest income, Agricultural Income.

Return : 13.11.2010 at Rs.18,70,500/- (PB 42-50) & Agricultural Income Rs. 2,00,000.

Assessment order : 02.01.2013. Assessed Income – 1,08,57,210/- U/s 143(3)

The order of the Id AO was challenged before the Id CIT(A). Detailed proceedings were conducted by the Id CIT(A). The pleadings before Id CIT(A) are given in the order of Id CIT(A) as under:

<b>Proceedings</b>	<b>Pg/ Para</b>
Grounds of Appeal	Pg. 1 para 1
Order of Id AO Quoted	Pg. 5 para 2
W.S. to Id CIT(A) reproduced	Pg. 8 para 3
Remand Report dt. 07.03.2014	Pg. 17 para 4
Rejoinder	Pg. 19 para 5
Notice u/s. 251 by Id CIT(A)	Pg. 22 para 6
Reply by assessee	Pg. 23
Findings of Id CIT(A)	Pg. 30 para 7

Ld CIT(A) confirmed/ deleted the following additions, which are challenged before your honours as under:

<b>Gr. No. (from Original Grounds)</b>	<b>Gr. No (from Revised Grounds)</b>	<b>Ground</b>	<b>AO</b>	<b>CIT(A)(deleted) /Enhanced</b>	<b>CIT(A) confirmed (Before Your Honours)</b>
2.	2.	Low House Hold Withdrawals	4,80,000	(62,500)	4,17,500
3.	3.	Disallowance of Transfer exp on sale of agricultural land	7,25,000	-	7,25,000
4.	4.	Disallowance of Deduction u/s54B	35,46,018		35,46,018

5.	5.	Cash loan from children	3,70,000	-	3,70,000
6.	6. (Old 6 & 7 merged)	Disallowance of Interest claimed on Term loan	9,38,756	-	9,38,756
7.		Suppression of income from other sources	-	5,20,303	5,20,303
8.	7.	Agriculture income	2,00,000	-	2,00,000
9.	8.	Advance cash against Flat booking	7,00,000	(3,70,000) in sr. no 4	3,30,000
10	9.	Gift from Smt. Kanta Sojatia	17,78,522	-	17,78,522
11.	10.	Interest from bank not shown in return	42,461	-	42,461
-	11.	Cash Deposit in Bank	26,01,000	(9,00,000)	17,01,000

The grounds are taken as per the revised grounds of appeal. Ground-wise submissions are made as under:

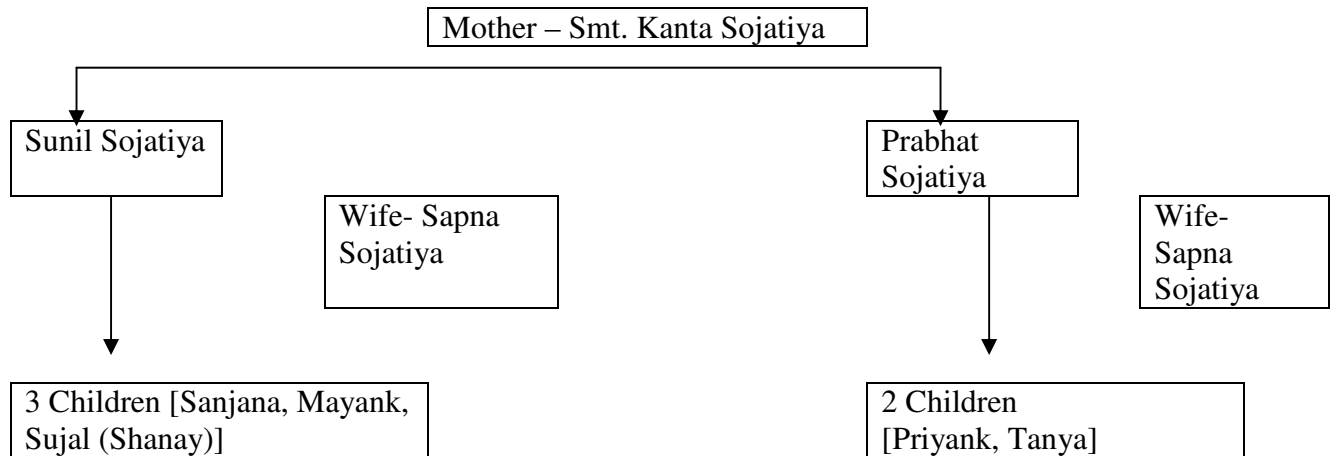
**GROUND NO.2: LOW HOUSEHOLD EXPENSES RS. 4,17,500/-**

**AO para 5.**

**CIT(A) pg. 30 para 8.**

**FACTS**

The family of the appellant consists of the following:



Household expenses shown by the appellant family are as under:

Particulars	Debited by Sunil	Debited by Prabhat	PB Ref.
<b><u>A. Expenses</u></b>			
Other Household expenses	Sunil 1,20,000	Prabhat 3,37,101	PB 49 PB 56
	Wife 26,500	Wife 45,000	PB 179
	HUF 36,000	HUF 36,000	
Tution/ Education Fees	1,75,500	1,37,700	PB 49, 56
<b>TOTAL (A)</b>	<b>3,58,000</b>	<b>5,55,801</b>	
<b><u>B. Investments</u></b>			
LIC Premium	2,66,802	6,66,767	PB 48
Medical Insurance	7,153	566	PB 47
Personal Accident Policy		3,52,856	PB 47
<b>TOTAL (B)</b>	<b>2,73,955</b>	<b>10,20,189</b>	
<b>TOTAL EXPENSES (A) + (B)</b>	<b>6,31,955</b>	<b>15,75,990</b>	

It is also a pertinent fact that: -

- Appellant owns the house.
- Housing loan was taken for construction of house. Interest on same was booked separately in capital account (apart from household expenses).
- Assessee does not own any vehicle in personal capacity. Thus, household expenses are bound to be less.

**WHAT THE LD AO DID?**

- Ld AO quoted the capital account of the appellant showing drawings of Rs. 1,20,000/-. Further, he alleged that the assessee have 3 school going children and directorship in 3 companies and partner in firm. He cannot survive at Rs. 8,000/- p.m. Thus, he added Rs. 4,80,000/- to the income of the assessee. The total household expenses, therefore were estimated at Rs. 6,00,000. No basis was given for arriving at an ad hoc figure of Rs. 6,00,000 (i.e. Rs. 50,000 p.m.)

Disclosed (as per ld AO)	Rs. 1,20,000
Undisclosed (Estimated)	<u>Rs. 4,80,000</u>
TOTAL	Rs. 6,00,000

- b. A pertinent fact is that he also contended that the capital account does not reflect the life insurance premium, Medical Insurance Premium and Personal accident premium, whereas the same was claimed under deductions u/s 80C and 80D. A separate addition for same was made at Rs. 2,05,383.

**WHAT THE LD CIT(A) DID?**

- a. Ld CIT(A) accepted the adhoc estimation of the Id Assessing Officer at Rs. 6,00,000 again without any basis. However, as per the Id CIT(A), since the capital account of assessee, wife and HUF showed a household withdrawal of Rs. 1,82,500; the same were deducted and balance addition of Rs. 4,17,500 was done.

Particulars	Drawings in capital account	Educatio n expenses	PB Ref.
Assessee	1,20,000	26,600	PB 49
Sapna Sojatia	26,500	1,07,800	PB 56
Sunil Omprakash Sojatia (HUF)	36,000	41,100	PB 179
<b>Total</b>	<b>1,82,500</b>	<b>1,75,500</b>	

- b. The Id CIT(A) gave relief of Rs. 62,500 considering withdrawals of wife (Rs. 26,500) & HUF (Rs. 36,000). No credit of education expenses was given which was shown separately.

**SUBMISSIONS:**

- a. There is no basis for estimation of household expenses of Rs. 50,000 p.m. Appellant has already justified that a huge household expenses have been debited in the family to the tune of Rs. 22,07,945.
- b. The following facts are very important for estimation of household expenses:
- School fees Rs. 3,13,700 was shown separately in capital account. This is for 5 children.
  - Other Household expenses of family shown Rs. 6,00,601.
  - House was owned by assessee.
  - There were no vehicles (two wheelers/ four wheelers) in personal capacity.
  - No evidence of any other expenses were found.
  - Also, the appellant along with his wife own agriculture land (Refer income & exp account at PB 56) and the basic food, vegetable and milk requirements are fulfilled from the same.

It is therefore prayed that the household expenses are very reasonable and therefore no addition is called for such an adhoc addition, which is not based on any evidence.

**GROUND NO.3: TRANSFER EXPENSES ON SALE OF AGRICULTURAL LAND**

**RS. 7,25,000**

**AO para 6.**

**CIT(A) pg. 31 para 10.**

**FACTS**

1. Assessee had sold an agricultural land to Samridhi Indore Town Planner P Ltd for Rs. 1.36 crores. Capital gains was claimed to be exempt u/s. 54F, which is contested in other ground.
2. On sale of said agricultural land, transfer expenses of Rs. 7,25,000 were paid, which were denied by ld lower authorities while computing the capital gains.
3. As per clause 15 of the agreement, the expenses of registry were to be borne by the assessee, the seller. PB 189, para 15.
4. The total transfer expenses are Rs. 14,50,000 on sale of agriculture land at Rau. Assessee had 50% share i.e. Rs. 7,25,000 which was debited in the capital account PB 49.
5. The same was claimed to be paid by cheque to Iqbal Khan. Registry for sale of land was dated 06.01.2010. The stamps were purchased on 29.12.2009.

Iqbal Khan, who is stamp vender, helped the assessee in getting the registration formalities completed. Payment was made for stamp charges and registration charges.

6. Ld AO merely held that no evidence was available for expenses on registration. He disallowed the entire expenses of assessee Rs. 7,25,000.
7. Ld CIT(A) held that the assessee had stated to have sold the land through Iqbal Khan. Stamp vendor's name on Stamp Paper is written as Sh. Narendra Joshi. Thus, the transfer expenses could not be justified; and he therefore made disallowance of same.

**SUBMISSIONS:**

- a. The fact that the transfer expenses were to be borne by assessee is clear from the Registry. PB 189 para 15.  
The letter in this regard from 'Samridhi Indore Town Planner Pvt. Ltd' (Purchaser) is at PB 69.
- b. The undisputed fact is that the stamps were purchased. Registry was done. Thus, it is proved that the expenses were infact incurred.

No evidence was brought on record by ld AO that the registry expenses were borne by the buyer.

- c. So far as the payment of expenses to M. Iqbal Khan is concerned; the ledger extract for payment to Iqbal Khan in books of assessee is at PB 70. The registry expenses are paid through ICICI Bank, chq no 13189.

Assessee took help of M. Iqbal Khan for getting the registry. Part of the stamps were available with Iqbal and Part were taken from Narendra Joshi. This fact is clear from PB 192 (back side). This stamp is from the stock of M. Iqbal Khan.

How M. Iqbal Khan arranged the stamp was not for which assessee could be blamed. The fact was that the expenses were incurred and they were paid by the assessee by cheque.

- d. Confirmation from Iqbal Khan confirming the modus operandi is at PB 250, which is submitted before the Hon'ble Bench just to reaffirm the facts already on record.
- e. Without prejudice, in any case, the transfer expenses have been claimed in computation of capital gains of sale of agricultural land at Rao. PB 44. Disallowance of above expenses would result in increase in capital gains.

The appellant claims that the capital gains on the sale of agricultural land at Rao is exempt u/s. 54B. If the said ground is allowed, the addition, if any would be neutralized.

- f. Id AO in the remand proceedings has accepted this fact at CIT(A) pg. 18 para 3, which is quoted as under:

*“Assessee has submitted copies of sale deed of land and letter from purchaser M/s. Samridhi Indore Town Planner Pvt. Ltd. stating that all such expenses are borne by the assessee, copy of stamp vender. On perusal of these documents it is evident that the 50% of transfer expenses i.e. stamp duty and other expenses of Rs. 7,25,000/- has been paid by the assessee against sale of land through account payee cheque.”*

Thus, although the fact that Id AO had accepted these expenses, still Id CIT(A) confirmed the same, without bringing any material to prove that the findings of Id AO in remand report are incorrect.

It is therefore prayed that the disallowance of registration expenses may kindly be deleted.

**GROUND NO.4: DISALLOWANCE OF DEDUCTION U/S. 54B RS.**

**35,46,018/-**

**AO para 7.**

**CIT(A) pg. 32 para 11.**

Purchase of Agricultural Land at Rao	:	31.03.2006.
Sale of Agricultural land	:	06.01.2010. Rs. 68,20,000. PB 180-249. PB 182 mentions land as agricultural.

Purchase of New Agricultural Land : Located at Bicholi Mardana, Indore.  
Rs. 65,00,000. Purchase deed. PB 71-77.  
PB 72 mentions land as agricultural.

### **FACTS**

1. The appellant in his computation of income claimed deduction u/s. 54B on purchase of new agricultural land (PB 44).
2. Ld AO disallowed the claim holding simplicitor that no evidence for claim of exemption u/s. 54B was filed.
3. Ld CIT(A) accepted the fact that the new land was purchased. However, he contended that assessee could not establish that the old and new land were used for agricultural purposes.

### **SUBMISSIONS**

1. **Old Land was agricultural: -**
  - a. The Khasra of Old Land is at PB 251-254. This khasra is for F.Y. 2005-06 to 2009-10. Crops grown therein are mainly soyabean and potato. This further establishes that the old land was used for agricultural purposes more than 2 years immediately prior to date of transfer.
  - b. The registry also mentions that the old land was agricultural. PB 182.
  - c. Agricultural income offered in A.Y. 2008-09 was Rs. 3,42,000 (PB 119) and for A.Y. 2009-10 was Rs. 2,25,000. Assessment order for A.Y. 2009-10 is at PB 126-120. Agricultural income of Rs. 25,000 was accepted and balance was rejected as no bills etc were submitted.
2. **New Land was to be used for agriculture: -** The land at Bicholi Mardana is agricultural. This fact can be verified from the Rin Pustika at PB 78-96. The registry also mentions that the new land was agricultural. PB 72.

Agricultural income of Rs. 5,64,000 was offered for A.Y. 2011-12. PB 169-173. Specific PB 172. Same was accepted.

3. Ld AO himself in the remand report at Pg. 18 of CIT(A) order in para 4 accepted the fact and did not counter the same. The same is reproduced as under:

*“Assessee has submitted photocopy of purchase deed of land at Bicholi Mardana, indore. On going through the purchase deed of land it is evident that assessee has purchased a agriculture land amounting to Rs. 35,75,000/- during the year against sale of agriculture land. Keeping in view, the documents submitted your honour may take suitable action.”*

Ld CIT(A) had not brought any evidence to prove that the land sold or purchased was not an agricultural land. He only gave general findings. The fact that the land was purchased and was agricultural land was established by the evidences already on record.

The appellant therefore prays that the exemption u/s. 54B, which is a legally allowable claim, may kindly be granted.

**GROUND NO. 5: CREDITS FROM CHILDREN RS. 3,70,000**

**AO para 8.**

**CIT(A) pg. 34 para 12.**

The appellant has received booking advance/ credits from minor children in the family:-

i.	Ku. Sanjana Sojatia	Rs. 45,000
ii.	Mast. Mayank Sojatia	Rs. 1,25,000
iii.	Mast. Sujal Sojatia	Rs. 2,00,000
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		Rs. 3,70,000

Ld AO added the same denying the credits and the source of minor children. Ld CIT(A) confirmed the same holding that the source of children remains unexplained.

**SUBMISSIONS:**

- a. Under the head, booking against flat Rs. 7,00,000 (PB 46), the total credit includes a credit of Rs. 3,70,000 from the three minor children.
- b. Trial Balance and the source of the children were already on record. PB 256-261, PB 275, 280, PB 297-302.  
 Gift deeds showing source of source are filed as additional evidences before your honours. These documents only support the plea taken by the assessee before the learned lower authorities.
- c. There is also an unsecured credit from all the three children. PB 48. The total of unsecured credit and advance against flat are as under:

Name	PAN	Unsecured Credit PB 48	Booking from Flat PB 46	Total	Shown in their Trial Balance
Sanjana Sojatia	EXJPS6693M PB 255	Rs. 10,62,856	Rs. 45,000	11,07,856	PB 259
Mayank Sojatia		Rs. 5,20,428	Rs. 1,25,000	Rs. 6,45,428	PB 300. Rs.6,18,904
Sujal (Shanay) Sojatia		Rs. 3,87,167	Rs. 2,00,000	Rs. 5,87,167	PB 278

The unsecured credits as above have been accepted, which is major amount. Thus, for smaller amount, it cannot be said that the assessee could not explain the

source; moreover when no specific findings are given as to how the source is unexplained.

- d. In remand proceedings, Ld AO although accepted the fact that the confirmations were given; but was of the view that the source of same could not be established. In the remand proceedings, Id Assessing Officer stated that: -

*“Assessee has submitted loan confirmation accounts and copy of trial balance of Kumari Sanjana Sojatia, Master Mayank Sojatia and Master Sujal Sojatia for the year 2008-09 & 2009-10. On perusal of these documents it is evidence that the assessee has received loan/ advance from children, these amounts were given out of past savings.”*

Ld CIT(A) ignoring the said remand report, stated that the source of the credit remains unexplained.

- e. The advance for booking of flats was accepted in cash as at that time, there was no restriction on receipt of the advance against sale of flat in cash. The restriction was on a loan or deposit u/s. 269SS.

It is therefore prayed that no addition is called for.

**GROUND NO.6 (REVISED) : DISALLOWANCE OF INTEREST/ INCOME FROM OTHER SOURCES**

**AO para 9.**

**CIT(A) pg. 34 para 13.**

Addition by Id AO	Rs. 9,38,756 - Expenditure for earning interest
Enhancement by Id CIT(A)	Rs. <u>5,20,303</u> - Interest income not offered
<b>TOTAL</b>	<b>Rs. 14,59,059</b>

**FACTS**

Interest income on Deposit (with Dena Bank – Int. on Rs. 1 crs.)	Rs. 9,31,984
Interest expenditure (Loan from ICICI Bank- for deposit with Dena Bank)	<u>Rs. 9,38,756</u>
<b>NET</b>	<b>(Rs. 6,772)</b>

1. The appellant wanted to purchase a mortgaged property, mortgaged with Dena Bank. The borrower was Ashish Bhandari and the Lender Bank was Dena Bank. The agreement for purchase of property was entered into on 7<sup>th</sup> May 2007. PB 107-113. Total consideration fixed was Rs. 4,14,00,000.
2. For this Rs. 1 crores was paid by the appellant as per the payment schedule on PB 112. The payment was in the form of deposit in No lien account in Dena Bank. The bank agreed to pay interest as per SAVIFIX scheme of Bank till permission of M.P. High Court was obtained. Same is noted at PB 108. The balance was to be paid immediately after getting the permission of the High Court.

3. For making this payment, assessee took a loan from ICICI Bank of Rs. 117 lakhs. Loan was taken on 28.03.2007. The loan disbursement is at PB 114-115, which was taken to State Bank of Indore. From there, FDR for security deposits/ advance was made for Rs. 1 crores.
4. Interest income on this SAVFIX Deposit was offered at Rs. 9,31,984. Same was offered as income in the computation of income. PB 43-44.
5. The appellant has claimed interest expenditure on term loan from ICICI bank at Rs. 9,38,756. Ld AO disallowed this holding that assessee has not shown any business income in the computation of income.
6. Ld CIT(A) held that the appellant has not raised any ground of appeal for same. However, he decided the same. The appellant is therefore in appeal against the order of ld CIT(A).
7. Further, ld CIT(A) did enhancement holding that the accrued interest income was Rs. 14,52,287, and only Rs. 9,31,984 was offered. Thus, Rs. 5,20,303 was not offered; which ld CIT(A) did enhancement.

**SUBMISSIONS:**

- a. **Interest Expenditure Rs. 9,38,756:** As submitted above, the interest expenditure was incurred on ICICI Loan, which amount was used for purchase of property. The interest income on said advance for purchase of property was offered in the return. So the interest expenditure which had a direct nexus with “earning such income” was allowable u/s. 57.
- b. Ld AO himself, in the Remand Report (CIT(A) pg. 18 para 7) accepted the fact that the nexus between the loan taken and deposit with Dena Bank is established. He stated as under:

*“Assessee has submitted Agreement to sale between Dena Bank, Ashish Bhandari & the assessee, Repayment Schedule for loan from ICICI Bank Ltd. Bank statement & photo copy of pass book of State Bank of Indore. From the agreement it is evident that the assessee has given Rs. One Crore as deposit to the Bank on which assessee received interest of Rs. 9,31,984/-. The same has been offered by the assessee as income from other sources in his computation for the A.Y. 2010-11. The said deposit was out of loan taken by the assessee from ICICI Bank Ltd. Both the figures have been verified from the balance sheet.”*
- c. Ld CIT(A) held that the appellant has not raised any ground of appeal for same. However, he decided the same. The appellant is therefore in appeal against the order of ld CIT(A). This ground arises out of the order of ld CIT(A). Thus, the appellant, being aggrieved by this addition, which was confirmed by ld CIT(A), is challenging the same before your honours.

Alternatively, and without prejudice, the same may be considered as additional ground in any case.

- d. **Interest Income**: - Interest income, Rs. 9,31,984, which was accrued and subjected to TDS was offered in the current year. Interest income which accrued in F.Y. 2008-09 was already offered in F.Y. 2008-09, amounting to Rs. 6,75,211. (PB 320 is the ledger of Interest on FDR). Interest on FDR was reflected in Income and Expenditure account for F.Y. 2008-09 which was covered in total interest on FDR Rs. 7,04,352. PB 160.

Interest income F.Y. 2008-09	Rs. 6,75,211	PB 320, 160
Interest income F.Y. 2009-10	<u>Rs. 9,31,984</u>	PB 47
	Rs. 16,07,195	

FDR is reflected at Rs. 1,14,52,287, net of TDS. The same can be verified from the FDR account at PB 321. The amount was already offered for taxation. The addition made is therefore totally wrong, and would amount to double addition.

- e. **In respect of jurisdiction for enhancement.** Ld CIT(A) enhanced the income from Rs. 9,31,984 to Rs. 14,52,287 stating that entire interest income ought to have been offered. Ld CIT(A) states that enhancement notice was given covering the issue at point no. (xiii). Point no. (xiii) is at Pg. 23 of Ld CIT(A) order which reads as under:  
*“What is the basis of claiming interest expenses of Rs. 9,38,756/-. Give details of loan taken and purpose of such loan on which such interest was paid. Under which section of Income Tax Act, 1961 you have claimed such deduction and how it is allowable.”*

The entire question relates to interest “expenditure” paid to ICICI Bank and not to interest “income” from Dena Bank. Thus, no notice of enhancement, as claimed by the Ld CIT(A) was given in respect of the interest income from Dena Bank. The fact of enhancement notice quoted by Ld CIT(A) is incorrect.

Question no. (xiii) was suitably replied, which is quoted at pg. 30 of Ld CIT(A) order.

Thus it is prayed that the interest expenditure shall be allowed, and the interest income, which was already offered for tax, shall not be taxed again.

**GROUND NO. 7 (REVISED) :AGRICULTURAL INCOME :RS. 2,00,000**

AO para 10.

CIT(A) pg. 35 para 14.

1. Agricultural income offered was Rs. 2,00,000.
  - a. Land of Rao was under cultivation (sold on Jan 2010, both the harvesting seasons were enjoyed by assessee). Land was 1.420 hectares (i.e. 3.50 acres). PB 180-249. The crop grown on same was Soyabean and Potato. PB 251-254 is Khasra.
  - b. Another land at Budhaniya was 1.092 hectare (i.e. 2.69 acres). Rin pustika for same at PB 130-135.

2. Agricultural income offered in A.Y. 2008-09 was Rs. 3,42,000 (PB 119) and for A.Y. 2009-10 was Rs. 2,25,000. Assessment order for A.Y. 2009-10 is at PB 126-120. Agricultural income of Rs. 25,000 was accepted and balance was rejected as no bills etc were submitted.
3. It is prayed that agricultural income, which the Hon'ble Tribunal finds proper may be estimated.

**GROUND NO. 8 (REVISED) :BOOKING OF FLATS Rs. 3,30,000**

AO para 11.

CIT(A) pg. 36 Para 15.

1. The appellant owns a land at Collector office, Lal Bagh, Indore. The appellant planned to construct flats on same.
2. The appellant has received advance against booking of flats at Rs. 7,00,000.
3. Ld CIT(A) gave relief of Rs. 3,70,000 being amount received in respect of (i) to (iii) above, which related to addition already confirmed in other grounds by him. Ld CIT(A) however, confirmed the addition of Rs. 1,65,000 and Rs. 1,65,000 for loan from Dilip and Sunil Solanki.
4. The advance of Rs. 3,30,000 was received from following persons:

Name	Amount	Address	Other evidences
Sunil Solanki	1,65,000	16/1, Sindhi Colony, Indore	(a) PAN ANYPS1153M. (b) Confirmation PB 332. (c) IT Return. PB 333-336.
Dilip Solanki	1,65,000	16/1, Sindhi Colony, Indore	(a) PAN BSWPS7183P. PAN copy PB 338. (b) Confirmation PB 337.

5. At the relevant time, there was no restriction in respect of receipt of advances in cash. The rigours of section 269SS applied only on loans and deposits, and not on advances.

The appellant therefore prays that the addition made in the hands of the appellant in respect of advances may kindly be deleted.

**GROUND NO. 9 (REVISED): GIFT FROM SMT. KANTA SOJATIA RS. 17,78,522**

AO para 12. CIT(A) pg. 39 para 17.

Gift from Smt. Kanta (mother)	Rs. 15,00,000
Other Credit Balance (taken to capital a/c)	Rs. <u>2,78,522</u>
<b>TOTAL</b>	<b>Rs. 17,78,522</b>

**GIFT OF RS. 15,00,000**

1. Gift of Rs. 15,00,000 from mother is evidenced by
  - (i) Gift deed PB 137
  - (ii) Cheque from mother. PB 138
  - (iii) Return, Computation etc from mother. PB 139-146. Gift of Rs. 17,78,622 reflected in her capital account. PB 144.
  - (iv) Bank pass book of S.B. Indore. PB 147-156. Specific PB 149, the gift is reflected.
  - (v) Ledger account of mother. PB 157.
  
2. In the remand report, Id Assessing Officer accepted of having taken gift of Rs. 15,00,000 from mother. CIT(A) pg. 19 para 9. He stated as under:  
*“Assessee submitted photocopy of gift deed and cheque, bank passbook of Smt. Kanta Sojatia, Ledger copy of account, balance sheet, capital account for F.Y. 2008-09, 2099-10 and acknowledgement of IT Return. On perusal of these documents it is evident that assessee had received gift from his mother by an account payee cheque from a bank account wherein funds have been owned and possessed by the donor i.e his mother.”*
  
3. Ld CIT(A) however, noted that before giving the gift, cash of Rs. 15,00,000 was deposited by her. He, merely on suspicion therefore held that the cash was deposited by the assessee.
  - a. It is submitted that no evidence was pointed out to show that cash was deposited by the assessee.
  - b. She was a regular income-tax assessee. In her capital account at PB 144, the opening capital was reflected at Rs. 40,98,329. Before giving gift to the assessee, she has done withdrawals in cash on multiple occasions. On 05.11.2009 itself, she had done withdrawal of Rs. 9,00,000. Her household expenses were met by her children only.
  - c. In *CIT vs. Dwarkadhish Investment (P) Ltd 330 ITR 298* it was held that "just because the lenders were unable to explain the cash deposit in their account, does not give right to revenue to invoke sec 68 against the authority, it is settled law that assessee need not prove 'source of source'
  - d. Similarly, as per the locus classics in *DCIT vs. Rohini Builders [2003] 127 TAXMAN 523 (GUJ.)* it was held that "assessee was not expected to prove genuineness of cash deposited in bank accounts of creditors, because under law, assessee can be asked to prove source of credits in its books of account but not source of source"
  - e. In yet another case, *CIT, Ajmer vs. Jai Kumar Bakliwal [2014] 45 taxmann.com 203 (Rajasthan)* it was held that unsecured loan raised by assessee from relatives was added in income of assessee on ground that none of creditors were able to prove source of amount advanced to assessee and immediately before grant of loan by them cash was deposited in their accounts - However, it was admitted by Assessing Officer that all creditors were assessed to Income tax and they had provided confirmation as well as their PAN - Moreover, all payments were through account payee cheques and most of cash creditors appeared before Assessing Officer and were examined on oath. Thus, there was no clinching evidence nor Assessing Officer had been able to

prove that money actually belonged to none but to assessee himself, action of Assessing Officer appeared to be based on mere suspicion and, thus, addition was deleted.

The gift to the tune of Rs. 15,00,000 is therefore explained.

**GIFT OF RS. 2,78,522.**

1. Credit balance standing in the books of assessee in her name was taken as gift, by mutual consent in the family. The said gift was reflected by her in her capital account also. PB 144.
2. The assessee has also treated the same as gift and was reflected in his capital account. PB 49. The nature and source of the credit is explained.
3. In any case, the credit balance was opening balance. No sum of money was credited in this year. It is a settled proposition of law that opening balance cannot added as a unexplained credit in the current year. This is so as there is no "sum credited" in the current P.Y.

*Hotel Excelsior Limited; 114 TTJ 248 (Del.).*

The gifts are established as the identity is undoubted; the gifts are confirmed by the mother by entries in her books and also gift deed; she was a regular income tax assessee; and had sufficient capital; the gift was received from close relative. She had gifted a substantial part of her capital to family members. The gift is therefore acceptable.

**GROUND NO.10 (REVISED) : INTEREST FROM BANK RS. 42,461**

AO para 13.

CIT(A) pg. 40 para 18.

Interest received	Rs. 1,18,383
Disclosed (per AO)	<u>Rs. 75,922</u>
Balance added	Rs. 42,461

**GROUND NO. 11 (REVISED) : DEPOSITS IN BANK RS. 17,01,000**

CIT(A) pg. 36 para 16.

At the first instance it is submitted that this ground was inadvertently not taken in the grounds of appeal, originally. The same arises from the order of Id CIT(A). However, the same was left to be taken over in the original grounds of appeal. However, vide application dated 7<sup>th</sup> Dec. 2016, the appellant has prayed that this ground may kindly be admitted and considered by the Hon'ble Bench as:

1. The ground arises from the order of Id CIT(A).
2. The fact of this ground was quoted in the statement of facts filed before the Hon'ble ITAT. (Kindly refer to the statement of facts filed before the Hon'ble ITAT).

3. It was only inadvertently, this ground left to be taken in the respective column of grounds of appeal.
4. The appellant acted in good faith and merely for the reason of human error, this ground skipped the grounds of appeal. The happened due to the fact that more than 10 grounds of appeal were before the Hon'ble ITAT and also the fact that some of the grounds which are before Hon'ble ITAT were not raised before the Id CIT(A) [due to enhancement], but it was only the Id CIT(A) who did enhancement on same; thus there was a lot of confusion.

**On merits**, it is submitted that the appellant had deposited Rs. 26,01,000 in ICICI bank account. The source of deposit was explained as under:

Out of Opening Cash	Rs. 15,98,017
Withdrawal in April 2009	Rs. 2,35,000
Advance received	Rs. 7,00,000 – considered in other grounds

Ld CIT(A) added Rs. 17,01,000 out of the above cash deposit after giving credit of Rs. 7,00,000 covered in other grounds of appeal. Ld AO had not made addition for same.

Cash flow submitted to Id CIT(A) is placed at PB 339 for F.Y. 2008-09; and PB 341 for F.Y. 2009-10. At no place there was a negative cash balance. Infact, total cash deposit with all banks was Rs. 1,21,78,000, which is explained in the cash flow statement.

Details of Bank-wise withdrawals and deposits is given at PB 342. Also for preceeding F.Y. 2008-09 (A.Y. 2009-10), the same are given at PB 340. During current year, the deposit in ICICI Bank was Rs. 26,01,000.

The appellant submits as under:

- a. All the transactions of preceeding year are recorded in the books of accounts. The books are duly audited for F.Y. 2008-09. Cash in hand on 31.03.2009 was Rs. 15,98,017 as per Audited Accounts. PB 162. None of the deposit was found to be unaccounted. Section 69 would apply only in respect of deposits, which are not recorded in the books.
- b. Opening cash balance Rs. 15,98,017.
  - i) Opening cash balance is reflected in the balance sheet of earlier year. PB 162.
  - ii) Assessment u/s. 143(3) of A.Y. 2009-10 was completed and the cash balance was accepted. PB 126-129.
  - iii) The appellant was having high cash in hand, in the earlier years also. On 31.03.2008 also, the cash in hand was at a very high figure of Rs. 89,65,372. PB 340.
- c. Withdrawals during April, 2009 Rs. 2,35,000
  - i) Withdrawals in April have been accepted. No defect is found in same.

- ii) Ld CIT(A) only stated that why appellant withdrew the amount when he had sufficient cash balance. The fact remains that the Id CIT(A) himself accepted the fact that the amount was withdrawn. Further opening cash was available which was accepted by him only in the assessment for A.Y. 2009-10.

Thus, the appellant prays that the addition is baseless and the source of the deposits is duly explained, and each deposit has already been taken in to account while preparing the balance sheet. The deposit cannot be treated as unaccounted.

4. On query by the bench, assessee has filed reconciliation at page 24, which is reproduced as under:

*May in please your honours,*

In the earlier hearing, we were directed to provide the following: -

1. Return with Capital account of Smt. Kanta Sojatia (mother) for earlier year A.Y. 2009-10. The same is enclosed at pg. 25-30.

It would be noticed that her closing capital on 31.03.2009 was Rs. 40,98,329. This capital was available on 01.04.2009 as opening capital PB 144. She has been filing returns since years. Thus, her source cannot be doubted.

In any case, the fact of gift is confirmed by her. In case, the Id AO doubted her source, addition could not have been made in the case of assessee. It cannot be presumed that the cash deposited in her bank account was done by the assessee. Reliance is place on the case of *CIT, Ajmer vs. Jai Kumar Bakliwal [2014] 45 taxmann.com 203 (Rajasthan)*.

2. In respect of difference in "Fixed Assets", the reconciliation is enclosed at pg. 31. In fact, on 31.03.2009, the balance was Rs. 70,48,249 as shown at PB 159/ II. However, while preparing the balance sheet of 31.03.2010, the fixed asset figure was mentioned as Rs. 41,68,749 as opening balance. This difference arose due to some clerical error. The corrected figures can be taken as under:

<i>Fixed Assets (As per Schedule "C") (pg. 31 of synopsis)</i>	
<i>As on 01/04/2009</i>	<i>70,48,249</i>
<i>Add: Additions/ (Deletion)</i>	<i>(28,79,500)</i>
	<i>41,68,749</i>
<i>Less: Depreciation</i>	<i>0</i>
<i>Balance</i>	<i>41,68,749</i>

The mistake happened due to writing the figure after adjustments during the year as opening figure.

5. Further, a remand report from the A.O. was sought. The A.O. vide his report dated 31.7.2018 has submitted as under:

Kindly refer to the above.

2. As per the paper book submitted by the assessee, additional evidences are submitted on following two issues as under:

1. Reg Transfer expenses of Rs. 7,25,000/-
2. Reg Loan from three Minor children.

On perusal of the additional details submitted before the Tribunal, it is seen that signature on the confirmation of stamp vendor, shri Iqbal Khan, submitted do not match with the signature on his stamp on last page of sale deed as submitted in the paper book. Therefore, confirmation is not established to be of Iqbal Khan. Further, sale deed is dated 6.1.2010 while payment to Iqbal Khan alleged to have been made vide cheque dated 7.1.2010 which supports findings of the Id. CIT(A). There is no denying that sale documents registered had stamp of Shri Narendra Joshi as stamp vendor which included stamps purchased on 29.12.2009 and cannot be related to alleged payment made through cheque on 7.1.2010 to Shri Iqbal Khan.

3. Regarding unsecured loan from minor children received in F.Y. 2009-10, it is found that additional evidences produced before the Hon'ble Tribunal are copies of gift deeds only for the alleged gifts received by his three children in year 2003 and year 2004. Details of such gifts are tabulated in annexure 'A'. Salient observations in this regard are as under:

- Alleged gifts are of 2003 and 2004 from different donors and no relation to them is established.

- Why alleged gift deeds on stamp papers were never furnished before the AO and the CIT(A) ?
- No evidences on copies of gift deeds regarding purchase of stamp papers from stamp vendor with sr. no. of stamp and date of stamp purchase are found on copies of alleged gift deeds submitted.
- Occasion for the alleged gifts are not mentioned specially when donors are not mentioned as relatives and no subsequent gifts from such donors are shown.
- Bank account details/ statements are not submitted for alleged gifts received.
- Identity and capacity of donors for such gifts are not furnished along with the additional details.
- All gifts are of amounts either of Rs. 50,000/- or of Rs. 1,00,000/- and on similar dates raises suspicion about purpose and genuineness of gifts.
- No evidences to establish that income generated on such fund were offered u/s 64 in return filed by the parents of three children.
- No fund flow is furnished with evidences to establish that the alleged amounts received in 2003/2004 were available with children for giving unsecured loan to the assessee in FY 2009-10 that too in cash.
- Moot issue is that why unsecured loans in FY 2009-10 were given in cash in violation of section 269SS of the I. T. Act, 1961 when alleged gifts are shown through cheques subject to verification.

4. In view of the above, unsecured loans claimed to have been received in cash in F.Y. 2009-10 from 3 children totaling to Rs. 3,70,000/- is not proved genuine transaction and the capacity of minors to give unsecured loans in F.Y. 2009-10 is also not proved by such alleged gift deeds.

5. It is submitted that observations supra be brought to notice of the Hon'ble Tribunal with prayer not to admit/reject additional evidences produced by the assessee and to uphold the assessment order of the A.O.

5. During the course of proceedings, a reply to the report of the A.O. dated 31.7.2018 was sought from the Ld. A.R. The contents of the reply of the Ld. A.R. are as under:

Sub: Reply to the report submitted by Add. CIT, Range 2(1), Indore in case of Sunil Sojatia for the A.Y. 2010-11, dated 31.07.2018.

Ref: Letter No. CIT(DR)/ITAT/Ind/2018-19, Dated 27.06.2018.

It is hereby submitted that the additional evidences were submitted before your honors,

1. Reg Transfer Expenses of Rs. 7,25,000/-  
(GR. No. 3 Transfer Expenses on Sale of Agricultural Land- Rs. 7,25,000/-)

The comments on the observations of d ACIT-2(1), Indore are submitted below.

**A. Signature on the confirmation of Stamp Vendor (PB 250) do not match with Signature on his Stamp on Last page of Sale Deed (PB 249), back)**

- i. A person may have two different signatures; he may use them at different point of time. The Id AO did not chose to call Iqbal Khan in order to verify the authenticity of the confirmation.
- ii. The Id AO in his remand report dated 07.03.2014 on verification of 'Sale deed of land (PB 180-249) and letter from purchaser M/S Samridhi Indore Town Planner Pvt. Ltd' (PB 69) had in categorical terms stated that "On perusal of these documents it is evident that 50% of transfer expenses, i.e stamp duty and other expenses of Rs. 7,25,000/- have been paid by assesee against the sale of land through account payee Cheque". (Pg no 17-18 of CIT(A) order)
- iii. Thus, the facts that expenses were incurred and they were paid by the assessee by cheque are undisputed.
- iv. The additional evidence was filed in order to reconfirm that Iqbal Khan helped in registration and payment was made towards stamp charges and registration charges.

It is therefore prayed that the disallowance of 'Transfer expenses on sale of Agricultural land' may please be deleted in light of above submissions.

**2. Reg Loan from three Minor Children.**

**(Gr No. 5: Credits from Children Rs. 3,70,000/-)**

**B. Copies of Gift deeds for alleged gifts received by three minor Children in year 2003 and 2004.**

**i. Alleged Gifts are of 2003 and 2004 from different donors and no relation to them established.**

- a. In Section 56(2), a Clause (v) was inserted vide Finance (No.2) Act, 2004 to provide that a sum of money exceeding Rs.25,000 received by an individual or HUF from any person after 01.09.2004 without consideration will be deemed to be income, the Amount received from any relative, as defined in explanation to section 56(2)(v)/(vi) is also not chargeable to tax.

Prior to the above amendment, any amount received as gift or without consideration no tax was leviable either for giver or receiver. In the present case, the gifts were prior to that.

**ii. Why alleged Gifts deeds on stamp papers were never furnished before the AO and the CIT(A).**

- b. The Gift Deeds pertaining to year 2003 and 2004 are filed as additional evidence, in order to justify the financial capacity of minor children. Although, the same is towards showing source of source, these documents only support the plea taken by the assessee before the Id lower authorities.

**iii. No evidences on copies of Gift deeds are regarding purchase of stamp papers from Stamp vendor with Sr. no of stamp and date of stamp purchase are found on copies of alleged gift deeds submitted.**

- c. The Gift deeds are on Stamp papers of Rs. 50. The transaction is through banking channel and thus cannot be doubted. The Sr no of Stamp and date of stamp are on **pg. no 21-23** of this submission.

**iv. Occasion for the alleged gifts deeds are not mentioned specially when donors are not mentioned as relatives and no subsequent gifts from such donors are shown.**

- d. The Gift is between close relatives. There is no requirement of occasion for Gifting and also it is not necessary that subsequently also gifts shall be given to prove the genuineness of Gifts.
- v. Bank account details/statements are not submitted for alleged gifts received.
- e. The Trial Balance duly recording the Gifts received are on record. (PB 256-261, PB 275-280, PB 297-302).
- vi. Identity and capacity of donors for such gifts are not furnished along with the additional details.
- f. The gift relate to F.Y. 2003-04 The assessee is not required to prove the source of Source. After lapse of such long period.
- vii. All gifts are of amounts either of Rs. 50,000 or of Rs. 100,000/- and on similar dates raised suspicion about purpose and genuineness of Gifts.
- g. This is a general comment. The Id AO in his remand report dated 07.03.2014 on the Ground of Credits from Children – 3,70,000/- Pg no 18 of CIT(A) order had already stated that “ *Assessee has submitted loan confirmation accounts and copy of trail balance of Kumari Sanjana Sojatia, mayank Sojatia and Master Sujal Sojatia for the year 2008-09 & 2009-10. On perusal of these documents it is evident that the assessee has received loan/advance from children, these amounts were given out of past savings.*”
- viii. No evidences to establish that income generated on such funds were offered u/s 64 in return filed by the parents of three children.
- h. These are Gifts from relative and hence not taxable.
- ix. No fund flow is furnished with evidences to establish that the alleged amounts received in 2003/2004 were available with children for giving unsecured loan to assessee in FY. 2009-10 that too in cash.
- i. The comment of Id AO in his remand report dated 07.03.2014 on the Ground of Credits from Children – 3,70,000/- Pg no 18 of CIT(A) order had already stated that “ *Assessee has submitted loan confirmation accounts and copy of trail balance of Kumari Sanjana Sojatia, Mayank Sojatia and Master Sujal Sojatia for the year 2008-09 & 2009-10. On perusal of these documents it is evident that*

*the assessee has received loan/advance from children, these amounts were given out of past savings.*

The amount was given towards Flat Booking advance and not an unsecured loan.

- x. Moot issue is that why unsecured loans in F.Y. 2009-10 were given in cash in violation of section 269SS of the IT Act, 1961 when alleged gifts are shown through cheques subject to verifications.
- j. The amount was given towards Flat Booking advance and not an unsecured loan. The advance for booking of flats was accepted in cash at that time, there was no restriction on receipt of the advance against sale of flat in cash. The restriction was on a loan or deposit u/s 269SS.

It is therefore prayed that the addition on account of unexplained credits from Children Rs. 3,70,000/- may please be deleted in light of above submissions.

6. The Ld. D.R. opposed the submissions and the Ld. Counsel for the assessee had supported the findings and reasoning given by the Ld. CIT(A).

7. We have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below.

Ground No.2 is against confirmation of addition made on account of low household expenditure. We find that the authorities below made addition purely on estimation basis. Reasoning given by the authorities below are on the ground that the assessee has 3 school going children, therefore, it is not possible to maintain the expenditure as claimed by the

assessee. However, it is submitted by the assessee that school fee was shown separately in capital account. The total household expenses are shown at Rs.6,00,601/-. The family is residing jointly. Therefore, it is contended that no addition is called for. We have given our thoughtful consideration to the facts of the present case keeping in view of the facts that fee and other expenditure have been claimed separately. We, therefore, restrict the disallowance to the extent of Rs.2 lakhs. Rest of the addition is deleted. Ground No.2 of the assessee's appeal is partly allowed.

8. Ground No.3 is against confirming the addition made on account of disallowance of transfer expenses of agricultural land sold. It is contended that 50% of the transfer charges was required to be borne by the assessee. This fact is not controverted by the authorities below. He submitted that the A.O. in his remand report has duly accepted this fact. The A.O. in the remand report has stated that the signature on the confirmation of stamp vendor Shri Iqbal Khan as submitted do not match with the signature on last page of sale deed as submitted in the

paper book. Therefore, confirmation is not established to be of Shri Iqbal Khan. In reply to this observation, the assessee has stated that the signatures of a person may differ at different times. The A.O. did not choose to call Shri Iqbal Khan in order to verify the authenticity of the confirmation. It is also stated that Shri Iqbal Khan has given an affidavit which is enclosed in the paper book at page No.250. We have perused the contents of this affidavit. As per this, the deponent of the affidavit Shri Iqbal Khan had admitted to have received money in respect of purchase of stamp papers related to the transaction in question. In our considered view, the A.O. ought to have summoned the deponent of the affidavit and examine him. This exercise is not done by the A.O. We therefore, set aside the order of the authorities below on this issue and restore this issue to the A.O. to decide afresh to verify the facts of the affidavit of Shri Iqbal Khan by summoning him and making such enquiry which is necessary for verification. This ground of the appeal is allowed for statistical purposes.

9. Ground No.4 is against sustaining the addition of Rs.35,46,018/- on account of disallowing the exemption claimed u/s 54B of the Act. In respect of this disallowance, it is stated by the assessee that deduction is disallowed on the ground that the requirement of law is not fulfilled as the assessee has not carried out any agricultural activities. We find that Ld. CIT(A) has decided this issue in para No.11 of his order as under:

**11.** Gr. no.4 is against disallowance of claim made by appellant against capital gain u/s 54B of I.T. Act of Rs.35,46,018/-. The AO disallowed such claim because appellant failed to submit any proof in this regard. Now during appellate proceedings appellant has furnished purchase document for purchase of an agriculture land in Village Bicholi Mardana for Rs.65,00,000/- in joint ownership of self & wife, through document dated 13-01-2011. However essential requirement of section 54B of I.T. Act is not fulfilled which says:-

*“land which, in the two years immediately preceding the date on which the transfer took place, was being used by the assessee or a parent of his for agriculture purposes.”*

Requirement of law has to be strictly fulfilled if it is required for allowance of any deduction. Provisions granting exemption require strict

construction as held in case of Kota Co. op Marketing Society Ltd. (Raj.) 207 ITR 608 and Renuka Datla (AP) 240 ITR 463. Hence appellant was required to adduce some positive evidence that such land was used by appellant or his parents for agriculture purposes, in two preceding years. But appellant failed to adduce any positive evidence which could prove that he or his parents has done any agriculture activity on the land sold in Village Rau. Appellant is a media person & he resides with his family & parents in Indore and he is not involved in agricultural activity. Besides the area of Rau is developed and most of the lands are sold here to builders & developers, for either plotting of land or construction of multistory buildings. Even appellant has sold his land in Rau to a developer namely "Samrudhi Indore Town Planner P. Ltd." Besides this appellant failed to produce any positive evidence to prove that he was carrying out any agricultural activity on such land. He failed to produce bills for purchase of fertilizer, manure, seeds or bills of water and electricity, bills for tractor hire and he also failed to produce any bills for sale of agricultural produce. Even income shown in round figure of Rs.2,00,000/- also proves that it was figure assumed & adopted by appellant as real income can never be in round figures with five zeros. Reliance is placed on the decisions in cases of Smt. Asha George [2013] 351 ITR 123 (Kerala) and G. Ramkumar [2012] 51 SOT 541 (Chennai), wherein it was held that onus lies on appellant to prove that land sold was used for agriculture and if appellant fails to prove the same, deduction u/s 54B of I.T. Act is not allowable. Appellant also failed to provide any proof that he carried out any agricultural activity on newly purchased land in Village Bicholi Mardana (which is also a fast developing area) and therefore deduction u/ 54 B is not allowable as held in case of G. Balu [2012] 53 SOT 25 (Chennai), (URO). Frequent purchase & sale of lands show intention of appellant that such lands were not transacted for agricultural income, but they were purchased for gaining accretion in investment in fast developing areas in and around Indore. As a result, the disallowance of claim of deduction u/s 54 B of

I.T. Act of Rs.35,46,018/- is hereby upheld. Gr. no.4 of appeal is dismissed.

10. It is stated that this observation of the Ld. CIT(A) is ex-facie wrong. He has drawn our attention to the paper book page Nos.51 to 54 where the revenue authority has recorded growing of soyabean and paddy from financial year 2005-06 to 2009-10. This fact is not controverted by the revenue by placing any contrary material on record. Moreover, we notice that the Ld. CIT(A) has also observed that intention of the assessee was not for utilising the land for agricultural purposes. We are of the view that where the assessee has demonstrated that it has fulfilled the conditions for availing the benefit of section 54B of the Act, intention of the assessee behind purchase and sale is of no consequence. We therefore, direct the A.O. allow deduction u/s 54B of the Act as claimed by the assessee, and delete the addition.

10. Ground No.5 is against confirming the addition of Rs.3,70,000/- made u/s 68 of the Act. It is stated by the Ld. Counsel for the assessee that the amount was received from the minor children of Rs.3,70,000/-.

He submitted that the assessing officer and CIT(A) both erred in not allowing the claim of the assessee and making addition. We find that in the remand proceedings, the A.O. has categorically stated that these advances were received from the minor children and these amounts pertain to the past savings of the children. The Ld. CIT(A) has not brought on record any adverse material rebutting the finding of the A.O. We therefore, direct the A.O. to delete this addition.

11. Ground No.6 is against sustaining the disallowance of interest paid to bank of Rs.9,38,756/- and enhancing the interest income on the term loan against fixed deposits to Rs.5,20,303/-. It is stated that the A.O. had made addition of Rs.9,38,756/- expenditure for earning interest. The Ld. CIT(A) enhanced this to Rs.14,59,059/-. It is stated that interest income on deposit with the Dena Bank was accrued at Rs.9,31,984/-. Interest expenditure loan from ICICI bank was deposited with Dena Bank of Rs.9,38,756/- and net interest income was of Rs.6,772/-. It is stated that assessee wanted to purchase a property mortgaged with Dena Bank. The borrower was Shri Ashish Bhandari and the lender bank was

Dena Bank. The agreement for purchase of property was entered on 7.5.2007. Our attention was drawn on paper book page Nos.107 to 113. Total consideration fixed was of Rs.4,14,00,000/-. For this Rs.1 crore was paid by the appellant as per the payment schedule. The payment was in the form of deposit in no lien account in Dena Bank. The bank agreed to pay interest as per Savifix scheme of bank till permission by the Hon'ble M.P. High Court was obtained. The balance was to be paid immediately after getting permission of the Hon'ble High Court. For making this payment, the assessee took a loan from ICICI bank of Rs.117 lakhs on 28.3.2007. The loan was dispersed and deposited in the State Bank of Indore from their FDR for security deposit/advance so made. Interest income on Savifix deposit was offered at Rs.9,31,984/- in return of income. In support of this, our attention was drawn to computation of income at paper book page Nos.43 to 44. The assessee claimed interest there on and the same was disallowed by the A.O. on the ground that the assessee had not shown any business income in the computation of income. The Ld. CIT(A) did not adjudicate this ground,

however, enhanced the income. It is stated that the A.O. has confirmed the fact in the remand report. It is also stated that the notice for enhancement was defective as in the notice it was stated that what was the basis of claiming interest expenses of Rs.9,38,756/- and not the notice as to why the interest income from Dena Bank was not offered. We find force into the contention of the assessee. The interest income as offered and the expenditure incurred there on was a direct nexus with earning of such income which is allowable u/s 57 of the Act. The factum of offering of income of Rs.9,31,084/- is duly admitted by the A.O. in his remand report. The assessee has proved nexus with the expenditure incurred and income earned. Therefore, the addition is hereby deleted. Ground No.6 of the assessee's appeal is allowed.

12. Ground No.7 is against addition of Rs.2 lakhs on account of disallowing the claim of agricultural income. Apropos to this ground, it is stated that the agricultural income was offered in the assessment year 2008-09 of Rs.3,42,000/- and in assessment year 2009-10 of Rs.2,25,000/-, was accepted and balance sheet rejected as no bills, etc.

were submitted. It is prayed that the agricultural income may be estimated. After considering totality of the facts and material on record as the land was sold in Jan'16 and the Pustika of the another land is also placed on record, we therefore, estimate income at Rs.1 lakh. The assessee gets relief of Rs.1 lakh. A.O. to delete addition of Rs.1 lakh. This ground of the assessee's appeal is partly allowed.

13. Ground No.8 is against sustaining the addition on account of not accepting the deposits received from the persons against booking of flat. We find that the assessee has furnished PAN No., Incometax Returns of the two persons namely Sunil Solanki and Dilip Solanki. The assessee has claimed that the amount so received as advance not as a loan. This fact requires verification by the A.O. We therefore, set aside the order of the Ld. CIT(A) on this issue and restore the issue to the file of the A.O. for verification from the persons who had advanced money to the assessee and decide the issue afresh.

14. Ground No.9 is against maintaining the addition of Rs.17,78,552/- on non acceptance of gift from mother of the assessee Smt. Kanta

Sojatia. It is stated that the assessee had received a gift of Rs.15 lakhs from his mother. A gift deed to this effect is duly executed which is enclosed at paper book page No.137, copy of the cheque is also enclosed at paper book page No.138. Return computation etc. of mother is also enclosed. Bank pass book, ledger account is also enclosed. The A.O. has also accepted the factum of gift. It is stated that the Ld. CIT(A) has proceeded only on the ground of suspicion. It is stated that there is no evidence to demonstrate that the cash of Rs.15 lakhs was deposited by the assessee. It is further stated that mother of the assessee is a regular income tax payee. The capital of Rs.40,98,329/- is duly reflected and disclosed to the department. It is further pointed out that on 5.11.2009, a sum of Rs.9 lakhs was withdrawn from the bank account. Therefore, it cannot be inferred that mother of the assessee was not having any source of income. Under these facts, we are unable to sustain the finding of the Ld. CIT(A). Further, the assessee has demonstrated that balance amount of Rs.2,78,522/- standing on the credit balance was also gifted to the assessee and the same was reflected by capital account also. Since the

donor is having sufficient source to donate duly assessed to income tax, thus, the finding of the Ld. CIT(A) is not sustained and the addition made is deleted.

15. Ground No.10 is against addition of Rs.42,461/- on account of interest received but not reflected in the return. Ld. Counsel for the assessee fairly conceded that this amount was not reflected in the books of accounts. We therefore, dismiss this ground of the assessee's appeal.

16. Ground No.11 is against confirming the addition of Rs.17,01,000/- on account of unexplained cash deposits in bank. It is contended that assessee had deposited a sum of Rs.26,01,000/- in bank. The source of deposit was out of opening cash of Rs.15,98,017/- withdrawal in April, 2009 of Rs.2,35,000/-, advance received of Rs.7 lakhs. It is stated that all the transactions of preceding year are recorded in the books of accounts. The books are duly audited. The cash on hand as on 31.3.2009 of Rs.5,98,017/-. As per the audited accounts, none of the deposit was found to be unaccounted. Section 69 of the Act would apply only when the transaction is not recorded in the books. It is stated

that the assessment of assessment year 2009-10 was completed u/s 143(3) of the Act, wherein the cash balance was duly accepted. It is also stated that the cash in hand in earlier years was accepted. Ld. D.R. could not rebut this contention of the assessee that in the earlier year cash balance was duly accepted in the assessment proceedings. Therefore, the addition as made is deleted. In respect of the addition of Rs.2,35,000/- , it is pointed out by the assessee that this amount was out of withdrawal during April, 2009. Therefore, addition made cannot be sustained. Same is hereby deleted.

17. Ground No.12 is against initiation of penalty. Ground No.13 is against charging of interest u/s 34B & 34C of the Act. Ground No.12 being premature is dismissed as such. Ground No.13 is consequential in nature and is held accordingly.

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

19. Now we take up ITA No.310/Ind/2015 wherein the assessee has raised following grounds of appeal:

1. *The CIT(A) upheld the assessment order without entertaining/admitting/considering the submissions of the appellant. It is not based on the facts on record and it is contrary of the provisions of law and justice.*
2. *The Ld. CIT(A) is not justified in maintaining addition of Rs.3,03,000/- on account of less withdrawals for house hold expenses.*
3. *The Ld. CIT(A) is not justified in maintaining the addition of Rs.56,82,161/- on account of cash deposits in bank account.*
4. *The Ld. CIT(A) is not justified in enhancing the addition by Rs.34,800/- on account of agriculture income of Rs.2,34,800/- shown by the assessee out of Rs.2,34,800/- A.O. has already added Rs.2,00,000/- under the head unexplained deposits in bank account.*
5. *The Ld. CIT(A) is not justified in maintaining initiation of penalty u/s 271(1)(c).*
6. *The Ld. CIT(A) is not justified in maintaining charging of interest u/s 234B and 234C.*
7. *The Appellant craves leave to add, amend or alter any ground or appeal and/or raise any other ground of appeal.*

20. Apropos to these grounds, Ld. Counsel for the assessee has reiterated the submissions as made in the written submissions, which are reproduced as under:

Return	:	18.01.2011 at Rs.18,79,050/- and agricultural income at Rs. 2,34,800
Source	:	Income from Salary, House Property and agriculture and agricultural income.
Assessment order u/s 143(3)	:	20.12.2012. Assessed Income – 99,72,230/-
CIT (A) Order	:	22.08.2014

**GROUND NO.2 - LOW HOUSEHOLD EXPENDITURE RS. 3,03,000**

**AO para 5.**

**CIT(A) pg. 23 para 8.**

Household expenses added by Id AO	Rs. 4,80,000
Less: Deleted by Id CIT(A) as already shown	<u>Rs. 1,77,000</u> **
Confirmed by Id CIT(A)	Rs. 3,03,000

\*\* Correct household expenses shown Rs. 4,18,010.

At the first instance, the household expenses shown by assessee is taken wrongly by Id CIT(A) as PB 41 shows household expenses at Rs. 3,37,010 and other expenses like education is shown separately Rs. 1,37,700. Id CIT(A) has taken household expenses only at Rs. 96,000 for assessee instead of Rs. 3,37,100.

Further, the ground is covered by ground no. 2 of Sunil Sojatiya Appeal No. ITA 312/ IND/ 2015.

Particulars	Debited by Sunil	Debited by Prabhat
<b><u>(A) Expenses</u></b>		
Other Household expenses	Sunil 1,20,000 Wife 26,500 HUF 36,000	Prabhat 3,37,010 Wife 45,000 HUF 36,000
Tution/ Education Fees	1,75,500	1,37,700
<b>TOTAL (A)</b>	<b>3,58,000</b>	<b>5,55,801</b>
<b><u>(B) Investments</u></b>		
LIC Premium	2,66,802	6,66,767
Medical Insurance	7,153	566
Personal Accident Policy		3,52,856
<b>TOTAL (B)</b>	<b>2,73,955</b>	<b>10,20,189</b>
<b>TOTAL EXPENSES (B) + (B)</b>	<b>6,31,955</b>	<b>15,75,990</b>

It is also a pertinent fact that: -

- d. There is no basis for estimation of household expenses at Rs. 4,80,000. Appellant has already justified that a huge household expenses have been debited in the family to the tune of Rs. 22,07,945.
- e. Appellant owns the house.
- f. Housing loan was taken for construction of house. Interest on same was booked separately in capital account (apart from household expenses).

- g. Assessee does not own any vehicle in personal capacity. Thus, household expenses are bound to be less.
- h. No evidence of any other expenses were found.

**GROUND NO.3 – CASH DEPOSIT IN BANK RS. 56,82,161**

**AO para 6.**

**CIT(A) pg. 25 para 9.**

The Cash deposits by appellant on various dates in Bank accounts: -

Account No	Name of Bank	Amount
094501501974	ICICI Bank, Rajwada Branch, Indore	49,00,000
094501500001	ICICI Bank, Rajwada Branch, Indore	25,000
53005469860	State Bank of Indore, Rajwada Branch, Indore	8,82,161
Total		58,07,161

Out of the above cash deposit of Rs. 58,07,161, an amount of Rs. 57,82,161 was deposited before 08.07.2009. Withdrawal before 08.07.2009 was Rs. 1,00,000. Thus difference of Rs. 56,82,161/- was added as unexplained deposits of the appellant.

**SUBMISSIONS: -**

1. The summary of cash flow for the current year is as follows (PB 93, reproduced with respective PB nos. of current paper book) :-

Particulars	Amount	Reference
Opening Cash Balance (01.04.2009) [supported by wealth-tax return PB 88]	<b>37,31,517</b>	PB 88
Add: Cash Withdrawal from ICICI bank a/c no 094501501974	1,05,000	PB 68
Cash Withdrawal from ICICI bank a/c no 094501500001	3,27,000	PB 71
Cash Withdrawal from SBI bank a/c no 53005469860	1,50,000	PB 73
Cash Withdrawal from IDBI bank a/c no 052910400001236	1,52,230	PB 76
Cash Withdrawal from Partnership firm 'Dainik Prabhat Kiran'	8,00,000	PB 99
On sale of Agriculture crop	2,00,000	PB 99
Refund of Loan from Shri Satyanarayan Soni	4,14,028	PB 101
Refund of Loan from Prakash Purohit	81,375	PB 103
Cash Inflow	<b>59,61,150</b>	
Less:		
Cash Deposit in ICICI Bank a/c no 094501501974	49,00,000	PB 68

Cash Deposit in ICICI bank a/c no 094501500001	25,000	PB 71
Cash Deposit in SBI bank a/c no 53005469860	8,82,161	PB 73
Cash Deposit in IDBI bank a/c no 052910400001236	24,314	PB 76
Cash Withdrawal for Domestic Expenses	96,000	PB 44
Balance as on 31.03.2010	<b>33,675</b>	PB 42

Thus, all the deposits are explained.

2. **Why such huge cash:** - The ICICI-Bank mortgage loan of Rs. 1.17 crs was taken by the assessee on 18.12.07. Same was taken to SBI. PB 143.

The assessee was in search of land in Bhopal and Ujjain for establishing the expansion/ editions of his newspaper – ‘Dainik Prabhat Kiran’. For this the land was to be purchased.

The cash was withdrawn from SBI for the same purpose in Dec. 2007. PB 151-152. But unfortunately the project idea was dropped and the cash was kept in hand. This cash was utilized for depositing in the bank account later in current year.

3. **Opening cash:** - The appellant has deposited this out of the opening cash balance as on 01.04.2009 of Rs. 37,31,517, which is reflected in Balance Sheet submitted to the department at the time of furnishing wealth tax return for A.Y 2009-10 and has also deposited wealth tax on said cash amount. Refer PB 87-88.

The opening cash balance is also explained through the Cash Book for A.Y 2009-10 at PB 96. Further the opening balance of cash as on 01.04.2008 for Rs. 69,58,428 is supported with the return of income, Statement of affairs for A.Y 2008-09. (Refer PB 108).

4. Wealth tax returns/ computations are as under:

<b><u>Valuation Date</u></b>	<b><u>A.Y.</u></b>	<b><u>Cash in hand</u></b>
31.03.2008	2008-09	Rs. 69,58,428 [PB 173]
31.03.2009	2009-10	Rs. 37,31,517 [PB 88]

5. The assessee received the cash from following sources also during the F.Y 2009-10, which was deposited in bank account:

<b>r. No</b>	<b>Particulars</b>	<b>Amount</b>	<b>Remarks</b>
.	Cash withdrawal from firm ‘Dainik Prabhat Kiran’	8,00,000	The form 26AS have the details of Rs. 6 lac and tax deducted on the same.(PB 48)The Ledger extract of ‘dainik Prabhat Kiran’ (PB 99-100) and form 16.(53-54
.	Loan to Mr. Satyanarayan	4,14,028	The confirmation and ledger is in PB 101-102

	Soni was received in cash		
.	Loan from Shri Prakash Purohit received in cash	81,375	The confirmation and ledger is in PB 103
.	Sale of agriculture crop	2,00,000	The cash received is supported by sale bills on PB 115-135 and the amount is credited in capital account on PB 47, the same is also in the return of income at PB 38.
total		<b>14,95,403</b>	

It is therefore prayed that the addition may kindly be deleted.

**GROUND NO. 4: AGRICULTURAL INCOME**  
**CIT(A) Pg. 31.**

Shown in return		Rs. 2,34,800
AO Added	NIL	
CIT(A) enhanced	<u>Rs. 2,34,800</u>	Rs. 2,34,800
Less: CIT(A) deleted amount already		
Deposited in bank (added as deposits)	<u>Rs. 2,00,000</u>	
CIT(A) confirmed		Rs. 34,800

1. Basis of Id CIT(A). No evidence for agriculture submitted.
2. See CIT(A) pg. 20 reply to Que 7. Evidences submitted.

Thus, the very foundation for addition is wrong.

The appellant further submits that the appellant has land at Gram Bicholi Mardana. PB 43. Bills for sale of agricultural produce (both at mandi and outside) are given. Same were not disputed by the learned CIT(A).

Further, as this issue does not arise out of assessment, Id CIT(A) could not have done enhancement on this issue. It is a trite law that the Id CIT(A) has powers of enhancement. These powers are wide and empower Id CIT(A) to decide any issue in the interest of justice.

However, this does not mean that the powers are unfettered. Id CIT(A) can only do "enhancement of assessment" i.e. he can do enhancement only on those points which were subject matter of assessment.

In *CIT vs. Shapoorji Pallonji Mistry 44 ITR 891 (SC)*, it was held that CIT(A) cannot find a new source of income not considered by I.T.O. Power of enhancement is restricted to the subject matter of assessment or source of income considered by I.T.O.

This judgment was followed in following cases: -

- (a) *CIT vs Sardari Lal & Co. 251 ITR 864 (Del.)(FB)*. CIT has not power to travel beyond the subject matter of the assessment.
- (b) *CIT vs. Rai Bahadur Hardutroy Motilal Chamaria [1967] 66 ITR 443 (SC)*;
- (c) *Prabhudas Ramji 62 ITR 621 (Guj.)*; *CIT vs Nirbheram 127 ITR 491 (MP)*;
- (d) *CIT vs Chaganlal Kailas & Co. 148 ITR 7 (Mad.)*. By the exercise of the power to assess fresh sources of income, the assessee is deprived of a finding by two tribunals and one right of appeal.
- (e) *Jagarnath Therani vs CIT AIR 1925 Pat 408*. Where the assessee objects validity of assessment, power of CIT(A) cannot extend to enhancing the assessment, it must be limited to annulling assessment, if it is without jurisdiction.

21. At the time of hearing, Ground No.1 is not pressed and the same is dismissed as such.

22. Ground No.2 is against maintaining the addition of Rs.3,03,000/-.

We find that the authorities below made addition purely on estimation basis. We have given our thoughtful consideration to the facts of the present case we restrict the disallowance to the extent of Rs.2 lakhs. Rest of the addition is deleted. Ground No.2 of the assessee's appeal is partly allowed.

23. Ground No.3 is against addition on account of cash deposits in bank of Rs.56,82,161/-. It is stated that the opening cash balance of

Rs.37,31,517/-. It is also stated that the assessee in ICICI Bank Rajwada branch deposited a sum of Rs.49,25,000/- and in the State Bank of Indore a sum of Rs.8,82,161/-. The assessee has given a cash flow statement in the submission

6. The summary of cash flow for the current year is as follows (PB 93, reproduced with respective PB nos. of current paper book) :-

Particulars	Amount	Reference
Opening Cash Balance (01.04.2009) [supported by wealth-tax return PB 88]	<b>37,31,517</b>	PB 88
Add: Cash Withdrawal from ICICI bank a/c no 094501501974	1,05,000	PB 68
Cash Withdrawal from ICICI bank a/c no 094501500001	3,27,000	PB 71
Cash Withdrawal from SBI bank a/c no 53005469860	1,50,000	PB 73
Cash Withdrawal from IDBI bank a/c no 052910400001236	1,52,230	PB 76
Cash Withdrawal from Partnership firm 'Dainik Prabhat Kiran'	8,00,000	PB 99
On sale of Agriculture crop	2,00,000	PB 99
Refund of Loan from Shri Satyanarayan Soni	4,14,028	PB 101
Refund of Loan from Prakash Purohit	81,375	PB 103
Cash Inflow	<b>59,61,150</b>	
Less:		
Cash Deposit in ICICI Bank a/c no 094501501974	49,00,000	PB 68
Cash Deposit in ICICI bank a/c no 094501500001	25,000	PB 71
Cash Deposit in SBI bank a/c no 53005469860	8,82,161	PB 73
Cash Deposit in IDBI bank a/c no 052910400001236	24,314	PB 76
Cash Withdrawal for Domestic Expenses	96,000	PB 44
Balance as on 31.03.2010	<b>33,675</b>	PB 42

Thus, all the deposits are explained.

24. It is pointed out that the assessee had deposited out of opening cash balance of Rs.37,31,577/- and the same is duly reflected in the wealth

tax return pertaining to the assessment year 2009-10. The cash balance is also explained through cash book of assessment year 2009-10. Further, opening balance of cash as on 1.4.2008 for Rs.69,58,428/- is supported with the return of income and statement of affairs pertaining to the assessment year 2009-10. In this regard, our attention is drawn to paper book page no.108. It is also stated that assessee has also received cash withdrawal from Dainik Prabhat Kiran of Rs.8 lakhs, loan from Satyanarayan Soni and Shri Prakash Purohit of Rs.4,14,028 & Rs.81,375/- and out of sale of agricultural crop of Rs.2 lakhs. From the cash flow statement as furnished by the assessee, it is clear that the assessee was having cash in hand and cash received from Dainik Prabhat Kiran on sale of agricultural crop and refund of loan, etc. to make deposits in the bank. The revenue has not placed any adverse material contradicting the submissions of the assessee. Under these facts, the addition cannot be sustained. Hence, this ground of assessee's appeal is allowed.

25. Ground No.4 is in respect enhancing the addition by Rs.34,800/- on account of agricultural income of Rs.2,34,800/-. We find that the authorities below made addition purely on estimation basis. We have given our thoughtful consideration to the facts of the present case, we restrict the disallowance to the extent of Rs.2 lakhs.

26. It is contended by the Ld. Counsel for the assessee that the basis of making addition is wrong and contrary to the material available on record. It is further contended that all evidences related to the agricultural income was placed before the Ld. CIT(A). In support of this, he has taken us through the paper book on the evidences furnished, it is clear that the assessee is having agricultural income, therefore, the addition made by the Ld. CIT(A) is hereby deleted.

27. Ground No.5 is in respect of initiation of penalty and Ground No.6 is against charging of interest. Ground No.5 being premature is dismissed as such. Ground No.6 is consequential in nature and is held accordingly.

28. Ground No.7 is general in nature and needs no separate adjudication.

29. In the result, the appeal of the assessee is partly allowed.

30. The appeal of the assessee in ITA No.312/Ind/2015 is partly allowed for statistical purposes and the appeal of the assessee in ITA No.310/Ind/2015 is partly allowed.

*Order was pronounced in the open court on 23.10.2018.*

Sd/-  
(MANISH BORAD)  
ACCOUNTANT MEMBER

Sd/-  
(KUL BHARAT)  
JUDICIALMEMBER

Indore; दिनांक Dated : 23/10/2018  
VG/SPS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

**Sr. Private Secretary, Indore**