

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 No.473/Ind/2017
Assessment Year: 2013-14**

Shri Vasudev Patidar, Village- Tillor Khurd, District Indore(MP) (Appellant)	<u>बनाम/</u> Vs.	Income Tax Officer -2(4), Indore (Revenue)
PAN: BYBPP1563R		
Appellant by	Shri Ashish Goyal, & Shri N.D. Patwa, Advs.	
Revenue by	Shri R.S. Ambedkar, Sr. DR	
Date of Hearing:	24.10.2019	
Date of Pronouncement:	30.10.2019	

आदेश / O R D E R

PER MANISH BORAD, A.M:

This appeal at the instance of Assessee pertaining to A.Y. 2014-14 is directed against the order of Commissioner of Income Tax-(Appeals)-I, Indore, (in short 'CIT'), dated 24.03.2017 which is arising out of the order u/s 144 of the Income Tax Act 1961(hereinafter called as the 'Act') framed on 28.01.2016 by ITO-2(4), Indore.

2. The assessee has raised following grounds of appeal:

“That, the Ld. CIT(A) erred in not allowing in the appeal in full. When the Ld. CIT(A) accepted that there is a typographical mistake then there is no justification in maintaining the agricultural income of Rs.13,53,068/-.

2. That the Ld. CIT(A) further erred in assessing the agricultural income as income from other sources.

3. That the Ld. CIT(A) further erred in upholding the agricultural income as income from other sources & the income estimated by him is not proper particularly when the assessee is having agricultural income and bank interest income. The onus lies on the department to establish that the assessee derived income from any other source. No such material is there and therefore the income of Rs.13,070/- and agricultural income of Rs.4,70,802/-.

4. The assessee owns agricultural land 5.13 Bigha at Maheshwar & 4.87 Bigha at Tillor Khurd totalling 10 Bigha of agricultural land in which 50% agricultural land is owned by the brother of the assessee.

5. Ld. CIT(A) erred in upholding the agricultural income of Rs.13,53,068/- as agricultural income in 5 Bighas of agricultural land. ”

3. Briefly stated facts as culled out from the records are that the assessee is an individual earning income from interest and agricultural operation. Income of Rs.13,070/- and agricultural income of Rs.47,08,302/- declared in the return of income filed on 30.03.2014. Case selected for scrutiny assessment, followed by serving of notices u/s 143(2) & 142(1) of the Act. Learned Assessing Officer (in short Ld. AO) after examining various details relating to assessee's claim of agricultural income of Rs.47,08,302/- and after going through the details of Sales proceeds, expenses incurred, cash deposited by the assessee in the bank accounts, came to a conclusion that the assessee has made incorrect claim of

agricultural income of Rs.44,08,302/- and the same needs to be added as “Income from other sources”, thereby, assessing income at Rs.44,21,372/- and agricultural income assessed at Rs.3,00,000/-.

4. Against this addition the assessee preferred an appeal before the Ld. CIT(A) and partly succeeded to the extent that Ld. CIT(A) deleted the addition of Rs.30,68,302/-.

5. Now the assessee is in appeal challenging the finding of Ld. CIT(A) confirming the addition of Rs.13,40,000/- (Addition by the Ld. AO at Rs.44,08,302/- less - Addition deleted by the Ld. CIT(A) at Rs.30,68,302/-).

6. Ld. counsel for the assessee vehemently argued referring to the following written submissions, placing reliance on decision and referring to the cash flow statements:

The appellant contends that the source of the deposits is explained as under:

<i>Total deposit in bank of assessee</i>	<i>Rs. 25,40,000</i>
<i>Less: Withdrawals from bank</i>	<i>Rs. 18,56,000</i>
<i>Less: Household expenses</i>	<i>Rs. 1,50,000</i>
	<i>Rs. 17,06,000</i>
<i>Less: Withdrawals from Seva Sahakari Bank (PB 33)</i>	<i>Rs. 4,15,000</i>
<i>Less: Agricultural income on 3.263 hectares (Belonging to assessee)</i>	<i>Rs. 4,70,830</i>
<i>Less: Balance out of past savings</i>	<i>Rs. 1,00,000</i>
	<i>(Rs. 1,51,830)</i>

1. Withdrawals from Bank

Summarised chart of monthly cash deposits and withdrawals from bank account of appellant are given below

Cash Deposits and Withdrawals from Bank for F.Y. 2012-13				
	Opening	Withdrawals	Deposits	Closing
April			5,00,000	5,00,000
May	5,00,000	59,000		4,41,000
June	4,41,000	8,85,000		-444,000
July	-444,000		2,70,000	-174,000
Aug	-174,000	42,000	8,00,000	5,84,000
Sep	5,84,000		3,00,000	8,84,000
Oct	8,84,000	5,00,000	3,50,000	7,34,000
Nov	7,34,000	1,50,000		5,84,000
Dec	5,84,000		2,20,000	8,04,000
Jan	8,04,000	2,00,000		6,04,000
Feb	6,04,000	20,000	1,00,000	6,84,000
March	6,84,000			6,84,000
		18,56,000	25,40,000	6,84,000

Summarized chart of monthly cash deposits and withdrawals from bank account of of Shri Jitendra Patidar (appellant's son) are as under:-

Cash Deposits and Withdrawals from Bank for F.Y. 2012-13				
2013	Opening	Withdrawals	Deposits	Closing
April		52,000		-52,000
May	-52,000	30,000		-82,000
June	-82,000			-82,000
July	-82,000	10,000	7,00,000	6,08,000
Aug	6,08,000	3,10,000	2,00,000	4,98,000
Sep	4,98,000	2,00,000		2,98,000
Oct	2,98,000	1,00,000		1,98,000
Nov	1,98,000	40,000		1,58,000
Dec	1,58,000		50,000	2,08,000
Jan	2,08,000			2,08,000
Feb	2,08,000			2,08,000
March	2,08,000	2,500		2,05,500
		7,44,500	9,50,000	2,05,500

2. Withdrawals from Seva Sahakari Bank

There was bank F.D.R. in Seva Sahakari Bank. This F.D.R. matured in the current year and out of the maturity proceeds Rs. 4,15,000 were withdrawn. These were further redeposited in the bank account with Bank of India.

3. Agricultural income on 3.263 hectares (8.06 acres)

The total land holding of assessee family is 5.414 hectares of which 3.263 hectares is of the assessee.

The land is irrigated. Bills of agricultural produce are filed at PB 65-85. Agricultural income of Rs. 3,00,000 was accepted by the ld AO himself. Pg. 5 bottom, the ld AO states:

“Keeping in view that the claim of agricultural income is restricted to Rs. 3,00,000”.

4. Past savings

The appellant was aged 57 years, at the relevant time. The appellant submits that the balance deposits were out of his past savings from agriculture which he had earned across his life.

Without Prejudice, the unaccounted income is agricultural income

In any case, since the only known source of income of the appellant was agricultural income (except specific source of income being bank deposit), unaccounted income, if any shall be agricultural income.

*For this reliance is placed on **Krishnakant Paliwal 9 ITJ 348 (Trib. Indore)**.*

*It is a settled proposition of law as laid in **Laxmichand Baijnath 35 ITR 416 (SC)**, that where unaccounted income is found, it shall be from same source as the accounted source. This judgment was further followed in **Margret’s Hope Tea Mfg Co. 201 ITR 747 (Cal.)**, where it was held that cash credits were the tea income of the assessee, as this was the known source of income.*

*In **DIT (Exemption) vs Raunaq Education Foundation 294 ITR 76 (Del.)**, it was held that where the assessee was running educational institution, any unaccounted income was to be held as the income from educational institution only and same would be exempt u/s. 10(22).*

Thus, in the present case, any income which assessee is unable to explain would be only from the known source, i.e. the agricultural income only.

7. Per Contra Ld. Departmental Representative (DR) supported the order of Ld. CIT(A).

8. We have heard rival contentions and perused the record placed before us and carefully gone through the submission made by the

Ld. counsel for the assessee. The issue relates to the claim of agricultural income which at the time of filing the return of income was claimed by the assessee at Rs.47,08,302/- and subsequently, before the Ld. CIT(A) it was contended that the actual agricultural income is only raised at Rs.4,70,830/- and was wrongly mentioned in the return of income at Rs.47,08,302/-.

9. We find that Ld. CIT(A) examined the facts in detail including the cash flow statements, details of sales proceeds of agricultural income and incidental expenses incurred, income of the sons of the assessee, investment in the warehouse and other facts observing as follows:

7. Ground Nos.2, 4 & 5:- *These grounds of the appellant are directed against the addition of Rs4408302/ - being agricultural income treated as undisclosed income under the head income from other sources. The detailed facts of the case as per the assessment order are reproduced at Para No.2 above. The detailed submissions of the appellant are reproduced at Para No.3 above. The remand report is reproduced at Para No. 4 above. No specific comments have been submitted by the appellant on the remand report.*

7.1 *From the material on record it is seen that the appellant had shown agricultural income of Rs.4708302/ - in the return of income filed. During the course of assessment proceedings it was contended by the appellant that he was an agriculturist having land at Tillore Khurd and Maheshwar being 5.13 Bighas at Maheshwar and 4.87 Bighas at Tillore Khurd jointly with his brother. On such land agricultural activities were carried out and Vegetables,*

Onions, Potatoes, Wheat, Soyabean, Chana crops were taken. Appellant also filed some bills and Income and Expenditure account in support of the claim according to which gross agricultural receipts were shown at Rs4708302/ - and expenses on agricultural activities was shown at Rs.3197235/ -. The net agricultural income thus shown was Rs.1511067/-. The appellant did not substantiate the receipts and expenses with any documentary evidences and the bills of sale of agricultural products produced by the appellant were rejected by the AO as these pertained to subsequent period and were not relevant for the year under consideration. AO also observed that the land holding of the appellant was inadequate to account for the gross receipts shown. AO also noted the fact that cash deposits were made in the bank accounts which were not satisfactorily explained. AO asked for specific compliances as noted in the assessment order and asked the appellant to rem am present for examination however, as the appellant failed to comply AO assessed the income u/s 144 of The Act by rejecting the contention that the amount of Rs.4708302/- represented 'agricultural income. Agricultural income of Rs.300000 / - was estimated as the correct agricultural income and the balance amount of Rs4408302/ - was added as undisclosed income.

7.2 During the course of appellate proceedings the appellant took the plea that the agricultural income of Rs.4708302/ - was wrongly shown in the return of income filed due to inadvertent mistake and the correct agricultural income was only Rs 470830/ - which was commensurate with agricultural income of Rs.235650/- shown in A.Y. 2011-12 and Rs.245680/ - "shown in A.Y. 2012-13. Appellant was asked to justify the above

contention by producing details of all bank accounts of self and family explaining the cash deposits in the said account, details of land holding of self and family and the crops grown and the area under cultivation of each crop. In response to the above appellant submitted the details called for vide submission dated 27/02/2017 which is reproduced above. On perusal of the same it is noticed that the total land holding of the appellant is 5.414 Hectares out of which 3.263 Hectares is in the name of the appellant and 2.151 Hectares is in the name of his brother Shri Mangilal. It has been contended by the appellant that agricultural activity was being jointly carried out with his brother.

7.3 *From the detail of bank accounts submitted it is seen that the appellant has account with Bank of India Account No. 0632 and Account with Seva Sahakari Vrittakar Sahakari Sansfha Maryadit Account No. 54. His son Shri Jitendra Patidar has an account with Bank of India Account No. 5652 and his other son Shri Rajendra Patidar has an account with State Bank of India Account No. 5168. On perusal of the above accounts it is seen that in the account of the appellant with Bank of India cash deposits of Rs.2590000 / - has been made. In the account of Shri Jitendra Patidar cash of Rs.250000 / - has been deposited and the account of Shri Rajendra Patidar an account of Rs.49500/ - has been deposited during the year under consideration. Shri Rajendra Patidar was working. The appellant has submitted that the cash deposits of Rs.2590000 / - in his bank account are out of sale proceeds of agricultural produce and cash in hand out of prior withdrawals. According to his Submission dated 27/02/2017 the deposits of Rs.2590000 /- are as under:-*

1. Loan received from Swami Saran	Rs.48300/-
2. Withdrawal from Seva Sahakari Sanstha out of FD maturity.	Rs. 320000/-
3. Sale of agricultural produce	Rs. 1500000/-
4. Cash in hand & cash prior withdrawals.	<u>Rs.721700/-</u>
Total	Rs.2590000 /-

7.4 From the above submission of the appellant it is seen that agricultural receipts are shown at Rs.1500000 /- however, this is only the cash deposited. Apart from this an amount of Rs.29085/- and Rs.528767 is also deposited in the above account and is stated to be amount received by cheque on sale of agricultural produce thus, the total receipts from sale of agricultural produce come to Rs.2057852/-. The agricultural expenses are shown on estimated basis at Rs.1050000/- by the appellant. The net agricultural income therefore comes to Rs.1007852/-. The statement of the appellant therefore that his correct agricultural income was only Rs.470830 /- and not Rs.4708302/- does not get supported by the details submitted by the appellant of his agricultural income to explain the cash deposits in his bank account. Further, the agricultural income of Rs.1500000 /- claimed by the appellant is also without taking note of the fact that it does not take into account the cash deposits of Rs.550000 /- in the account of Shri Mangilal Patidar and Rs.250000 /- in the account of Shri Jitendra Patidar. Further, appellant has produced details of land holding and crops grown according to which total land holding of the appellant is only 3.263 Hectares and the gross receipts shown from 3.263 hectares at Rs.1500000 /- comes to

Rs.460000/- per hectares. Appellant has submitted bills of sale of Onions and Potatoes and Vegetables totaling to Rs.792559/-. This does not include the amount of Rs.528767/- received from Shiv Shakti Aloo Utpadak by cheque. Appellant has not produced the details of area under aloo cultivation, onion cultivation and vegetables Cultivation. From the bills submitted and cheque receipts from sale of agricultural produce the total comes to Rs.1350411/-. As against this cash deposits are Rs.2590000/- in the account of the appellant, Rs.250000/- in the account of Shri Jitendra Patidar who does not have any other independent source of income to explain the said deposit and Rs. 550000/ - in the account of Shri Mangilal Patidar brother of the appellant, who also has income from agriculture, which totals to Rs.3390000/-. Considering the above the agricultural receipts estimated by the appellant are Rs.1500000/ -. Even if, the cash deposits in the account of Shri Mangilal Patidar is not taken into consideration the cash deposits in the account of the appellant and his son work out to Rs.2840000/-. For the year under consideration it is also seen that the son of the appellant Shri Jitendra has constructed a ware house and the appellant has also contributed towards expenses on such construction. In the wake of the above the contention of the appellant that cash withdrawn from the bank account was re-deposited is found to be not satisfactory to explain the deposits in cash in the account. Appellant has also not bifurcated the utilization of the amount in household expenses, agricultural expenses and re-deposit on the respective date. Considering all the above facts it is held that the cash deposits in the bank account of the appellant and

*his son totaling to Rs.2840000/- are found to be satisfactorily explained only to the extent of Rs.1500000/- and the balance amount of Rs.1340000/- is treated to be not satisfactorily explained. The addition of Rs.4408302/- is therefore directed to be restricted to RS.1340000/. The appellant gets relief of Rs.3068302/- .The explanation of the appellant that the agriculture income was inadvertently shown at Rs.4708302/- is found to be without merits. The whole exercise under taken by the appellant was with the intention of explaining the cash deposits in the bank account and this was also with a view to establish a link between the construction of the ware house by his son and the withdrawals from his bank account. **Rs.3068302/- Deleted***

10. Before us the Ld. counsel for the assessee tried to prove that the source of alleged deposit in cash in the bank account is explained by the agriculture income, past savings and withdrawal on various occasions from other bank accounts. However, the ld. counsel for the assessee failed to rebut the finding of Ld. CIT(A) that the net agricultural income primarily was computed at Rs.10,07,852/- which totally negate the claim of assessee that the only agricultural income of Rs.4,70,830/- was earned. Ld. counsel for the assessee also failed to controvert the finding about the source of investment in the warehouse construction by Mr. Jitendra Patidar, (son of the assessee), household expenses not considered in cash flow statements, no independent source of income of the assessee's son, non-production of details of potato, onion, vegetables cultivation.

11. We, therefore, in the given facts and circumstances of the case and fair finding of facts given by the Ld. CIT(A) who after examining the cash flow statements, transactions carried by the assessee during the year, agricultural proceeds and expenses incurred during the year has given relief of Rs.30,68,302/- as against the addition made by the Ld. AO at Rs.44,08,302/-, find no merit in the submissions of Ld. counsel for the assessee. We, therefore, find no reasons to interfere in the well-reasoned finding of the Ld. CIT(A). Accordingly grounds raised by the assessee stands dismissed.

12. In the result, the appeal of the assessee is dismissed.

Order was pronounced in the open court on 30.10.2019.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 30/10/2019

Patel, P.S./नि.स.

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

By order
Assistant Registrar