

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“PATNA BENCH, PATNA**  
**VIRTUAL HEARING AT KOLKATA**

**Before Shri Duvvuru RL Reddy, Vice-President and Shri Sanjay Awasthi, Accountant Member**

**I.T.A. No.174/Pat/2023**  
Assessment Year: 2020-21

ACIT, Central Circle-1, Patna.....Appellant

vs.

Suman Kumar.....Respondent

**S/o Late Madan Singh,  
Vill-Baijnathpur, P.O-Wazir Gangj,  
Distt- Gaya (Bihar)-805131.  
[PAN: ARXPK3461F]**

**Appearances by:**

Shri Ashok Kumar, CIT, appeared on behalf of the appellant.

Shri Manish Rastogi, Advocate, appeared on behalf of the Respondent.

Date of concluding the hearing : November 26, 2024

Date of pronouncing the order : December 10, 2024

**ORDER**

**Per Sanjay Awasthi, Accountant Member:**

1. The present appeal emanates from the order u/s 250 of the Income Tax Act, 1961 (hereinafter the 'Act') passed by Commissioner of Income Tax (Appeals)-3, Patna dated 02.03.2023. In this case, vide order dated 30.09.2021, the Assessing Officer has recorded that the assessee was apprehended with cash of Rs.58,00,000/- on a Lucknow to Patna Flight. It appears that the assessee deposed before the Investigation Wing Authorities initially that the entire amount was undisclosed and offered the said amount for taxation. However, during the assessment proceedings, it was submitted by the assessee that the seized amount included two loans of Rs.25,00,000/- and Rs.19,00,000/-. Also, the assessee made efforts to prove that the Rs.58,00,000/- was out of cash-in-hand. Finally, the assessee claimed that Rs.30,00,000/-, as undisclosed income from sand mining, could not be submitted in a

revised return due to some technical issue. However, the Assessing Officer added this amount u/s 69A of the Act.

1.1 Before the Id. CIT(A), the assessee could succeed on most issues, except on the addition of Rs.30,00,000/-. Briefly, the Id. CIT(A) has re-appraised the evidence regarding the impugned transactions and before granting relief has noted that the Assessing Officer should have conducted more effective enquiries.

2. Aggrieved with this action of the Id. CIT(A), the revenue is in appeal before us through the following grounds of appeal:

*“i. That on the facts and circumstances of the case, the learned Commissioner of Income-tax (A)-3, Patna has erred both in law and on fact in deleting the addition of Rs. 58,00,000/- made in respect of unaccounted and unexplained money without appreciating the fact that the assessee did not furnish any corroborative documents which could establish that intercepted cash amount being brought from Lucknow by flight was recorded in his books of accounts.*

*ii. That on the facts and circumstances of the case, the learned Commissioner of Income-tax (A)-3, Patna has erred both in law and on fact in deleting the addition of Rs. 44,00,000/- made as unexplained credits without appreciating the fact that the assessee failed to establish the identity, creditworthiness and genuineness of the two lenders from whom unsecured loans were claimed to have been taken as the assessee did not furnish confirmation from the alleged lenders and also failed to produce Cash Book to substantiate the cash in hand on 13.02.2020.*

*iii. That the Ld. CIT(A) erred both in law and facts in accepting the reconciliation statement submitted by the assessee without considering the fact that assessee neither submitted the details of his sand business nor any proof of the source and purpose of carrying the cash to Lucknow.*

*iv. That the Ld. CIT(A) erred in ignoring the fact that cash books, sale and purchase register were not produced by the assessee and the claimed receipts, profits and depreciation (in cash) were not supported by any material.*

*v. That the Ld CIT(A) erred in accepting the reconciliation statement ignoring the fact that in the statement recorded on oath on 13.02.2020 during the search and seizure u/s 132(1) the assessee accepted that the*

*investment as well as earning from sand business is completely unaccounted and not recorded in any books of accounts.*

*vi. That the Ld CIT(A) erred both in law and in facts to accept the concocted reconciliation where net proceeds from guest house, rental income and even interest subsidy is claimed to be in cash, with remanding the matter to AO for verification.*

*vi. petitioner/revenue craves leave to amend, modify and or alter grounds and or to adduce and rely upon such further evidences and or documents as may be required at any time before and during the time of hearing.”*

2.1 Before us, the documents and orders of authorities below have been gone through with the help of ld. AR. The ld. DR chose to recuse himself from this case as he was the author of the impugned order. The ld. AR supported the findings of the ld. CIT(A) and relied on the same.

3. We have carefully considered the findings of the Assessing Officer/ld. CIT(A) and the averments of the Ld. AR. It is seen that the Assessing Officer has not only doubted the loan transaction claimed but has doubted the fact that the assessee was able to withdraw, in several tranches, amounts over a period of time and thereafter accumulate the same till being apprehended at Patna Airport. The main point of suspicion regarding these loans was apparently the absence of confirmation from these loan creditors. It is seen that a confirmation of the said loan dated 25.08.2021 was filed by the assessee on his own behalf and not from the loan creditors. This confirmation, filed on behalf of the assessee, is only for Rs.25,00,000/- as loan received from one Deepak Kumar. No document is before us to indicate any confirmation being filed by the two loan creditors on their own account. It has been stressed by the Assessing Officer that no books of account, especially cash book, were produced before him to allow any meaningful verification. It has also been recorded that the availability of cash, or even a cash flow statement, on a day-to-day basis could not be verified as the cash book was never produced. This fact needed to be settled

conclusively as the Rs.58,00,000/- found in possession of the assessee was claimed to be justified on the basis of cash availability on a daily basis. The ld. CIT(A) is seen to have deeply probed the alleged weakness in the Assessing Officer's approach towards the impugned amounts to grant relief to the assessee. However, the fact of absence of books of account and absence of confirmations from the loan creditors, have been admittedly ignored.

3.1 Considering the totality of facts and circumstances of the case, it is felt that in the interest of a thorough verification of facts, this matter deserves to be remanded back to the file of the Assessing Officer for a fresh appraisal of facts. The assessee would be at liberty to present any fresh documents and books of account in support of his claims. Needless to say, the Assessing Officer would provide ample opportunity to the assessee before completing the assessment order.

4. Before parting with this issue, it deserves to be mentioned that the so-called income from guest house and rental income claim has been challenged by the department even though no specific addition has been made on this account. Since, we are remanding back this matter to the file of the Assessing Officer, we do not deem it necessary to adjudicate each and every ground of appeal. All the issues covered in the grounds would be looked into by the Assessing Officer at his level at the time of framing of assessment order.

5. With this remanding back, this appeal is allowed for statistical purposes.

***Kolkata, the 10<sup>th</sup> December, 2024.***

Sd/-  
**[Duvvuru RL Reddy]**  
**Vice-President**

Sd/-  
**[Sanjay Awasthi]**  
**Accountant Member**

Dated: 10.12.2024.

RS

*Copy of the order forwarded to:*

1. ACIT, Central Circle-1, Patna
2. Suman Kumar
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches