

ITA No. 164/PAT/2013 (A.Y. 1993-1994)

ITA No. 165/PAT/2013 (A.Y. 1994-1995)

ITA No. 167/PAT/2013 (A.Y. 1996-1997)

M/s. Shanti Creators (Pvt.) Limited

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA-PATNA 'e-COURT', KOLKATA  
[Hybrid Court Hearing]**

**Before Shri Duvvuru RL Reddy, Vice-President (KZ)  
&  
Shri Sanjay Awasthi, Accountant Member**

**I.T.A. No. 164/PAT/2013  
Assessment Year: 1993-1994  
&**

**I.T.A. No. 165/PAT/2013  
Assessment Year: 1994-1995  
&**

**I.T.A. No. 167/PAT/2013  
Assessment Year: 1996-1997**

***M/s. Shanti Creators (Pvt.) Limited,.....Appellant  
Samarpan House, Sheikhpura,  
Patna-800014, Bihar  
[PAN:AQBPS1829A]***

***-Vs.-***

***Assistant Commissioner of Income Tax,....Respondent  
Central Circle-1, Patna,  
C.R. Annexe Building,  
Patna-800001, Bihar***

**Appearances by:**

*No n e, appeared on behalf of the assessee  
Shri Ashok Kumar, CIT, appeared on behalf of the  
Revenue*

**Date of concluding the hearing: January 01, 2025**

**Date of pronouncing the order: February 26, 2025**

**O R D E R**

**Per Duvvuru RL Reddy, Vice-President (KZ):-**

The present appeals bearing ITA Nos. 164, 165 &  
167/PAT/2013 are directed at the instance of assessee against the

orders of ld. Commissioner of Income Tax (Appeals)-1, Patna, all dated 1<sup>st</sup> February, 2013 passed for Assessment Years 1993-94, 1994-95 and 1996-97 respectively.

2. Briefly stated the facts are that the assessments were originally completed under section 144/147 of the Income Tax Act, 1961 in the cases bearing ITA Nos. 164/PAT/2013, 165/PAT/2013 and 167/PAT/2013 on total incomes of Rs.56,70,150/-, Rs.62,84,330/- and Rs.70,18,590/- respectively on protective basis in the hands of the appellant and substantively in the hands of Sri Tripurari Mohan Prasad.

3. On being aggrieved, the assessee preferred appeals before the ld. CIT(Appeals). The ld. CIT(Appeals) confirmed the action of the ld. Assessing Officer and dismissed the appeals of the assessee on 05.05.2000 (for A.Y. 1993-94), 17.03.2004 (for A.Y. 1994-95), & 17.03.2004 (for A.Y. 1996-97).

4. Being aggrieved with the orders of ld. CIT(Appeals), the assessee preferred appeals before the ITAT, Patna Bench, Patna. After considering the submissions of the assessee in all the three assessment years, ITAT set aside the orders passed by the ld. CIT(Appeals) and restored the matter back to the file of ld. Assessing Officer observing that unless and until the substantive assessment/addition having been made in the hands of the persons concerned, protective basis will not serve any purpose. The ld. Assessing Officer completed the assessments, but the ld.

CIT(Appeals) without keeping these appeals pending against the assessment orders, disposed of these appeals. Therefore, the assessee again preferred appeals before the ITAT for three assessment years and raised the following grounds:-

*(1) For that the grounds of appeal hereto are without prejudice to each other.*

*(2) For that the order of the Id. Assessing Officer (AO) as well as Id. Commissioner of Income-tax (Appeals)-1, Patna [ CIT(A) ] are bad, both in law and in facts.*

*(3) For that the order of the Id. AO as well as Id. CIT(A) are based on presumption, surmises and conjecture.*

*(4) For that the order of the Id. AO as well as Id. CIT(A) further in violation of the settled principles of natural justice inasmuch as no opportunity much less adequate opportunity was ever afforded to the appellant to furnish his defence in course of the assessment and the appellate proceedings.*

*(5) For that the order of the Id. AO as well as Id. CIT(A) are wholly perverse inasmuch as the same are contrary to and at variance with the materials available on record.*

*(6) For that in view of the fact that the Hon'ble ITAT restored back the matter to the file of the AO with the observation that unless and until the substantive assessment/addition made in the hands of the person concerned is settled finally, the disposal of appeals in the cases of the assessee in whose hands the addition/assessment has been made on protective basis will not serve any purpose and further that the ITAT also directed to decide the question of making protective/substantive assessment in the case of the assessee only after the final outcome of the final decision in the case of the person in whose hands the assessments have been made on substantive basis i.e. the case of TM Prasad, the Ld. CIT (A) should have kept the appellate proceedings pending against assessment order u/s 143(3)/147/245HA of the Act particularly since the appellant- Group including T. M. Prasad have filed writ petition before the Hon'ble Patna High Court challenging the order u/s 245HA of the Act passed by Hon'ble Settlement Commission which is still pending and the assessment being protective in nature, no demand is revocable and there is no time limit prescribed under the Income-tax Act, 1961 for disposal of appeal by CsIT (A). The action of the Ld.*

*CIT (A) put the assessee to unnecessary harassment. Passing of orders in such circumstances is wholly unjustified.*

**(7) (FOR A.Y. 1993-94) :-** *For that the additions of Rs.56,70,150 (comprising of additions of Rs.27,44,000/-, Rs.12,90,146/- and Rs.17,17,000/- made to the income disclosed even on protective basis is wholly unjustified and the entire additions are fit to be deleted.*

**(FOR A.Y. 1994-95):-** *For that the additions of Rs.62,84,325 (comprising of additions of Rs. 11,23,740/-and Rs.51,60,585/- made to the income disclosed even on protective basis is wholly unjustified and the entire additions are fit to be deleted.*

**(FOR A.Y. 1996-97):-** *For that the additions of Rs.70,18,590/- (comprising of Rs.18,58,000/- and Rs.51,60,585/- made to the income disclosed even on protective basis is wholly unjustified and the entire additions are fit to be deleted.*

*(8) For that the charging of interest u/s 234 is wholly unjustified.*

*(9) For that the appellant craves his right to add/alter/substitute/delete any ground(s) at the time of hearing.*

5. None appeared on behalf of the assessee at the time of hearing. We have decided to dispose of these appeals after hearing the ld. Departmental Representative and perusing the material available on record. The Tribunal has given several opportunities to the assessee, but neither the assessee nor its representative appeared before the Tribunal. Therefore, we proceed to dispose of these matters since the appeals were registered as 26.06.2013 and the assessment orders in all these appeals were passed on 24.12.2010.

6. It was the submission of the ld. Departmental Representative that this is the second round of litigation and as per the directions

of the ITAT, Patna during first round of litigation, the ld. Assessing Officer had issued notices to the appellant-assessee for all these appeals under sections 143(2) and 142(1) of the Act and in response to the notices, one Shri S.N. Sinha, Advocate appeared and submitted his submissions. After considering the submissions made by the assessee's ld. Counsel, the ld. Assessing Officer concluded the assessments by making an addition of Rs.27,44,000/- as unexplained investment (for A.Y. 1993-94), Rs.12,90,146/- towards unsecured loan (for A.Y. 1993-94), and Rs.17,17,000/- (for A.Y. 1993-94) were added to the assessee-company, aggregating to Rs.56,70,146/-.

6.1. Similarly, ld. Assessing Officer concluded the assessment by making an addition of Rs.51,60,585/- (for A.Y. 1994-95) as unexplained investment and Rs.11,23,740/- (for A.Y. 1994-95) credited in the Bank account maintained with United Bank of India, Patna, as investment, aggregating to Rs.62,84,325/-.

6.2. Similarly, ld. Assessing Officer concluded the assessment by making an addition of Rs.18,58,000/- (for A.Y. 1996-97) as unexplained investment, which was found to be credited in the United Bank of India, Patna and Rs.51,60,585/- (for A.Y. 1996-97) as unexplained investment, aggregating to Rs.70,18,585/-.

7. On being aggrieved with the order of ld. Assessing Officer, the assessee preferred appeals before the ld. CIT(Appeals) and the assessee did not produce any supporting evidence before the ld.

CIT(Appeals) even after several opportunities. Therefore, the ld. CIT(Appeals) confirmed the action of the ld. Assessing Officer and dismissed the appeals filed by the assessee.

8. The ld. D.R. further submitted that even before the ITAT, neither the assessee nor his representative appeared before the Tribunal to substantiate its claim for all these three appeals. Therefore, in the absence of any evidence, the appeals of the assessee are liable to be dismissed.

9. It is an admitted fact that it is the second round of litigation and these are the oldest appeals pending before the ITAT, Patna Bench. In spite of service of several notices, the assessee failed to appear before the Tribunal to explain the source of investment and also to explain the creditworthiness of the creditors for unsecured loans. Apart from that before the lower authorities also, the assessee was not in a position to establish its claim. Therefore, both the revenue authorities are not accepted the contentions raised by the assessee in all the appeals. We have gone through the assessment order and appellate order, since the assessee failed to establish the source of investment and creditworthiness of the creditor, the revenue authorities have categorically given findings on the additions made by them. Hence, we do not find any infirmity in the orders passed by ld. Assessing Officer as well as ld. CIT(Appeals). However, as per the grounds of appeals, the main contention of the assessee is that without concluding the substantive assessment, the revenue authorities are precluded to

pass the assessment order in the hands of the assessee-company on protective basis, but the assessee did not appear before us to establish the status of the substantive assessment. Therefore, considering the facts and circumstances of the cases, we have no hesitation to come to the conclusion that the assessee has miserably failed to substantiate its claim before the revenue authorities as well as before the ITAT. Therefore, the grounds raised by the assessee in all the appeals are liable to be dismissed.

**10. In the result, all the appeals filed by the assessee are dismissed.**

Order pronounced in the open Court on 26/02/2025.

Sd/-  
**(Sanjay Awasthi)**  
**Accountant Member**

Sd/-  
**(Duvvuru RL Reddy)**  
**Vice-President (KZ)**

***Kolkata, the 26<sup>th</sup> day of February, 2025***

*Copies to :(1) M/s. Shanti Creators (Pvt.) Limited,  
Samarpan House, Sheikhpura,  
Patna-800014, Bihar*

*(2) Assistant Commissioner of Income Tax,  
Central Circle-1, Patna,  
C.R. Annexe Building,  
Patna-800001, Bihar*

*(3) CIT(Appeals)-1, Patna;*

ITA No. 164/PAT/2013 (A.Y. 1993-1994)

ITA No. 165/PAT/2013 (A.Y. 1994-1995)

ITA No. 167/PAT/2013 (A.Y. 1996-1997)

M/s. Shanti Creators (Pvt.) Limited

(4) CIT - ;

(5) *The Departmental Representative;*

(6) *Guard File*

*TRUE COPY*

*By order*

*Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

***Laha/Sr. P.S.***