

IN THE INCOME TAX APPELLATE TRIBUNAL "PATNA BENCH", PATNA
(VIRTUAL HEARING AT KOLKATA)

SHRI DUVVURU RL REDDY, VICE PRESIDENT
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No. 304/Pat/2023
(Assessment Year 2017-18)

I.T.A. No. 305/Pat/2023
(Assessment Year 2018-19)

&

I.T.A. No. 306/Pat/2023
(Assessment Year 2019-20)

Bhartish Kumar,
Bari Path, Bakerganj,
Patna, Bihar - 800004
[PAN: ADNPK2678N]

..... **Appellant**

vs.

ACIT, Central Circle-1,
Patna – 800001

..... **Respondent**

Appearances by:

Assessee represented by : Sh. A.K. Rastogi, Sr. Adv.
Sh. Rakesh Kumar, Adv.

Department represented by : Rinku Singh, CIT DR

Date of concluding the hearing : 16.04.2025

Date of pronouncing the order : 23.04.2025

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER

1. This is a batch of 3 appeals pertaining to the same assessee for AY's 2017-18, 2018-19 and 2019-20. The impugned order has been passed by the Ld. CIT(A), Patna-3, vide order dated 23.08.2023 in all the three cases. These orders have been passed u/s 250 of the Income Tax Act, 1961 (hereafter "the Act"). For the sake of convenience and since the issues are inter connected, all these cases are being disposed of through a single

order. For the sake of laying out the basic facts, the lead case is taken as ITA No. 304/Pat/2023 (AY 2017-18). In these cases, there was an interception of cash amounting to Rs. 92,85,000/- from one Mr. Surendra Kumar, son of Mr. Yogendra Prasad. This person admittedly worked for the assessee. Thereafter, the Ld. AO passed an order u/s 153A of the Act for AYs. 2017-18 and 2018-19, whereas for AY 2019-20, an order u/s 143(3) of the Act has been passed. The issues may be briefly listed out for each of the assessment years as under:

Assessment Year 2017-18

- (i) Rs. 37,96,500/- added u/s 68 of the Act on account of cash deposited during demonetisation period.
- (ii) Rs. 16,75,835/- has been added u/s 68 of the Act on account of cash credits in the bank account, other than during the demonetisation period.

Assessment Year 2018-19

- (i) An amount of Rs. 4,20,000/- has been added on account of alleged unexplained addition to capital, which has been treated u/s 68 of the Act.
- (ii) An amount of Rs. 2,00,000/- has been added on account of alleged advance paid for purchase of a plot of land.
- (iii) An amount of Rs. 1,40,544/- has been added as short-term capital gain on account of sale of shares which have, purportedly, yielded an undisclosed profit.

Assessment Year 2019-20

An amount of Rs. 92,85,000/- has been added u/s 69A of the Act by way of alleged undisclosed cash seized from the possession of employee of the assessee.

1.2 Before the First Appellate Authority, the status of the decision is as under:

Assessment Year 2017-18

The Ld. CIT(A) has deleted the addition of Rs. 37,96,500/- but has confirmed the addition of Rs. 16,75,835/-.

Assessment Year 2018-19

For this assessment year, both the addition of Rs. 4,20,000/- and Rs. 2,00,000/- have been confirmed at first appellate stage.

Assessment Year 2019-20

For this year, the Ld. CIT(A) granted partial relief by sustaining the addition of Rs. 21,94,551/- out of Rs. 92,85,000/- added by the Ld. AO. For this year, the Ld. CIT(A) has given a detailed finding of fact to the extent that there was availability of cash-in-hand which justified a part of the amount seized.

2. Aggrieved by the action of Ld. CIT(A), the assessee is in appeal in all the three years on account of amounts of additions sustained at the first appellate stage.

2.1 Before us, the Ld. AR took us through detailed written submissions for all the three years and certain documents filed through paper books. For AY 2017-18, the Ld. AR read out the portions from page 32 of the impugned order and pointed out there was a typographical error in mentioning the figure of sale to Mahalaxmi Jewellers at Rs. 95,67,749/- as against the correct sale figure of Rs. 9,56,749/-. This typographical error has resulted in the adverse finding by the Ld. CIT(A). He also pointed out that the sale figures and credit entries in bank account are all justifiable and requested that an opportunity may be provided for reconciling the same before the Ld. AO. Regarding AY 2018-19, he pointed out that the introduction of capital amounting to Rs. 4,20,000/- could be

explained by cash withdrawals made by the assessee. He pointed out that the introduction of capital was also in cash. Furthermore, regarding the amount of Rs. 2,00,000/- added was claimed to be unjustified since the benefit of telescoping was not given by the Ld. AO as the assessee had a substantial amount in the capital account and had also declared income of Rs. 54,04,560/- for AY 2016-17. For this year also, the Ld. AR requested that the issue may be remanded to the file of Ld. AO for considering all the facts. Regarding AY 2019-20, it was stated by the Ld. AR that out of total disclosure of Rs. 59.04 lakhs, a sum of Rs. 54.04 lakhs were credited in the bank account. It was pointed out by the Ld. AR that the closing balance of capital, after credit of the said amount, is Rs. 96.91 lakhs. Thereafter, the Ld. AR pleaded that there was enough liquidity in the capital account to justify the entire cash seizure, even the amount of addition sustained by the Ld. CIT(A).

2.2 The Ld. DR supported the orders of Ld. AO and the Ld. CIT(A) and stated that the Ld. CIT(A) has passed a detailed and reasoned order, which deserves to be upheld.

3. We have carefully considered the rival submissions and also gone through the documents before us. We find that the additions for all the three years are based on facts and there is some strength in the appellant's arguments that a holistic appraisal of the books of account can easily help the Ld. AO in arriving at a correct and true picture of the income of the assessee for all the three years. We are mindful of the fact that for AY 2017-18 an incorrect order may have been passed due to a typographical error, as has been discussed supra. Furthermore, regarding the issue of capital introduction and amount of advance for sale of land, there can be some benefit of telescoping available to the assessee in case the books of account are analysed again. For AY 2019-20 prima facie there is capital available in the assessee's account which may or may not be able to justify the impugned addition of Rs. 21,94,551/-. This aspect has to be examined for an accurate determination of taxable income for this

year. Considering these facts, the impugned orders for all the three years are hereby set aside and the matters are remanded back to the file of Ld. AO for fresh assessment. Needless to say, the Ld. AO would give adequate opportunity of being heard and the assessee would do well to present the books of accounts, etc and his arguments clearly before the Ld. AO.

4. In the result, these appeals filed by the assessee are allowed for statistical purposes.

Order pronounced on 23.04.2025

Sd/-
(Duvvuru RL Reddy)
Vice President

Sd/-
(Sanjay Awasthi)
Accountant Member

Dated: 23.04.2025
AK, Sr. P.S.

Copy of the order forwarded to:

1. Bhartish Kumar
2. ACIT, Central Circle-1, Patna – 800001
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches