

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.560/Pat/2024
(Assessment Year 2017-18)

Md. Shanawaj Rizwi,
S/o Md. Imam Muzaffar
Prop: Raza Nursing Home,
Shiv Mandir Road, Line Bazar,
Purnea – 854301 (Bihar)
[PAN: AGYPR9871Q]

..... **Appellant**

vs.

ACIT, CC- 2,
Patna

..... **Respondent**

Appearances by:

Assessee represented by : K.P. Jalan, CA

Department represented by : Sh. Ashwani Kr. Singal, JCIT

Date of concluding the hearing : 29.04.2025

Date of pronouncing the order : 05.05.2025

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER

1. The present appeal arises from order u/s 250 of the Income Tax Act, 1961 (hereinafter “the Act”), passed by the Ld. Commissioner of Income Tax (Appeals), Patna-3 [hereafter the Ld. CIT(A)] vide order dated 11.07.2024 for AY 2017-18.

1.1 In this case, a survey operation u/s 133 of the Act was conducted on 25.02.2020. During the course of such survey, it was noticed that the assessee had purchased three acres of land on 27.05.2016 at a total cost of Rs. 75,00,000/-. Allegedly, this investment was not disclosed in the return of income (balance sheet). Apparently, the assessee admitted that this was undisclosed investment during the course of statement recorded

during the survey. Thereafter, the Ld. AO proceeded to add Rs. 15,00,000/- u/s 56(2)(vii) of the Act on account of the difference between the actual value of land (Rs. 75,00,000/-) and the alleged factual consideration paid (Rs. 60,00,000/-).

1.2 The assessee carried this matter before the Ld. CIT(A) where also he could not succeed and the addition was confirmed.

2. Aggrieved with the action of Ld. CIT(A), the present appeal has been filed with the following grounds:

“01. For that the Ld. CIT (A) has erred in dismissing appeal without merit and affirming the order of the AO (DCIT/ACIT, Central Circle-2, Patna, wherein the Id.AO has invoked deeming provisions of section 56(2)(vii)(b)(ii) of I.T. Act 1961 and has added back Rs. 15.00 Lacs being the difference between the circle value of Land and actual value of land, while passing the order u/s 147/ 143(3), in fact reason recorded for issuance of notice u/s 148 for undisclosed investment of Rs.75.00 Laes in 3acre land at Marocha Ujiyarpur, Purnea bought on 27.05.2016, therefore addition was made on other count in place of subject matter of Notice u/s 148.

02. For that the Ld. CIT(A) has erred in passing order dismissing the appeal without merit and without affording proper opportunity of being heard to the appellant and had violated the principles of equity, natural justice and fair play which requires proper and adequate opportunity of being heard.

03. For that the Ld. CIT (A) has erred in holding the appellant with admitted facts that the appellants had disclosed investment on account of Land Rs.7207050.00 in his audited accounts, but Ld. CIT(A) holds the appellants being charged with difference of money of Rs. 15.00 Lcas between actual consideration Rs.60.00 Lacs and the stamp value Rs. 75.00 Lacs of immovable assets 3acre land at Marocha Ujiyarpur, Purnea, is treated income from other sources in view of provisions of section 56(2)(vii)(b)(ii) of I.T. Act 1961, therefore the addition is upheld and accordingly the grounds of appeal dismissed.

04. For that Ld CIT (A) upholds the validity of reopening proceeding as well addition on other count, in place of subject matter of notice u/s 148, by stating that the AO had the fresh information available with him for reopening of assessment and the AO cannot be expected to turn blind to the information available with him, therefore in view of discussion I hold the re-opening assessment u/s147 valid and accordingly this grounds of appeal dismissed.

05. For that the whole order is bad in fact and law of the case and is fit to be annulled and may be set aside.

06. For that the other grounds, if any, shall be urged at the time of hearing of appeal.”

2.1 Before us, the Ld. AR pointed out the finding of Ld. CIT(A) on pages 10-11 of the impugned order and specially took care to point out that on page 4 of Ld. CIT(A), it is seen that in the return of income itself, the

assessee had disclosed an amount of Rs. 72,07,050/- as investment. The Ld. AR emphasized that a substantial part of Rs. 75,00,000/- investment in the impugned property was already disclosed in the return of income. The Ld. AR thereby assailed the finding of authorities below and stated that it was not understood how they had arrived at a conclusion that Rs. 15,00,000/- was exigible to tax u/s 56(2)(vii) of the Act. He requested that the assessee may be given another chance to present the full facts before the Ld. AO so that the correct income of the assessee could be determined.

3. The Ld. DR relied on the orders of authorities below.

4. We have carefully considered the rival submissions and gone through the records before us. It is actually seen that on page 4 of the impugned order the figure of Rs. 72,07,050/- has been mentioned as investment shown in the return of income. We are persuaded by the Ld. AR's arguments that indeed there is a mismatch between the total investment shown by the assessee and the investment figure adopted by the Ld. AO. Accordingly, we deem it fit to set aside the impugned order and remand this matter back to the file of the Ld. AO for working out the investment figure shown by the assessee and thereafter calculating if there is any amount surviving for treatment u/s 56(2)(vii) of the Act. Needless to say, the Ld. AO will provide ample opportunity of being heard and the assessee would do well to present all documents before the Ld. AO. The assessee is also at liberty to raise any objection regarding the proceedings initiated through the issuance of notice u/s 148 of the Act before the Ld. AO.

5. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 05.05.2025

Sd/-
(Duvvuru RL Reddy)
Vice President

Sd/-
(Sanjay Awasthi)
Accountant Member

Dated: 05.05.2025
AK, Sr. P.S.

Copy of the order forwarded to:

1. Md. Shanawaj Rizwi
2. ACIT, CC- 2, Patna
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches