

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

SHRI PRADIP KUAMR CHOUBEY, JUDICIAL MEMBER
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No. 69/PAT/2023
(Assessment Year 2017-18)

Income Tax Officer,
Ward 4(1), Patna,

Room No. 409, 4th Floor,
Lok Nayak Jai Prakash Bhawan,
Dak Bungalow Road,
Patna – Bihar – 800001

..... **Appellant**

vs.

Ambika Prasad Gupta,

1, Shri Ram Market Mithapur,
Patna - 800001
[PAN: ACUPG0383Q]

..... **Respondent**

Appearances by:

Assessee represented by : Sh. Shikesh Jha, Adv.

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

Date of concluding the hearing : 14.05.2025

Date of pronouncing the order : 19.05.2025

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER

1. This appeal arises from order u/s 250 of the Income Tax Act, 1961 (hereafter “the Act”), passed by Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, vide order dated 05.01.2023.

1.1 In this case, the Ld. AO has added Rs. 1,95,71,000/- u/s 68 of the Act, on account of the following observations:

“Based on above discussion, following discrepancies are observed in the submission of assessee as under:

1. *The assessee doesn't maintain proper books of account,*
2. *The assessee doesn't furnish cash book, bank book for verification;*
3. *The assessee has not shown the amount of cash withdrawal of Rs. 2,00,000/-in his submission and so, reliability of submission is doubtful;*
4. *That the assessee has failed to furnish complete sales & purchase invoices for verification to the extent of cash generated and deposited in the account during demonetization period;*
5. *Closing cash in hand balance as on 08.11.2016 is very high and abnormal in comparison to opening cash in hand as on 01.04.2016 & closing cash in hand as on 31.03.2017;*
6. *The assessee has not furnished denomination of notes and quantum of amount deposited during period of demonetization;*
7. *Even bank account statement was not furnished for complete period of FY 2016-17, specifically for the period 09.11.2016 to 30.12.2016;*
8. *Total sales shown by the assessee during year under consideration is Rs. 74478650 and average sales comes to Rs. 204051/- and the assessee has deposited cash in the account just before 09.11.2016 in frequent manner in between 01.11.2016 to 08.11.2016 and so, the closing cash in hand shown by the assessee as on 08.11.2016 is not correct and genuine. It is only manipulated to justify the deposit in the account during the demonetization period.*
9. *Failed to furnish purchase invoices in respect of payment exceeding 20,000/-.*
10. *Further, the assessee has failed to furnish details of stock & debtors as on 08.11.2016.”*

1.2 Aggrieved with this action, the assessee approached the Ld. CIT(A), where the said addition was deleted on account of the following findings:

“8.2 From the above it is clear that the AO is not questioning the source of the cash deposit since he has accepted substantive cash deposited by the appellant in the bank accounts during the months of Apr 2016 to October 2016 and January 2017 to March 2017 as business receipt which makes it clear that it is admitted fact that sales is the source for cash deposits. It is also observed from the details of cash deposits as enumerated in the assessment order that the appellant has deposited total Rs. 1,95,71,000/- as cash on 57 occasions during the period 08.11.2016 to 31.12.2016 in smaller amounts and on regular interval of daily or alternate days which is also indicative of source of cash as regular business receipt. Further the AO has failed to brought any fact which could prove that the cash deposited during the demonetization period were in banned currency. Thus, it is very evident that the conclusion drawn from the same rejecting total business receipt of the appellant during the demonetization period without finding the nature of currency and treating the same as unexplained credit u/s 68 of the Act was not genuine as no independent findings has been given by the AO.

8.3 As it is evident from the above discussion that the AO has erroneously taken the entire cash deposit during November and December 2016 not from business Ignoring the details of cash sales submitted by appellant without bringing anything contrary to the record, I am of the opinion that there is no case here for

treating the entire cash deposit of Rs. 1,95,71,000/- as unexplained cash credit u/s. 68 of the Act and thereby making the addition of Rs. 1,95,71,000/- is unjustified. The addition of Rs.1,95,71,000/- is therefore deleted. Accordingly, these grounds of appeal are allowed.”

1.3 Aggrieved with this action, the Revenue is in appeal with the following grounds:

“(i) The Commissioner of Income Tax (Appeal) has erred in providing relief to the assessee by deleting the addition of Rs. 1,95,71,000/- made during the demonetization period without considering the fact that the cash deposit during the demonetization period is abnormal and very high in comparison to rest of the period during the year and cash balance as on 08/11/2016 is very high in comparison to 01/04/2016.

(ii) Any other grounds that may be urged at the time of hearing.”

2. Before us, the Ld. DR vehemently argued that the assessee had not presented the cash book or bank book for verification and the assessee had also not furnished complete sales and purchase invoices for verification. The Ld. DR read out from various portions of the Ld. AO's order and stated that in light of unverifiability of the source of cash deposits, the action of Ld. AO was worth upholding. The Ld. DR also pointed out that the Ld. CIT(A) has pointed out certain superficial lacunae in the Ld. AO's action and was wrongly convinced of the assessee's bonafides even in the absence of cash books, bank book etc. to grant relief. In conclusion, the Ld. DR argued for restoring the addition made by the Ld. AO.

2.1 The Ld. AR on the other hand, filed a paper book, which incidentally does not have a certificate as required under ITAT Rules to show whether the said documents were before any of the authorities below or not. However, he took us through the audit report and the bank certificate regarding SBNs. Incidentally, the bank certificate is dated 05.05.2023, whereas this appeal itself has been filed on 01.03.2023, Thus the said document could not have been before any of the authorities below. It was argued that the Ld. CIT(A) was convinced by the same documents and facts presented before the Ld. AO and has thereby granted relief. The Ld. AR strongly supported the finding of Ld. CIT(A).

3. We have considered the rival submissions and also gone through the orders of authorities below. As has been pointed out earlier, a critical document being the bank certificate regarding SBN's, was obtained after the present appeal has been filed by the department. Clearly this document was neither before the AO nor before the Ld. CIT(A). It is also evident that there has been some laxity on the part of the assessee in presenting the required documents and books of accounts that have been required by the Ld. AO (see extract from AO's order -supra). It is felt that instead of pointing out shortcomings in the enquiry done by the Ld. AO, the Ld. CIT(A) could have called for a remand report and thereby satisfied herself whether the documents available with the assessee were enough to discharge the burden cast upon him u/s 68 of the Act. In light of the facts and circumstances and in light of the discussion above, we deem it fit to set aside the impugned order and remand this case to the file of Ld. AO for fresh assessment. It is expected that the assessee would file all necessary documents before the Ld. AO and also file the bank certificate regarding SBNs dated 05.05.2023 which has been filed before us. The Ld. AO would give adequate opportunity and pass a reasoned assessment order.

4. With these remarks, appeal of the Revenue is allowed for statistical purposes.

Order pronounced on 19.05.2025

Sd/-
(Pradip Kumar Choubey)
Judicial Member

Sd/-
(Sanjay Awasthi)
Accountant Member

Dated: 19.05.2025
AK, Sr. P.S.

Copy of the order forwarded to:

1. Ambika Prasad Gupta
2. Income Tax Officer, Ward 4(1), Patna
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches