

आयकरअपीलीयअधिकरण,पटना न्यायपीठ,पटना

IN THE INCOME TAX APPELLATE TRIBUNAL "PATNA BENCH", PATNA

BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER
AND

SHRI PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER

आयकर अपील सं No.244/PAT/2023

(निर्धारणवर्ष / Assessment Year :2017-2018)

ACIT, Central Circle-3, Patna	Vs	Sachchu Prasad, Kasap, Udwant Nagar, Bhojpur Bihar-802206
PAN No. :AJSP 8058 Q		

AND

आयकर अपील सं No.245/PAT/2023

(निर्धारणवर्ष / Assessment Year : 2017-2018)

ACIT, Central Circle-3, Patna	Vs	Suresh Prasad, Udwant Nagar, Kasap Bihar-802206
PAN No. :AJSP 8056 A		

AND

आयकर अपील सं No.246/PAT/2023

(निर्धारणवर्ष / Assessment Year : 2017-2018)

ACIT, Central Circle-3, Patna	Vs	Suresh Jewellers, Shakuntla Palace, Bakarganj, Patna, Bihar-800004
PAN No. :ADHFS 5624 G		

(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारितकीओरसे /Assessee by	:	Shri Devesh Poddar, Advocate
राजस्वकीओरसे /Revenue by	:	ShriRajat Datta, CIT-DR
सुनवाईकीतारीख/ Date of Hearing	:	28/07/2025
घोषणाकीतारीख/Date of Pronouncement	:	26/08/2025

आदेश / ORDER

Per Bench:

These are the appeals filed by the revenue against three different assesseees against the separate orders of the Id.CIT(A), Patna-3,all dated 31.05.2023for the assessment year 2017-2018.

ITA No.244/PAT/2023 (AY: 2017-18)(Assessee-Sachchu Prasad)

2. In this appeal, the revenue has raised the only issue against the deletion of addition by the Id.CIT(A) of Rs.93,42,000/-, which was added by the Assessing Officer on the basis of documents seized during the search proceedings.

3. Facts in brief are that a survey operation u/s.133A of the Act was conducted in the business premises of the assessee firm on 26/09/2019 wherein cash in excess of Rs.10 lakhs was recovered. Thus, the survey converted into a search and seizure operation which commenced on the next day of survey i.e. 27.09.2019 at the residential premises of Shri Suresh Prasad, Shri Sachhu Prasad and M/s Suresh Jewellers. Subsequently notice u/s.153A of the Act was issued on 26.03.2021, which was not complied with by the assessee by not filing his return of income. Thereafter notice u/s.142(1) of the Act alongwith questionnaire was issued. During the course of search proceedings, statements of partners including the assessee was recorded wherein both the partners have stated that they introduced capital valued at Rs.93,42,500/- each as capital in the firm during the year. Based on the said statement, the Assessing Officer called for information and details from the assessee. The assessee submitted that he introduced cash of Rs. 50,000/- and gold of Rs. 43,42,500/- and made addition of Rs.93,42,500/-(50,000/- + 43,42,500/-)on substantive basis in the hands of the assessee which was also added protectively in the hands of firm which is to be dealt with hereinafter. During the course of assessment proceedings, the assessee

retracted from the statement, however, the Assessing Officer did not acknowledge the same and made addition on the basis of such statement.

4. In the appellate proceedings, the Id.CIT(A) deleted the addition in the hands of the assessee on the ground that the statement recorded could not be a basis for making addition as the same is not within the incriminating evidences and consequently since the assessment year under consideration is unabated on the date of search and therefore the Assessing Officer has no jurisdiction to make addition in absence of any seized incriminating material by relying on the decision of the Hon'ble Apex Court in the case of Pr.CIT Vs. Abhisar Buildwell Pvt. Ltd. reported in 259 ITR 212 (SC).

5. After hearing the rival contentions of the parties and perusing the material available on record, we find that the addition has been made merely on the basis of statement given by the partners during the course of search. We note that during the course of search no incriminating material was found qua the said addition made by the AO and hence the addition made solely on the basis of statement recorded during the course of search, which was also retracted by the assessee. Therefore, we do not find any reason to interfere in the order of the Id. CIT(A) in deleting the addition made on the basis of statement of the partners without corroborative material and the instant assessment year is also an unabated assessment on the date of search. Accordingly, we hold that the Assessing Officer had no jurisdiction to make such addition for want of

seized incriminating material. Thus, we uphold the order of the Id.CIT(A) and dismiss the appeal of the revenue in ITA No.244/PAT/2023.

ITA No.245/PAT/2023 (AY: 2017-2018)(Suresh Prasad)

6. The first issue raised in this appeal by the revenue is against the deletion of addition of Rs.93,42,500/- by the Id.CIT(A) as made by the Assessing Officer on the basis of documents seized during the course of search proceedings.

7. This issue has already been decided by us while deciding the appeal of the revenue in ITA No.244/PAT/2023 in the case of Sachchu Prasad, wherein we have upheld the order of the Id.CIT(A) by dismissing the appeal of the revenue. Therefore, the issue decided by us in ITA No.244/PAT/2023 shall apply *mutatis mutandis* to the issue involved in the present appeal as well . Thus, first issue raised by the revenue in the present appeal is dismissed.

8. Second issue raised by the revenue is against the deletion of addition of Rs.42,13,360/- by the Id. CIT(A) as made by the Id. Assessing Officer towards suppressed sale received from hotel business.

9. Facts in brief are that during the course of search it was found that the gross receipt during the impugned assessment year was Rs.61,77,727/- from Hotel Shanti Raj, however, the assessee has shown the receipt only to the tune of Rs.19,64,367/-. The Assessing Officer held that the assessee has suppressed receipts to the extent of Rs.42,13,360/- and accordingly called upon the assessee to explain the same. The

assessee did not make any compliance before the Assessing Officer and accordingly the Assessing Officer added the same to the total income of the assessee.

10. In the appellate proceedings, the Id.CIT(A) deleted the addition by observing and holding as under :-

Ground no. 03 For that the AO has erred in making addition of Rs.42,13,360/- on account of gross receipts as unaccounted sales.

During the course of assessment proceedings, it was found that the gross receipts from Hotel Shanti Raj during the FY 2016-17 relevant to AY 2017-18 was 61,77,727/- but the appellant has shown total gross receipts in his ITR as Rs. 19,64,367/-. Thus, the AO has given the finding that the appellant has suppressed his receipt to the tune of Rs. 42,13,360/-. The appellant failed to explain the same during the assessment proceedings. Accordingly, the AO added the difference to the income of the appellant.

During the appellate proceedings, the Ld. AR has made a detailed written submission. The Survey/Search revealed unrecorded sales of Rs. 42,13,360/-. The appellant in face of the incriminating evidence, offered net profit of Rs. 4,95,000/- which is more than 8% of the sales of Rs 61.77,727/-. The Ld. AR has submitted a copy of letter dated 21.09.2021 wherein he intimated the disclosure of the undisclosed profit of Rs. 4,95,000/-, copy of computation of income wherein he offered profit from business of Rs. 33,99,750/- and copy of payment challan of Rs. 14,10,010/-. As the above mentioned evidence was available to the AO, he had no reason to suspect that tax on profit from unrecorded sales was not paid. The AO has added gross unrecorded sales of Rs. 42,13,360/- which was not in consonance with the accounting principles and the applicable law. The Ld. AR has relied upon following authorities to buttress his arguments:-

- 1. CIT vs President Industries Ltd. (2002) 258 ITR 654 (Guj)*
- 2. CIT vs BalchandAjit Kumar (2003) 263 ITR 610 (MP)*
- 3. Man Mohan Sadani vs CIT (2008) 304 ITR 52*
- 4. Kishore Mohanlal Telwala vs ACIT (1999) 64 ITJ 543 (Ahd)*
- 5. Agarwal Motors vs ACIT (1999) 68 ITD 407 (Jab)*

In all the above cited authorities the accounting principle has been reiterated that it is the net profit contained in the unrecorded sales that has to be added not the goods sales.

I have gone through the facts of the case. On the basis of evidence submitted before the AO, undeniably the tax of net profit on the unrecorded sales has been paid. The action of the AO in adding the unrecorded gross sales is legally not sustainable. As the tax on the unrecorded sales has already been paid, the undisclosed sales turnover was clearly brought to tax as per the accounting principles. In view of aforesaid discussion addition of Rs. 42,13,360/- is deleted. The grounds raised on this issue are allowed.

10. After hearing the rival contentions and perusing the material available on record, we find that the Assessing Officer added Rs.42,13,360/- on account of suppressed receipts of the assessee. The Id.CIT(A) deleted the addition on the ground that the assessee has already paid the taxes on the unrecorded sales Rs. 33,99,750/- which were added to the income in the return filed u/s 153A and the taxes thereon were paid. Therefore, addition made by the Assessing Officer on account of unrecorded gross sales is not correct. The assessee has filed its return of income declaring the total income at Rs.5,13,205/- which included the profit from business of Rs.4,95,000/-. Therefore, we find that the order passed by the Id.CIT(A) is a very reasoned and speaking order and we do not find any merit in the grounds raised by the revenue. Thus, this ground of revenue is dismissed. Accordingly, appeal of the revenue in ITA No.245/PAT/2023 is dismissed.

ITA No.246/PAT/2023 (AY: 2017-2018) (Suresh Jewellers)

10. The first issue raised by the revenue is against the deletion of addition of Rs.39,95,476/- as made by the Assessing Officer on protective basis on the basis of search material whereas substantive addition was made in the case of above two assesseees being partners of the said firm as discussed and decided supra.

11. Facts in brief are that the Assessing Officer during the course of assessment proceedings in consequent to the search proceedings as stated hereinabove in the case of partner in ITA No.245/PAT/2023 that the two partners introduced capital in the firm during the year under consideration. The Assessing Officer noticed that as per the assessment record during the search, partners had introduced Rs.50,00,000/- in cash and Rs.43,42,500/- value of 1.5Kg Gold. The Assessing Officer during the course of assessment proceedings noted that both the partners could not explain the said introduction in cash or any kind and, therefore, added the same in the hands of respective partners on substantive basis and in the hands of the assessee firm on protective basis. In the appellate proceedings, the Id. CIT(A) decided the issue in favour of the assessee.

12. Since this issue is similar to the issue decided by us in ITA No.245/PAT/2023 wherein we have upheld the order of the Id.CIT(A) by dismissing the appeal of the revenue on the ground that the addition made on the basis of statement of assessee partners cannot be sustained and also this being unabated assessment and there being no seized incriminating material qua the addition made by the Assessing Officer, therefore, the Assessing Officer has no jurisdiction to make the addition. Accordingly, this ground of revenue in the present appeal also devoid of any merits and the same is hereby dismissed.

13. The second issue raised by the revenue is against the deletion of addition of Rs.3,19,638/- made by the Assessing Officer applying 8% on the unrecorded sales of Rs.39,95,476/-.

14. After hearing the rival contentions and perusing the material available on record, we find that the Id.CIT(A) has restricted the addition made by the Assessing Officer on account of suppressed sales. The order passed by the Id.CIT(A) is a very reasoned and speaking one. Accordingly, we do not see any reason to interfere with the findings recorded by the Id. CIT(A) on this issue and thus we uphold the same. The ground of revenue is dismissed.

15. Third issue is against the deletion of addition of Rs.15,91,000/- as made by the Assessing Officer on account of unexplained sales.

16. Facts in brief fare that the Assessing Officer on the basis of seizure operation, has found that the assessee firm has received the sale amount in cash from some Manish Ji resident of Chitkohra Patna. The assessee has also admitted the amount as unaccounted sale. During the course of assessment proceedings, the assessee could not explain this issue with any documentary evidences. Accordingly, the Assessing Officer treated Rs.15,91,000/- as firms undisclosed and unaccounted income and added the same to the total income of the assessee.

In the appellate proceedings, the Id.CIT(A) partly allowed restricting the addition by applying profit rate 8% of the total suppressed sales transactions.

A perusal of the order of the Id. CIT(A) reveals that the assessee was unable to submit the documentary evidences before AO to substantiate its claim, however, corroborated by submitting the documents before the

Id. CIT(A). Thus Id CIT(A) treated cash sales of Rs.15,91,000/- as suppressed sales and applied rate of 8%.. Therefore, we do not find any merit in the ground raised by the revenue.

17. In the result, ITA No.244 & 245/PAT/2023 and ITA No.246/PAT/2023 are dismissed.

Order dictated and pronounced in the open court on 26/08/2025.

Sd/-
(PRADIP KUMAR CHOUBEY)
JUDICIAL MEMBER

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Kolkata; दिनांक Dated 26/08/2025
Prakash Kumar Mishra, Sr.P.S.

आदेशकीप्रतिलिपिअग्रहित/Copy of the Order forwarded to :

1. Appellant
2. प्रत्यर्थी/ The Respondent-
3. आयकरआयुक्त(अपील) / The CIT(A),
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, पटना/ DR, ITAT,
Patna
6. गार्डफाईल / Guard file.

सत्यापितप्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)
आयकरअपीलीयअधिकरण, पटना/ITAT, Patna