

**IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA BENCH AT KOLKATA**

[Virtual Court]

Before

**SHRI SONJOY SARMA, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 152/PAT/2025
Assessment Year: 2003-04**

Veena Mishra Through Nitish Mishra	Vs.	ACIT, Cent.Cir-1, Patna
(Appellant)		(Respondent)
PAN: AHYPM2263N		

Appearances:

Assessee represented by : Aman Raja, AR.

Department represented by : Ashwani Kumar, Sr. DR.

Date of concluding the hearing : 16-July-2025

Date of pronouncing the order : 08-September-2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals)- 3, Patna [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2003-04 dated 31.01.2025, which has been passed against the assessment order u/s 143(3) r.w.s. 147 of the Act, dated 31.01.2006.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

"1. For that the grounds of appeal hereto are without prejudice to each other.

2. For that the order of ld. Assessing officer is bad both in law and facts.



3. For that the order of the Id. Assessing officer is based on presumption, surmise and conjectures.

4. For that the order of the Id. Assessing officer is further violative of the settled principle of natural justice in as much as no opportunity much less adequate opportunity was ever afforded to the appellant to furnish its defence in course of assessment proceedings.

5. For that the orders of the Ld. Assessing officer are wholly perverse in as much as the same are contrary to and at variance with the materials available on record.

6. For that the Ld. Assessing officer has erred in making a protective assessment in the hands of the appellant and substantially in the hands of the husband of the appellant notwithstanding the facts that the appellant is an old Income tax assessee and had plausible and an independent source of income in her individual capacity and the same has duly been accepted by the Ld. Assessing officer himself in the assessment proceedings of the preceding assessment years.

7. For that the Ld. Assessing officer has erred in adding a sum of Rs. 75,320/- protectively in the hands of the appellant on the ground that the appellant had no independent source of income without even assigning any valid or cogent reasons therefore.

8. For that the Ld. Assessing officer has erred in adding the sum of Rs. 75,320/- protectively in the hands of the appellant on the ground that the appellant is a simple house wife and her husband is an accused in AHD scam of Bihar and also he was the Chief Minister of Bihar for a very long period without any evidence or materials in support of the same.

9. For that the Ld. Assessing officer has erred in adding a sum of Rs. 75,320/- only on account of Income from other sources (Interest on investments) protectively in the hands of the appellant on the ground that the appellant lady has no independent source of income notwithstanding the facts to the contrary.

10. For that on the facts and in circumstances of the case, the Ld. CIT(A) has erred in passing the impugned order without considering the order of the Hon'ble ITAT in I.T.A. Nos. 130-132 /Pat/2023 dated 27.11.2024 wherein the Hon'ble ITAT has already adjudicated upon the similar issue.

11. For that the Ld. Assessing officer has erred in making certain incoherent and irrelevant statements and observations not germane to the decision in the assessment without any evidence or materials in support of the same without even comprehending the plentitude of such averments in the order



of assessment and Ld. CIT Appeal erred in passing the order without considering the material available on record.

12. For that the Ld. Assessing officer has erred in clubbing the income of the appellant as substantive income in the hands of the husband of the appellant without any cogent or relevant evidences or materials on record notwithstanding the fact that the income in the hands of the appellant by the Ld. Assessing officer himself in an assessment of the preceding assessment years has already been accepted and Ld. CIT Appeal erred in passing the order without considering the material available on record.

13. For that the ld. Assessing officer has erred in initiating penalty proceedings under the provisions of section 271(1)(c) and 271(1)(b) of the Act in the fact and circumstances of this case and Ld. CIT Appeal erred in confirming the same.

14. For that the ld. Assessing officer has erred in charging interest under the provisions of section 234A, 234B and 234C of the income tax Act, 1961 on the total income as computed in the orders of assessment and Ld. CIT Appeal erred in confirming the same.

15. For that the order of the assessment so passed by the assessing officer and the appellate order passed by the Ld. CIT Appeal is otherwise arbitrary and illegal.

16. For that in view of the matter the order of the assessment and the appellate order is wholly arbitrary and illegal.

17. For that other various reasons which may be used at the time of hearing.”

3. Brief facts of the case are that the assessee is an individual and had filed her return of income on 30.03.2004 showing total income of ₹75,513/- from other sources and ₹80,968/- from agriculture. Notice u/s 148 of the Act was issued and served to the assessee. Statutory notices u/s 143(2) and 142(1) of the Act were issued and served upon the assessee. The assessee responded to the notices and filed written reply to the questionnaire and other details. The Assessing Officer (hereinafter referred to as Ld. 'AO') conducted enquiries to verify the agricultural income claimed by the assessee and accepted the agricultural income to the extent of ₹80,968/-. The income of the



assessee was also added to the income of the husband as she had no proven source of income. The assessment was completed u/s 143(3) r.w.s. 147 of the Act declaring the total income at ₹75,320/-, protectively and substantively in the hands of the husband, Dr. Jagannath Mishra. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who, vide order dated 31.01.2025, dismissed the appeal of the assessee.

4. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

5. Rival contentions were heard and the submissions made have been examined. At the outset, the Ld. AR submitted that the assessment has been made in a protective manner in the hands of the assessee and in substantive manner in the hands of the husband. The appeal has been filed through the legal heir, Shri Nitish Mishra. However, the assessment order was passed in the name of the deceased and it was stated that the same is not valid. The assessment was passed in the name of Smt. Veena Mishra but she expired sometime in 2022 and the appeal has been filed by the legal heir. It was submitted that since substantive addition had been made in the hands of the husband of the assessee therefore, there is no justification for retaining the addition in the hands of the assessee.

6. We have considered the submissions made. Since in this case the addition was made in protective manner as the assessee did not have any source of income which was held to be the income belonging to the husband and where the substantive assessment appears to have been made, therefore, the assessment made in the protective manner in the hands of the assessee is quashed as at the assessment stage a



protective assessment was justified while at the appellate stage before the Ld. CIT(A) once a finding had been made that the income did not belong to the assessee, there was no justification for sustaining the assessment order as has been done in the past that the entire income has been treated to be belonging to the husband of the assessee. The assessee has also filed a copy of the order of the Tribunal in the case of Dr. Jagannath Mishra (HUF) Vs. ACIT, Central Circle-1, Patna in I.T.A. Nos. 125, 127/Pat/2023 Assessment Years: 2000-01, 2001-02; Dr. Jagannath Mishra (HUF) Through L/H Nitish Mishra Vs. ACIT, Central Circle-1, Patna in I.T.A. Nos. 126, 128, 129/Pat/2023 Assessment Years: 2000-01, 2001-02, 2002-03; Smt. Veena Mishra Through Nitish Mishra Vs. ACIT, Central Circle-1, Patna in I.T.A. Nos. 130-132/Pat/2023 Assessment Years: 2000-01 to 2002-03 in which vide paras 22 to 25, the assessment made in a protective manner has been treated as substantive assessment in the hands of the assessee. The relevant extract is as under:

“22. Issue raised in ground no. 9 to 15 relates to protective addition made in the assessee's hand of Rs. 1,81,930/- whereas the substantive addition made in the hands of the assessee's husband Shri Jagannath Mishra. We have already decided the issue in ground no. 9 to 15 in ITA No. 126/Pat/2023 for AY 2000-01 wherein we have held that the assessee is having agricultural land of 4.72 acres and was owning a property independently as is apparent from the Wealth Tax returns for AY 1986-87 to 1990-91 and orders u/s 16 of the Wealth Tax Act which are available in the paper book. Similarly, the orders u/s 143(1) of the Act for AY 1986-87 to 1988-89 are available in the paper book which sufficiently substantiates that the assessee was having her own income and assets which were accepted by the Department in the earlier assessment years. Similarly, during the year, the assessee has earned a long term capital gain of Rs. 1,87,944/- which was claimed as exempt u/s 54 of the Act on sale of property. Therefore, the conclusion drawn by the AO that the assessee was simply a house wife and all the income of the assessee were belonging to the husband of the assessee was without any substantive evidences on record. Accordingly, we hold that income has to be assessed in the hands



of the assessee only. Accordingly, the addition made by the AO of Rs. 1,13,040/- on protective basis is sustained in the hands of the assessee. Accordingly, ground nos. 9 to 15 are allowed.

23. Issue raised in ground no. 16 to 20 is general in nature and needs no specific adjudication.

ITA Nos. 131 & 132/Pat/2023 for AY 2001-02 and 2002-03.

24. The issue raised in the appeal in ground no. 6 to 8 are similar to one as decided by us in ground no. 6 to 8 in ITA No. 126/Pat/2023 for AY 2000-01. Therefore, our decision in ITA No. 126/Pat/2023 for AY 2000-01 would, mutatis mutandis, apply to ground no. 6 to 8 this appeal as well. Accordingly, the grounds are partly allowed.

25. The issue raised in the appeal in ground no.9 to 15 is similar to one as decided by us in ground no. 9 to 15 in ITA No. 130/Pat/2023 for AY 2000-01. Therefore, our decision in ITA No. 130/Pat/2023 for AY 2000-01 would, mutatis mutandis, apply to ground no.9 to 15 this appeal as well. Accordingly, the grounds are allowed.”

7. Therefore, respectfully following the order of the Coordinate Bench in the case of assessee, the appeal is allowed and assessment made in the hands of the assessee is treated as in respect of the income of the assessee on a substantive basis. Ground Nos. 6 to 8 are allowed and other grounds are not being separately adjudicated upon as relief has been granted on the facts of the case in respect of the protective assessment.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 8th September, 2025.

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 08.09.2025

Bidhan (Sr. P.S.)



Copy of the order forwarded to:

1. **Veena Mishra Through Nitish Mishra, 113/70B, Shastri Nagar, Patna, Bihar, 800023.**
2. **ACIT, Cent.Cir-1, Patna.**
3. CIT(A)-3, Patna.
4. CIT-
5. CIT(DR), Patna Bench, Patna.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata