

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

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

I.T.A. No. 568/PAT/2024
(Assessment Year 2021-22)

Deputy Commissioner of Income-tax,
Central Circle-2, Patna,
Central Avenue Building (Annexe),
6th Floor, Birchand Patel Marg,
Patna – 800001 **Appellant**

vs.

Goverdhan Silk Pvt. Ltd.,
M.P. Dwivedi Road, Near Bhagwan
Pustkalaya, Bhagalpur - 8122001
[PAN: AACCG5217G] **Respondent**

CO No.1/PAT/2024
In ITA No. 568/PAT/2024
(Assessment Year 2021-22)

Goverdhan Silk Pvt. Ltd.,
M.P. Dwivedi Road, Near Bhagwan
Pustkalaya, Bhagalpur - 8122001
[PAN: AACCG5217G] **Appellant**

vs.

Deputy Commissioner of Income-tax,
Central Circle-2, Patna,
Central Avenue Building (Annexe),
6th Floor, Birchand Patel Marg,
Patna – 800001 **Respondent**

Appearances by:

Assessee represented by : Shri Desh Bandhu Gupta, Adv.
Department represented by : Shri Himanshu Kumar, JCIT

Date of concluding the hearing : 17.09.2025
Date of pronouncing the order : 19.09.2025

ORDER

PER SONJOY SARMA, JUDICIAL MEMBER

This appeal by the Revenue in ITA No. 568/Pat/2024 and the Cross Objection by the assessee in CO No. 01/Pat/2024 are directed against the order dated 26.06.2024 passed by the Ld. CIT(A)Patna-3 [hereinafter “Ld. CIT(A)”] for the assessment year 2021–22. Since both arise from the same appellate order, they are disposed of by this consolidated order for the sake of convenience and clarity.

2. Brief facts of the case are that in the case of assessee a search and seizure operation under section 132 of the Income-tax Act, 1961 (“the Act”) was carried out on 19.10.2020 in the case of the assessee. Consequent to the search, proceedings under section 153A were initiated. The assessee did not file the return of income for the assessment year 2021–22 within the statutory period. Several notices were issued by the Assessing Officer (“AO”), but compliance was partial. Eventually, the AO proceeded with the assessment under section 153A read with section 143(3), also invoking section 144 in view of non-compliance. The AO determined the total income at ₹1,73,37,532.

3. Aggrieved by the above order assessee preferred and appeal before the Ld. CIT(A), where Ld. CIT(A) granted partial relief. Specifically, the Ld. CIT(A) restricted the addition of ₹8,31,116 to ₹4,13,121 in respect difference in stock and deleted the additions of ₹20,40,156 and ₹40,10,045 which were made towards sundry debtors.

4. Aggrieved by the above order the Revenue has preferred the present appeal challenging the deletions and relief granted to the assessee. On the

other hand, the assessee has filed a cross-objection primarily contending that the Revenue's appeal is not maintainable in view of the CBDT Circular prescribing monetary limits for filing departmental appeals. The Revenue has assailed the order of the Ld. CIT(A) on the ground that the Ld. CIT(A) erred in law and on facts in restricting the addition made by the AO and in deleting other additions. That the Ld. CIT(A) has wrongly admitted fresh evidence which had not been produced during the course of assessment proceedings. The ld. DR. stated that while relying on such fresh evidence, the Ld. CIT(A) failed to call for a remand report from the AO, thereby violating the principles of natural justice. According to the Revenue, the order of the Ld. CIT(A) suffers from procedural infirmity and therefore requires to be set aside.

5. In the cross objection, the assessee has submitted that the appeal filed by the Revenue deserves to be dismissed at the threshold since the tax effect involved is below the monetary limit prescribed by CBDT in its Circulars issued under section 268A of the Act. However, the assessee has not filed any working or computation sheet demonstrating that the tax effect is in fact below the monetary threshold.

6. We have carefully considered the rival submissions and perused the material available on record. The short controversy before us is twofold:

7. Whether the order of the Ld. CIT(A) suffers from violation of Rule 46A for having admitted fresh evidence without calling for a remand report from the AO; and

8. Whether the Revenue's appeal is liable to be dismissed on account of low tax effect as per CBDT Circulars.

9. In the instant appeal it is an admitted position that while granting relief, the Ld. CIT(A) relied upon fresh evidence or documents which were not furnished before the AO during assessment proceedings. According to Rule 46A of the Income-tax Rules, 1962 clearly provides that when an assessee produces fresh evidence before the first appellate authority, the same may be admitted only upon recording reasons in writing, and only after giving an opportunity to the AO to examine such evidence. The settled position in law, as held by various Courts, is that the AO must be given a reasonable opportunity to respond to such new material. In the present case, the Ld. CIT(A) did not call for a remand report from the AO before relying upon the fresh evidence. This constitutes a procedural irregularity going to the root of the matter.

10. In view of this, we are of the considered opinion that the matter needs to be restored to the file of the Ld. CIT(A) for fresh adjudication in accordance with law, after complying with the requirements of Rule 46A and after calling for a remand report from the AO.

11. The assessee has argued that the Revenue's appeal is not maintainable since the tax effect is below the monetary threshold fixed by CBDT. While the principle enunciated in CBDT Circulars is well accepted, the onus is on the assessee to demonstrate that the tax effect in the instant case is below the threshold. However, in the present matter, the assessee has not placed on record any working or computation to substantiate this plea. In absence of such evidence, we are unable to accept the contention of the assessee. Accordingly, the cross objection filed by the assessee is dismissed.

12. In light of the foregoing discussion, we hold that the order of the Ld. CIT(A) suffers from violation of Rule 46A since fresh evidence was admitted without calling for a remand report. Accordingly, the matter is remanded to the file of the Ld. CIT(A) for fresh adjudication after obtaining a remand report from the AO and after affording due opportunity of hearing to the assessee.

13. The cross objection filed by the assessee is dismissed as the plea of low tax effect is not supported by any computation or evidence.

14. In the result, the appeal of the Revenue is treated as allowed for statistical purposes, while the cross objection filed by the assessee is dismissed.

Order pronounced on 19.09.2025

Sd/-
(Rakesh Mishra)
Accountant Member

Sd/-
(Sonjoy Sarma)
Judicial Member

Dated: 19.09.2025
AK, Sr. P.S.

Copy of the order forwarded to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. CIT(DR)

//True copy//

By order

Sr. Private Secretary/Assistant Registrar, Patna Bench