

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

**BEFORE SHRI DUVVURU RL REDDY, VP
AND
SHRI RAJESH KUMAR, AM**

**ITA No. 72/PAT/2023
(Assessment Year: 2018-19)**

Shri Hariom Jee Rice Mill
Sanjhauli, Rohtas, Sasaram,
Bihar-802220

(Appellant)

Vs.

ACIT, Central Circle-1
Patna-800001, Bihar

(Respondent)

PAN No. ABDFS7955A

Assessee by : Shri Vishal Kr. AR
Revenue by : Shri Md. AH Chowdhary, DR

Date of hearing: 27.11.2025
Date of pronouncement: 08.12.2025

ORDER

Per SHRI DUVVURU RL REDDY, VP:

This is an appeal preferred by the assessee against the order of the Commissioner of Income-tax (Appeals), Patna-3 (hereinafter referred to as the "Ld. CIT(A)") dated 23.11.2022 for the AY 2018-19.

2. The assessee has revised and concise the grounds of appeal which are as under:-

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

2. For that the Assessment Order as passed is bad in law and fit to be quashed in view of following legal issues / grounds:-

(i) For that the learned ITO, W-3(4), Sasaram erred in issuing notice u/s 143(2) of the Act dated 24.09.2019 without complying to the CBDT Instruction F.No.225/157/2017/ITA-II dated 23-06-2017, hence the notice issued u/s 143(2) is not valid as per law.

(ii) For that the assessment has been framed u/s 143(3) by learned ACIT, Central Circle-1, Patna without issue of notice u/s 143(2) of the Act. notice u/s

143(2) dated 24.09.19 issued by ITO, Ward-3(4), Sasaram is illegal and bad in law in view of CBDT's Instruction No. 01/2011 dt 31.01.2011.

(iii) For that the assessment framed u/s 143(3) by ACIT, Central Circle-1, Patna is invalid in absence of order u/s 127 by the competent authority (i.e., PCIT, Patna). Migration of PAN on basis of CBDT letter no. F. No. 225/126/2020/ITA-II dated 17.09.2020 without transfer order u/s 127 is arbitrary, unjust, void ab-initio and bad in law.

3. For that the learned Assessing Officer has made impugned additions without issue of mandatory show cause notice, hence the addition as made and sustained by learned CIT(A) is void ab-initio, bad in law and fit to be deleted.

4. For that the learned CIT(A) has erred in confirming the addition of Rs. 9,23,530/- as made by Assessing Officer on account of cash found during the course of survey. The addition as sustained is arbitrary, unjustified, void ab-initio, bad in law and fit to be deleted.

5. For that the learned CIT(A) has erred in confirming the addition of Rs. 3,73,62,593/- as made by Assessing Officer on account of impugned/alleged difference of stock. The addition as sustained is arbitrary, unjustified, void ab-initio, bad in law and fit to be deleted.

6. For that the learned CIT(A) has erred in confirming the addition of Rs. 8,26,04,367/- as made by Assessing Officer on account of goods of farmer found in premises of assessee in respect of Karari and Amanati. The addition as sustained is arbitrary, unjustified, void ab-initio, bad in law and fit to be deleted.

7. For that the learned Assessing Officer has erred in invoking the provision of section 115BBE of the Act. The learned CIT(A) has erred in not adjudicating this ground of appeal. The application of section 115BBE is arbitrary, unjustified, void ab-initio and bad in law.

8. For that the learned CIT(A) has erred in confirming the charging of interest u/s 234A at Rs. 9,14,704/-, u/s 234B at Rs. 3,84,17,568/- and 234C at Rs. 39,447/-. The return has been filed u/s 139(1) before due date, hence interest u/s 234A is not applicable. Interest u/s 234B is chargeable on income returned: The learned CIT(A) has erred in not adjudicating this ground of appeal. Interest as charged is fit to be deleted.

9. For that the appellant reserves its right to file detailed submission at the time of hearing."

2.1. After hearing the rival contentions and perusing the materials available on record, we find that the assessee has raised a legal issue in the above revised grounds of appeal vide Para no.2 and 3 and which are not adjudicated by the first appellate authority therefore, we admit the said legal issue being arising from the assessment

record which goes to the root of the matter. In our considered view the assessee is at liberty to raise any legal issue before any appellate authority for the first time even when the same has not been raised before the lower authorities. The case of the assessee is squarely covered by the decisions of the Apex court in the case of i) Jute Corporation of India Ltd. Vs CIT in 187 ITR 688, ii) National Thermal Power Co. Ltd v. CIT [1998] 229 ITR 383 and also by the decision of Hon'ble Calcutta High Court in PCIT vs. Britannia Industries Ltd. [2017] 396 ITR 677 (Cal). Therefore, we are inclined to admit the same for adjudication.

2.2. Since, the issue raised before us is not raised before the first appellate authority by the assessee therefore, this additional ground is restored to the file of the learned CIT (A) with a direction to decide the same after affording reasonable opportunity of hearing to the assessee and also after taking into account the facts relating to these issues. Accordingly, the appeals of the assessee are allowed for statistical purposes.

3. In the result, the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 08.12.2025.

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Sd/-
(DUVVURU RL REDDY)
(VICE PRESIDENT)

Patna, Dated: 08.12.2025

Sudip Sarkar, Sr.PS



Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

True Copy//

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Patna