

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

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

**ITA No.16/PAT/2021  
(Assessment Year: 2016-17)**

**ACIT, Central Circle-2, Patna**  
6<sup>th</sup> floor, C.R. (annexe) Building,  
Bir Chand Patel Marg,  
Patna-800001

**Vs.**

**M/s Gaurav Rice & food  
Processing Pvt. Ltd.**  
Factory, Office-cum-godown  
premises at sarani, Vaishali,  
Bihar

**(Appellant)**

**(Respondent)**

**PAN No. AAECG9324J**

**Assessee by** : S/Shri A.K. Rastogi,  
Rakesh Kumar, ARs  
**Revenue by** : Shri Md. AH Chowdhary, DR

**Date of hearing:** 24.11.2025  
**Date of pronouncement:** 09.12.2025

**ORDER**

**Per Rajesh Kumar, AM:**

This is an appeal preferred by the Revenue against the order of the Commissioner of Income-tax (Appeals), Patna-3(hereinafter referred to as the "Ld. CIT(A)") dated 29.01.2021 for the AY 2016-17.

02. The issue raised in ground nos.1 and 2 are against the deletion of addition of ₹87,65,840/- including Rs. 18,50,000/- made under Section 68 of the Act in respect of unexplained cash credit by the learned Assessing Officer.
03. The facts in brief are that a search action under Section 132 of the Act was conducted on the assessee on 11.08.2017, at the residential office and factory premises of the assessee after an information was

received from the inspector of police, Alamganj, Patna city, who intercepted Shri Subodh Kumar with huge cash of ₹15,01,500/-. Notice under Section 153A of the Act was issued on 14.03.2017, and return of income was filed on 03.10.2019, declaring total income of ₹13,48,480/-. Thereafter the statutory notices along with questionnaire were issued and duly served upon the assessee which were duly replied by the Authorized Representative of the assessee. The learned Assessing Officer analyzed the documents impounded during the course of search on the assessee and made an addition in respect of subscription received by the assessee as unexplained cash credit. The learned Assessing Officer discussed the issue from para no.1 to 7 and added a sum of ₹87,65,840/- to the income of the assessee. Similarly, the learned Assessing Officer made an addition in respect of share capital issued by the assessee to various parties by treating the same as unexplained cash credit on the ground that the assessee has failed to prove the identity, creditworthiness of the investors and genuineness of the transactions.

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

*"3.1 Finding and decision:*

*I have gone through the assessment order & written submission of the appellant. In the present year under consideration there are two issues first with regard addition of Rs. 87,65,840/- on account of unexplained cash credit under section 68 & secondly addition of Rs. 1,25,00,000/- in respect of unexplained cash credit under section 68 of the Income tax Act.*

*The undisputed fact is that a search and seizure operations u/s 132(1) of the Income Tax Act, 1961 was conducted on 11.08.2017 in Gaurav Rice Mill group cases of Patna. The appellant Sunil Kumar is related to Gaurav Rice mill group and also subjected to search. Apparently as can be seen from the assessment order the AD has not referred to any material either found or seized during the course of search based on which addition was made. However, the AO do referred to post search enquiry done by the*

ADIT. Accordingly, the AO based on the findings of the ADIT. Patna held that the identity, genuineness and creditworthiness of following company which subscribed to the shares of the M/s Gaurav Rice & Food Processing Pvt Ltd were held to be non-genuine and accordingly made an addition of Rs.8765840/-u/s.68 of the Act.

The appellant further argued that the AQ has not controverted the material placed on record or the AD could lay his hand on any incriminating material found during the course of search or could independently gather any evidence to corroborate the findings of the ADIT, Patna. Accordingly, the appellant relying on various case laws of Hon'ble High courts and Hon'ble Apex court including that of Hon'ble Jurisdictional High court (*supra*) concluded that it has discharged the onus placed on it u/s.68 of the Act by documentary evidence, however, the AO simply disbelieved the same,

I have carefully considered the rival arguments/submissions/findings of the AO and the appellant and I find considerable force in the argument/submission of the appellant. As I have stated earlier, the AO can assume valid jurisdiction u/s.153A based on the report from the Investigation wing of the department, but at the same time has to be backed by Independent enquiry by the AO with positive evidence to corroborate the findings contained in the investigation report. However, the AO failed to gather any additional evidence and could not controvert the evidence placed by the appellant.

In *Jai Steel (India) v. Asstt. CIT 2013 Tax Pub(DT) 1647 (Raj-HC): 2013 219 Taxman 223 (Raj): (2013) 259 CTR (Raj) 281*, it was held that in case nothing Incriminating is found on account of search or requisition, the question of reassessment of the concluded assessment does not arise. It has further been held by the High Court that the provisions of section 153A to 153C cannot be interpreted to be further innings to the assessing officer and/or assessee beyond the provisions of section 139 (return of income), 139(5) (revised return of income), 147 (income escaping assessment) and 263 (revision of orders) of the Act. The Hon'ble High Court has further observed that the words "assess" or "re-assess" have been used at more than one place in the section and harmonious construction of entire provision would lead to an irresistible conclusion that word 'assess has been used in the context of abated proceedings and 're-assess' has been used for completed assessment proceedings, which would not abate as they are not pending on the date of initiation of the search or making of requisition and which would also necessarily support the interpretation that for the completed assessments, the same can be tinkered only on the basis of the incriminating material found during the course of search or requisition of documents.

Rajasthan High Court in the case of "*Jai Steel (India) (supra)*" Hon'ble Gujrat High The Proposition of law which emerges out in the light of the law laid down by the High Court in the case of '*Chetan Dass Lachman Das*' is that where incriminating material is found during the search action, the assessing officer while making assessment under section 153A can take note of other materials on record, which are relevant and connected to the material found during the search and inference can be drawn relating to other transactions of similar nature. However, when no incriminating evidence is found during search, it is not open to the assessing officer to make re-assessment of concluded assessment in the grab of invoking the provisions of section 153A. As observed above, such an action will defeat the other relevant provisions of the Act and also the rights of the assessee accrued therein.

*With regard to addition of Rs. 18,50,000/- included in 87,65,840/-. The Sunil Kumar has during the assessment proceedings has submitted that amount received by the three persons namely Lalita Devi, Mridula Devi and Renu Devi Gupta has been refunded back by M/s Gaurav Rice & food processing P Ltd. This fact has been ignored by the AO though the same has been refunded through banking channels.*

*With regard to addition of Rs. 48,25,000/- included in 87,65,840/-. The Sunil Kumar has during the assessment proceedings has submitted that the appellant has shown Rs. 51,25,000/- as appropriation towards share capital held in the staff. Further, list along with the appropriation chart has been submitted in the course of the assessment proceedings. This fact has been ignored by the AO.*

*A perusal of the assessment order clearly shows that the entire assessment has been framed by the assessing officer without conducting any independent enquiry from the relevant share applicants or independent sources.*

*Considering the of evidence & judicial decisions, I am of considered view that the appellant has discharged the onus cast upon him by the provisions of section 68 of the IT Act. In the present case, I am of considered view that the appellant has discharged its onus cast upon him under section 68, accordingly, the addition on account of share capital stands deleted.*

*As discussed above, the AO is directed to deleted the addition of Rs.87,65,840/- on merit. of initiation of the search or making of requisition and which would also necessarily support the interpretation that for the completed assessments, the same can be tinkered only on the basis of the incriminating material found during the course of search or requisition of documents.*

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*As discussed above, the AO is directed to deleted the addition of Rs.87,65,840/- on merit.*

*With regard to the second issue of addition of Rs. 1,25,00,000/- in respect of unexplained cash credit under section 68 of the Income tax Act on account of amount transferred from account no. 54020101005036 to account no. 540201010511 in the name of the appellant. The appellant during the course of assessment proceedings has submitted the detailed reply with respect to amount transferred from account no. 540201010050366 to account no. 540201010511 held in the name of appellant. In the reply it was explained that out of fund of Rs. 1,25,00,000/- from account no.540201010050366 held in the name of Sri Jawahar Lal, share of Rs. 18,88,000/- has been allotted and Rs. 1,06,12,000/- is against sell of rice/ broken rice. The appellant in the course of assessment also submitted the ledger copy along with the copy of sale bill. The assessing officer has ignored the reply and without pointing out any defects/ objection and rejected the submission. No independent enquiry what so ever has been conducted and AO has simply brushed aside the submission of the appellant. Further, during the course of assessment hearing the appellant has submitted the copy of bank account held in the name of Jawahar Lal and also the ledger copies of the Jawahar lal in the books of the appellant. Further the source of credit appearing in the account no. 540201010050366 is from M/s Bharat Traders. Thus material which was purchased from M/s Gaurav rice and food processing P Ltd. has been sold to M/s Bharat Traders. Further, Sunil kumar Director of the appellant company and S/o Sh. Jawahar Lal has offered income @ 8% in respect of such turnover.*

*In the present case the AO has simply rejected the evidence furnished by the appellant. Hon'ble High court in the case of Gangeshwari Metal P Ltd has disapproved the action of the AO wherein the AO sits back with folded hands till the appellant exhaust all the evidence or material in his possession and then comes forward to merely reject the same on the presumption and suspicion. Here the assessing officer, after noting the facts, merely rejected the same.*

*I find merit in the submission of the appellant and direct the AO to delete the addition of Rs. 1,25,00,000/-.*

*3.2. In the result, the appeal is allowed."*

05. After hearing the rival contentions and perusing the materials available on record, we find that certain subscribers subscribed the

shares of the assessee company which was treated as non-genuine and accordingly, the additions of ₹87,65,840/- and Rs. 1,25,00,000/- were made under Section 68 of the Act. The Id. CIT(A) deleted the addition of Rs. 87,65,480/- on the ground that assessee has furnished the evidences with the AO and he has not done any enquiry. The learned CIT (A) as regards to ₹1.25 crores noted that ₹18,88,000/- were received from Shri Jawahar Lal, in lieu of allotment of shares and ₹1,06,12,000/- were received against the sale of rice/ broken rice. The learned CIT (A) also noted that the addition made by the learned Assessing Officer of ₹1,25,00,000/- was in respect of unexplained cash credit under Section 68 of the Act on account of amount transferred from amount no.1005036 to account no. 1010511, in the name of the appellant and thereafter, explained the reason as to how the addition was deleted. The Id. CIT(A) noted the assessee furnished all the documents before the which he failed to consider. Therefore, the order passed by the learned CIT (A) is a very reasoned and speaking order which does not require any inference from our side and accordingly by upholding the same, the appeal raised by the Revenue is dismissed.

06. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 09.12.2025.

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

Sd/-  
(RAJESH KUMAR)  
(ACCOUNTANT MEMBER)

Patna, Dated: 09.12.2025

*Sudip Sarkar, Sr.PS*



Copy of the Order forwarded to:

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

BY ORDER,

True Copy//

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