

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'PATNA' BENCH VIRTUAL HEARING AT KOLKATA**

**Before Shri Sonjoy Sarma, Judicial Member and Shri Rakesh Mishra, Accountant Member**

**I.T.A. No.711/PAT/2024**  
Assessment Year: 2022-23

**Shri Shah Afroze Hossain.....Appellant**

12, Shahganjhi, Habibpur,  
Bhagalpur, Bihar-812006.  
**[PAN: AAPPH1112D]**

**vs.**

**DCIT, Central Circle-2, Patna..... Respondent**

**Appearances by:**

Shri Manish Rastogi, Adv., appeared on behalf of the appellant.

Md. Shadab Ahmed, CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : October 14, 2025

Date of pronouncing the order : December 30, 2025

**आदेश / ORDER**

**Per Sonjoy Sarma, Judicial Member:**

This appeal filed by the assessee is directed against the order of the CIT(A), Patna-3 (hereinafter referred to as "Id. CIT(A)") dated 22.10.2024 passed under Section 250 of the Income-tax Act, 1961 (hereinafter referred to as the "Act").

2. Brief facts of the case are that the assessee filed his return of income for the Assessment Year 2022-23 declaring a total income of ₹75,56,770, comprising the income from business of ₹6,54,569, long-term capital gains: ₹49,60,293 and income from other sources of ₹19,35,912. A search and seizure operation under section 132 of the Act was carried out on 29.12.2022 at the residential and business premises of the assessee pursuant to a warrant of authorisation issued by the Director of Investigation, Patna. During the course of the search,

certain documents were found and seized from the residential premises marked as SHA-01 to SHA-275 and from the business premises marked as MBF-012 to MBF-031, situated at Sahaganj, Habibpur, Bhagalpur. Subsequently, the jurisdiction of the assessee's case was centralized. The return of income was selected for compulsory scrutiny and notice under section 143(2) of the Act was issued on 27.06.2023, followed by statutory notices under section 142(1) of the Act from time to time. The assessee duly filed replies and produced details as called for. Ultimately, the Assessing Officer completed the assessment determining the total income at ₹2,52,28,190 as against the returned income of ₹75,56,770, by making the addition under the head of undisclosed business income of ₹62,22,920, Unexplained money introduced in business of ₹26,50,000, Addition under section 50C of the Act of ₹76,93,500 and unexplained expenditure based on seized material of ₹10,85,000. Thus, total additions of ₹1,76,51,420 were made.

3. Aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). The CIT(A) partly allowed the appeal and restricted the total additions by granting partial relief to the assessee. The findings of the Ld. CIT(A) relating to undisclosed business income restricted to ₹51,13,685, addition of ₹26,50,000 towards unexplained money introduced in business sustained, issue under section 50C of the Act restored to the file of the Assessing Officer for reference to the District Valuation Officer under section 50C(2) of the Act and issue relating to addition of ₹10,85,000 towards unexplained expenditure sustained.

4. Still aggrieved, the assessee is in appeal before the Tribunal. The appeal raises the following substantive issues:

1. Sustenance of addition on account of undisclosed business income
2. Sustenance of addition of ₹26,50,000 as unexplained money introduced in business
3. Restoration of section 50C issue to the Assessing Officer
4. Sustenance of addition of ₹10,85,000 as unexplained expenditure
5. On the issue No. 1 relating to addition on account of Undisclosed Business Income, the Ld. AR stated that the Assessing Officer, on the basis of seized material marked MBF-14 to MBF-19, worked out gross receipts at ₹2,90,34,175 and corresponding expenses at ₹3,08,62,320. After reducing declared turnover of ₹57,39,500, the balance amount was treated as undisclosed receipts. The Assessing Officer applied a gross profit rate of 24.77% based on returned results and made an addition of ₹62,22,920. Before the Ld. CIT(A), while partly accepting the assessee's explanation, excluded receipts of ₹26,50,000 pertaining to the assessee's brother's income and recomputed undisclosed turnover at ₹2,06,44,675, applying the same GP rate of 24.77%, resulting in an addition of ₹51,13,685.
6. On this context the Ld. AR contended that the seized material reflected combined transactions of the assessee and his brother, who is independently assessed to tax and engaged in tractor business. The assessee is primarily engaged in brick kiln business, where application of GP rate is inappropriate and net profit rate should be applied. The GP rate adopted here is arbitrary and excessive, and at best, a net profit rate of about 15% to 16% could be applied.

7. On the other hand Ld. DR supported the order of the Authority below.

8. We have carefully considered the rival submissions and perused the material on record. We find that the assessee is engaged in brick kiln business, where profits are influenced by multiple factors including seasonal operations and fixed expenses. Application of GP rate on seized turnover without rejecting books or bringing comparable cases is unjustified. We also note that the CIT(A) himself accepted the contention that receipts relating to the assessee's brother cannot be taxed in the assessee's hands. In our considered opinion, adoption of a net profit rate of 16% on undisclosed turnover of ₹2,06,44,675 would meet the ends of justice. Accordingly, undisclosed income works out to approximately ₹33,03,148, and the assessee is entitled to consequential relief. Accordingly, we direct that a net profit rate of 16% be applied on the undisclosed turnover of ₹2,06,44,675, resulting in an addition of ₹33,03,148. Thus, the assessee is entitled to relief of ₹29,19,772 vis-à-vis the addition of ₹62,22,920 made by the Assessing Officer. Accordingly, this ground is partly allowed.

9. The another issue No. 2 relates to the addition of ₹26,50,000 made as unexplained money introduced in business as alleged by the A.O. The contention of the Ld. AR is that the addition was made on the basis of entries found in seized material MBF-14 to MBF-19. The assessee explained that withdrawals prior to the search amounted to ₹63,00,000, comprising ₹33,00,000 by the assessee and ₹30,00,000 by his brother. The explanation was supported by a chart placed at page 63 of the paper book. The assessee further relied upon the decision of the Hon'ble Gujarat High Court in Navjivan Oil Mills vs. CIT (2002) 124

Taxman 392, wherein it was held that seized material must be read as a whole and selective interpretation is impermissible.

10. On the other hand Ld. DR supported the decision of the Authority below.

11. We find that the availability of sufficient cash prior to the alleged introduction is not disputed. When withdrawals exceed the alleged introduction, the addition lacks factual foundation. The Assessing Officer failed to consider this crucial aspect, when there was sufficient cash in hand with the assessee, the same cannot be treated as unexplained money introduced in the business. The assessee had demonstrated withdrawals aggregating to ₹63,00,000, comprising ₹33,00,000 withdrawn by the assessee and ₹30,00,000 withdrawn by his brother. The explanation was duly supported by a chart placed at page 63 of the paper book. In such circumstances, the view taken by the CIT(A) in sustaining the addition was not proper, since the availability of cash is not in dispute. When the withdrawals exceed the alleged introduction, the very foundation of the addition fails. The Assessing Officer failed to consider this crucial aspect. Accordingly, the addition of ₹26,50,000 is directed to be deleted.

12. The another issue no. 3 relating to addition under Section 50C of the Act the Ld. CIT(A) restored this issue to the file of the Assessing Officer for reference to the District Valuation Officer under section 50C(2) of the Act. Since the issue is already remanded, no further adjudication is required at this stage. This ground is treated as allowed for statistical purposes.

13. The issue No. 4 relating to addition of ₹10,85,000 as unexplained expenditure. The Ld. AR stated that the addition was made solely on

the basis of seized document SHA-27, allegedly reflecting land-related expenditure. The assessee categorically denied having purchased or sold of any land during the year under consideration and demonstrated from the balance sheet that no such transaction exists. The Assessing Officer as well as the CIT(A) failed to establish any nexus between the seized document and the assessee. It is settled law that third-party documents, without corroboration, cannot form the basis of addition. The Ld. AR alternatively stated that, the undisclosed turnover has been determined at ₹2,06,44,675, on which a net profit has already been brought to tax. The alleged unexplained expenditure of ₹10,85,000 stands embedded in and covered by the said undisclosed turnover. Once the income is estimated by applying a net profit rate on the undisclosed turnover, no separate addition for expenditure can be made, as the same would result in double taxation of the very same income. The principle of telescoping squarely applies to the facts of the case. Further, the addition of ₹10,85,000 is based solely on third-party documents and no nexus has been established between the assessee and any actual purchase or sale transaction. In absence of any corroborative evidence, such an addition is unsustainable. Accordingly, on both counts application of telescoping and absence of nexus the addition of ₹10,85,000 deserves to be deleted.

14. On the other hand Ld. DR supported the order of the authority below.

15. We after hearing the rival submission of the parties and perusing the material available on record find that the assessee successfully rebutted the presumption arising from possession of the document. In absence of any evidence of actual transaction, the addition is

unsustainable. Moreover, once the income is estimated by applying a net profit rate on the undisclosed turnover, no separate addition for expenditure can be made, as the same would result in double taxation of the very same income. The principle of telescoping squarely applies to the facts of the case. Accordingly, the addition of ₹10,85,000 is hereby directed to be deleted.

16. In the result, the appeal of the assessee is partly allowed in terms indicated above.

***Kolkata, the 30<sup>th</sup> December, 2025.***

Sd/-

**[Rakesh Mishra]**

लेखा सदस्य/Accountant Member

Sd/-

**[Sonjoy Sarma]**

न्यायिक सदस्य/Judicial Member

Dated: 30.12.2025.

RS

*Copy of the order forwarded to:*

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

//True copy//

By order

Assistant Registrar, Kolkata Benches