

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

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

**ITA No.442/PAT/2024
(Assessment Year:2017-18)**

ITO, Ward 2(1), Begusarai
3rd Floor, G.S. Motors Building,
Har Har Mahadev Chauk,
Begusarai-851101, Begusarai,
Bihar-851101

(Appellant)

Vs.

Manish Kumar Motani,
Manish Kumar Motani, Hanuman
Traders, Mill Road, Khagaria,
Khagaria, Bihari-851204

(Respondent)

PAN No. AJJPM4263D

**CO No. 02/PAT/2025
(Arising in ITA No. 442/PAT/2024 for A.Y. 2017-18)**

Manish Kumar Motani,
Manish Kumar Motani, Hanuman
Traders, Mill Road, Khagaria,
Khagaria, Bihari-851204

(Applicant)

Vs.

ITO, Ward 2(1), Begusarai
3rd Floor, G.S. Motors Building,
Har Har Mahadev Chauk,
Begusarai-851101, Begusarai,
Bihar-851101

(Respondent)

Assessee by : S/Shri A.K. Rastogi,
S.K. Duta, ARs
Revenue by : Shri A.H. Chowdhary, DR

Date of hearing: 24.11.2025
Date of pronouncement: 26.02.2026

ORDER

Per Rajesh Kumar, AM:

The appeal by the Revenue and the CO by the assessee are arising against the order of the Commissioner of Income-tax (Appeals)-Patna-3, (hereinafter referred to as the "Ld. CIT(A)") dated 20.03.2024 for the AY 2017-18.

2. At the outset, we observe from the appeal folder that there is a delay of 12 days in filing the appeal by the department and in support of which a condonation petition was filed. It was stated that the delay has occurred due to obtaining the administrative approvals from the competent authorities in the tax hierarchy, which took time and accordingly, the delay may be condoned. The Id. AR, on the other hand, did not oppose the condonation of delay. Considering the reasons cited before us, we are inclined to condone the delay and admit the appeal for hearing.
3. At the outset, we note that the Cross Objection of the assessee is barred by limitation by 248 days. At the time of hearing the counsel of the assessee explained the reasons for delay in filing the cross objection. The Ld. D.R did not raise any objection in condoning the delay. After hearing the rival contentions and perusing the materials available on record, we find that the delay is for bonafide and genuine reasons and hence, we condone the delay and admit the cross objection for adjudication.
4. The only issue raised by the Revenue in the various grounds of appeal is against the order of learned CIT (A) deleting the addition made by the learned Assessing Officer of ₹8,02,45,293/-, which was in violation to the Provisions of Section 40A(3) of the Income-tax Act, 1961 (the Act) and not allowable as deduction. The Revenue has raised one more issue that the learned CIT (A) has erred in adopting the GP rate of 1.6% of the total turnover by ignoring the fact that the assessee has not taking into account the amount of ₹5,63,71,552/-, which represented cash purchases made outside the books of account of the assessee from various parties.

5. The facts in brief are that a survey under Section 133A of the Act was conducted on the assessee on 04/01/2017 and various documents were impounded which showed that the assessee has unaccounted cash transactions of purchases of ₹5,63,71,552/-, which were not included in the total sales of the assessee. The assessee filed the return of income on 13.12.2017, by declaring the total income of ₹34,62,020/-. The case of the assessee was selected for scrutiny and finally, the learned Assessing Officer assessed the income at ₹8,53,95,910/- as against the return income of ₹34,62,020/- by making the two additions (i) ₹8,02,45,293/- in respect of undisclosed sales and (ii) 16,88,598/-, in respect of disallowance computed at the rate of 10% on Freight & wages expenses, Miscellaneous expenses, travelling and conveyance expenses etc.
6. In the appellate proceedings, the learned CIT (A) partly allowed the appeal of the assessee by deleting the first addition of ₹8,02,45,293/- made by the learned Assessing Officer under Section 40A(3) of the Act in respect of cash purchases, however, directed the learned Assessing Officer to apply GP rate at the rate of 1.6% by observing and holding as under: -

" In this case, as survey action u/s 133A was conducted on 04.01.2017. The appellant is engaged in the business of wholesale trading in food grains. During the course of survey proceedings, it was noticed that the appellant has made certain cash purchases of Masoor dal, Matar and Matar dal in cash, in the statement recorded during survey, the appellant admitted to have made unaccounted trading and agreed to disclose an amount of Rs. 5,63,71,552/- in the return of income on account of violation of section 40A(3). However, the appellant has not disclosed this sum in the return of income. On the basis of impounded material SSY-1, the AO worked out unaccounted purchase payments for masoor and masoor dal beyond Rs. 20000/- in cash at Rs. 5,45,53,743/- and on the basis of impounded document SSY-4 such disallowance in respect of Matar/Matar Dal was worked out at Rs. 2,91,58,150/-, In aggregate the total disallowance u/s 40A(3) was worked out at Rs. 8,02,45,293/-, During assessment proceedings the appellant sought to take shelter of Rule 6DD claiming payment to agriculturist and business expenditure of incurring expenditure in

cash. The AO held that payments were made to traders and the appellant is not coursed under rule 6DD.

It is pertinent to mention here that above purchases were unaccounted purchases out of books and were not part of regular books of account maintained in tally. In the statement recorded during survey the appellant admitted unaccounted trading and also admitted to violation of section 40A(3). These purchases were not recorded in regular books, However, in the return of income, the sale and purchases were incorporated in the turnover. On page no. 30 of assessment order, the AO has observed as under

"The book result books of account of the assessee is not reliable to the extent as discussed in the order in respect of various additions and disallowances, hence the same are rejected."

In the light of aforesaid observation, the AO ought to have estimated profit on entire turnover including turnover out of books which was incorporated in return of income. Once books were rejected, there was no scope of any other additions/disallowance. The purchase and sale of Matar/Mater Dal and Masoor/Masoor Dal as seen in impounded documents were not part of regular books. In other words, disallowance u/s 40A(3) was not warranted as such payments were not part of regular books and the fact that the AO rejected the books.

In the case of *PCIT vs. Juned Menon 95 Taxman 20 (Gujarat)*, Hon'ble High Court has held that on cash purchases above on 20,000/- profit element embedded there in should be brought to tax. The entire amount was not to be disallowed u/s 40A(3). Relevant head note is quoted as under:

"[Section 37(1), read with sections 40A(3) and 145, of the Income-tax Act, 1961-Business expenditure Allowability of (Business expenditure) Assessment year 2009-10-Assessee made various payments totaling to Rs 2.08 crores through mode other than account payee cheque or bank draft though each payment exceeded Rs. 20,000 per day Though Assessing Officer was of opinion that assessee inflated purchase expenditure by raising bogus claims, he disallowed said expenditure of Rs. 2.08 crores invoking section 40A(3) Commissioner was of opinion that in essence Assessing Officer had disputed expenditure claimed by assessee and indirectly applied section 37 He was of opinion that not entire expenditure which was under cloud but profit element embedded therein should be brought to tax and, thus, limited disallowance to Rs. 47.28 lakhs enhancing gross profit ratio to 5.8 per cent from declared gross profit ratio of 2.9 per cent shown by assessee after noticing that in earlier year, gross profit ratio was 5.2 per cent and that assessee's unverifiable purchases of Rs. 2.08 crores is 129 per cent of total purchases Whether when Assessing Officer had doubted genuineness of expenditure, he would require bringing to tax profit element so avoided by assessee Held, yes Whether Commissioner (Appeals) was justified in limiting additions and in bringing assessee's declared gross profit ratio at same rate as in previous year which was even otherwise in tune with percentage of assessee's doubtful purchases Held, yes [Paras 6 & 8] [In favour of assessee]"

In the case of Prasant Oil Mill vs. ITO 72 Taxmann 136 (Guj) Hon'ble High Court has held the once the books were rejected, the AO ought not to have made any addition relying upon same books. Instead, he ought to have made best judgement assessment. Relevant head note is as under.

"Section 145, read with section 143, of the Income-tax Act, 1961 Method of accounting Rejection of accounts (Others) Assessing Officer rejected account, books of assessee after verification Thereafter he made a certain addition to income of assessee relying upon same account books Whether when Assessing Officer rejected account books of assessee, then he ought not to have made addition by relying upon same account books Held, yes-Whether he ought to have made best judgment assessment on basis of history and nature of business and net profit rate as shown by assessee in previous year - Held, yes [Para 6] [In favour of assessee/Matter remanded]"

In ITO vs. Sadananda Singha 49 taxmann 323, ITAT Kolkata, Hon'ble Tribunal has held that profit is estimated on disputed turnover/purchases, no further disallowance can be made by invoking provisions of section 40A(3). The facts of the instant case are similar. In this case the AO rejected books but failed to estimate profit/taxable income. In fact, the AO has not compared with the GP rate shown by the appellant. The position of GP in previous, current and subsequent year is as under:

Comparative chart of sale and GP for five years.

Previous Year		GTO	Gross Profit	% of GP
31.03.2015		280921501	3411633.83	1.21%
31.03.2016		329717919	3743260.26	1.14%
31.03.2017	In appeal	480941287.42	4979069.42	1.04%
31.03.2018		449584703.34	5448130.38	1.21%
31.03.2019		464680300.24	5893230.75	1.27%

The appellant has engaged in transactions beyond books as well. These transactions save taxes, bank charges etc. and same GP rate cannot be applied considering totality of facts GP rate of 1.60% is applied on the total turnover of Rs. 480941287.42 which comes to Rs. 76,95,061/-. The appellant has already shown GP of Rs. 49,79,069/- in his books. Thus, GP addition of Rs. 27,15,992/- made to the total income of the appellant. In view of above facts and legal position, the disallowance u/s 40A(3) of Rs. 8,02,45,293/- is set aside and GP addition of Rs. 27,15,992/- as discussed above is made to the total income of the appellant. Hence, ground no. 1 is partly allowed."

6.1. Similarly, the learned CIT (A) in respect of the second addition of Rs. 16,88,598.67 allowed the appeal of the assessee by holding that the learned Assessing Officer has rejected the books of account and also made addition on estimated basis by making 10% disallowance of the total expenses as stated above. The Id. CIT(A) held that, since,

income has been estimated by applying GP rate, no further disallowance is warranted as the learned Assessing Officer did not record any reasons to doubt the genuineness of the expenses claimed.

7. After hearing the rival contentions and perusing the materials available on record, we find that in this case the survey was conducted under Section 133A of the Act on the assessee on 04.01.2017. During the course of survey certain unrecorded cash purchases were found aggregating to ₹5,63,71,552/-, which were out of books of accounts. The learned AO during the course of assessment proceedings, prepared details of unaccounted purchases of Matar/Matar Dal (pulses) which aggregated to ₹5,45,53,743/-. The learned AO also computed the details of Matar/Matar Dal purchases as per SSY-4 during the course of survey which was worked out at Rs. 2,91,58,150/-. Finally, the learned AO compiled party wise details of purchases of Matar/Matar Dal, etc. and computed the total unaccounted purchases of ₹8,06,35,323/- and consequently, added the same to the income of the assessee. The learned CIT (A) deleted the same by directing the learned AO to apply GP at 1.6% on the total purchases for estimation of income of the assessee and assess accordingly. In our opinion, the learned CIT (A) has passed a reasoned order as in the case of unaccounted purchases the presumption is that these purchases were sold and assessee earned a legitimate profit on the same which can only be assessed by applying GP rate on the said purchases. The Id. CIT(A) directed to compute the income on the total turnover @ 1.60% which comes to Rs. 75,95,061/- and after allowing the amount of gross profit shown by the assessee of Rs. 49,798,069/-, the remaining amount of Rs. 27,15,992/- was directed to be added to the income. Thus, we do not

find any infirmity in the order of the learned CIT (A) and accordingly, we uphold the same on this issue.

8. So far as the second issue is concerned qua making disallowance of Rs. 16,88,598.67 on estimated basis @ 10% of various expenses claimed by the assessee, we note that the learned CIT (A) has observed that in case of estimation of income no further disallowance can be made. Therefore, on this count also we do not find any merit in the issue raised by the Revenue. Accordingly, this issue is also dismissed by upholding the order of learned CIT (A).
9. The Cross Objection of assessee is in support of the order of learned CIT (A), since, we have dismissed the appeal of the Revenue on both the issues by upholding the order of the learned CIT (A), the assessee's Cross Objection becomes infructuous and is hereby dismissed.
10. In the result, the appeal of the Revenue and CO of the Assessee are dismissed.

Order pronounced in the open court on 26.02.2026.

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

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Patna, Dated: 26.02.2026

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