

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

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

**ITA No.482/PAT/2022
(Assessment Year: 2007-08)**

Umesh Prasad Singh
Bihta Kothi, Mithapur, Patna-
800001, Bihar

(Appellant)

ACIT, CC-3, Patna
C.R. Building (Annexe), Bir
Chand Patel Path, Bihar-800001

Vs.

(Respondent)

PAN No. AJHPS6342P

Assessee by : S/Shri A.K. Rastogi,
Rakesh Kumar, Ars
Revenue by : Shri Ashwani Kr. Singal, DR

Date of hearing: 24.11.2025
Date of pronouncement: 23.02.2026

ORDER

Per Rajesh Kumar, AM:

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 31.08.2022 for the AY 2007-08.

02. The only issue raised by the assessee in the various grounds of appeal is against the order of learned CIT (A) confirming the addition of ₹45,94,000/- by upholding the order of the learned Assessing Officer, wherein the learned Assessing Officer made an addition of cash found during the course of search by treating the same as unexplained money under Section 69A of the Act.
03. The facts in brief are that a search action under Section 132 of the Act was conducted on the assessee on 06.10.2006. During the course of

search, a team found cash amounting to ₹45,94,000/- from locker with HDFC bank, Patna, which was in the name of assessee's wife Dr. Anita Singh. She was confronted with the recovery of the cash and replied that she did not know about the source of cash and stated that her husband Shri UP Singh, deals with the financial matters. Undisputed fact is that the assessee is running a nursing home and she stated that the cash found may be related to the nursing home and her husband. The statement of Dr. UP Singh, was also recorded on 02.11.2006, at the time of opening another locker with Central Bank of India, Patna. However, he was confronted that the cash of ₹45,92,500/- found from the locker with HDFC Bank and 6 lacs from the residence to which he stated that the cash record from both the places amounting to ₹51,92,500/- would be offered to tax as income. However, while filing the return of income, the assessee did not offer the same to tax. Accordingly, the learned Assessing Officer added the same to the income of the assessee in the assessment framed under Section 143(3) of the Act dated 31.12.2008 and added the same under Section 69 of the Act, thereby making an addition of ₹45,94,000/- under Section 69A of the Act in respect of cash seized from locker with HDFC bank. Similarly, another addition of ₹9 lacs was made under Section 69A of the Act, which was stated by the assessee to have been received from the father.

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

"I have considered the assessment order passed by the ACIT, Central Circle-3, Patna, the appellate order passed by Ld. CIT(A)-1, Patna, copy of paper book filed before Hon'ble ITAT, Patna and written submission made by the Ld. AR. The only dispute remains to be decided is regarding the addition of Rs. 54,94,000/- on following issues.

A. On account of undisclosed cash found from locker no. Rs. 45,94,000/-454, HDFC Bank, Boring Road, Patna

B. Unexplained money paid to the children Rs. 9,00,000/-

Total Rs. 54,94,000/-

The points of additions are discussed and decided hereunder:

Addition of Rs. 45,94,000/- u/s 69A of the Act.

A sum of Rs. 45,94,000/- was found in locker no. 454 at HDFC Bank, Boring Road, Patna rented in the name of the appellant Shri Umesh Prasad Singh and his wife Dr. Anita Singh. In the statement recorded on oath on 19.10.2006, Dr. Anita Singh w/o the appellant at the time of post search operation of bank locker no. 454 at HDFC Bank, Boring Road, Patna when confronted with recovery of Rs. 45,94,000/- stated in response to question no. 3 that "I do not exactly know about the sum of the above cash found in the aforesaid locker. My husband namely Dr. Umesh Prasad Singh deals with the financial matter related to Nursing Home and family affairs. So far my knowledge goes the above cash found may be of Nursing Home and of my husband." Thereafter, in course of post search operation of another locker no. 39F at Central Bank of India, Patna, the statement on oath of Dr. Umesh Prasad Singh was recorded on 03.11.2006 wherein he was confronted with recovery of Rs. 45,94,000/- from locker no. 454 with HDFC Bank, Boring Road, Patna. In response to question no. 6, the

appellant Dr. Umesh Prasad Singh stated that "The cash found and seized in course of search operation at my residence as well as from locker no. 454 at HDFC Bank Ltd, Boring Road, Patna aggregating to Rs. 51,92,500/- For the purpose of taxation, I disclose a sum of Rs. 52,00,000/- including the above cash seizure. The rest investment on movable and immovable assets will be explained later." Under the facts and circumstances of the case, Ld. CIT(A)-1, Patna confirmed the addition which has been explained earlier. The Hon'ble ITAT has remanded the matter back to file of CIT(A) to consider this issue after providing the appellant sufficient opportunity of being heard. During the course of remand appellate proceeding, sufficient opportunity has been provided to appellant. U/s 106 of the Indian Evidence Act, 1872, the onus of proving a fact is upon the person who has specific knowledge of the fact on the matter. For ready reference, the provision of section 106 is reproduced below:

**106. Burden of proving fact especially within knowledge. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."*

Admittedly, cash of Rs. 45,94,000/- was recovered from the bank lockers existing in the name of the appellant and his wife from locker no. 454 at HDFC Bank, Boring Road, Patna. The onus of proving the source of cash was on the appellant as well as his wife Dr. Anita Singh. As discussed above, Dr/Anita Singh in her statement recorded on 19.10.2006 on oath, in response to question no: 13 stated that the above cash may be of Nursing Home or her husband Shri Umesh Prasad Singh." Based on her statement, recorded u/s 132(4) which has evidentially value, now, the burden shifted to appellant to explain the source of the cash. The appellant was confronted with recovery of the abovementioned cash of Rs. 45,94,000/- from locker no. 454 during the course of opening of sealed locker no. 39F with Central Bank of India, Patna on 03.11.2006. In the statement recorded on oath u/s 132(4) of the Act, the appellant in response to question no. 6 has admitted that the said cash was unexplained income

and offered the same for taxation. Even at the risk of repetition, the statement in response to question no. 6 of the appellant is reproduced below:

"The cash found and seized in course of search operation at my residence as well as from locker no. 454 at HDFC Bank Ltd, Boring Road, Patna aggregating to Rs. 51,92,500/-. For the purpose of taxation, I disclose a sum of Rs. 52,00,000/- including the above cash seizure. The rest investments on the movable and immovable assets will be explained later."

During the course of assessment proceedings, the appellant retracted from the disclosure made. The appellant has referred to Circular of CBDT in F.No. 286/2/2003-IT(Inv) title "confession of additional income during the course of search & seizure and survey operation, "to submit that any confession not based on any credible evidence which has been retracted later cannot be used against the assessee for the making addition. In this case, there is no dispute that Rs. 45,94,000/- was recovered from the locker. Therefore, credible evidence has to be explained by the owner of the locker as per the provision of section 106 of Indian Evidence Act, as the fact was within his specific knowledge. No further corroborative evidence is required. Dr. Anita Singh w/o the appellant stated that the said cash may belong to Nursing Home or her husband Dr. Umesh Prasad Singh. Admittedly, the appellant faced with the evidence, in statement under oath which was recorded u/s 132(4) on 03.11.2006, almost after a month from the date of initiation of search on 06.10.2006 during which he would have considered the incriminating evidence found during the search, made a statement where he offered the said amount of cash as undisclosed income for the purpose of taxation. It cannot be said that the admission of additional income was made without any credible evidence. The standard of prove is "preponderance of probability" or "human probability in a civil proceeding. In this case, the appellant was the only person who had the burden to disclose the source of cash found from the locker. The admission was made almost after a month. By human probability, the appellant must have considered the entirety of incriminating evidence found during the course of searches and survey at various premises. Further, it is also important to note that his statement was recorded on 03.11.2006 during the course of opening of last locker at Central Bank of India, Yarpur Branch, Patna. Based on the human probability, it can safely be inferred that the appellant was stating the correct state of financial affairs in his statement recorded on 03.11.2006. It would be relevant to reproduce section 132(4) of Income Tax Act as under:

(4) The authorized officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act."

In the present case, cash was found in possession of the appellant, in respect of which the appellant admitted it as his undisclosed income and offered the same for taxation. Such a statement may be used as evidence under the Income Tax Act. As clarified by the explanation, the statement would not only be in respect of any books of account, other documents and assets found as a result of search but in respect of all matter relevant for the purpose of any investigation under the Act. Therefore, any subsequent

retraction without any credible documentary evidence will be of no consequence. In this case, the retraction has not been supported with any documentary evidence. Any indication that this cash may belong to any Nursing Home cannot be entertained as the assessment of the Nursing Home was also made by same Ld. AO wherein the available evidence like the books of accounts and cash book of the Nursing Home was duly considered by the Ld. AO. In view of the discussion in the foregoing paragraphs, I hold that cash of Rs. 45,94,000/- found from the locker represent undisclosed income of the appellant which has been sufficiently proved on the basis of fact found during the course of search, statement made by the appellant and also the relevant provision of the Act. The ground regarding deletion of addition, therefore cannot be sustained. Accordingly, the addition is confirmed.

Addition of Rs. 9,00,000/-

The issue has been considered by the Ld. AO at page no. 6 of assessment order. It would be relevant to reproduce the finding recorded by the Ld. AO as under:

"During the course of assessment proceedings of the case of Dr. Abhishek Singh (assessee's son) and Dr. Anumeha Singh (assessee's daughter) for the AY, it was submitted that these persons have received Rs. 7,00,000/- and Rs. 2,00,000/- from their father out of the money received by him on the death of his sister-in-law late Sushila Devi, w/o late Suresh Prasad Singh. As no evidence of the same was produced at the assessment stages of both the assessee, the same was added in their total income on protective basis. Hence, keeping in view of the findings in the above two cases, this cash of Rs. 9,00,000/- (Rs. 7,00,000/- Rs. 2,00,000/-) is treated as unexplained money of the assessee and added in his total income as unexplained money u/s 69A of the Act on substantive basis."

Subsequently, the Ld. CIT(A)-1, Patna after considering the entire conspectus of the fact and relevant law on this issue, confirmed the addition of Rs. 9,00,000/- as the appellant failed to substantiate with reference to documentary evidence, the story regarding receipt of said amount of Rs. 9,00,000/- from his sister-in-law late Susila Devi. It has been argued by the appellant before the Hon'ble ITAT, Patna and also before the lower authorities by stating that the Department did not find any paper or any evidence which could prove that this amount did not belong to the assessee on the basis of his statement that "it was received from sister-in-law late Susila Devi. The fact remains that during the course of search and post search enquiry the appellant had gifted Rs. 9,00,000/- to his children which was disclosed in their respective income tax returns. The appellant could not produce any documentary evidence before any authority to substantiate his claim that Rs. 9,00,000/- was received from his late sister-in-law. The onus was on the appellant to prove with reference to documentary evidence that this amount of Rs. 9,00,000/- was not his income but represented receipt from his sister-in-law. The appellant has miserably failed to discharge his onus. Under the Income Tax Act and also the Evidence Act, the burden lies on the person who states that particular amount of money found in his hand does not represent his income. From the totality of the facts in the case of the appellant, it is found that apart from making a plain statement that a sum of Rs. 9,00,000/- does not represent his income, he has miserably failed to substantiated the same with reference to documentary evidence. In conspectus of the facts of the case and in law, I hold that

the sum of Rs. 9,00,000/- represent the undisclosed income of the appellant. The ground is dismissed and addition is confirmed.

5.In the result, the appeal is dismissed.”

05. After hearing the rival contentions and perusing the materials available on record, we find that though the assessee tried to explain the cash seized during the course of search from the locker and also found from the residence of the assessee and his wife with reference to cash available in the books of account of the assessee as well as cash available with the nursing home, as per the return filed prior to the date of search. However, we find that no plausible evidence was made available to the search team during the course of search explaining the said cash. The learned counsel of the assessee prayed before us that since the evidences furnished before the learned Assessing Officer and learned CIT (A) were not looked into by the respective authorities in correct perspective and therefore, the matter may be restored for a fresh adjudication in the light of these evidences. However, on the other hand, the learned Departmental Representative strongly opposed the argument of the learned Authorized Representative by submitting that since the issue related to the A.Y. 2007-08 and considerable time has elapsed since then, therefore the same may be decided herein as no meaningful purpose will be served by restoring the issue to the file of the learned Assessing Officer or learned CIT (A). Considering the facts on record and also the evidences filed, we are of the considered view that the cash found during the course of search was not explained and whatever evidences were produced before us are not able to explain the source of search said cash. We do not find any merit in the argument of the learned Authorized Representative that these were the cash available from the business of running the nursing home of

the assessee and therefore, the same may be allowed to set off against the said cash available in the hands of the assessee. We have examined the evidences as placed before us in the paper book by the learned CIT (A) and find that these evidences are not plausible and cannot be accepted as at the time of search the hard cash was seized and there was no material available whatever evidences are available and placed before us do not explain the availability of cash on the date of search. Therefore, we are inclined to hold the amount of recovered cash during the course of search was rightly treated by the learned Assessing Officer as unexplained money and confirmed by the learned CIT (A). Accordingly, we uphold the order of learned CIT (A) and dismissed the appeal of the assessee on this issue.

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

Order pronounced in the open court on 23.02.2026.

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

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Patna, Dated: 23.02.2026

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

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

BY ORDER,

True Copy//

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