

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

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

**ITA Nos. 34 & 35/PAT /2021
(AY: 2011-12 & 12 -13)**

ACIT, Central Circle-3 Patna.	Vs	Ashok Kumar Bagaria, 502 & 503, Shanti Vihar Apartment, Frazer Road, Patna.
(APPELLANT)		(RESPONDENT)
PAN No. ADAPB9497P		

**Assessee by: Sh. A.K. Rastogi, Sr. Adv. And
Sh. Rakesh Kumar, Adv.
Revenue by: Md. A. H. Chowdhary, CIT (DR).**

Date of Hearing: 24.11.2025	Date of Pronouncement: 23.02.2026
------------------------------------	--

ORDER

Per Rajesh Kumar, AM:

These appeals are preferred by the Revenue against the orders of the Commissioner of Income -tax (Appeals), Patna-3 (hereinafter referred to as the “Ld. CIT(A)”) even dated 11.02.2021 for the A.Ys.2011-12 and 2012-13.

2. As the facts and circumstances in both the appeals are exactly similar , these are being disposed off by this common order for the sake of convenience

and berevity. Hence, we first take ITA No.34/PAT/2021 and decide the appeal accordingly.

ITA No. 34/PAT/2021

2. The only issue raised by the Revenue in this appeal is against order of the learned CIT (A) deleting the addition of Rs.3,02,00,000/- u/s 69 of the Act as was made by the AO in respect of share capital by treating the same as unexplained cash credit.

3. The facts in brief are that assessee is a director of Shree Vishnu Vishal Paper Mills (P) Ltd. A search and seizure operation u/132(1) of the Act was conducted at the various premises of Shree Vishnu Vishal Papers Mill (P) Ltd. Patna on 16.09.2013 and the assessee was also covered in the same search. Notice u/s 153A of the Act was issued on 27.10.2014. The assessee filed return of income on 10.04.2015 declaring total income at Rs.3,67,645/- in compliance to the said notice. Thereafter notice u/s143(2) and 142(1) of the Act, along with detailed questionnaire were issued and duly served upon the assessee. The assessee also complied with the said notice by filing details/ evidences as was called for by the AO. According to the AO, M/s Vishnu Vishal Paper Mills Pvt. Ltd. has no business activities and it was in the process of setting up paper and power plant. During the course of search and seizure operation it was found that the shares of M/s Vishnu Vishal Paper Mills Ltd. were issued to various

companies, the details of which were recorded in page 1 to 3 of the assessment order. According to the AO, Shri Ashok Kumar Bagaria, the director of the company during the course of statement recorded u/s 132(4) in the course of search and seizure operation admitted that the amount of Rs.7.00 crores was introduced by him in cash through the chain of paper companies in the form of share capital during the financial year from 2008-09 to 2012-13. The AO also noted that during the course of search and seizure operation, the share certificates were found lying with the auditor company which were treated as unexplained cash credit and accordingly added to the income of the assessee in the assessment framed.

3. In the appellate proceeding, the CIT(A) allowed the appeal of the assessee by observing and read as under:

“Ground No. 5 to 8 & 16 relate with addition of Rs.3,02,00,000/- u/s 69 of the IT Act, 1961.

Assessing Officer in assessment order mentioned that

“Sh. Ashok Kumar Bagaria the director of the company during the relevant period, admitted in his sworn statement taken u/s 132(4) in the course of search & seizure operation that the amount of around Rs.7 crores was introduced by him through the chain of paper companies in the form of share capital during the financial year 2008-09 to 2012-13 though he failed to quantify it year wise. Subsequently, vide his submission dated 14.03.2016 in the form of affidavit admission made under section 132(4) in the course of search & seizure operation was retracted on the pretext of statement having been given under mental stress and agony.

In the course of search & seizure operation the share certificates were found lying with auditor company of M/s Vishnu Vishal Paper Mills Ltd. of which the assessee was the director. Page 21,22 & 23 of the seized loose papers marked as SKM-5 was identified by another director of the company Sh. Sanjay Modi as a document related with 'Jama Kharchi' companies used to introduce unaccounted funds in the form of share capital. The document page 22 shows transaction made by Sh. Ashok Kumar Bagaria indicated therein as AB for the purpose of introducing unaccounted fund in the company M/s Vishnu Vishal Paper Mills Ltd. Further, in the course of investigation carried out by the investigation wing the claimed share holder companies' whereabouts could not be located. Therefore, considering all the circumstances and inordinate delay in making retraction of the statement affirming introduction of his own fund through accommodation entries, the affidavit filed by the assessee in which retraction of the earlier statement was made deserves to be disbelieved and no evidentiary value can be assigned to it"

During the course of appellate proceeding, it was argued by the appellant that the SKM-5 Page 21 & 22 was found & seized from the premises of another director of the company Sh. Sajay Modi in which the name of the appellant was mentioned for few transactions. Mr. Sanjay Modi during the course of search stated that seized document SKM -5 relates with 'Jama Kharchi'. However, no further observation was recorded by the AO in the assessment order.

From the perusal of the assessment order, it is seen that Assessing Officer has passed assessment order considering the statement given by Sh. Sanjay Modi and seized material SKM-5 in which the name of the appellant is mentioned for few transactions and Assessing Officer finally concluded that the share capital introduction made during the year in Shree Vishnu Vishal paper Mills Ltd. is nothing but the undisclosed investment made by the appellant. Assessing Officer also relied upon the reports of investigation with Kolkata related to the various share applicants of Shree Vishnu Vishal paper Mills Ltd. Assessing Officer while finalizing the assessment order relied upon the following:

1. *The seized document marked as SKM-5 indicating the name of appellant in few transactions.*
2. *Statement of Sh. Sanjay Modi.*
3. *The report of investigation Wing, Kolkata.*

The Assessing officer did not provide cross examination to the appellant with Sh. Sanjay Modi and simply relied upon the statement given by Sh. Modi. Further, Assessing Officer has not made enquiry/ verification / examination of the report of Investigation Wing, Kolkata. Assessing Officer simply relied upon the information passed o. Assessing Officer during the course of assessment proceedings has not done any verification/ enquiry I this regard. If at all the report of investigation wing, Kolkata is relied upon, it emerges the case of bogus share capital introduction by the company Shree Vishal Paper Mills Ltd. The Assessing Officer failed to establish nexus between the appellant and the company Shree Vishu Vishal Paper Mills Ltd. for undisclosed investment of the appellant of the appellant.

In light of discussion made above the action of Assessing Officer does not hold good on legal matrix. Hence, the addition made by the Assessing Officer u/s 69 of the IT. Act is hereby deleted.

3.2 I the result the appeal is partly allowed.”

4. After hearing the rival contentions and perusing the materials available on record, we find that the assessee is a director of M/s Vishnu Vishal Paper Mills Ltd. which issued equity shares to various subscriber companies raising aggregate amount of Rs.3,02,00,000/- by way of share capital and the AO added the same to the total income of the assessee on the ground that during the course of search, the assessee's director, admitted to have injected the funds in

cash into the assessee company and share certificates were also found in the possession of the auditors of the assessee company. We also note that the statement of the assessee was recorded on the basis of document found in the office of Shri Sanjay Modi ,the auditor of the company and not on the basis of searched material. In these circumstances, we find no infirmity in the order of the Id. CIT(A), which is a very speaking and reasoned order and does not require any interference at our end. We note that Ld. CIT(A) has recorded a clear-cut finding that the documents were seized from the office of the auditor of the assessee company and not from the assessee's premises. The Ld. CIT(A) has also noted that the AO did not give any opportunity to make any cross examination by the assessee of Shri Sanjay Modi and simply relied upon the statement given by Shri Sanjay Modi. Consequently, we are inclined uphold the decision of the Ld. CIT(A) by dismissing the appeal of the Revenue. The appeal of the revenue is dismissed

ITA No. 35/PAT/2021

5. The issue raised in this appeal of Revenue in ITA No.35/PAT/2021 is similar to one as decided by us in ITA No. 34/PAT/2021 for A.Y. 2011-12(supra). Accordingly, our decision would, mutatis mutandis, apply to this appeal of Revenue in ITA No. 35/PAT/2021 as well. Hence, the appeal of Revenue is dismissed.

6. In the result, both the appeals of the Revenue are dismissed.

(Order Pronounced in the Court on 23/02/2026)

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

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Dated: 23.02..2026

S.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR