आयकर अपीलीय अधिकरण
पटना 'डीबी' बेंच कोलकाता मे

IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA 'DB' BENCH AT KOLKATA

[Virtual Court]

Before

SHRI YOGESH KUMAR US, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER

ITA No(s). 540, 541, 542, 543, 545, 546 & 547/PAT/2026
Assessment Year(s) 2013-14 to 2019-20

Abhishek Kumar 34, Sabaur, Tower Campus, Bhagalpur, Bihar, 813210	Vs.	**ACIT, Central Circle-1** Patna, Bihar, 800001
(अपीलार्थी/Appellant)		***(प्रत्यर्थी/Respondent)***
***स्थायी खाता संख्या*/PAN: AZUPK2651A**		

उपस्थिति/Appearance:

अपीलार्थी के ओर से/

Assessee represented by (AR) **:** None.

प्रत्यर्थी के ओर से/

Department represented by (DR) **:** Bharat Bhusan Garg, CIT, DR.

सुनवाई की तिथि/
Date of concluding the hearing : 08.10.2026

आदेश उद्घोषणा की तिथि/
Date of pronouncing the order : 16.10.2026

आदेश/ORDER

PER BENCH:

All these appeals filed by the assessee are against the separate orders of the Commissioner of Income Tax (Appeals)-3, Patna [Ld. 'CIT(A)'] passed u/s 250 of the Act for AY 2013-14 dated 30.10.2025.

1.1 The Registry has informed that all the appeals are barred by limitation by 220 days. The assessee has filed an affidavit along with a

petition for condonation of delay explaining the reasons that the delay occurred due to the untimely demise of their senior consultant, Late Shri Abhas Kumar Mitra, on 22.09.2023, the subsequent time required by his son to understand the matter, and the assessee's own severe heart-related ailment. After perusing the same, we are satisfied that the assessee had a reasonable and sufficient cause and was prevented from filing the instant appeals within the statutory time limit. We, therefore, condone the delay and admit the appeals for adjudication.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal as per **ITA No. 540/PAT/2026** for AY 2013-14 which are argumentative and more or less similar grounds have been raised for other appeals:

> ***I. ITA No. 540/PAT/2026, AY 2013-14:***
>
> *"1. Addition on Account of Capital Gain on Sale of Plot*
>
> *The Learned Commissioner Appeals below has methodically and mechanically without going into the facts based on which the said appeals has been filed has completely erred in simply taking a recuse of non submission of documents whereas to the contrary it is pretty surprising that fact checking had not been done by the Learned Commissioner from the Assessing Officer (herein in future to be referred as Officer Below) herein it had been stated quite categorically that while computation of the capital gains took place on the basis of the Government value even though the said provision came into force with effect from 01.04.2014. This was a blatant case of gross negligence and indulgence of negative mens rea both on the part of the highly knowledgeable Commissioner Appeals and Officer Below. Hence, the said disallowance is arbitrary, illegal and fit to be deleted.*
>
> *Moreover, wherein the Appellant had categorically disclosed all his incomes and had also requested that the amount lying in the PD Account be released so that the return under section 153C could be filed by him. In spite of this fact being stated in his submissions to the Officer Below with respect to the queries raised with regard to the sale of immovable properties, the Investigation Team itself had stated the share of income which was liable to be taxed in the hands of the Appellant. However, the Learned Assessing Officer, with a preconceived negative mens rea and without going through*

the relevant documents duly filed by the Appellant, simply computed the capital gains at Rs. 80,500/-, whereas the Investigation Team itself had referred to the total consideration of Rs. 59,000/- in the said questionnaire. And this statement of fact was not bothered to be cross verified nor was it addressed by the highly knowledgeable Commissioner Appeals; this clearly shows his casual approach towards the said appeal and the aforesaid disallowance is illegal, baseless and fit to be deleted.

In the recent judgments also The Hon'ble Income Tax Tribunal of Patna in the case of Prama Metta Orphanes Trust vs ITO (Exemption), Ward-1, Patna (ITA No 135 to 137/PAT/2026) all the appeals of the assessee are allowed for statistical purposes because of the basic prudence of law that justice should not be denied but can be delayed. In Tar Lochan Dev Sharma v. State of Punjab (2001) 6 SCC 260, the Hon'ble Supreme Court held that the order must disclose conscious and due application of mind to the relevant facts and issues.

2. Addition on account of House Rent Income: -

2.0 Addition on account of House Rent Income Rs.3,15,000/-

The Learned Commissioner Appeals should have either requisitioned or remanded the said appeals filed before his good self because in the grounds of appeal filed it had clearly been stated that the Learned Assessing Officer had already predetermined the course of action which he intended to adopt, because he did not bother to go through the land deeds submitted by the Appellant on 06.08.2021, wherein all the immovable properties acquired by the Appellant for his personal purposes as well as for investment had been clearly disclosed. Likewise, all the properties sold by the Appellant had also been furnished on the very same date, i.e., 06.08.2021. Hence, this addition is ill conceived, has a negative mens rea, not pro justice but pro revenue and hence should be deleted.

Moreover, the highly Learned Commissioner Appeals had not bothered to cross verify with the Department that had the Learned Assessing Officer bothered to go through the said deeds. Then he would have clearly observed that the property situated at Umeshwar Nagar and the property described as K.N. Colony, Sabour are one and the same property, as both are covered under the same Deed No. 5975. It is, therefore, impossible for the same property to have two different rental computations, as has been done while making the impugned addition under this head. This is a simple and clear case of prejudice against the Appellant and simply stating and reiterating the order passed by the Officer below was not expected from the appellate body of the Commissioner. Hence, the said addition should be struck down.

2.1 Addition on Account of House Rent Income Rs.1,09,200/-

The Appellant humbly had reiterated before the Officer below his revised computation which he had submitted on 15.03.2021, wherein he had already offered the correct rental income for taxation and had also requested adjustment of the amount lying in the PD Account. But however, despite the revised computation and despite the deeds of the immovable properties having been submitted on 06.08.2021, herein The Commissioner Appeals should have remanded to the Learned Assessing Officer under the provisions of Section 251(1)(c), of the Act and same were the views held by the Hon'ble ITAT Delhi Bench in the case of Income-tax Officer, TDS Ward, Ghaziabad vs Amity International School [2014] 48 taxmann.com 173 (Delhi Trib.)/[2014] 150 ITD 704 (Delhi Trib.) [27-06-2014]. Therefore, the said order has been passed with a preconceived negative mens rea by the Hon'ble Commissioner Appeals and therefore should the addition be deleted.

Furthermore, no relief whatsoever has been granted in any of the orders with regard to the amount lying in the PD Account, and there is no mention whatsoever of the amount lying therein, amounting to Rs. 24,04,702/-. The Learned Commissioner of Income Tax (Appeals), instead of considering these facts and examining the documentary evidence placed on record, has merely confirmed the addition without assigning any independent reasons leading to gross injustice and which is basically against the laws of natural justice that funds are taken away through coercive action at the time of raid and the said funds are not being adjusted prior to re-computation of income of the Appellant nor has the Commissioner Appeals bothered to throw light on this grave injustice done to the Appellant. Therefore, the Appellant did not get any justice at the First Appellate stage which is totally against the laws of natural justice. Accordingly, the addition is bad in law, arbitrary and deserves to be deleted.

2.2 Addition on Account of House Rent Income Rs.1,68,000/-

The Learned Commissioner of Income Tax (Appeals) has erred in sustaining the addition of Rs.1,68,000/- without independently appreciating the revised computation of income filed by the Appellant on 15.03.2021, wherein the correct rental income had already been voluntarily offered for taxation. The documentary evidence, including the relevant property deeds furnished on 06.08.2021, was already available on record and clearly warranted verification. In these circumstances, the Learned Commissioner of Income Tax (Appeals) ought to have exercised the powers vested under section 251(1)(c) of the Act by calling for a remand report instead of mechanically affirming the assessment order. Reliance is placed on the decision of the Hon'ble ITAT, Delhi Bench in Income-tax Officer, TDS Ward,

Ghaziabad vs. Amity International School [2014] 48 taxmann.com 173 (Delhi-Trib.)/[2014] 150 ITD 704.

Further, the Appellant had specifically requested adjustment of the amount of Rs.24,04,702/- lying in the PD Account. However, neither the Learned Assessing Officer nor the Learned Commissioner of Income Tax (Appeals) has dealt with or granted any relief in respect of the said amount. The appellate order merely reproduces the conclusions of the assessment order without recording any independent findings or considering the evidence already on record. Such an approach is contrary to the principles of natural justice and has resulted in grave prejudice to the Appellant. Accordingly, the addition of Rs. 1,68,000/- is arbitrary, unsustainable in law and deserves to be deleted.

2.3 Addition on Account of House Rent Income Rs.42,000/-

The Learned Commissioner of Income Tax (Appeals) has failed to appreciate that the impugned addition of Rs.42,000/- has been sustained without examining the revised computation of income furnished by the Appellant on 15.03.2021, wherein the correct rental income had already been disclosed. The relevant title deeds and supporting documents were also placed before the Learned Assessing Officer on 06.08.2021. In the presence of such material evidence, the appellate authority ought to have directed proper verification by calling for a remand report under section 251(1)(c) of the Act instead of affirming the addition in a routine and mechanical manner. Reliance is placed on the decision of the Hon'ble ITAT, Delhi Bench in Income-tax Officer, TDS Ward, Ghaziabad vs. Amity International School [2014] 48 taxmann.com 173 (Delhi-Trib.)/[2014] 150 ITD 704.

It is further submitted that the Appellant had consistently requested adjustment of the amount of Rs.24,04,702/- lying in the PD Account. Neither the assessment order nor the appellate order has dealt with this specific claim or assigned any reason for ignoring the same. The Learned Commissioner of Income Tax (Appeals) has simply endorsed the findings of the Learned Assessing Officer without independently considering the evidence and submissions placed on record. Such non-consideration of material facts has resulted in serious prejudice to the Appellant and is violative of the principles of natural justice. The addition of Rs.42,000/- is, therefore, unsustainable in law and deserves to be deleted.

2.4 Addition on Account of House Rent Income Rs.32,200/-

The Learned Commissioner of Income Tax (Appeals) has gravely erred in confirming the addition of Rs.32,200/- without independently examining the revised computation of income submitted by the Appellant on 15.03.2021, wherein the correct rental income had already been duly offered for

taxation. The relevant title deeds and supporting documents had also been furnished before the Learned Assessing Officer on 06.08.2021. Instead of directing further verification or calling for a remand report under section 251(1)(c) of the Act, the Learned Commissioner of Income Tax (Appeals) has merely endorsed the findings recorded by the Learned Assessing Officer. Such an approach is contrary to the settled legal position laid down by the Hon'ble ITAT, Delhi Bench in Income-tax Officer, TDS Ward, Ghaziabad vs. Amity International School [2014] 48 taxmann.com 173 (Delhi-Trib.)/[2014] 150 ITD 704.

The Learned Commissioner of Income Tax (Appeals) has further failed to consider the Appellant's specific request for adjustment of the amount of Rs.24,04,702/- lying in the PD Account, which has remained completely unaddressed throughout the appellate proceedings. The impugned order, therefore, suffers from non-application of mind and has been passed without proper appreciation of the documentary evidence and submissions placed on record. Consequently, the addition of Rs.32,200/- is arbitrary, unsustainable in law and deserves to be deleted.

3. Addition on Account Bus Rental Income Rs.2,40,000/-

The Learned Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs.2,40,000/- without independently examining the factual position and the material evidence available on record. The Learned Assessing Officer made the impugned addition on account of alleged bus rental income without verifying the date of purchase of the vehicle, although such verification could have easily been carried out by requisitioning the books of account and records of the owner. Had the Learned Assessing Officer exercised due diligence, it would have been evident that the vehicle in question was purchased only during the Financial Year 2014-15, and that too towards the end of the financial year, rendering the impugned addition wholly unsustainable.

Instead of directing further verification or appreciating the factual matrix, the Learned Commissioner of Income Tax (Appeals) has merely affirmed the findings of the Learned Assessing Officer without recording any independent reasons or findings. The impugned appellate order, therefore, suffers from complete non-application of mind and has been passed without proper appreciation of the evidence available on record. Accordingly, the addition of Rs.2,40,000/- is arbitrary, baseless, unsustainable in law and deserves to be deleted.

4. Addition on Account of Land Commission Business Income Rs.45,77,092/-

The Learned Commissioner of Income Tax (Appeals), instead of directing proper verification or appreciating the documentary evidence available on record, has merely affirmed the findings of the Learned Assessing Officer without recording any independent reasons. The estimation of net land commission at 85% of the gross receipts is based purely on assumptions and conjectures and is unsupported by any material brought on record. Such an approach defeats the very object of the presumptive taxation scheme under section 44AD of the Act, under which the return of income was filed by the Appellant. Accordingly, the impugned addition is arbitrary, unsustainable in law and deserves to be deleted. Reliance is placed upon the decision of the Hon'ble ITAT, Chandigarh Bench in Nand Lal Popli v. DCIT, Central Circle-II, Chandigarh [2016] 71 taxmann.com 246 (Chandigarh-Trib.), wherein it was held that once the presumptive scheme under section 44AD is accepted, the Assessing Officer cannot make arbitrary additions by disturbing the deemed computation of income without any cogent material. The Learned Assessing Officer has neither rejected the books of account nor brought any independent evidence on record to justify estimation of profit at 85% of the gross receipts. The impugned estimation is therefore wholly arbitrary and contrary to the settled principles governing presumptive taxation under section 44AD of the Act. The impugned addition is thus the result of non-application of mind, is arbitrary, baseless and deserves to be deleted.

5. Addition on Account of EMI Payment of Innova Car Rs.1,68,000/-

The Learned Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs.1,68,000/- without independently examining the documentary evidence already available on record. The Learned Assessing Officer proceeded to make the impugned addition without verifying the bank statements and loan account statements furnished by the Appellant through email dated 05.07.2021. Had the Learned Assessing Officer examined the said records with due diligence, he would have found that all the EMI payments relating to the Innova Car were made through regular banking channels from the Appellant's disclosed bank accounts, complete statements whereof had already been furnished during the course of the assessment proceedings.

Despite the relevant bank statements and loan account statements being available on record, the Learned Assessing Officer failed to conduct any further enquiry or verification before drawing an adverse inference against the Appellant. If any clarification was considered necessary, the Learned Assessing Officer ought to have afforded the Appellant an opportunity to explain the transactions instead of making the addition merely on assumptions and without any cogent basis.

The Learned Commissioner of Income Tax (Appeals), instead of appreciating the documentary evidence and directing proper verification, has merely affirmed the findings of the Learned Assessing Officer without recording any independent reasons. The impugned addition has thus been sustained without due application of mind and is arbitrary, unsupported by the evidence on record, unsustainable in law and accordingly deserves to be deleted.

6. In the aforesaid facts and circumstances of the case, it is therefore most humbly prayed that this Hon'ble Tribunal may graciously be pleased to allow the present appeal, set aside the impugned order passed by the Learned Commissioner of Income Tax (Appeals), Patna-3 under section 250 of the Income-tax Act, 1961 for the Assessment Year 2013-14, and consequently delete the additions sustained. It is further prayed that the consequential demand of tax, interest and penalty, if any, arising pursuant to the impugned assessment order and the appellate order be deleted and all consequential recovery proceedings initiated against the Appellant be quashed. The Appellant further prays for such other or further relief(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and in the interest of justice."

3. We shall first take up **ITA No. 540/PAT/2026** for AY 2013-14 for adjudication. Brief facts of the case are that the assessee had filed the return of income for AY 2013-14 on 29.09.2013 declaring the total income at ₹1,98,770/-. A search and seizure action was conducted on 06.09.2018 at the residential premise of the assessee as a fallout of the SRIJAN scam, following which no return of income was filed u/s 153A of the Act. Consequently, the Assessing Officer [Ld. 'AO'] framed the assessment u/s 144 r.w.s. 153A of the Act, investigating the assessee's various sources of income including business income, director's salary, house property rent, letting out of vehicles, and commission on the sale of immovable properties. The Ld. AO made several additions, specifically ₹80,500/- for capital gain on the sale of plots u/s 69A of the Act, multiple additions for undisclosed house property income including ₹3,15,000/- for K.N. Colony, ₹1,09,200/- for Umeshwar Nagar, ₹1,68,000/- for Saraswati Vidya Mandir School, ₹42,000/- for a tower,

and ₹32,200/- for a flat at Bhagalpur, along with ₹2,40,000/- for undisclosed rental income from plying a bus, ₹45,77,092/- as unexplained money from land commission business u/s 69 of the Act, and ₹1,68,000/- for unexplained EMI payment of an Innova car u/s 69C of the Act and determined the total income at ₹59,30,762/-. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A), who observed that the assessee did not avail any of the multiple opportunities of being heard and failed to furnish requisite details and documentary evidence to support the claims. Accordingly, the Ld. CIT(A) confirmed the action of the Ld. AO and dismissed the appeal of the assessee vide his findings as under:

> *"I have carefully considered the material facts on record and grounds of appeal raised by the appellant.*
>
> *In this regard, it is pertinent to note the decision of the Hon'ble Supreme Court in the case of B.N. Bhattacharjee and Another (118 ITR 461) wherein it has been held that appeal does not mean merely filing of memo of appeal but also pursuing it effectively. In cases where the appellant does not want to pursue the appeal, appellate authorities have inherent power to dismiss the appeal for non-prosecution as held by the Hon'ble Bombay High Court in the case of M/s Chemipol vs. Union of India in Excise Appeal No. 62 of 2009. While deciding the issue, the Hon'ble High Court of Bombay has referred to the observations of Hidayatullah, Chief Justice (as His Lordship then was) in Sunderlal Mannalal Vs. Nandramdas Dwarkadas AIR 1958 MP 260 wherein it was observed: -*
>
> > *"Now the Act does not give any power of dismissal. But it is axiomatic that no court or tribunal is supposed to continue a proceeding before it when the party who has moved it has not appeared nor cared to remain present. The dismissal, therefore, is an inherent power which every tribunal possesses..."*
>
> *There is a well-known dictum of law "VIGILANTIBUS, NO DORMENTIBUS, JURA SUBVENIUNT" which means law will help only those who are vigilant. Law will not assist those who are careless of his/her right. In order to claim one's right, s/he must be watchful of his/her right. Only those persons, who are watchful and careful of using his/her rights, are entitled to the benefits of law. Law confers rights on persons who are vigilant of their rights.*

Hon'ble Madhya Pradesh High Court in the case of Estate of Late TukojiraoHolkar vs. CWT (223 ITR 480) has held as under:

> *"if the party, at whose instance the reference is made, fails to appear at the hearing, or fails in taking steps for preparation of the paper books so as to enable hearing of the reference, the court is not bound to answer the reference."*

Similarly, Hon'ble Punjab & Haryana High Court in the case of New Diwan Oil Mills vs. CIT (2008) 296 ITR 495) returned the reference unanswered, since the appellant remained absent and there was no assistance from the appellant.

This appeal has been filed by the appellant claiming that the AO has erred in making various additions. In such a situation, it is for the appellant to furnish submissions with relevant evidence(s) to support the claim. The 'burden of proof is always on the person who makes the claim. In this case, it is the appellant who has made the claim by filing the appeal. Since, an appeal is nothing but the claim of the appellant that he has been unduly unjustifiably taxed, it is for the appellant to prove its case. The appellant has not availed any opportunity to do so.

In view of the above, as the appellant failed to furnish the requisite details and documentary evidence in support of its claim made in the grounds of appeal in-spite of affording sufficient opportunities, the appeal filed by the appellant in liable to be dismissed.

7. Accordingly, all the grounds filed by the appellant stands Dismissed."

4. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

5. None appeared on behalf of the assessee and, therefore, the appeal was heard with the assistance of the Ld. DR.

6. The Ld. DR submitted that the assessee was provided ample opportunities of being heard but neither the the return of income was filed in response to the notice issued u/s 153A of the Act nor compliance was made during the assessment proceeding or even during the appeal proceeding as a consequence to which the Ld. AO had no other option but to complete the assessment u/s 144 r.w.s. 153A of the Act. Even

before the Ld. CIT(A) no compliance was made except for filing adjournment petition despite 16 opportunities provided. He therefore, requested that the order of the Ld. CIT(A) may be confirmed.

7. We have considered the submissions made, gone through the facts of the case and perused the record and the order of the Ld. CIT(A). The Bench was of the view that the assessee has filed a petition for condonation of delay mentioning the untimely death on 22.09.2023 of Sr. Consultant Shri Abhas Kumar Mitra, who was handling this case. An affidavit in this regard has also been filed stating that after the untimely demise of Late Sri Abhas Kumar Mitra, his son Sri Arijit Mitra handled the matter as he was assisting his father in handling the case but had only limited knowledge of the detailed facts and the circumstances of the case as the matter was primarily being handled by Late Sri Abhas Kumar Mitra. We note that the hearing took place from 05.07.2022 to 13.05.2025 and on the last date of response as per para 5.1 on page 6 of the order of the Ld. CIT(A) the assessee had sought adjournment but there is no further detail of any hearing mentioned thereafter but the order has been passed after five months on 30.10.2025. Thus, the Bench was of the view that since there was a gap of nearly five months between the last date of hearing and the date of order, the assessment order was made u/s 144 of the Act, instead of dismissing the appeal on account of non-prosecution, the merits of the case ought to have been discussed for deciding the appeal. We note that section 250(6) of the Act casts a duty upon the Ld. CIT(A) to pass an order in appeal which should state the points for determination and a decision as well as the reason for arriving at such decision. We find that at both the stages of assessment order before the Ld. AO as well as before the Ld. CIT(A) in the appeal, proper representation was not made

on behalf of the assessee. We note that in **Ajji Basha Vs. CIT (2019) 111 taxmann.com 348 (Madras)** it has been held that a speaking order on merits with reasons and findings is to be passed by Commissioner (Appeals) on basis of ground raised in assessee's appeal; he cannot dispose the assessee's appeal merely by holding that the Assessing Officer's order is a self-speaking order which requires no interference. It has also been held in the case of **Commissioner of Income-tax (Central) Nagpur v. Premkumar Arjundas Luthra (HUF) [2016] 69 taxmann.com 407 (Bombay)** after discussing the provisions of sections 250(1) and 251(1) that the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act. Since the assessment order was made u/s 144 of the Act, the Ld. CIT(A) was also empowered to remand the matter before the Ld. AO for fresh assessment. Therefore, we deem it appropriate in the interest of justice and fair play that another opportunity needs to be provided to the assessee to represent his case properly before the Ld. CIT(A). We, therefore, set aside the order of the Ld. CIT(A) and restore the appeal before him to be decided afresh, who shall allow an opportunity of being heard to the assessee and also grant an opportunity of representing the case and to be heard to the Ld. AO as per rule 46A of the Income Tax Rules, 1962, if required, and thereafter pass an order in accordance with law. Accordingly, the grounds taken by the assessee in the appeal are partly allowed for statistical purposes.

8. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

9. As regards the **ITA Nos. 541, 542, 543, 545, 546 & 547/PAT/2026** for AYs 2014-15 to 2019-20 are concerned, since the

facts relating to the dismissal of appeals in these appeals are identical, our findings in **ITA No. 540/PAT/2026** for AY 2013-14 shall *mutatis mutandis* also apply in these appeals. The grounds taken by the assessee in these appeals are also partly allowed for statistical purposes.

10. In the result, all the appeals filed by the assessee in **ITA Nos. 540, 541, 542, 543, 545, 546 & 547/PAT/2026** are partly allowed for statistical purposes.

Order pronounced in the open Court on 16th October, 2026.

Sd/-	*Sd/-*
[**Yogesh Kumar US**]	[**Rakesh Mishra**]
Judicial Member	Accountant Member

Dated: 16.10.2026

Bidhan (Sr. P.S.)

Copy of the order forwarded to:

1. ***Abhishek Kumar.***
2. ***ACIT, Central Circle-1.***
3. CIT(A)-3, Patna.
4. CIT-
5. CIT(DR), Patna Benches, Patna.
6. Guard File.