

IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, PATNA
(VIRTUAL HEARING AT KOLKATA)

SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
SHRI SONJOY SARMA, JUDICIAL MEMBER

ITA No. 389/PAT/2025
Assessment Year : 2017-18

Sita Devi, Bijuli, NH-57, Darbhanga (Bihar) - 847115 [PAN: ADCPD6265D]	Vs.	AC/DC, Circle-3, Darbhangha, Near Old Bus Stand, Lalbagh, Darbhanga, Bihar - 846004
APPELLANT		RESPONDENT

Assessee by	:	None (Adjournment petition filed)
Revenue by	:	Sh. Manab Adak, JCIT

Date of hearing	:	22.04.2026
Date of Pronouncement	:	20.05.2026

O R D E R

PER LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

This is an appeal filed by the assessee against the order passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) by the Ld. Addl./Joint Commissioner of Income Tax (Appeals), 3-Kolkata [hereinafter referred to as “the Ld. CIT(A)"] dated 30.08.2024, DIN & order

No. ITBA/APL/S/250/2024-25/1068187588(1) on the following grounds of appeal:

- “1. For that the grounds of appeal hereto are without prejudice to each other.*
- 2. For that the learned ITO, W-3(2), Darbhanga erred in issuing notice u/s 143(2) of the Act dated 24.09.2018 without complying to the CBDT Instruction F.No.225/157/2017/ITA-II dated 23-06-2017. There was no mention of the type of scrutiny under which the case of the assessee has been selected. Hence the notice issued u/s 143(2) is not valid as per provisions of Act and the Assessment Order passed on the basis of such notice is baseless and should be quashed.*
- 3. For that the assessment has been framed u/s 143(3) by learned ACIT, Circle – 3, Darbhanga without issuing notice u/s 143(2) of the Act and without order u/s 127 by the competent authority (i.e., PCIT, Patna). Therefore, the AO (AC, Circle – 3, Darbhanga) who passed the Assessment Order did not have the jurisdiction to frame the assessment u/s 143(3) of the Act. The order of assessment as passed is bad in law, without jurisdiction and fit to be cancelled / annulled.*
- 4. For that the notice u/s 143(2) dated 24.09.18 issued by ITO, Ward – 3(2), Darbhanga is illegal and bad in law in view of CBDT’s Instruction No. 01/2011 dated 31.01.2011, Notice u/s 143(2) of the Act, subsequent notices and Assessment Order as passed is arbitrary, illegal, bad in law and fit to be quashed.*
- 5. For that in the facts and circumstances of the case the learned CIT(A) is not justified in confirming the disallowances of Rs. 2,41,674/- as made by the Assessing Officer on estimate being 10% out of bonafide and legitimate expenses incurred for the purpose of business. The estimates disallowances of Rs. 2,41,674/- as sustained is arbitrary, unjustified, void ab-initio and bad in law. The estimates disallowances as sustained is fit to be deleted.*
- 6. For that the estimated disallowances as made at Rs. 2,41,674/- by resorting the provision of section 69A is arbitrary, unjustified, void ab-initio and bad in law. Application of section 69A rws 115BBE by applying tax @ 60% is arbitrary, unjustified, void ab-initio and bad in law.*
- 7. For that the charge of interest u/s 234A at Rs. 13,415/-, 234B at Rs. 81,882/- and 234C at Rs. 8,857/- is arbitrary, unjust and bad in law. The interest as charged and sustained by learned CIT(A) is fit to be deleted.*
- 8. For that the delay in filing appeal may kindly be condoned.*

9. For that the appellant reserves her right to file detailed submission at the time of hearing.

10. For that the appellant craves leave to urge, add or alter any other ground or grounds at the time of hearing.”

2. Briefly stated the facts of the case are that the assessee filed return of income on 20.03.2018 declaring income at Rs. 15,30,390/- along with tax audit report in Form No. 3CA and 3CD. The assessee is running a petrol pump in the name and style of M/s Sita Petrol Pump. The case was selected for scrutiny under CASS. Accordingly, notice u/s 143(2) of the Act was issued to the assessee with DIN & Order No. ITBA/AST/S/143(2)/2018-19/1012513407(1) dated 24.09.2018. Subsequently, other statutory notices were issued to the assessee. On analysis of Profit & Loss Account it was seen that the assessee has claimed certain expenditure under different heads and observed that some of the expenses appears to be excessive and assessee failed to produce the bills and vouchers in support of claim of expenses. Accordingly, AO had made adhoc disallowance of 10% against following heads of expenses:

- (i) Travelling and Conveyance - Rs. 3,63,310/-
- (ii) Electricity and Generator – Rs. 15,07,620/-
- (iii) Miscellaneous Expenses Rs. – Rs. 5,45,817/-

Total Rs. 24,16,747/-

3. Accordingly, he disallowed 10% of Rs. 24,16,747/- = Rs. 2,41,674/- and assessment was completed.
4. Aggrieved from the above order, the assessee filed appeal before the Ld. CIT(A). The Ld. CIT(A) called a remand report, after considering the remand report he confirmed the order of AO.
5. None present on behalf of the assessee (adjournment petition filed).
6. On the other hand, the Ld. DR relied on the order of lower authorities and submitted that in respect of claim of expenditure, the assessee had failed to substantiate with supporting documents in respect of the legal issue raised by the assessee. It was submitted that the notice was issued by the ITO, Ward 3(2), Darbhanga in the prescribed format the same and substance of the issue of notice is to scrutiny the case of the assessee.
7. Considering the submission of the Ld. DR and paper book filed by the assessee containing page No. 1 to 33. We noted that in Ground Nos. 2, 3 and 4 (supra) that the assessee has challenged that the notice issued by the AO u/s 143(2) of the Act is not in accordance with the CBDT Instruction No. 225/157/2017/ITAT, dated 23.06.2017. For the sake of convenience, we are reproducing the notice u/s 143(2) of the Act as under:

पावती संख्या/ PAN: ADCPD6265D	निर्धारण वर्ष/ AY: 2017-18	नोटिस संख्या / Notice No.: ITBA/AST/S/143(2)/2018- 19/1012513407(1)	दिनांक/ Dated: 24/09/2018
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आयकर अधिनियम, 1961 की धारा 143(2) के अधीन नोटिस

Notice under section 143(2) of the Income-tax Act, 1961

संवीक्षा (कंप्यूटर आधारित संवीक्षा चयन)

Scrutiny (Computer Aided Scrutiny Selection)

महोदय/महोदया/ मेमसा,

Sir/ Madam/ M/s,

आपको सूचित किया जाता है कि निर्धारण वर्ष 2017-18 के पावती संख्या 466598971200318 के अनुसार आपके द्वारा दिनांक 20/03/2018 को दाखिल की गई आयकर विवरणी को संवीक्षा के लिए चुना गया है।

This is for your kind information that the return of income filed by you for assessment year 2017-18 vide ack. no. 466598971200318 on 20/03/2018 has been selected for Scrutiny.

2. इस संबंध में, आपको दिनांक 25/10/2018 को 12:00 PM तक साक्ष्य प्रस्तुत करने अथवा साक्ष्य प्रस्तुत कराने का अवसर प्रदान किया जा रहा है जिस पर आप उक्त आयकर विवरणी के समर्थन में निर्भर हैं/रहेंगे।

2. In this regard, an opportunity is being given to you to produce or cause to produce any evidence on which you may like to rely in support of the said return of income by 25/10/2018 at 12:00 PM.

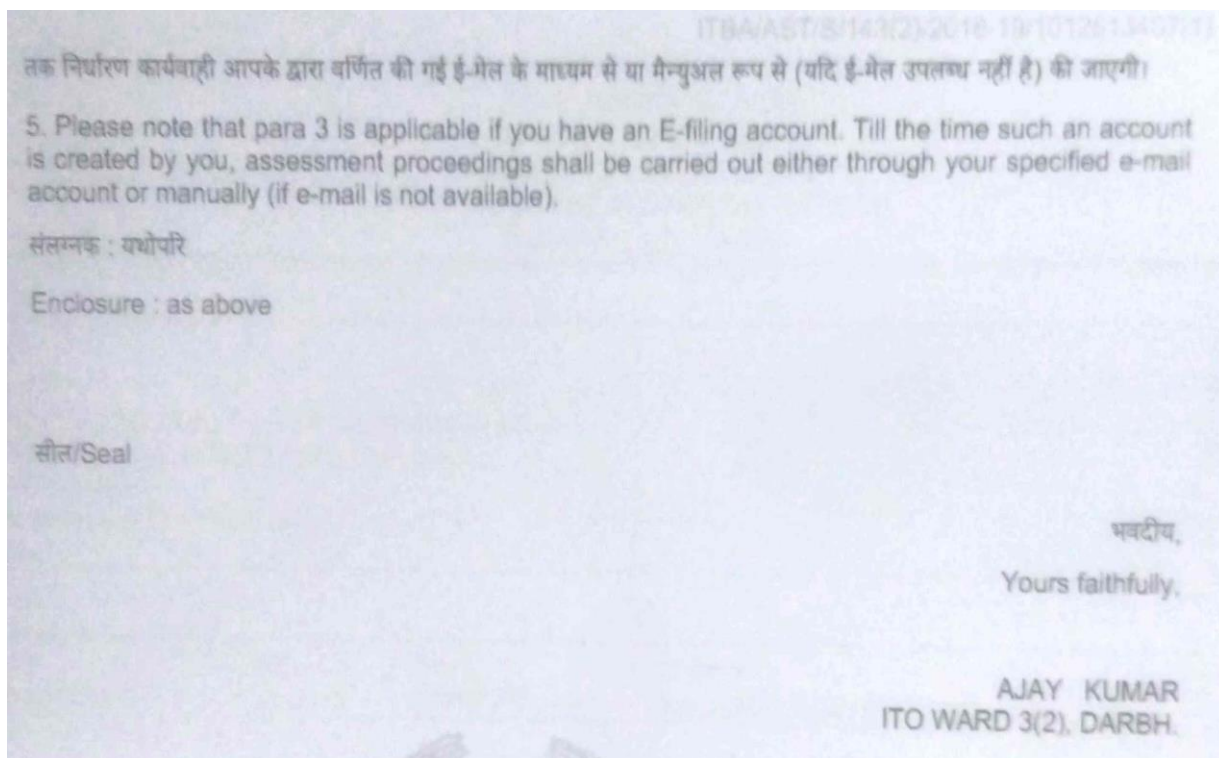
3. उपर्युक्त निर्दिष्ट प्रमाण / सूचना को आपको ऑनलाइन माध्यम से इलेक्ट्रॉनिक रूप में incometaxindiaefiling.gov.in पर अपने ई-फाइलिंग खाता द्वारा प्रस्तुत किया जाना है। बाद की निर्धारण कार्यवाही भी आयकर विभाग की 'ई-कार्यवाही' सुविधा द्वारा की जायेगी। 'ई-कार्यवाही' पर एक संक्षिप्त नोट आपके संदर्भ के लिए संलग्न है।

3. The evidence/information specified above has to be furnished online electronically through your E-filing account in incometaxindiaefiling.gov.in. Subsequent assessment proceedings shall also be conducted electronically through the 'E-Proceeding' facility of Income-tax Department. A brief note on 'E-Proceeding' is enclosed for your kind reference.

4. निर्धारण कार्यवाही के दौरान, यदि आवश्यक होगा तो सूचना / दस्तावेज हेतु विशेष प्रश्नावली (यों) या अधियाचना (यों) को बाद में जारी किया जाएगा।

4. In course of assessment proceedings, if required, specific questionnaire(s) or requisition(s) for information/document shall be issued subsequently.

5. कृपया ध्यान दें कि यदि आपके पास ई-फाइलिंग खाता है तो आपके लिए पैरा 3 लागू है। आपके द्वारा स्वयं अपना खाता न बना लेने



8. On going through the facts of the case grounds taken by the assessee considering the notice issued u/s 143(2) of the Act a similar issue has been decided by the coordinate Bench of the ITAT, Kolkata Tribunal in the case of Sajal Biswas Vs. ITO, ITA No. 1244/Kol/2023, dated 26.03.2025 (2025) 180 taxmann.com 588 (Kol-Trib) in which it has been held that the notice issued in contravention of CBDT Instruction is invalid and notice u/s 143(2) of the Act was quashed which is as under:

“8. The ld. DR on the other hand submitted that this is a computer generated notice and the non-mentioning of the fact of either limited or complete scrutiny or compulsory manual scrutiny would not render the issuance of notice u/s 143(2) of the Act as invalid. Therefore, additional ground raised by the assessee may kindly be dismissed.”

9. The notice issued by AO is not in accordance with the prescribed format but the finance Act 2026 has made certain amendments,

therefore the notice issued will not be invalidate. However we noted that the AO made adhoc addition without pointing out any de defects in the evidences produced. The AO has not rejected the books of account The coordinate bench has decided a issue that the AO made addition on net profit without invoking the section 1453(3) in the case of Suman Singh vs ITO reported in (2026) 186 taxmann.com 316 (Bangalore – Trib) in ITA No. 760/ Bang/ 2026 FOR THE ay 2022-23 order dated 08.05.2026. Respectfully following this judgment, we allow the appeal of the assessee..

10. In the result, appeal of the assessee is allowed.

Order pronounced on 20.05.2026.

Sd/-

(Sonjoy Sarma)
Judicial Member

Sd/-

(Laxmi Prasad Sahu)
Accountant Member

Dated: 20.05.2026

AK, Sr. P.S.

Copy of the order forwarded to:

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

//True copy//

By order

Assistant Registrar, Kolkata Benches

