

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**NAGPUR BENCH, NAGPUR**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER**

**SMC MATTER**

**ITA no.204/Nag./2025**

**(Assessment Year : 2018-19)**

Parth Enterprises  
Santaji Nagar, Main Road  
At P.O. Bhadrawati, Chandrapur 442 902  
PAN – AAPFP2479P

..... Appellant

v/s

Income Tax Officer  
Ward-2, Chandrapur

..... Respondent

Assessee by : Shri Mohammed Lakkadsha  
Revenue by : Shri Surjit Kumar Saha

Date of Hearing – 14/05/2025

Date of Order – 27/05/2025

**ORDER**

Aforesaid appeal by the assessee is against the impugned order dated 27/01/2025, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2018-19.

2. In its appeal, the assessee has raised following grounds:-

*"1. The learned CIT(A), NFAC erred in dismissing the appeal solely on procedural grounds without considering the merits of the case despite the fact that the appellant had duly submitted Form 35 along with a detailed statement of facts and grounds of appeal, which were sufficient for adjudicating the matter on merits. The dismissal of the appeal in such a manner is in gross violation of the principles of natural justice.*

2. The learned CIT(A), NFAC erred in confirming the addition of 12,61,500 under Section 69 as unexplained investment without proper justification and without appreciating the fact that the property in question is rural agricultural land, which is not a capital asset under Section 2(14) of the Income Tax Act, 1961. As such, neither Section 56(2)(x) nor Section 69 is applicable in this case.

3. The learned CIT(A), NFAC failed to appreciate that the reassessment proceedings under Section 147 were initiated on an incorrect basis, as the initial Show Cause Notice issued by the Assessing Officer proposed the addition under Section 56(2)(x), which is legally unsustainable given that rural agricultural land does not qualify as a capital asset. The final assessment order, however, arbitrarily shifted the basis of addition from Section 56(2)(x) to Section 69, indicating inconsistency and rendering the reassessment proceedings invalid.

4. The learned CIT(A), NFAC erred in upholding the reassessment under Section 147 without establishing the necessary condition of "reason to believe" that income had escaped assessment, as required under the law. The appellant had disclosed all material facts during the original assessment, and there was no failure on its part to disclose any relevant information, making the reopening unjustified and invalid.

5. The learned CIT(A), NFAC erred in confirming the addition despite the Assessing Officer failing to substantiate how the investment was unexplained, particularly when the source of funds was fully accounted for by the appellant. The onus was wrongly placed on the appellant to prove the negative, contrary to settled legal principles.

6. The learned CIT(A), NFAC erred in disregarding binding judicial precedents relied upon by the appellant, including:

- Mubarak Gafur Korabu vs. ITO (Pune ITAT, ITA No. 752/PUN/2018)
- Shri Yogesh Maheshwari vs. DCIT (Jaipur ITAT, ITA No. 300/JP/2019) which clearly establish that rural agricultural land is not a capital asset and does not fall within the ambit of Section 56(2)(x).

7. The learned CIT(A), NFAC erred in not considering the fact that the appellant had already placed on record all relevant facts, documents, and legal arguments, which were sufficient to adjudicate the matter, thereby violating the principles of natural justice.

8. The above grounds are independent and without prejudice to one another, and the appellant reserves the right to add, alter, amend, vary, or delete any of the above grounds of appeal at any stage before or during the hearing of the appeal.

#### PRAYER

In view of the above facts, legal submissions, and judicial precedents, the Hon'ble Tribunal is respectfully requested to:

1. Delete the addition of 12,61,500 made under Section 69, holding that the land in question is rural agricultural land and not a capital asset.
2. Quash the penalty proceedings under Section 270A, being consequential and without legal basis.
3. Allow the appeal in full, by setting aside the orders of the lower authorities.
4. Pass such other and further orders as may be deemed just and proper in the interest of justice."

3. The case of the assessee was re-opened under section 147 of the Income Tax Act, 1961 ("the Act") for scrutiny on the following reasons:-

*"The assessee is firm. The assessee has filed return of income for the A.Y. 2018-19 but not reported the transaction of purchase amount of Rs. 12,61,500/- in the ITR for the A. Y. 2018-19.*

*2 The case of the assessee has been flagged by risk management strategy under the category non filling of return (NMS) case for A. Y. 2018-19. On perusal of information uploaded on insight portal, it is noticed that the assessee Parth Enterprises have made transaction of purchase of property for Rs. 12,61,500/- during F. Y. 2017-18 but not reported in the ITR for A. Y. 2018-19. Thus, as the assessee has filed the return of income for the assessment year 2018-19 on dated 28.02.2023 in response to the notice under section 142(1). But the transaction of purchase of immovable property is not disclosed in the return of income. Therefore, income from above transactions has escaped assessment within the meaning of section 147 of the Act.*

*3. In view of the above, I have reason to believe that the income chargeable to tax has escaped assessment of Rs. 12,61,500/- within the meaning of explanation -2(a) of section 147 of the I.T. Act, 1961 for A.Y. 2018-19. The case is a fit case for re-opening u/s 147 of the I.T. Act, 1961."*

4. On a perusal of the reasons, it is clear that the Assessing Officer has proceeded on mere suspicion. There is no specific requirement of disclosing transaction of purchase of immovable property in the return of income. The assumption of jurisdiction under section 147 of the Act, therefore, must be on existence of materials before the authority. The existence of the materials must be real. The exercise must contain a specific application of mind by the Assessing Officer to reach an inference based on materials justifying that

income has escaped assessment. If the action of the Assessing Officer is founded on some material or ground that has no nexus to the formation of reasons to believe or is not founded on any existing material the same is liable to be interfered with. There must be nexus between material and belief. The reasons referred to must show application of mind by the Assessing Officer. The Assessing Officer has not corroborate his belief with the books of account to transfer the same as reasons to believe. The patent irregularity goes to the root of the matter. The assessment order and is not sustainable. The impugned order of the learned CIT(A) is overturned and we direct the Assessing Officer to delete the addition of ₹ 12,61,500, made under section 69 of the Act. Since the appeal is based on legal ground at the very onset, the other grounds became academic in nature.

5. In the result, assessee's appeal is allowed.

Order pronounced in the open Court on 27/05/2025

**Sd/-**  
**V. DURGA RAO**  
**JUDICIAL MEMBER**

**NAGPUR, DATED: 27/05/2025**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Sr. Private Secretary  
ITAT, Nagpur