

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR “SMC” BENCH : NAGPUR
BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL
MEMBER

I.T.A.No. 420/NAG/2023
(Assessment Year 2011-12)

ABC Realty Pvt. Ltd., 1, C/o Amarnath Mudliar, Camp Road, Amravati, Maharashtra. PAN : AAGCA 7162 E	vs.	ITO, Ward-1, Amravati.
(Appellant)		(Respondent)

For Assessee :	Shri K.P. Dewani, Ld. Advocate
For Revenue :	Shri Anand Nagrale, Ld. Sr. DR

Date of Hearing :	16.06.2025
Date of Pronouncement :	16.06.2025

ORDER

This appeal has been preferred by the assessee against the order dated 01/11/2023 impugned herein passed by the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi [in short, “Ld. Commissioner”] u/sec. 250 of the Income Tax Act, 1961 (for short, “the Act”) for the Assessment Year (for short, “AY”) 2011-12.

2. In the instant case, the case of the assessee was reopened u/sec. 147 of the Act mainly on the issue of capital gains of ₹ 1,26,11,045/- out of sale of plot & building and the expenses amounting to ₹ 1,35,59,605/- incurred on the building, which were not reflected in the return of income, which escaped assessment. Admittedly, the Assessing Officer (for short, "AO") did not make any addition on such count/issue, on which the case of the assessee was reopened u/sec. 147 of the Act. However, the A.O. vide assessment order dated 09/09/2016, u/sec. 143(3) r.w.s. 147 of the Act ultimately made the addition of ₹ 12,00,000/- on account of disallowance u/sec. 40A(3) of the Act, without issuing any fresh notice for this issue/count, which is un-sustainable, specifically in view of the judgment passed by the Hon'ble Bombay High Court in the case of *CIT vs. Jet Airways (I) Ltd.* (2011) 331 ITR 236, wherein it has been held as under:-

"21.

.....

Sec. 147 has this effect that the AO has to assess or reassess the income ("such income") which escaped assessment and which was the basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which, comes to his notice during the course of the proceedings. **However, if after issuing a notice under s. 148, he accepted the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped**

assessment, it is not open to him independently to assess some other income. If he intends to do so, a fresh notice under s. 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee.”

3. As observed above that in view of the dictum laid down by jurisdictional high Court in the case referred to above, the addition under consideration is unsustainable and therefore the same is deleted.

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

Order pronounced in the open Court on 16.06.2025.

Sd/-
(Narender Kumar Choudhry)
Judicial Member

vr/-

Copy to

1.	The appellant
2.	The respondent
3.	The CIT(A), Nagpur concerned.
4.	D.R. ITAT, Nagpur Bench, Nagpur.
5.	Guard File.

By Order

//True Copy //

Sr. Private Secretary,
ITAT, Nagpur Bench.