

**IN THE INCOME TAX APPELLATE TRIBUNAL,
NAGPUR "SMC" BENCH, NAGPUR**

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

**ITA No. 276/NAG/2025
(Assessment Years : 2016-17)**

Neelam Janardhan Rachalwar , Sai Mandir Road, Tilak Ward, Chimur, Chandrapur, Maharashtra PAN: ADQPR 7539 E	Vs.	ITO, Ward-2, Chandrapur
(Appellant)		(Respondent)

Present for:

Assessee by : Ms. Shikha Loya, Ld. CA
(*Amicus curiae*)
Revenue by : Shri Surjit Kumar Saha, Ld. Sr. D.R.

Date of Hearing : 25.06.2025
Date of Pronouncement : 25.06.2025

ORDER

This appeal has been preferred by the Assessee against the order dated 19/12/2024 impugned herein passed by the Learned Commissioner of Income Tax (Appeals)NFAC, Delhi (in short, 'Ld. Commissioner') u/sec. 250 of the Income Tax Act, 1961 (in short, 'Act') for the Assessment Year 2016-17 (AY).

2. There is a delay of 57 days in filing the instant appeal, on which Assessee by filing a petition for condonation of delay in filing the present appeal which is duly supported with duly sworn affidavit, has claimed as under:-

1. *That I am the appellant in the appeal no. Appeal No.: (EFXXXXXX1347) before Hon'ble Income-tax Appellate Tribunal, Nagpur and as such I am well acquainted with the facts and circumstances of the case and competent to swear this affidavit.*
2. *That the appeal is being filed against the order of the Commissioner of Income Tax (Appeals) dated 19-12-2024, received on email of my son Parth in Dec-2024.*
3. *That the due date for filing the appeal before the Hon'ble Income Tax Appellate Tribunal was 28/02/2025.*
4. *That there is a delay of 60 days in filing the appeal before this Hon'ble Tribunal.*
5. *That the order of CIT (A) was served on email address of my son Parth who is pursuing JEE along with National Aptitude Test in Architecture (NATA). He was busy with his studies due to JEE exams in January and April and Board exams in February/ March. As such, he did not paid attention to the email received.*
6. *That I came to know about the CIT(A) order only recently but due to frequent travelling for my son's education, I was not able to devote time and attention to the matter, which led to the delay in providing necessary documents to the consultant and thus filing the present appeal.*
7. *That the delay in filing the appeal was neither deliberate nor intentional but occurred due to the above genuine and unavoidable reasons.*
8. *I say and submit that this Hon'ble Tribunal may kindly condone the delay in filing the appeal and admit the same for hearing and adjudication on merits in the interest of justice, as I have a good case on merits.*

9. *That I assure this Hon'ble Tribunal that such delay will not be repeated in future and I undertake to exercise utmost diligence in all future legal proceedings."*

3. On the contrary, learned Departmental Representative (DR) refuted the claim of the Assessee, but not the contentions raised by the Assessee as mentioned above.

4. Considering the reasons stated and demonstrated by the Assessee, as reasonable, *bonafide* and unintentional, delay of 57 days in filing the present appeal, is hereby condoned.

5. Coming to the merits of the case, it is observed that the Assessing Officer (AO) vide assessment order dated 27/12/2019 u/sec. 147 r.w.s. 143(3) of the Act has made the addition of Rs.36,13,000/- on account of difference between the consideration shown by the Assessee and the stamp duty valuation.

6. The Assessee, being aggrieved, challenged the reopening of the proceedings as well as addition made by the Ld. AO by filing first appeal before the Ld. Commissioner, however, of no avail, as the Ld. Commissioner confirmed the reopening as well as addition by dismissing the appeal of the Assessee. Against which, the Assessee being aggrieved has preferred the instant appeal.

7. Learned counsel for the Assessee, at the outset, has submitted that in the instant case, the following information was available with the Department:

"That the Assessee has sold immovable property for a consideration of Rs. 35,00,000/- situated at Tilak Ward, Chimur, District Chandpur. Sale deed for the said property was executed on 28/12/2015 i.e. during the F.Y.

2015-16 relevant to A.Y. 2016-17. Out of the total sale consideration of Rs. 35.00 lakhs, Rs. 10.00 lakhs were received in cash. Since the amount received in cash in the instant case, is in excess of limit of Rs. 20,000/-, is a clear violation of section 269SS of the Act, which attracts penalty u/sec. 271D of the Act. In addition to the above, the issue of capital gain arising out of sale of the above immovable property also needs to be covered”.

8. And therefore the Ld. AO, on the basis of the aforesaid information, reopened the case of the Assessee u/s 147 of the Act by recording the reasons for reopening and issuing notice dated 28/02/2019 u/sec. 148 of the Act.

9. The Ld. AO during the course of assessment proceedings, also observed that the Assessee vide **agreement to sale** dated **24/08/2015** had purchased land at **Mouza Vadala Paiku Tal-Chimur**, District Chandrapur for a consideration of **Rs. 70.00 lakhs**. However, the market value of the said immovable property was shown at Rs. 1,06,13,000/-, hence, in this case, provision of section 56(2)(vii)(b) has been attracted and therefore the Ld. AO in order to verify the said transaction, vide show cause notice dated 24/12/2019, show-caused the Assessee *“as to why the difference of Rs. 36,13,000/- (stamp duty value of the property Rs. 1,06,13,000 – sale consideration of Rs. 70,00,000) shall not be treated as income from other sources and added to the income of the Assessee.”*

10. The Assessee in response to the aforesaid show-cause notice, made no compliance. Therefore, in the constrained circumstances, the Ld. AO ultimately made the addition of Rs. 36,13,000/- being difference between the stamp duty value and the consideration shown by the Assessee.

11. The Assessee thus has claimed that in the instant case, the reasons for reopening mainly pertains to the information received by the Department for the property **sold** by the Assessee, on a consideration of **Rs. 35.00** lakh situated at **Tilak Ward, Chimur,** District Chandpur vide sale deed dated 28/12/2015 and on the allegation that out of total sale consideration of Rs. 35.00 lakhs, the Assessee has received Rs. 10.00 lakhs in cash, hence, excess of limit of Rs. 20,000/- as laid down for cash transaction u/sec. 269SS of the Act.

The Ld. AO in the reasons recorded also mentioned that in addition to the above, the issue of capital gain arising out of **sale** of the above immovable property, also needs to be covered.

However, it is a fact that the Ld. AO vide assessment order has ultimately made the addition of **Rs. 36,13,000/-** only, being difference between stamp duty valuation and the consideration shown by the Assessee with regard to the property situated at Mouza Vadala Paiku Tal-Chimur District Chandrapur **sold** vide agreement to sale dated **24/02/2015** on a consideration of Rs. **70.00** lakhs.

Admittedly, the Ld. AO did not make any addition, on the basis of reasons recorded for reopening of the case. As in the reasons for reopening, the property under controversy has been shown as **sold** on a consideration of Rs. **35.00** lakhs situated at **Tilak Ward,** Chimur, District Chandpur, but not the property **purchased** on dated **24/08/2015** on a consideration of Rs. **70.00** lakhs at **Mouza Vadala Paiku Tal-**Chimur District Chandrapur.

It is also not the case of the Revenue that the Ld. AO in addition to the notice dated 28/02/2019 issued u/sec. 148 of the Act and/or

reasons recorded, also issued fresh notice u/sec. 148 of the Act and/or revised the reasons for reopening of the proceedings and/or recorded reasons for reopening qua the property, which ultimately resulted into making the addition under consideration, and therefore addition under consideration is liable to be deleted, specifically in view of judgment of Hon'ble Jurisdictional High Court in the case of *CIT vs. Jet Airways (I) Ltd.* [2011] 331 ITR 236 (Bom.) wherein the identical issue has been dealt with, by observing and holding as under: -

"11. *The rival submissions which have been urged on behalf of the revenue and the assessee can be dealt with, both as a matter of first principle, interpreting the section as it stands and on the basis of precedents on the subject. Interpreting the provision as it stands and without adding or deducting from the words used by Parliament, it is clear that upon the formation of a reason to believe under section 147 and following the issuance of a notice under section 148, the Assessing Officer has the power to assess or reassess the income, which he has reason to believe had escaped assessment and also any other income chargeable to tax. The words "and also" cannot be ignored. The interpretation which the Court places on the provision should not result in diluting the effect of these words or rendering any part of the language used by Parliament otiose. Parliament having used the words "assess or reassess such income and also any other income chargeable to tax which has escaped assessment", the words "and also" cannot be read as being in the alternative. On the contrary, the correct interpretation would be to regard those words as being conjunctive and cumulative. It is of some significance that Parliament has not used the word "or". The Legislature did not rest content by merely using the word "and". The words "and", as well as "also" have been used together and in conjunction.*

The Shorter Oxford Dictionary defines the expression "also" to mean 'further, in addition, besides, too'. The word has been treated as being relative and conjunctive. Evidently, therefore, what Parliament intends by use of the words "and also" is that the Assessing Officer, upon the formation of a reason to believe under section 147 and the issuance of a notice under section 148(2) must assess or reassess: (i) 'such income'; and also (ii) any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section. The words 'such income' refer to the income chargeable to tax which has escaped assessment and in respect of which the Assessing Officer has formed a reason to believe that it has escaped

assessment. Hence, the language which has been used by Parliament is indicative of the position that the assessment or reassessment must be in respect of the income in respect of which he has formed a reason to believe that it has escaped assessment and also in respect of any other income which comes to his notice subsequently during the course of the proceedings as having escaped assessment. **If the income, the escapement of which was the basis of the formation of the reason to believe is not assessed or reassessed, it would not be open to the Assessing Officer to independently assess only that income which comes to his notice subsequently in the course of the proceedings under the section as having escaped assessment. If upon the issuance of a notice under section 148(2), the Assessing Officer accepts the objections of the assessee and does not assess or reassess the income which was the basis of the notice, it would not be open to him to assess income under some other issue independently. Parliament when it enacted the provisions of section 147 with effect from 1-4-1989 clearly stipulated that the Assessing Officer has to assess or reassess the income which he had reason to believe had escaped assessment and also any other income chargeable to tax which came to his notice during the proceedings. In the absence of the assessment or reassessment of the former, he cannot independently assess the latter.**

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15. xxxxxx

16. Explanation 3 lifts the embargo, which was inserted by judicial interpretation, on the making of an assessment or reassessment on grounds other than those on the basis of which a notice was issued under section 148 setting out the reasons for the belief that income had escaped assessment. Those judicial decisions had held that when the assessment was sought to be reopened on the ground that income had escaped assessment on a certain issue, the Assessing Officer could not make an assessment or reassessment on another issue which came to his notice during the proceedings. This interpretation will no longer hold the field after the insertion of Explanation 3 by the Finance Act (No. 2) of 2009. However, Explanation 3 does not and cannot override the necessity of fulfilling the conditions set out in the substantive part of section 147. An Explanation to a statutory provision is intended to explain its contents and cannot be construed to override it or render the substance and core nugatory. Section 147 has this effect that the Assessing Officer 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 section 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 section 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee.

(emphasis supplied – highlighted for clarity and better understanding)

13. Thus in the aforesaid analyzations, the addition sans sanctity u/sec. 147 r.w.s. 148 of the Act, is unsustainable, thus, the same is deleted.

14. In the result, Assessee's appeal is allowed.

Order pronounced in the open court on 25.06.2025.

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

vr/-

Copy to: The Appellant
The Respondent
The CIT, Concerned, Nagpur
The DR Concerned Bench

//True Copy//

By Order

Senior Private Secretary,
ITAT, Nagpur.

Vr/-