



आयकर अपीलीय अधिकरण "एस एम सी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "SMC" :: PUNE

BEFORE DR.DIPAK P. RIPOTE, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.2380/PUN/2025

निर्धारण वर्ष / Assessment Year: 2012-13

Mrs.Jasmine Zubin Shroff (through Legal Heir Zubin K Shroff), 826/C No.5, Anklesharia Blocks, Dastur Meher Road, Camp, Pune - 411001.	V s	The Income Tax Officer, Ward-7(1), Pune.
PAN:BASPS7144E		
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri B C Malakar
Revenue by	Shri Sandeep Sathe - JCIT
Date of hearing	08/12/2025
Date of pronouncement	28/01/2026

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the Legal Heir of Late Jasmine Z. Shroff against the order of Id.Commissioner of Income Tax(Appeal)[NFAC], passed under section 250 of the Income Tax Act, 1961 for the A.Y.2012-13 dated 19.12.2023 emanating from the Assessment Order passed under section 144 of the



Act, dated 15.11.2019. The Assessee has raised the following grounds of appeal :

“1. On the facts and in the circumstances of the case and in law, the Ld. Addl./JCIT (A)-12, Delhi (hereinafter called as CTT(A), NFAC) erred in passing the appellate order dated 19/12/2023 on a dead assessee appellant who died on 22/06/2022 due to various ailments including Cancer thereby dismissing the appeal of the appellant for non-compliance to the notices of hearing issued by him on 24/02/2022, 30/12/2020, 12/04/2021 & 11/12/2023 ignoring and without appreciating the facts that no appellate order could be legally enforceable and held as valid order when the same is passed on a dead assessee and therefore such order passed by the Ld. CIT(A), NFAC being illegal and bad-in-law be quashed/set-aside.

2. On the facts and in the circumstances of the case and in law, the Ld. Addl./JCIT (A)-12, Delhi (hereinafter called as CIT(A), NFAC) erred in dismissing the appeal of the appellant for non-compliance to the notices of hearing issued by him on 24/02/2022, 30/12/2020, 12/04/2021 & 11/12/2023 ignoring and without appreciating the facts that such notices had not been received/accessed by the appellant and/or by his CA & Accountant who had the access in assessee's e-filing portal having password and ID with him and duly replied due to closure of the offices for serious Covid-19 Pandemic and the declaration of Lockdown by the Government of India time and again during the said period of most of the notices issued and therefore question of compliance to the notices issued by the CIT(A), NFAC did not arise. The appellant therefore so passed ignoring the said facts and for non-compliance to the notices thereby dismissing the appeal of the appellant being arbitrary, illegal and bad-in-law be quashed/set-aside.

3. On the facts and in the circumstances of the case and in law, the Ld. Addl./JCTT (A)-12, Delhi (hereinafter called as CIT(A), NFAC) erred in dismissing the appeal of the appellant for non-compliance to the notices of hearing issued by him on 24/02/2022, 30/12/2020, 12/04/2021 & 11/12/2023 ignoring and without appreciating the facts that no such notices had been received by the appellant or by his CA/Accountant due to closure of the office of the CA/Accountant during the Covid-19 Pandemic in the said period of issuing notices mostly barring the last notice dated 11/12/2023 which could not be accessed by the CA/Accountant and therefore the appellant had no occasion to interact



with the CA/Accountant and comply to the notices even if the same had been received in appellant's e-filing portal wherein the access to such portal was only with the said CA/Accountant since the appellant was totally ignorant about the operation of e-filing portal and was fully dependent on him for any response to any notice for income tax proceedings. The appellate order therefore so passed by the Ld. CIT(A), NFAC ignoring and without appreciating the above facts being arbitrary, illegal and bad-in-law be quashed/set-aside.

4. On the facts and in the circumstances of the case and in law, the Ld. Addl./JCIT (A)-12, Delhi (hereinafter called as CIT(A), NFAC erred in dismissing the appeal of the appellant thereby merely referring to the statement of facts and grounds of appeal raised by the appellant in Form No. 35 in the said appellate order without making any discussion either of the contents of the Assessment Order or the statement of facts and ground of appeal raised as to why the same were not acceptable merely for the reason that the appellant did not respond to the notices of hearing and should have been vigilant for the appeal filed ignoring and without appreciating the facts that neither the appellant could attend the hearing due to her prolonged suffering from various ailments including cancer which finally took her life nor the legal heir of the appellant being her aged husband who could not duly contact her CA/Accountant for responding to the notices of hearing for rendering services in attending his ailing wife admitted in the hospital and also due to lock down during COVID-19 Pandemic. The appellate order therefore so passed be quashed/set-aside.

5. On the facts and in the circumstances of the case and in law, the Ld. Addl./JCIT (A)-12, Delhi (hereinafter called as CIT(A), NFAC erred in dismissing the appeal of the appellant thereby confirming the addition made by the Ld. Assessing Officer of Rs.10,00,000/- on account of on-money paid for purchase of flat on the basis of a third party statement of Shri Subhairit Shah, partner of the builder and developer namely M/s. Acropolis Purple Developers given by him of receiving such money in cash from the appellant for purchase of the flat from the said party without providing such copy of statement given by the said party to the appellant and further allowing any cross objection to the appellant to the said party when no such cash had been paid by the appellant to the said party ignoring and without appreciating the facts that the Ld. Assessing Officer had issued the notices u/s.142(1) of the Act on 15/07/2019, 24/07/2019, 16/08/2019 and 14/09/2019 for compliance during Assessment Proceedings which were completely the period



involving serious COVID-19 Pandemic when all the offices were declared lock-up by the Government of India and Local Bodies and therefore there was no occasion on the part of the appellant to comply the said notices before the Assessing Officer. The addition therefore so made by the AO duly confirmed by the Ld. CIT(A), NFAC being arbitrary, illegal and bad-in law be deleted.

6. The appellant craves leave to add, alter, delete, amend, withdraw, modify, change or substitute any ground or grounds of appeal or to add any new ground or grounds of appeal during or before the hearing of the appeal.”

Submission of Id.AR :

2. Ld.Authorised Representative(Id.AR) for the Assessee submitted that notice u/s.148 was issued without application of mind, hence, it is bad in law. Ld.AR further submitted that no specific document has been referred by the Assessing Officer for issuing notice u/s.148 of the Act. Copy of reasons were never served on assessee. Copy of the statement of Shri Subahukirit Shah was never provided to Assessee, no cross-examination was provided. Even in the reasons recorded, there is no specific reference to the Answers given in the statement. The reasons are vague and hence, bad in law.

2.1 On merits, Id.AR submitted that Assessee had never paid any cash. Ld.AR submitted that the Flat was purchased in the name of Husband and Wife vide registered agreement dated 02.12.2011. copy of the said agreement was filed at page no.51 to 89 of the paper



2.2 Ld.AR further submitted that Assessing Officer has not mentioned any date of payment of alleged cash. Therefore, it cannot be presumed that alleged cash was paid during A.Y.2012-13, though we deny payment of any cash. Therefore, Assessing Officer was wrong in making the addition. Ld.AR submitted that addition cannot be made merely on the basis of third-party statement. Ld.AR submitted that copy of the statement was never provided, copy of cross-examination was never provided. Ld.AR submitted that therefore, Assessment Order is bad in law.

2.3 Ld.AR for the Assessee relied on the following case laws :

i. Collector Land Acquisition Vs. Mst. Katiji & Ors AIR 1353, 1987 SCR (2) 387

ii. Vasu & Company Vs. State of Kerala (2001) 124 STC 124 (Ker) :

iii. Ludhiana Vs. Ujagar Sing & Other (Civil Appeal No. 2395 of 2008 dated 9/06/2010), the Hon'ble Supreme Court.

iv. CIT(exemptions) Pune Vs. Progressive Education Society (2019) 102 Taxman. Com 402 (SC) In this case, the delay was condoned for 362 days directing to hear the appeal on merit.

*V. Karanjia Terminal & Logistics (P) Ltd. [2019] 101 taxmann.com 160 (Bom-HC)
n this case delay of 198 days in filing the appeal was condoned.*

vi. AUTOSER (P.) Ltd. [1998] 101 Taxman 70 (Coch.) (Mag)

vii. N. Balakrishnan Vs. M. Krishnamurthy (1998} 7 SCC 123, 1998 (9) TMI 602 SC;



Condonation of Delay :

3. Assessee was admitted for treatment of Cancer, unfortunately she died. Legal Heir of the Assessee has filed copy of the Death Certificate. In these facts and circumstances of the case, we condone the delay of 593 days in filing appeal before this Tribunal.

Submission of Id.DR :

4. Ld.Departmental Representative(ld.DR) for Revenue relied on the order of Assessing Officer and ld.CIT(A). Ld.DR filed copy of the reasons recorded by ITO for reopening.

Findings and Analysis:

5. We have heard both the parties and perused the records. In this case, to understand the basic facts, we are reproducing the reasons recorded by the ITO as submitted by ld.DR for the Revenue.

Reasons recorded by the ITO, Ward-7(1), Pune are as under :

“Reasons for re-opening of the assessment in the case of Jasmine Zubin Shroff for A.Y. 2012-13 u/s 147 of the Income-tax Act, 1961.

The assessee has filed Return of income for A.Y. 2012-13 on 23/08/2012 declaring total income at Rs. 3,27,370/-. The return was processed u/s 143(1) of the Income Tax Act, 1961.

2. *Information has been received from Deputy Commissioner of Income- tax, Circle-14, Pune that a Survey action u/s 133A of the Income-tax Act, 1961 was conducted on M/s. Acropolis Purple Developers, Pune. During the course of the survey action, incriminating documents were found and impounded. From the impounded*



documents, it was noticed that during the F.Y. 2011-12 relevant to A.Y. 2012-13, the assessee, Smt. Jasmine Zubin Shroff has purchased a flat/immovable property from M/s. Acropolis Purple Developers and paid amount of Rs. 10,00,000/- in cash over and above the agreement value.

Thereafter, the statement of Shri Subahukirit Shah, Partner of M/s Acropolis Purple Developers, was recorded u/s 131 of the Income-tax Act, 1961, wherein he has admitted that M/s. Acropolis Purple Developers had received cash from various flat buyers which is not recorded in the books of accounts and has admitted the cash receipts as undisclosed income for respective projects and concerned financial years.

3. Therefore, I have reason to believe; that income to the extent of Rs.10,00,000/- has escaped assessment for A.Y. 2012-13 and hence the case is to be re-opened u/s 147 of the Income-tax Act, 1961.

4. It is pertinent to mention that the assessee has filed return of income for the year under consideration but no assessment as stipulated u/s 2(40) of the Act was made and the return of income was only processed u/s 143(1) of the Income-tax Act, 1961. In view of the above, provisions of clause (b) of explanation 2 to section 147 are applicable to facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment

5. In this case more than four years have lapsed from the end of assessment year under consideration. Hence, necessary sanction to issue notice u/s 148 may kindly be accorded by the Pr. Commissioner of Income- tax-4, Pune.”

5.1 Thus, it can be observed that Assessee had filed return of income for A.Y.2012-13 under section 139(1) of the Act. It can be observed from the reasons recorded that reasons are based on sum survey conducted in the case of M/s.Acropolis Purple Developers. Date of Survey u/s.133A of the Income Tax Act, is not mentioned in



the reasons recorded. The ITO has not referred the specific document alleged to have been impounded. In the reasons recorded, ITO has merely mentioned about Statement under section 131 of the Act, of Shri Subahukirit Shah. No specific Question and Answer has been referred by ITO in the reasons.

5.2 Thus, based on these two things, ITO arrived at a decision that there was escapement of income.

5.3 Hon'ble Delhi High Court in the decision of Well Trans Logistics India Pvt. Ltd. Vs. Addl.CIT [2024] 474 ITR 131 vide order dated 02.09.2024 has held as under :

Quote "24. We may note that the Assessing Officer after reproducing the information received from DDIT,(Investigation) Unit, drew the conclusion of escapement of income. In the case of Assistant Commissioner of Income-tax v. Rajesh Jhaveri Stock Brokers (P.) Ltd. [2007] 161 Taxman 316/291 ITR 500 (SC), the Supreme Court had explained that expression "reason to believe" would mean justification to know or suppose that income had escaped assessment. While, it is correct that it is not necessary for the Assessing Officer to finally ascertain whether income had escaped assessment, nonetheless, the Assessing Officer must have sufficient cause to believe that it has.

25. In the present case, as may be seen, there is no "close nexus" or "live link" between tangible material and the reason to believe that income has escaped assessment. The information received from the Investigating Unit of the Revenue cannot be the sole basis for forming a belief that income of the assessee has escaped assessment. Having



received information from the Investigating Wing, it was incumbent upon the Assessing Officer to take further steps, make further enquiries and garner further material and if such material indicates that the income of the assessee has escaped assessment and then form a belief that the income of the assessee has escaped assessment.

26. Clearly, in this case, the Assessing Officer has not acquired any material to form such belief. There is not even a line of reason which may justify the formation of the belief. Consequently, we are satisfied that reopening of assessment for the assessment year in question by the Assessing Officer does not satisfy the requirement of law in terms of Section 147 & 148 of the Act.

27. Consequently, the writ petition is allowed. The impugned reassessment notice dated 22.03.2018 issued under Section 148 of the IT Act and further proceedings, if any, initiated pursuant to the said notice dated 22.03.2018 are set aside.” Unquote

5.4 Hon'ble Bombay High Court in the decision of Pr.CIT Vs. Shodiman Investment Pvt. Ltd., [2018] 422 ITR 337 vide order dated 16.04.2018 has held as under :

“14. Further, the reasons clearly shows that the Assessing Officer has not applied his mind to the information received by him from the DDIT (Inv.). The Assessing Officer has merely issued a re-opening notice on the basis of intimation regarding re-opening notice from the DDIT (Inv.) This is clearly in breach of the settled position in law that re-opening notice has to be issued by the Assessing Office on his own satisfaction and not on borrowed satisfaction.



15. Therefore, in the above facts, the view taken by the impugned order of the Tribunal cannot be found faultwith. This view of the Tribunal is in accordance with the settled position in law.”

6. We have perused the assessment order. In this case, Assessee has purchased a Flat in Joint Name from M/s.Acropolis Purple Developers vide registered agreement dated 02.12.2011. Assessing Officer has alleged that Assessee has paid cash of Rs.10 lakhs for the Flat. There was a survey in the case of Acropolis Purple Developers. In the Assessment Order also ITO has not referred any specific impounded document to prove alleged cash payments. ITO has also not referred to any Answer given by Shri Subahukirit Shah in the statement u/s.131 of the Act, wherein he has allegedly referred to assessee. Rather, copy of the statement was never given to the Assessee. Copy of the statement has also not been produced before us. Therefore, based on these cryptic findings of the Assessing Officer, it cannot be alleged that assessee has paid cash of Rs.10 lakhs. Another important fact is the Flat was purchased in the name of Husband and Wife. No notice has been issued by the ITO for reopening to assessee's husband who is joint owner of the Flat. It is not clear from the assessment order that why ITO has presumed that cash payment was made by assessee and not her husband. In these facts and circumstances of the case, we are convinced that there was



no material before the Assessing Officer to add Rs.10 lakhs in the assessment order to the income of the assessee. In such cases, onus is on the Assessing Officer to prove that Assessee had paid impugned amount. Assessing Officer has failed to prove by documentary evidence that Assessee has paid Rs.10 lakhs in cash. In these facts and circumstances of the case, we direct the Assessing Officer to delete the addition of Rs.10 lakhs made in the assessment order. Accordingly, grounds of appeal raised by the assessee are allowed.

6. In the result, appeal of the Assessee is allowed.

Order pronounced in the open Court on 28 January, 2026.

Sd/-
VINAY BHAMORE
JUDICIAL MEMBER

Sd/-
Dr.DIPAK P. RIPOTE
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 28 Jan, 2025/ SGR

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "एस एम सी" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्डफ़ाइल / Guard File.



ITA No.2380/PUN/2025 [A]

आदेशानुसार / BY ORDER,

/ / TRUE COPY / /

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.