सत्यमेव जयते

आयकर अपीलीय अधिकरण" एस एम सी "न्यायपीठ नागपुर में।

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

BEFORE Dr. MANISH BORAD, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.294/NAG/2026

निर्धारण वर्ष / Assessment Year: 2020-21

Mohhamad Shafique Mohammad Ismail Malnas through legal heir Mhd Jubair Mhd Shaifique Malnas, Teli Pura, Choti Gujari, Darwha S.O. Darwha, Yavatmal-445202 Maharashtra PAN-BNJPM1816P	Vs	Income Tax Officer, Ward-1, Yavatmal
Appellant		Respondent

Assessee by	:	Shri Naresh Jakhotia, CA (Virtual)
Revenue by	:	Shri Shiv Shankar Yadav, SR DR (Virtual)
Date of hearing	:	31.07.2026
Date of pronouncement	:	06.08.2026

आदेश/ORDER

PER DR. MANISH BORAD, A.M. :

This appeal at the instance of assessee is directed against the order passed by Ld. CIT(A), NFAC, Delhi u/s 250 of the Income-tax Act, 1961 dated 11.02.2026 which is arising out of the Assessment Order passed u/s. 147 r.w.s 144 of the IT Act dated 02.01.2025.

2. Assessee has raised following grounds of appeal:-

1. On the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) erred in not appreciating the fact that the assessment order passed by the Assessing Officer under section 147 read with section 144B of the Income Tax Act, 1961, which is illegal, bad in law and liable to be quashed.

2. On the facts and circumstances of the case and in law, the learned CIT(A) failed to appreciate that the notice issued under section 148 dated 30.03.2024 was issued in the name of a deceased person who had expired on 14.12.2019, and therefore the entire reassessment proceedings are void ab initio and without jurisdiction.

3. On the facts and circumstances of the case and in law, the learned CIT(A) erred in law in not holding that issuance of notice in the name of a deceased person is a jurisdictional defect which cannot be cured under section 292B or section 292BB of the Act.

4. The learned CIT(A) failed to appreciate that the Assessing Officer erred in not bringing the legal heir of the deceased assessee on record before initiating or completing the reassessment proceedings, thereby violating the mandatory provisions of section 159 of the Income Tax Act, 1961.

5. On the facts and circumstances of the case and in law, the learned CIT(A) erred in not appreciating that the entire reassessment proceedings are void ab initio since the very assumption of jurisdiction under section 147 is invalid in law.

*6. **General ground**:*

The appellant craves leave to add, alter, amend, or withdraw any of the above grounds before or at the time of hearing.

3. I have heard rival contentions and perused the records placed before me. I observe that the assessee has raised legal issues challenging the validity of notice issued u/s 148 dated 30.03.2024 in the name of the deceased person who expired on 14.12.2019, and therefore the entire reassessment proceedings are void and without jurisdiction. Ld. CIT(A) has not decided the legal issue referred above. Hon'ble Delhi High Court in the case of *Divine Infracon Private Limited Vs. PCIT 2025 (171) Taxman.com 92* has held that the Tribunal has no jurisdiction to proceed to decide the ground which did not arise from the impugned order passed

by first appellate authority, irrespective of such ground was raised in first appeal or not.

4. I therefore respectfully following the above judgement of Hon'ble Delhi High Court restore all the issues raised in the instant appeal including the legal issue raised in ground No. 1 to 4 to the file of Ld. CIT(A) for necessary adjudication and to decide in accordance with law. Needless to mention that proper opportunity of hearing shall be granted to the assessee. Assessee is also directed to remain vigilant and not to take adjournment unless otherwise required for reasonable cause. Effective grounds of appeal raised by the assessee are allowed for statistical purposes.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on this 06th day of August, 2026.

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

पुणे /Pune; दिनांक /Dated: 06th August, 2026.
Neeta

Neeta Milind Shirsath

Digitally signed by Neeta Milind Shirsath
Date: 2026.08.11 14:49:40 +05'30'

<u>आदेश की प्रतिलिपि अग्रेषित /Copy of the Order forwarded to:</u>

1. **अपीलार्थी** /The Appellant.
2. **प्रत्यर्थी** /The Respondent.
3. The Pr. CIT concerned.
4. **विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एस एम सी" बेंच, नागपुर**/ DR, ITAT, "SMC" Bench, Nagpur
5. **गार्ड फाइल**/ Guard File.

आदेशानुसार /BY ORDER,

सहायक रजिस्ट्रार/Assistant Registrar

आयकर अपीलीय अधिकरण, नागपुर /ITAT, Nagpur