

आयकर अपीलीय अधिकरण, ' ए ' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH, CHENNAI**

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./ I.T.A. No. 1600/Mds/2016

निर्धारण वर्ष/Assessment Year : 2006-07

Shri C.R. Badrinarayanan,  
2/581, 1<sup>st</sup> Cross Street,  
Singaravelan Salai,  
Neelankarai,  
Chennai – 600 041.

Income Tax Officer,  
Vs. Business Ward III(2),  
Chennai.

**[PAN: AFVPB 7105B]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri M. Narayanan, FCA

प्रत्यर्थी की ओर से/Respondent by

: Shri S. Nataraja, JCIT

सुनवाई की तारीख/Date of Hearing

: 06.07.2017

घोषणा की तारीख/Date of Pronouncement

: 11.07.2017

**आदेश / O R D E R**

**PER S. JAYARAMAN, ACCOUNTANT MEMBER:**

This is an appeal filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-15, Chennai in ITA No. 149/CIT(A)-15/14-15 dated 03.03.2016.

2. Shri C. R. Badrinarayanan, an individual, is a licensed surveyor for general insurance company. For the assessment year 2006-07, his assessment was completed u/s. 143(3) dated 14.11.2008. This assessment was reopened u/s. 147 and the re-assessment was completed u/s. 147 r.w.s. 148 on 12.03.2014. Aggrieved, the assessee filed an appeal before the CIT(A) and the CIT(A) dismissed the appeal. Aggrieved against the CIT(A) order the assessee filed this appeal, primarily challenging the Jurisdiction to reopen the case u/s. 147.

3. The AR submitted that the assessment for assessment year 2006-07 was completed on 14.11.2008. After four years from the end of the assessment year, the AO issued a notice for reopening the assessment on 22.10.2012 to revise the fair market value as on 01.04.1981. He invited our attention to the specific portion of assessment order passed on 14.11.2008 which is extracted as under:

*"When the source for this investment is questioned, in the same letter, it has stated that the entire investments were met out from the sale proceeds of house property situated at No. 2, 6<sup>th</sup> Cross Street, Sashtri Nagar, Adyar, Chennai. The property was acquired in 1976 for a consideration of Rs. 75000/- by his late father when the assessee was a student. Due to the family arrangement as per the deed copy of "Scheme of Division" which was executed on 4<sup>th</sup> January, 1989, the share of right over the property has been defines as 50% between the assessee and his brother Sri C.R. Krishnan. The 50% share of the*

*assessee comes to Rs. 36,33,903/-, out this the above said investments were made. Copy of the Sale deed filed."*

and submitted that the Assessing Officer considered the following facts at the time of original assessment:

Year of Property purchase	: June 76
Original cost of acquisition	
Area of the land	: Rs 75,000/- @ Rs 15.26 per SFT 4914 SFT (2 grounds and 114SFT)
Fair Market Value as on 01/04/1981 adopted for computing Capital Gains	: Rs 675,000/- @ 137.36 per SFT,
Sale Value	: Rs 72.67 Lacs
Assessee's share in the property	: 50%
Assessee's share of Capital Gains based on above Sale value and Fair Market Value as on 1/4/81 after indexation	: Rs 19.56 Lacs,; assessee invested Rs 20 Lacs in REC Bonds and claimed full exemption.

All the above details were given at the time of original assessment. In fact the AO asked for further details with regard to the sale of the property which was furnished. Hence, the AO has applied his mind and passed the original order allowing exemption.

4. The AR submitted that the AO after detailed scrutiny has completed the assessment as above. Thereafter, he invited our attention to the following portion of revised assessment order:

*"During the previous year relevant to Assessment year 2006-07, the assessee has admitted capital gains from sale of property. The assessee along with his two brothers had acquired a property at Plot no B-31, New no 3, Old no 2, Sixth Cross Street, Shastri nagar, Adyar, Chennai, in 1976. The assessee had 33.33% at the time of purchase (1976) and another 16.67% was acquired as per family arrangement, from his brother who relinquished his right, in January 1989. In the computation statement, the assessee had adopted the cost inflation index for 1981 at about 10 times the value of the property as in 1976, the year of acquisition, which appeared to be incorrect. By reason of the assessee's failure to disclose correct income in the return of income filed, there was reason to believe that income chargeable to tax has escaped assessment under the head capital gains as per the provisions of Sec. 147 of the Act. Hence, approval of the Commissioner of Income tax, Chennai- VI (now CIT-X), was solicited and obtained, and notice u/s. 148 dated 22.10.2012 was issued and the assessment was reopened.*

*During the course of scrutiny assessment proceedings, it has been ascertained from the Sub-Registrar, Adyar, that the guideline value of the property at Urur Village, Sixth cross street, Shastri Nagar was Rs. 16/- per sq.ft. as on 0 1.04.1981. This was put forth to the assessee."*

The AR submitted that the AO issued notice after 4 years proposing to adopt the Guideline value as on 1/4/81 ( Rs 16 per SFT), which incidentally is almost the same as the cost as in June 76. There is no new information to the AO; the above guideline value is already available with the AO as in 2008 at the

time of original assessment. There is no failure on the part of assessee; all the details submitted and the AO has raised queries in respect of the sale of subject property. Hence applied his mind. In any case, the guideline is not the Fair Market value to be adopted for this purpose and prayed to render justice. Per contra, the DR supported the order of the CIT(A).

5. We have considered the rival submissions. It is clear from the reassessment order, as extracted supra, that the Assessing Officer did not have any fresh information. It appears that during the course of reassessment proceedings only he has ascertained from the sub-Registrar about the guideline value and proceeded to complete the reassessment. Thus, there is merit in the submissions of the assessee that there was no tangible material before the Assessing Officer on the basis of which the reassessment could have been reopened. In the absence of tangible material, what the AO has done while reopening the assessment is to change his opinion which was formed earlier. The reassessment made after four years from the end of the assessment year on a change opinion can't be upheld. In this case, the assessee had disclosed fully and truly all material facts necessary for his assessment at the time of original assessment. The AO has not established the reasons for the failure on the part of the assessee and hence, the proceedings initiated after four years from the end of this assessment year is quashed.

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

Order pronounced on Tuesday, the 11<sup>th</sup> day of July, 2017 at Chennai.

<b>Sd/-</b> (एन.आर.एस. गणेशन) ( <b>N.R.S. GANESAN</b> ) न्यायिक सदस्य/ <b>Judicial Member</b>	<b>Sd/-</b> (एस जयरामन) ( <b>S. JAYARAMAN</b> ) लेखा सदस्य/ <b>Accountant Member</b>
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चेन्नई/Chennai,

दिनांक/Dated: 11<sup>th</sup> July, 2017

**JPV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT     | 5. विभागीय प्रतिनिधि/DR  | 6. गार्ड फाईल/GF             |