

आयकर अपीलीय अधिकरण, ' बी ' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" 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. 1548/Mds/2016

निर्धारण वर्ष/Assessment Year : 2006-07

Shri K. Ananthan,
37/9, Suresh Nagar Main Road,
Janaki Nagar,
Valasarwakkam,
Chennai – 600 087.

Deputy Director of Income Tax,
Vs. International Taxation-I,
121, Mahatma Gandhi Road,
Aayakar Bhavan, Room No. 706,
Annexe Building, VII Floor,
Chennai – 600 034.

[PAN: AICPA 2670C]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. G. Ganesh Babu

प्रत्यर्थी की ओर से/Respondent by

: Mrs. Ann Mary Baby, JCIT

सुनवाई की तारीख/Date of Hearing

: 24.05.2017

घोषणा की तारीख/Date of Pronouncement

: 08.08.2017

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)-16, Chennai in ITA No. 38/A-16/AY 2006-07 dated 29.02.2016.

2. Shri K. Ananthan, the assessee, is a non-resident individual having income from house property, capital gains and other sources in India apart from his overseas earnings. He filed his return for assessment year 2006-07 on 27.09.2006 declaring total income of Rs. 36,75,707/-. This return was processed u/s. 143(1). The AO received information that during financial year 2005-06, the assessee purchased the property (Kalyanamandapam) at Ambur for a consideration of Rs. 50 lakhs. However, the documented value as per Document No. 2698/2005 dated 29.08.2005 was at Rs. 74,62,175/-. The AO re-opened the assessment, required the assessee to explain the sources for the purchase of property and when the assessee could not explain with evidence, the AO made an addition of Rs. 74,62,175/- u/s. 69. Aggrieved, the assessee filed an appeal before the CIT(A) and the CIT(A) dismissed the appeal.

3. Aggrieved against the CIT(A) order, the assessee filed this appeal. Primarily on the ground that

"2. the CIT(A) erred in not adjudicating on the ground raised in the written submissions dated 22.01.2016 and 25.01.2016, wherein,

a. validity of the re-opening of u/s. 147 without getting the approval of the Joint director/Joint Commissioner of Income Tax as required under sec 151 of the IT Act and

b. Non-forming of independent opinion for concluding that income has escaped assessment was raised.

3. *Without prejudice to the above, the CIT(A) ought to have held that the assessment re-opened by the learned AO without forming an independent opinion on the material available before him is void ab initio*

4. *Without prejudice to the above the CIT(A) ought to have held that the assessment re-opened, without appreciating the law of the land that stamp duty collected by the revenue authorities cannot form foundation to determine the market value of the property as held by the Hon'ble Supreme Court in the case of Jawajee Nagathan Vs The Revenue Divisional Officer, Adiabab, A.P CDJ 1994 SC 313, (1994) 4 SCC 595 is void ab initio.*

5. *The CIT(A) has erred in not holding that in the re-opened assessment order passed by the AO in which he has neither disclosed nor discussed the reason for reopening the assessment is fatal to the proceedings initiated u/s. 147 and is void as initio.*

6. *The CIT(A) has erred in not holding that in the re-opened assessment order passed by the AO from which it is evident that not obtaining the satisfaction of the Joint Director of Income Tax u/s. 152 for re-opening the assessment, fatal to the proceedings initiated u/s. 147 and is void ab initio."*

4. We heard the rival submissions, perused the orders. It is seen from the paper book that the CIT(A) has acknowledged the assessee's letters dated 22.02.2016 and 25.03.2016. Therein, the assessee has raised the validity of issue of notice u/s. 147 r.w.r. 151(2), validity of re-opening of assessment u/s. 148, the AO issued notice without any material for confirming the independent opinion etc. It is seen from the order of the CIT(A) that the CIT(A) has not dealt these issues. In the facts and circumstances, we are of

the view that the CIT(A) order has to be set aside for an afresh consideration. The CIT(A) shall pass a speaking order on the issues raised by the assessee in his appeal including the issues raised in his letters dated 22.02.2016 and 25.01.2016, after affording reasonable opportunity to the assessee.

5. In the result, the appeal of the assessee is treated as allowed for statistical purpose.

Order pronounced on Tuesday, the 08th day of August, 2017 at Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/Judicial Member

Sd/-

(एस जयरामन)

(S. JAYARAMAN)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 08th August, 2017

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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