

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'A' BENCH: CHENNAI**

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री रमित कोचर, लेखा सदस्य के समक्ष

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

**ITA No.2316/Chny/2019**

निर्धारण वर्ष / **Assessment Year: 2016-17**

Shri Vijayakumar Nagarajan,  
1031, Appaswamy Greensville,  
189, Old Mahabaliopuram Road,  
Sholinganallur,  
Kanchipuram-600 119, Tamil Nadu.

v. The Income Tax Officer,  
Non-Corporate Ward-21(5),  
Chennai.

**[PAN: ADAPN 3575 G]**

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by

: Mr. N.Vijay Kumar, CA

प्रत्यर्थी की ओर से /Respondent by

: Mr. A.R.V.Sreenivasan, JCIT

सुनवाई की तारीख/Date of Hearing

: 28.01.2020

घोषणा की तारीख /Date of Pronouncement

: 26.02.2020

**आदेश / O R D E R**

**PER RAMIT KOCHAR, ACCOUNTANT MEMBER:**

This appeal filed by assessee is directed against appellate Order dated 22.05.2019 passed by learned Commissioner of Income Tax (Appeals)-9, Chennai (hereinafter called "the CIT(A)"), in ITA No.33/CIT(A)-9/2018-19 for assessment year (ay) 2016-17, the appellate proceedings before learned CIT(A) had arisen from assessment order dated 28.12.2018 passed by learned Assessing Officer (hereinafter called "the AO") u/s.143(3) of the Income-tax Act, 1961 (hereinafter called "the Act").

2. The grounds of appeal raised by assessee in memo of appeal filed with the Income-Tax Appellate Tribunal, Chennai (hereinafter called "the Tribunal") read as under:-

*"1. For that the order of the Commissioner of the Income Tax (Appeals) is contrary to law, facts and circumstances of the case to the extent prejudicial to the interests of the Appellant and is opposed to the principles of natural justice, equity and fair play.*

*2. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing officer is without jurisdiction.*

*3. For that the Commissioner of Income Tax (Appeals) erred in upholding the addition of Rs.6,78,341/- u/s. 56(2)(vii)(b).*

*4. For that the Commissioner of Income Tax (Appeals) erred in concluding that the notice for hearing was fixed on 09/05/2019 vide notice dated 23/04/2019 was the last and final notice, when actually the final hearing was fixed for 13/06/2019 by another notice dated 15/05/2019 and subsequently the hearing was rescheduled on 17/06/2019.*

*5. For that the Commissioner of Income Tax (Appeals) erred in not entertaining the hearing on 17/06/2019 and decided on the case without giving any opportunity.*

*6. For that the Commissioner of Income Tax (Appeals) erred in not appreciating the fact that the purchase of Flats in an apartment is a single transaction and not two different transaction constituting the UDS and the apartment building. The UDS is impartible and inseparable from the apartment building and valuing anyone of them individually will not result in correct valuation.*

*7. For that the Commissioner of Income Tax (Appeals) erred in not considering the fact that registration of the UDS portion was to conform with law and for documentation purpose and for all other practical reasons the purchase is of an apartment and not just UDS portion separately and constructed area separately.*

*8. For that the Commissioner of Income Tax (Appeals) erred in not correctly interpreting the Explanation given for clause (vii) of section 56(2), where property means Immovable property being land or building or both.*

*9. For that the Commissioner of Income Tax (Appeals) erred in not appreciating the fact that though Undivided share of land and Divided share of land are same per se, their value cannot be the same as Undivided share of land is restrictive in nature and naturally should have lesser value than the divided share of land.*

*10. For that the Commissioner of Income Tax (Appeals) erred in not entertaining the plea for valuation from a registered valuer to value the Immovable property and determine whether the property was actually purchased for a lesser value to invoke Section.56(2).*

11. For that the Commissioner of Income Tax (Appeals) erred in not appreciating the fact that the price decided for the Undivided share of land and the construction of the building is the prerogative of the builder and the buyer can only negotiate as to the terms of full value of the apartments and not as to UDS and constructed portion.

12. For that the Commissioner of Income Tax (Appeals) erred in not appreciating that all the other co-owners of the apartments had registered the UDS at the same value and there was no concession to the Appellant nor any indirect benefit derived by the appellant to invoke the deeming provisions of section 56(2)(vii).

13. For that the Commissioner of Income Tax (Appeals) erred in not considering the fact that the appellant had paid Rs. 7,25,000/- for Car parking facilities, which can be considered as part of the UDS.

**PRAYER**

For these grounds and such other grounds that may be urged before or during the hearing of the appeal it is most humbly prayed that the Hon'ble Tribunal may be pleased to

a) Direct the Assessing Officer to delete the addition of Rs. 6,78,341 u/s.56(2)(vii). or

b) Pass such other orders as this Hon'ble Tribunal may deem fit."

3. Briefly stated facts of the case are that the assessee is an employee of World Bank. The assessee's case was selected for framing scrutiny assessment by Revenue under CASS owing to large exempt income and large balance in foreign bank account, claimed by assessee. The AO issued notice to the assessee u/s 143(2) of the 1961 Act , dated 04.07.2017 for framing scrutiny assessment u/s 143(3) of the 1961 Act which was duly served on the assessee and assessment was framed by AO against assessee vide assessment order dated 28.12.2018 passed by AO u/s 143(3) of the 1961 Act , by assessing total income at Rs.8,51,790/- as against returned income of Rs. 84,250/-. The additions to the income of the assessee as were made by the AO which is subject matter of dispute before us to the tune of Rs. 6.78,341/- were on account of difference in

guideline value of the property and the actual sale consideration as recorded in sale deed , by invoking provisions of Section 56(2)(vii)(b)(ii) of the 1961 Act.

4. Aggrieved by an assessment framed by the AO u/s 143(3) of the 1961 Act, the assessee filed first appeal with Ld.CIT(A) who was pleased to dismiss appeal filed by assessee ex-parte in the absence of assessee, vide appellate order dated 22.05.2019 passed by learned CIT(A). The aforesaid first appeal was dismissed by Ld.CIT(A) ex parte as the assessee did not entered appearance before Ld.CIT(A) nor written submissions were filed by assessee before Ld.CIT(A), which led to dismissal of appeal of the assessee ex-parte by learned CIT(A) in the absence of assessee.

5. Aggrieved by an appellate order dated 22.05.2019 passed by learned CIT(A), the assessee has now come in appeal before tribunal and at the outset, it was submitted by Ld.Counsel for the assessee before the Bench that appeal was filed with Ld.CIT(A) on 25.01.2019, which was dismissed ex-parte by learned CIT(A) within a short period of four months on 22.05.2019. It was submitted that proper and adequate opportunity of being heard was not granted to the assessee which led to infringement of principles of natural justice and appeal was dismissed ex-partre by the Ld.CIT(A) in the absence of assessee in a hurried manner which has caused serious prejudice to the assessee. It was submitted by learned counsel for the assessee that Ld.CIT(A) has issued notice of hearing bearing number ITBA/APL/S/APL\_1/2019-20/1016004847(1) dated

15.05.2019 fixing the date of hearing for 13.06.2019 ( the said notice as filed by assessee is placed in file), and it was submitted that in the meantime appeal of the assessee was already hurriedly dismissed by the Ld.CIT(A) on 22.05.2019. The copy of the said notice is re-produced as under:

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT  
OFFICE OF THE COMMISSIONER OF INCOME TAX, APPEAL  
CIT(A), Chennai-9

To,  
VIJAYAKUMAR NAGARAJAN,  
FLAT 2A FLAT 2A, LUCKY PEARL 4,  
SASTRI NAGAR, 10TH CROSS,  
ADYAR- 600 020.  
Tamil Nadu, India.

PAN: ADAPN 3575 G	AY: 2016-17	Dated: 15/05/2019	Notice No. ITBA/APL/S/APL_1/2019- 20/1016004847 (1)
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Sub.: Appeal No.- CIT (A), Chennai-9/10147/2018-19 for the Assessment Year 2016-17 regarding.

The above noted appeal against the order u/s.143(3) of Income Tax Act preferred by you has been fixed for hearing on 13/06/2019 at 11:30 AM in my office.

You are requested to attend in person or through a representative. Your counsel should bring the power of attorney while attending the appellate proceedings, if not filed so far. Attendance is not necessary if you wish that the appeal may be decided on the basis of your written submissions which may be furnished on or before the said date.

Please also send your written submissions, If any, through e-mail at [CHENNAI.CIT.APL9@INCOMETAX.GOV.IN](mailto:CHENNAI.CIT.APL9@INCOMETAX.GOV.IN)

Thangappan Vasanthan  
CIT(A), Chennai-9

Copy to:

Non Corp. Ward-21(5), Che.

Thangappan Vasanthan  
CIT(A), Chennai-9

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Note: If digitally signed, the date of digital signature may be taken as date of document.  
ROOM NO:219,MAIN BUILDING -II FLOOR, CHENNAI-MAIN BUILDING, No. 121, MAHATMA  
GANDHI ROAD, NUNGAMBAKKAM, CHENNAI,  
Tamil Nadu, 600034

Email: CHENNAI.CIT.APL9@INCOMETAX.GOV.IN, Office Phone:04428338429

It was also brought to the notice of the Bench that further notice was also issued by the Ld.CIT(A) on 04.06.2019, re-scheduling the hearing of the appeal to 17.06.2019 at 4.45P.M.(the said notice as filed by assessee is placed in filed), which is again re-produced hereunder:

Office of the Commissioner of Income-Tax (Appeals) - 9  
Room No. 220, 2nd Floor, Aayakar Bhavan, Main Building  
121, Mahatma Gandhi Road, Chennai 600 034.  
Phone: 044-2833 8383, Extn: 8206/28338439 FAX: 044-28338429  
Email : Chennai.cit.apl9@incometax.gov.in  
Notice under Section 250(1) of I.T. Act, 1961

Rescheduled hrg/ CIT [A]-9

Date: 04/06/2019

To  
Vijayakumar Nagarajan,  
Flat 2A, Lucky Pearl No.4,  
Sastri Nagar, 10<sup>th</sup> Cross,  
Adyar-600 020.

Sub: Appeal for the Asst. Yr 2016-17- PAN :ADAPN3575G-Reg.  
Refixation of appellate hearing in your own case-reg

Ref: This office notice dt. 15/5/2019

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Please refer to the above.

2, As per the notice under reference , the hearing in this case was fixed on 13/6/2019. In this regard, it is stated that the hearing in your case is rescheduled on 17/06/2019 at 4.45 P.M

3. If there is any appeal pending or already decided, on the same issues in your case in any other assessment year, kindly inform this office about the current status of appeal. If the said appeal is already disposed of, kindly furnish a copy of the appellate order.

Yours faithfully,

For the Commissioner of Income-Tax  
(Appeals)-9, Chennai - 34

Thus, it is submitted that on the one hand notices were issued intimating the assessee about the date(s) of hearing and on the other hand, appeal filed by assessee was already dismissed ex-parte by Ld.CIT(A) on

22.05.2019. Under the aforesaid circumstances, it is prayed by Ld.Counsel for the assessee that matter may be restored back to the file of Ld.CIT(A) for fresh adjudication on merits in accordance with law. The Ld.DR after going through the contentions of the assessee and aforesaid two notices issued by Ld.CIT(A) for fixing hearing even after appellate order was passed by learned CIT(A) fairly agreed that the matter can be restored back to file of the Ld.CIT(A) for fresh adjudication on merits in accordance with law. After hearing both the parties and after go through the entire material on record, we are of the considered view that this matter need to be restored to the file of the Ld.CIT(A) for fresh adjudication on merits in accordance with law. Thus, we set aside the appellate order dated 22.05.2019 passed by learned CIT(A). Needless to say that Ld.CIT(A) will given proper and adequate opportunity of being heard to the assessee in accordance with principles of natural justice in accordance with law. The explanation/evidences submitted by assessee in set aside remand proceedings before Ld.CIT(A) in his defense shall be admitted by Ld.CIT(A) in accordance with law also keeping also in view Rule 46A of the Income Tax Rules, 1962. The assessee did not appear before Ld.CIT(A) in the first round of litigation as could be seen above in this order nor written submissions were filed by assessee before learned CIT(A), when the appeal was posted for hearing by learned CIT(A) before it, prior to appellate order passed by learned CIT(A) on 22.05.2019 . It is a settled proposition of law that powers of Ld.CIT(A) are co-terminus with power of the AO including power of enhancement of income as is

enshrined u/s.251(1)(a) of the 1961 Act. With the above observations, we set aside the appellate order passed by learned CIT(A) in first round of litigation and remit the matter back to the file of Ld.CIT(A) with directions to re-adjudicate the appeal of the assessee on merits in accordance with law. We clarify that we have not commented on merits of the issues in appeal and all contentions are kept open. We order accordingly.

6. In the result, the appeal filed by assessee in ITA No.2316/Chny/2019 for ay: 2016-17 is allowed for statistical purposes.

Order pronounced on the 26<sup>th</sup> day of February, 2020 in Chennai.

**Sd/-**

(एन.आर.एस. गणेशन)

**(N.R.S. GANESAN)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

**Sd/-**

(रमित कोचर)

**(RAMIT KOCHAR)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 26<sup>th</sup> February , 2020.

TLN

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