IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTEENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE B. SUDERSHAN REDDY

And

THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT PETITION No.7369 of 2005

Between:

M/s. Innovation Industries,

a registered partnership firm having its

registered office at Plot No.F-1, Vikrampuri Colony,
Rep. by its Managing Partner T.N. Khambati,

S/o late N.G. Khambati, aged 77 years,
R/o. Secunderabad.

..... PETITIONER

AND

1) The Assistant Commissioner of Income Tax,

Circle 10(1), 7th Floor, Budha Bhavan Complex,
M.G. Road, Secunderabad.

2) The Sub Registrar (Uppal) at Uppal.

3) M/s. Prajay Engineer Syndicate Limited

Rep. by its Managing and Senior Partner

Mr. D.Vijey Sen Reddy, S/o. D.S.P. Reddy,

Office at 4-1-2/4, Ramkote, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue any appropriate Writ, Order or direction preferably a writ in the nature of Writ of *Mandamus*, declaring the proceedings No.GIR/PAN No.I-301/AABFI6624F/2004-05, dated

18-2-2005, issued by the 1st respondent as being arbitrary, illegal, violative of Article 14 of the Constitution of India and consequently stay all further proceedings pursuant to the said proceedings.

Counsel for the Petitioner: Mr. P. Venugopal

Counsel for Respondent No 1: G.P. for Commercial Tax

Counsel for Respondent No.2: G.P. for Revenue

Counsel for Respondent No.3:

The Court made the following :

ORDER: (Per Hon'ble Sri Justice B. Sudershan Reddy)

Heard the learned counsel for the petitioner as well as the respondents. At their request, the writ petition itself is taken up for final disposal at the stage of admission.

Rule Nisi.

The petitioner in the instant writ petition challenges the notice, dated 18-02-2005, issued by the 1st respondent herein requiring the petitioner to appear before him on 07-03-2005 along with the objections, if any, to be filed for proposal to adopt Rs.1,95,18,000/- as sale consideration for the purpose of arriving at capital gains. There is no final determination, as such, made by the 1st respondent requiring the petitioner to pay any specified amount towards capital gains. In the notice itself, it is indicated that as per the document, the market value is adopted at Rs.1,94,18,000/- and the stamp duty thereon amounting to Rs.13,61,200/- has been paid by the petitioner and it is for that reason, the 1st respondent proposed to adopt the said sale consideration shown in the document as consideration for the purpose of arriving at capital gains.

Sri P. Venugopal, learned counsel for the petitioner, however, contends that the 1st respondent is being guided solely whatever stated by the 2nd respondent who in turn has no authority to levy and collect the stamp duty according to his own choice and at any rate, the levy of stamp duty and registration charges have no bearing whatsoever upon the question as to the assessment of the capital gains. It is not necessary to express any opinion on this contention, since it is open to the petitioner to raise this objection before the

1st respondent, which would duly be taken into consideration by him before taking any final decision in the matter.

For the aforesaid reasons, we are not inclined to interfere with the impugned notice, dated 18-02-2005, which admittedly does not determine any issue as such.

The question as to what capital gains is required to be paid by the petitioner is yet to be determined by the 1st respondent.

It is not the case of the petitioner that the very impugned notice suffers from lack of inherent jurisdiction.

In such view of the matter, we are not inclined to interdict the very impugned notice at this stage.

It shall be open to the petitioner to submit his objections to the impugned notice, dated 18-02-2005, within two weeks from today, which shall be received by the

1st respondent for his consideration. The 1st respondent shall take appropriate decision in the matter, in accordance with law, uninfluenced by the observations, if any, made in this order, since we have not expressed any opinion on the merits of the case.

With the observations as above, the Writ Petition shall stand dismissed without any order as to costs.

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B. SUDERSHAN REDDY, J

Date:13-04-2005.

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C.V. RAMULU, J

NOTE:

Furnish certified copy of the order by 15-04-2005.

(**B**/**O**)

PV

To

1) The Assistant Commissioner of Income Tax,

Circle 10(1), 7th Floor, Budha Bhavan Complex,
M.G. Road, Secunderabad.

2) The Sub Registrar (Uppal) at Uppal.

3) Two C.Cs. to G.P. for Commercial Tax,

High Court of A.P., Hyderabad (O.U.T.).

4) Two C.Cs. to G.P. for Revenue,

High Court of A.P., Hyderabad (O.U.T.).

5) Two C.D. copies.