

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

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 2863/Mds/2016
निर्धारण वर्ष / Assessment Year : 2013-14

Smt. Indira Sivaprasad,
"Rudra Prasada", 93,
V.M. Street, Mylapore,
Chennai - 600004.

v. The Income Tax Officer,
International Taxation – 1,
Chennai.

PAN : ABAPI0449N

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

&

आयकर अपील सं./ITA No. 2864/Mds/2016
निर्धारण वर्ष / Assessment Year : 2013-14

Shri Rahul Kondagunta
Sivaprasad,
"Rudra Prasada", 93,
V.M. Street, Mylapore,
Chennai - 600004.

v. The Income Tax Officer,
International Taxation – 2,
Chennai.

PAN : EIWPS7567A

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri Vepa Krishna, FCA

प्रत्यर्थी की ओर से/Respondent by

: Shri V. Nanda Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 29.12.2016

घोषणा की तारीख/Date of Pronouncement

: 28.02.2017

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

Both the appeals of the assessee are directed against the respective orders of the Commissioner of Income Tax (Appeals)-16, Chennai dated 29.07.2016 and pertains to the assessment year 2013-14. Since common issue arises for consideration in both the appeals, we heard the same together and disposing off the same by this common order. The only issue arises for consideration is determination of fair market value for the purpose of capital gain.

2. Shri Vepa Krishna, the Ld. representative for the assessee submitted that the assesseees are members of the joint family and received the subject property on a partition which took place on 01.05.2012 and accordingly adapted the indexed cost of asset as on 01.04.1981. Placing reliance on the judgment of the Bombay High Court in CIT v Manjula J Shah (2013) 355 ITR 472, the Ld. representative submitted that even though the assessee inherited the property and obtained a specific share on a partition which took place on 01.05.2012, it cannot be said that the assessee has acquired the property. The property was received by the assessee only because of inheritance from the parents. Therefore, the cost of indexation has to be adopted from the year in which the assesseees father acquired the property. Therefore the

CIT (Appeals) is not justified in confirming the order of the Assessing Officer.

3. On the contrary, Shri V. Nanda Kumar, the Ld. Departmental Representative submitted that the assessee has become the owner of the property on 01.05.2012, when the partition took place by means of a settlement deed. Therefore, the Assessing Officer and the CIT (Appeals) have rightly found that cost inflation index has to be adopted from the financial year 2012-13.

4. We have considered the rival submissions on either side and perused the material available on record. An identical issue was considered by the Bombay High Court in the case of Manjula J Shah (*supra*). The Bombay High Court found that when the property was inherited, the cost of indexation has to be adopted from the year in which the previous owner acquired the property. Inheritance of property and the allotment of specific share on a partition by means of family settlement cannot be construed as a transfer of property. Hence, the Assessing Officer is not justified in holding that the assessee acquired the property only on 01.05.2012, when the specific share of the property was allotted to the assessee. By respectfully following the judgment of the Bombay High Court in the case of Manjula J Shah (*supra*), this

Tribunal is of the considered opinion that the indexed cost of acquisition has to be adopted from the year in which the previous owner acquired the property. Therefore, we are unable to uphold the orders of both the authorities below. Accordingly, the orders of both the authorities below are set aside and the Assessing Officer is directed to adopt the cost inflation index from the year in which the previous owner acquired the property.

6. In the result both the appeals of the assessee stands allowed.

Order pronounced on 28th February, 2017 at Chennai.

Sd/-

(डि.एस. सुन्दर सिंह)
(D.S. Sunder Singh)
लेखा सदस्य/Accountant Member

Sd/-

(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 28th February, 2017.

JR.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellants
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-16, Chennai
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.