

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No.2322/Mds/2016
निर्धारण वर्ष /Assessment year : 2012-2013

Shri. Rajendra Kumar Gollapudi, **Vs.** The Income Tax Officer,
No.17/9, Sriram Nagar, Ward 1(1)
North Street, International Taxation,
Alwarpet, Chennai 600 018. Chennai.

[PAN BGFPF 2783N]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : None
प्रत्यर्थी की ओर से /Respondent by : Shri. A.V.Sreekanth, IRS, JCIT

सुनवाई की तारीख/Date of Hearing : 15-11-2016
घोषणा की तारीख /Date of Pronouncement : 23-11-2016

आदेश / ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

Assessee in this appeal is aggrieved that benefits of indexation while working out capital gains was not allowed to it, from the year in which it inherited the property.

2. Facts apropos are that assessee alongwith his father, brother and sister had sold a property wherein bearing door no.199, New No.90, Govindappa Naicken Street, Chennai measuring one ground and 334 sq.ft on 18.04.2011 for a consideration of ₹87,00,000/-, assessee's share of sale consideration ₹21,75,000/-. While computing long term capital gains, assessee took the cost of land and building with the base price of financial year 1981-82 and cost inflation index was accordingly applied. Assessee had inherited the said property through a will dated 21.07.2001 of his grandmother Smt. Durgambal Gollapuddi. Smt Durgambal Gollapuddi had expired on 05.09.2001. It seems Smt. Durgambal Gollapuddi had held this land since long. Ld. Assessing Officer was of the opinion that by virtue of definition Indexed cost of acquisition given to Explanation (iii) to Section 48 of the Act, cost inflation index that could be considered was one which was relatable to 2001-2002, when assessee became the owner of the property. According to him, assessee had claimed cost inflation index relevant to financial 1981-82 which was not in accordance with law. He reworked long term capital gains against the original long term capital gains of ₹6,40,363/- admitted by the assessee. Assessing Officer worked out long term capital gains as ₹18,00,469/- resulting an addition of ₹11,60,106/-.

3. Assessee moved in appeal before Id. Commissioner of Income Tax (Appeals) but did not meet with any success.

4. Now before us, Id. Authorised Representative strongly assailing the judgment of Hon'ble Bombay High Court in the case of *CIT vs. Manjula J. Shah* 355 ITR 474 submitted that words 'asset was held by the assessee' appearing in Explanation to clause (iii) to Sec. 48 of the Act had to be construed in accordance with object of the statute. As per Id. Authorised Representative when the property was acquired by the assessee by gift deed, assessee would be deemed to have held the capital asset from the date on which the donor acquired the property in so far as indexation benefit was concerned.

5. Per contra, Id. Departmental Representative strongly supported the orders of the authorities below.

6. We have considered the rival contentions and the orders of the authorities below. Hon'ble Bombay High Court in the case *Manjula J. Shah (supra)* held as under:-

'16. For better appreciation of the dispute, we quote the relevant part of section 48 herein :

"48. Mode of computation.—The income chargeable under the head 'Capital gains' shall be computed, by deducting from the full value of the consideration received or accruing as a result

of the result of the transfer of the capital asset the following amounts, namely :—

(i) expenditure incurred wholly and exclusively in connection with such transfer ;

(ii) the cost of acquisition of the asset and the cost of any improvement thereto : . . .

Provided further that where long-term capital gain arises from the transfer of a long-term capital asset, other than capital gain arising to a non-resident from the transfer of shares in, or debentures of, an Indian company referred to in the first proviso, the provisions of **clause** (ii) shall have effect as if for the words 'cost of acquisition' and 'cost of any improvement', the words 'indexed cost of acquisition' and 'indexed cost of any improvement' had respectively been substituted : . . .

Explanation.—For the purposes of this section,—

(iii) 'indexed cost of acquisition' means an amount which bears to the cost of acquisition the same proportion as cost inflation index for the year in which the asset is transferred bears to the cost inflation index for the first year in which the asset was held by the assessee or for the year beginning on the 1st day of April, 1981, whichever is later;

(iv) 'indexed cost of any improvement' means an amount which bears to the cost of improvement the same proportion as cost inflation index for the year in which the asset is transferred bears to the cost inflation index for the year in which the improvement to the asset took place ;

(v) 'cost inflation index', in relation to a previous year, means such Index as the Central Government may, having regard to seventy-five per cent. of average rise in the consumer price index for urban non manual employees for the immediately preceding previous year to such previous year, by notification in the Official Gazette, specify, in this behalf."

17. It is the contention of the Revenue that since the indexed cost of acquisition as per **clause** (iii) of the Explanation to section 48 of the Act has to be determined with reference to the cost inflation index for the first year in which the asset

was held by the assessee and, in the present case, as the assessee held the asset with effect from February 1, 2003, the first year of holding the asset would be the financial year 2002-03 and, accordingly, the cost inflation index for 2002-03 would be applicable in determining the indexed cost of acquisition.

18. We see no merit in the above contention. As rightly contended by Mr.Rai, learned counsel for the assessee, the indexed cost of acquisition has to be determined with reference to the cost inflation index for the first year in which the capital asset was "held by the assessee". Since the expression "held by the assessee" is not defined under section 48 of the Act, that expression has to be understood as defined under section 2 of the Act. Explanation 1(i)(b) to section 2(42A) of the Act provides that in determining the period for which an asset is held by an assessee under a gift, the period for which the said asset was held by the previous owner shall be included. As the previous owner held the capital asset from January 29, 1993, as per Explanation 1(i)(b) to section 2(42A) of the Act, the assessee is deemed to have held the capital asset from January 29, 1993. By reason of the deemed holding of the asset from January 29, 1993, the assessee is deemed to have held the asset as a long-term capital asset. If the long-term capital gains liability has to be computed under section 48 of the Act by treating that the assessee held the capital asset from January 29, 1993, then, naturally in determining the indexed cost of acquisition under section 48 of the Act, the assessee must be treated to have held the asset from January 29, 1993, and, accordingly the cost inflation index for 1992-93 would be applicable in determining the indexed cost of acquisition.

19. If the argument of the Revenue that the deeming fiction contained in Explanation 1(i)(b) to section 2(42A) of the Act cannot be applied in computing the capital gains under section 48 of the Act is accepted, then, the assessee would not be liable for long-term capital gains tax because it is only by applying the deemed fiction contained in Explanation 1(i)(b) to section 2(42A) and section 49(1)(ii) of the Act, the assessee is deemed to have held the asset from January 29, 1993, and deemed to have incurred the cost of acquisition and, accordingly, made liable for the long-term capital gains tax. Therefore, when the Legislature by introducing the deeming fiction seeks to tax the gains arising on transfer of a capital asset acquired under a gift or will and the capital gains under section 48 of the Act has to be computed by applying the deemed fiction, it is not possible to accept the contention

of Revenue that the fiction contained in Explanation 1(i)(b) to section 2(42A) of the Act cannot be applied in determining the indexed cost of acquisition under section 48 of the Act.

20. It is true that the words of a statute are to be understood in their natural and ordinary sense unless the object of the statute suggests to the contrary. Thus, in construing the words "asset was held by the assessee" in **clause** (iii) of Explanation to section 48 of the Act, one has to see the object with which the said words are used in the statute. If one reads Explanation 1(i)(b) to section 2(42A) together with sections 48 and 49 of the Act, it becomes absolutely clear that the object of the statute is not merely to tax the capital gains arising on transfer of a capital asset acquired by an assessee by incurring the cost of acquisition, but also to tax the gains arising on transfer of a capital asset, inter alia, acquired by an assessee under a gift or will as provided under section 49 of the Act where the assessee is deemed to have incurred the cost of acquisition. Therefore, if the object of the Legislature is to tax the gains arising on transfer of a capital asset acquired under a gift or will by including the period for which the said asset was held by the previous owner in determining the period for which the said asset was held by the assessee, then that object cannot be defeated by excluding the period for which the said asset was held by the previous owner while determining the indexed cost of acquisition of that asset to the assessee. In other words, in the absence of any indication in **clause** (iii) of the Explanation to section 48 of the Act that the words "asset was held by the assessee" has to be construed differently, the said words should be construed in accordance with the object of the statute, that is, in the manner set out in Explanation 1(i)(b) to section 2(42A) of the Act.

21. To accept the contention of the Revenue that the words used in **clause** (iii) of the Explanation to section 48 of the Act has to be read by ignoring the provisions contained in section 2 of the Act runs counter to the entire scheme of the Act. Section 2 of the Act expressly provides that unless the context otherwise requires, the provisions of the Act have to be construed as provided under section 2 of the Act. In section 48 of the Act, the expression "asset held by the assessee" is not defined and, therefore, in the absence of any intention to the contrary the expression "asset held by the assessee" in **clause** (iii) of the Explanation to section 48 of the Act has to be construed in consonance with the meaning given in section 2(42A) of the Act. If the meaning given in section 2(42A) is not adopted in construing the words used in

section 48 of the Act, then the gains arising on transfer of a capital asset acquired under a gift or will be outside the purview of the capital gains tax which is not intended by the Legislature. Therefore, the argument of the Revenue which runs counter to the legislative intent cannot be accepted.

22. Apart from the above, section 55(1)(b)(2)(ii) of the Act provides that where the capital asset became the property of the assessee by any of the modes specified under section 49(1) of the Act, not only the cost of improvement incurred by the assessee but also the cost of improvement incurred by the previous owner shall be deducted from the total consideration received by the assessee while computing the capital gains under section 48 of the Act. The question of deducting the cost of improvement incurred by the previous owner in the case of an assessee covered under section 49(1) of the Act would arise only if the period for which the asset was held by the previous owner is included in determining the period for which the asset was held by the assessee. Therefore, it is reasonable to hold that in the case of an assessee covered under section 49(1) of the Act, the capital gains liability has to be computed by considering that the assessee held the said asset from the date it was held by the previous owner and the same analogy has also to be applied in determining the indexed cost of acquisition.

23. The object of giving relief to an assessee by allowing indexation is with a view to offset the effect of inflation. As per CBDT Circular No. 636, dated August 31, 1992 (see [1992] 198 ITR (St.) 1) a fair method of allowing relief by way of indexation is to link it to the period of holding the asset. The said circular further provides that the cost of acquisition and the cost of improvement have to be inflated to arrive at the indexed cost of acquisition and the indexed cost of improvement and then deduct the same from the sale consideration to arrive at the long-term capital gains. If indexation is linked to the period of holding the asset and in the case of an assessee covered under section 49(1) of the Act, the period of holding the asset has to be determined by including the period for which the said asset was held by the previous owner, then obviously in arriving at the indexation, the first year in which the said asset was held by the previous owner would be the first year for which the said asset was held by the assessee.

24. Since the assessee, in the present case, is held liable for long-term capital gains tax by treating the period for which the capital asset in question was held by the previous owner

as the period for which the said asset was held by the assessee, the indexed cost of acquisition has also to be determined on the very same basis”.

It has been clearly held by their lordship that for the purpose of indexation, the period of holding of the donor has also to be considered. We are therefore, of the opinion that assessee was eligible for the claim. Grounds raised by the assessee are allowed.

7. In the result, appeal of the assessee is allowed.

Order pronounced on Wednesday, the 23rd day of November, 2016, at Chennai.

Sd/-

(एन.आर.एस. गणेशन))

(N.R.S. GANESAN)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 23rd November, 2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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