

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

श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं
श्री एस. एस. गोदारा, न्यायिक सदस्य के समक्ष

BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER &
SHRI S.S. GODARA, JUDICIAL MEMBER

आयकर अपील सं./ I.T.A. No.2900/Mds/2014
(निर्धारण वर्ष / Assessment Year : 2005-2006)

Smt. Mekala Mahalingam,
by PAO Holder S. Gopinath,
C/o. M/s. Gopi Kumar Associates,
Chartered Accountants,
AP 345, 36th Street, 7th Sector,
K.K.Nagar, Chennai 600 078.

The DDIT.
Vs International Taxation,
Chennai.

[PAN: ANEPM 9562A]

आयकर अपील सं./ I.T.A. No.2901/Mds/2014
(निर्धारण वर्ष / Assessment Year : 2005-2006)

Smt. Kalaiarasi Mahalingam,
by PAO Holder S. Gopinath,
C/o. M/s. Gopi Kumar Associates,
Chartered Accountants,
AP 345, 36th Street, 7th Sector,
K.K.Nagar, Chennai 600 078.

The DDIT.
Vs International Taxation,
Chennai.

[PAN: ARBPK 6688G]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri. M. Narayanan, Retd Addl. CIT.
प्रत्यर्थी की ओर से / Respondent by : Shri. P. Radhakrishnan, IRS, JCIT.

सुनवाई की तारीख/Date of hearing : 25.02.2015
घोषणा की तारीख /Date of Pronouncement : 27.02.2015

आदेश / O R D E R

PER S.S. GODARA, JUDICIAL MEMBER

These two appeals by different assesseees emanate from separate orders; both dated 05.09.2014, passed by the Commissioner of Income Tax-VII, Chennai, in ITAs No.383 and 384/13-14 respectively, sustaining long term capital gains of ₹23,94,560/- each, in proceedings u/s. 143(3) r.ws. 147 of the Income Tax Act, 1961 [in short the "Act"]. The relevant assessment year is 2005-2006.

2. The assesseees' identical grounds pleaded in the appeals read as under:-

1. The order of the learned Commissioner of Income Tax (Appeals) is bad in law and against the facts and circumstances of the case.

2. The learned Commissioner of Income Tax (Appeals) erred in not granted the indexation from the date of holding of the property by the father, the first owner who bought it.

3. The learned Assessing Officer having accepted in the Assessment order that the assessee got her share of 37.5% on the death of her father and later her mother, should have allowed indexation from the dates of holding by the father.

4. The learned Commissioner of Income Tax erred in dismissing the appeal by not following the Superior decisions without explaining how he facts are different in assessee's case.

5. For these and other grounds that may be taken at the time of hearing the appeal, it is prayed that the indexation as claimed by the assessee appellant may be allowed."

Both the learned representatives inform us that these assessees are real sisters. The issue in question of long term capital gains is also stated to have been arisen from the same capital asset. Thus, we take up ITA No.2900/Mds/2014 as the 'lead case'.

3. The assessee/ an 'individual' is permanently settled in Britain. She is daughter of Shri. P. Mahalingam and Smt. Saraswathi Mahalingam. Both of them were Indian citizens. Shri. Mahalingam had purchased a plot in Ashok Nagar in the year 1976. He raised super structure thereupon in the years 1977, 1986 and 1990. Shri. Mahalingam expired in the year 1999 leaving behind his mother, wife, his two daughters ie the assessee and her sister having equal shares of $\frac{1}{4}$ each in the property. The assessee's mother expired in the year 2004. Her share also devolved in favour of the assessee and her sister. This made both of them to be owners having 37.5% share each.

4. The assessee, her sister and grandmother sold the aforesaid property on 11.03.2005 for ₹70,00,000/-. She filed her return on

13.07.2006 stating total income of ₹18,59,150/-. The same was 'summarily' processed.

5. The Assessing Officer took up 'scrutiny'. He noticed that the assessee had not taken into consideration section 48 Explanation (iii) for computing cost inflation index of the property sold. Notice u/s.148 stood issued on 31.03.2009. The assessee reiterated her 'return' already filed. She challenged the initiation of section 147 proceedings. The Assessing Officer rejected her objections in a separate order dated 21.09.2010. He took up the case on merits. He observed in assessment order dated 21.12.2010 that the assessee had held the property in the year 2004 and cost inflation index as per section 48 explanation (iii) would apply from the said financial year only. This resulted in computation of the impugned long term capital gains of ₹23,94,562/-.

6. The Commissioner of Income Tax (Appeals) has affirmed the Assessing Officer findings on legality of reopening as well as on merits. Therefore, the assessee has filed the instant appeal.

7. We have heard both sides and perused the case file. The

assessee's sole substantive contention before us is that cost inflation index has to be calculated in the hands of previous land owner/her father. There is no dispute on facts. The assessee's father had purchased the property in question in the year 1976. He passed away in the year 1999. The assessee inherited this capital asset. She acquired 12.5% share on death of her mother in the year 2004. Section 49(1)(iii) specifically prescribes that where the capital asset becomes property of the assessee by succession, inheritance or devolution, its cost of acquisition shall be deemed to be the cost for which the previous owner of the property acquired it, as increased by the cost of any improvement..... This is followed by further Explanation defining previous owner as the last previous owner of the capital asset who acquired it by a mode of acquisition other than those stated in clauses (i) to (iv) of section 49(1). The assessee's father had purchased the plot in the year 1976. This mode does not fall in any of the acquisition instances in clauses (i)-(iv) stated hereinabove. Therefore, we hold that this specific provision prevails over section 48(iii); which is otherwise a definition clause. The hon'ble Bombay high court in [2013] 355 ITR 474 CIT vs. Manjula J. Shah has approved Special Bench decision of the 'tribunal' in the very case [2009] 318 ITR (AT) 471 (Mumbai) (SB) holding that cost indexation

has to be from the date the previous owner acquired ownership of the capital asset sold. The Revenue fails to quote any judicial precedent to the contrary. Therefore, the assessee grounds are accepted. We direct the Assessing Officer to re-compute capital gains afresh by taking cost indexation from the financial year in which Shri. Mahalingam had purchased the property or from 01.04.1981; whichever is later. The assessee's appeal ITA No.2900/Mds/2014 is allowed.

8. Same order to follow in ITA No. 2901/Mds/2014.

Both appeals ITAs No.2900 & 2901/Mds/2014 are allowed.

Order pronounced on Friday, the 27th of February, 2015 at Chennai.

Sd/-
(ए. मोहन अलंकामणी)
(A.MOHAN ALANKAMONY)
लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-
(एस. एस. गोदारा)
(S.S. GODARA)
न्यायिक सदस्य/ JUDICIAL MEMBER

चेन्नई/Chennai.

दिनांक/Dated:27.02.2015.

KV

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.

