



ITA No.948/Mum/2017  
Kershaw Burjor Colabawalla  
Assessment Year-2012-13

**आयकर अपीलीय अधिकरण “एच” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“H” BENCH, MUMBAI**

जोगिन्दर सिंह, न्यायिक सदस्य एवं  
श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।  
**BEFORE SHRI JOGINDER SINGH, JM AND**  
**SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./I.T.A. No.948/Mum/2017  
(निर्धारण वर्ष / Assessment Year: 2012-13)

<b>Income Tax Officer</b> <b>(International Taxation)-2(1)(1)</b> Room No.1724, 17 <sup>th</sup> Floor Air India Building, Nariman Point Mumbai-400 020	<b>बनाम/</b> <b>Vs.</b>	<b>Kershaw Burjor Colabawalla</b> A3, Ben Nevis Bhulabhai Desai Road Breach Candy Mumbai-400 0036
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. <b>AAAPC-5583-E</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	None
<b>Revenue by</b>	:	Rajat Mittal, Ld. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	21/06/2018
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	04/07/2018

**आदेश / O R D E R**

**Per Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by revenue for Assessment Year [AY] 2012-13 contest the order of the Ld. Commissioner of Income-Tax (Appeals)-57 [CIT(A)], Mumbai, *Appeal No.CIT(A)-57/Arr.74/2016-17* dated 24/10/2016 by raising the following sole ground of appeal:-

1. “Whether on the facts and in the circumstances of the case and in Law, the Ld. CIT(A) has erred in holding that while computing the capital gains arising on transfer of capital asset acquired by the assessee under a gift, the indexed cost of acquisition



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*has to be computed with reference to the year in which the previous owner first held the asset and not the year in which the assessee became the owner of the asset?"*

The assessment for impugned AY was framed by *Ld. Income Tax Officer (International Taxation)-2(1)(1), Mumbai [AO] u/s 143(3) of the Income Tax Act,1961* on 17/03/2015 determining total income at Rs.115.61 Lacs. None has appeared for assessee since *RPAD* notice has returned back undelivered and updated address of the assessee is not available on record. Left with no option, we proceed to dispose-off the same on the basis of material available on record and after hearing *Ld. Departmental Representative [DR], Sh. Rajat Mittal*. The only dispute involved under the appeal is the year from which the indexation benefit shall be available to the assessee in case of inheritance while arriving at certain capital gains earned by the assessee during impugned AY.

2. During assessment proceedings, it was noted that the assessee earned certain capital gains on sale of a residential flat, which devolved upon the assessee during Financial Year [FY] 2002-03 consequent to death of assessee's father. The said flat was acquired by the original owner prior to 01/04/1981. Accordingly, the assessee claimed indexation benefit against the same from FY 1981-82. However, considering the provisions of section 48, *Ld. AO* opined that indexation benefit was available only since FY 2002-03, being the year in which the flat actually devolved upon the assessee. Resultantly, the indexation benefit was allowed only from FY 2002-03 which resulted into Long Term Capital Gains being computed at Rs.115.61 Lacs in the hands of the assessee.

3. Aggrieved, the assessee contested the same with success before *Ld. CIT(A)* vide impugned order dated 24/10/2016 wherein *Ld. CIT(A)*,



relying on the judgment of Hon'ble Bombay High Court rendered in *Manjula V. Shah Vs DCIT [355 ITR 474]* concurred with the stand of the assessee. Aggrieved, the revenue is in further appeal before us. The Ld. DR has supported the stand of Ld. AO.

4. Upon due consideration, we find that the issue under hand, at present, stood squarely covered in assessee's favour by the cited judgment of Hon'ble Bombay High Court. Although, it is observed that *Special Leave Petition* against the said judgment has been admitted by Hon'ble Apex Court Vide *SLP No. 19924/2012*, yet the operation of the judgment has not been stayed in any manner by the Hon'ble Apex Court and the ratio of the decision, at present, is binding on us. The revenue has neither disputed the basic factual matrix nor able to bring on record any contrary judgment to support the stand of Ld. AO. Therefore, concurring with the stand of Ld. CIT(A), we dismiss the revenue's appeal.

5. Resultantly, the revenue's appeal stands dismissed.

*Order pronounced in the open court on 04<sup>th</sup> July, 2018.*

Sd/-  
**(Joginder Singh)**  
न्यायिक सदस्य / **Judicial Member**

Sd/-  
**(Manoj Kumar Aggarwal)**  
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 04 .07.2018.  
Sr.PS:-Thirumalesh



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**आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai**