

**IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI**

**BEFORE SHRI RAMIT KOCHAR, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No.2111/Mum/2018

(निर्धारण वर्ष / Assessment Year: 2014-15)

ITO (IT)-2(3)(1) 17 <sup>th</sup> Floor, Room No.1727, Air India Building, Nariman Point, Mumbai-400021.	<b>बनाम/</b> Vs.	Semine Fazalbhoy Flat No.9, Kamal Mahal, Charmichael Road, Mumbai- 400026.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAHPF6321L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Dr. Narender Kumar (DR)	
Assessee by:	Shri Mahendra Sanghavi	

सुनवाई की तारीख / Date of Hearing: 24/07/2019

घोषणा की तारीख /Date of Pronouncement: 29/07/2019

**आदेश / O R D E R**

**PER AMARJIT SINGH, JM:**

The revenue has filed the present appeal against the order dated 29.01.2018 passed by the Commissioner of Income Tax (Appeals) -56, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2014-15.

2. The revenue has raised the following grounds: -

- "1. 1. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by AO by relying on the judgement of Bombay High Court in the case of Manjula Shah Vs DCIT reported in 355 ITR 474 (Bom) (2013) when the SLP filed in the said case is pending before SC?"



2. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing the AO that indexed cost of acquisition should be taken from the year in which previous owner acquired the asset i.e. 01.04.1981 and not from the year in which assessee became owner of the asset for the purpose of computation of LTCG?"*
3. *The Appellant prays that the order of the Ld. CIT(A) on the above ground be set aside and that of the Assessing Officer be restored.*
4. *The Appellant craves leave to amend or alter any ground or add a new ground which may be necessary."*

3. The brief facts of the case are that the assessee filed her return of income on 30.11.2014 declaring total income to the tune of Rs.77,38,27,120/- for the A.Y.2014-15. Thereafter, the assessee filed the revised return of income on 24.12.2015 declaring total income to the tune of Rs.77,38,27,120/-. The return was processed u/s 143(1) of the I.T. Act, 1961 accepting the returned income. Thereafter, the case was selected for scrutiny under CASS. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. During the year under consideration, the assessee derived income from house property, capital gains and income from other sources. On verification, it was found that the assessee received capital gains on sale of property (tenancy rights) situated at glaims villa received by way of Gift from her mother-in-law, Mrs. Nermeen Fatehali Fazalbhoi. The assessee received the net sale proceeds from the said property of Rs.135,91,50,000/- after availing indexation on cost of property. Out of sale proceeds the assessee invested Rs.50,00,000/- in specified bonds and claimed deduction u/s 54EC. The assessee also purchased new property and claimed exemption u/s 54 and net capital gains



has been shown of Rs.77,20,99,613/- which was offered for taxation as long term capital gains.

4. The assessee calculated capital gain after availing indexation from F.Y.1981-82 on cost of property from the date of property held by the previous owner on 28.07.1981. The AO for the purpose of indexation considered the date on which the assessee received the property i.e.16.04.2008 in the F.Y.2008-09 and accordingly assessed the long term capital gain in sum of Rs.88,51,20,979/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who allowed the claim of the assessee, therefore, the revenue has filed the present appeal before us.

5. We have heard the arguments advanced by the Ld. Representative of the parties and perused the record. The Ld. Representative of the revenue has argued that the CIT(A) has decided the matter of controversy on the basis of the decision in the case of **Manjula J. Shah Vs. CIT (2013) 355 ITR 474 Bombay High Court** which was not accepted by Department and the Department has filed the appeal of the Supreme Court, therefore, in the said circumstances, the finding of the CIT(A) is not justifiable, hence, is liable to be set aside and the long term capital gain is liable to be considered w.e.f. dated 16.04.2008 the date on which the assessee became the owner of the property in question. However, on the other hand, the Ld. Representative of the assessee has strongly relied upon the order passed by the CIT(A) in question. Before going further, we deem it necessary to advert the finding of the CIT(A) on record.:-

*"8. Before me AR of appellant reiterated decision in CIT-12 Vs. Manjula J. Shah(2012) 204 Taxman 691. The matter is examined. The decision of jurisdiction High Court is binding. The Hon'ble Supreme Court has not*



*given the verdict on SLP. As judicial discipline is needed in decision making in appeal, I following the decision in CIT-12 Vs. Manujla J. Shah (2012) 204 Taxman 691 and allow the grounds of appeal as facts and circumstances of case are identical.”*

6. The factual position is not in dispute that the assessee received the capital gain on sale of property (tenancy right) situated at glaims villa received by way of Gift from her mother-in-law, Mrs. Nermeen Fatehali Fazalbhoy. The assessee received the net sale proceeds from the said property of Rs.135,91,50,000/- after availing indexation on cost of property. The assessee deposited in sum of Rs.50,00,000/- in specified bonds and claimed deduction u/s 54EC. The assessee has also purchased new property and claimed exemption u/s 54 and showed the net capitals gains of Rs.77,20,99,613/- which was offered for taxation as long term capital gains. The assessee calculated the capital gain after availing indexation from F.Y.1981-82 on cost of property the date of which when the property was held by the previous owner on 28.07.1981. The CIT(A) has placed reliance upon the order passed by Bombay High Court in case of **CIT-12 Vs. Manujla J. Shah (2012) 204 Taxman 691**. According to the said decision, the indexation benefit shall be available to the assessee even for the period held by previous owner also when the property was inherited. In the present circumstances, the assessee received the property from her Mother-in law who gifted the said property which is within the family. The verdict of the case of Majula J. Shah (supra) has come from the Hon'ble Supreme Court. The copy of order passed by Hon'ble Supreme Court in case of SLP No.19924/2012 dated 18.09.2018 is on the file in which the SLP filed by revenue has been ordered to be dismissed due to low tax effect. No law contrary to the law relied by the Ld. Representative of the



ITA No. 2111/M/2018  
A.Y.2014-15

assessee has been produced before us. In view of the said circumstances, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfered with at this appellate stage. Accordingly, this issue is being decided in favour of the assessee against the revenue.

**7. In the result, the appeal filed by the revenue is hereby ordered to be dismissed.**

Order pronounced in the open court on 29/07/2019.

Sd/-

(RAMIT KOCHAR)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated :29/07/2019

Vijay/Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**