

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND  
SHRI N.K. PRADHAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NO. 5670/MUM/2017 (A.Y: 2013-14)**

Income Tax Officer (IT) – 2(2)(1) Room No. 1725, 17 <sup>th</sup> Floor Air India Building, Nariman Point Mumbai – 400 021	v.	Shri Shavji Lalji Hirani G-7, Amidhaval Society Highway Service Road Vile Parle (W) Mumbai - 400057  <b>PAN: AFAPH5471F</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

**Assessee by : Shri Rahul K. Hakani**

**Department by : Shri Udaya B. Jakke**

**Date of Hearing : 28.01.2020**

**Date of Pronouncement : 23.10.2020**

**ORDER**

**PER C.N. PRASAD (JM)**

**1.** This appeal is filed by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals) – 56, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 02.06.2017 for the A.Y. 2013-14.

**2.** Revenue in its appeal has raised following grounds: -

"1. *"On the facts and the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by AO on 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 not deciding whether the cost of acquisition should be taken as 47,910/- i.e. the actual purchase price of assessee's parents or at Rs. 75,60,000/- which is as per report of the valuer furnished by the assessee."*

3. *The Appellant prays that the order of the Ld. CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored."*

**3.** Briefly stated the facts are that, Assessing Officer while completing the assessment noticed that during the assessment year under consideration the assessee sold one residential flat gifted by his mother to the assessee. Assessee and his brother are the two legal heirs of the said flat and they own the said flat by way of gift deed executed on 30.12.2005. The property was acquired prior to 1981. The assessee while working out the long term capital gain the value of the property has been for indexation as on 1981 and the period till the sale of the property. The Assessing Officer proposed not to allow indexation for the property. However, assessee relying on the decision of the Hon'ble Bombay High Court in the case of Manjula J. Shah v. CIT [16 taxmann.com 42] submitted that while computing the capital gains arising on transfer of a capital asset acquired by assessee under a gift, indexed cost of acquisition

has to be computed with reference to the year in which previous owner first held the property and not the year in which assessee become the owner of the property. This was not accepted by the Assessing Officer observing that the Department has not accepted the decision of the Hon'ble Bombay High Court in the case of Manjula J. Shah (supra) and SLP was filed and the same is pending.

**4.** Ld.CIT(A) following the decision of the Hon'ble Bombay High Court in the case of Manjula J. Shah *v.* CIT (supra) held that the benefit of indexation for computation of capital gains arising on transfer of capital asset acquired under a gift should be with reference to the year in which the previous owner first held the asset and not the year in which assessee become the owner of the property. Ld.CIT(A) allowed the claim of the assessee.

**5.** Ld. DR vehemently supported the order of the Assessing Officer and Ld. Counsel for the assessee strongly placed reliance on the order of the Ld.CIT(A) and also order of the Tribunal in the case of ITO *v.* Shri Hirji Lalji Hirani in ITA.No. 5669/Mum/2017 dated 10.01.2019.

**6.** We have heard the rival submissions, perused the orders of the authorities below and the order of the Coordinate Bench in the case of ITO v. Shri Hirji Lalji Hirani (supra) who is the brother of the assessee and is the co-owner of the property. In the case of assessee's brother the Tribunal considered the very same property and the period for which indexation has to be allowed to the assessee, and held as under:

*"7. We have heard the rival submissions of both the parties and perused the material on record including the decision cited by the Id. AR and copy of the decision of the Hon'ble Supreme Court in the case of appeals filed by the Revenue against the order of Hon'ble Bombay High Court in the case of Manjula J. Shah (supra). We observe from the order of AO that the AO has not followed the binding decision of the Hon'ble Bombay High Court in the above case on the ground that Revenue has filed appeal before the Hon'ble Supreme Court against the said order. Ld. CIT(A) has allowed the appeal of the assessee on the ground of ratio laid down by the Hon'ble Bombay High Court in the above decision being a binding decision in view of the jurisdictional High Court. Ld. CIT(A) has passed a reasoned and speaking order which in any case is also have the authority of the Hon'ble High Court as the appeal of the Revenue has been dismissed by the Hon'ble Supreme Court and the decision of Hon'ble Bombay High Court has attained its finality. In view of these facts, we hold that the order passed by the CIT(A) is correct and proper, which requires no interference at our end. Accordingly, we dismiss the grounds raised by the Revenue."*

**7.** Following the same we hold that there is no infirmity in the order of the Ld.CIT(A) and the same is sustained. Grounds raised by the revenue are rejected.

**8.** In the result, appeal of the Revenue is dismissed.

9. Before parting, we noticed that this appeal was heard on 28.01.2020 and the pronouncement is delayed due to lockdown in view of COVID-19 pandemic. The pronouncement is as per Rule 34(5) of Income Tax Appellate Tribunal Rules, 1963 and Hon'ble Bombay High Court decision vide orders dated 15.04.2020 and 15.06.2020 extending the time bound periods specified by Hon'ble High Court by removing the period under lockdown. This aspect was also dealt with in detail by the Mumbai Bench of the Tribunal in case of DCIT v. JSW Steel Vide order dated 14.05.2020 in ITA.No. 6264/Mum/2018.

Order pronounced on 23.10.2020 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-  
**(N.K. PRADHAN)**  
**ACCOUNTANT MEMBER**  
Mumbai / Dated 23/10/2020  
Giridhar, Sr.PS

Sd/-  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**