

IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT  
AND SHRI A K GARODIA, ACCOUNTANT MEMBER

ITA No.260/Bang/2019
Assessment year: 2013-14

Shri Dharamchand Bafna, No.14, 3 <sup>rd</sup> Cross, N.S. Iyengar Street, Kumara Park West, Bengaluru – 560 020. Bangalore – . <b>PAN: ABUPB 5851B</b>	Vs.	The Income Tax Officer, Ward 2(2)(1), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Smt. Suman Lunkar, CA
Respondent by	:	Smt. R. Premi, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	22.10.2020
Date of Pronouncement	:	26.10.2020

**ORDER**

*Per N.V. Vasudevan, Vice President*

This appeal by the assessee is against the order dated 31.12.2018 of the CIT(Appeals), Bengaluru-2, Bengaluru relating to assessment year 2013-14.

2. This appeal was originally heard and decided by this Tribunal vide order dated 30.12.2019. The issue that arose for consideration in the aforesaid appeal was with regard to computation of long term capital gain. Three aspects of computation of long term capital gain was required to be examined in the appeal viz.:-

- i) Denial of exemption u/s. 54 of the Act;
- ii) adoption of guideline value u/s. 50C of the Act; and
- iii) not granting indexation benefit from the year in which property was acquired by the previous owner as the assessee got the property way of gift. The benefit of indexation was granted only from the year in which the assessee got the property way of gift.

3. The Tribunal in the order dated 30.12.2019 allowed the benefit of exemption u/s. 54 of the Act and further observed in the order that since deduction u/s. 54 is allowed, there would be no long term capital gain that remains for taxation and therefore the other two issues referred to above academic and are not being adjudicated.

4. The assessee filed a Miscellaneous Petition in MP No.66/Bang/2020 pointing out that even after allowing deduction u/s. 54 of the Act, there would still be long term capital gain that would be chargeable to tax and therefore adjudication of the other two issues would also be vital. It was submitted that the order of Tribunal suffers from a mistake apparent on the face of record inasmuch as the Tribunal has proceeded on the basis that consequent to allowing deduction u/s. 54, there would be no long term capital gain that would remain for taxation. The Tribunal vide order dated 14.08.2020 allowed the MP on the above issue observing as follows:-

“6. We have considered the submissions of the Id. counsel for the assessee and are of the view that there is a mistake apparent on the face of record inasmuch as even after allowing deduction u/s 54 of the Act, there would still be long term capital gain that would be chargeable to tax and therefore the question of period from which indexation benefit should be allowed to the assessee ought to have been adjudicated. We accordingly recall the order of the Tribunal dated 30.12.2019 for the limited purpose of examining the question with reference to period for which the assessee should be allowed the benefit of indexation while computing the long term capital gain. The Registry is directed to post the appeal for hearing in due course with notice to the parties.”

5. Accordingly the appeal was taken up for hearing on the issue. We have heard the rival submissions. As far as the issue of allowing benefit of indexation is concerned, the facts are that the property which was subject matter of transfer was purchased by the father and mother of assessee under a Sale Deed dated 15.9.1980. The property was given by way of gift by the assessee on 15.3.2006. The AO allowed the benefit of indexation only from AY 2005-06 taking a view that benefit of indexation will be available only from the period when property was given by way of gift to the Assessee. It was the plea of assessee that since property was acquired in the year 1980 and since as per the provisions of Explanation (1) to section 2(42A) and the provisions of section 49(1) of the Act, if the property is acquired by way of gift, then the period of holding as well as the date of acquisition of the property should be reckoned from the date on which the predecessor of the assessee acquired the property. These submissions are contained in para 15.3.3 to 15.3.12 of the CIT(A)'s order. Though the submissions have been extracted, the CIT(Appeals) has, however, not considered those submissions and has not rendered any finding on the above issue.

6. Be that as it may, we find that the issue of allowing the benefit of indexation in a case where property is acquired by way of gift has been considered and decided by the Hon'ble Bombay High Court in the case of *CIT v. Manjula J. Shah, 355 ITR 474 (Bom)*. The Court held that legislature by introducing deeming fiction seeks to tax gains arising on transfer of a capital asset acquired under a gift or will and, capital gain under section 48 has to be computed by applying deemed fiction and that fiction contained in Explanation 1(i)(b) to section 2(42A) has to be applied in determining indexed cost of acquisition under section 48 of Act also. Therefore, while computing capital gains arising on transfer of a capital asset acquired by assessee under a gift or will, indexed cost of acquisition has to be

computed with reference to year in which previous owner first held asset and not year in which assessee became owner of asset.

7. The Hon'ble High Court of Karnataka in the case of *CIT v. Smt. Asha Machaiah [2014] 48 taxmann.com 381* applied the same analogy to acquisition of property by way of inheritance holding that when an asset is acquired by way of inheritance, cost of acquisition of asset should be calculated on basis of cost of acquisition to previous owner and said cost of acquisition of previous owner has to be calculated on basis of indexed cost of acquisition as provided in Explanation (3) to section 48.

8. In our view, the reasoning applicable when property is acquired by way of inheritance and when the same is acquired by way of gift, cannot be different. We are, therefore, of the view that the assessee should be allowed the benefit of indexation from AY 198-81. We hold and direct accordingly and allow the relevant grounds of appeal.

Pronounced in the open court on this 26<sup>th</sup> day of October, 2020.

Sd/-  
( A K GARODIA )  
ACCOUNTANT MEMBER

Sd/-  
( N V VASUDEVAN )  
VICE PRESIDENT

Bangalore,  
Dated, the 26<sup>th</sup> October, 2020.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.