

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

श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष  
**BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER AND**  
**SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

अपील सं./ITA No.3096/Chny/2018

निर्धारण वर्ष /Assessment Year: 2015-16

**Ms. Wundevalli Krishna Deepthy,**  
New No.32, Old No.19, F-3, I Floor,  
Jains Anurag Apartments, Arcot Street,  
T. Nagar, Chennai – 600 017.

**Vs.** The Income Tax Officer,  
Non corporate Ward – 1(4),  
Chennai.

**[PAN: DQDPK 5546M ]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri Vishva Padmanabhan, C.A

प्रत्यर्थी की ओर से /Respondent by

: Shri G. Chandrababu, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 04.02.2021

घोषणा की तारीख /Date of Pronouncement

: 24.02.2021

**आदेश / ORDER**

**PER SHRI S. JAYARAMAN, ACCOUNTANT MEMBER :**

The Assessee filed this appeal against the order of the Commissioner of Income Tax (Appeals)-2, Chennai, in ITA No.55/2017-18/A.Y. 2015-16/CIT(A)-2 dated 27.09.2018 for the assessment year 2015-16.

2. The assessee's father had purchased a property located at T. Nagar, Chennai on 20.04.1982 and settled it in favour of the assessee's brothers and reserving life interest to his wife, Smt. Jayashree vide

settlement document No.531 dated 11.03.2008. The assessee's brothers and her mother, in turn settled 1/3<sup>rd</sup> of the total property to Ms. Krishna Deepthy, the assessee vide settlement document No.900 dated 28.04.2011. During the period relevant to this assessment year 2015-16, the assessee and her brothers jointly sold the property and the assessee claimed exemption u/s. 54 of the Income Tax Act, 1961 towards re-investment made in another residential property. While making the assessment, the AO found, inter alia, that the assessee had claimed the indexed cost of acquisition of the property, which included the cost of land and building relating to the year 1982 and she claimed indexed cost of improvement towards additional construction made in the year 1985. The AO relying on the provisions of s. 48 of the Act, held that for the purpose of indexed cost of acquisition, the year has to be reckoned with the first year in which the asset was held by the assessee and accordingly, he worked out the indexed cost of acquisition applying the cost inflation index for the year 2011 in which the asset is first held by the assessee. With regard to the investment made in additional floors in the year 1985, the AO restricted the rate per sq. ft. claimed by the assessee at Rs. 380/- for the reason that it was almost three times the cost adopted by the assessee in the year 1982 and estimated the cost at Rs. 175/- per sq. ft. and thus arrived long term capital gain in the assessee's hand. The assessee claimed Rs. 1,33,333/- as brokerage for acquiring

the new property and the AO asked to produce the evidence towards that claim. Since, the assessee could not produce any evidence he refused to allow the claim made by the assessee. Aggrieved against that order, the assessee filed an appeal before Ld. CIT(A). The Ld. CIT(A) partly allowed the appeal. Aggrieved against order, the assessee filed this appeal.

3. The case was heard through video conferencing. The Ld. AR submitted that the Ld. CIT(A) failed to appreciate the fact that the assessee's father purchased the property on 20.04.1982 and settled the same in favour of her brothers and reserving life interest to his wife, Smt. Jayashree vide a settlement document No.531 dated 11.03.2008. In turn, the brothers and mother settled 1/3<sup>rd</sup> of the property to the assessee vide settlement deed No. 900 dated 28.04.2011. During the period relevant to this assessment year 2015-16, the assessee and her brothers jointly sold the property and the assessee claimed exemption u/s. 54 of the Act towards re-investment made in another residential property. Therefore, the Ld. CIT(A) ought to have held that the previous owner of the property is the assessee's father in accordance with the Explanation below section 49(1). The Ld. CIT(A) erred in concluding the period of holding of the capital asset by the previous owner should be reckoned from 11.03.2008 and not from the date when the 'previous to previous owner'

had held the property. In this regard, the Id. AR invited our attention to Explanation below sub section (1) of s. 49, which is extracted as under:

***“Cost with reference to certain modes of acquisition.***

49. (1) *Where the capital asset became the property of the assessee—*
- (i) *on any distribution of assets on the total or partial partition of a Hindu undivided family;*
  - (ii) *under a gift or will;*
  - (iii) (a) *by succession, inheritance or devolution, or*  
 (b) *on any distribution of assets on the dissolution of a firm, body of individuals, or other association of persons, where such dissolution had taken place at any time before the 1st day of April, 1987, or]`~~~~~`*  
 (c) *on any distribution of assets on the liquidation of a company, or*  
 (d) *under a transfer to a revocable or an irrevocable trust, or*  
 (e) *under any such transfer as is referred to in clause (iv) or clause (v) [or clause (vi)] [or clause (via)] [or clause (viaa)] [or clause (vica) or clause (vicb)] of section 47;*

- (iv) *such assessee being a Hindu undivided family, by the mode referred to in sub-section (2) of section 64 at any time after the 31st day of December, 1969,]*

*the cost of acquisition of the asset 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 of the assets incurred or borne by the previous owner or the assessee, as the case may be.*

*Explanation.— In this [sub-section] the expression “previous owner of the property” in relation to any capital asset owned by an assessee means the last previous owner of the capital asset who acquired it by a mode of acquisition other than that referred to in clause (i) or clause (ii) or clause (iii) [or clause (iv)] of this 64[sub-section].]”*

And submitted that in this case, the previous owner is the last previous owner of the capital asset i.e., the assessee’s father, who acquired it by a mode of acquisition other than that referred to in clause (i) or clause (ii) or clause (iii) or clause (iii) or clause (iv) of sub section (1) of section 49 of the Act. In this regard, the Id. AR relied on the decision of Hon'ble Jurisdictional High Court in CIT vs. Minor Shanthi Chandran

[2000] 241 ITR 0371 (Mad) and the decision in the case of CIT vs. Janhavi S. Desai [2012] 209 Taxman 0289 (Bom). With regard to the issue of estimating the rate towards additional construction in the year 1985 at Rs. 175/-, the Id. AR inviting our attention to the grounds taken before the Ld. CIT(A) vide ground No. iv, v, vi, vii and viii and also inviting our attention to para 17 of the order of the Ld. CIT(A) submitted that the Ld. CIT(A) failed to adjudicate this issue while disposing the appeal. With regard to the brokerage expenditure claimed by the assessee, the Ld. AR submitted that without incurring that expenditure the assessee would not have acquired the property and hence pleaded to allow the appeal. Per contra, the Id. DR supported the orders of the lower authorities.

4. We have heard the rival submissions and perused the material available on record. The assessee's father had purchased a property located at T. Nagar, Chennai on 20.04.1982 and settled it in favour of the assessee's brothers and reserving life interest to his wife, Smt. Jayashree, vide a settlement document No.531 dated 11.03.2008. The assessee's brothers and her mother, in turn settled 1/3<sup>rd</sup> of the total property to Ms. Krishna Deepthy, the assessee, vide settlement document No.900 dated 28.04.2011. During the period relevant to this assessment year 2015-16, the assessee and her brothers jointly sold the

property and the assessee claimed exemption u/s. 54 of the Act towards the re-investment made by her in another residential property. In this regard, the assessee relied on the decision of Hon'ble Jurisdictional High Court in CIT vs. Minor Shanthi Chandran [2000] 241 ITR 0371 (Mad) and the decision in the case of CIT vs. Janhavi S. Desai [2012] 209 Taxman 0289 (Bom). In accordance with explanation to sub section (1) of s.49, it is clear that the last previous owner of the capital asset is the assessee's father and hence, we direct the AO to work out the indexed cost of acquisition of the property from 1982. With regard to the issue of estimating the rate per sq. ft. towards additional construction in the year 1985, we find that the Ld. CIT(A) has not adjudicated this issue and hence, we remit this issue back to the Ld. CIT(A) to hear the assessee and dispose this issue in accordance with law. On the issue of brokerage claim, we find that the assessee had failed to produce documentary evidence, name and address of the person/persons who were paid brokerage etc. and failed to substantiate the genuineness of the claim before the lower authorities. Even before us, the assessee is not able to substantiate this claim. Therefore, we do not find any reason to interfere with the orders of the lower authorities on this issue. Therefore, the corresponding grounds of the assessee fail.

5. In the result, the appeal filed by the assessee is partly allowed.

*Order pronounced on the day of 24<sup>th</sup> February, 2021 in Chennai.*

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(एस. जयरामन)

(S. JAYARAMAN)

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai, दिनांक/Dated: 24<sup>th</sup> February, 2021.

EDN, Sr. P.S

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