

**IN THE INCOME TAX APPELLATE TRIBUNAL
'SMC' BENCH : BANGALORE**

**BEFORE SHRI PRASHANT MAHARISHI, VICE – PRESIDENT
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No. 2348/Bang/2025
Assessment Year : 2016-17

Mrs. Jeanette Dsouza, LR of Late Shri Vinod Dsouza, Flat No. San F 10, Holy Family Apartments, Lalbagh, Mangalore, Karnataka – 575 003. PAN: ADHPD4076H	Vs.	The Income Tax Officer, Ward – 1(1), Mangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Prasanna Shenoy, CA
Revenue by	:	Shri Ganesh R Ghale - Advocate, Standing Counsel for Revenue

Date of Hearing	:	17-12-2025
Date of Pronouncement	:	10-02-2026

ORDER

PER PRASHANT MAHARISHI, VICE – PRESIDENT

1. Caption appeal is filed by Mrs. Jeanette D'Souza being legal representative of late Sri Vinod D'Souza (the assessee/appellant) for assessment year 2016 – 17 against the appellate order passed by National faceless appeal Centre, Delhi (the learned CIT – A) dated 20 August 2025 wherein the appeal filed by the assessee against the assessment order dated 22 March 2023 passed under section 147 read with section 144 read with section 144B of the income tax act, 1961 (the act) by the National faceless assessment Centre (the learned AO) was dismissed.

2. The assessee is aggrieved with the fact that the learned CIT is confirmed the order of the learned assessing officer where the assessee earned a Long term capital gain on sale of property has been treated as a short-term capital gain and further denied the indexation benefit under section 55 (2) (ac) though the property was acquired in 1994 and held for over 22 years.
3. The briefly stated the fact shows that late Sri Vinod D'Souza was a resident individual who acquired an immovable property in the year 1994 and sold the same as per registered sale deed dated 11 January 2016 for a total consideration of ₹ 14 lakhs. Assessee is a non-filer and therefore no return under section 139 (1) of the act was found. The assessee passed away on 19 December 2021.
4. Therefore, the assessee was issued notice for reopening of the assessment was issued on 22 June 2021. Several other notices were issued under section 142 (1) as well as show cause notice under section 144 of the act which was not responded to by the assessee. The assessee was issued such notices on 1 February 2023, 20 February 2023, 2 March 2023 and 15 March 2023. As the assessee has not responded to any of the notices for the reason that assessee has already passed away, the learned assessing officer passed an assessment order on 22nd of March 2023 in the name of Sri Vinod the D'Souza.
5. The fact shows that assessee has sold a property for ₹ 14 lakhs as per the registered sale deed dated 11 January 2016. The assessee did not file any return of income and therefore the entire sale consideration was found to be an unexplained income accordingly the total income of the assessee was determined at ₹ 14 lakhs as per the assessment order dated 22 March 2023.
6. Assessee preferred an appeal before the learned CIT – A. The assessee objected to the reassessment proceedings, as well as the computation of undisclosed income. The learned CIT – A dismissed

the appeal of the assessee. Therefore, the assessee is in appeal before us.

7. The learned authorized representative submitted that that the notice under section 148 was issued on 22 June 2021 which was later treated as a show cause notice under section 148A (b) following the decision of the honourable Supreme Court. It was submitted that the proceedings were initiated against the deceased are void ab initio under section 159 (2) (a) of the act and reassessment was barred by limitation under section 149 (1) (b) of the act as they escaped income is below ₹ 50 lakhs. It was further stated that even otherwise on the marriage the property was acquired in 1994 which was held for almost 22 years and therefore same is a long-term capital asset assessee should have been granted the benefit of indexation by substituting the actual cost with the fair market value as on 1 April 2001 in terms of the provisions of section 55 (2) (ac) of the act. It was submitted that both the lower authorities have failed to grant such benefit despite having the copy of the sale deed available with them. In the end the assessee submitted that that notice under section 148 was issued on 29th of March 2021 in the name of Sri Vinod D'Souza. The assessee passed away on 17 April 2021. Despite this knowledge, the assessment order was passed in the name of dead person. Such assessment order is bad in law.
8. The learned authorized representative also submitted the copy of the sale deed executed by Mr. Vinod D'Souza on 11 January 2016 which clearly shows that that the above property was constructed in 1995 – 1996 and assessee was also the owner of 1/9 on divided interest in the land which was purchased as per sale deed dated 4/2/1995. Therefore, the assessee must be granted at least the cost of acquisition of the property at indexed value.
9. The learned departmental representative vehemently supported the order of the learned lower authority however it was agreed that the

assessee must be granted the cost of acquisition of the property at indexed value.

10. We have carefully considered the rival contention and perused the orders of the learned that lower authorities. The facts clearly shows that assessee has sold the residential apartment numbers C001 situated at ground floor together with 1/9th undivided share in the common area and facilities by the name of Madhura Apartment which was acquired on 4 February 1995 and further construction was made in 95 – 96. This property was sold for ₹ 14 lakhs and the learned lower authorities despite having the copy of the sale deed available with them did not grant any deduction of the cost of acquisition of the property. The learned assessing officer was duty-bound to grant the cost of acquisition as the information was available with him that the assessee purchased the land and constructed property in 95 – 96 thereon. The share of the assessee is 1/9 undivided share in land as well as the cost of construction of the flat. The learned that lower authorities have treated the whole of the sale consideration as capital gain of the assessee without granting any cost of acquisition as deduction. In view of above facts, we restore the whole issue back to the file of the learned assessing officer with a direction to the learned AO to grant the assessee the deduction of cost of land, cost of construction indexed to the year of acquisition as deduction from the sale consideration and then compute long term capital gain chargeable to tax in the hands of the legal heir.
11. In the end, this was the only claim made by the learned authorized representative before us. No other issues were pressed.
12. In the result, with above direction to the learned assessing officer, the ground No. 1 – 2 of the appeal are allowed.
13. In the result appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 10th February, 2026.

Sd/-
(KESHAV DUBEY)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
VICE-PRESIDENT

Bangalore,
Dated, the 10th February, 2026.

TNTS

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore