

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'C' BENCH, CHENNAI

श्रीएन.आर.एस. गणेशन, न्यायिकसदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 1693/Mds/2016

निर्धारण वर्ष /Assessment Year : 2013-14

Shri M.Prakash,
F-4, Jain Anahitha,
No.9, 1st Cross Street,
Lake Area, Nungambakkam,
Chennai – 600 034.

v. The Income Tax Officer,
International Taxation 2(1),
Chennai.

PAN : AYGPP9316G

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri A.S.Sriraman, Advocate

प्रत्यर्थीकीओरसे/Respondent by

: Shri A.V.Shreekanth, JCIT

सुनवाईकीतारीख/Date of Hearing

: 30.08.2016

घोषणाकीतारीख/Date of Pronouncement

: 23.09.2016

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the CIT(A)

-16, Chennai dated 11.05.2016 and pertains to Assessment Year 2013-14.

2. The only issue arises for consideration is determination of fair market value as on 01.04.1981 for the purpose of computing capital gain. Shri A.S.Sriraman, the learned counsel for the assessee submitted that the assessee acquired a property by way of a settlement deed executed by his grandmother on 14.02.2003. This property was originally purchased by the assessee's grand mother Mrs.Kamalammal on 23.03.1960. Therefore, the assessee claimed before the assessing officer to determine the cost of acquisition as on 01.04.1981. However, the assessing officer rejected the claim of the assessee on the ground that the assessee acquired the property only on 14.02.2003 by means of a settlement deed from his grandmother. Therefore, the indexed cost of acquisition has to be computed from assessment year 2003-04. Placing reliance on the judgment of the Bombay High Court in the case of CIT-12 Vs. Manjula J.Shah reported in (2012) 204 Taxman 691, the learned counsel for the assessee submitted that on identical situation, the Bombay High Court found that the cost of indexation has to be determined with effect from 01.04.1981. In fact, this Tribunal in S.Krishnan Vs. Deputy Director of Income Tax (International Taxation) reported in (2015) 44 CCH 0132 ChenTrib had an occasion to consider an identical situation. This Tribunal placing reliance on the judgment of the Bombay High Court in the case of Manjula J.Shah found that the indexed cost of acquisition has to be computed with effect from 01.04.1981. Therefore, according to the learned counsel for the assessee, the CIT(A) is not justified in confirming the order of the Assessing Officer.

3. On the contrary, Shri A.V.Shreekanth, the learned department representative submitted that the assessee acquired the property from his grandmother only by means of a settlement deed dated 14.02.2003. Therefore, the assessee becomes owner of the property only from 14.02.2003. Hence, the CIT(A) has rightly found that the indexed cost of acquisition has to be computed only from the date on which the assessee acquired the property.

4. We have considered the rival submissions on either side and also perused the material available on record. The only issue arises for consideration, rightly pointed out by the learned department representative is the fair market value as on 01.04.1981 for the purpose of computing capital gain. It is not in dispute that the assessee acquired the property by means of a settlement deed executed by his grandmother on 14.02.2003. The revenue claims that the assessee becomes the owner of the property only from 14.02.2003. Therefore, the cost of indexation has to be computed only from the financial year 2002-03 relevant to assessment year 2003-04. From the order of the CIT(A), it appears that the assessee brought to the notice of the CIT(A) the decision of this Bench of the Tribunal in the case of Mr.Ramalingam Balaji Vs.DCIT in ITA No.86/Mds/2016 dated 24.03.2016. The CIT(A) after referring to the decision of this Tribunal observed that he differ from the decision of this Tribunal. It is pertinent to point out that the CIT(A) is an authority lower in rank to that of this Tribunal. When this Tribunal found that the indexation has to be made with effect from 01.04.1981, the CIT(A) cannot differ from the order of this Tribunal. If the revenue has any grievance over the

order of this Tribunal, it is open to them to take up the matter before the High Court in a manner known to law. If the CIT(A) is allowed to differ from the decision of the Tribunal, then, there is no meaning in having an appellate tribunal under the scheme of Income Tax Act. Therefore, this Tribunal is of the considered opinion that when this Tribunal found that the cost of acquisition has to be determined as on 01.04.1981, when the property was inherited from the previous owner either by succession or by means of settlement deed, the CIT(A) is expected to follow the order of this Tribunal. Unfortunately, the CIT(A) has not done so and he simply observed that he differ from the decision of this Tribunal. Such an attitude on the part of the CIT(A) is not appreciable.

5. This Tribunal hope and trust that in future, the CIT(A) will be little more careful in making an observation against the order of this Tribunal. Whenever there is an order of this Tribunal on identical set of facts, unless there is a contrary judgment of any of the High Courts or Apex Court, the CIT(A) is expected to follow the same.

6. Now coming to the issue under consideration, admittedly, the property was acquired by the assessee from his grandmother by means of a settlement deed. On an identical situation, this Tribunal, placing reliance on the judgment of Bombay High Court in Manjula J.Shah (supra) found that the indexed cost of acquisition has to be computed with effect from 01.04.1981. Since the issue is identical as in Manjula J.Shah (supra), this Tribunal is of the considered opinion that the judgment of the Mumbai High Court is squarely applicable to these

facts. Therefore, by following the judgment of the Mumbai High Court in Manjula J.Shah (supra) and for the reasons stated therein, the orders of the lower authorities are set aside and the assessing officer is directed to compute the indexed cost of acquisition with effect from 01.04.1981.

7. In the result, the appeal of the assessee stands allowed.

Order pronounced on 23rd September, 2016 at Chennai.

Sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 23rd September, 2016.

sp.

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.