

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिक सदस्यकेसमक्ष
**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No.39/Mds/2016

निर्धारण वर्ष /Assessment year : 2012-2013

Shri. V.P. Anandhan,
38, 2nd Cross Street,
Ananda Nagar,
Thoraipakkam,
Chennai 600 097

Vs. The Income Tax Officer,
International Taxation II(1)
Chennai.

[PAN BCBPP 4731M]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri. Shri. A.S. Sriraman, Advocate

प्रत्यर्थी की ओर से /Respondent by

: Shri. Shiva Srinivas, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing

: 22-08-2016

घोषणा की तारीख /Date of Pronouncement

: 19-09-2016

आदेश / ORDER

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The appeal filed by the assessee is directed against order of the Commissioner of Income-tax (Appeals)-16, Chennai in ITA No.61/A-16/2012-13, dated 06.11.2015 for the assessment year 2012-2013 passed u/s.143(3) and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

2. The assessee has raised sole substantive ground that the Id. Commissioner of Income Tax (Appeals) erred in confirming the action of the Id. Assessing Officer that Cost Inflation Indexation has to be allowed from the year in which the assessee has inherited the property from father without considering the fact that previous owner was holding the property prior to 01.04.1981.

3. The Brief facts of the case are that the assessee is an Non Resident and having income from House Property, Capital Gains and other sources and filed Return of income on 14.07.2012 admitting total income of ₹2,00,11,857/-. Under scrutiny norms the case was selected and notice u/sec. 143(2) of the Act and also notice u/s.142(1) of the Act were issued. In compliance to notices, the Id. Authorised Representative of assessee appeared from time to time and submitted details. The Id. Assessing Officer in the assessment proceeding found that the assessee while offering income from Long Term Capital Gains on sale of property has adopted Cost Inflation Indexation from 01.04.1981 for the purpose of computation of Long Term Capital Gains whereas the property was inherited after demise of his father on 30.12.2002. The Id. Assessing Officer is of the opinion that Index cost of acquisition has to be allowed from financial year 2002-03 as per Explanation (iii) to Sec. 48 of the Act. Further dealt on the provisions and calculated the cost to the previous owner but

benefit of cost of indexation has to be granted in the year in which the property was legally vested to the assessee. Since the assessee inherited property after demise of his father on 30.12.2002 the benefit of cost of indexation was allowed from financial year 2002-03 and the Id. Assessing Officer has worked out Long Terms Capital Gains and allowed deduction u/se. 54 and 54EC and determined total income of ₹2,09,60,050/-. Aggrieved by the order, the assessee filed an appeal before Commissioner of Income Tax (Appeals).

4. In the appellate proceedings, the Id. Authorised Representative of assessee argued the grounds that the Id. Assessing Officer has erred in allowing indexation from financial year 2002-03 instead of date of acquisition by assessee's father prior to 01.04.1981 and indexation from financial year 1981-82 in respect of purchase of land and construction of the property. The Id. Authorised Representative relied on the provisions and Explanations u/sec. 2(42A) of the Act and the Explanations 1(i)(b) for determining period of holding, whereas the Id. Assessing Officer has allowed cost of acquisition under the provisions as held by the father but allowed cost inflation index from the financial year 2002-03 and the Id. Authorised Representative also supported his submissions with judicial decisions and prayed for allowing the appeal. The Id. Commissioner of Income Tax (Appeals) considered the grounds, submissions and distinguished

the decisions relied by the assessee and also written submissions filed by the assessee and dismissed the appeal of the assessee. Aggrieved by the Commissioner of Income Tax (Appeals) order, the assessee has assailed an appeal before Tribunal.

5. Before us, Id.A.R reiterated the submissions made in the assessment and first appellate proceedings on provisions of inheritance, succession and gift. The Id.A.R explained that the property was devolved upon the assessee on succession after death of assessee's father and the index cost of acquisition has to be determined with reference to the cost of inflation index of the first year in which the capital asset was held by the previous owner. The Ld.CIT(A) has erred in distinguishing the decisions and observed that assessee inherited the property after death of the father on 30.12.2002 during financial year 2002-03 and indexed cost of acquisition has to be allowed in respect to the year, were the asset was first held by the assessee. Further assessee's father was holding the property as on 01.04.1981 and as per the provisions of the section 48 & 49(i) of the Act, the cost of previous owner and holding period has to be considered for indexation and supported with the decision of Bombay High Court in the case of *CIT Vs. Manjula J.Shah* 355 ITR 474 and prayed for the deletion of capital gains.

6. Per contra, Id. Departmental Representative relied on the order of the Commissioner of Income Tax (Appeals) and vehemently opposed to the submissions of Id. Authorised Representative.

7. We have heard the rival submissions, perused the material on record and judicial decision cited. The Id.A.R has emphasized on the disputed issue on holding period of the assessee on whom the property was devolved on the death of assessee's father, the provisions of Sections 48 & 49(i) (iii) of the Act allow certain mode of transfer by succession and inheritance. The action of the Assessing Officer cannot be appreciated that the property was acquired by assessee's father but inherited by the assessee on demise father on 30.12.2002 whereas the assessee became a rightful owner as per Explanation 1(i)(b) to section 2(42A) of the Act and in the present case, assessee deemed to hold the property from 1981 and indexed cost of acquisition has to be calculated from 01.04.1981 with the base year as 100 and the assessee has complied with the conditions of the previous owner and rightfully claimed the cost inflation indexation from the base year i.e. 01.04.1981 and the arguments of the Id.A.R are supported by the decision of the Bombay High Court in the case of *CIT Vs. Manjula J.Shah* (supra) held that when the assessee sells his immovable property which is acquired under gift or will, while computing the capital gain the index cost of acquisition has to be

computed with reference to the year in which previous owner first held the asset and not the year in which the assessee became the owner of the asset and Karnataka High Court in the case of *CIT vs. Smt. Kaveri Thimmaiah (2014) 369 ITR 0081* held that when an asset is acquired by way of inheritance, cost of acquisition of asset should be calculated on basis of cost of acquisition by previous owner and said cost of acquisition of previous owner has to be calculated on basis of indexed cost of acquisition. The ratio of these decisions are squarely applicable to the facts of the present case of the assessee.

8. We rely on the above judicial decisions and direct the AO to allow the cost inflation indexation to the assessee from 01.04.1981 for computation of capital gains.

9. In the result, the appeal of the assessee is allowed.

Order pronounced on Monday, the 19th day of September, 2016, at Chennai.

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated:19.09.2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

3. आयकर आयुक्त (अपील)/CIT(A)

5. विभागीय प्रतिनिधि/DR

2. प्रत्यर्थी/Respondent

4. आयकर आयुक्त/CIT

6. गार्ड फाईल/GF