

**IN THE INCOME TAX APPELLATE TRIBUNAL
"I" Bench, Mumbai**

**Before Shri B.R. Baskaran, Accountant Member
and Shri Amarjit Singh, Judicial Member**

ITA No. 6852/Mum/2017
(Assessment Year: 2014-15)

Income Tax Officer (IT)-2(1)(1) Room No. 1724, 17th Floor Air India Building Nariman Point Mumbai 400021	Vs.	Shri Sham Lokumal Chellaram 629, Gazdar House 3rd Floor, J. Shankar Seth Marg Dhobi Talao, Mumbai 400002
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PAN – AAJPC8506E

Appellant

Respondent

ITA No. 6853/Mum/2017
(Assessment Year: 2014-15)

Income Tax Officer (IT)-2(1)(1) Room No. 1724, 17th Floor Air India Building Nariman Point Mumbai 400021	Vs.	Shri Lal Lokumal Chellaram 629, Gazdar House 3rd Floor, J. Shankar Seth Marg Dhobi Talao, Mumbai 400002
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PAN – AAJPC8506E

Appellant

Respondent

Appellant by: Shri Rajeev S Kesarwani
Respondent by: None

Date of Hearing: 09.04.2019
Date of Pronouncement: 09.04.2019

ORDER

Per Bench:

Both these appeals have been filed by Revenue challenging the orders passed by the learned CIT(A) -56, Mumbai and they relate to A.Y. 2014-15. Since identical issue is being contested in these appeals and further they are based on common set of facts, these appeals were heard together and are being disposed of by this common order.

2. None appeared on behalf of the assessee. However, we noticed that adjournment was granted on earlier occasion at the request of the

assesseees. Hence, we proceed to dispose off these appeals ex-parte, without the presence of assesseees.

3. We have heard the learned D.R. and perused the record. The solitary issue urged in this appeal is whether the learned CIT(A) was justified in granting indexation benefit, while computing long term capital gain on sale of property, from 01.04.1981 as against the order of the AO in granting indexation from the date when the assesseees became owners of the property.

4. Facts related to this issue are discussed in brief. Both the assesseees herein inherited a property from their mother on 06.01.2012. The mother of the assesseees had inherited the property from her husband (and father of the assesseees herein) on 26.12.2002. The father of the assesseees, Mr. Lokumal Kishinchand Chellaram, was partner in a firm named M/s. Kishinchand Chellaram. The father of assesseees and the above said partnership firm along with other co-owners jointly held 13.04 thousand cents of land. The father of the assesseees also acquired certain piece of land from one of the partners of M/s. Kishinchand Chellaram. After dissolution of the partnership firm, the father of the assessee became owner of undivided share of 3,73,730.30 cents in the total area of land of 13.04 thousand cents.

5. Both the assesseees herein obtained equal rights in 3,73,730.30 cents referred above. This land was sold by both the assesseees herein during the year under consideration. Both the assessee's claimed indexation benefit from the period, the land was held by their father. The AO, however, took the view that the assesseees are entitled for indexation benefit only from the year in which they became owners of the property. Accordingly he granted indexation benefit from FY 2011-12 only.

6. In the appellate proceedings the learned CIT(A) noticed that the issue was squarely covered by the decision rendered by the Hon'ble Jurisdictional High Court in the case of CIT vs. Manjula J. Shah (2012) 204 Taxman 691. According to the said decision, the period of holding of

earlier owner shall be considered for indexation benefits, when the property was obtained by the assessee by way of inheritance. Accordingly the learned CIT(A) allowed the appeals filed by both the assessees. Aggrieved, Revenue has filed these appeals before us.

7. Before us the learned D.R. placed reliance on the definition “indexed cost of acquisition” given in Explanation to Section 48 of the Act. He submitted that indexation benefit shall be available from the year in which the asset was first held by the assessee. He submitted that in the instant cases, the asset came to be held by the assessees herein only from FY 2011-12 since they inherited the property on 06.01.2012 after expiry of their mother.

8. We noticed that the Hon'ble Bombay High Court has rendered the decision in the case of Manjula J. Shah (supra) on the very same issue and has held that indexation benefit shall be available from the earlier period also if the property was inherited. In the instant cases, there is no dispute with regard to the fact that the impugned property was inherited by the assessees from their mother, who had inherited it from her husband. We notice that the learned CIT(A) has followed the binding decision of the Hon'ble Bombay High Court in deciding this issue in favour of the assessees. Accordingly, we do not find any reason to interfere with the orders passed by the learned CIT(A) in the case of both the assessees.

9. In the result, the appeals filed by the Revenue are dismissed.

Order pronounced in the open court on 9th April, 2019.

Sd/-
(Amarjit Singh)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Mumbai, Dated: 9th April, 2019

Copy to:

- 1. The Appellant*
- 2. The Respondent*
- 3. The CIT(A) -56, Mumbai*
- 4. The CIT - concerned*
- 5. The DR, "I" Bench, ITAT, Mumbai*

By Order

//True Copy//

*Assistant Registrar
ITAT, Mumbai Benches, Mumbai*

n.p.