

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "J", MUMBAI**

**BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER**

**ITA No.1975/M/2011
Assessment Year: 2007-08**

Income Tax Officer – 19(3)(1), Room No.307, 3 rd Floor, Piramal Chambers, Lalbaug, Parel, Mumbai – 400 012 (Appellant)	Vs.	Mrs. Bibi Siddiqua Husaini, Bldg. No.9, Lucky Mansion, S.V. Road, Bandra (W), Mumbai – 400 050 PAN: AAAPH7729M (Respondent)
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Assessee by : Shri K.R. Lakshminarayanan, A.R.
Revenue by : Shri Shekhar L. Gajbhiye, D.R.

Date of Hearing : 21.08.2014
Date of Pronouncement : 27.08.2014

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been filed by the Revenue against the order of the Commissioner of Income Tax (Appeals) [(hereinafter referred to as CIT(A)] dated 13.12.2010 relevant to assessment year 2007-08.

2. The Revenue has taken the following grounds of appeal:

“(1) On the facts and in the circumstances of the case and in law, the Learned CIT(A) has erred in directing to take the full value consideration as on 12.05.1999 towards the cost of acquisition without appreciating the fact that the assessee was the owner of property as on 19.02.2004.

(2) On the facts and in the circumstances of the case and in law, the Learned CIT(A) failed to appreciate the fact that the Clause (b) of Section 2(42A) is only for determining the period held by the assessee for the purpose of treating the asset as a long term capital asset and

Explanation (iii) to Section 48 clearly states that the Cost Inflation Index shall be from the first year in which the asset was held by the assessee.

(3) The decision of the Special Bench of the ITAT in the case of Manjula J. Shah ITA No.7315/Mum/2007 dated 16.06.2009 has not been accepted by the Department.

(4) The appellant prays that the order of CIT(A) on the above grounds be set aside and that of the AC. be restored.”

3. The brief facts of the case are that the assessee had sold her immovable property being residential flat No.101, 1st floor, Hill Queen, Pali Malla Road, Bandra, Mumbai for Rs. 1,55,00,000/- on 30.08.2006 and after indexation Long Term Capital Gains(LTCG) of Rs.1,26,20,624/- were determined. However the assessee claimed exemption u/s.54 on account of investments in two new flats and claimed the net LTCG of Rs. NIL. It had been contented on behalf of the assessee that the property was acquired by her late husband Mr. Sultan Huseini in the F.Y.1999-2000 for a consideration of Rs.27,05.404/-. The property was passed to the assessee on 19.02.2004 i.e. the date when her husband died. The assessee contented for the purpose of indexation, the date should be reckoned from the date from which the original owner, i.e. the husband of the assessee, held the property. The ld. AO however observed that indexation could only be allowed from the year in which the asset was first held by the assessee. He held that in the case in hand, the asset for the first time vested in the assessee only on 19.2.2004, he therefore allowed the indexation from Financial Year 2004-05.

4. In appeal, the ld. CIT(A) held that that in view of the decision of Special Bench of Mumbai ITAT in “DCIT vs. Manjula J. Shah” 318 ITR AT 417, for the purpose of indexation, the date should be reckoned from the date from which the original owner held the property. He further observed that the decision of the Special Bench of the Tribunal in the case of “DCIT vs. Manjula

J. Shah” (supra) was squarely applicable to the facts of the case of the assessee. He therefore directed the AO to adopt cost inflation index of acquisition of the capital asset with reference to the year in which the previous owner first held the asset i.e. from 1.4.1981 and to compute the long term capital gain accordingly. The Revenue is thus in appeal before us.

5. We may observe that the Special Bench decision of the Tribunal in the case of “DCIT vs. Manjula J. Shah” (supra) has been further approved by the Hon’ble Bombay High Court cited as “CIT vs. Manjula J. Shah” (2013) 355 ITR 0474.

The Id. D.R. could not bring, before us, any law contrary to the above decision of the Hon’ble Bombay High Court.

6. In view of the above, we do not find any infirmity in the order of the Id. CIT(A) and the same is hereby upheld.

7. In the result, the appeal of the Revenue is hereby dismissed.

Order pronounced in the open court on 27.08.2014.

Sd/-
(R.C. Sharma)
ACCOUNTANT MEMBER

Sd/-
(Sanjay Garg)
JUDICIAL MEMBER

Mumbai, Dated: 27.08.2014.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai

The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.