IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 1031 of 2017

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PRINCIPAL COMMISSIONER OF INCOME TAX-5....Appellant(s)

Versus

PRAKASH KRISHNALAL BHAGWATI....Opponent(s)

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Appearance:

MRS MAUNA M BHATT, ADVOCATE for the Appellant No. 1

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CORAM: HONOURABLE MS.JUSTICE HARSHA DEVANI

and

HONOURABLE MR.JUSTICE A.S. SUPEHIA

Date : 22/01/2018

ORAL ORDER

(**PER : HONOURABLE MS.JUSTICE HARSHA DEVANI**)

1. By this appeal under section 260A of the Income Tax Act, 1961 (hereinafter referred to as the "Act"), the appellant-revenue has challenged the order dated 21.11.2016 made by the Income Tax Appellate Tribunal, Ahmedabad Bench "B" (hereinafter referred to as the "Tribunal") in ITA No.1811/Ahd/2013, by proposing the following question, stated to be a substantial question of law:

> *"Whether the Appellate Tribunal is correct in law and on facts in accepting the cost Inflation Index taken by the assessee of the year in which the father of the assessee became the owner irrespective of the fact that the property* in question *was transferred in favour of assessee after the death of his father through inheritance?"*

2. The assessment year is 2006-07 and the relevant accounting period is 01.04.2005 to 31.03.2006.

3. The assessee inherited a capital asset being Bungalow No.22, Shrimali Society, Navrangpura, Ahmedabad, by virtue of a will on 08.03.2004. The property devolved upon him in his capacity of sole beneficiary of his late father. The assessee sold the capital asset on 23.01.2006 for Rs.2,20,00,000/-. He filed return of income on 30.07.2006 declaring long term capital gain of Rs.1,03,15,530/- after taking cost of acquisition for the year 1981. The Assessing Officer was of the view that under clause (iii) of the Explanation to section 48 of the Act, the cost of indexation has to be taken from March 2004 only and not for the year 1981, since the asset was acquired on the former date. He, accordingly, framed the reassessment on 31.10.2012 and recomputed the cost of acquisition at Rs.92,50,206/- and made the consequential addition.

4. The assessee went in appeal before the Commissioner (Appeals), who partly allowed the appeal by holding that the assessee was justified in stating that the fair market value of the property acquired by virtue of a will shall be

taken as on 01.04.1981 as is clearly provided under section 55(2)(b)(ii) of the Act, as the cost of acquisition in the hands of the assessee. He, accordingly, held that the Assessing Officer's action of computing long term capital gain taking financial year 2004-05 as the base year for the purpose of cost of acquisition was untenable in law and accordingly deleted the addition of Rs.92,50,206/-.

5. The revenue carried the matter in appeal before the Tribunal, which followed the decision of the Bombay High Court in the case of ***Manjula J. Shah***, *249 CTR 270*, wherein the court held that section 49(1)(iii) of the Act is very much clear that where an assessee acquires the capital asset in question by way of succession, inheritance or devolution, cost of acquisition thereof shall be deemed to be the cost for which the previous owner of the property had acquired the same.

6. Mrs. Mauna Bhatt, learned senior standing counsel for the appellant, assailed the impugned order on the grounds set out in the memorandum of appeal and the reasoning adopted by the Assessing Officer.

7. The facts are not in dispute. The respondent assessee inherited the property in question from

his father by virtue of a will. Subsequently, he sold the property for a consideration of Rs.2,20,00,000/- by taking indexation of cost of acquisition for the year 1981 for the purpose of computing long term capital gain. According to the respondents, since the assessee acquired the property in the year 2004, the indexed cost of acquisition has to be considered by considering the cost of acquisition for that year.

8. To better appreciate the controversy in issue, it may be necessary to refer to certain statutory provisions. Section 49 of the Act provides for *"Cost with reference to certain modes of acquisition"* and to the extent the same is relevant for the present purpose, reads thus:

> *"**49. Cost with reference to certain modes of acquisition.**— (1) Where the capital asset became the property of the assessee—*
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> *(i) on any distribution of assets on the total or partial partition of a Hindu undivided family;*
>
> *(ii) under a gift or will;*
>
> *(iii)(a) by succession, inheritance or devolution, or*
> *(b) on any distribution of assets on the dissolution of a firm, body of individuals, or other association of persons, where such dissolution had taken place at any time before the 1st day of April, 1987, or*

(c) on any distribution of assets on the liquidation of a company, or

(d) under a transfer to a revocable or an irrevocable trust, or

(e) under any such transfer as is referred to in clause (iv) or clause (v) or clause (vi) or clause (vi-a)or clause (vi-aa) or clause (vi-ca) or clause (vic-b) or clause (xiii) or clause (xiii-b) or clause (xiv) of Section 47;

(iv) such assessee being a Hindu undivided family, by the mode referred to in sub-section (2) of Section 64 at any time after the 31st day of December, 1969, the cost of acquisition of the asset shall be deemed to be the cost for which the previous owner of the property acquired it, as increased by the cost of any improvement of the assets incurred or borne by the previous owner or the assessee, as the case may be.

Explanation.—In this sub-section the expression "previous owner of the property" in relation to any capital asset owned by an assessee means the last previous owner of the capital asset who acquired it by a mode of acquisition other than that referred to in clause (i) or clause (ii) or clause (iii) or clause (iv) of this sub-section."

9. Thus, sub-section (1) of section 49 of the Act *inter alia*, lays down that where the capital asset became the property of the assessee under a gift or a will; by succession, inheritance or devolution; the cost of acquisition of the asset shall be deemed to be the cost for which the

previous owner of the property acquired it, as increased by the cost of any improvement of the assets incurred or borne by the previous owner or the assessee, as the case may be. The expression “previous owner of the property” in relation to any capital asset owned by the assessee has been defined in the Explanation to sub-section (1) of section 49 of the Act to mean the last previous owner of the capital asset who acquired it by a mode of acquisition other than that referred to in clause (i) or clause (ii) or clause (iii) or clause (iv) of the sub-section (1).

10. Examining the facts of the present case in the light of the above statutory provisions, in this case, the previous owner of the property was the assessee's father. Undisputedly the capital asset in question became the property of the assessee upon execution of a will. Therefore, the provisions of sub-section (1) of section 49 of the Act would be squarely attracted and the cost of acquisition of the asset shall be deemed to be the cost for which the previous owner of the property acquired it. The material on record reveals that the property in question was acquired by the father of the assessee in the year 1945.

11. At this juncture reference may be made to section 48 of the Act which provides for the mode of computation of the income chargeable under the head “Capital gains”. Explanation (iii) thereto which is relevant for the present purpose defines “indexed cost of acquisition” to mean an amount which bears to the cost of acquisition the same proportion as Cost Inflation Index for the year in which the asset is transferred bears to the Cost Inflation Index for the first year in which the asset was held by the assessee or for the year beginning on the 1st day of April, 1981, whichever is later. In view of the provisions of sub-section (1) of section 49 of the Act read with the Explanation thereto, since the capital asset has become the property of the assessee under a will, the cost of acquisition is deemed to be the cost for which the previous owner, namely the assessee’s father, acquired it. The record of the case shows that the property was acquired by the father of the assessee in the year 1945. Therefore, in view of the provisions of clause (iii) to the Explanation to section 48 of the Act, the indexed cost of acquisition is required to be computed by considering the cost of acquisition for the year beginning on the 1st day of April, 1981.

12. In the light of the above discussion, it is amply clear that the view adopted by the Tribunal is in consonance with the above statutory provisions. Under the circumstances, it cannot be said that the impugned order passed by the Tribunal suffers from any infirmity giving rise any question of law, much less, a substantial question of law as proposed or otherwise. The appeal, therefore, fails, and is, accordingly, summarily dismissed.

Sd/-
[HARSHA DEVANI, J]

Sd/-
[A. S. SUPEHIA, J]

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*Bhavesh-[pps]**