

A.F.R.

Court No. - 35**Case :- INCOME TAX APPEAL No. - 264 of 2015****Appellant :- Principal Commissioner Of Income Tax****Respondent :- Smt. Vidhi Agarwal****Counsel for Appellant :- Manu Ghildyal****Hon'ble Bharati Sapru,J.****Hon'ble Saumitra Dayal Singh,J.**

This appeal has been filed under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as the Act) against the order of the Income Tax Appellate Tribunal, Delhi, Bench "H", New Delhi dated 8.5.2015 for the Assessment Year 2009-2010.

The appeal was admitted on the following questions of law:-

"(A) Whether, in the facts and circumstances of the case and in law, the learned ITAT erred in allowing 50% of Rs. 4,52,530/- under the head 'expenditure over share transaction' which was disallowed by the AO ignoring the fact that no evidence was every submitted by the assessee during the entire course of assessment proceedings in support of the said expenditure?"

(B) Whether, in the facts and circumstances of the case and in law, the learned ITAT erred in law and fact in adopting the cost of acquisition of flat at Mumbai as on 01.04.1981 at Rs. 1,05,02,677/- against Rs. 10,00,000/- that had been adopted by the AO on the basis of gift deed on the basis of gift deed dated 10.12.1999 ignoring the fact that the donor at the time of gift to the assessee declared the value of flat at Rs. 10 lacs?"

(C) Whether, in the facts and circumstances of the case and in law, the learned ITAT erred in law and fact in affirming the indexed cost of improvement of the flat at Mumbai at Rs. 15,80,464/- ignoring the fact that the assessee failed to produce evidence relating to source of funds invested by the assessee for

improvement of the said flat?

(D) Whether, in the facts and circumstances of the case and in law, the learned ITAT erred in restricting the litigation expenses of Rs. 13 lacs to Rs. 6.5 lacs and allowing the amount of Rs. 6.5 lacs claimed by the assessee on account of brokerage expenses ignoring the fact that both these expenses were not originally claimed by the assessee at the time of filing of return of income especially since no documentary evidence to this effect were ever produced by the assessee in support of these expenses?"

Briefly the facts giving rise to the present appeal are that the assessee's mother-in-law had purchased a residential flat at Mumbai in the year 1970 for consideration of Rs. 45,000/-. She gifted the same to the assessee on 10.12.1999 against a registered gift deed. In that gift deed the value of the flat was mentioned at Rs. 10,00,000/-, as on 1.4.1981. Also, the said flat became subject matter of a civil dispute between the assessee and a third party. It was carried up to the Supreme Court. Later, during the previous year relevant to the Assessment Year 2009-10 the assessee sold the aforesaid flat through registered sale deed for a total consideration of Rs. 6,50,00,000/-. For the purpose of computation of the capital gains, the assessee relied on the provision of Section 55(2)(b)(ii). She disclosed the value of the flat in question, as on 1.4.1981 at Rs. 1,05,02,677/- on the basis of a valuation report prepared and submitted by the Kapoor & Associate, an approved valuer.

The Assessing Officer disbelieved the aforesaid valuation report submitted by the assessee in support of her claim (as to cost of acquisition of the flat property) on the reasoning that the assessee had not led any evidence in

support of the valuation report, such as circle rate etc.

The assessee carried the matter in appeal. The CIT (Appeals) allowed the appeal of the assessee and upon appeal by the revenue the Tribunal has affirmed the order of the CIT (Appeals).

Then, in respect of the aforesaid flat that gave rise to the claim of capital gain, the assessee further claimed to have incurred cost of improvement Rs. 15,80,464/-. It was also disallowed by the Assessing Officer as also by the CIT (Appeals). Upon appeal by the assessee the Tribunal has allowed the same.

Also, in respect of this civil litigation involving the aforesaid flat, the assessee claimed to have incurred legal expenses of Rs. 13,00,000/-. The Assessing Officer has disallowed the same in entirety. The CIT (Appeals) allowed 50% of the same and upon appeal the Tribunal has allowed entirety the expenses as claimed by the assessee.

Last, the assessee had also claimed to have derived income from trading in shares. Against such income, the assessee had claimed expenditure of Rs. 4,52,530/-. The Assessing Officer disallowed the claim of expenditure in entirety. Upon appeal the CIT (Appeals) allowed 50% of the same. The assessee carried the matter in appeal to the Tribunal. The Tribunal has allowed the expenditure in entirety.

Despite service of notice, none has appeared on behalf of the assessee.

Heard Sri Manu Ghildyal, learned counsel for the

revenue. It has been submitted by learned counsel for the appellant that the value of the flat having been disclosed in by the assessee in the gift deeds as on 1.4.1981, at Rs. 10,00,000/- it was not open to the assessee to claim a different value for the purpose of computation of capital gains.

In this regard, Section 55 (2)(b)(ii) reads as under:-

55.(1).....

(2) *For the purposes of sections 48 and 49, "cost of acquisition"*

(a).....

(b) *in relation to any other capital asset,-*

(ii) where the capital asset became the property of the assessee by any of the modes specified in sub-section 1 of Section 49, and the capital asset became the property of the previous owner before the first day of April, 1981, means the cost of the capital asset to the previous owner or the fair market value of the asset on the first day of April, 1981, at the option of the assessee."

From the plain reading of the aforesaid provision, it is clear that the legislature first contemplated a situation where the assessee may have come into ownership of an asset after 1.4.1981 from a previous owner who in turn may have acquired that asset prior to 1.4.1981. In such case the cost of acquisition of such asset by the assessee is required to be taken either as the fair market value of the assets as on 1.4.1981 or the cost of acquisition of that asset by the previous owner. However, an option has been given to the assessee to choose between the aforesaid two values and it is not for the Assessing Officer to elect or choose one of the two values. In any case Rs. 10,00,000/- is not either of the

two valuer. It is in fact another (third) value mentioned in the gift deed.

In the instant case, the assessee clearly did not chose the value of the cost of acquisition of the asset by the previous owner, which was only Rs. 45,000/- in the year 1970 as her cost of acquisition. In fact the assessee specifically relied on the report of the approved valuer disclosing the fair market value of the assets at Rs. 1,05,02,677/-. The Assessing Officer on his part only objected to the valuation report for the reason of it not being supported with any evidence. However, he perhaps lost sight of the fact that the expert opinion i.e. approved valuer's report was itself a piece of evidence. It was for the Assessing Officer to have led or required such evidence to come on record as he may have wished to rely upon if he doubted the correctness of the value disclosed in the report of the approved valuer.

On the other hand, the Act does not require that the opinion of the approved valuer should have been supported with further evidence in the shape of circle rate or exemplar sale deeds etc.

There is nothing on record to doubt the correctness of the report or its contents. The Tribunal has found that in absence of any evidence to doubt the correctness of the approved valuer's report the same should have been accepted by the department.

Once, the Act had given the option to the assessee and the assessee had acted in accordance thereof and exercised her option to rely on the fair market value of the assets as on

1.4.1981 which she duly supported with evidence, it was not open to the Assessing Officer to take a different view.

Further, the fact that in the gift deed value of the asset was mentioned at Rs. 10,00,000/- is of no consequence. That valuation is irrelevant and extraneous to the issue involved. Section 55 (2) (b) (ii) does not require such value to be considered or even be relevant. In any case that value was relevant only for purpose of determination of stamp duty payable on the gift deed and not to determine capital gains.

For reasons given above, the finding of the Tribunal does not suffer from any infirmity. The questions of law 'B' is answered in favour of the assessee and against the revenue.

In so far as the questions of law A, C and D are concerned, those questions essentially doubt of correctness of finding of fact recorded by the Tribunal. Each of those finding in respect of expenditure incurred in trading shares; cost of improvement of the flat and; legal expenses incurred were claimed by the assessee on the basis of evidence found existing on record. The Tribunal has considered the same and thereafter allowed the claim of expenditure incurred in the business of share trading as also cost of improvement of the flat and litigation expenditure.

The findings recorded by the Tribunal have not been shown to be perverse or based on no evidence. Being pure findings of fact recorded on the basis of evidence existing on record, the same do not warrant any interference merely because a different conclusion was also possible to be drawn. Questions of law A, C and D as raised are therefore

answered accordingly i.e. the same are on questions of fact and therefore do not warrant any interference in this appeal.

The appeal lacks merit and is **dismissed**. No order as to costs.

Order Date :- 28.11.2017
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