

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI**

**BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER AND
SHRI K.D. RANJAN, ACCOUNTANT MEMBER**

**I.T. A. No.3732/Del/2010
Assessment Year : 2007-08**

Asstt. Commissioner of Income-tax,
Circle 33(1), New Delhi.

Vs. Shri Suresh Verma,
C-602, Ardee City, Residency,
Sector-52, Gurgaon.
PAN: AAEPV8185D

(Appellant)

(Respondent)

Appellant by : Smt. S. Mohanthy, DR.
Respondent by : Shri S.M. Mathur, CA.

ORDER

PER K.D. RANJAN, ACCOUNTANT MEMBER:

This appeal by the Revenue for Assessment Year 2007-08 arises out of the order of the Commissioner of Income-tax (Appeals)-XXVI, New Delhi.

2. The grounds of appeal raised by the Revenue are reproduced as under:-

“1. The Ld. CIT(A) has erred in deleting the addition made by the AO by admitting the assessee’s claim with regard to benefit of indexation available to him from the year it was acquired by the 1st owner as against the year it was held by the assessee.

2. The Ld. CIT(A) has further erred in allowing deduction u/s 54 in respect of the whole of the amount invested by the

assessee in purchase of residential house in the absence of no provision in law to allow deduction u/s 54 to the assessee for the portion of the new residential property owned by his wife.”

3. The first issue for consideration relates to deleting the addition made by the Assessing Officer with regard to benefit of indexation. The facts of the case stated in brief are that the assessee declared long term capital gain of Rs.1,37,02,500/- on sale of residential property at Chandigarh (½ share) and after claiming deduction of Rs.80,00,000/- under sec. 54 and Rs.40,00,000/- under sec. 54EC, declared taxable long term capital gain at Rs.17,02,500/-. During the course of assessment proceedings, it was observed by the Assessing Officer that the assessee became owner of the ½ share of property along with his brother as per Will of his father dated 4.04.1988. Later on, the father of the assessee expired on 6.04.1990, when the assessee became owner of the property to the extent of ½ share. Since the above property was built by his father in 1965 and was expanded in 1971, the assessee took cost of acquisition at Rs.2,50,000/- being the fair market value of the property as on 1.04.1981. The assessee accordingly worked out the indexed cost of acquisition with reference to the acquisition of property as on 1.04.1981. However, the Assessing Officer interpreted the provisions of Explanation (iii) to section 48 of the Act in such a way that the assessee could get benefit of indexation only from the date when the asset

was first held by him. The AO allowed benefit of indexation with reference to F.Y. 1990-91 and not for F.Y. 1980-81 as claimed by the assessee. The AO relied on the decision of ITAT, Delhi Bench in the case of Arun Shungloo Trust in ITA No.1336/Del/2005 dated 25th January, 2008. The AO computed the cost of acquisition at Rs.7,12,912/-.

4. The second issue for consideration is in relation to allowing deduction under sec. 54 of the Act in respect of the whole of the amount invested by the assessee in the purchase of residential house. The assessee purchased residential property at C-602, The Residency, Ardee City, Gurgaon in joint name with his wife Smt. Ritu Verma and claimed deduction under sec. 54 of the Act in respect of amount of Rs.80,00,000/- invested in residential property. However, the AO restricted the deduction under sec. 54 to the extent of Rs.40,00,000/- as the property was jointly held by the assessee with his wife.

5. Before the CIT(A) it was submitted that the Explanation 1 to sec. 2(42A) for the purpose of determination of period for which any capital asset is held by the assessee in the case of a capital asset which becomes the property of the assessee in the circumstances mentioned in sub-sec.(1) of sec. 49, the period for which the asset was held by the previous owner referred to in section 49(1) of the Act is to be included. It was, therefore,

submitted that in terms of provisions of sec. 2(42A), the period of holding by the previous owner has to be included for the purpose of working out cost of indexation. The learned Authorized Representative of the assessee relied on the decision of ITAT in the case of DCIT vs. Manjula J. Shah, 318 ITR 417 (Mumbai)(SB). As regards second ground, it was submitted that the whole purchase consideration in respect of property at C-602, The Residency, Ardee City, Gurgaon, was paid by the assessee only out of sale proceeds of the property. The name of his wife in the agreement to transfer was included only to avoid future hassle due to old age of the assessee. His wife has not contributed towards purchase of property nor does her name get reflected in the possession certificate. It was further submitted that the assessee had fulfilled the conditions of sec. 54 before making the claim of exemption. His attention was also drawn to the provisions of sec. 27 and sec. 64 by submitting that if there was any capital gain on transfer of such house property, such capital gain shall first be computed in the hands of transferee and thereafter, the same will be clubbed with the income of transferor in view of provisions of sec. 27(i) and sec. 64(1)(iv). The learned AR of the assessee relied on several decisions to support his contention.

6. The learned CIT(A) as regards the first ground of appeal, after considering the submissions made by the assessee, observed that the

assessee held the property upon the death of his father with effect from 6.04.1990. Explanation 1 to sec. 2(42A) provides that in determining the period of holding where such an asset was acquired in the circumstances mentioned under sec. 49(1), the period of holding by previous owner shall be included. Since father of assessee acquired the property prior to 1.04.1981 and the period of previous owner was to be included, the learned CIT(A) held that cost inflation index was to be applied with reference to 1.04.1981 and not from the date on which he became owner of the property. As regards second issue, the learned CIT(A) observed that the assessee had invested Rs.80,00,000/- in the house property, which was jointly held by him with his wife, his wife is a joint owner and did not have any source of income. The new property was purchased only by the assessee by deploying long term capital gain on sale of property, which he received on inheritance. It was also clarified that at the time of purchase of new property, the same was originally transferred to assessee only, a fact duly documented by agreement to transfer and in the possession certificate. It was also informed that at a later stage, the name of the wife of assessee was included in order to avoid future hassle as both the assessee and his wife are old persons. The learned CIT(A) in view of above facts, has held that the assessee meets all conditions required under sec. 54 as the sale proceeds of the capital gains

have been invested in the new residential house within the prescribed time. The learned CIT(A) in view of above, allowed the appeal in favour of the assessee on both the points.

7. Before us, the learned Sr. DR submitted that the assessee became owner of the property on 6.04.1990 and therefore, the indexation benefit should be allowed from this date and not from 1.04.1981. As regards second issue, the learned Sr. DR submitted that the amount of Rs.40,00,000/- out of sale proceeds has been invested in the name of Smt. Ritu Verma, wife of the assessee who has become the owner of ½ share of the property. Therefore, for all purposes the property owned by her and on later date if the property is sold, the capital gain which should be assessable in the hands of the assessee, would be assessable in the hands of Smt. Ritu Verma. Therefore, the benefit of Rs.40,00,000/- in the hands of assessee cannot be given. She therefore, supported the order of the AO.

8. We have heard both the parties and gone through the material available on record. U/s 49(1)(iii), where the capital asset became the property of the assessee by succession, inheritance or devaluation, the cost of acquisition of 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. In the case before us, the assessee became owner of property by inheritance. The said property was acquired by his father in 1965 and was expanded in 1971. Therefore, the fair market value of the property in the hands of assessee has to be taken as was in the hands of his father i.e. as on 1.04.1981. Further clause (b) of Explanation 1 to sec. 2(42A) provides that in determining the period for which any capital asset is held by the assessee in the case of a capital asset which becomes the property of the assessee in the circumstances mentioned in sec. 49(1), the period for which the asset was held by the previous owner shall be included. Sec. 2(42A) defines the expression “short-term capital asset” and means a capital asset held by an assessee for not more than thirty-six months immediately preceding the date of its transfer. Therefore, from the Explanation 1 to sec. 2(42A), it is clear that for determination of period of holding in respect of a capital asset, the period for which the capital asset was held by the previous owner has to be included. Therefore, the period from 1.04.1981 till the death of previous owner shall be included in the period of holding by the assessee for the purpose of determination of indexation cost of the property. Our view is in line with the decision of ITAT, Special Bench in the case of Manjula J. Shah (supra). Respectfully following this decision of Special Bench of the Tribunal, it is held that

indexation cost of the asset transferred has to be taken from 1.04.1981 and not from the date on which the assessee became owner of the property. Accordingly, we do not find any infirmity in the order passed by the learned CIT(A) holding that benefit of indexation cost will be available to the assessee with reference to fair market value of the asset as on 1.04.1981.

9. As regards second issue, the assessee had invested entire amount of Rs.80,00,000/- in the new asset and the name of his wife Smt. Ritu Verma has been entered in the sale agreement just for the purpose of security reasons. Under sec. 64(1)(iv) subject to provisions of sec. 27(i), the income as arises directly or indirectly to the spouse of an individual from the assets transferred directly or indirectly to the spouse by such individual otherwise than for adequate consideration or in connection with the agreement to live apart shall be included in the income of such individual. Therefore, if the new asset as held by Mrs. Ritu Verma is let out and the income is earned, the same will be clubbed in the hands of the assessee. Further, sec. 27 also provides that where an individual who transfers otherwise than for adequate consideration any house property to his or her spouse, not being a transfer in connection with an agreement to live apart, or to a minor child not being a married daughter, shall be deemed to be the owner of the house property so transferred. Therefore, within the meaning of provision of sec. 27, the

assessee will be the owner of the whole property and therefore, the income will be assessable in the hands of assessee. Once the assessee is owner, the capital gain, if any, on sale will be assessable in the hands of the assessee only. Therefore, the apprehension of the learned Sr. DR is without any basis that Smt. Ritu Verma has become owner of the property. Since Shri Suresh Verma, the assessee for the purpose of sec. 22 to 26 is the owner of the new property, in our considered opinion the assessee will be eligible for benefit of entire amount spent on acquisition of new asset, which is jointly held by him with his wife Smt. Ritu Verma. In view of above facts, in our considered opinion, the learned CIT(A) was justified in allowing the benefit of sec. 54 in respect of entire amount of Rs.80,00,000/-.

10. In the result, the appeal filed by the revenue is dismissed.

11. This decision is pronounced in the Open Court on 27th January, 2012.

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

Sd/-
(K.D. RANJAN)
ACCOUNTANT MEMBER

Dated: 27th January, 2012.

Copy of the order forwarded to:-

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

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By Order

Deputy Registrar, ITAT.