

## Cap gain of inherited asset is to be computed by taking CII of the year in which asset is acquired by previous owner

**Summary – The Ahmedabad ITAT in a recent case of Harishkumar Babulal Shah, (the Assessee) held that As per section 49 where capital asset became property of assessee by succession or inheritance, then cost of acquisition of said asset shall be deemed to be cost for which previous owner of said property has acquired it**

### Facts

- The assessee had inherited a property, along with his two brothers, after death of his father 'R'. He acquired 1/6th share of said property. The property was sold jointly by all the members of assessee's family (HUF).
- The Assessing Officer opined that 1/6th undivided share in the property in question was first held by the assessee on 19-2-2004 on the death of his one of his brother. As such the index cost of acquisition was to be taken at to 463 which is being notified by the Central Government for every year under clause (v) of the *Explanation* to section 48 as against 100 shown by the assessee. Therefore, he determined the cost of acquisition adopting cost inflation index of year 2004 *i.e.* for 463 with respect to section 48(iii). The Assessing Officer made addition of Rs. 11.7 lakhs as LTCG in hands of the assessee.
- The assessee submitted that the property was not acquired in the year 2003 but it was acquired way back after the death of his father in 1961, hence, the cost of acquisition index as on 1-4-1981 was to be applied by the Assessing Officer.
- The Commissioner (Appeals) confirmed Assessing Officer's order.
- On appeal:

### Held

- The main issue before the Court was whether the revenue authorities were correct in adopting the index price in assessment year 2003-04 instead of 1-4-1981. In this regard, relevant paragraph of the assessment order has also been reproduced above. The Assessing Officer has held that the said property had devolved on the assessee on the death of 'R' on 19-2-2004 and thereafter he has held that the cost of acquisition would be considered for financial year 2003-04 on 463 in terms of the provision of section 49, read with section 48(iii). Section 48 *Explanation (iii)* prescribes that the 'index cost of acquisition' means 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 1-4-1981, whichever is later. As per this *Explanation*, the cost inflation index is to

be adopted of the year in which the asset is transferred and to be divided by the cost inflation index of the year in which the asset was first held by the assessee or as on 1-4-1981, whichever is later. As far as the cost inflation index of the asset when it was transferred is concerned there is no dispute because the assessee as well as the Assessing Officer both have adopted this figure at 582. The dispute is that whether the cost inflation index is to be adopted as prescribed for 1-4-1981 which is 100 or as on financial year 2003-04 which is 463. Although, it is not required to mention being known to everyone that if the denominator is higher than the resultant figure is lower and if the denominator is lower than the resultant figure is higher. The resultant figure is prescribed to be reduced from the sale consideration. To resolve the issue of the correct year of acquisition of this asset it is worth to examine the provisions of section 49. This section prescribes the cost with reference to certain modes of acquisition and one of such mode is 'succession'. As per section 49 where the capital asset became the property of the assessee by succession or inheritance then the cost of acquisition of the asset shall be deemed to be the cost for which the previous owner of the property had acquired it. In this case, the assessee, had acquired this property by inheritance on death of his father who expired on 19-12-1961. If the dates are correct then the index cost of acquisition is required to be adopted as on 1-4-1981, *i.e.*, 100 instead of 463 as alleged by the Assessing Officer. Since the family tree was not disclosed in the assessment order, at this stage of second appeal it is not clear that whether the dates as mentioned were verified by the Assessing Officer or not. Therefore, the Assessing Officer is required to investigate this issue in the light of the dates mentioned in the said registered sale deed, especially, the date of death of the father of the assessee. If it is found to be prior to 1-4-1981 then naturally the year of inheritance shall be held as 1-4-1981 for the purpose of fixation of cost indexation. With these remarks this issue raised as per ground no.3 of ground of appeals is restored back for *de novo* adjudication. This ground may be treated as allowed but for statistical purpose only.

- Another issue has been raised through additional ground which pertains to the cost of acquisition. The Assessing Officer had adopted the cost at the figure of Rs. 1,28,666; on the other hand the assessee had adopted Rs. 7,48,833. As far as the claim of assessee is concerned, reliance was placed on a valuation report of the valuer. Although, the assessee has certified this valuation report was filed before the Assessing Officer but it appears that the same has not been properly discussed. The Assessing Officer has formed an opinion that the asset in question was acquired by the assessee on 19-2-2004 on the death of assessee's brother and therefore on that basis he has proceeded to assess the capital gain in the hands of the assessee. Although, this issue has already been discussed in above paragraphs but for the sake of clarity the court again reiterated that the assessee got his share in the property after the death of his father and later on after the death of his brother his already existed share was enhanced or increased by the death of his brother. So the assessee is required to place on record the correct factual position in respect of the property which was inherited by the assessee on death of his father and the portion of the property which he received on the death of his brother. After verifying this fact, the Assessing Officer shall examine the datas

referred in the valuation report so as to decide the correctness of the value of the property for the purpose of applying the value in the formula of cost inflation index. Since certain facts are yet to be determined, the additional ground is also allowed for the statistical purpose.