

[ITO v. Sohrab Fali Mehta [TS-117-ITAT-2023(Mum)] – Date of Judgement : 15.03.2023 (ITAT Mumbai)]

Property from ‘Will’ eligible for cost indexation basis first owner's acquisition date

Mumbai ITAT holds that while computing capital gains arising on transfer of a capital asset received by the Assessee under a will, the indexed cost of acquisition has to be computed with respect to the year in which the first owner held the asset; Relies on jurisdictional High Court ruling in CIT v. Manjula J Shah (2013) 355 ITR 474 : (2011) 16 Taxmann.com 42 (Bom.) on the same issue in the context of a gifted asset and CBDT Circular No. 636; For Assessment year 2016-17, Assessee, a US resident, filed return of income declaring a total income of Rs. 15.02 Cr including long term capital gain from sale of share in the immovable property located at Colaba in Mumbai, received from his mother's will in Assessment year 2008-09, amounting to Rs. 14.89 Cr; Assessee computed the capital gains after claiming: (i) indexed cost of acquisition of Rs. 33.82 Lakhs duly supported by valuation report (ii) brokerage of Rs. 42.36 Lakhs, (iii) solicitors' and CA's fees of Rs. 51 lakh, (iv) valuation fees Rs. 57,500 and (v) cost of vacating occupied place Rs.17.15 Lakh; Revenue held that since the Assessee received the property only in March 2008, upon death of Assessee's mother, the Assessee can be allowed indexation only from Financial Year 2007-08 and not from Financial Year 1981-82; However, CIT(A) granted indexation benefit from Financial Year 1981-82 relying on jurisdictional High Court ruling in Manjula J Shah; ITAT notes that the leasehold right of impugned property was first acquired two individuals in 1907 and through various modes of transfer such as mortgage, settlement of trust, will, etc., the 15% of the property came to be inherited by the Assessee; Opines that the issue is squarely covered by jurisdictional High Court ruling in Manjula J Shah wherein it was held that while computing capital gains arising of transfer of capital asset acquired by the Assessee under the will, the indexed cost of acquisition has to be computed with respect to the year in which the initial owner first held the asset and not in the year in which Assessee became

the owner of the asset by virtue of his mother's death; Thus, holds that the Assessee is entitled for indexed cost of acquisition benefit from Financial Year 1981-82; As regards deduction for brokerage charges, ITAT notes that Revenue held that assessee's claim and brokerage expenses and solicitor's fees is not wholly and exclusively related to transfer of property as there is no dispute in property and accordingly allowed only 2% on sale consideration as incidental expenses of transfer; Observes that brokerage was paid only in connection with the sale of this subject mentioned property, who had arranged and coordinated the meetings with respective Attorneys of buyers and had also contributed effectively for negotiating final sale consideration; Also observes that since Assessee was resident of USA, he had employed a broker to negotiate on his behalf with the purchaser and to represent him in all the meetings, accordingly holds that the brokerage paid is allowable in full; As regards Rs. 51 Lakhs paid to thr solicitor and CA, ITAT opines that the total expense paid by the Assessee to the said solicitor is to be bifurcated towards items allowable and items not connected with the transfer of the property and since Rs.18 Lakh was already allowed, holds the same to be reasonable; With respect to the cost of vacating the premises, opines that compensation paid on leave and license agreement paid to tenant is allowable as deduction and directs Revenue to allow the same as deduction. [In favour of assessee] (Related Assessment year : 2016-17) – [ITO v. Sohrab Fali Mehta [TS-117-ITAT-2023(Mum)] – Date of Judgement : 15.03.2023 (ITAT Mumbai)]

NOTE

Revenue's SLP against Bombay High Court ruling in Manjula J Shah was dismissed by Supreme Court due to low tax effect.