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IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI SPECIAL BENCH B-1, MUMBAI

BEFORE S/SHRI D. MANMOHAN, V.P., T.R. SOOD, AM
& P.M. JAGTAP, A.M.

ITA No. 7315/Mum/2007
Assessment Year 2004-05

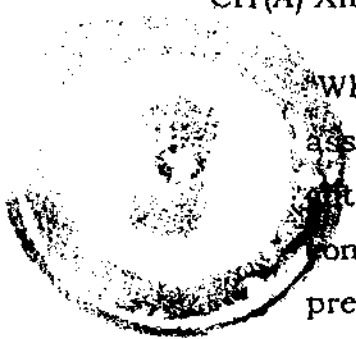
D.C.I.T., 12(2), Room No.114, Aayakar Bhawan, M.K. Road, MUMBAI 400 020.	Vs.	Manjula J. Shah, 309, Marine Chambers, 11, New Marine Lines, MUMBAI 400 020. PAN ABWPS 2510G
Appellant		Respondent

Appellant by	Shri Ajit Kumar Sinha
Respondent by	Shri Hiro Rai

ORDER

PER P.M. JAGTAP, A.M.

This Special Bench has been constituted by the Hon'ble President for considering and deciding the following question as a result of the divergent views expressed by the Division Benches. The said question also incorporates the solitary issue arising from the appeal of the Revenue which is preferred against the order of Id. CIT(A) XII, Mumbai dated 26.09.2007.



"While computing the capital gains in the hands of an assessee who had acquired the asset transferred under whether indexed cost of acquisition was to be computed with reference to the year in which the previous owner first held the asset or the year in which the assessee became the owner of the asset."

2. The relevant facts of the case giving rise to this issue are as follows. The assessee is an individual who derives income from business, house property, capital gains and other sources. The return

of income for the year under consideration was filed by her on 28.4.04 declaring a total income of Rs. 20,92,400/-. In the said return, long term capital gain arising from sale of residential flat bearing No. 1202-A at Chaitanya Towers, Prabhadevi, Mumbai was declared by the assessee at Rs. 4,17,338/-. The total consideration of the said flat sold on 30.6.03 was shown at Rs. 1,10,00,000/-, and after deducting indexed cost of acquisition of Rs. 1,04,81,552/- and stamp duty of Rs. 1,01,010/-, long term capital gain of Rs. 4,17,338/- was offered by the assessee to tax. The flat so sold was actually received by the assessee as gift from her daughter Mrs. Shilpa J. Shah under a gift deed dated 1.02.2003. As submitted on behalf of the assessee before the A.O during course of assessment proceedings, the said flat was purchased by the previous owner Mrs. Shilpa J. Shah on 29.1.93 for a total consideration of Rs. 50,48,350/- and adopting the cost inflation index of 223 applicable to F.Y. 1992-93, the indexed cost of acquisition was worked out at Rs. 1,04,81,552/- by taking the cost of inflation index of 463 applicable to the year under consideration. According to the A.O., the said flat having been received by the assessee as gift only on 1.2.2003, the first year in which it was held by her was F.Y. 2002-03 and therefore cost inflation index of 447 applicable to that year should have been adopted for the purpose of arriving at the indexed cost of acquisition. He, therefore, sought the explanation of the assessee in the matter. In reply, reliance was placed by the assessee on the provisions of Explanation -1(b) to section 2(42A) to contend that the capital asset being flat having become her property under the gift, the holding period of the previous owner was liable to be included for determining the period for which the said flat was held by her. It was contended that the period of holding of the said flat was thus was to be reckoned from 29.1.93 i.e. date from which the said flat was held by the previous owner. This contention of the assessee was not found acceptable by the A.O.

According to him, Clause. (b) of Explanation 1 to section 2(42A) relied upon by the assessee was applicable only for determining whether the property in question was short term capital asset or long term capital asset. He held that the same however could not be extended or applied for the purpose of working out indexed cost of acquisition and in view of the clear provisions of Explanation (iii) to Section 48, the indexed cost of acquisition was liable to be worked out by taking the cost inflation index of 447 applicable to F.Y. 02-03 being the first year in which the asset was held by the assessee. Accordingly, he worked out the indexed cost of acquisition at Rs. 52,29,052/- (i.e. Rs. 50,48,350 x 463/447) and the long term capital gain was computed by him at Rs. 56,69,838/- as against Rs.4,17,388/- declared by the assessee.

3. On appeal, the learned CIT(A) accepted the contention raised by the assessee on this issue before the A.O. and reiterated before him. He held that the provisions of Clause (b) of Explanation 1 to section 2(42A) were clearly applicable in the case of the assessee and the capital asset having become the property of the assessee under the circumstances mentioned in section 49(1), the period for which the said asset was held by the previous owner was liable to be included in determining the period of holding of the asset by the assessee. He noted that the definition of "indexed cost of acquisition" was given in section 48 and there was nothing to indicate that for determining the indexed cost of acquisition, the provisions of section 2(42A) and section 49(1) should not be followed. He, therefore, held that the assessee was entitled for the benefit of indexation w.e.f. 29.1.93 and accordingly directed the A.O. to re-compute the long term capital gain by allowing the said benefit. Aggrieved by the order of the Id. CIT(A), the Revenue has preferred this appeal before the Tribunal.

4. The ld. D.R. invited our attention to the provisions of Explanation (iii) to section 48 wherein the definition of the expression "indexed cost of acquisition" is given. He pointed out that the words used therein are "the first year in which the asset was held by the assessee". He then referred to the provisions of Explanation 1 (b) to section 2(42A) and submitted that the said explanation allowing inclusion of period for which the asset was held by the previous owner for determining the period of holding by the assessee is specifically applicable to ascertain whether it is a short term capital asset or long term capital asset. He contended that these provisions are deeming provisions which cannot be extended and applied to determine the indexed cost of acquisition which is separately defined in Explanation (iii) to section 48. He contended that the view taken by the A.O. on this issue thus was based on the relevant provisions of the Act which are plain and clear in this context and a similar view has also been taken by the Mumbai bench of ITAT in the case of DCIT vs. Kishore Ramji, 102 ITD 437 after analyzing the said provisions. He contended that no doubt there are other decisions of the Tribunal taking a view in favour of the assessee on this issue, but the same have been expressed without taking into consideration the provisions of Explanation (iii) to section 48 which are relevant and material in this context.

5. The learned counsel for the assessee at the outset referred to the provisions of section 47(iii) to point out that transaction involving gift is not regarded as transfer. He submitted that cost of acquisition of the previous owner is treated as cost of acquisition of the assessee for the purpose of computing long term capital gain on the transfer of capital asset becoming property of the assessee under a gift and as

per second proviso to section 48, indexed cost of acquisition is to be adopted for working out long term capital gain. He submitted that Explanation (iii) to section 48 giving definition of "indexed cost of acquisition" relied upon by the revenue, uses the words "..... in which the asset was held by the assessee" and not "..... in which the asset became the property of the assessee" as are used in section 49. He then referred to Explanation I (b) to section 2(42A) to point out that it starts with the words "in determining the period for which any capital asset is held by the assessee". He contended that having regard to these identical expressions used in Explanation (iii) to section 48 as well as Explanation I(b) to section 2(42A) and keeping in view that the definitions given in Section 2 are applicable to the entire Act, it cannot be said that the definition given in Explanation (iii) to section 48 is to be considered in isolation and the provisions of section 2(42A) especially Explanation I(b) thereto cannot be applied to decide the issue of indexation.

6. The learned counsel for the assessee also contended that when the date and cost of acquisition of the original owner are treated as the date and cost of acquisition of the assessee for the purpose of computing the capital gain, there is no reason or logic in not working out the indexed cost of acquisition by adopting the date of acquisition of the original owner as the date of acquisition of the assessee. He contended that any interpretation contrary to this will be against the scheme of the Act as laid out in the relevant provisions and non-granting of indexation for the earlier period of holding by adopting such interpretation would result in absurdity. Relying on the decision of Hon'ble Supreme Court in the case of CIT vs. Laxmi Machine Works, 290 ITR 667, he contended that schematic interpretation of

the relevant provisions thus needs to be adopted to serve the legislative intention behind enacting the relevant provisions.

5. The learned counsel for the assessee further submitted that if the provisions of Explanation I(b) to section 2 (42A) create a legal friction as contented by learned DR, it has to be carried to its logical conclusion as held, inter alia, by the decision of Hon'ble Supreme Court CIT vs. G. Narasimhan And Others, 236 ITR 227. He contended that the purpose of indexation has to be kept in mind in this context and when cost was admittedly incurred by the previous owner in the earlier years, the only logical conclusion is that the benefit of indexation should be given for the corresponding period. He contended that if the interpretation sought to be given by the D.R. is accepted, nobody would get the benefit of indexation for the period of holding of the capital asset by the previous owner which is certainly not acceptable in logical terms. He contended that such literal interpretation on the contrary would result in absurdity and unjust result which has to be avoided as held by the Supreme Court in the case of P. Varghese vs. ITO 131 ITR 597. He contended that in its decision rendered by the Mumbai Bench of ITAT in the case of DCIT vs. Kishore Kaungo (supra), such a literal interpretation was adopted and as the same is leading to absurdity and unjust result, the view taken by the Division Bench of the Tribunal adopting such literal interpretation needs to be reviewed by this Special Bench. He contended that the decision rendered by Calcutta bench of ITAT in the case of Smt. Meena Devgan vs. ITO, 117 TTJ 121, taking a view in favour of the assessee on this issue, on the other hand, is a well discussed and well considered one. He therefore strongly relied on the said decision stating that para No. 8.3, 8.4 and 8.6 containing the operative portion may be taken into consideration while deciding the

issue under consideration. He also relied on the decision of Chandigarh SMC Bench of ITAT in the case of Mrs. Pushpa Sofat vs. ITO 81 ITD 1 and pointed out that while deciding a similar issue in favour of the assessee, Explanation (iii) to section 48 was duly referred to by the Tribunal at page No. 4 of the report. He also relied on the Circular No. 636 issued by the CBDT explaining the purpose of indexation allowed while computing the long term capital gain as reported in 198 ITR 1(St.) at page No. 24, para 35.

6. In the rejoinder, the Id. D.R. submitted that Section 2 starts with "..... unless the context otherwise requires". He contended that Explanation (iii) to section 48 defining the indexed cost of acquisition is in a different context and therefore the definition as given in section 2(42A) as further explained in Explanation 1(b) cannot be applied in such different context especially when there is nothing in Explanation (iii) to section 48 to suggest or indicate to this effect.

7. We have considered the rival submissions and also perused the relevant material on record. The relevant provisions dealing with computation of income from capital gains are contained in Section 45 and 55-A of the I.T. Act, 1961. Section 45 is a charging provision according to which any profit or gains arising from the transfer of a capital asset effected in the previous year shall be chargeable to tax under the head 'capital gains' save as otherwise provided in section 54 etc. Section 47 enumerates certain transactions which are not regarded as transfer. Section 48 lays down the manner and method of computing the income chargeable under the head 'capital gains'. As provided in Section 48, the cost of acquisition of the asset, inter alia, is to be deducted from the full value of the consideration received or receivable as a result of the transfer of the capital asset and such



cost with reference to certain modes of acquisition is specified in Section 49. In so far as transfer of a capital asset under a gift is concerned, such transaction is not regarded as transfer as per Section 47 which provides that the provisions contained in Section 45 shall not apply to any transfer of a capital asset under a gift. However, where the capital asset becoming the property of the assessee under gift is transferred by him as envisaged in section 45, it gives rise to capital gain chargeable to tax and as per the provision of section 49(1), the cost of acquisition of such 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 asset incurred or borne by the previous owner or the assessee, as the case may be. As per second Proviso to Section 48, where the long term capital gain arises from the transfer of long term capital asset, what would be deductible from the full value of the consideration for computing the income from capital gain is the indexed cost of acquisition and indexed cost of any improvement. The definition of "Long term capital asset" given in Section 2(29A) to mean a capital asset which is not a short term capital asset. The expression "short term capital asset" is defined in Section 2(42A) so as to mean a capital asset held by the assessee for not more than 36 months immediately preceding the date of its transfer. As per Explanation 1(b) to Section 2(42A), in the case of capital asset which becomes the property of the assessee under gift, there shall be included in determining the period for which any capital asset is held by the assessee, the period for which the asset was held by the previous owner.

7. If all the aforesaid provisions are read together, the position which emerges is that there is no capital gain chargeable to tax as a result of transfer of a capital asset under gift since the transaction

involving a gift of capital asset is not regarded as transfer for the purpose of Section 45. However, where such capital asset becoming the property of the assessee under gift is subsequently transferred as envisaged in Section 45, the capital gain arising from such transfer is made chargeable to tax and having regard to the specific provisions contained in the statute, the date and cost of acquisition of the previous owner are adopted as a cost and date of acquisition of the assessee for the purpose of computation of income from such capital gains. The entire capital gain including the capital gain which would have been chargeable as a result of transfer of a capital asset by the previous owner to the assessee as a result of gift but for the provisions of section 47 thus is made chargeable to tax at the second stage when the capital asset becoming the property of the assessee under gift is transferred by him. This is the scheme of the Act as laid out in the relevant provisions which treat the cost and date of acquisition of the previous owner as the cost and date of acquisition of the assessee.

8. As per the definition given in Explanation (iii) to section 48, the "indexed 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 the first day of April, 1981 whichever is later. Relying on this definition, the Id. D.R. has contended that the year in which the capital asset was received by the assessee under gift would be the first year in which the same could be said to be held by the assessee.

According to him, such date therefore has to be reckoned for working out the indexed cost of acquisition and the date of acquisition of the said asset by the previous owner would not be relevant in this context. He has contended that Explanation 1(b) to section 2(42A)

allowing inclusion of the period for which the asset was held by the previous owner in determining the period for which any capital asset is held by the assessee in the case of such capital asset becoming the property of the assessee under the gift is relevant only to ascertain whether the said capital asset is a short term capital asset or long term capital asset. We find it difficult to accept this contention of the Id. D.R. for the reasons which are set forth hereunder.

9. The expression "indexed cost of acquisition" used in Section 48 is defined in Explanation (iii) as under:-

- iii) "indexed 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 1st day of April, 1981, whichever is later;

10. The definition of "short term capital asset" is given in section 2(42A) and Explanation 1(b) to the said section reads as under:-

2(42A) ²⁴ "Short-term capital asset" means a capital asset held by an assessee not more than ²⁵ [thirty-six] months immediately preceding the date of its transfer :]

²⁶ [Provided that in the case of a share held in a company ²⁷ [or any other security listed in a recognised stock exchange in India or a unit of the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963) or a unit of a Mutual Fund specified under clause (23D) of section 10] ²⁸ [or a zero coupon bond], the provisions of this clause shall have effect as if for the words "thirty-six months", the words "twelve months" had been substituted.]

²⁹ [Explanation 1].—(i) In determining the period for which any capital asset is held by the assessee—

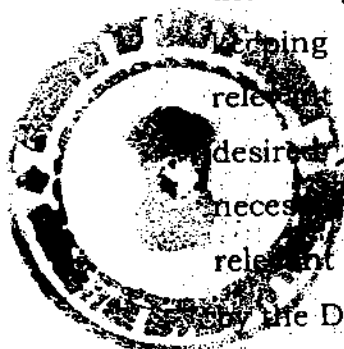
- (a) in the case of a share held in a company in liquidation, there shall be excluded the period subsequent to the date on which the company goes into liquidation ;

- (b) in the case of a capital asset which becomes the property of the assessee in the circumstances mentioned in ¹[sub-section (1)] of section 49, there shall be included the period for which the asset was held by the previous owner referred to in the said section

11. A combined reading of both the aforesaid provisions, which are relevant in the present context, clearly shows that importance is assigned to the period of holding of the capital asset in as much as Explanation (iii) to section 48 refers to the first year in which the asset was held by the assessee whereas Explanation 1(b) to section 2(42A) provides for inclusion of the period for which the asset was held by the previous owner in determining the period for which any capital asset is held by the assessee. Having regard to this aspect as well as keeping in view that the definitions given in section 2 are applicable for the entire Act, we are of the view that the legislative intention behind enacting these provisions is very clear to treat the date as well as cost of acquisition of capital asset of the previous owner to be the date and cost of acquisition of the assessee for the purpose of computing capital gain in terms of Section 48. This is the scheme of the Act as laid out in the relevant provisions and this is the context in which the same has to be understood and appreciated. As rightly contented by the Id. Counsel for the assessee, had it not been the intention of the legislature, the expression used in Explanation (iii) to section 48 would have been "..... for the first year in which the capital asset became the property of the assessee" as used in Section 49(1).

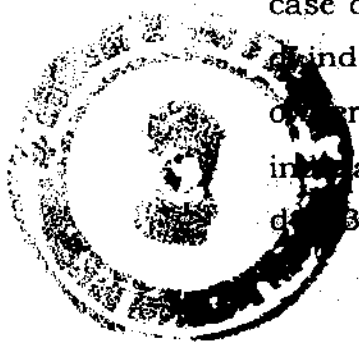
12. As already observed, the transaction of gift is not regarded as transfer and accordingly capital gain arising from such transfer is not made chargeable to tax u/s. 45. However, this capital gain by

implication is brought to tax at second stage when capital asset becoming the property of the assessee under gift is subsequently transferred by him by adopting the date and cost of acquisition of the capital asset of the previous owner as the date and cost of acquisition of the assessee. This precisely is the scheme of the Act as laid out in the relevant provisions and if Explanation (iii) to section 48 is interpreted in the way sought by the Id. D.R. by taking the date on which the capital asset received by the assessee under a gift becoming his property for the purpose of working out the indexed cost of acquisition, it will certainly not be in consonance with the scheme. We, therefore, agree with the contention of the Id. Counsel for the assessee that one should not go by the literal meaning of the words or by the grammatical structure of the sentence while interpreting the relevant provisions of Explanation (iii) to section 48. On the other hand, schematic method of interpretation is to be adopted going by the design or purpose which lies behind the relevant provisions keeping in mind the spirit and not the letter of legislature. The relevant provisions thus are to be interpreted so as to produce the desired effect which was sought to be achieved. It is therefore necessary in such a situation to avoid the literal interpretation of the relevant provisions. We, therefore, do not agree with the view taken by the Division Bench of this Tribunal in the case of Kishore Kanunur (supra) while deciding a similar issue against the assessee by adopting such literal interpretation of Explanation (iii) to Section 48. In our opinion, it is an appropriate situation to assign a schematic interpretation to said Explanation going by the design or purpose which lies behind it so as to produce the desired effect which was sought to be achieved. If it is so done, the only view possible from the interpretation of relevant provisions is that the period for which the asset was held by the previous owner is to be included in determining the period for which the asset was held by the assessee as provided in



Explanation 1(b) to section 2(42A) and this position is applicable even for working out the indexed cost of acquisition within the meaning of Explanation (iii) to section 48.

13. This is so also because when the cost of acquisition to the previous owner as on the date of acquisition of the capital asset by him is to be adopted as cost of acquisition to the assessee even for the purpose of working out the indexed cost of acquisition as per the meaning given in Explanation (iii) to section 48, it does not sound logical to adopt the cost inflation index for the year in which the capital asset became the property of the assessee and not that for the year in which the asset was acquired by the previous owner. In our opinion, when the cost of acquisition of the previous owner as on the date of acquisition of the capital asset by him is to be taken for working out the indexed cost of acquisition, the only conclusion which logically and reasonably follows is to adopt the cost inflation index corresponding to that date for appropriately determining the indexed cost of acquisition. Any other view as sought to be put forth by the Id. D.R. relying on the decision of Division Bench of this Tribunal in the case of Kishore Kaungo (supra) would result in not giving the benefit of indexation for the period of holding of capital asset by the previous owner which will defeat the very purpose of allowing the benefit of indexation as explained in paragraph No. 35 of CBDT Cir. No. 636 dated 31.8.1992 which is extracted below:-



"35. The Finance Act has recast the system of taxation of long-term capital gains. At present, an asset is considered to be long-term if it is held for a period of more than 36 months except for shares of a company, where the period of holding should be more than 12 months. This definition continues to be the same in the changed format. In the scheme prior to 1-4-1992 a basic deduction of Rs. 15,000 and a fixed percentage of the balance amount of capital gains

was allowed as deduction under section 48(2). The percentage depended on the nature of the asset and the status of the assessee, but was unrelated to the length of the period of holding. This deduction was intended to give a rough and ready relief for inflation, to counteract bunching of profits and to exclude from the tax net capital gains which were relatively small. As an additional measure to offset the effect of inflation, all appreciation before 1-4-1974 in the value of assets was excluded from taxation. A fair method of allowing relief for these factors is to link it to the period of holding. For this purpose, the cost of acquisition of and the cost of improvement to the asset are to be inflated to arrive at the indexed cost of acquisition and indexed cost of improvement and then deduct these amounts from the sale consideration to arrive at the long-term capital gains. The cut-off date for assets held for purposes of indexation is taken as 1-4-1981. Accordingly, for an asset acquired before this date its value as on 1-4-1981 will be taken for indexation. The cost of improvement after this date only will be taken into account for indexation."



14. As explained in para No. 35 of the aforesaid circular, the fixed percentage method followed earlier by allowing deduction u/s 48(2) was dependent on the nature and status of the assessee, but was unrelated to the length of period of holding. This deduction was intended to give a rough and ready relief for inflation. It was, however, felt that a fair method of allowing relief for these factors would be to link it to the period of holding and for this purpose, provisions have been made to inflate the cost of acquisition of the asset and cost of improvement of the asset so as to arrive at the indexed cost of acquisition and indexed cost of improvement and deduct these amounts from the sale consideration to arrive at the long term capital gains. It is thus clear that the legislative intention to introduce the concept of "indexed cost of acquisition" and "indexed cost of improvement" in the statute has been to allow deduction while computing the capital gains on the basis of length of the period of holding of the capital asset. In this situation, if the meaning to "indexed cost of acquisition" as sought to be given by the Id. D.R. relying on Explanation (iii) to section 48 is assigned, the length of

period of holding of the capital asset by the previous owner would get completely excluded while giving the benefit of indexation. Such an interpretation thus will lead to absurdity and unjust result which, as held by the Hon'ble Supreme Court in the case of K.P.Varghese (supra), has to be avoided. Moreover, it will defeat the very purpose of introducing the concept of "indexed cost of acquisition" in the statute. The settled principle of statutory interpretation with reference to Tax Laws is that the words in the "statute" are to be understood in the sense in which they best harmonize with the subject of the enactment and object which the legislature has in view. This is also known as rule of purposive construction. As held by the Hon'ble Supreme Court in the case of C.W.S. (India) Ltd. Vs. CIT, 208 ITR 649, the object of all rules of interpretation is to give effect to the object of enactment and such object or legislative intention can be gathered from the memorandum explaining the relevant provisions.

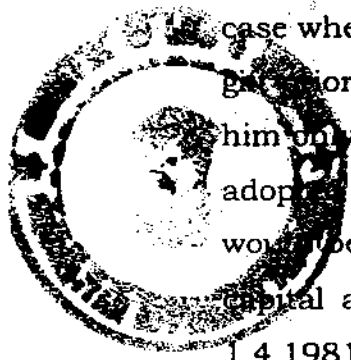
15. It is also observed that if the interpretation as sought by the Id. D.R. is assigned to Explanation (iii) to section 48, there would be a resultant conflict between the said clause (iii) and clause (iv) of the Explanation which read as under:

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- (iii) "indexed 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 1st day of April, 1981, whichever is later;
 - (iv) "indexed cost of any improvement" means an amount which bears to the cost of improvement the same proportion as Cost Inflation Index for the year in which the asset is transferred bears to the Cost Inflation Index for the year in which the improvement to the asset took place;

As is clearly evident from the aforesaid clause (iv), it permits the indexation of cost of any improvement unconditionally and if the same

is read with section 55(1)(b)(ii) which allows deduction for cost of improvement incurred by a previous owner, the position which emerges is that cost of any improvement to the capital asset incurred by the previous owner is also eligible for indexation. This will result in an apparent anomaly in as much as the cost of improvement incurred by the previous owner would be eligible for indexation on the basis of year in which the said improvement was done by the previous owner whereas in case of cost of acquisition, the year of acquisition of the asset by the assessee would be relevant for indexation purpose and not the year of acquisition by the previous owner, which is beyond any logical comprehension.

16. It is also noted that if the interpretation as sought by the learned D.R. is assigned to Clause (iii) of Explanation to Section 48, it would lead to such working of indexed cost of acquisition in some cases which is totally illogical and unreasonable. For instance, in the case where capital asset has become a property of the assessee under a gift prior to the cut off date of 1.4.1981 but the same is transferred by him only after 1.4.1981; say in Financial Year 1987-88, the year to be adopted for indexation as per the contention of the learned D.R., would be Financial Year 1987-88. However, the cost of acquisition of capital asset in such case would be taken as Fair Market Value of 1.4.1981 being the cut off date embedded in the indexation scheme as agreed even by the learned D.R. The situation will thus arise where the cost of acquisition of capital asset would be taken as of 1.4.1981 whereas the cost inflation index for the year 1987-88 would be applied to the said cost to work out the indexed cost of acquisition. Such a working will not stand to any reasonability or logic and will certainly defeat the very purpose of indexation scheme as explained in the aforesaid Circular No. 636 dated 31.8.90.



17. For the reasons given above, we are of the view that for the purpose of computing long term capital gain arising from the transfer of a capital asset which had become property of the assessee under gift, the first year in which the capital asset was held by the assessee has to be determined to work out the indexed cost of acquisition as envisaged in Explanation (iii) to section 48 after taking into account the period for which the said capital asset was held by the previous owner. In that view of the matter, we hold that the indexed cost of acquisition of such capital asset has to be computed with reference to the year in which the previous owner first held the asset. Accordingly, we answer the question referred to us in favour of the assessee and uphold the impugned order of the learned CIT(A) on this issue.

18. In the result, the appeal of the revenue is dismissed.

sd/-	sd/-	sd/-
(T.R. SOOD)	(D. MANMOHAN)	(P.M. JAGTAP)
ACCOUNTANT MEMBER	VICE PRESIDENT	ACCOUNTANT MEMBER

Dated: 16th October, 2009.

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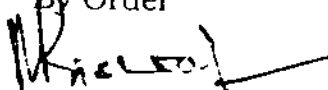
1. The Appellant.
2. The Respondent.
3. The CIT concerned
4. The CIT(A), Mumbai.
5. The DR/ITAT, Mumbai.
6. Guard File.

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By Order


Assistant Registrar, ITAT, Mumbai.