INDEXATION ON INHERITED PROPERTY

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A big question arise in the mind of every professional that whether benefit of Indexation can be claimed on Inherited Property ; if yes then second half thought is whether it can be claimed from the year in which it is first held by the assessee or from the year in which it is occupied by the Previous Owner or predecessor.

Since As per Explanation (iii) to Section 48 Of Income Tax Act “"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”

AND

Section 49(1) Of Income Tax Act says that “Where the **capital asset became the property of the assessee** by succession, inheritance etc . then the **cost of acquisition of the 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.

THERE IS A CONFLICT BETWEEN BOTH THESE PROVISIONS

For Better Understanding lets take a Case Example :

- Mr A has Acquired an Asset on 01.01.1990
- Mr A died on 30.09.2008
- Mr B (son of Mr A) acquired the Asset belonged to Mr A on 30.09.2008 (By Inheritance)
- Mr.B sold the same Asset on 31.01.2014

Now the question arise that whether the Indexation will be claimed at 582 (FY 2008-2009) or at 172 (FY 1989-1990)

Analysis of case

If you carefully understand **Explanation (iii) to Section 48 Of Income Tax Act it has clearly state that "For the purpose of computation of Indexed Cost of Assets the Cost Inflation Index has to be considered for the first year in which the asset was held by the assessee " which is 2008-2009 in the given case. And Section 49(1) says that the cost of acquisition of the asset shall be deemed to be the cost for which the previous owner of the property acquired it (therefore consider Cost Inflation Index for the year in which the assets is acquired by the Previous owner) which is 1989-1990 in the given case** .

The said issue have been challenged many times in many Tribunals and High Courts but the matter has been reasonably resolved in the Following Cases:

1) **COMMISSIONER OF INCOME TAX – I vs. GAUTAM MANUBHAI AMIN (GUJRAT HIGH COURT – 2013)**
2) **ARUN SHUNGLOO TRUST vs. COMMISSIONER OF INCOME TAX (DELHI HIGH COURT – 2011)**
3) **DCIT vs. MANJULA J SHAH (ITAT 2011)**

In Case of COMMISSIONER OF INCOME TAX – I vs. GAUTAM MANUBHAI AMIN; Assessee (An Individual) sold property inherited by him for Rs 3.35Cr. hence calculated his share of Capital Gain at Rs.21.24 Lac after considering the benefit of Cost Inflation Index as per base year 1981-1982 but the Assessing Officer is of the view that Cost Inflation Index should be as per Financial Year 1998-99 which is the year in which the property is acquired by the assessee under Inheritence therefore compute Capital Gains accordingly.

Assessee was aggrieved with the decision of Assessing Officer therefore filed an appeal to CIT (Appeals) where CIT (A) on considering the decision held in case of **DCIT vs. MANJULA J SHAH (ITAT 2011)** pass the order in favour of Assessee.

Later on ITAT also confirmed the order passed by Assessing Officer in the same case.

At last the matter was placed before **HIGH COURT OF GUJRAT** on the appeal filed by Revenue in which High Court conclude that "For the purpose of computation of Capital Gains , Indexed Cost of Acquisition was to be computed with reference to year in which previous owner first held asset and not the year in which assessee become owner of assets by inheritance".

In Case of ARUN SHUNGLOO TRUST vs. COMMISSIONER OF INCOME TAX : Assessee (Mr. Arun) acquired property before 1981 then in 1996 Mr. Arun transferred the property to the trust Managed by the Appellant , during 2001-2002 the Appellant sold the aforesaid property.

The contention of the appellant assessee is that it is entitled to the benefit of indexed cost of acquisition from the period during which Mr. Arun Shungloo held the property before it was Transferred to the trust. There is no reason and justification to hold that clause (iii) of the explanation to section 48 intents to reduce or restrict the "indexed cost of acquisition" to the period during which the assessee has held the property and not the period during which the property was held by the previous owner.

In the given case **HIGH COURT OF DELHI** held that the Assessee Trust have acquired the property in 1996which was acquired by the transferor (Previous Owner) sometimes before 01.04.1981 therefore on the sale of property by the Assessee Trust in 2001-2002, Trust is entitled to the benefit of Indexed Cost of Acquisition from 01.04.1981 and not for the period after 1996.

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