

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ITA No.3 of 2014 (O&M)
Date of decision: 18.03.2014**

**Thakur Dwara Shri Krishanji Maharaj Handiyaya, Barnala through Mahant
Om Parkash Chela Mahant Madan Dass**

.....Appellant

Vs.

Commissioner of Income Tax, Patiala and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MS. JUSTICE ANITA CHAUDHRY**

Present: Ms. Radhika Suri, Advocate for the appellant.

Ajay Kumar Mittal,J.

1. This appeal has been preferred by the assessee under section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 15.5.2013 Annexure A-3, passed by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh in ITA No.172/Chd/2010 for the assessment year 2006-07, claiming following substantial questions of law:-

“i) Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal has fallen in error in applying the ratio of the judgment of the Hon'ble Court in the case of *CIT v. Raja Malwinder Singh*, (2011) 334 ITR 48 to the facts and circumstances of the present case?

ii) Whether in facts and circumstances of the case, the Income Tax Appellate Tribunal has fallen in error in applying the provisions of section 55(3) of the Income Tax Act to compute the capital gain even though there was no cost of acquisition of the acquired land and thus no profits and gains could be computed on acquisition of the same?

2. A few facts relevant for the decision of the controversy involved, as narrated in the appeal may be noticed. Agricultural land measuring 146 kanals 19 marlas was situated within the municipal limits of Barnala which was acquired by the Improvement Trust, Barnala. Compensation of ₹ 2,77,51,294/- was awarded as per award dated 28.11.2005. Since the land was gifted to the appellant by the Maharaja of Patiala, the cost of acquisition of the land was the same as to the Maharaja of Patiala. Since the Maharaja did not incur any cost, the same was not chargeable to tax under section 45 of the Act. The Assessing Officer rejected the said plea of the appellant vide order dated 24.12.2008, Annexure A.1 by holding that as per the provisions of section 55(3) of the Act, even in cases where the cost of acquisition to the previous owner could not be ascertained, the same had to be computed by taking into account the fair market value of the assets as on 1.4.1981. The Assessing Officer adopted the market value of the land as on 1.4.1981 and computed the capital gains in relation to the acquisition of land. Aggrieved by the order, the assessee filed appeal before the Commissioner of Income Tax(Appeals) [CIT(A)]. Vide order dated 8.12.2009, Annexure A.2, the CIT(A) set aside the order passed by the Assessing Officer and deleted the addition on account of capital gains made by the Assessing Officer. Not satisfied with the order, the revenue filed appeal before the Tribunal on the ground that

the CIT(A) had erred in holding that the compensation received on account of acquisition of land of the assessee was not exigible to tax as neither the assessee nor the previous owner had incurred any cost to acquire the asset. Vide order dated 15.5.2013, Annexure A.3, the Tribunal accepted the appeal by placing reliance on the Full bench decision of this Court in **Raja Malwinder Singh's** case (supra). Hence the present appeal by the assessee.

3. We have heard learned counsel for the appellant-assessee and perused the record.

4. Learned counsel for the assessee-appellant submitted that the cost of acquisition in the present case had to be taken as the cost to the previous owner under Section 49 of the Act. The explanation to Section 49 specifically provides that previous owner is one who has acquired the asset by a mode other than referred to in clauses 1, 2, 3 and 4 of this sub section. It was further argued that the previous owner under the Act is a person who has acquired the asset by payment of money i.e. the cost incurred for acquisition of the asset. In case the previous owner has not incurred any cost neither the provisions of Section 55(2) (b) nor the provisions of Section 55 (3) of the Act would apply. Support was drawn from judgment of the Apex Court in **CIT, Bangalore v. B.C.Srinivasa Setty**, (1981) 128 ITR 294 and judgment of Gujarat High Court in **CIT v. Manoharsinhji P.Jadeja**, (2006) 281 ITR 19.

5. We are not impressed with the submissions of learned counsel for the appellant. The matter is no longer *res integra*. The Full Bench of this Court in **Raja Malwinder Singh's** case (supra) after considering the judgment of the Apex Court in **B.C.Srinivasa Setty's** case (supra) and the

provisions of Sections 48, 49, 55(2) and 55 (3) of the Act under similar circumstances observed as under:-

“5. It is pointed out that judgment in *CIT, Bangalore v. B.C.Srinivasa Setty*, [1981] 128 ITR 294 (SC), is distinguishable. It was observed therein that in a newly started business the value of goodwill was not ascertainable, and on sale of goodwill, capital gain was not attracted. It is submitted that in case of acquisition of land, the same is either acquired at some cost or without cost and under the scheme of the Act, there can be no situation when the cost is incapable of ascertainment. Section 55(2) provides for taking the cost either equal to the market value as on 1.1.1954 or at the option of the assessee equal to the cost of acquisition of the previous owner. Section 55(3) provides that where cost of acquisition of the previous owner cannot be ascertained, it has to be taken to be equal to the market value on the date the asset was acquired by the previous owner. Explanation to section 49 provides that previous owner is the person not covered by the clauses mentioned in section 49(2) i.e. who acquires property otherwise than by way of gift, will or by succession.

6. In the present case, the assessee acquired the property by succession from previous owner. According to the stand of the assessee, cost of acquisition by the previous owner could not be ascertained. However, he failed to exercise the option of going either by the date of market value on the date of acquisition or by the cost of the previous owner in which case only option available to the Assessing Officer was to proceed to compute capital gain by taking the cost of the asset to be fair market value on the specified date i.e. 1.1.1954 as per applicable provision for assessment year 1977-78 and as on 1.1.1964 for assessment year 1978-79. Even in a case where cost of acquisition cannot be ascertained, section 55(3) statutorily prescribes the cost to be equal to the market value

on the date of acquisition. This being the position, capital gain is not excluded even on the plea that value of the asset in respect of which capital gain is to be charged was incapable of being ascertained. The view taken in *Amrik Singh's* case [2008] 299 ITR 14 (P&H) based on the assumption that where market value cannot be ascertained, capital gain cannot be applied, is not correct being against the statutory scheme. Similarly, the view taken by the Madhya Pradesh High Court in *CIT vs. H.H.Maharaja Sahib Shri Lokendra Singhji*, [1986] 162 ITR 93 (MP) cannot be accepted. The said judgment also does not give effect to the mandate of section 55(3) which provides for a situation where value of the asset acquired could not be ascertained. If market value can be ascertained, it has to be taken to be equal thereto and if the value cannot be ascertained, it has to be equal to market value on a specified date at the option of the assessee. It is not the case of the assessee that land had no market value at all on the date of its acquisition. Contention that value was incapable of being ascertained, as already observed, the value in such case has to be taken as being equal to market value on a specified date.”

6. Further, while concluding, it was held :-

“Even where the cost of acquisition of capital asset cannot be ascertained but the asset has a market value, capital gain will be attracted by taking the cost of acquisition to be fair market value as on January 1, 1954, or on date statutorily specified or at the option by the assessee, the market value on the date of acquisition.”

7. The Full Bench of this Court in *Raja Malwinder Singh's* case (supra) had dissented from judgment of the Madhya Pradesh High Court in *CIT v. H.H.Maharaja Sahib Shri Lokendra Singhji*, (1986) 162 ITR 93 (MP), whereas the Gujarat High Court in *Manoharsinhji P.Jadeja's* case (supra) had applied the principles enunciated therein. We are unable to

subscribe to the view expressed in *Manoharsinhji P.Jadeja's* case (supra).

8. As a result, no substantial question of law arises in this appeal and the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

March 18, 2014
'gs'

(Anita Chaudhry)
Judge