IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL No. 1715 of 2016.

Pr. Commissioner of Income Tax-23 ..Appellant.

Vs

Smt. Elsa Silva ..Respondent.

Mr. A.R. Malhotra a/with Mr. N.A.Kazi, for the Appellant.

CORAM : AKIL KURESHI &
B. P. COLABAWALLA, JJ.

DATED :- 12TH FEBRUARY, 2019.

P.C. :

1. Revenue is in appeal against judgment of Income tax Appellate Tribunal. Following question is presented for our consideration:-

> "Whether on the facts and circumstances of the case and in law, the ITAT failed to appreciate the fact that Section 48 clearly states that the cost inflation index shall be from the first year in which the asset was held by the assessee?

2. It is not in dispute that the assessee became the owner of part of the immovable property upon death of her mother by way of succession. Subsequently, she received the rest of the share in the property by way of gift from other successors. At the time of sale of the property by the respondent-assessee, the question of computing capital gain arose. The assessee contend that the benefit of indexation should be granted from the death of her mother i.e. predecessor-in-title of the property, became the owner thereof. This view is supported by a judgment of this Court in the case of the Commissioner of Income Tax Vs. Manjula J. Shah [2013] 355 ITR 474. In the said judgment, it was held and observed as under :-

> "We see no merit in the above contention. As rightly contended by Mr. Rai, learned counsel for the assessee, the indexed cost of acquisition has to be determined with reference to the cost inflation index for the first year in which the capital asset was "held by the assessee". Since the expression "held by the assessee" is not defined under section 48 of the Act, that expression has to be understood as defined under section 2 of the Act. Explanation 1 (i)(b) to Section 2 (42A) of the Act provides that in determining the period for which an asset is held by an assessee under a gift, the period for which the said asset was held by the previous owner shall be included. As the

> previous owner held the capital asset from January 29, 1993, as per Explanation 1 (i)(b) to Section 2 (42A) of the Act, the assesee is deemed to have held the capital asset from January, 29, 1993, the assessee is deemed to have held the asset as a long-terim capital asset. If the long-term capital gains liability has to be computed under section 48 of the Act by treating that the assessee held the capital asset from January, 1993, then, naturally in determining the indexed cost of acquisition under section 48 of the Act, the assessee must be treated to have held the asset from January 29, 1993, and, accordingly the cost inflation index for 1992-93 would be applicable in determining the indexed cost of acquisition."

3. In fact, the revenue also does not dispute this position. This appeal was probably filed in view of the fact that the revenue had not accepted the judgment of this Court in case of CIT v. Manjula J. Shah and carried appeal before the Supreme Court. We are informed that such an appeal is dismissed on the ground of low tax effect. Be that as it may, insofar as this Court is concerned, the issue is covered against the revenue. Income-tax appeal is dismissed with no order as to costs.

(B.P. COLABAWALLA, J.) **(AKIL KURESHI, J)**