INCOME TAX: Where assessee had inherited property with encumbrance by way of mortgage, amount paid by assessee to clear that encumbrance to be treated as part of cost of acquisition or cost of improvement under section 48/49

[2020] 120 taxmann.com 402 (Madras)

HIGH COURT OF MADRAS

N.Rajarajan

v.

Assistant Commissioner of Income Tax, Corporate Circle XIV, Chennai*

DR. VINEET KOTHARI
AND KRISHNAN RAMASAMY, JJ.
TAX CASE (APPEAL) NO.464 OF 2017†
SEPTEMBER 16, 2020

Section 48, read with sections 49 and 55, of the Income-tax Act, 1961 - Capital gains - Cost of acquisition (Encumbrance) - Assessment year 2010-11 - Assessee received 3 acres of land under a settlement deed out of total land of 11.53 acres belonging to various family members from his grandmother, 'SA' - However entire land was earlier mortgaged by various joint owners of property including 'SA' with Bank and upon default in payment matter went to DRT and subsequently settled land in an OTS before DRT and land was sold - Assessee claimed deduction of proportionate part of OTS amount paid to bank as cost of acquisition under section 55 - Assessing Officer as well as Tribunal rejected claim of deduction - Whether encumbrance by way of mortgage whether by way of direct mortgage or as collateral security, had to be cleared off by legal heir or person in whose favour property had been settled like assessee and thus, amount paid by assessee to clear that encumbrance had to be treated as part of cost of acquisition or cost of improvement under section 48/49 - Held, yes [Paras 14 and 17] [In favour of assessee]

CASE REVIEW

R. M. Arunachalm v. *CIT* [1997] 93 Taxman 423/227 ITR 222 (SC) (para 13) *followed*.

CASES REFERRED TO

Dy. CIT v. *Kutty Flush Doors* [IT Appeal No. 2017 (Mds.) of 2014, dated 29-10-2014] (para 3), *R.M. Arunachalam* v. *CIT* [1997] 93 Taxman 423/227 ITR 222 (SC) (para 11) and *Ambat Echukutty Menon* v. *CIT* [1973] 87 ITR 129 (Ker.) (para 13).

Kaushik and **S. Sridhar** *for the Appellant.* **Karthik Ranganathan**, Sr. Standing Cousel *for the Respondent.*

JUDGMENT

Dr.Vineet Kothari, J. - The Assessee N. Rajarajan has filed this present Appeal under section 260A of

the Income-tax Act raising the following purported substantial questions of law arising from the order passed by the Income-tax Appellate Tribunal on dated 26-10-2016 for the Assessment Year 2010-2011 dismissing the Appeal of the Assessee on two grounds:-

"(*i*) Whether the Appellate Tribunal is correct in sustaining the average value adopted on the consideration of the SRO's guideline value and the Chartered Engineer's valuation report to quantify the cost of acquisition being the fair market value as on 1-4-1981 in the recomputation of long term capital gains despite the settled position on the sanctity of SRO's guideline value for the understanding/for the determination of the fair market value?

(*ii*) Whether the Appellate Tribunal is correct in law in sustaining the disallowance of the payments made to clear the loan liability as part of the cost of acquisition in the recomputation of long term capital gains while overlooking the pre-existing charge of the bank liability on the capital asset/property under consideration when it got vested by virtue of settlement deed dated 14-7-2004?

(*iii*) Whether the Appellate Tribunal is correct in law in sustaining the disallowance of the payments made to clear the loan liability as part of the expenses incurred in connection with the transfer as prescribed in section 48 of the Act in the recomputation of long term capital gains which was claimed as alternative stand by the Appellant?

(*iv*) Whether the Appellate Tribunal is correct in sustaining the recomputation of long term capital gains while overlooking the loss suffered consequent to the guarantee/mortgage of the property/capital asset in relation to the loan transaction with the bank entered into by the company which legally mandated for set off as well as not disputed the loss suffered in the capital field?"

2. The relevant findings of the learned Tribunal are quoted below for ready reference:-

"6.1 On appeal, the Ld. CIT(A) upheld the order of Id. Assessing officer with the following reasons.

(1) The loan was not taken by Smt. Susila Ammal assessee's mother. As mentioned earlier, the loan was taken for business purposes by the aforesaid firm. As one of the partners, Smt. Susila Ammal had offered her asset as collateral security.

(2) The loan was finally settled by M/s. S. Albert & Co. Private Limited, the Company that subsumed the erstwhile firm, as per the Memo of Compromise between SBI and the company.

(3) It is not the case that the bankers had taken over the possession of the impugned property, and that the company was forced to sell the property and liquidate the loan as per the Memo of compromise. The Bankers had given a possession notice on 4-12-2005, following which the Company got its act together, and entered into the Memo of Compromise. It is seen from the schedule of payments furnished by the appellant that the first payment for liquidation loan was made in April, 2007, and the last on February 2010.

(4) The appellant has failed to controvert the finding in the assessment order that the sales consideration was not utilized to clear the loan liability.

(5) In any case, appellant's grandmother was just a guarantor. The primary responsibility for the loan stands on the borrower, *i.e.* the Company that had taken over the firm. The charge of the bank was on the company, and not appellant's grandmother. The company was able to discharge the loan

through negotiation and structuring without alienating the impugned property which was a collateral. Once the loan was restructured as per the Memo of compromise, the same was honored by the company as per the schedule of payment filed. It is of crucial importance to note that the entity which took the loan, liquidated it without disturbing the nature and possession of the impugned property that was a collateral. When the property in question is sold at a later date how does the interest paid by another entity for its own loan be transferred as the liability of assessee's grand mother? Aggrieved, the assessee is in appeal before us.

7. We have heard both the parties and perused the material on record. The ld. A.R relied on the decision of Co-ordinate Bench of Chennai Tribunal in the case of M/s. Sivanandha Mills Ltd., in ITA Nos.1216 & 2016/Mds/2013 to the proposition that the payment of loan liability to the State 'Bank of India, settled through the Debt Recovery Tribunal is having a direct nexus with transfer of capital assets and it is to be deducted from the sale consideration of capital assets and accordingly capital gains to be computed. In our opinion, the decision cannot be applied to the facts of the present case. In this case, the property was given as a collateral security for the loan availed by other than the assessee, which is a M/s. S. Albert & (Co., as pointed out by the AO in his assessment order and neither the assessee nor the assessee's grandmother who settled the property in favour of the assessee, is borrower nor a party to the suit, the mortgage debt cannot be considered as a cost of acquisition of property so as to give deduction while computing the capital gains from the transfer of the property. If the consideration of sale of property apportioned towards the outstanding debt in bank, the assessee is having very well right to claim from the borrower of the bank whose debt was settled. In view of this we do not find any any infirmity in the order of the Ld. CIT(A). The same is confirmed."

3. On the issue of average of valuation governed by Registered Valuer and Sub-Registrar Valuation for determining the Fair Market Value (FMV) of the property as on 1-4-1981, the learned Tribunal followed its earlier view in the case of *DCIT* v. *Kutty Flush Doors* [IT Appeal No. 2017 (Mads.) of 2014, dated 29-10-2014] and therefore, upheld the order of the learned Commissioner of Income-tax (Appeals) *vide* para 4 of its order, which is also quoted hereunder for ready reference:-

"4. We have heard both the parties and perused the material on record. In this case, Ld. CIT(A) had considered the average of registered valuer and Sub-Registrar valuation for determining the FMV of the property as on 1-4-1981. This decision of Ld. CIT(A) is based on the order of the Tribunal, Chennai Bench in the case of M/s. Kutty Flush Doors in ITA No. 2017/Mds/2014 dated 29-10-2014. Being so, we do not find any infirmity in the order of Ld. CIT(A). The same is confirmed."

4. On the second issue of average value, question No. 1 is sought to be raised before us in the present Appeal. However, the learned Senior Standing Counsel for the Revenue pointed out that this was on the own admission of the Assessee before the learned Tribunal as quoted in para 4.3(*b*) of the order passed by the learned Commissioner of Income-tax (Appeals), which is also quoted below for ready reference:-

"The appellant has taken an alternate ground, that the Assessing Officer may be directed to adopt the average of the value adopted in the computation of Long Term Capital Gains and the value adopted in the recomputation done in the assessment. In support of the alternate grounds, the appellant has cited the judgement of Hon'ble Madras High Court in the case of *CIT* v. *J. Chelladurai*, reported on 204 Taxmann 251, and the decision of ld. ITAT, Chennai 'C' Bench in the case of *DCIT* v. *Kutty Flush Doors & Furniture Company (P.) Ltd*. [ITA No. 2017/Md/2014 dated 29-10-2014]."

5. In view of the submission of the Assessee himself in this regard, we cannot permit the said question of law to be raised before us under section 260A of the Act again and therefore, question No. 1 is

answered against the Assessee and in favour of the Revenue.

6. However, on the issue of computation of Long Term Capital Gains in the hands of the Assessee, the facts in brief which has led to filing of the present Appeal as discussed by the learned Tribunal are thus:-

The Assessee received 3 acres of land under a Settlement Deed dated 14-7-2004 out of the total land of 11.53 acres belonging to various family members out of which the Assessee's Grandmother Mrs. Susila Ammal settled 3 acres of land in favour of the Assessee Mr. N. Rajarajan. The said land entirely seems to have been mortgaged by the various joint owners of the property with State Bank of India and upon defaults in repayment, in the proceedings before the DRT by the Company M/s. Albert and Co. Ltd., which took over the Partnership Firm of M/s. Albert & Company, in which the said Settler Mrs. Susila Ammal was a Partner, settled the land, in an One Time Settlement (OTS) in O.A.No.2387 of 2001 before the DRT to square up the said settlement of 9.60 Crores in favour of M/s. ASREC India Limited, the Assignee of the debt by the State Bank of India, the land in question was required to be sold and payment made to the said ASREC India Limited on the following dates:-

DATE	*PARTICULARS*	*AMOUNT*	*PAID TO*
April 2007	SARFAESI	50,00,000	DRT
12-8-2009	RTGS BY ANDHRA BANK, ANNA NAGAR	1,00,00,000	ASREC
19-8-2009	DD PAID BY MARTIN GROUP	4,00,00,000	ASREC
6-1-2010	RTGS BY ANDHRA BANK, ANNA NAGAR	2,87,00,000	ASREC
16-2-2010	ANDHRA BANK, ANNA NAGAR DD No. 244175 to 244179	45,00,000	ASREC
18-2-2010	ANDHRA BANK, ANNA NAGAR DD No. 244186, 244189 to 244191	28,00,000	ASREC
24-2-2010	INDIAN BANK, EGMORE DD No. 858306	25,00,000	ASREC
24-2-2010	ANDHRA BANK, ANNA NAGAR DD No. 244203 to 244205	25,00,000	ASREC
	TOTAL	9,60,00,000	

7. The sale deed in question has been produced before us which is dated 17-2-2010 and it appears to be made in favour of one M/s. Martin Property Develoeprs (Pvt.) Ltd. and the various parts of the land including the land belonging to the Settlor Mrs. Susila Ammal, which was only a collateral security for the said debt of the Company, was also part of the sale of land for settlement of the dues of the State Bank of India. The said land in question is shown at Serial No. 32 of the mortgaged assets with the State Bank of India for which Sale Notice dated 3-12-2005 and Possession Notice dated 4-12-2005 were issued under SARFAESI Act. The Assessee, who got the land in question under the Settlement Deed dated 14-7-2004 has claimed before the Authorities below the apportionment of the settlement of dues as cost of improvement under section 48 of the Act in proportion of the sale of various parts of the land to the tune of Rs. 1,06,76,905/- vide Table given at page 9 of the paper book which is also quoted below for ready reference:-

ALLOCATION OF LOAN SETTLEMENT TO SBI OF 9 CR. 60 LAKHS BY SALE OF LAND AT TUTICORIN

LANDLORD NAMES	*ACRES*	*SURVEY NO.*	*SELLLNG PRLCE*	*LOAN AMOUNT APPROPRIATED*	*VALUALTON AS ON 1-4-1981 AS PER VALUATION*
A.ALBERT	1.46 Acres	536 B	10635050.00	5196095.00	876000.00
A.CHAKRAVARTHY	5.00 Acres	530	27532152.00	13451716.00	3000000.00
A.CHAKRAVARTHY	2.76 Acres	529	24643542.00	12040395.00	1656000.00
A.MURALIDHARAN	6.52 Acres	569	19661013.00	9606020.00	3912000.00
A.MURALIDHARAN	2.00	534B/339	15458862.00	7552923.00	1200000.00

A.MADHUKUMARAN	Acres 8.53 Acres	534B2	62134920.00	30358008.00	5118000.00
A.MADHUKUMARAN	2.00 Acres	534B	14568563.00	7117938.00	1200000.00
RAJA RAJAN	3.00 Acres	567B2	21852839.00	10676905.00	1800000.00
			196486941.00	96000000.00	18762000.00

The said sum of Rs. 1,06,76,905/- is computed as under:—

Proportionate to selling

price of 3 Acres :2,18,52,839

---------- x 9,60,00,000 = Rs. 1,06,76,905/- 19,64,86,941

8. Thus, the Assesee claimed that a sum of Rs. 1,06,76,905/-was part of his contribution of the Settlement amount of Rs. 9,60,00,000/- being the amount agreed in OTS to clear up the dues SBI, through its Asset Reconstruction Company, ASREC (India) Ltd. and therefore, the said amount forms part of 'cost of acquisition or cost of improvement' under section 48 read with Section 49 of the Income-tax Act and the same is liable to be deducted from the sale value of land to compute capital gains tax liability. However, the same was disallowed by the Authorities below for the reasons narrated in the order of the learned Tribunal.

9. During the course of hearing of the present appeal, we directed the Assessee to produce the said Documents for our perusal so that *prima facie*, we can have a look at the facts of the case, as they emerged for the Settlement of the property in favour of the Assessee and Sale thereof to clear the cloud over the title of the Assessee and to ascertain whether the same could form part of the cost of acquisition or cost of improvement under section 49 of the Act or not. The Assessee, accordingly, has produced these documents.

10. We may add here that though the High Court, in the process of hearing the Appeals under section 260A of the Income-tax Act, should hear only on the substantial question of law and are bound by the findings of facts returned by the Income-tax Appellate Tribunal and unless such findings of facts are found to be perverse, they are binding on the High Courts and High Court is not expected to go into the veracity of the finding of facts returned by the Tribunal. But on a reading of the documents adduced before us, *prima facie*, we found that the contention raised before the learned Tribunal and before us is about the contribution of the Assessee for the clearance of the mortgage charge was not being considered as the cost of acquisition or improvement and without going into such relevant factual things, the Tribunal, which it was duty bound to do so as a final fact finding body, but it has disallowed the claim of the Assessee even though a ground in that regard was raised before it. In our opinion, the order of the learned Tribunal is therefore rendered perverse and the learned Tribunal is required to re-examine the facts on the basis of the legal position.

11. As far as the legal position in this regard is concerned, the issue seems to have been settled by the Hon'ble Supreme Court in the judgment in the case of *R.M. Arunachalam* v. *CIT* [1997] 93 Taxman 423/227 ITR 222.

12. We may add here that the said case arose before the Hon'ble Supreme Court to consider the question whether the estate duty paid by the legal heirs who inherit the property in respect of the inherited portion, would form part of cost of acquisition or not. The Hon'ble Supreme Court held that it would not form part of cost of acquisition. But, while discussing the legal position in this regard and referring to the decisions of various other High Courts cited before the Hon'ble Supreme Court, the Hon'ble Supreme Court held as under:-

"13. The submission regarding diversion in relation to the amount paid by way of estate duty has been raised by the assessee for the first time before this Court. Before the Tribunal as well as before the High Court the contentions urged on behalf of the assessee were confined to a claim for deduction by way of cost of acquisition or cost of improvement under S.48 of the Act. The questions referred to by the Tribunal to the High Court have to be considered in the light of the said submissions. The submission regarding diversion involves the question whether apart from the deductions permissible under the express provision contained in S.48 of the Act, deduction on account of diversion is permissible in the matter of computation of capital gains under the Act. This is an entirely independent issue which has not been considered by the Tribunal or the High Court. It cannot be permitted to be raised for the first time at this stage. We, therefore, do not propose to go into this question.

14. While we are affirming the impugned judgment of the High Court, we are unable to endorse the view of the Kerala High Court in *Ambat Echukutty Menon* v. *CIT* (*supra*) to which reference has been made by the High Court in the impugned judgment. In that case, the assessee, as one of the heirs, had inherited property from the previous owner who had mortgaged the same during his life-time and after his death the heirs, including the assessee, had discharged the mortgage created by the deceased. The said property was subsequently acquired under the Land Acquisition Act and for the purpose of capital gains the assessee sought deduction of the amount spent to clear the mortgage. The High Court held that the capital asset had become the property of the assessee by succession or inheritance on the death of the previous owner under S.49(1) of the Act and the cost of acquisition of the asset is to be deemed to be the cost for which the previous owner acquired it, as increased by the cost of any improvement of the assets incurred or borne either by the previous owner or by the assessee. According to the High Court, having regard to the definition of the expression 'cost of improvement' contained in S.55(1)(*b*) of the Act, in order to entitle the assessee to claim a deduction in respect of the cost of any improvement, the expenditure should have been incurred in making any additions or alterations to the capital asset that was originally acquired by the previous owner and if the previous owner had mortgaged the property and the assessee and his co-owners cleared off the mortgage so created, it could not be said that they incurred any expenditure by way of effecting any improvement to the capital asset that was originally purchased by the previous owner. This decision has been followed in subsequent decisions of the High Court in *Salay Mohamad Ibrahim Sait* v. *ITO & Anr.* [1994] 210 ITR 700 (Ker.) and *K.V. Idiculla* v. *CIT* [1995] 214 ITR 386 (Ker.). A contrary view has been taken by the Gujarat High Court in *CIT* v. *Daksha Ramanlal* [1992] 197 ITR 123 (Guj.). In taking the view that in a case where the property has been mortgaged by the previous owner during his life-time and the assessee, after inheriting the same, has discharged the mortgage debt, the amount paid by him for the purpose of clearing off the mortgage is not deductible for the purpose of computation of capital gains, the Kerala High Court has failed to note that in a mortgage there is transfer of an interest in the property by the mortgagor in favour of mortgagee and where the previous owner has mortgaged the property during his life-time, which is subsisting at the time of his death, then after his death his heir only inherits the mortgagors interest in the property. By discharging the mortgage debt his heir who has inherited the property acquires the interest of the mortgagee in the property. As a result of such payment made for the purpose of clearing off the mortgage the interest of the mortgagee in the property has been acquired by the heir. The said payment has, therefore, to be regarded as cost of acquisition under S.48 r/w S.55(2) of the Act. The position is, however, different where the mortgage is created by the owner after he has acquired the property. The clearing off the mortgage debt by him prior to transfer of the property would not entitle him to claim deduction under S.48 of the Act because in such a case he did not acquire any interest in the property subsequent to his acquiring the same. In *CIT* v. *Daksha Ramanlal* (*supra*) the Gujarat High Court has rightly held that the payment made by

a person for the purpose of clearing off the mortgage created by the previous owner is to be treated as cost of acquisition of the interest of the mortgagee in the property and is deductible under S.48 of the Act."

13. While overruling the Judgment of the Kerala High Court in the case of *Ambat Echukutty Menon* v. *CIT* [1973] 87 ITR 129 the Hon'ble Supreme Court has clearly held that in the later part of the afore quoted part that that by discharging the mortgage debt, his heir, who has inherited the property with the charge of mortgage, such legal heir acquires the interest of the mortgagee in the property and as a result of such payment made for the purpose of clearing off the mortgage, the heir and the said payment, therefore, has to be regarded as cost of acquisition under section 48 read with section 55(2) of the Act. However, where the mortgage is created by the owner or heir himself after his acquiring the property, the payment to redeem the mortgage will not be cost of acquisition or improvement under section 48 of the Act.

14. Therefore, the encumbrance by way of mortgage whether by way of direct mortgage or as collateral security, as is the case in hand and if that encumbrance has to be cleared off by the legal heir or person in whose favour the property has been settled like the Assessee before us, the amount paid by the Assessee to clear that encumbrance has to be treated as part of cost of acquisition or cost of improvement under section 48/49 of the Act.

15. The said provisions are also quoted below for ready reference:

""Sec. 48. Mode of computation and deductions. -

The income chargeable under the head "Capital gains" shall be computed by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely :

(*a*) expenditure incurred wholly and exclusively in connection with such transfer;

(*b*) the cost of acquisition of the capital asset and the cost of any improvement thereto."

Sec. 49. makes provision regarding the cost of acquisition with reference to certain modes of acquisition of the assets. Sub-s. (1) of S.49 provided as under :

"Sec. 49. Cost with reference to certain modes of acquisition :- (1) Where the capital asset became the property of the assessee :

(*i*) on any distribution of assets on the total or partial partition of an HUF;

(*ii*) under a gift or will;

(*iii*) (*a*) by succession, inheritance or devolution, or

(*b*) on any distribution of assets on the dissolution of a firm, BOI or other AOP, or;

(*c*) on any distribution of assets on the liquidation of a company, or

(*d*) under a transfer to a revocable or an irrevocable trust, or

(*e*) under any such transfer as is referred to in cl. (*iv*) or cl. (*v*) or cl. (*vi*) of s. 47

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.

Explanation. - In this sub-section the expression "previous owner of the property" in relation to any capital asset owned by an assessee means the last previous owner of the capital asset who acquired it by a mode of acquisition other than that referred to in cl. (*i*) or cl. (*ii*) or cl. (*iii*) of this

sub-section".

The expressions "cost of improvement" and "cost of acquisition" for the purpose of ss. 48, 49 and 50 have been defined in S.55 of the Act. In cl. (*b*) of sub-s. (1) of S.55 "cost of improvement" was thus defined :

"(*b*) "cost of improvement", in relation to a capital asset, —

(*i*) where the capital asset became the property of the previous owner or the assessee before the 1st day of January, 1954, and the fair market value of the asset on that date is taken as the cost of acquisition at the option of the assessee, means all expenditure of a capital nature incurred in making any additions or alterations to the capital asset on or after the said date by the previous owner or the assessee, and

(*ii*) in any other case, means all expenditure of a capital nature incurred in making any additions or alterations to the capital asset by the assessee after it became his property, and, where the capital asset became the property of the assessee by any of the modes specified in S.49, by the previous owner,

but does not include any expenditure which is deductible in computing the income chargeable under the head 'Interest on securities', 'Income from house property', 'Profits and gains of business or profession', or 'Income from other sources', and the expression 'Improvement' shall be construed accordingly.

"In sub-s. (2) of S.55 the expression 'cost of acquisition' was defined in the following terms :

"(2) For the purposes of ss.48 and 49, 'cost of acquisition', in relation to a capital asset, -

(*i*) where the capital asset became the property of the assessee before the 1st day of January, 1954, means the cost of acquisition of the asset to the assessee or the fair market value of the asset on the 1st day of January, 1954, at the option of the assessee;

(*ii*) where the capital asset became the property of the assessee by any of the modes specified in sub-s.(1) of S.49, and the capital asset became the property of the previous owner before the 1st day of January, 1954, means the cost of the capital asset to the previous owner or the fair market value of the asset on the 1st day of January, 1954 at the option of the assessee.""

16. In view of the above, we do not consider it necessary to go into other judgments cited before us as the position of law seems to be clear and the facts narrated above also *prima facie* indicate that the land of 3 acres in question, which was in the form of collateral security with SBI, has been settled by Mrs. Susila Ammal in favour of the Assessee and to clear off that debt, the sale of the land in question alongwith other parts of the land had to be undertaken in the settlement of dues to the SBI under the OTS Settlement.

17. Therefore, while there is no doubt that the said contribution of the Assessee to the extent of the land settled in his favour would be part of cost of acquisition or cost of improvement of the asset acquired by him as per Section 48 and Section 55 of the Act, the computation of the same deserves to be gone by the Tribunal, being a fact finding body, to find out whether the said sum of Rs. 1,06,76,905/- *vide* the Table quoted above is correct amount or not and whether the advance of Rs. 4 Crores received from the Purchaser M/s. Martin Group on 19-8-2009 *vide* Demand Draft payable to ASREC (India) Limited is correct fact or not.

18. Obviously, the High Court cannot be expected to do such a computing exercise under section 260-A

of the Act. Therefore, a remand of the case to the Tribunal is necessary, since these aspects of facts do not seem to have been properly placed before the Tribunal, as they are sought to be argued before us now with the documents placed on record of the High Court under the directions of the court. Therefore, we are of the opinion that a miscarriage of justice may happen, if all these facts are ignored even at this stage.

19. It is needless to say that the Assessee ought to have argued his case before the learned Tribunal on the relevant facts and evidence as otherwise, the finding of facts rendered by the learned Tribunal will be binding on the High Court while disposing the Appeals under section 260-A of the Act. But, even on *prima facie* perusal of these facts before us, we are not inclined to ignore these facts which unfortunately, the Tribunal also could not take into account for either they were not placed before the learned Tribunal properly or even if they were placed before it, the learned Tribunal did not choose to go into all those details in a more detailed manner.

20. Be that as it may, to avoid any miscarriage of justice and to allow a fresh recomputation of "cost of acquisition" or cost of improvement properly under section 48/49 and Section 55 of the Act in the facts and circumstances of the case, we dispose of the present Appeal by setting aside the order of the Income-tax Appellate Tribunal to that extent.

21. Therefore, in respect of issue No. 2 regarding computation of Capital Gain in the hands of the Assessee and to compute the cost of acquisition properly in the light of the decision of the Hon'ble Supreme Court cited *supra*, we remit the matter back to the learned Income-tax Appellate Tribunal to decide the Appeal of the Assessee on that ground once again.

22. In the circumstances, the questions with regard to Capital Gain Tax liability and computation of cost of acquisition are answered in the aforesaid manner and the computation part is remitted back to the learned Tribunal as indicated above. The Appeal is, accordingly, disposed of. No order as to costs.

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* In favour of assessee.
† Arising out of order of ITAT in IT Appeal No. 40/Mds/2016, dated 26-10-2016.