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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 30th October, 2025

+ **W.P.(C) 15373/2025**

SANTOSH KUMAR SURIPetitioner

Through: Mr. Nagesh Kumar Behl, Adv
versus

DEPUTY COMMISSIONER OF INCOME TAXRespondent

Through: Mr. Sidharth Sinha, Adv.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE SHAIL JAIN

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CM APPL. 63023/2025 (Exemption)

2. Allowed, subject to all just exceptions. Application stands disposed of.

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3. The present petition has been filed by the Petitioner under Articles 226 and 227 of the Constitution of India, *inter alia*, seeking issuance of directions to the Income Tax Department for giving effect to the order dated 20th January, 2023, passed by the Income Tax Appellate Tribunal (*hereinafter as 'ITAT'*) (*hereinafter, 'ITAT order'*).

4. A brief background of the present petition is that, the Petitioner had filed his income tax returns for the Assessment Year 2016-2017, declaring total income as Rs 33,64,160/-. The same was scrutinized under Section 143(3) of the Income Tax Act, 1961 and thereafter, an Assessment order was passed by the Income Tax Department on 25th December, 2025 (*hereinafter,*



‘Assessment order’). Thereafter, the tax of Rs. 36,85,243/- was also deposited, against the demand which was raised against the Petitioner.

5. The Petitioner had preferred an appeal against the Assessment order and *vide* order dated 5th December, 2019, Commissioner of Income Tax (Appeals) (*hereinafter*, ‘CIT Appeal order’) had considered the appeal of the Petitioner and passed an order wherein the appeal was partially allowed. The operative portion of the CIT Appeals’ order reads as under:

“ 04. The cost of improvement thus will be indexed as below:

<i>Financial</i>	<i>Amount</i>	<i>Amount related to Inherited portion of the Property (₹)</i>	<i>Index Base Year</i>	<i>Index for Inherited Property</i>	<i>Index for own Property</i>	<i>Indexed Cost (₹)</i>
1	2	3	4	5	6	7
1999-2000	60,38,137	30,19,068	463	389	1081	1,54,38,591
2000-2001	69,86,037	34,93,018.50	463	406	1081	1,74,55,783
2001-2002	52,00,000	26,00,000	463	426	1081	1,26,68,063
2004-2005	85,50,000	N.A	N.A	480	1081	1,92,55,313
2005-2006	87,85,000	N.A	N.A	497	1081	1,91,07,817
Total						8,39,25,567

The cost of acquisition has been taken by the appellant after indexation at Rs. 19,50,000/-. The AO is directed to verify the indexed cost of acquisition of the property in the hands of the appellant for both the portions i.e., part purchased by the appellant and the portion of the property that was inherited by him in F.Y. 2003-04 and enhance it with the cost of improvement as



worked out and compute the capital gains allowable under section 54 of the I.T. Act.

6. In result, the appeal is partly allowed.”

6. Thereafter, the order of the CIT Appeals was challenged by the Revenue Department and Petitioner/Assessee before ITAT. Vide ITAT order, which was passed under Section 254 of the Income Tax Act, 1961, the appeal was partly allowed in the following terms:

“ [...]

8. We observe that the Id. CIT (Appeals) held that in the case of inherited property cost of acquisition as well as the cost of improvement by the previous owner of a capital asset the indexation shall be allowed during the year of acquisition or improvement by the previous owner or the year of inheritance by the person, who sold the property. The Hon’ble Bombay High Court in the case of CIT Vs. Manjula J. Shah (supra) affirmed the view of the Tribunal in holding that while computing the capital gains arising on transfer of a capital asset acquired by the assessee under a gift or inheritance the index cost of acquisition has to be computed with reference to the year in which the previous owner first held the asset and not the year in which the assessee became the owner of the asset. Similar view has been taken by the Hon’ble Delhi High Court in the case of Arun Shungloo Trust Vs. CIT (supra). **Respectfully following the above decisions, we direct the Assessing Officer to allow the cost of indexation to the assessee keeping in view the principles laid down by the above judgements. Ground No. 5 of grounds of appeal of the assessee is allowed.”**



7. A perusal of the ITAT order would show that the Assessing Officer was to allow the cost of indexation to the Petitioner/Assessee, bearing in mind the various judgments which were discussed by the ITAT.

8. Accordingly, the Assessing Authority had to conduct a fresh assessment within a period of nine months, in terms of Section 153(3) of the Income Tax Act, 1961. However, the same was not done by the Assessing Authority.

9. Thereafter, several reminders were sent by the Petitioner to the Income Tax Department, which also elicited no favourable assessment order. Therefore, the Petitioner has filed the present writ petition.

10. Ld. Counsel for the Petitioner submits that the writ petition was filed on 19th September, 2025, and was listed before the previous Bench on 08th October, 2025. Around the same time, when the writ petition was filed, notice was issued to the Petitioner to appear for computation of the amounts and on 14th October, 2025, the order has been passed by the Assessing Authority in the following terms:

“2. Aggrieved, the assessment order, assessee filed an appeal before the Ld. CIT(A)-14, New Delhi on 24.01.2019. The Ld. CIT(A) vide order dated 05.12.2019, directed to AO to verify the indexed cost of acquisition of the property in the hands of appellant for both portions i.e. part purchased by the appellant and the portion of the property that was inherited by him in F.Y. 2003-04 and enhance it with the cost of improvement as worked out and compute the capital gains allowable u/s 54 of the Act.

3. Aggrieved to the order u/s 250 of the Act, the department preferred an appeal before the



Hon'ble ITAT. The Hon'ble ITAT vide its order dated 20.01.2023, appeal of the Revenue allowed for statistical purpose. In pursuance of order of Hon'ble ITAT, a letter was issued 24.09.2025 to the assessee for verification of cost of acquisition with indexation/ cost of improvement of the subject property. In response of the letter, assessee filed his reply vide letter dated 25.09.2025 alongwith the supporting documents. After considering the decision of the Hon'ble ITAT and reply of the assessee, the index cost of acquisition was computed with reference to the year in which the previous owner first held the asset and not the year in which the assessee become the owner of the asset.

4. Accordingly, the revised income assessed of the assesseeRs. 33,64,160/-. Allow credit to taxes paid after assessment. Issue necessary forms.”

11. In terms of the above order, an amount of Rs 36,85,243/- is to be paid to the Petitioner. It is the submission of Id. Counsel for the Petitioner that as per the statute, under Section 244 (1A) of the Income Tax Act, 1961, the Petitioner is entitled to receive the said amount including interest @3%, for the delayed period.

12. Id. Counsel for the Respondent, appearing on advance notice, submits that he does not have instructions in the matter, and is not aware of the order dated 14th October, 2025, passed by the Assessing Authority.

13. Heard. The Court notes with some consternation that it is only after the writ petition has been filed, that the Income Tax Department has got activated, and have issued notice to the Petitioner, as also computed the amount.



14. It is pertinent to note that the entire period after the ITAT order was passed in January, 2023, no action has been taken by the Income Tax Department.

15. Notably, the ITAT order clearly directed the Assessing Authority to have a re-look. Despite reminders being given by the Petitioner, the Income Tax Department has failed to take any action.

16. In this background, the statutory interest is liable to be paid to the Petitioner in the present case, including interest @ 3%.

17. The concerned officials of the Income Tax Department ought to have taken up this matter with alacrity, which they have failed to do so.

18. In view of the fact that the order dated 14th October, 2025 has now been passed by the Assessing Authority, let the amount of Rs 36,85,243/- be credited to the Petitioner, alongwith the interest, in terms of under Section 244 (1A) of the Income Tax Act, 1961, within a period of one week from from this order.

19. If the same is not credited to the Petitioner, the concerned official of the Income Tax Department shall remain present in the Court, on the next date of hearing.

20. List on 15th December, 2025 in the ***Supplementary List***.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

OCTOBER 30, 2025/sk/sm