

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DIVISION BENCH 'B', CHANDIGARH**

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER  
AND MS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

**ITA No.552/Chd/2017**

(Assessment Year : 2007-08)

The I.T.O.,  
Ward 5(1),  
Chandigarh.

Vs.

Sh.Sikandar Singh Maluka,  
# 1370, Sector 40-B,  
Chandigarh

PAN: ABZPM7206N

&

**ITA No.633/Chd/2017**

(Assessment Year : 2007-08)

Sh.Sikandar Singh Maluka,  
# 1370, Sector 40-B,  
Chandigarh.

Vs.

The I.T.O.,  
Ward 5(2),  
Chandigarh

PAN: ABZPM7206N

(Appellant)

(Respondent)

Department by : Shri Manjit Singh

Assessee by : Shri T.N. Singla, CA

Date of hearing : 14.05.2018

Date of Pronouncement : 17.05.2018

**ORDER**

**PER ANNAPURNA GUPTA, A.M.:**

The captioned cross appeals, by the Revenue and the assessee, have been filed against the order of learned Commissioner of Income Tax (Appeals)-2, Chandigarh dated 23.01.2017, relating to assessment year 2007-08.

2. Briefly stated, assessment for the impugned year was framed on the assessee u/s 147 of the Income Tax Act, 1961 (in short 'the Act') and addition made on account of Long Term Capital Gains earned on sale of plots of land owned by the assessee amounting to Rs.3.65 crores. An

appeal against the aforesaid assessment order was filed to the CIT(Appeals), challenging both the validity of assessment framed u/s 147 of the Act and also merits of the case. The Ld.CIT(Appeals) upheld the validity of the order passed u/s 147 of the Act while he restricted the addition made on account of Long Term Capital Gains to the extent of capital gain earned on plots actually transferred during the year following the decision of the Hon'ble Jurisdictional High Court in the case of Charanjit Singh Atwal Vs. ITO (2013) 144 ITD 528.

3. Aggrieved by the same, the assessee has come up in appeal before us in ITA No.633/Chd/2017 challenging the action of the Ld.CIT(Appeals) in upholding the validity of the assessment framed u/s 147 of the Act, raising the following grounds before us:

- “1. That the order passed by the Learned CIT(A) is bad, against the Law & facts.*
- 2. That the Learned CIT(A) has wrongly upheld the issue of notice u/s 148.*
- 3. That the Learned CIT(A) has wrongly upheld misuse of provision of Section 148 to re-assess the time barring assessment.*
- 4. That the Learned CIT(A) has wrongly upheld issue of notice u/s 148 merely on change of opinion.*
- 5. That the Learned CIT(A) has wrongly set aside the issue of disallowance of long term capital gain of Rs. 3,65,71,210/-.*
- 6. That the Learned CIT(A) has wrongly rejected the additional evidence filed for claim u/s 54 EC on investment in REC Bonds.*
- 7. That the Learned CIT(A) has wrongly upheld disallowance of deduction claimed u/s 54 EC amounting to Rs.16,00,000/-.”*

While the Revenue has challenged the action of the Ld.CIT(Appeals), in its appeal filed in ITA No.552/Chd/2017, in restricting the addition made on capital gains earned on sale of plots, raising the following grounds:

- “1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the parties had agreed for pro-rata transfer of land whereas by virtue of executing the Joint Development Agreement (JDA) read with possession letter and duly registered irrevocable special power of attorney, there was a grant and assignment of all rights in the entire property in favour of Tata Housing Development Company Limited (THDC) and so 'transfer' for the purposes of section 2(47)(v) of the Income Tax Act 1961 read with Section 2(47)(ii), 2(47)(vi), and explanation below 2(47) and Section 2691A had taken place.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that that no possession had been given by the transferor to the transferee of the entire land in part performance of the JDA read with possession letter and irrevocable special power of attorney so as to fall within the domain of Section 53A of the Transfer of Property Act 1882, completely disregarding the facts that as per the JDA there was a grant and assignment of all rights in the entire property in favour of THDC along with handing over of physical and vacant possession.*
3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that that no possession had been given by the transferor to the transferee of the entire land in part performance of the JDA so as to fall within the domain of Section 53A of the Transfer of Property Act 1882 whereas by virtue of the duly registered irrevocable special power of attorney, the developer was in complete control of the property and was in possession thereof including all rights of a defacto owner.*
4. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the essential ingredients of Section 53A of the Transfer of Property Act 1882 were not fulfilled on the mere ground that the JDA was not registered whereas section 2(47)(v) of the Income Tax Act 1961 only refers to the contract of the nature referred to in section 53A of the Transfer of Property Act and the requirement*

*of registration of agreement under section 53A of the Transfer of Property Act cannot be read into section 2(47)(v) of the Income Tax Act 1961 read with Section 2(47)(ii), 2(47)(vi), and explanation below 2(47) and Section 269UA,*

5. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in holding that the possession delivered, if at all, was as a licensee for the development of the property and not in the capacity of the transferee whereas all possible rights in the property including the right to sell etc. had been given to the builder.*
6. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in bifurcating the agreement into different portions and allowing the assessee to pay capital gains tax only when cash or money is received whereas section 45 of the Income Tax Act, 1961 is a deeming provision where capital gain is liable to be taxed in the year in which transfer takes place and there is no provision under the law to allow the assessee to pay capital gains tax beyond the year in which the capital gain has accrued.*
7. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not adjudicating on the crucial issue of applicability of section 2(47)(ii) and 2(47)(vi) of the Income Tax Act 1961 in the case of the assessee as the provisions of section 2(47)(ii) and 2(47)(vi) also make the assessee liable for capital gains under the Income Tax Act 1961.*
8. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the provisions of section 2(47)(vi) of the Income Tax Act were not applicable in absence of registered conveyance deed disregarding the decision of the Supreme Court in Podar Cement Ltd. holding that the principle of Common law, transfer of property Act and Registration Act were not conclusive for interpretation of provisions of Income Tax Act.*
9. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the provisions of section 2(47)(ii) are not applicable whereas all the members of society surrendered their individual rights in the plots together with original purchase deeds in favour of society to be subsequently transferred to Tata Housing Development Company Limited (THDC) leading to extinguishment of rights in the plots.”*

4. We shall first be dealing with the appeal of the assessee in ITA No.633/Chd/2017 challenging the validity of assessment framed u/s 147 of the Act.

5. During the course of hearing before us the primary argument raised by the assessee against the validity of the assessment framed u/s 147 of the Act were two fold;

i) that it was based on mere change of opinion of the Assessing Officer;

b) that the notice u/s 148 was issued without proper sanction, as prescribed u/s 151 of the Act.

6. To substantiate its contentions, the Ld. counsel for assessee drew our attention to the chronology of events in the present case as under:

30.8.2007 - Original return filed by the assessee showing taxable income of Rs.2,01,707/-

15.1.2010 - Revised return filed including Long Term Capital Gains of Rs.22,21,210/- which in turn were claimed as exempt u/s 54EC/54F of the Act .

24.12.2010 - First notice issued u/s 148 of the Act , in response to which assessee stated that revised return filed be treated as return filed in response to notice u/s 148 and subsequently no action was taken by the Assessing Officer(.P.B 6&7)

09.02.2012 - Second notice issued u/s 148.(P.B-8)

12.03.2012 - The assessee submitted that revised return filed on 15.1.2010 be treated as return filed in response to notice u/s 148 of the Act .(P.B-9)

31.03.2012 - Assessment proceedings in lieu of notice issued on 24.12.10 becomes time barred

18.02.2013 - Order passed by the Assessing Officer dropping the proceedings initiated u/s 148 vide 2<sup>nd</sup> notice issued u/s 148, stating that the income on the basis of which notice u/s 148 was issued pertained to assessment year 2008-09 .(P.B-11)

26.3.2014 - Third notice issued u/s 148 consequent to which the impugned assessment order was framed.(P.B-12)

7. Referring to the above, Ld. counsel for assessee stated that all the present re-assessment proceedings were initiated for the same reason that the income from capital gain had escaped assessment, as the particulars furnished in the return of income were not available to the Assessing Officer. Our attention was drawn to the copy of reasons for reopening vide the notice u/s 148 dated 09-02-12 and that dated 26-03-14 placed at Paper Book pages 10 & 14 to 16 respectively). Ld.Counsel for the assessee thereafter stated since the assessment proceeding in lieu to the first notice issued u/s 148 had become time barred, while in lieu of the second notice an order had been passed dropping the proceedings, the present reopening for the same reasons

tantamounted to change of opinion on the same set of facts. Vis-à-vis the contention of the Ld. counsel for assessee that the notice was issued without proper sanction as per section 148 of the Act, it was stated that since an order was passed in pursuance to second notice issued u/s 148 and the impugned notice leading to the present order passed u/s 148 having been issued after the expiry of four years from the end of the assessment year, the permission of the Chief Commissioner of Income Tax(CCIT) or Commissioner of Income Tax(CIT) was required for issuing such notice as per the provisions of section 151 of the Act, which was absent in the present case and hence the notice was issued without proper sanction. For the aforesaid reasons the Ld.Counsel for the assessee contended that the assessment framed in the present case u/s 147 was invalid.

8. The Ld. DR, on the other hand relied upon the order of the Ld.CIT(Appeals) stating that in pursuance to the first and the second notices issued u/s 148 of the Act, no enquiry had been conducted by the Assessing Officer who had merely dropped the proceedings and, therefore, it cannot be said that the Assessing Officer had formed any opinion on the issue so as to constitute the re-opening resorted to in the third case, for identical reasons as in the first and second notices u/s 148, to be on the same set of facts. The Ld. DR also contended that for the same reason the order passed in the second round could not be said to

be any order passed u/s 143(3)/147 of the Act ,since there was no discussion on the merits of the case, and therefore there was no requirement for obtaining sanction of the CIT or CCIT before issuing the third impugned notice in the present assessee. The Ld. DR heavily relied on the findings of the CIT(A) dismissing the assessee's contention vis-à-vis legality of the assessment framed u/s 147 of the Act in this regard at paras 5.3 and 5.3.1 of his order which are as under:

*“5.3 Submission of the appellant, the assessment order and relevant material on the record have been carefully considered. I have discussed the issue with the A.O and perused the assessment record for the relevant assessment year. It is correct that for assessing long term capital gains on sale of plots assessee being member of Punjabi Co-operative House Building Society, Mohali, which has escaped assessment, assessing officer issued original notice on 24.12.2010 against which no order was passed. Subsequently A.O issued notice u/s 148 dated 16.02.2012 after recording reasons and objections of the assessee were duly considered. These re-assessment proceedings initiated by issue of notice dated 16.02.2012 were dropped by assessing officer by passing a simple order dated 18.02.2013 stating that the capital gains actually pertains to financial year 2007-08 and assessable in assessment year 2008-09 only and therefore the notice issued for A.Y. 2007-08 has no relevance, the same is filed. It is clear that the assessing officer remained confused with regard to the assessability of capital gains with respect to the assessment year and therefore, he initiated re-assessment proceedings which on the first occasion were not concluded and on the second time the notice issued was filed. It is also clear that the assessing officer has not dealt the issue of capital gains on merits in response to notices dated 24.12.2010 and 16.02.2012 and therefore, it cannot be said that any order u/s 143(3) or u/s 147 has been passed in response to these notices. Assessing Officer therefore issued notice u/s 148 on 21.03.2014 after duly recording reasons to believe and after taking sanction for issue of notice from joint commissioner of income tax as per section 151 of the Act. The sanction for issue of notice u/s 148 has been correctly obtained u/s 151 of the Act. and as there was no order passed by the Assessing Officer u/s 143 or 147 and therefore the issue of capital gains was not considered and dealt on merits. Therefore, the issue of notice for the relevant assessment year u/s 147 dated 26.03.2014 after recording reasons cannot be said change of*

*opinion. The decision relied upon by the appellant are distinguishable on facts in the case of the appellant. The reliance is placed on the decision of ITAT, Kolkata, Bench in the case of Som Dutt Buildurs 98 ITD 78 wherein it has been held that change of opinion comes to rescue of assessee only when assessing officer has taken one of permissible views at the time of original proceeding and held that re-opening is valid. ITAT, Chennai Bench in the case of Srinivasa Computers Ltd. 107 ITD 357 held that "There is no bar in issuing a second notice u/s 148 when the parameters for issue of such notice are fulfilled and is within statutory time limits - When the second notice u/s 148 was issued, the time limit for completion of assessment on the basis of first notice u/s 148 has expired and hence it cannot be treated as pendency of any proceedings -Fresh notice u/s 148 backed by reasons, is valid."*

*5.3.1 In view of the above discussion it is held that there is no illegality in the issue of notices and there is no change of opinion in the issue of last notice u/s 148 dated 26.03.2014. Therefore, the additional grounds taken by the appellant are liable to be dismissed.*

9. The Ld. DR further stated that the contentions now raised by the assessee were also raised as objections to the Assessing Officer in response to the impugned notice issued u/s 148 dated 26.3.2014, in pursuance to which re-assessment proceedings took place. The Ld. DR stated that all the objections of the assessee had been duly met with by the Assessing Officer. Copy of the order passed by the Assessing Officer dealing with the objections of the assessee to the initiation of proceedings u/s 147 of the Act was placed before us. Referring to the same the Ld. DR pointed out that it was categorically stated by the Assessing Officer, after going through the material on record, that the first notice issued u/s 148 was not proceeded with on account of discovery by the Assessing Officer of his lack of jurisdiction since while the assessee was assessable by the Assessing Officer of Ward 5(2) while the notice assuming jurisdiction u/s 148 was issued by the

ITO Ward 5(3). The Ld. DR further pointed out that even the second notice issued u/s 148 was issued by the Assessing Officer of Ward 5(3), who was not the Assessing Officer of the assessee, and on becoming aware of the same had transferred the file to the correct jurisdictional Assessing Officer of Ward 5(2), who had thereafter proceeded with the case and had filed the proceedings noting that the income which was believed to have escaped assessment pertained to assessment year 2008-09 and not the impugned year. The Ld. DR pointed out from the order of the Assessing Officer that it was categorically pointed out to the assessee that first two notices issued u/s 148 were either not valid being issued without jurisdiction and or were filed on receiving the objection from the assessee which meant that no valid assessment was completed in consequence of such proceedings. The Ld. DR, therefore, stated that in view of the same, the present assessment proceedings cannot be said to have been initiated on the basis of change of opinion without having obtained the approval of the competent authority. Our attention was drawn to the contents of the order of the Assessing Officer as referred to above as under:

*“2. It is matter of record that the proceedings within the meaning of section 147 of the I.T. Act, were initiated as per notice u/s 148 of the I.T. Act 24.12.2010 by Sh. B.S. Yadav the then ITO Ward 5(3), Chandigarh apparently without jurisdiction. As per the reasons recorded, the proceedings u/s 147 of the Act were initiated on the ground that the income from capital gain which is liable for capital gain has escaped assessment as the particulars furnished in the return of income were not available to the then Assessing Officer. On receipt of notice u/s 148 of the Act dated 24-*

12-12-2010, the assessee submitted return on 15-01-2010 vide acknowledgment No. 418150110004669 and informed as per letter dated 21-01-2011 explaining the rationale for the same. It appears that the proceedings were closed. Otherwise also the proceedings automatically came to an end by the close of calendar year 2011 i.e. by 31-12-2011.

Subsequently proceedings u/s 147 were again initiated by issue of notice u/s 148 of the I.T. Act, dated 16.2.2012 by the then ITO Ward 5(3), Chandigarh. The assessee in response to said notice dated 16.2.2012 stated as per its letter dated 12.3.2012 received on 19.3.2012 as under:

*This is with reference to your notice dated 22.2.2012.*

*"The assessee had voluntarily revised the income tax. return for the A.Y. 2007-08 on 15.01.2010 vide acknowledgment no, 418150110004669 dated 15.01.2010 with a detailed note explaining the rationale for the same.*

*Kindly treat the revised return so filed vide acknowledgement no.418150110004669 dated 15.01.2010 as return filed in response to your above said notice.*

*As per facts, on record the assessee as per its letter dated 23.3.2012 made a request to ITO W-5(3), Chandigarh for supply of reasons recorded for issuance of notice u/s 148 of the I.T. Act so as to enable it to file its objection. The copy of the reasons recorded was provided to the assessee. In the meantime it appears that the ITO W-5(3), Chandigarh having come to know that it is not having the jurisdiction over the case and had inadvertently issued the notice without jurisdiction. It accordingly transferred the case record to the undersigned predecessor. The assessee filed its objection to the initiation of proceedings u/s 148 as per above letter dated 7.01.2013. The proceedings were accordingly filed by the undersigned predecessor as per order dated 18.2.2013 while deposing of the assessee's objections as per its letter dated 7.1.2013. It is a matter of record that the order dated 18.2.2013 was accepted by the assessee.*

*The proceedings in this case were again initiated within the meaning of section 147 of the I.T. Act, after recording reasons thereof and accordingly a notice u/s 148 dated 26/28.3.2014 was issued after obtaining the necessary satisfaction of the Joint Commissioner of Income Tax, as granted vide letter No. 11920 dated 21.3.2014. A copy of reasons recorded was also supplied to the assessee. The assessee has again filed its objection as per its letter dated 2.8.2014 which is a subject matter for consideration.*

3. *From the facts adduced above, it is evident the proceedings initiated u/s 147 of the Act vide notices dated 24-12-2010 and 16-02-2012 were either not valid being issued without jurisdiction and /or were filed on*

*receiving the objections from the assessee. Otherwise mean that no valid assessment was completed in consequence of such proceedings. The proceeding within the meanings of section 147 of the Act has now been initiated as per the provisions of the Act after obtaining the approval from the competent Authority.*

*4. In the light of facts adduced above, it is therefore evident that notice u/s 148 of the I.T. Act, dated 26/28.3.2014 was issued after obtaining mandatory sanction from appropriate authority i.e. JCIT, Range-V, Chandigarh as granted vide letter No. 11920 dated 21.3.2014. Since the notice has been issued after due sanction from the appropriate authority it is a valid notice.”*

10. We have heard the contentions of both the parties, perused the order of the authorities below and have also carefully gone through the documents placed before us. The contention of the Ld. counsel for assessee before us is that the present proceedings initiated u/s 148 are invalid for the reason that they are based on mere change of opinion and had been initiated without obtaining the prior approval of the prescribed authority u/s 151 of the Act. The genesis of this contention of the Ld. counsel for assessee is the fact that on two earlier occasions re-assessment proceedings were initiated by issuing notices u/s 148 of the Act for identical reasons which were either not proceeded with and had become time barred or were dropped by passing an order. The argument of the Ld. counsel for assessee is that since the re-assessment proceedings in the present case have been initiated for the same reason as in the earlier two notices issued, it tantamounted to re-opening the case on the same set of facts which is not permissible under the provisions of the Act. Also since the order had been passed earlier, the re-assessment proceedings could have been initiated now, after expiry of four years from the end of the

relevant assessment year, only after obtaining approval of the Commissioner or Chief Commissioner of Income Tax, as prescribed u/s 151 of the Act which has not been done in the present case and thus the proceedings have been initiated without the statutory approval.

11. We find no merit in the above contentions of the Ld. counsel for assessee. On going through the documents placed before us we find that jurisdiction to assess the assessee was with Assessing Officer, Ward 5(2), Chandigarh. The impugned assessment order passed u/s 147/148 has been passed by the said Assessing Officer, whose jurisdiction has not challenged before us. Further this fact was also pointed out by the Assessing Officer while dealing with the objections of the assessee in his order dated 17.11.2014 reproduced above. Therefore it is an uncontroverted and undisputed fact that the Assessing Officer of the assessee was ITO, Ward 5(2), Chandigarh. Further, we find, that the first two notices issued u/s 148 dated 24.12.2010 and 9.2.2012 were issued by the Income Tax Officer Ward-5(3), Chandigarh. This fact is evident from the copies of the notices placed before us at Paper Book pages 6 and 8 respectively. This fact, we find, was also pointed out to the assessee in the order passed by the Assessing Officer while dealing with the objections of the assessee dated 17.11.2014 which have not been controverted by the assessee. Thus clearly the first two notices issued u/s 148 were invalid, issued without valid jurisdiction, having not

been issued by the Assessing Officer of the assessee . Clearly, therefore, the proceedings, whatsoever took place in consequence thereof, were also invalid and were null and void. This fact, we find, was brought to the notice of the assessee by the AO in his order passed while dismissing the objections of the assessee to the reassessment proceedings initiated vide notice dated 26-03-14, and the same have not been controverted before us. Therefore, what follows is that, prior to the notice issued u/s 148 on 26.3.2014, in consequence of which the present assessment u/s 147 was framed on the assessee, no proceeding which was valid in the eyes of law, had taken place on the assessee. Therefore, the contention of the assessee that the present proceedings were based on change of opinion, since for similar reason proceedings had been initiated earlier also and dropped, or that present notice u/s 148 was issued without sanction of the prescribed statutory authority u/s 151 of the Act since an order was framed earlier on account of the second notice issued to the assessee, all falls flat and merit no consideration. Since the aforesaid were the only arguments of the Ld.Counsel for the assessee against the validity of the assessment order passed u/s 147 in the present case, and the same having been rejected by us as aforesaid ,there remains no further challenge to the validity of the order passed in the present case.

12. In view of the above, we hold that the present proceedings had been validly initiated u/s 148 of the Act

and were not based on any change of opinion or without the sanction of any statutory authority as prescribed u/s 151 of the Act. The validity of the present proceedings are, therefore upheld and the grounds raised by the assessee in this regard in Ground No.1-4 are accordingly dismissed.

13. Ground Nos. 5 to 7 raised by the assessee relate to merits of the case and are with regard to the addition made by the Assessing Officer on account of Long Term Capital Gains earned by the assessee on transfer of land owned by it. The Revenue has also come up in appeal before us against the order passed by the CIT(Appeals) on this issue. Since the issue vis-à-vis ground Nos.5 to 7 raised by the assessee and the grounds raised by the Revenue in its appeal in ITA No.552 are interlinked, we shall be adjudicating the same together.

14. Beginning with the facts relating to the case , the same are that a Housing Society, named as The Punjabi Cooperative House Building Society Ltd. Mohali. (hereinafter referred to as 'Society') was formed. In financial year 2001-02, the society purchased land measuring 21.2 acres in Village Kansal, District Mohali. This Society entered into a tripartite joint development agreement (hereinafter referred to as 'agreement') on 25.02.2007 with M/s Hash Builders Pvt. Ltd., Chandigarh (hereinafter referred to as 'Hash') and M/s Tata Housing Development Company Ltd., Mumbai (hereinafter referred to as 'THDC'), by virtue of which the society would transfer its

land for development in lieu of monetary consideration and also consideration in kind to the members of the society. The assessee was also a member of the said society owning 1000 sq. yards plot of land. The total consideration was settled at Rs.1,65,00,000/- plus allotment of two flats of 2250 sq. feet to the assessee. As the assessee failed to show capital Gains on the entire sale consideration, proceedings u/s 147 were initiated and notice u/s 148 was issued to the assessee on 26.03.2014. In response to notice u/s 148 the assessee submitted that the revised return filed by him 15.01.2010 be treated as return in response notice u/s 148 of the Act. In the revised return filed assessee had declared long term capital gains of Rs.22,21,210/- which in turn had been claimed exempt u/s 54 EC/54F of the Act .No supporting document relating to the same was filed before the assessing officer. The AO, thereafter assessed the Long term capital gains earned by the assessee at Rs.3,65,71,210/- on the entire sale consideration received/receivable in cash and kind and disallowed the assessee's claim of exemption u/s 54EC/54F of the Act.

15. The matter was carried in appeal before the CIT(A) who found that identical issue had been dealt with by the Hon'ble Jurisdictional High Court in the case of C.S. Atwal Vs. ITO (2013) 144 ITD 528, wherein it was held that only Long Term Capital Gains earned on the amount of sale

consideration actually received by the assessee was to brought to tax. The CIT(A) accordingly directed the AO to recomputed the capital gains on the sale consideration actually received in pursuance to the agreement. Further the Ld.CIT(Appeals) dismissed the ground raised by the assessee for allowing exemption from capital gains u/s 54EC for investments in REC bonds holding that as per the ratio of the decision of the Hon'ble Jurisdictional High Court the assessee was not entitled to the same and further also for the reason that no evidence in support of the exemption claimed was filed before the Assessing Officer. It was also noted by the Ld.CIT(Appeals) that though the necessary evidences of the investments made in REC bonds were filed during appellate proceedings but since no request u/s 46A of the Income Tax Rules was filed for admitting the same, the Ld.CIT(Appeals) ignored the additional evidences filed and thus dismissed the grounds raised by the assessee in this regard.

16. Aggrieved by the same, the assessee has challenged the action of the Ld.CIT(Appeals) in setting aside the issue of disallowance of Long Term Capital Gains of Rs.33,65,71,210/- to the file of the Assessing Officer as also the denial of the claim of exemption u/s 54EC of the Act by not entertaining the additional evidences adduced by the assessee In ground No.5-7 reproduced in earlier part of our order.

17. The Revenue has also challenged the action of the Ld.CIT(Appeals) in directing the Assessing Officer to recompute the capital gains only on the ground of the sale consideration actually received as against the same calculated on the amount receivable by the assessee as per the said agreement at Rs.3.65 crores by the Assessing Officer in the grounds raised by it as reproduced above in the earlier part of our order.

18. During the course of hearing before us, the Ld. counsel for assessee drew our attention to the fact that the decision of the Hon'ble Jurisdictional High Court in the case of C.S. Atwal (supra) had been upheld by the Hon'ble Supreme Court in the case of CIT Vs. Balbir Singh Mani & Others reported in 156 DTR 273. The Ld. DR fairly agreed with the above.

19. In view of the above and considering the fact that the Ld.CIT(Appeals) has followed the ratio of the Hon'ble High Court in the case of C.S. Atwal (supra), the facts of which admittedly are identical to that of the assessee, and no distinguishing facts were brought to our notice by the Ld.DR, we find no reason to interfere in the order of the CIT(Appeals) in directing the Assessing Officer to compute the Long Term Capital Gains as per the order of the Hon'ble High Court in the said case. In view of the above, grounds of appeal raised by the Revenue are dismissed as also the ground of appeal No.5 raised by the assessee in its appeal.

20. Vis-à-vis the issue of claim of exemption u/s 54EC of investment in REC bonds the assessee had filed the same before us as additional evidence alongwith an application requesting that the said certificates were in the file of the Assessing Officer during assessment proceedings also but did not take cognizance of the same. It was, therefore, requested that the same be accepted in the interest of justice.

21. The Ld. DR did not refute the above contention of the assessee that the same formed part of the assessment record.

22. In view of the same, we hold that the evidences now filed by the assessee by way of bond certificate of REC are not by way of additional evidences since they were already on the record of the Assessing Officer, the same are, therefore, being considered for the purpose of adjudicating the ground No. 7 raised by the assessee. Even otherwise, we find, that the said documents are relevant for determining the eligibility of the assessee to claim exemption of capital gains u/s 54EC of the Act ,which allows exemption if investments are made in specified Bonds by the assessee. Therefore also the said documents are admitted for adjudication. Ground No.6 raised by the assessee is therefore allowed.

23. Vis-à-vis the claim of deduction u/s 54EC, the Ld. counsel for assessee contended that the Ld.CIT(Appeals) had mis-interpreted/misappreciated the order of the

Hon'ble High Court in the case of C.S. Atwal (supra) to hold that the Hon'ble High Court in the said case had held that the assessee would not be entitled for any exemption or deduction u/s 54F/EC of the Act on the Long Term Capital Gains taxable in the impugned year. The Ld. counsel for assessee drew our attention to the findings of the Hon'ble High Court in this regard reproduced in the order of the Ld.CIT(Appeals) at para 7.3 wherein the conclusion of the Hon'ble High Court was reproduced and our attention was drawn to point No.6 of the same which reproduced as under:

*“6. The issue of eligibility to capital gains tax having been decided in favour of the assessee, the question of exemption u/s 54F of the Act would not survive any longer and has been rendered academic.”*

24. The Ld. counsel for assessee stated that the said finding of the Hon'ble High Court was vis-à-vis decision rendered by the Hon'ble High Court in favour of the assessee that no Long Term Capital Gains was to be treated as earned on lands which had not been transferred by the assessee during the impugned year. The Ld. counsel for assessee pointed out that it was vis-à-vis this relief given to the assessee that the Hon'ble High Court had held that no question of exemption u/s 54F of the Act would survive on the same. It was further pointed out that in any case the assessee was entitled to claim exemption u/s 54EC of Long Term Capital Gains earned by it in accordance with the provisions of law in this regard.

25. The Ld. DR, on the other hand, relied upon the order of the Ld.CIT(Appeals).

26. We have heard the contentions and on going through the order of the Ld.CIT(Appeals) and the Hon'ble Jurisdictional High Court in the case of C.S. Atwal (supra) we find merit in the contention of the Ld. counsel for assessee. We agree with the Ld. counsel for assessee that the findings of the Hon'ble High Court regarding denial of exemption u/s 54F was in the context of the relief which had been granted to the assessee to the extent of Long Term Capital Gains, not held to have been earned during the year by the Hon'ble High Court since the purported lands had not been transferred during the year. It was in this context that the Hon'ble High Court had held that, vis-à-vis the relief granted on the said capital gains, no exemption u/s 54F/54EC of the Act was allowable. The same stands to reason also since in the absence of any Long Term Capital Gains the assessee is logically not entitled to claim any exemption on account of investment made as per law. We, therefore, hold that vis-à-vis Long Term Capital Gains subjected to tax in the impugned year, as per the decision of the Hon'ble High Court which has been upheld by the Hon'ble Apex Court also, the assessee is entitled to claim deduction u/s 54EC/54F of the Act. We, therefore, restore the issue to the AO to verify the documents placed on record and thereafter allow the claim of the assessee in accordance with law.

Ground of appeal No.7 raised by the assessee is, therefore, allowed for statistical purposes.

27. In the result, the appeal of the assessee is allowed for statistical purposes and the appeal of the Revenue is dismissed.

Order pronounced in the open court.

Sd/-

Sd/-

**(SANJAY GARG)**  
**JUDICIAL MEMBER**

**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**

Dated : 17<sup>th</sup> May, 2018

\*Rati\*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT(A)
4. The CIT
5. The DR

Assistant Registrar,  
ITAT, Chandigarh