



**IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH
MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN, JM
&**

SHRI M.BALAGANESH, AM

**ITA No.5149/Mum/2017
(Assessment Year :2013-14)**

The Income-Tax Officer 30(2)(3) C-13, R.No.608, 6 th Floor Pratyaksha Kar Bhavan BKC, Bandra, Mumbai – 400 051	Vs.	Smt. Meeta Bhavesh Ganatra A-1301, Vikas Park, Link Road, Malad (W) Mumbai – 400 064
PAN/GIR No. AGTPG2793A		
(Appellant)	..	(Respondent)

Assessee by	Shri Vipul J. Shah
Revenue by	Shri Ashutosh Rajhans
Date of Hearing	15/04/2019
Date of Pronouncement	24/04/2019

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.5149/Mum/2017 for A.Y.2013-14 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-41, Mumbai in appeal No.CIT(A)-41/IT-459/15-16 dated 01/05/2017 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 19/02/2016 by the Id. Income Tax Officer 30(2)(3), Mumbai (hereinafter referred to as Id. AO).

2. The only issue to be decided in this appeal is as to whether the date of allotment of property could be reckoned as a specified date as against date of possession / registration of the property for the purpose of determining the period of holding of property and consequently gain to be taxed as long term capital gains or short term capital gains in the facts and circumstances of the case.

3. The brief facts of this issue are that the assessee purchased 7 Nos. of Industrial Galas at Malad, Mumbai from one Builder viz. Homeland Realtors and Developers Private Limited in the year 2007 jointly with her husband Mr. Bhavesh Natwarlal Ganatra at an agreed consideration of Rs. 53,75,700/-.

The details of the same are as follows:

Sr. No.	Gala No,	Consideration Amount (Rs.)
1	118	6,90,000/-
2	121	6,90,000/-
3	123	6,90,000/-
4	1 24	6,90,000/-
5	125	6,90,000/-
6	126	12,35,700/-
7	228	6,90,000/-
Total Rs.		53,75,700/-

3.1. The assessee paid the entire consideration for the same as under:

Sr. No.	Date	Amount (Rs.)
1.	Amount transferred from Loan Given to M/s. Parikh Builders upto F.Y. 2005-06	36,00,000/-
2.	20/10/2007	34,00,000/-
3.	07/11/2007	5,00,000/-

3.2. Homeland Realtors Mid Developers Private Limited issued the Allotment Letters to the assessee in 2007 allotting the specific Galas with specific Galas with corresponding galas marked on the floor plan.

3.3. The construction of the said Industrial Estate was completed in the year 2012 and therefore Homeland Realtors and Developers Private Limited sent a demand letter showing full payment made, asking to enter into agreement and entered into the formal purchase agreement of all galas (except Gala bearing No. 126) on 26th March, 2012 and in respect of Gala No.126 formal purchase agreement was entered on 15th May 2012. Upon execution of the agreement the possession was given to the assessee. The assessee sold the said 7 Nos. of Galas in F.Y.2012-13 for an aggregate consideration of Rs.2,12,00,000/-. The assessee invested the amount received on the sale of the said Galas for acquiring a residential flat by making payment of Rs.50,00,000/- and Rs.72,14,800/- on 04th March 2013 and 19th April 2013 to M/s. Adarsh Industrial Estate Pvt. Ltd., and claimed the deduction u/s.54F.

3.4. The Id. AO from the perusal of the various documents of the assessee has submitted, prepared the following tabulation in respect of purchase and sales of various industrial galas:-

Gala No.	Date of Registration / Date of purchase	Date of sale
118	26/03/2012	05/09/2012
121	26/03/2012	14/12/2012
123	26/03/2012	12/12/2012
124	26/03/2012	14/12/2012
125	26/03/2012	14/12/2012
126	15/05/2012	17/09/2012
228	26/03/2012	17/09/2012

3.5. The Id. AO observed that the assessee got possession of the said industrial Galas only in March 2012 and April 2012, as the case may be, by having vacant and peaceful possession of the same and these galas were sold subsequently starting from 05/09/2012, 12/12/2012, 14/12/2012 and 17/09/2012. The Id. AO reckoned the date of possession of the said industrial Galas in the hands of the assessee and accordingly determined the holding period of the same to be less than three years and consequently held the gains arising from the sale of said industrial Galas are to be taxed as only short term capital gains and consequently the claim of deduction examined u/s.54F of the Act was not eligible to the assessee. The Id. AO consequently also denied the benefit of indexation of the cost claimed by the assessee. Accordingly, the Id. AO determined the short term capital gain of Rs.75,16,750/- while computing the assessment.

3.6. The Id. CIT(A) granted relief to the assessee by observing as under:-

5. I have considered the findings of the AO in the Assessment order and the submission of the appellant. The issue required to be addressed in this appeal is that whether the Galas sold by the Appellant during the year on which long term capital gain was shown in the return was a 'long term capital asset' or 'short term capital asset' as per section 2 (42A) of the Income Tax Act, 1961.

5.1. The appellant has also demonstrated successfully that the allotment letters of galas were issued on 22/10/2007. It is further observed that the

entire consideration for purchase of galas was paid before the allotment letter through adjustment of loan from sister concern and payments from the bank accounts of the husband of the appellant.

5.2 As per Section 2 (42A) of the Act, "Short -term capital asset" means a capital asset held by an assessee for not more than thirty-six months immediately preceding the date of its transfer"

5.3 After going through decisions relied on by the appellant, it is found that for the purpose of holding an asset, it is not necessary that the assessee should be the owner of the asset with a registered deed of conveyance conferring title on him. As per section 2(47); sale, exchange or relinquishment of the asset or the extinguishment of any right: therein is to be treated as transfer in relation to a capital asset. Even in the absence of a title deed, the assessee holds that property and therefore, it is the point of time at which he holds the property, which is to be taken into consideration in determining the period between the date of acquisition and date of transfer of such capital gain in order to decide whether it is a short-term capital gain or a long-term capital gain.

5.4 In the decision of Mumbai ITAT in case of Anita D. Kanjani Vs. ACIT-I. T. A. No. 2291 / Mum / 2015 (ITAT"H" Bench (Mumbai)) dated 13/02/2017 , it was held after considering various case laws that the holding period should be computed from the date of issue of allotment.

5.5 I find that Indore Bench of ITAT in case of ACIT vs. Sanjay Kumath [2014] 42 taxmann.com 38 (Indore - Trib.) in similar facts has held that all the rights in the flat was duly acquired by the assessee when he was given letter of allotment which clearly described the precise number of flat so allotted to him. As per the provisions of Section 2(47)(ii) "Transfer" in relation to capital assets includes the extinguishment of any right therein. This letter of allotment extinguishes the rights of builder in the said flat In favour of the assessee in respect of this flat and by signing the letter of allotment, the assessee agreed to buy the same and for which payment was also made according to the letter of allotment. CBDT', Circular No. 171 dated 15.10.1986 and Circular No. 672 dated 16.12.1993 were also referred in the said decision. It was finally held that the period of holding is to be computed with respect to the date of allotment and not from the date of agreement of sale and hence the assessee is entitled to claim of exemption u/s 54/54F by treating the capital assets so sold as long term capital assets.

5.6 In the following decisions also same view has been taken by the Tribunal:

a) Meena A. Hemnani Vs. ITO [ITA No. 5998/M/2010] dated 17.1.2014 - B bench of Mumbai Tribunal.

b) ACIT vs.Smt. Vandana Rana Roy [ITA No. 6173/M/2011] dated 7.11.2012

5.7 In view of above, it is held that the holding period should be considered from the date of allotment of galas on 22/10/2007. Since these galas were held for more than 36 months before the sale, the resultant gain is Long Term Capital Gain. Therefore, the AO is directed to assess the capital gain on sale of 7 nos. of galas by the appellant as Long Term Capital Gain after computing the same as per law. The ground no. 2 is allowed.

4. Aggrieved, the revenue is in appeal before us.
5. We have heard rival submissions. We find that the factual findings recorded by the Id. CIT(A) that the allotment letters of Galas were issued to the assessee on 22/10/2007; that the entire consideration for purchase of said Galas was paid by the assessee before the allotment letter through adjustment of loan from sister concern and payments from the bank accounts of the husband of the assessee, remain uncontroverted by the revenue before us. We find that the Id. CIT(A) had reckoned the specified date to be the date of allotment i.e., 22/10/2007 and accordingly held that assessee had held Galas for more than three years before the date of transfer and accordingly treated the same as long term capital gain and consequently granting benefit of exemption u/s.54F of the Act. It is not in dispute that assessee had indeed made investment within the prescribed time in a new residential property making her eligible to claim benefit of exemption u/s.54F of the Act. The only dispute to be decided is whether the resultant gain on sale of industrial Galas by the assessee would be long term capital gain or short term capital gain which in turn had to be decided by taking a specified date as the date of allotment of Galas or date of registration of Galas. We find that the issue under dispute is squarely addressed by the decision of Hon'ble Jurisdictional High Court in the case of Pr. Commissioner of Income Tax vs. Vembu Vaidyanathan in Income Tax Appeal No.1459 of 2016 wherein it was observed as under:-

1. This appeal is filed by the revenue to challenge the judgment of Income Tax Appellate Tribunal. We have considered the following question presented by the revenue:-

“Whether on the facts and in the circumstances of the case and in law, the ITAT was justified in treating the gain arising from the sale of capital asset as Long Term Capital Gain without appreciating the fact that mere letter of allotment does not lead to creation of proper and effective right over the capital asset sought to be acquired, but only on execution of an agreement spelling out all the exact terms and conditions for acquisition?”

2. *This question arises in following background. The respondent-assessee is an individual. The assessee had filed the return of income for the assessment year 2009-10 and claimed long term capital gain arising out of capital asset in the nature of a residential unit. During the course of assessment the Assessing Officer examined this claim and came to the conclusion*

that the gain arising out of sale of capital asset was a short term capital gain. The controversy between the assessee and the revenue revolves around the question as to when the assessee can be stated to have acquired the capital asset. The assessee argued that the residential unit in question was acquired on the date on which the allotment letter was issued by the builder which was on 31st December, 2004. The Assessing Officer however contended that the transfer of the asset in favour of the assessee would be complete only on the date of agreement which was executed on 17th May, 2008.

3. *CIT appeals and the Tribunal held the issue in favour of the assessee relying on various judgments of different High Courts including the judgment of this Court in case of **Commissioner of Income-Tax, Bombay City I Vs. TATA Services Limited**. Reliance was also placed on CBDT circulars.*

4. *Having heard learned counsel for the parties, we notice that the CBDT in its circular No.471 dated 15th October, 1986 had clarified this position by holding that when an assessee purchases a flat to be constructed by Delhi Development Authority (“D.D.A.” for short) for which allotment letter is issued, the date of such allotment would be relevant date for the purpose of capital gain tax as a date of acquisition. It was noted that such allotment is final unless it is cancelled or the allottee withdraw from the scheme and such allotment would be cancelled only under exceptional circumstances. It was noted that the allottee gets title to the property on the issue of allotment letter and the payment of installments was only a follow-up action and taking the delivery of possession is only a formality.*

5. This aspect was further clarified by the CBDT in its later circular No.672 dated 16th December. In such circular representations were made to the board that in cases of allotment of flats or houses by co-operative societies or other institutions whose schemes of allotment and consideration are similar to those of D.D.A., similar view should be taken as was done in the board circular dated 15th October, 1986. In the circular dated 16th December, 1993 the board clarified as under:

“2. The Board has considered the matter and has decided that if the terms of the schemes of allotment and construction of flats/houses by the co-operative societies or other institutions are similar to those mentioned in para 2 of Board's Circular No.471, dated 15-10-1986, such cases may also be treated as cases of construction for the purposes of sections 54 and 54F of the Income-tax Act.”

It can thus be seen that the entire issue was clarified by the CBDT in its above mentioned two circulars dated 15th October, 1986 and 16th December, 1993. In terms of such clarifications, the date of allotment would be the date on which the purchaser of a residential unit can be stated to have acquired the property.

There is nothing on record to suggest that the allotment in construction scheme promised by the builder in the present case was materially different from the terms of allotment and construction by D.D.A.. In that view of the matter, CIT appeals of the Tribunal correctly held that the assessee had acquired the property in question on 31st December, 2004 on which the allotment letter was issued.

6. Learned counsel for the revenue has also argued that in any case the assessee was not entitled to exemption under Section 54F of the Income Tax Act, 1961 (“the Act” for short). Since the assessee had held multiple residential units which would disqualify the assessee from claiming the exemption on it as was held by the Assessing Officer. From the record we notice that before the CIT appeals the assessee had produced additional evidence to suggest that the other units previously held by the assessee were discarded earlier and that at the relevant time the assessee did not hold any other residential unit. Quite apart from it being a pure question of fact, we do not find any indication in the impugned judgment of the Tribunal though the revenue had argued such a contention in its appeal before the Tribunal.

7. In the result, the Income Tax Appeal is dismissed.”

5.1. We also find that similar issue had been adjudicated by the Co-ordinate Bench of this Tribunal in ITA No.6710/Mum/2017 for A.Y.2013-14 dated 02/11/2019 in the case of ACIT vs. Shri Keyur Hemant Shah wherein it was observed as under:-

1. *Aforesaid appeal by revenue for Assessment Year [in short referred to as 'AY'] 2013-14 contest the order of Ld. Commissioner of Income-Tax (Appeals)-37, Mumbai, [in short referred to as 'CIT(A)'], Appeal No. CIT(A)- 37/IT-886/ACIT-25(2)/15-16 dated 27/09/2017 on following grounds of appeals: -*

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition on account of Short-Term Capital Gain stating that the right in a property is created once its title is allotted to the purchaser and more so, if full consideration is paid. As the assessee had received an allotment vide letter dated 26.02.2008 and paid full consideration by 24.07.2008. Therefore, the assessee got the title to the property on the issuance of the allotment letter by the builder / seller."

2. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the deduction claimed u/s.54F of Rs.1,09,40,072/-, stating that the house was purchased within two years of sale, as required u/s 54F"

3. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not considering that the addition was made by the AO because it was clearly mentioned in the 2nd para of the allotment letter that the documents regarding allotment would be executed after the same was stamped by the buyers. As the assessee entered into an agreement for sale (for purchasing the under construction flat) on 25.03.2010 and the period of holding of rights from 25.03.2010 to 04.04.2012 is less than 36 months, thereby making the gain on transfer of rights as Short Term Capital Gain".

4. "On the facts and in the circumstances of the case and in law, the Ld.-CIT(A) has erred in not considering that the allotment letter did not contain the flat number nor any unconditional rights to dispose of the property. It is clear that the allotment letter was only an offer and the right or interest in property was to accrue only on signing and stamping of the agreement. Only the agreement dated 25.03.2010 conveyed the right to acquire the property which was under construction on the date of agreement."

5. *"On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not considering that the assessee had not purchased the new property claimed u/s. 54F, but just made an advance payment to the builder. The assessee had not entered into any agreement with the buyer."*

6. *On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in not appreciating the decision of Hon'ble Delhi High Court in the case of Gulshan Malik Vs. CIT in ITA No.55/2014, CM Appl 2383/2014 & 2384/2014 (2014) 43 Taxmann. Com 200 (Delhi)' wherein it was held that a right or an interest in an immovable property can accrue to a buyer only by way of an agreement."*

7. *"The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored."*

2.1 *Facts in brief are that the assessee being resident individual was assessed in scrutiny assessment u/s 143(3) for impugned AY on 12/02/2016 wherein the assessee's income was determined at Rs.401.78 Lacs after certain adjustments as against returned income of Rs.185.33 Lacs filed by the assessee on 31/07/2013. As evident from grounds of appeal, the subject matter of present appeal is to determine the nature of certain capital gains earned by the assessee in the impugned AY and the assessee's eligibility to claim deduction u/s 54F.*

2.2 *During assessment proceedings, it transpired that the assessee sold a duplex apartment Flat No.1201 with 4 car parking in the building Natura of Tapovan Cooperative Society Ltd., Santa Cruz (W), Mumbai [flat] on 04/04/2012 for a sale consideration of Rs.1200 Lacs, the assessee's share being 50% in the same. The assessee after adjusting the indexed cost of acquisition worked out Long-Term Capital Gains [LTCG] for Rs.288.73 Lacs and after claiming deduction u/s 54F for Rs.109.40 Lacs against the same, offered balance LTCG of Rs.179.33 Lacs to tax.*

2.3 *It transpired that the said flat was purchased by the assessee vide Registered Agreement for Sale on 25/03/2010 and counted from this date, the assessee's holding period was less than 36 months which led to Ld. AO to treat the resultant gains as short-term capital gains [STCG]. The assessee defended the same by submitting that the said flat was purchased vide allotment letter dated 26/02/2008 and substantial payment of Rs.185.50 Lacs was already made by 24/07/2008 and therefore the holding period, as counted from the date of allotment letter, was more than 36 months and therefore the resultant gains were Long-Term Capital Gains.*

2.4 However, upon perusal of allotment letter as extracted on para 4.4 of the quantum assessment order, Ld. AO noted that the same did not contain the specific flat number and it mentioned the fact that documents regarding allotment will be executed after the same is stamped by the buyer and therefore, the assessee did not have unconditional right to dispose of the property. Reliance was placed on the decision of Hon'ble Delhi High Court rendered in Gulshan Malik Vs. CIT [43 Taxman.com 200] while arriving at the conclusion that it was only the agreement dated 25/03/2010 which conveyed the right to acquire the property in favor of the assessee. It was also noted that the flat was at under construction stage on the date of agreement. Therefore, the resultant gains, in the opinion of ld. AO, were short-term in nature.

2.5 Proceeding further, as a logical consequence to above conclusion, deduction u/s 54F as claimed by the assessee was also denied. Another fact noted by Ld. AO to deny the same was that the assessee merely advanced certain sum of money towards purchase of the new property and did not actually purchased the property. Finally, the gains were treated as STCG and the indexation benefit was denied to the assessee. Also, deduction u/s 54F was denied to the assessee.

3.1 Aggrieved, the assessee agitated the same with success before Ld. first appellate authority vide impugned order dated 17/09/2017 wherein it was, inter-alia, held that right in the property was created once the title was allotted to the purchaser and the payment of instalment as well as delivery of possession was mere formality. Reliance was placed on CBDT circular No. 471 & 672 to draw the said conclusion. The ratio of the following judicial pronouncement was also considered while forming such an opinion:

No.	Case Law	Judicial Authority	Citation
1.	Vinod Kumar Jain Vs. Ld. CIT	Hon'ble Punjab & Haryana High Court	244 CTR 340
2.	Sanjeev Lall Vs CIT	Hon'ble Supreme Court	365 ITR 389
3.	CIT Vs. Vijay Flexible Containers	Hon'ble Bombay High Court	186 ITR 693
4.	CIT Vs Ram Gopal	Hon'ble Delhi High Court	ITA 70/2015 09/02/20
5.	Snehabimal Vs PCIT	Mumbai Tribunal	ITA 5489/M/
6.	Seeta Prabhu Vs ITO	Mumbai Tribunal	ITA 1020/M/

The case law of Gulshan Malik Vs. CIT [supra] was held to be distinguishable on facts since in that case the confirmation letter specifically provided that no right to provisional / final allotment accrues until the buyers' agreement is signed, which was not the case here. Finally, convinced with factual matrix, Ld. first appellate authority, vide para nos. 5.4 to 5.10 of the impugned order, came to a conclusion that the resultant gains were Long-Term Capital Gains in nature, against which benefit of progressive indexation was available to the assessee.

3.2 Regarding assessee's claim u/s 54F, it was noted that the investment in new flat was made on 14/04/2012 which was well within the stipulated time period as envisaged by Section 54F and therefore, the assessee was eligible to claim the said deduction in terms of CBDT circular No. 471 dated 15/10/1986. Reliance was placed on several judicial pronouncements also to arrive at the said conclusion, which has already been discussed in the impugned order in para nos. 6.5 to 6.8 of the impugned order. Accordingly, Ld. AO was directed to allow the claim of Rs.109.40 Lacs u/s 54F as claimed by the assessee.

Aggrieved, the revenue is in further appeal before us.

4. The Ld. DR, placing reliance on the cited decision of Hon'ble Delhi High Court in Gulshan Malik Vs. CIT [43 Taxman.com 200] supported the stand of Ld. AO by submitting that this decision has already attained finality by way of dismissal of Special Leave Petition by Hon'ble Apex Court on 26/10/2015 vide SLP No. 30670/2014. On the other hand, Ld. Authorized Representative for Assessee [AR] submitted that the issue stood squarely covered in assessee's favor by catena of binding judicial pronouncements and the cited case law of Hon'ble Delhi High Court was distinguishable on facts. Reliance has been placed on the recent decision of Hon'ble Bombay High Court rendered in PCIT Vs. Vembu Vaidyanathan [ITA No. 1459 of 2016 dated 22/01/2019], a copy of which has been placed on record.

5. I we have carefully heard the rival submissions and perused relevant material on record. Upon perusal, the undisputed facts that emerges are that the assessee has acquired the rights in a duplex flat on 12th & 13th floor front facing the road admeasuring 1961.75 Square Feets & terrace measuring 881.5 Square Feets as per the attached layout plan along with 4 car parking in building known as Tapovan vide Allotment Letter dated 26/02/2008 issued by DSD Builders & Developers Pvt. Ltd. for total consideration of Rs.371 Lacs. The said allotment is not a conditional allotment and do not envisages cancellation of the allotted property, in any manner. Therefore, the assessee has acquired right in a specific property which is clearly earmarked in the layout plan. The full payment of the same has been made by the assessee by 24/07/2008

*which is evident from assessee's letter containing payment details as placed on page no. 4 of the paper-book. Subsequently, agreement of sale has been executed by the builder in assessee's favor on 25/03/2010 which was nothing but mere improvement in assessee's existing rights to acquire a specific property and part & parcel of the same transaction. This being the case, the case laws being relied upon by the revenue do not apply to the factual matrix of the case and therefore, rightly, distinguished by the Ld. first appellate authority. 5.2 We find that the factual matrix of the present case is squarely covered by the recent decision of Hon'ble Bombay High Court rendered in **PCIT Vs. Vembu Vaidyanathan [ITA No. 1459 of 2016 dated 22/01/2019]**, wherein the issue has succinctly been clinched by Hon'ble Court in the following manner: -*

2. *This question arises in following background. The respondent-assessee is an individual. The assessee had filed the return of income for the assessment year 2009-10 and claimed long term capital gain arising out of capital asset in the nature of a residential unit. During the course of assessment, the Assessing Officer examined this claim and came to the conclusion that the gain arising out of sale of capital asset was a short term capital gain. The controversy between the assessee and the revenue revolves around the question as to when the assessee can be stated to have acquired the capital asset. The assessee argued that the residential unit in question was acquired on the date on which the allotment letter was issued by the builder which was on 31st December, 2004. The Assessing Officer however contended that the transfer of the asset in favour of the assessee would be complete only on the date of agreement which was executed on 17th May, 2008.*
3. *CIT appeals and the Tribunal held the issue in favour of the assessee relying on various judgments of different High Courts including the judgment of this Court in case of **CIT v. TATA Services Ltd. [1980] 122 ITR 594/[1999] 1 Taxman 427**. Reliance was also placed on CBDT circulars.*
4. *Having heard learned counsel for the parties, we notice that the CBDT in its circular No.471 dated 15th October, 1986 had clarified this position by holding that when an assessee purchases a flat to be constructed by Delhi Development Authority ("D.D.A." for short) for which allotment letter is issued, the date of such allotment would be relevant date for the purpose of capital gain tax as a date of acquisition. It was noted that such allotment is final unless it is cancelled or the allottee withdraw from the scheme and such allotment would be cancelled only under exceptional circumstances. It was noted that the allottee gets title to the property on the issue of allotment letter and the payment of installments was only a follow-up action and taking the delivery of possession is only a formality.*

5. *This aspect was further clarified by the CBDT in its later circular No.672 dated 16th December, 1993. In such circular representations were made to the board that in cases of allotment of flats or houses by co-operative societies or other institutions whose schemes of allotment and consideration are similar to those of D.D.A., similar view should be taken as was done in the board circular dated 15th October, 1986. In the circular dated 16th December, 1993 the board clarified as under:*

"2. The Board has considered the matter and has decided that if the terms of the schemes of allotment and construction of flats/houses by the co-operative societies or other institutions are similar to those mentioned in para 2 of Board's Circular No.471, dated 15-10-1986, such cases may also be treated as cases of construction for the purposes of sections 54 and 54F of the Income-tax Act."

It can thus be seen that the entire issue was clarified by the CBDT in its above mentioned two circulars dated 15th October, 1986 and 16th December, 1993. In terms of such clarifications, the date of allotment would be the date on which the purchaser of a residential unit can be stated to have acquired the property. There is nothing on record to suggest that the allotment in construction scheme promised by the builder in the present case was materially different from the terms of allotment and construction by D.D.A.. In that view of the matter, CIT appeals of the Tribunal correctly held that the assessee had acquired the property in question on 31st December, 2004 on which the allotment letter was issued.

Respectfully, following the same, we confirm the stand of Ld. first appellate authority to the extent that the resultant gains were Long-Term Capital Gains in nature.

5.3 *The only surviving issue is assessee's eligibility to claim deduction u/s 54F. The undisputed fact, in that respect, are that the assessee has made the payment within stipulated time as envisaged by Section 54F and the allotment in a specific property has been obtained by the assessee on 14/04/2012 which is evident from allotment letter as placed on page nos. 186 to 190 of the paper-book. Therefore, since all the conditions of Section 54F was fulfilled by the assessee, there could be no occasion to deny the benefit of deduction to the assessee. Therefore, no infirmity could be found in the impugned order.*

6. *Finally, the appeal stands dismissed.*

5.2. Respectfully following the said aforesaid decisions, we find that the Id. CIT(A) had rightly granted relief to the assessee in the facts and circumstances of the case which, in our considered opinion, requires no interference. Accordingly, the grounds raised by the revenue are dismissed.

6. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on this 24/04/2019

**Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER**

**Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER**

Mumbai; Dated 24/04/2019
Karuna Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai