

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C' NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 1062/Del/2020
Assessment Year: 2016-17**

KiranKaurKohli,
47, JorBagh, New
Delhi.

PAN: AAIPK8725G
(Appellant)

Versus ACIT, Circle 53(1),
New Delhi

(Respondent)

Appellant by : Shri R.S. Singhavi, Ld. CA
ShriRajatGarg, Ld. CA

Respondent by : ShriAnujGarg, Ld. Sr. DR

Date of hearing : 13.07.2022

Date of order : 28.07.2022

ORDER

PER N.K. CHOUDHRY, J.M.

This appeal has been preferred by the Assessee against the order dated 25.02.2020, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)-23, New Delhi (in short "Ld. Commissioner"), u/s. 250 of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2016-17.

2. Brief facts as appear from record, relevant for disposal of the instant appeal are *that the Assessee has claimed to purchased rights in the property situated at BPTP Plot J 21-5, Faridabad on dated 30.12.2006 vide Plot Buyers Agreement dated 30.12.2006 and made regular instalments in its respect on due dates and purchase price is corroborated from the balance sheet for A.Y. 2015-16. Further by virtue of such buyer agreement dated 30.12.2006, the Assessee duly transferred the rights in the said property to M/s. Surya Hotels Private Limited by executing an agreement to sale dated 14.10.2015. M/s. BPTP was unaware of the fact that the Assessee has already sold the property rights vide agreement dated 14.10.2015 and such conveyance deed dated 20.01.2016 only shows the mutation of property in the name of the Assessee, although the same was already sold to M/s. Surya Hotels Pvt. Limited.*

2.1 The Assessee, therefore, claimed long term capital loss of Rs.10,55,490/- on the indexed cost of Rs.58,55,490/- on the basis of instalments paid for purchasing the property rights .

2.2 The Assessing Officer being not satisfied with the claim of the Assessee, made the disallowance of Rs.10,55,490/- on account of long term capital loss on the ground *that no documents like sale/purchase and indexed cost details in support of the claim were provided by the Assessee during the assessment proceedings. The long term*

capital loss of Rs.10,55,490/- claimed by the Assessee is disallowed in the Income-tax Return of the Assessee.

3. The Assessee being aggrieved with the disallowance apart from other additions made by the AO which are not in controversy here, challenged the same before the Id. Commissioner and claimed

3.1 The Id. Commissioner after considering the facts of the case and the claim of the Assessee, came to the conclusion that as per documents submitted, conveyance deed has been executed on 20.01.2016 between the Assessee and M/s. BPTP(vender). Possession of the plot has been handed over in consequence of the letter dated 11.02.2016. The Assessee has entered into sale agreement with M/s. Surya Hotels Pvt. Ltd. for sale of plot on 14.10.2015. Thus the Assessee became the owner of the plot with the signing of the conveyance deed on 20.01.2016 and taking over possession during the financial year 2015-16. Plot was sold during the same year, thus, the transfer as defined in section 2(47) of the Act was completed during the F.Y. 2015-16.

3.2 The Id. Commissioner, further while determining *that since the period of holding of the plot was less than 36 months, income from sale of plot is held to be taxable as short*

term capital gain, computed the capital gain of the Assessee as under:

Sale proceeds of BPTP J2-5 to Surya Hotels Pvt. Ltd. on 02.07.2015. 48,00,000/-	
Less: Cost of acquisition as per Conveyance deed.	26,48,750/-
Short Term Capital Gain	21,51,250/-

By making such computation, the Id. Commissioner enhanced the income of the Assessee to the tune of Rs.21,51,250/- on account of short term capital gain.

4. The Assessee being aggrieved preferred the instant appeal and in support of its case submitted that impugned order is based on the contrary facts and liable to be set aside being perverse, improper and invalid in the eyes of law.

5. On the contrary the Ld. DR submitted that impugned order is a reasoned and logical order and therefore do not require any interference.

6. Heard the parties and perused the material available on record. The question involved in the instant appeal relates to the computation of capital gain u/s 54F of the Act. The Assessee claimed that the date of allotment i.e. 30.12.2006 on which date 'plot buyers agreement dated

30.12.2006 with BPTP Ltd. (the vendor)' for purchase of the plot/land under consideration was executed, is relevant for consideration as date of acquisition and for the benefit of indexation to claim capital gain or tax u/s 54 of the Act and therefore the Assessee is entitled to get benefit of long term capital gain because the Assessee acquired the property under consideration 30.12.2006 and sold the same on 14.10.2015.

The Assessee in order to strengthen its contention also relied upon the judgment of Hon'ble Apex Court rendered in the case of PCITVsVembuVaidyanathan (2019) 108 taxman.com 339(SC).

6.1 The assessee also claimed that the Hon'ble Delhi High court in the case of CIT vs. K. Ramakrishnan(2014) 188 taxmann.com-55 while relying upon the judgment in Jitendra Mohan Vs. ITO (2007) 11 SOT 594 (Delhi) (2007) 11 SOT 594 Delhi and considering the facts of the case "*wherein the plot was allotted to the Assessee through HUDA on 03.08.1999 and subsequently, conveyance deed was executed and possession was given on 12.12.2015. The Assessee sold the said plot through registered sale deed on 09.01.2008. The Assessing Officer brought to tax the capital gain arising from the sale of plot as short term capital gain*" held that it is the date of allotment which is relevant for purpose of computing the holding period and not the date of registration or conveyance.

6.2 The Assessee also relied upon the judgement of Hon'ble Delhi High Court rendered in the case of CIT vs. Frick India Ltd., 369 ITR 328 (Delhi) wherein the Hon'ble Court was pleased to hold that word used in section 2(42A) is with regard to the capital asset and the term "capital asset" is not confined and restricted to the ownership of property or an asset. Capital asset can consist of rights other than ownership right in an asset, like leasehold rights, allotment rights, etc. The sequitur, therefore, is that the word 'held' or 'hold' is not synonymous with right over the asset as an owner and has to be given a broader and wider meaning.

6.3 We have given thoughtful consideration to the peculiar facts and circumstances of the case and found nothing on record to controvert the claim of the Assessee and the judgments referred above. Hence, considering the peculiar facts and circumstances, we deem it appropriate to set aside the order passed by the Id. Commissioner and to direct the Assessing Officer to recompute the capital gain/loss of the Assessee u/s. 54 of the Act, while considering the date of plot buyer's agreement dated 31.12.2006 as acquisition date of plot/property sold and for indexation benefit. Ordered accordingly.

7. In the result, the appeal filed by the Assessee stands allowed.

Order pronounced in the open court on 28/07/2022.

Sd/-

**(N.K. BILLAIYA)
ACCOUNTANT MEMBER**

Sd/-

**(N.K. CHOUDHRY)
JUDICIAL MEMBER**

*aks/-