

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA No.1368/Del/2022
Assessment Year: 2019-20

Ms. Renu Khurana, H. No. 6480, Sector C-6, Vasant Kunj, New Delhi	Vs.	ACIT, Intl. Taxation -2(1)(2), New Delhi
PAN :BBPPK6150E		
(Appellant)		(Respondent)

Appellant by	Sh. M.P. Rastogi, Advocate
Respondent by	Sh. Munish Kumar Gupta, CIT(DR)

Date of hearing	31.01.2023
Date of pronouncement	17.02.2023

ORDER

PER SAKTIJIT DEY, JM:

Captioned appeal by the assessee is against the assessment order dated 11.05.2022 passed under section 143(3) read with section 144C(13) of the Income-tax Act, 1961 (for short 'the Act') pertaining to assessment year 2019-20, in pursuance to the directions of learned Dispute Resolution Panel (DRP).

2. The dispute between the parties in the present appeal is in relation to deduction claimed on account of indexed cost of acquisition for the purpose of computing long term capital gain.

3. Briefly the facts are, the assessee is a non-resident individual. In the financial year relevant to the assessment year under dispute, the assessee had sold an immovable property, being residential flat no. A-501, Park View SPA, Village Fatehpur, Sector-47, Gurgaon, Haryana through registered sale deed dated 29.03.2019 for a consideration of Rs.2,10,00,000/-. After deducting an amount of Rs.2,09,54,863/- towards indexed cost of acquisition under section 48 of the Act, the assessee offered long term capital gain of Rs.45,137/- in the return of income filed for the impugned assessment year. As alleged by the Assessing Officer, in course of assessment proceeding, the assessee proceeded to complete the assessment under section 144 of the Act to the best of his judgment. While doing so, he rejected assessee's claim of deduction of indexed cost of acquisition and on estimate basis allowed 1/4th of the sale consideration as deduction towards indexed cost of acquisition. Against the draft assessment order, the assessee raised objections before learned DRP. In course of proceedings before learned DRP, assessee furnished additional evidences regarding the payments made for acquiring the property, agreement with the builder, sale deed etc. The additional evidences furnished by the assessee were

forwarded to the Assessing Officer for verification. After verifying the additional evidences the Assessing Officer furnished remand report. On perusal of remand report, learned DRP found that the assessee executed the Apartment Buyers Agreement with the builder on 04.08.2010 falling in financial year 2010-11. Thus, learned DRP held that financial year 2010-11 is the year in which the assessee acquired the property. Thus, learned DRP directed the Assessing Officer to allow deduction towards indexed cost of acquisition on payments made from financial year 2010-11 onwards. In terms with the directions of learned DRP, the Assessing Officer passed the final assessment order allowing deduction on account of indexed cost of acquisition for an amount of Rs.1,84,03,321/-. Thereby, revising the addition on account of long term capital gain to Rs.25,96,679/-.

4. Before us, learned counsel appearing for the assessee submitted that the residential flat was allotted to the assessee vide allotment letter issued on 12th December, 2005. He submitted, beginning from financial year 2005-06 till financial year 2014-15, the assessee has made payments towards purchase of the flat aggregating to Rs.1,16,90,311/-. Thus, he submitted, since, the allotment letter was issued in favour of the assessee in

respect of a specifically identifiable property in the financial year 2005-06, the assessee is entitled to claim indexed cost of acquisition based on payments made in each financial year beginning from financial year 2005-06. In support of such contention, learned counsel relied upon the following decisions:

1. *Praveen Gupta Vs. ACIT, ITA No.2558/Del/2010 for AY: 2007-08.*
2. *CIT Vs. Jindas Panchand Gandhi, 279 ITR 552*
3. *CIT Vs. S.R. Jeyashankar [2015] 373 ITR 120 (Mad.)*
4. *L. Vivekananda Vs. ACIT [2021] 124 taxmann.com 67 (Bangalore – Trib.)*
5. *Mrs. Madhu Kaul Vs. CIT, [2014] 363 ITR 54 (P&H)*

5. Learned Departmental Representative strongly relied upon the observations of the Assessing Officer and learned DRP.

6. We have considered rival submissions and perused materials on record. The short issue arising for consideration is, in which financial year the assessee can be said to have acquired the property for the purpose of granting indexation benefit of cost of acquisition. On perusal of allotment letter dated 12th December, 2005, issued to the assessee by the builder/developer, a copy of which is placed at page 13 of the paper-book, it is observed that

flat no. A-501, Park View SPA, Village Fatehpur, Sector-47, Gurgaon, Haryana, being a four bed room flat, admeasuring 2875 sq. feet was allotted to the assessee on certain terms and conditions. On perusal of the letter of allotment it is observed that the payment to be made by the assessee towards purchase of the flat was linked to construction. In other words, it is in the nature of a self-financing scheme. From the materials placed on record, it is observed that the assessee has made payments linked to various stages of construction in the following manner:

Financial Year	Amounts
2005-06	19,22,704
2006-07	9,62,359
2008-09	25,000
2009-10	26,46,084
2010-11	22,14,231
2011-12	11,11,776
2012-13	12,87,047
2013-14	10,07,111
2014-15	5,14,000
Total	1,16,90,311

7. Thus, from the aforesaid facts, it is very clear that in the allotment letter not only a specifically identifiable residential flat was allotted to the assessee but the assessee had made payments in accordance with the terms and conditions of the allotment letter. In Circular No. 471, dated 15.10.1996, the Central Board of Direct Taxes (CBDT) has clarified that in respect of flats allotted

under the self-financing scheme of the Delhi Development Authority (DDA), the date of issuance of allotment letter would be considered to be the date of acquisition of the property. This is so because, the allotment is final unless it is cancelled or the allottee withdraws from the scheme. In case of assessee before us, as well, the allotment letter issued by the developer/builder is final, as, it is in respect of a specifically identifiable property and has ultimately culminated in execution of apartment buyer's agreement in financial year 2010-11. Therefore, in our view, the date of acquisition of the residential flat has to be reckoned from the date of the allotment letter. While coming to the aforesaid conclusion, we have drawn support from the decisions cited before us by learned counsel appearing for the assessee. Therefore, in our view, the benefit of indexed cost of acquisition should be available to the assessee based on the payments made beginning from financial year 2005-06 and not from the execution of the apartment buyers' agreement, as directed by learned DRP.

8. In view of the aforesaid, we direct the Assessing Officer to factually verify the computation of indexed cost of acquisition made by the assessee, basis payments made from financial year 2005-06, and allow the deduction.

9. In the result, the appeal is allowed.

Order pronounced in the open court on 17th February, 2023

**Sd/-
(G.S. PANNU)
PRESIDENT**

**Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER**

Dated: 17th February, 2023.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi