

**THE INCOME TAX APPELLATE TRIBUNAL  
DELHIBENCH 'E', NEW DELHI**

**Before Dr. B. R. R. Kumar, Accountant Member**

**Sh. Yogesh Kumar US, Judicial Member**

**ITA No. 7465/Del/2019 : Asstt. Year : 2014-15**

Shri Nirmal Singh Malhi, G-8, Pratap Bhawan, 5, Bahadur Shah Zafar Marg, New Delhi-110002	Vs	ACIT, Circle-30(1), New Delhi-110002
(APPELLANT)		(RESPONDENT)
<b>PAN No. AHCPM1492M</b>		

**Assessee by : Sh. Tushar Jarwal, Adv.**

**Sh. Rahul Sateerja, Adv.**

**Revenue by : Sh. Ajay Kumar Arora, Sr. DR**

**Date of Hearing: 06.12.2022**

**Date of Pronouncement: 03.03.2023**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the assessee against the order of Id. CIT(A)-33, New Delhi dated 18.07.2019.

2. Following grounds have been raised by the assessee:

*"1. That the order of the Id. CIT(A) is unsustainable in law as Section 45 of the Income Tax Act, 1961 is inapplicable in the facts and circumstances of the present case.*

*2. That the Id. CIT(A) has erred in law and in facts in arriving at a finding that appreciation in money is chargeable as there is neither a "transfer" nor a "capital asset" involved on receipt of an advance and its subsequent return.*

*3. That the Id. CIT(A) has erred in law and in facts in applying indexation to an advance received as there is no provision under the Act that vests in the Id. CIT(A) the statutory power to do so."*

3. Briefly stated the facts of the case are that the assessee entered into an agreement to sale with one Mr. Nirankar Singh on 30.10.2004 and as per the terms of agreement and advance of Rs.50 lacs was received by the assessee.

4. Due to certain circumstances, the deal did not materialize. Sh. Nirankar Singh filed a suit before the Hon'ble Court of Civil Judge (Senior Division) Punchkula. The case was decided in the favour of Mr. Nirankar Singh directing the Assessee to execute the sale deed in favour of Mr. Nirankar Singh. The Assessee on receiving the judgment filed an appeal in the Court of District Judge, Punchkula. The Assessee sold property in question to Goyals vide agreement to sale dated 19.10.2012 for a sum of Rs. 10,64,00,000/- after entering into out of court settlement with Mr. Nirankar Singh for a sum of Rs.3,00,00,000/- and returned Rs.3,50,00,000/- to him on 19th November, 2012.

5. This Rs.3,50,00,000/- included refund of Rs.50,00,000/- taken by the Appellant at the time of entering into the agreement dated 30.10.2004. The Assessing Officer observed that the Assessee has not taken into account Rs.50,00,000/- received on 30.10.2004 in the computation of income which he retained with him till it was refunded to Mr. Nirankar Singh alongwith the refund of Rs.3,00,00,000/-. According to the Assessing Officer, if money received amounting to Rs.50,00,000/- is valued as per the indexation, the same would

work out to Rs.97,81 250/- After deducting the refund of Rs.50,00,000/-, the Assessing Office has added.

6. The Ld.CIT(A) held that Section 51 and Section 56(2)(ix) are applicable only where the sum of money received as advance in the course of negotiations for the transfer of capital asset has been forfeited. From the facts of the case, it is clear that the Assessee had to return Rs.50,00,000/-. So, the income cannot be assessed u/s 56(2)(ix) and the amount cannot be considered for reducing the cost of acquisition u/s 51 as well.

7. The Id. CIT(A) held the other question arises whether receipt of Rs.50,00,000/- was a capital asset or not. It was held that advance of Rs.50,00,000/- was received by the Assessee to sell a commercial property. Therefore, the nature of this advance was capital in nature. It is also a fact that the money was retained by the Assessee until the same had to be refunded to Mr. Nirankar Singh to give effect to out of court settlement. Keeping Rs.50,00,000/- by the Assessee from 2004-05 to 2013-14 would result in increased sale consideration in respect of the asset sold as the inflation index for two financial years indicate that Rs.50,00,000/- received in 2004-05 is not the same in FY 2013-14. The fact cannot be denied by the Assessee that Rs.50,00,000/- was received in connection with the commercial asset. So, any appreciation in the money of Rs.50,00,000/- would be long term capital gain. Since Rs.50,00,000/- has been refunded by the Assessee, only appreciation by virtue of inflation index would be worked out to compute the long term capital gain. The Assessing Officer has computed the difference of Rs.47,81,250/- by applying the cost indexation of FYs. 2004-

05 and 2013-14. The amount is confirmed to be added to the total income under the head 'Long Term Capital Gain'.

8. Not much to say about the issue and the adjudication of the authorities below, we are in total disagreement with the way, the addition has been made and confirmed. The assessee has paid Rs.3 cr. in order to obtain a clear title and also refunded Rs.50,00,000/- which has been taken as advance.

9. Indexing the advance received and treating the difference between the indexed cost and the original amount received as advance as taxable sans any legal proprietary and application of provisions of the Income Tax Act. Such action on the part of the authorities is totally not permissible and hence unsustainable.

10. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 03/03/2023.

Sd/-

**(Yogesh Kumar US)**  
**Judicial Member**

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**Dated: 03/03/2023**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**