

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

**I.T.A. No. 1429/Kol/2023**  
**Assessment Year: 2014-15**

<b>Snehasish Bhaumik</b> A-3/2, Labony Estate Salt Lake, Bidhannagar North Kolkata - 700064 <b>[PAN : ADYPB8516H]</b>	Vs	<b>Asstt. Commissioner of Income Tax, Circle - 50(1), Kolkata</b>
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Soumitra Choudhury, Advocate
Revenue by :	Shri S.B. Chakraborty, JCIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 07/03/2024  
घोषणा की तारीख /Date of Pronouncement: 04/06/2024

**आदेश/ORDER**

**PER DR. MANISH BORAD, ACCOUNTANT MEMBER :**

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre (hereinafter the "Id. CIT(A)") dt. 31/10/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for Assessment Year 2014-15.

2. The sole issue raised in this appeal is about the correctness of the amount of capital gain arising from sale of flat owned by the assessee.

3. Facts in brief are that the assessee is an individual and filed its return of income for Assessment Year 2014-15 on 30/09/2014 declaring total income of Rs.10,40,570/- and the same included income from capital gain at Rs.4,12,278/-. Thereafter, the assessment was completed u/s 143(3) of the Act on 26/10/2016 and the assessment records were the subject matter before the Id. Pr. CIT in the proceedings u/s 263 of the Act and after culmination of the revisionary proceedings, directions were given to the Id. Assessing Officer by the Id. Pr. CIT to pass a fresh

assessment order examining the “evidence of possession” and “cost of acquisition” for calculation of capital gain. In compliance thereto, proceedings u/s 143(3) r.w.s. 263 of the Act were carried out. The Id. Assessing Officer examined the transactions of sale of flat at Orbit Sky View. The flat was sold on 17/09/2013. So far as sales consideration is concerned, there is no dispute at the end of both the parties. As regards cost of acquisition based on the flat purchase tripartite agreement, the assessee considered the date of purchase as 15/09/2009 but the Id. Assessing Officer took the basis of the registered deed dt. 12/12/2011 and treated the capital gain as short term capital gain. Id. Assessing Officer observed that the assessee considered the stamp duty value as on the date of registration i.e., 12/12/2011 at Rs.41,39,900/- as purchase cost for the purpose of calculating the index cost of acquisition but the actual cost incurred is only Rs.23,27,257/-. Though the assessee filed various details but the Id. Assessing Officer calculated the capital gain from sale of flat as short term capital gain at Rs.30,36,003/- as against the long term capital gain of Rs.4,12,278/- declared by the assessee in the income tax return. Aggrieved the assessee preferred appeal before the Id. CIT(A) but failed to succeed.

3. Now, the assessee is in appeal before this Tribunal.

4. The Id. Counsel for the assessee has referred to the paper book containing 139 pages and also placed the list of events about the purchase of flats from allotment date to the of date of sale. It was submitted by the Id. Counsel of the assessee that the flat in question was allotted to the assessee by M/s. Orbit Projects Pvt. Ltd. on 26/06/2009. Housing loan was sanctioned by Bank of Baroda on 04/09/2009 and possession letter

was issued on 15/04/2010. He submitted that the date of acquisition of the flat should have been adopted as 15/09/2009, as on this date, tripartite agreement was entered into between the seller, the assessee and Bank of Baroda, which agreed to give the housing loan. As regards, the cost of acquisition, he was fair enough to admit that in the computation of income filed with the income tax return, assessee has wrongly adopted the stamp value as on the date of registration at Rs.41,39,900/- and the indexed cost of acquisition should have been calculated on the basis of purchase of Rs.23,27,257/-.

On the other hand, the ld. D/R vehemently argued supporting the orders of the lower authorities.

5. We have heard rival contentions and perused the material placed before us. The only issue for our consideration is the correctness of the amount of capital gain from sale of residential flat bearing no. 6C, Block-2, Orbit Sky View Projects, Kolkata. As far as the sale consideration of Rs.57,06,260/- received from sale of flats on 17/09/2013, there is no dispute at the end of both the sides. First point for our consideration is whether the capital gain falls under the category of short term capital gain or long term capital gain. The ld. Assessing Officer has adopted date of purchase of flats as per the registered sale deed of the flat dated 12/12/2011. However, the ld. Counsel for the assessee states that date of purchase of flat should be taken as tripartite agreement between assessee, seller and Bank of Baroda dt. 26/06/2009. We have examined the documents and find merit in the contention of the ld. Counsel for the assessee. The assessee was allotted the flat as on 26/06/2009 and the payment schedule was communicated and the consideration for the

purchase of flat was paid upto 02/04/2010. The assessee also took housing loan from Bank of Baroda vide sanction letter dt. 04/09/2009. The possession letter has been given to the assessee on 03/04/2010 stating therein that all the payments towards cost of flat has been received. As per the documents filed before us it is claimed that the total payment towards the purchase of flat was paid during financial year 2009-10.

6. Under these given facts and circumstances of the case, so far as the date of purchase of flat is concerned the same has to be considered as 26/06/2009 and since all the payments of purchase of flats have been made during the financial year 2009-10 itself, the indexed cost of acquisition has to be calculated taking the financial year of purchase as 2009-10. Further since the date of purchase is 15/09/2009 i.e., the date of tripartite agreement and the date of sale being 17/09/2013, the flat is held by the assessee for more than 36 month and, therefore, the capital gain would fall under the category of long term capital gain. So far as this plea of the assessee is concerned, the same is allowed and it is held that the capital gain from sale of flat is falling under the category of long term capital gain.

7. As regards the calculation of indexed cost of acquisition, the Id. Counsel for the assessee has admitted that in the computation of income filed with return of income, assessee has wrongly adopted the cost of acquisition at Rs.41,39,900/-. However, the correct cost of acquisition is Rs.23,27,257/- and to this figure, both the parties agree and, therefore, the indexed cost of acquisition is calculated at Rs.34,57,744/- (23,27,257

X 939/632). Accordingly, the long term capital gain would arrive at Rs.18,59,659/- in the following manner:-

<i>Sale Consideration (17/09/2013)</i>	<i>57,06,260</i>
<i>Less: brokerage</i>	<i>(-) 2,00,000</i>
<i>Less: Indexed cost of acquisition (purchase date 15/09/2009) 23,27,257 X 939/632</i>	<i>(-) 34,57,744</i>
<i>Less: Cost of Improvement 1,43,000 X 939/711</i>	<i>(-) 1,88,857</i>
<i>Long Term Capital Gain</i>	<i>18,59,659/-</i>

8. Thus, to conclude, we hold that the assessee has earned long term capital gain of Rs.18,59,659/- (as calculated above) from sale of residential flat in question. Accordingly the grounds of appeal raised by the assessee are partly allowed as per terms indicated above.

9. In the result, appeal of the assessee is partly allowed.

**Order pronounced in the Court on 4<sup>th</sup> June, 2024 at Kolkata.**

*Sd/-*

**(DR. MANISH BORAD)  
ACCOUNTANT MEMBER**

Kolkata, Dated 04/06/2024

*\*S.S.B.*

आदेश की प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Kolkata