IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER

ITA No.226/KOL/2022
Assessment Year: 2015-16

Shuvro Chattaraj C/o, Jain Vinod K. & Associates, 41A, A. J. C. Bose Road, Diamond Prestige Nirman, 6rh Floor, Suite No. 613, Kolkata-700017. (PAN: AFMPC9030R)	Vs	Income Tax Officer, Ward-1(2), Durgapur
(Appellant)		**(Respondent)**

Present for:

Appellant by : Shri Vinod Kumar Jain, FCA
Respondent by : Shri Subhendu Datta, CIT, DR

Date of Hearing : 11.06.2024
Date of Pronouncement : 28.08.2024

O R D E R

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the revision order of the Ld. Pr. Commissioner of Income Tax, Burdwan (hereinafter referred to as "the Ld. PCIT" passed u/s. 263 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AY 2015-16 vide No.99-101/PCIT/BWN/263/2019-20 dated 29.05.2020.

2. The grounds of appeal raised by the assessee are as under:

"1. That the appellant pray for admission of appeal filed with a delay of 645 days for the exceptional circumstances and facts of the case, beyond his control. For the purpose, the appellant had submitted the prayer and affidavit to condone the delay for cause of justice.

2. That the Ld. Pr. CIT passed a perverse Order in setting aside on grounds that the assessment order passed u/s 143(3) is erroneous and prejudicial to the interest of revenue.

3. That the Ld. Pr. CIT erred in law in interpreting the provisions of section 263 which says 'commissioner may call for and examined the records of the proceeding if he consider any order passed there in, by the AO is erroneous in so far as prejudicial to the interest if revenue' whereas in present case the AO had already conducted the inquiry, allowed the deductions as permissible.

4. That the Ld. Pr. CIT erred in law in setting aside the assessment order on ground of capital gain arising from transfer of a long term asset of year 1998 as short term capital gain.

5. That the Ld. Pr. CIT erred in law to deny the deduction u/s 54E and 54F in impugned year on the ground that transfer took plakhe in earlier year 2012-13 (AY:2013-14) but at same time directed to tax the consideration received on such transfer in impugned assessment year 2015-16, itself.

6, That Ld. Pr. CIT erred on facts about taxability of capital gain on transfer of long term capital Assets in earlier Assessment Year 2013-14 and 2014-15 to rely on his judgment. That even otherwise Ld. Pr. CIT erred on facts too.

7. That the appellant carves leave to add alter, modifying or omit any ground of appeal and/or adduce the additional evidence(s) during the appellate proceeding."

3. The appeal of the assessee is reportedly barred by limitation of time by 646 days and a condonation of delay petition along with an affidavit has been filed, which is available on record. In the said affidavit, the assessee has stated as under:

"1. That the revision order u/s 263 for the assessment year 2015-16, setting aside the assessment order passed u/s 143(3) on 29.05.2017 passed by Pr. CIT on 29.05.2020. As appears, the Revision order was passed amid peak pandemic period, during which I was not going to office and kept myself at home only.

2. That for my income tax compliances, I rely upon my tax consultant and as such I had provided his email ID for notices and other communications to Income Tax Department. During the period of pandemic, I was not in touch with him and even he was not attending the official works during the pandemic as his office was shut. For that, the notices were not attended and order was not noticed.

3. That only on receipt of assessment order passed post revision order on 31.03.2022, we came to know about such proceeding.

4. As it is well aware by all, the official working and life was immensely disturbed for Pandemic in 2020 and 2021. In later month of 2021 till early 2021, I got struck with Covid virus and was under treatment.

5. That on being aware of the assessment order passed on 31.03.2022 post such revision order, my tax consultant approached me and advised to engage a senior tax advisor to file the appeal and take remedial measures.

6. That I along with my tax consultant took immediate steps and the matter was assigned to a senior tax consultant on 29.04.2022 for filing the appeal.

7. That, on consulting the papers and records, the senior tax consultant drafted and finalized the documents for the appeal on 02.05.2022.

8. That the appeal was filed on 05.05.2022, with a delay of 645 days, as the due date of filing the appeal was on 28.07.2020.

9. That, on the facts and circumstances of the case, it is prayed that the delay was beyond the control of myself was unintentional, not mala-fide in nature.

10. That, for this delay caused by Pandemic enforced disruptions, the appellant may suffer, if the appeal is not admitted for the delay in filing.

11. That on such facts and circumstances, the appellant prays to admit the appeal by condoning the delay. The appellant further pray that the denial of appeal on this technical ground would cause irreparable damage and losses to the appellant.

12. That the above information and explanation are true and correct and the deponent adheres to them."

3.1. The impugned order passed u/s. 263 of the Act is dated 29.05.2020 which is passed during the period of Covid-19 pandemic. The assessee had filed the present appeal on 05.05.2022 and the delay is attributable to the COVID pandemic. Thus, the period from May 2020 upto the date of filing of appeal is covered by the decision of the Hon'ble Supreme Court. This period has been excluded by the Hon'ble Supreme Court in the case of *suo moto* Writ Petition (C) No. 3 of 2020 dated 10.01.2022 by which the period from 15.03.2020 to 28.02.2022 has been directed to be excluded for the purpose of limitation. Vide this order a further period of 90 days has been granted for providing the limitation from 01.03.2022. Accordingly, we hold that there is no delay and proceed to admit the appeal for hearing.

4. Brief facts of the case are that the assessee is a salaried employee, regularly assessed to tax under PAN: AFMPC9030R. On and around 15.12.1998, the mother of the assessee acquired a property situated at Bamunara, Durgapur, District: Burdwan, West Bengal from Mr. D.K. Chattraj by virtue of a deed. On 21.09.2011, she transferred the property to her son Mr. Shuvro Chattraj, the assessee, vide a registered gift deed.

On 03.11.2011, the assessee entered into a MOU with a developer M/s. R.K. Constructions, a proprietary concern of Dr. Malaya Mukherjee for joint development. The terms of payment were under deferred consideration. Pursuant to the above MOU, the assessee and said developer executed an unregistered development agreement on 10.02.2012, with the following terms:

> a. In lieu of his land, the assessee would get Rs. 1,95,00,000 (One Crore Ninety five lakh) in deferred consideration manner spread over 60 months;
> b. Along with 8 (Eight) flats with 8(Eight) car park upon construction.

5. The assessee received Rs. 38 (Thirty Eight) Lakh in FY 2012-13 (AY: 2013-14) and Rs. 24 Lakh (Twenty four) Lakh only in the next financial year 2013-14 (AY 2014-15). The assessee offered for taxation Rs. 38 (Thirty eight) lakh in AY 2013-14 as long term capital gains and Rs. 24 (Twenty five) lakh in AY 2014-15 as short term capital gains. The assessee paid taxes as applicable in both the years.

6. On 26.09.2014, the assessee entered into a fresh Joint Development Agreement (JDA), this time duly registered, with Tanvee Green city (P) Ltd. represented by its director Mr. Apurba Shyam. The agreement was executed on fresh terms. In this agreement, the assessee was entitled to receive Rs. 162 (One hundred Sixty two) Lakh only plus one Flat and One car park from the developer, M/s. Tanvee Green City Pvt Ltd. The developer agreed to pay Rs. 100 Lakh to the assessee after adjustment of earlier receipts of Rs. 62 (Sixty two) Lakh, on settlement of claim of the earlier developer. The assessee received Rs. 90 (Ninety) Lakh during the year and offered for tax the amount of Rs.90 Lakh received. The assessee claimed deductions u/s 54EC for Rs. 40 (Forty) Lakh and

another deduction u/s 54F for Rs. 43 (Forty three) Lakh. Subsequently, the return of income was selected for scrutiny on the following issues:

a. Sale of property mismatch

b. Mismatch in income/capital Gain on sale of land or building

c. Deduction claimed under head Capital Gain.

7. The assessee was issued notice u/s 142(1) of the Act dated 15.02.2017 to furnish the following details:

a. Copies of sale deed and purchase deed in relation to transaction made in the year

b. Computation sheet

c. Capital gains calculation

d. Supporting & working for Deduction under the head Capital gains

e. All Bank statements

8. The assessee attended the hearings before the Jurisdictional Assessing Officer (JAO) from time to time. On requisition, the assessee filed current registered development agreement and Power of attorney registered under the agreement, both dated 26.09.2014, Income Tax Returns of the past three assessment years, AY 2013-14, AY 2014-15 & AY 2015-16 wherein inter alia he had offered capital gains on considerations received under earlier JDA in each assessment years as also under the fresh JDA respectively, copies of MOU dated 03.11.2011 and old unregistered development agreement dated 10.02.2012.

9. The assessee filed the required details and the assessment order was passed on 29.05.2017 by the JAO who added Rs. 10,00,000/- to the returned income u/s 50C of the Act for shortfall in consideration shown at Rs. 90,00,000/- as against the market value of the new joint

development agreement at Rs. 1,00,00,000/-. He also disallowed the claim of Rs. 12,24,360/- u/s 54F of the Act for construction cost of new residential property for want of supporting documents and considered the taxability of JDA on the basis of the latter registered agreement dated 26.09.2014 and allowed the deduction u/s 54EC of the Act from the capital gains arising from such JDA in the year.

10. Subsequently, the PCIT examined the record and initiated revision proceedings u/s 263 of the Act on the following grounds:

a) The transfer of property had taken place in AY 2013-14, thus the capital gains on the asset accrued in that year, not in the impugned assessment year 2015-16..

b) The assessee had wrongly claimed deduction u/s 54EC and u/s 54F as the transfer had taken place in earlier Assessment Year 2013-14, and not in the impugned assessment year 2015-16.

c) The assessee had offered for tax Rs. 38 Lakh in AY 2013-14 and Rs. 24 Lakh in AY 2014- 15 as short term capital gains tax, hence on the same asset he could not claim long term capital gains.

11. In his view the deduction allowed u/s 54EC & 54F by the AO was erroneous in so far as it was prejudicial to the interest of revenue and accordingly, vide order u/s 263 of the Act, he set aside the assessment order directing to frame the same afresh after considering his observations. Aggrieved with the order of the Ld. PCIT, the assessee has filed this appeal. The assessee has assailed the order of the Ld. PCIT on the following points:

a. He failed to consider that the assessee had entered into two different development agreements dated 03.11.2011 (AY

2013-14) and 26.09.2014 (AY 2015-16). Thus, the observation that the Capital gains arose in AY 2013-14 only is wrong of facts.

b. Both the agreements were with different entities, for different considerations and on different dates. Each agreement was considered for taxation purpose in the year(s) of accrual of gains.

c. The Ld. PCIT failed to consider that the assessee had already offered for tax Rs.38 Lakh in AY 2013-14 and Rs.24 Lakh in AY 2014-15, both in the year of receipts. The value of consideration of Rs.90 Lakh under the fresh agreement dated 26.09.2014 was rightly and lawfully offered for tax in the AY 2015-16. The JAO, after due consideration and application of mind computed the capital gains.

d. The order of the Pr. CIT is silent on the veracity of claim of deduction from capital gains u/s 54EC and 54F, based on documentary evidence submitted with the JAO and available in assessment records. It is not his point that the claim is not based on evidence.

e. There is no error in such computation of income. The order of the JAO is not erroneous on the facts of the case.

f. More so there is no loss of revenue as the entire sum of Rs.162 Lakh was offered for tax.

g. Alternatively, if we go by the observation of the Ld. PCIT then Rs.90 Lakh will not be subject to tax as his order is silent on year of taxability of the said receipt of money. The Ld. PCIT merely harped upon the claim of deduction u/s 54F and 54EC, on wrong ground that such capital gains has wrongly

been claimed in AY 2015-16. The Ld. Pr. CIT failed to order the year of taxability of such capital gains.

12. According to the assessee, it was after considering the facts, claims and supporting documents that the AO passed the order, hence it cannot be said that order is erroneous on want of enquiry. The AO has rightly treated such capital gains on long term capital asset only. The asset was acquired in 1998 and gifted to the assessee in 2011. As per section 49(1), the cost of acquisition and period of holding of the donor are considered in the hands of donee. Thus the Ld. PCIT erred on fact that the property is not a long term asset when the same was acquired in 1998. The Ld. PCIT erred on law that the capital gains arising on such long term capital asset is not eligible for deduction u/ss 54F and 54EC, which provide that the deductions are available from capital gains on transfer of Long Term Capital Asset, not on Long term Capital Gain. The order of the Ld. PCIT is vague and ambiguous as it failed to assert the decision on taxability of capital gains, if the taxability is not in this year then there is no question of allowability of deductions u/s 54EC and 54F. On alternate argument then there is no question of taxability of Rs.90, 00,000/- in this year.

13. We have heard the rival contentions and gone through the facts of the case. It was vehemently argued during the course of the appeal by the Ld. AR that the Ld. PCIT failed to consider that there were two distinguished agreements, one with M/s R.K. Construction, a proprietary concern of Dr. Malaya Mukherjee and which was executed as a Memorandum of Understanding (MoU) on 03.11.2011 and an unregistered development agreement on 10.02.2012 whereby the assessee would get Rs. 1,95,00,000/- in staggered manner spread over 60 months along with 8 flats with 8 car parks upon construction and out of which the assessee received Rs. 38,00,000/- in FY 2012-13 and Rs. 24,00,000/- in FY 2013-14. The agreement with M/s R.K. Construction could not materialise and therefore, on 26.09.2014, the assessee entered

into a fresh development agreement with M/s. Tanvee Green City (P) Ltd. represented by its director Mr. Apurba Shyam, which was duly registered and under this agreement the assessee was entitled to receive Rs. 1,62,00,000/- along with one flat and one car park from the developer M/s. Tanvee Green City (P) Ltd. The developer adjusted the earlier receipt of Rs. 62,00,000/- received by the city and which was paid by the new developer to the erstwhile developer M/s. R.K. Constructions. The assessee offered Rs. 90,00,000/- for tax during the AY 2015-16 as it had offered Rs. 38,00,000/- in AY 2013-14 and Rs. 24,00,000/- in AY 2014-15 being long term capital gains and short term capital gains respectively. The residual receipt of Rs. 90,00,000/- was shown during the AY 2015-16 on which deductions u/s 54EC for Rs. 40,00,000/- and another deduction u/s 54F for Rs. 43,00,000/- was claimed for the residential property constructed during AY 2016-17. The assessee had also borrowed money and paid interest which was claimed u/s 24(b) of the Act. The PCIT was of the view that the transfer of property had taken place in the AY 2013-14 thus the capital gains accrued in that year and not in the impugned assessment year 2015-16. Since the transfer had taken place in earlier AY 2013-14 and not in the impugned assessment year 2015-16, therefore, the deductions u/s 54EC and 54F were incorrectly claimed in AY 2015-16. The assessee had offered for tax Rs. 38,00,000/- in AY 2013-14 and Rs. 24,00,000/- in AY 2014-15 and hence on the same asset he cannot claim capital gains on asset as long term capital gains on which short term capital gains was claimed therefore, he set aside the assessment order to frame the assessment order afresh after considering his observations. One of the contentions raised during the course of the appeal by the assessee was that the Ld. PCIT failed to consider that the assessee had entered into two different agreements dated 03.11.2011 for which part consideration was received in AY 2013-14 and 2014-15 and the second on 26.09.2014. Thus, the observations that the capital gains

arose in the AY 2013-14 only is incorrect. Further, submission in this regard are as under:

a. *"He failed to consider that the assessee had entered into two different development agreements dated 03.11.2011 (AY 2013-14) and 26.09.2014 (AY. Thus, the observation that the Capital gain aroused in AY 2013-14 only is wrong of facts. 15-16)*

b. *Both the agreements were with different entities, different considerations and on different dates. Each agreements were considered for taxation purpose in the year(s) of accrual of gains*

c. *The Ld. PCIT failed to consider that the assessee has already offered for tax Rs.38 Lakh in AY 2013-14 and Rs.24 Lakh in AY 2014-15, both in the year of receipts. The Value of consideration of Rs.90 Lakh under the fresh agreement dated 26.09.2014 was rightly and lawfully offered for tax in AY 2015-16. The JAO after due consideration and application of mind computed the capital gain.*

d. *The order of the Pr. CIT silent on the veracity of claim of deduction from capital gain u/s 54EC and 54F, based on documentary evidence submitted with JAO and available in assessment records. It is not his pint that the claim is not based on evidence.*

e. *There is no error in such computation of income. The order of the JAO is not erroneous on the facts of the case.*

f. *More so there is no loss of revenue as entire sum of money of Rs.162 Lakh were offered for tax.*

g. *Alternatively, if we go by the observation of Ld. PCIT then Rs.90 Lakh will not be subject to tax as his order is silent on year of taxability of said receipt of money. The Ld. PCIT merely harped upon the claim of deduction u/s 54F and 54EC, on wrong ground that such capital gain has wrongly claimed in AY 2015-16. The Ld. Pr. CIT failed to order the year of taxability of such capital gain.*

xvi. The view taken by AO on examination of documents and records on taxability of capital Gain. The AO sought details and supporting on claim of deductions on 15.02.2017 u/s 54EC and 54F., which were furnished on 22.02.2017. The AO also issued Show cause notice on 26.05.2017. The assessee replied.

xvii. After considering all facts, claims and supporting, the AO passed the order, hence it cannot be said that order is erroneous on want of enquiry.

xviii. The AO has rightly treated such capital gain on long term capital asset only. The asset was acquired in 1998 and gifted to the assessee in 2011. As per 49(1) the cost of acquisition and period of holding of the donor are considered in the hands of donee. Thus the Ld. PCIT erred on fact that the property is not a long term asset when same was acquired in 1998.

xix. The Ld. PCIT erred on law that the capital gain arising on such long term capital asset is not eligible for deduction u/s 54F and 54EC, which says deduction are available on capital Gain on transfer of Long term Capital asset, not on Long term capital Gain.

xx. The order of Ld. PCIT is vague and ambiguous as it failed to assert the decision on taxability of capital Gain, if the taxability is not in this year then there is no question of allow-ability of deductions u/s 54EC and 54F. On alternate argument then there is no question of taxability of Rs. 90, 00,000 in this year."

14. Before proceeding further, it would be pertinent to mention that the assessee is one of the directors in M/s Tanvee Green City (P) Ltd. with which second joint development agreement was executed.

15. The Ld. DR relied upon the order of the Ld. PCIT and requested that the order of the Ld. PCIT may be confirmed.

16. We have examined the matter and also gone through the submissions made. Section 45(1) relating to capital gains is reproduced as under:

45. (1) Any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save as otherwise provided in sections 54, 54B, 54D,54E, 54EA, 54EB, 54F , 54G and 54H, be chargeable to income-tax under the head "Capital gains", and shall be deemed to be the income of the previous year in which the transfer took place.

The transfer is defined under section 2(47) of the Act as under:

2(47) "transfer", in relation to a capital asset, includes,—

(i) the sale, exchange or relinquishment of the asset; or

(ii) the extinguishment of any rights therein; or

(iii) the compulsory acquisition thereof under any law; or

(iv) in a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in-trade of a business carried on by him, such conversion or treatment ; or

(iva) the maturity or redemption of a zero coupon bond; or

(v) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882) ; or

(vi) any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, any immovable property.

Explanation 1.—For the purposes of sub-clauses (v) and (vi), "immovable property" shall have the same meaning as in clause (d) of section 269UA.

Explanation 2.—For the removal of doubts, it is hereby clarified that "transfer" includes and shall be deemed to have always included disposing of or parting with an asset or any interest therein, or creating any interest in any asset in any manner whatsoever, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily, by way of an agreement (whether entered into in India or outside India) or otherwise, notwithstanding that such transfer of rights has been characterised as being effected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India;

17. The assessee had entered into joint development agreement with M/s R.K. Construction on 10.02.2012 for a total consideration of Rs. 1,95,00,000/- along with 8 flats and 8 car parks upon construction. The total consideration therefore, was not only Rs. 1,95,00,000/- but the fair market value of the 8 flats and car park which the assessee was to receive from the developer. However, instead of showing capital gain in the year of transfer i.e. AY 2012-13, the assessee showed capital gains of Rs. 38,00,000/- in AY 2013-14 and Rs. 24,00,000/- in AY 2014-15 which is not in accordance with the provisions of the Act relating to computation of capital gains. The capital gains is to be computed in the year of transfer, which was AY 2012-13 and after reducing the cost of acquisition. The cost of acquisition in the case of gifted property is governed by section 49(1) of the Act. Since, the agreement dated 03.11.2011 and the subsequent unregistered agreement dated 10.02.2012 with M/s R.K. Construction, a proprietary concern of Dr. Malaya Mukherjee, could not materialise, therefore, subsequently the assessee entered into another

joint development agreement with M/s Tanvee Green City (P) Ltd. on 26.09.2014 which was a registered development agreement. The powers of attorney were also issued in the name of the directors of the company for getting all the formalities completed. The developer adjusted the amount of Rs. 62,00,000/- received by the assessee earlier and accordingly, the assessee was to receive only the balance of Rs. 1,00,00,000/- along with one flat and one car par. The total consideration was therefore, Rs. 1,62,00,000/- plus market value of one flat and one car park from which the cost of land owned by the assessee, which was gifted to him by his mother was to be deducted to arrive at the capital gains, which was assessable in AY 2015-16. The assessee contends that if the transfer is considered in AY 2013-14 then there is no discussion regarding the taxation of Rs. 90,00,000/- received in AY 2015-16 by the Ld. PCIT. The Ld. PCIT while setting aside the order of the Ld. AO has held in paras 10 as under:

> *"10. Having regard to the facts and circumstances of the case and in the light of the aforesaid decisions of Hon'ble Supreme Court and Hon'ble High Court, and in accordance with the amendment made in Section-263 of the Act with effect from 01.06.2015, I hold that the impugned assessment order dated 29.05.2017 passed by the A.O. is erroneous in so far as it is prejudicial to the interests of the revenue. I further hold, after giving the assessee an opportunity of being heard, that the impugned assessment order dated. 29.05.2017 is liable to set aside. Therefore, I set aside the said assessment order directing the A.O. to frame the assessment afresh after considering the aforesaid observations, Hon'ble Supreme Court and Hon'ble High Court decisions and as per law."*

18. As regards, the deduction u/s 54EC and 54F, he has made the following observations in para 3 of his order.

> *"3. On perusal of return of A.Y 2013-14 and 2014-15 it is noticed that the assessee claimed STCG on both the years on the basis of date of transfer as per section 53A of the Transfer of Property Act. Subsequently the assessee claimed exemption u/s 54EC and 54F on the basis of the fact that date of transfer of the same property as the date of registration, thus claiming and allowing the date of transfer as the date of registration was not in order for availing exemptions u/s. 54EC and 54F in the FY. 2014-15 relevant to A.Y. 2015-16 when the assessee himself claimed in two consecutive assessment years Le., AY 2013-14 and AY 2014-15, the date of development agreement as the date of transfer for claiming STCG."*

19. As mentioned above, since the second registered agreement and the balance payment was received from M/s Tanvee Green City (P) Ltd., therefore, the Ld. PCIT was not correct in holding that claiming and allowing the date of transfer as the date of registration was not in order for availing exemption u/s 54EC and 54F in FY 2014-15. The AO allowed the claim of deduction u/s 54EC but disallowed the claim of deduction u/s 54F of Rs. 43,00,000/- since as per the Inspector's report, the residential house was not completed till date and he had also added the sum of Rs. 10,00,00,000/- on account of difference in market value for development agreement and computation of income. Thus, the order of the Ld. PCIT needs to be modified as under:

(a) The date of transfer is to be considered as on 26.09.2014 being the date of registered joint development agreement with M/s Tanvee Green City (P) Ltd. as the earlier agreement with M/s. R. K. Construction had been rescinded and was not in operation.
(b) As per terms of the fresh joint development agreement, the sale consideration of Rs. 1,92,00,000/- along with one flat and one car park was to be considered.
(c) Appropriate deduction of the cost of acquisition, which in the case of the gifted property is the cost to the donor is to be allowed after considering the indexation, as applicable.
(d) Since, the assessee had invested in the bonds of NHAI, therefore, the deduction as claimed u/s 54EC was to be allowed in AY 2015-16. Depending upon the year of completion of the house, the deduction under section 54F was to be allowed as per law.

20. The assessee had shown capital gains being the instalment of sale proceeds received in AY 2013-14 and 2014-15 at Rs. 38,00,000/- and Rs. 24,00,000/- respectively, which was not correct. It has been judicially held that income is to be assessed in the correct AY and since the unregistered joint development agreement with M/s R.K. Construction

could not materialise and another JDA with M/s Tanvee Green City (P) Ltd. was executed, the capital gains was chargeable only in AY 2015-16 and not in the earlier assessment year(s). Accordingly, the order of the Ld. PCIT is modified as per paragraph 19 (supra) and the appeal of the assessee is partly allowed.

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

Order pronounced in the open court on 28th August, 2024.

Sd/-	***Sd/-***
(Rajpal Yadav)	(Rakesh Mishra)
Vice President	Accountant Member

Dated: 28th August, 2024

AK, PS

Copy to:

1. The Appellant:
2. The Respondent.
3. Pr. CIT(A), Burdwan
4. ITO, Ward-1(2), Durgapur.
5. DR, ITAT, Kolkata Bench, Kolkata

//True Copy// By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata