

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

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER  
AND  
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No.1556/DEL/2022  
[Assessment Year: 2019-20]**

Jagdish Choudhary, C/o- K.R. Manjani, Advocate, K-98, 1 <sup>st</sup> Floor, Lajpat Nagar- II, New Delhi-110024	Vs	ACIT, Circle INT Tax-1(2)(1), Civic Centre, Minto Road, New Delhi-110002
<b>PAN-AAFCA1688N</b>		
Assessee		Revenue

Assessee by	Shri K.R. Manjani, Adv. & Shri Tarun Aswani, Adv.
Revenue by	Shri Vijay B. Vasanta, CIT-DR

<b>Date of Hearing</b>	<b>20.09.2024</b>
<b>Date of Pronouncement</b>	<b>11.11.2024</b>

**ORDER**

**PER BRAJESH KUMAR SINGH, AM,**

This appeal by the assessee is directed against the order of the Assessing Officer dated 21.06.2022 passed u/s 143(3)/144C(13) of the Income Tax Act, 1961 (hereinafter 'the Act') arising out of order of Dispute Resolution Panel dated 11.05.2022 pertaining to Assessment Year 2019-20.

2. The grounds of appeal are as under:-

*On facts and circumstances as well as in law, the assessment is void because*

(1) *It was mandatory that service of notice u/s 143(2) of IT Act, 1961 should have been before 30th September 2020 whereas notice has been issued on 31.03.2021.*

2) *For Applicability of section 144C(15)(b) eligible assessee means*

*"(i) any person in whose case the variation referred to in sub-section (1) arises as a consequence of the order of Transfer Pricing Officer passed under sub-section (3) of section 92CA; and*

*ii) any non-resident not being a company, or any foreign company."*

*Thus section 144C will apply if both conditions i.e.*

*(c) There is variation u/s 92CAiii), and*

*(d) The assessee should be non-company non-resident or foreign company, are to be satisfied.*

*Here condition (b) is satisfied but condition (a) is not satisfied. Therefore sec. 144C should not had been invoked. Hence assessment is time barred.*

(3) *Ld. AO has erred on facts as well as in law in making addition of Rs. 2,71,77,059/- which is indexed cost of property sold and commission for sale which are allowable as per sec 48 of I.T Act, even though complete details were filed before Ld. AO as well as Hon'ble DRP.*

(4) *There is a violation of principle of natural justice because no proper opportunity was given by the Ld. AO which is clear from his notice DIN & Notice No. ITBA/AST/F/143(3)(SCN)/2021-22/1035745713(1) dated 20.09.2021 received at 08.29 PM of 20.09.2021 and reply was to be filed by 11:00AM on 22.09.2021. Thus only one day's time was given which is absolutely no opportunity when details called for run into 72 pages.*

(5) *The Ld. AO without going through the details has indicated that sufficient details have not been filed without indicating the deficiency in details filed. This clearly shows Ld. AO did not go through the letter and the papers filed. In such cases the assessment is non-est as repeatedly held by various Hon'ble High Courts indicated in our letter dated 18.12.2021 filed with the Hon'ble DRP."*

3. Brief facts of the case: The assessee is an individual aged about 85 years and a non-resident permanently based in USA. During the year, the assessee *inter -alia* had sold three flats nos.DGA-10-004, 005 and 007, Digital Greens, Sector-61, Gurugram, for Rs.3,21,15,900/- on 18.04.2018 to M/s. AAP Infracom -LLP on which capital gains amounting to Rs.49,38,841/- was offered after claiming indexation and commission paid on sale of property amounting to Rs.2,71,77,059/-. As per the statement of facts and other facts available on record, the assessee had paid an amount of Rs.1,63,96,606/- vide two cheques dated 18.07.2012 towards booking amounts for the said flats. The assessee submits that it had not received the possession till the time of its sale and the payments were only towards booking of flats, which was sold vide agreement dated 27.02.2018 for a total consideration of Rs.3,21,15,900/- to M/s. AAP Infracom -LLP subject to the condition that the possession will be handed over only after the receipt of the total sales consideration which was received on 19.04.2018 vide instrument no. 15178 amounting to Rs.1,83,57,649.35. The balance amount of Rs.31,00,000/- was received vide cheque no.000044 dated 06.01.2018, and an amount of Rs.66,61,403.65 was deducted towards TDS by the purchaser and the balance amount of Rs.39,96,747/- which was due and payable to the builder towards the cost of the flat was paid directly to the seller i.e. M/s. EMAAR

MGF Ltd. by the purchaser M/s. AAP Infracom -LLP The assessee considered the amount of Rs.39,96,747/ towards the cost of the 3 flats sold but did not claim any indexation on this amount. On the sale of these flats, the assessee had claimed indexed cost of acquisition amounting to Rs.2,71,77,059/-, which the AO disallowed in the draft assessment order passed under Section 144C of the Act dated 20.09.2021 on the ground that sufficient documentary proof with respect to the indexation claimed was not submitted. In this regard, it may be mentioned that during the draft assessment proceedings, the assessee had claimed total indexation amounting to Rs.3,67,37,418/- which included the indexed cost of the aforesaid three flats as mentioned above and further Flat no. 328 at DLF Qutub Enclave, Gurugram (Rs.20,88,525/-), and Flat no. C-19A at Sushant Lok, Gurugram (Rs.74,71,834/-). After considering the directions of the Ld. DRP, the AO in the final assessment order, disallowed the indexed cost amounting to Rs.2,71,77,059/- in respect of three flats at Digital Green, Gurugram and allowed indexation cost to the extent of Rs.14,11,200/- as against Rs.20,88,525/- claimed in respect of flat No. 328 at the Qutub Enclave, thereby, making a disallowance of Rs.6,76,800/-. Further, he allowed the indexation cost of Rs.74,71,834/- as claimed by the assessee in respect of the Flat no. C-19A at Sushant Lok, Gurgaon. In appeal before us, the assessee has challenged only the disallowance towards the indexed cost

amounting to Rs.2,71,77,059/- in respect of three flats at Digital Green, Gurgaon. In this regard, the Ld. AR also submitted that the letter dated 20.09.2021 of the AO calling for the details was received at 8.29 PM on 20.09.2021 and the reply was to be filed at 11.00 AM on 22.09.2021 and thus there was only one day time given to the assessee to file the necessary details. The factual details as submitted by the assessee in the statement of facts is reproduced as below:-

*“This is a case of a Non-Resident who is permanently residing in USA. He is aged 83 years and not keeping good health. He has been hospitalized many times for various serious ailments. In India his main source of income is rent from house property and interest from bank. During the year under consideration he had sold flats Nos. DGA-10-004, 005, 007 Digital Greens Sector-61, Gurgaon. The appellant had booked these said 3 flats on 06.09.2012 and had paid single payment for each flat as under:-*

*1. Flat No.10-004. The appellant has paid a sum of Rs. 54,65,535/- vide cheque No. 641260 dated 18.07.2012 drawn on his Saving NRO A/c No.0992000600400200 with PNB, Lajpat Nagar, New Delhi, vide Receipt No. 33843/Bkg/20120906104117623 dated 20.07.2012*

*2. Flat No. 10-005. The appellant has paid a sum of Rs. 54,65,535/- vide cheque No. 641259 dated 18.07.2012 drawn on his Saving NRO A/c No.0992000600400200 with PNB, Lajpat Nagar, New Delhi, vide Receipt No. 33865/Bkg/20120906104117618 dated 18.07.2012*

*3. Flat No. 10-007. The appellant has paid a sum of Rs. 54,65,536/- vide cheque No. 641259-II dated 18.07.2012 drawn on his Saving NRO A/c No.0992000600400200 with PNB, Lajpat Nagar, New Delhi, vide Receipt No.33874/kg/20120906104117619 dated 18.07.2012*

*The assessee had further paid a sum of Rs. 10856/- on 15.05.2015 in respect of above said three flats out of his NRO A/c with PNB vide cheque No. 140161 on 15.05.2015.*

*The appellant had not received the possession and were only booking of flats. The appellant sold the above said bookings vide agreement dated 27.02.2018 for a total consideration of Rs.*

3,21,15,900/-. The buyer as per the sale agreement deducted a sum of Rs. 39,96,747/- which was due and payable to the builder towards the cost of the flats. Further the assessee had also paid a sum of Rs. 2,12,400/- vide cheque No. 700011 dated 23.04.2018 drawn on his NRO A/c with PNB towards commission to real estate agent for the sale of above said three flats.

Addition of Rs. 2,71,77,059/- which is index cost and commission paid on sale of property, is made on plea that payment of cost is not shown though this was never called and is available in papers filed. On this account rectification application is filed with the DRP.

Necessary evidence in support of the cost of the acquisition as well as transfer expenses are supported by the receipts and bank statement dully submitted before the Ld. AO.

The Ld. AO has disallowed the cost of acquisition as detailed above as well as the transfer expense i.e. commission paid to the agent for sale of the abovementioned flats by totally ignoring the evidences submitted.

It is humbly stated that the cost of the acquisition with index in respect of the said property booked by the assessee is allowable as per the provision of Income Tax Act. Therefore the disallowance of the cost of the acquisition declared by the appellant after applying the index is totally against the facts and law.

The Ld. AO's DIN & Notice No. ITBA/AST/F/143 (3)(SCN)/2021-22/1035745713(1) dated 20.09.2021 was received at 08.29 PM and reply was to be filed at 11.00AM on 22.09.2021. Thus only one day time was given which is no opportunity when the details to be filed were approximately 76 pages. In such cases Hon'ble High Courts have held that assessment is non-est. The Ld. AO without going through papers passed draft assessment order stating that sufficient material was not filed without stating which material was to be filed.

3. The Hon'ble DRP without going through the documents has stated that it could not verify that payments is for capital expenditure for properties No. DGA -10-007, 005, and 004 sold.

The above points will be elaborated when the case is argued.”

4. Aggrieved with the disallowance towards indexed cost amounting to Rs.2,71,77,059/- in respect of three flats at Digital Green, Gurugram order, the assessee filed an appeal before the ld.

DRP. The ld. DRP passed the directions vide an order dated 11.05.2022 upholding the order of the AO. During the DRP proceedings, a remand report was called from the AO, which was submitted to which the assessee filed a rejoinder dated 10.03.2022. The relevant directions of the Ld. DRP upholding the disallowance of Rs.2,71,77,059/- are as under:-

*"4.6 The AO, in his Remand Report, has stated as follows:-*

*"(1) DGA-10-004, 05,007 Digital Greens Sector-61, Gurgaon.*

*For the above mentioned property, the assessee has claimed that property was booked on 06.09.2012 and payment of Rs. 1,63,96,068/- was made for this. Further, the assessee has made further payments in subsequent years amounting to Rs 42,20,003/- (RS. 10,856+ 39,96,747 + 2,12,400), However no receipt of payment or proof of payment through banking channel was provided by the assessee during the course of assessment proceedings. The assessee has merely submitted copies of three provisional allotment letters to substantiate the cost of acquisition and the subsequent payments made by it. However, the documents provided are only in the nature of provisional allotment letters and do not prove the actual payment made by the assessee through banking channels. Further, as per the provisional allotment letters, the assessee along with Mrs. Sarojini Choudhary are the co-applicants for the said property. Therefore, the assessee has failed to substantiate the actual cost of acquisition for the said property in its hands. Further, the assessee has not provided any documentary proofs to substantiate the payment and the purpose for which subsequent payments of Rs.42,20,003/- were made. It could not be verified whether these payments were for capital expenditure on the aforesaid property and qualified for deduction as cost of improvement as defined in Section 55 of the Income-tax Act, 1961.*

*Without prejudice to the above, it is further submitted that these payments were made subsequent to the acquisition of property. However, the assessee has clubbed such payments with the cost of acquisition and claimed indexation benefit on the entire amount as indexed cost of acquisition. Therefore, even if deduction of such expenses is allowed, indexation benefit can only be claimed from the year of payment and not from the year of acquisition of property."*

4.7. The assessee in his rejoinder dated 10.03.2022 has stated as follows:-

" On page 1 last para, he has complained that no receipts have been supplied for Property No. DGA-1-004, 05, 007 Digital Greens Sector-61, Gurgaon. This is not correct, details of payments are in my letter dated 22.09.2021 appearing at page 11 and 12 of the paper book with which following receipts have been filed in respect of above property.

- |      |                                  |
|------|----------------------------------|
| i.   | Page 15 amount of Rs. 5465535/-  |
| ii.  | Page 16 amount of Rs. 5465535/-  |
| iii. | Page 17 amount of Rs. 5465535/-  |
| iv.  | Page 18 Receipt of Rs.18357649/- |
| v.   | TDS of <u>Rs.3996847/-</u>       |
|      | Total Cost 38751101              |

\* Total cost for which Index cost is Rs. 27177059/- which is in computation of income at page 8 of the paper book (filed with return) which is referred on page 11."

4.8. The AO has stated that the assessee has not been able to substantiate the purchase of the above property as no receipts of payment or/and proof of payment through banking channels has been given by the assessee. The assessee, on the other hand, has claimed that receipts have been filed at pages 11-12 of the Paper Book. However perusal of the Paper Book shows that pages 11-12 of paper contain letter of the assessee dated 22/09/2021 addressed to the AO are copies of letters from Emmar MGF Land Ltd. (Digital Greens) dated 06.09.2012 stating that an amount of Rs. 54,65,536/- is due within 60 days from the date of booking ie. 30.08.2012 all the three letters carry the same date ie. 06/09/2012 with the narrative that an amount of Rs. 54,65,535/- is to be paid within 60 days of booking and that the amount already paid is Rs. 54,65,536/-. However the reference no. of all three letter is different. A "Final Payment Receipt" for Rs. 3,21,15,900/- paid by cheque received from M/s AAP Infracon LLB through HDFC Bank dated 17.04.2018 is placed at page 18 of the Paper Book. However no bank statement/bank details have been provided corroborating the contention of the assessee. Perusal of the Paper Book also shows that no documentary proof has been given regarding subsequent payments.

4.9 It is also noted that the property is in the joint names of the assessee and Mrs. Sarojini Choudhary and details of any payment made by the second application have not been submitted. No details have been submitted for payment of Rs. 42,20,003/- nor does the Paper Bok contain any documentary proof for the purpose of the same.

*4.10 In view of the above the DRP upholds the findings of the AO that the indexed cost of acquisitions cannot be verified from the documentary proof furnished by the assessee.”*

5. Against the above directions, the assessee filed an appeal before us.

6. In ground no.1 it was submitted that it was mandatory that service of notice u/s 143(2) of IT Act, 1961 should have been made before 30th September 2020 whereas notice has been issued on 31.03.2021. However, this ground was not pressed during the course of hearing and therefore, the same is dismissed as not pressed.

7. In ground no.2, it was submitted that the assessee was not an eligible assessee within the meaning of section 144C(15)(b) of the Act and therefore, section 144C of the Act will not be applicable in the case of the assessee and therefore, the assessment was time barred. However, this ground was also not pressed during the course of hearing and therefore, the same is dismissed as not pressed.

8. Ground nos.3 to 5 are against the disallowance of Rs.2,71,77,059/- towards the indexed cost of property sold and commission paid for sale in respect of three flats at Digital Green, Gurgaon. The position that emerges out of the remand report submitted by the AO and the rejoinder filed by the assessee in respect of three flats are as under:-

Sl. No.	Date	Amount paid (In Rs.)	Remarks of the AO in the remand report	Comments of the assessee in the rejoinder	Findings of the DRP
1.	06.09.2012	1,63,96,606	No receipt of payment or proof of payment through banking channel submitted. The assessee merely submitted copies of three provisional allotment letters	As per para no. 4.7 as reproduced on page no.7 of this order	As per para no.4.8 as reproduced on page no.7 to 8 of this order
2.		Total amount claimed to have been paid 42,20,003/- (Rs.10,856 + 9,96,747 + 2,12,400)	The AO noted that these were further payments made in subsequent years and no proof were submitted that it was for capital expenditure eligible for claiming indexation benefit.	As per para no. 4.7 as reproduced on page no.7 of this order	As per para no.4.9 as reproduced on page no. 8 of this order

9. In the paper book filed on the date fixed for hearing on 13.05.2024, the assessee submitted a copy of rectification application dated 27.06.2022 filed with the DCIT DRP-2, New Delhi. In this, the details of calculation of indexed cost amounting to Rs.2,71,77,059/- is as under:-

**In nutshell Rs. 2,71,77,059 comprises of following**

S.I No	Date	Ref No., Date and Cheque No.	Amount	Indexed Cost
1	18.07.2012	33874/Bkg/20120906104117619, 18.07.2012 & 641259 form PNB	5465536	
2	18.07.2012	33865/Bkg/20120906104117618, 18.07.2012 & 641259 form PNB	5465535	$16396605 * 280 = 22955247$
3	18.07.2012	33843/Bkg/20120906104117623, 20.07.2012 & 641260 form PNB	5465535	200
4	15.05.2015	Cheque No. 140161	10856	$10856 * 280 = 12665/-$ 240
5	18.04.2018	Amount directly paid by buyer to the company from which above properties is purchased.	3996747	3996747/-
6	23.04.2018	Cheque No.700011 brokerage on sale	212400/-	212400/-
<b>Total = 2,71,77,059/-</b>				

10. In this regard, the assessee had submitted letter dated 27.05.2022 along with necessary documents regarding the evidences in respect of the capital gain claimed. The said letter is reproduced as under:

“To

*The Assistant Commissioner of Income Tax  
Circle INT TAX 1(2)(1)  
New Delhi*

*Sub:- Regarding assessment of Shri Jagdish Choudhary-  
PAN-AAJPC0143P - Assessment Year 2019-20*

*In continuation of all earlier submissions, it is humbly submitted regarding calculation of long term capital gain in respect of sale of Property No DGA-10-004, 05, 007 Digital Greens Sector-61, Gurgaon sold on 18.04.2018 for total sale consideration of Rs. 3,21,15,900/-. In this regard it is submitted that it was agreed with the seller that the pending payment of instalments of Rs. 39,96,847/- in respect of above said property will be paid by the buyer directly to the builder on behalf of 0.15 the assessee. Accordingly this payment of Rs. 39,96,847/- is also*

part of the cost of the above said flats to the assessee and the buyer deducted the said sum of Rs 39,96,847/- out of the total sale consideration and made the balance following payments of Rs. 2,81,19,053/-.

Sl. No.	Date	Amount	Details showing the receipts
1	06.01.2018	31,00,000/-	Received by Cheque deposited in PNB on 08.03.2018 Bank statement is at page No.24
2	TDS	66,61,402.65/-	TDS as indicated in sale deed already supplied at page 28.
3	19.04.2018	1,83,57,649.35/-	Received by cheque deposited in PNB on 19.04.2018 bank statement is at <b>page 26</b>

The costs of acquisition of above said properties are as under:-

Sl. No.	Prop. Name	Date	Amount	Ref.No.,Date and Cheque No.	Bank Name	Page No. Of receipts	Page No. Of Bank statement
1	DGA-10-007	18.07.2012	5465536	33874/Bkg/2012090610 4117619	PNB	1 to 9	10 to13
2	DGA-10-005	18.07.2012	5465535	33865/Bkg/2012090610 4117618	PNB		
3	DGA-10-004	18.07.2012	5465535	33843/Bkg/2012090610 4117623	PNB		

The payment mentioned at serial No. 1 & 2 above were out of the total amount of Rs 2,18,62,142/- as reflected in the bank statements, The payments towards assessee's flats were 50% i.e. following two payments.

1. Rs. 5465536/- vide Cheque No. 641259 dated 18.07.2012

2. Rs. 5465535/- vide Cheque No. 641259 dated 18.07.2012

S1. No.	Prop. Name	Date	Amount	Cheque No.	Bank Name	Attached as Page No. of receipts	Attached as Page No. of Bank statement
4	Balance dues, DGA-10-007	15.05.2015	3618	140161	PNB	2	14 to 17
5	Balance dues, DGA-10-00	15.05.2015	3619		PNB	5	
6	Balance dues, DGA-10-004	15.05.2015	3619		PNB	8	

The payment mentioned above at serial No. 4 to 6 were out of the total amount of Rs. 18053/-, these payments towards assessee's flats were Rs 10856/- paid on 20.05.2012. The payments towards assessee's flats are as under:-

1. Rs. 3618 vide cheque No. 140161 dated 20.05.2015 debited from PNB
2. Rs. 3619 vide cheque No. 140161 dated 20.05.2015 debited from PNB
3. Rs. 3619 vide cheque No. 140161 dated 20.05.2015 debited from PNB

The following three payments have been directly paid by the buyer and deducted from sale consideration paid to the assessee as clarified above in first para.

<i>Prop. Name</i>	<i>Date</i>	<i>Amount</i>	<i>Cost</i>	<i>Page No. of receipts.</i>
<i>DGA-10-007</i>	<i>18.04.2018</i>	<i>1348891</i>	<i>3996746</i>	<i>18-22</i>
<i>DGA-10-005</i>	<i>18.04.2018</i>	<i>1323928</i>		
<i>DGA-10-004</i>	<i>18.04.2018</i>	<i>1323928</i>		

The assessee has claimed brokerage of Rs. 2,12,400/- paid to broker M/s Realsta Infratech Pvt. Ltd. Assessee jointly with Mrs. Sarojini Choudhary has paid a sum of Rs. 3,54,000/- by cheque No. 700011 dated 23.04.2018 drawn on PNB attached at page 26. The receipts issued by the said estate agent through whom the above flats were sold, is a consolidated in respect of five flats out of which three

were in respect of assessee and two belonged to the wife of assessee, is enclosed at page 29.

In regard to Property No. 328 Qutab Plaza DLF Qutab Enclave Phase-1 Gurgaon, the following maintenance charges which have been claimed as part of cost, may kindly be added with index cost, as under:-

<i>Date</i>	<i>Amount</i>	<i>Remarks</i>	<i>Attached as Page No.</i>
25.02.2005	Receipts 100000/-	Debited on 01.03.2005	30-31
31.08.2013	198617/-	Debited from PNB	32 & 34
25.04.2018	176684/-	Debited from PNB	26

Receipts as well as bank statement in support of the above are attached. The said bank account No. 0992000600400200 with Punjab National Bank is joint bank account in the name of Smt. Sarojini Choudhary (wife) and the assessee.

The 50% of above amount may please be added as long term capital gain claimed because the assessee didn't know that it is not part of cost and had added in the cost of the property.

It is humbly requested that the above mentioned facts and supporting evidences may kindly be considered before completion of the assessment.

Encl: (i) Bank Statement Showing Payments

(ii) Receipts

(Total Encl: 1 to 34)

Date: 27.05.2022”

11. We have heard the rival submissions and perused the materials available on record. The main crux of the dispute in this case is regarding the claim of the assessee of making payment of Rs.1,63,96,605/- on 18.07.2012 and Rs.42,20,003/- (Rs.10,856/- + Rs.39,96,747/- + Rs.2,12,400/-) on the respective dates as claimed by him as detailed in the table on page no.11 of this order. The AO and the ld. DRP gave a finding that no supporting evidences in the form of receipt or bank statement to support its claim that the payment of Rs.1,63,96,605/- on 18.07.2012 and the balance payment of Rs.42,20,003/- made by the assessee on the respective dates as claimed by the assessee were filed.

12. The matter was again fixed up for clarification on 20.09.2024 wherein the assessee was informed that the necessary evidences in respect of making payment of Rs.1,63,96,605/- on 18.07.2012 and Rs.42,20,003/- (Rs.10,856/- + Rs.39,96,747/- + Rs.2,12,400/-) on the respective dates as claimed by him was not submitted in the appeal papers. During these proceedings, the Ld. AR of the assessee submitted three receipts dated 18.07.2012 evidencing payments of Rs. 1,63,96,606/- by the assessee and further stated that two other flats bearing nos. DGA-10-006 and 008 at Digital Green, Sector 61, Gurugram were also booked in the name of Smt. Sarojini Choudhary W/o the assessee for which again two payments of Rs.54,61,536/- and Rs.54,66,635/- was paid. It was further submitted by him that a

combined cheque of Rs.2,18,62,142/- as per details below was cleared in the bank account of his wife on 20.07.2012 and further another cheque of Rs.54,65,535/- was cleared in bank account of his wife on 23.07.2012:

S.No.	Flat No.	Amount of payment as per receipt submitted	Remarks
1.	DG A-10-005	Rs.5465535/-	Flat booked in the name of the assessee Shri Jagdish Choudhary.
2.	DG A-10-004	Rs.5465535/-	-do-
3.	DG A-10-007	Rs.5465536/-	-do-
4.	DG A-10-006	Rs.5465535/-	Flat booked in the name of Smt. Sarojini Choudhary W/o.Shri Jagdish Choudhary.
5.	DG A-10-008	Rs.5465536/-	-do-

Remarks: The payment for the flat nos. at Sr. Nos. 1 & 3 in the name of the assessee and 4 & 5 in the name of his wife was paid vide consolidated cheque no.641259 dated 18.07.2012 (debited in the bank account on 20.07.2012) totalling - Rs.2,18,62,142/- (

Rs.5465535+5465536+5465536+5465535). Further, the payment of the flat at sr. no. 2 in the name of the assessee amounting to Rs.5465535 was paid vide cheque no. 641260 dated 18.07.2012 (debited in the bank account on 23.07.2012. The same is supported by the bank statement filed by the assessee in respect of account id no. 099200600400200 with PNB, New Delhi in the name of Smt. Sarojni Choudhary and the receipt of the said payments by M/s. Emaar MGF Land Limited, the owner of the said flat. Further, as detailed in the assessee's letter dated 27.05.2022 to the Assessing Officer (which have been reproduced earlier in the order), an amount of Rs.18093/- vide cheque no.140161 was paid to the builder M/s. Emaar MGF Land Limited. Out of this, an amount of Rs.10,856/- has been claimed by the assessee whereas an amount of Rs.7236/- has been claimed by his wife Smt. Sarojini Choudhary. This payment is also supported by the bank account as referred above and in the computation of capital gains in respect of the assessee Shri Jagdish Choudhary and his wife Smt. Sarojini Choudhary. Further, an amount of Rs.3,54,500/- has been paid vide cheque no.7000112 (debited in the bank account of the assessee on 23.12.2018) to M/s. Realsta Infratech Pvt. Ltd. towards commission and brokerage for the sale of all the five flats. Out of this, an amount of Rs.2,12,400/- has been claimed by the assessee whereas an amount of Rs.1,41,600/- has been claimed by his wife Smt. Sarojini Choudhary. This payment

is also supported by the bank account as referred above and in the computation of capital gains in respect of the assessee Shri Jagdish Choudhary and his wife Smt. Sarojini Choudhary. Further, as per the sale agreement dated 27.02.2018 in respect of the flats bearing nos. DGA-10-004, 005 and 007, Digital Green, Sector 61, Gurugram with M/s. AAP Infracom -LLP and the final payment receipt by the assessee shows that an amount of Rs.39,96,847/- was paid directly by M/s. AAP Infracom -LLP to the builder M/s. Emaar MGF Land Limited. As discussed earlier in this order, the assessee did not claim any indexation on the amount of Rs.39,96,747/- paid directly by the buyer to the company in which flats bearing nos. DGA-10-004, 005 and 007, Digital Green, Sector 61, Gurugram were booked. Similarly, the assessee has not claimed any indexation towards the amount of Rs.2,12,400/- paid towards the brokerage.

13. Therefore, in view of the above facts and the evidences on record, we are satisfied that the assessee has correctly claimed the indexation amount of Rs.2,71,77,059/- as all the evidences are on record and verified by us and, therefore, the denial of the same by the Assessing Officer is not justified. Therefore, we direct the Assessing Officer to allow the indexation of Rs.2,71,77,059/- and claimed by the assessee and accept the capital gains amounting to Rs.49,38,841/- as offered by the assessee in respect of the three flats bearing nos.

DGA-10-004, 005 and 007, Digital Green, Sector 61, Gurugram.  
Ground no.3 of the appeal is allowed.

14. Ground nos. 4 & 5 of the appeal have become only academic in view of the relief granted to the assessee as decided in ground no.3 as above.

15. In the result, this appeal of the assessee is partly allowed.

Order pronounced in the open court on 11<sup>th</sup> November, 2024

**Sd/-**  
**[VIKAS AWASTHY]**  
**JUDICIAL MEMBER**

**Sd/-**  
**[BRAJESH KUMAR SINGH]**  
**ACCOUNTANT MEMBER**

**Dated** 11.11.2024.

*Shekhar & Mohan Lal*

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi