आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ,एफ,मुंबई ।

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "F", MUMBAI

श्री जोगिन्दर सिंह, न्यायिक सदस्य **एवं**

श्री रमित कोचर, लेखा सदस्य**,** के समक्ष

Before Shri Joginder Singh, Judicial Member, and
Shri Ramit Kochar, Accountant Member

ITA NO.5749/Mum/2013
Assessment Year: 2009-10

DCIT, Circle-3(1), Room No.607, 6th Floor, Aayakar Bhavan, Mumbai-400020	**बनाम**/ Vs.	Shri Vembu Vaidyanathan, B-1602, Beaumonde Apartments, Appa Saheb Marathe Marg, Prabhadevi, Mumbai-400028
(राजस्व /Revenue)		(निर्धारिती /Assessee)
		PAN. No.AAIPV5796J

राजस्व **की ओर से** / Revenue by	Shri B. Yadagiri-DR
निर्धारिती **की ओर से /** Assessee by	Shri Vijay C. Kothari

सुनवाई की तारीख **/ Date of Hearing :**	**24/09/2015**
आदेश की तारीख /**Date of Order:**	**28/10/2015**

आदेश / O R D E R

Per Joginder Singh (Judicial Member)

The Revenue is aggrieved by the impugned order dated 29/04/2013 of the ld. First Appellate Authority, Mumbai.

2. The first ground raised by the Revenue pertains to treating the gain arising from sale of capital asset as long term capital gain without appreciating the fact that the date

of acquisition of capital asset is date of registration under Maharashtra ownership of flats (regulation of promotion of construction, sale, management and Transfer Act 1963) and not the date of allotment of letter.

2.1. During hearing, the ld. DR, Shri B. Yadagiri, advanced his arguments which is identical to the ground raised by defending the conclusion arrived at in the assessment order by further submitting that while granting relief to the assessee, the ld. Commissioner of Income Tax (Appeals) did not appreciate the fact that the agreement for purchase was entered in 2006 and the date of sale was in 2008.

2.2. On the other hand, the ld. counsel for the assessee, Shri Vijay C. Kothari, defended the conclusion arrived at in the impugned order by contending that the assessee received allotment letters on 31/12/2004 and the agreement for purchase of the flats was entered into vide agreement dated 02/11/2006 and the MOU for sale of these flats was entered into on 24/04/2008 by explaining that the agreement of sale was executed on 17/05/2008 for flat no.1901 and 1902 and for flat no.1907 & 1908 on 18/07/2008.

2.3. We have considered the rival submissions and perused the material available on record. On the basis of material available on record, we note that the ld. Assessing Officer has discussed the issue in para 5.1.2 of the assessment order. The Assessing Officer treated the long

term capital gain at Rs.6,31,36,750/- as short term capital gain which arose on transfer of capital asset, duly disclosed by the assessee in his return. The stand of the Revenue is that it was wrongly disclosed as long term capital gains. The Assessing Officer computed the short term capital gain at Rs.3,31,84,000/- against the claimed long term capital gain at Rs.6,31,36,750/-. While doing so, the ld. Assessing Officer opined as under: -

i. *The period of holding should be computed from the date of conveyance and not from the date when a party merely agrees to sell.*

ii. *Agreement of sale executed by the assessee in July 2008 does not refer to 'allotment letter' and therefore the rights, title and interest were transferred to the assessee only in Nov. 2006.*

iii. *Agreement of sale executed by the developer in Nov. 2006 does not refer to the letter of allotment dt. 31 Dec. 2004.*

iv. *Registration is mandatory under section 4(1) of Maharashtra Ownership Flats Regulation of promotion of construction, sale, management and transfer) Act, 1963.*

v. *It is the date of registration that determines the rights of the purchaser and not the date of allotment. The allotment is subject to cancellation and changes but it is only a registered document which is capable of being enforced in a court of law. Hence the contention that date of allotment creates an asset in favour of the assessee is without any basis and devoid of merit.*

vi. *The assessee is not entitled to indexation benefits on the cost of acquisition since the Capital gain is treated as Short Term Capital Gain.*

2.4. On appeal, before the ld. Commissioner of Income Tax (Appeals) an elaborate discussion was made, wherein, various decisions from the Tribunal as well as from Hon'ble High Courts including Hon'ble jurisdictional High Court were considered along with CBDT Circular No.672 dated 16/12/1993 and Circular no.471 dated 15/10/1986. The issue was decided in favour of the assessee, against which the Revenue is aggrieved and is in appeal before this Tribunal.

2.5. If the observation made in the assessment order, leading to addition made to the total income, conclusion drawn in the impugned order, material available on record, assertions made by the ld. respective counsels, if kept in juxtaposition and analyzed, we note that, under the facts available on record, the basic question to be adjudicated is whether the gain arising on transfer of capital asset is long term capital gain or short term capital gain. We are of the considered opinion that assessee got his right over the capital asset on the date of allotment of letter in respect of flats booked by the assessee. Therefore, the subsequent action of registration of sale agreement is merely an assignment of rights in the property of the assessee with Act of registration under the Stamp Duty Act. Our view is fortified by the decisions of the Tribunal/Hon'ble High Courts in following cases:-

a. Praveen Gupta vs ACIT (137 TTJ 307)(ITAT Delhi)
b. CIT vs Laxmi devi Ratani (2005) 198 CTR (MP) 336

c. CIT vs Tata Services ltd. 122 ITR 594
d. CIT vs Vijay Flexible Containers 186 ITR 693 (Bom.)
e. CIT vs Mormasji Man Charji Vaid 168 CTR (Guj.)(FB) 565
f. Arundhati Balkrishna vs CIT (1982) 29 CTR (Guj.) 85.

2.6. In view of the above, we are usefully quoting the relevant portion from the decision from Hon'ble jurisdictional High Court (122 ITR 594) (supra):-

> Quote:- *"What is a capital asset is defined in section 2(14) of the I.T. Act, 1961. Under that provision, a capital asset means property of any kind held by an assessee, whether or not connected with his business or profession. The other sub-clauses which deal with what property is not included in the definition of capital asset are not relevant. Under section 2(47), a transfer in relation' to a capital asset is defined as including the sale, exchange' or relinquishment of the asset or the extinguishment of any right therein or the compulsory acquisition thereof under any law. The word "property ", used in section 2(14) of the 1. T. Act, is a word of the widest amplitude and the definition has re-emphasised this by use of the words "of any kind" Thus, any right which can be called property will be included in the definition of "capital asset ". A contract for sale of land is capable of specific performance. It is also assignable. (See Hochat Kizhakke Madathil Venkateswara Aiyar v. Kallor Illath Raman Nambudhri, AIR 1917 Mad 358). Therefore, in our view, a right to obtain conveyance of immovable property, was clearly "property" as contemplated by section 2(14) of the I.T. Act, 1961."* ***Unquote****.*

If the totality of facts and the ratio laid down in the aforementioned cases are analyzed in the aforesaid case, the

Hon'ble jurisdictional High Court even went to the extent that even **right to obtain conveyance of property is a property** as contemplated by section 2(14) of the Act. Even a mortgage is a capital asset because by the mortgaged, there is a transfer of interest in the property mortgage from the mortgagor to the mortgagee. Share of partner in a partnership concern is a capital asset as is transfer will give rise to capital gains. Likewise, a business as a going concern would constitute a capital asset within the meaning of section 45 of the Act. Route permits, for plying buses, issued by authorities under the Motor Vehicle Act, are property for the deprivation of which compensation is payable to the permit holder, hence, such route permits are capital assets in the hands of the transport company. Even, Stock Exchange Membership Card was held to be a capital asset. Thus, it can be said that the term 'capital asset' has an all embarrassing connotation and includes every kind of property as generally understood except those which are expressly excluded from the definition. It includes every conceivable things, right or interest or liability. The definition of capital asset, under the Income Tax Act referring to 'property of any kind' carries no words of limitation, because it is a wide amplitude and includes every possible interest that a person may hold and enjoy. Our view is fortified by the following decisions:-

a. Syndicate Bank Ltd. vs Addl. CIT 155 ITR 681 (Kerala),
b. Madthil Brothers vs DCIT (2008) 301 ITR 345 (Madr.)

c. CIT vs Tata Services ltd. 122 ITR 594 (Bom.)
d. Bafna Charitable Trust vs CIT 230 ITR 864 (Bom.)
e. V. Rangaswamy Naidu vs CIT 31 ITR 711 (Mad.)
f. Addl. CIT vs Ganpati Raju 119 ITR 715 (AP)
g. S. Vaidyanathna Swamy vs CIT 119 ITR 369 (Mad.)
h. P. J. Mathew vs ITO 323 ITR 592 (Ker.)

In the light of the above, it can be said that the interest of the assessee accrued right from the date of allotment itself. The claim of the assessee is further supported by CBDT Circular No.672 and 471 dated 16/12/1993 and 15/10/1986 respectively clarifying that "the allotee gets title to the property on the issuance of allotment letter and the payment of installments is only a follow of action and taking the delivery of possession is only a formality." The case of the assessee is further fortified by the ratio laid down in ACIT vs Smt. Sundar Kaur Sujan Singh Gad (3 SOT 206), ACIT vs Smt. Vandana Rana Roy (ITA No.6173/mum/2011) order dated 07/11/2012, holding date of allotment is the relevant date for computing capital gains, Jeetendra Mohan vs ITO (2007) 11 SOT 594 (Del.), Jagmohan Singh Rawat vs ITO (ITA No.3297/Del./2011) order dated 29/02/2012, thus, we find no infirmity in the conclusion of the ld. Commissioner of Income Tax (Appeals) on the issue in hand. Thus, this ground of the Revenue is having no merit, therefore, dismissed.

3. The next ground pertains to allowing the claim of deduction in respect of interest paid on borrowed capital to

acquire capital asset. The crux of argument advanced on behalf of the Revenue is that there is no provision for such deduction, therefore, the conclusion drawn in the assessment order was defended. On the other hand, the ld. counsel for the assessee defended the conclusion arrived at in the impugned order.

3.1. The facts, in brief, are that the assessee paid interest on housing loans availed from ICICI Bank and Standard Charter Bank for purchasing impugned flats in Ashok Towers. The interest so paid was for the period when construction of building was in progress. Such interest was treated as cost of acquisition /cost of improvement for the purpose of computing capital gains. Now the issue to be adjudicated by us "whether the interest paid on housing loan is deductible while computing gains as per section 48 of the Act". The stand of the Assessing Officer as well as of the ld. DR is that there is no provision u/s 48 of the Act for deduction of interest paid during the course of acquisition of asset. After considering the totality of facts, we are of the view, that when the assessee borrows any money for making investment in a asset and pays interest thereon and as such interest has not been allowed in computation of taxable income of the assessee, such interest is deductible while computing capital gains either is cost or is improvement in the asset. The ratio laid down in Addl. CIT vs K.S. Gupta 119 ITR 372 (AP), CIT vs Mithilesh Kumari 92 ITR 9 (Del.), CIT vs M. Pai 152 ITR 247 (Karn.) and Naozar Chenoy vs CIT 234 ITR 95 (AP). Section 48, which is meant for capital gains clearly envisages allowbility of

such expenditure which is incurred wholly and exclusively in connection with such transfer and for the purpose of cost of acquisition of the asset as deduction from the full value of consideration received or accrued as a result of transfer of capital asset, which is chargeable under the head capital gain. The words 'in connection with' used in section 48 (i) are very wide in their ambit and hence there is no warrant for importing a restriction that to qualify for deduction the expenditure must necessarily have been incurred prior to the passing of title. The Hon'ble Karnataka High Court in 152 ITR 247 (supra) held that interest on borrows is deductible only if is not allowed u/s 57 of the Act, thus, we find no infirmity in the conclusion drawn by the ld. Commissioner of Income Tax (Appeals) on this issue also, therefore, dismissed.

4. The next ground pertains to deleting the additions made by the Assessing Officer invoking the provisions of section 50C of the Act. The crux of argument on behalf of the Revenue is that while coming to a particular conclusion, the ld. Commissioner of Income Tax (Appeals) did not appreciate the fact that the provisions of section 50C of the Act, the Assessing Officer is bound to take the value adopted by Stamp Valuation Authority. On the other hand, the ld. counsel for the assessee defended the conclusion arrived at in the impugned order.

4.1. We have considered the rival submissions and perused the material available on record. The facts, in brief,

are that the assessee transferred the impugned flats and the stamp duty authorities determined the market value of flat number 1907 and 1908 at Rs.2,42,50,000/- and 2,34,50,000 respectively. As per the Stamp Duty Authorities, the market value of flat number 1901 and 1902, as per registered deed was Rs.2,16,66000 and RS. 2,24,34,000 respectively. As per valuation adopted by Stamp Duty Authorities, it was Rs.65,58,440/- and Rs.67,73,270/- respectively. Now the question arises whether as per the provision of section 50C, the full value of consideration on transfer of capital asset has to be determined as per the value adopted or assessed by Stamp Valuation Authority or on the basis of value determined for some other capital asset. As per the Assessing Officer, the value adopted by Stamp Valuation Authority for flat no.1907 and 1908 has to be considered the full value consideration for flat number 1901 & 1902 as per the provisions of section 50C of the Act. The stand of the ld. Commissioner of Income Tax (Appeals) is that the addition was unjustified as the stamp valuation authority adopted or assessed the market value of flat number 1901 and 1902 at Rs.65,58,440/- and Rs.67,73,270/- respectively. If the totality of facts are analyzed, there is undisputed fact, emerges from the conclusion of the ld. Commissioner of Income Tax (Appeals), that the market price was lesser than the value on which the assessee transferred flat no.1901 and 1902. It seems that the addition made by the Assessing Officer was on a wrong presumption. Our view is fortified by the decision in the case of ITO vs Yasin Mosa Godil (ITA No.2519/Ahd/2009), thus,

the stand of the ld. Commissioner of Income Tax (Appeals) is affirmed.

5. The next ground pertains to allowing expenditure of Rs.50 lakh, (Rs.53,11,335/-) claimed to be, incurred on interiors, by the assessee. The crux of argument on behalf of the Revenue is that relief was granted to the assessee without appreciating the fact that no evidence was produced by the assessee for such claim. On the other hand, the ld. counsel for the assessee defended the conclusion arrived at in the impugned order by submitting that all the payments of interior work were made through account payee cheque/from the bank account of the assessee and list of vendors, to whom the impugned payments totaling Rs.53,11,335/- were made, along with cheque number, date of cheque issued and copy of invoices were furnished by the assessee.

5.1. We have considered the rival submissions and perused the material available on record. Uncontrovertedly, the impugned payments were made through account payee cheque and the assessee furnished the complete list of vendors to whom the payments were made (through cheque), Cheque No., copy of invoices for the impugned amount were produced before the authorities. Admittedly, without interior work, largely kitchen, carpentry, ceiling and flooring the apartment cannot be come usable, thus, such investment was rightly held to be investment in the residential property, thus, we find no infirmity in the conclusion of the ld. Commissioner

of Income Tax (Appeals), therefore, we find no merit in the impugned ground, raised by the Revenue, consequently, dismissed.

6. The last ground pertains to allowing deduction u/s 54 of the Act by treating the gain so arrived on transfer of capital asset as long term capital gains instead of short term capital gain. The crux of argument on behalf of the ld. DR is in support to the assessment order, whereas, the ld. counsel for the assessee defended the conclusion arrived at in the impugned order.

6.1. We have considered the rival submissions and perused the material available on record. While disposing of ground no.1 and 2, in presiding para of this order, since the issue has been decided in favour of the assessee, therefore, this ground has remained for academic interest only being consequential in nature. Thus, we are in agreement with the finding of the ld. Commissioner of Income Tax (Appeals) that the assessee is entitled to claimed deduction u/s 54F of the Act. There is uncontroverted finding in the impugned order that the assessee received allotment letters on 31/12/2004 and the agreement for purchase of flat was entered on 02/11/2006, whereas the sale was executed on 17/05/2008 and 18/07/2008, therefore, the assessee is entitled for deduction, because it is as per the period for prescribed u/s 54F of the Act. The case of the assessee further find support from the decision of the Tribunal in V.M. Dujodwala vs ITO

(ITA No.4554/Mum/1986): (1991) 036 ITD 130 (Mumbai Tribunal.), which is reproduced hereunder for ready reference:-

2. The assessee is an individual and for the assessment year 1981-82. the relevant previous year ends on Diwali 1980. The assessee was the joint owner of Flat No. 26 in Meghdoot, Marine Drive, Bombay, purchased in 1952 for Rs. 38,000. He sold the said flat for Rs. 4,50,000 as per agreement dated 12-5-80. Possession was given on 15-5-80 to the buyer. The Income-tax Officer computed capital gains for the whole transaction at Rs. 4,12,800 and arrived assessee';s share therein at Rs. 2,06,000 which was treated as the income under the head ';Long Term Capital gains'; and allowed deduction under section 80-TTof the IT Act, 1961. The assessee submitted that he has purchased another house property being Flat No. 62, ';Rambha'; at Petit Hall, Bombay, vide agreement dated 22-10-77 for Rs. 2,80,000. In this property, the assessee';s share was 70% or Rs. 2,01,950. The assessee submitted his transactions in relation to purchase of new flat No. 62 in a serialised manner as under:

24-7-72 Agreement of original purchaser K.K. Gopaldas booking flat from Malabar Inds. P. Ltd.	
22-10-77	*Agreement to purchase from K.K. Gopaldas.*
24-10-77	*Date of payment of Rs. 42,780*
7-12-77	*Date of payment of Rs. 2,15,941*
29-12-77	*Letter from Builder agreeing to transfer from name of K.K. Gopaldas to the name of the assessee.*
24-3-79	*Date of payment of Rs. 20,780.*
23-4-79	*Pate of payment of*

	last instalment.
16-5-79	*Municipal conditional letter of NOC for occupation.*
24-11-79	*Date of offer for possession.*
9-4-80	*Letter from Builder for readiness for completion certificate.*
13-5-80	*Date of possession.*

3. Before the ITO, the assessee contended that though agreement for purchase of a flat was entered on 22-10-77 and payment was also made earlier, only the date when the new flat is ready for occupation should be taken as date of purchase by the assessee. The ITO rejected the above contention with the following observation in para 5 of his order:

I have considered the assessee';s contention the agreement for purchase of a new flat was entered into in 1977, payments were made in 1977, and even the last instalment was made on 3-4-79 while the old flat was sold on 15-5-80 i.e. more than one year after that. The assessee has already acquired a right in the new flat more than 12 months before the date of sale of the old flat though he might have taken possession of the same much late on and this amounts to purchase of a flat, since this was done more than 12 months before the sale of the old flat section 54 exemption is not available to the assessee. His claim is therefore rejected."

The Commissioner of Income-tax (Appeals) also confirmed the order of the ITO.

4. We have heard the counsels on both side. The Departmental Representative vehemently argued that the exemption under section 54 is not applicable to the assessee as he failed to buy any residential house property within a period of one year before/after the date of sale of the first house property. He submitted the reasons given by the ITO and the CIT(A) in their orders in support of his plea. He relied on the Supreme Court decision in CIT v. T.N. Aravinda

Reddy (1979) 120 ITR 46, and the decision of the Tribunal in Sri Rajaram v. ITO (1986) 119 ITR 141(Hyd.).

5. The learned representative for the assessee submitted that the agreement for purchase of property on 22-10-1977 on which the reliance is placed by the Department as the relevant date of purchase was in respect of property under construction. The flat intended to be purchased by the assessee was not at all constructed on that date. He placed reliance in support of his contention, to the source of Articles of Agreement dated 22-10-77 which clearly spells out in the recital that the agreement was one in respect of a building still under construction. So he claimed that the Revenue';s interpretation that the building was purchased on 22-10-77 is not a reasonable finding, what the assessee must have purchased is just a right for purchase of a flat in a proposed construction.

He submitted that the builder being out of fund and for such other reason, went on delaying the construction. Just to help the builder to fasten the construction, the payments were made in instalments much earlier to the actual possession of the property. This is very common in transaction in flats. The construction was completed at a later date and on 24-11-79, the builder expressed his desire to offer the possession of the flat. That is the first date when the property, at best, can be said to be a purchase of residential property. He stressed that even after construction of the building, the flat is not immediately available for residence to the assessee unless it is cleared by the municipal/corporation authorities. Therefore, he submitted that only when the flat construction was completed and available for residence and was actually allotted by the builder to the buyer in compliance with the agreement of sale entered upon by the builder earlier, it could be taken as ready for occupation and that was the date material for the purpose of counting period of one year within the meaning of section 54 of the IT Act, 1961. He finally submitted that 9-4-1980, on which date the builder agreed to give possession of the flat would be taken as the date on which the assessee has purchased the property for the purpose of residence within the meaning of section 54 of the IT Act, 1961. Till such time, he had only the right to purchase house property, he added. He relied on the following decisions:

(1) CWT v. K.B. Pradhan (1981) 130 ITR 393(Ori.)

(2) K.P. Varghese v. ITO (1981) 131 ITR 597(SC)

(3) CIT v. Mrs. Shahzada Begum (1988)173 ITR 397/38 Taxman 31 (AP)

(4) Purushottam Govind Bhat v. First ITO (1985) 13 ITD 939(Bom.)

(5) Damodar Raheja v. Eighth ITO (1984) 10 ITD 75(Mad.).

6. We have carefully gone through the facts of the case and the rival contentions. The question before us, though it is simple, raises problems of importance in metropolitan cities where there exists lot of problems for meeting basis human needs ';house';. Just to encourage assessee, section 54 is enacted to give relief of exemption from capital gains in the case of assessees selling existing residential units and acquiring any other residential unit. This has to be done within a period of one year either before or after the date of sale of the first house property. If that is done so, capital gains arising on transfer of the first house property will be exempt to the extent of investment in the second house property as stipulated in section 54. The flat in cities is the most common and a peculiar feature. The builder has to take plans of construction in his own name and sometimes in the names of his vendors and start construction. He invites prospective customers, enters into agreement for sale of flats proposed to be constructed by him and at times, demands the payment of price in one or more instalment. He may sometimes to finance his own construction activity, gives discounts and accepts lesser payment. The price paid before construction is complete, will be different from the price demanded by the vendors after the flat is constructed. The buyers even after having the agreement for purchase of the flat cannot exercise any right of ownership or their right cannot be traced to any part of the construction till such time the builder actually gives the possession of a particular flat to the buyer. After the completion of structure, it has to be inspected and cleared by the municipal authorities. Then the flat is ready for occupation which the builder normally intimates to the buyer. The buyer will then take possession and actually enjoy the house property to the exclusion of others. In this flat business, at times, the builder goes financially bad and delays the construction. Against this background of flat transaction, we are now faced with the provisions of section 54 for granting exemption to the assessee, who at one time, enters into purchase and at other times, takes possession and starts actual enjoyment of the flat. At what point of time he became owner of the house property will decide the fate of his exemption.

7. In identical issue in Purushottam Govind Bhat';s case (supra) the Tribunal held as under: The right the assessee has got is a peculiar type of right which certainly cannot be classified as ownership. To say, therefore, that the assessee. has purchased the property would in law be erroneous. On the contrary, that the assessee has an

interest in this flat as much as that of a full owner cannot be denied. The purpose of the assessee getting the flat allotted was to have the benefit of residential accommodation entirely in his control as if he was the full owner. Except, therefore, for a few technical requirements, the assessee can be said to be the full owner of the property. As a matter of fact, if not in law, therefore, it would be correct to say that the assessee has purchased a residential property.

If the meaning of the word ';purchase'; is pushed to its technical sense, perhaps, the owner of a flat as above would not get the benefit of section 54. Even so, it would be against the very object and purpose of section 54 if such a flat owner is denied the benefit. Practically in every big town in this country, the ownership flats are in fashion. In applying the provisions of section 54 to such a contingency, it would not be, as claimed by the learned counsel for the department, proper to deny the assessee the benefit of section 54. With the increase in the cost of buildings if the technical policy of denying the benefits of section 54 claimed by the learned departmental counsel is accepted, section 54 would almost be an unused section. Certainly that cannot be the purpose of the legislation especially when this covers a large number of assessees, in a peculiar transaction like flats. A reconciliation, therefore, between the provisions of section 54 and the peculiar law relating to the ownership flats in big cities where no ordinary person can purchase a house himself has to be made.

In T.N. Aravinda Reddy';s case (supra), on which reliance has been placed by the Revenue, is in respect of division of the HUF property Whether the release by the other coparceners could be taken as ';purchase'; for the purpose of granting relief under section 54(1) of the Act to that coparcener in whose favour the release is effected. The Supreme Court answered this question in favour of the assessee in extending the benefit of section 54.

In the case of Sri Rajaram (supra), the question for determination was whether the payment of consideration is relevant for the purpose of section 54, which the Tribunal rightly held that it is not so, considering the provisions of section 54.

Therefore, the two cases cited above are not clearly applicable to the facts in the present case.

8. Left with the relevant date to decide in the facts of the case, the decision of the Tribunal in Purushottam Govind Bhat';s case (supra) really comes to favour the assessee. In the said case, the assessee

joined the society in 1977. He was allotted a flat and occupied the same on l-l-1980. The Tribunal held, joining the society and paying the amounts cannot really amount to purchase of a house. On the contrary, allotment of the flat would certainly give the assessee certain specific obligations and rights. The manner in which the amounts are paid and the period over which they are paid may not be of much relevance. Considering the peculiar circumstances of that case, it was held that the benefit of section 54 should be extended by taking the date of allotment and occupation as the relevant date of purchase. Following the said decision, we are inclined to hold that in this case also, the assessee has, though, entered into agreement for purchase of flat on 22-10-77, paid the money during 1977 to 1979, but the relevant date to be taken for the purpose of applying of section 54 should be the date on which the flat was ready for occupation by the assessee. Taking that date as the date of purchase, is within the period of one year and therefore the capital gains are clearly exempt from tax applying the provisions of section 54.

9. In view of the above facts, we allow the assessee's appeal."

In view of the facts available on record and the conclusion drawn in the aforesaid order of the Tribunal, we find no infirmity in the conclusion drawn by the ld. Commissioner of Income Tax (Appeals), consequently, dismissed.

Finally, the appeal of the Revenue is dismissed.

This Order was pronounced in the open court in the presence of ld. representatives from both sides at the conclusion of the hearing on 24/09/2015.

Sd/-	Sd/-
(Ramit Kochar)	(Joginder Singh)
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य** / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 28/10/2015

Shekhar, P.S./नि.स.

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**