

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI,
ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.1087/Bang/2018
Assessment Year: 2013-14

Shri L. Vivekananda M/s. Vivek Hotels, 1294/1-B J.L.B. Road Mysuru-570 005 PAN NO : AASPV6693A	Vs.	ACIT Circle-1(1), Residency Road Nazarbad Mysuru-570 010
APPELLANT		RESPONDENT

Appellant by	:	Shri G.N. Bhat, A.R.
Respondent by	:	Smt. R. Premi, D.R.

Date of Hearing	:	17.11.2020
Date of Pronouncement	:	18.11.2020

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by the assessee is directed against order of the CIT(A) dated 31.10.2017. The assessee has raised following grounds of appeal:

- 1. The order of the CIT(Appeals). in so far as it is prejudicial to the appellant, is opposed to law, probabilities, weight of evidences, and facts and circumstances of the case.*
- 2 The learned CIT(Appeals) erred in not recognising that the appellant acquired the right in the asset at No.S-4, Siddartha Layout, Nazarbad Mohalla, Mysore in the financial year 1986-87 when the allotment letter was issued by Mysore Urban Development Authority and he made the full payment towards*

the cost of the asset and became entitled to take the inflated cost of acquisition of the Financial Year 1986-87 while working out the capital gain arising from the transfer of that asset.

3. *The learned CIT(Appeals) failed to appreciate that the appellant "held" the property in question right from the date of payments and no cost was paid later to MUDA, which allotted the site in favour of the appellant, and these facts establish that the property was acquired in the financial year 1986-87 itself.*

4. *The learned CIT(Appeals) erred in not considering the decisions of various High Courts, including the jurisdictional High Court and orders of ITATs relied upon by the appellant during the appeal proceedings. which squarely apply to the facts of the appellant's case.*

5.. *The learned CIT(Appeals) erred in not allowing the inflated, cost of improvement on the construction of a building at a cost of Rs.3,00,000 as claimed by the appellant before the Assessing Officer.*

6. *The Learned CIT(Appeals) erred in not noticing that the appellant had offered income from house property in respect of the structure existing on the land for many years and had shown the property in the Wealth – tax return also, which all corroborate the fact that improvement was effected in construction of a building.*

7. *The learned CIT(Appeals) erred in not specifically dealing with this ground of appeal and there is no discussion in his appellate order about the claim of the appellant.*

8. *Without prejudice to the right of the appellant to approach the Assessing Officer to give credit for TCS as per 26AS as directed by the CIT(Appeals) in his order, it is submitted that the CIT(Appeals) ought to have specifically directed the Assessing Officer to give credit for TCS of Rs.18,165/- as claimed in the return while computing the tax liability.*

9. *The appellant craves leave to add, delete, substitute any of the grounds before the hearing of appeal.*

10. *The appellant, therefore, prays that the ITAT may be pleased to set aside the order of CIT(Appeals), delete the additions made in the order of assessment, direct the Assessing*

Officer to accept the income returned and give credit for TCS as claimed in the return of income, in the interest of justice.

2. The facts of the case are that the appellant was allotted a site bearing No. S-4, Siddhartha Layout, Mysuru on 20.5.1986 by the then Mysore City Improvement Trust Board measuring 3095.50 sq.yards for a consideration of Rs.3,34,314/-, with a condition that the consideration should be paid within 15 days from the date of receipt of that allotment letter dated 20.5.1986. From the Allotment Letter it is evident that the allotment was done pursuant to a petition made by the appellant to the Chief Minister of the Government of Karnataka. Accordingly, the appellant paid the consideration by way of two Demand Drafts dated: 29.5.1986 vide DD No. 921565 and 897247 respectively for Rs.100,000/- and Rs.2,34,314/-, the receipt of which has been acknowledged by the then Mysore City Improvement Trust Board. Thus, the entire consideration was paid on 29.5.1986 as per the terms of allotment. It is clarified that the erstwhile City Improvement Trust Board was re-named as Mysuru City Improvement Trust Board. Pursuant to the payment made, the Mysuru Development Authority (**MUDA** for short) executed an agreement on 16.6.1998 vide Regn. No.1482, Volume No.1692, PP 33-36 of Book No.1 dated: 18.6.1998. In the Agreement, a mention has been made about the allotment of the site to the appellant on 20.5.1986 and the same has been confirmed by the Authority on 11.9.1986 has also been mentioned. The relevant clause of the agreement reads as follows:

"WHEREAS the First Party has purchased the site described in the Schedule for a sum of Rs. 3,34,314/-(Rupees Three lakh thirty four thousand three hundred fourteen only) as per allotment order dated: 20-5-1986, and the same has been confirmed by the Authority on 11.9.1986. On confirmation the First Party, has paid the full cost of the schedule site on 29.6.1986."

3. A possession Certificate was issued on 23.6.1998. Later, the MUDA has executed a deed on 6th January, 2004 conferring the title on the site to the appellant. The property held by the appellant from the date of allotment was sold by him on 9.5.2012 in favour of one Sri Parasmal Dak. Significantly, the sale deed at page 2 clearly mentions about the allotment letter dated: 20.5.1986. The claim of the appellant is, that since the entire consideration was paid to MUDA as per the letter of allotment, and an agreement has also been entered into on 19.6.1998, confirming the purchase of the site by the appellant by allotment letter dated:20.5.1986, the appellant became entitled for the ownership of the property. The appellant "held" the property for all practical purposes on de facto basis from the date of letter of allotment and the payment of the total consideration, more particularly in view of the fact that the allotment letter identified the property and the entire consideration was also paid during the financial year 1986-87. For the purpose of easy reference, the chronology of events is given below:

1. Date of application	03.05.1986
2. Date of allotment letter allotting site No.S-4, Siddhartha Layout, Mysuru	20.05.1986
3. Date of payment of entire consideration	29.05.1986
4. Date of execution of agreement	16.06.1998
5. Date of possession certificate	23.06.1998
6. Date of execution of deed conferring title	06.01.2004
7. Date of sale of the site by the appellant	09.05.2012

4. The appellant justified his claim that he is entitled to cost inflation from the financial year 1986-87 as not getting possession certificate of the site in question at the time of allotment on 20.5.1986 did not detract from the ownership of the property in question. The Assessing Officer, on the other hand, has taken the date of grant of possession certificate viz., 23.6.1998 and calculated the cost inflation from the financial year 1998-99 only. As a result of such adoption, the cost of acquisition was worked at Rs. 8,11,497 by the Assessing Officer, as against Rs. 20,34,539/- adopted by the appellant, resulting in an addition of Rs. 12,23,042/-.

5. The assessee went in appeal before CIT(A) and the Ld. CIT(A) confirmed the order of the A.O. Against this, the assessee is in appeal before us. The Ld. A.R. submitted that as per the definition of the term "Short term capital asset" in Section 2(42A), a capital asset held by an assessee for not more than thirty-six months immediately preceding the date of its transfer is a Short term capital asset. Section 2(29A) defines "Long term capital asset" means a capital asset which is not a short term capital asset. For the purpose of determining the

nature of capital gain, the legislature was concerned with the period during which the asset was held by the assessee for all practical purposes on de facto basis. The legislature was apparently not concerned with absolute legal ownership of the asset for determining the holding period. The allottee gets title of the property on the issuance of allotment letter and full payment of cost of the site. The issuance possession certificate is only a consequential action upon which delivery of possession flows. Therefore, the date of allotment letter and payment of consideration viz., 29.5.1986 is the year of acquisition for the purpose of calculation of inflated cost of acquisition. Further, he drew our attention to the Explanation (iii) to s. 48 which entitles the assessee to the indexation benefit and also to Explanation (iii) to s. 48 refers to the words 'the asset'. It means some capital asset which is subject-matter of sale on which long-term capital gain is to be computed.

6. Thus, going into the provisions, it is not necessary that to constitute a capital asset the appellant must be the owner by way of a conveyance deed in respect of that asset for the purpose of computing capital gain. The appellant had acquired a right to get a particular site from MUDA and that right of the assessee itself is a capital asset. The word 'held' used in s. 2(14) as well as Explanation to s. 48 clearly explains that appellant had some right in the capital asset which is subjected to transfer. By making the payment to MUDA pursuant to the allotment letter, the appellant held the capital asset and, therefore, the benefit of indexation has to be granted to the appellant on the basis of payments made by him for acquiring the said asset and the appellant has rightly claimed the indexation benefit from the dates when he has made the

payments to MUDA. As a matter of fact, MUDA on 1.1.1988 issued a show cause notice to the appellant to show cause why the allotment of the site made by the then City Improvement Trust Board should not be cancelled. The appellant satisfactorily replied the authorities and such a proposal to cancel the allotment was withdrawn. This show cause notice proves that the opportunity was given, as the appellant had acquired a vested right by virtue of allotment letter. The decision relied upon by the CIT(Appeals) in the case of Balbir Singh Maini has no application to the facts of the appellant's case at all. The Hon'ble Supreme Court in that case was concerned with taxability of capital gain on entering into a Joint Development Agreement. The questions framed by the Hon'ble Supreme Court in the case are extracted below:

"The present appeals arise from a judgment of the Punjab and Haryana High Court where a large number of appeals were disposed of under Section 260A of the Income Tax Act, 1961. The following substantial questions of law were raised before the High Court:

"i) Whether the transactions in hand envisage a "transfer" exigible to tax by reference to Section 2(47)(v) of the Income Tax Act, 1961 read with Section 53-A of the Transfer of Property Act, 1882?

ii) Whether the Income Tax Appellate Tribunal, has ignored rights emanating from the JDA, legal effect of non registration of JDA, its alleged repudiation etc.?

- iii) *Whether "possession" as envisaged by Section 2(47)(v) and Section 53-A of the Transfer of Property Act, 1982 was delivered, and if so, its nature and legal effect?*
- iv) *Whether there was any default on the part of the developers, and if so, its effect on the transactions and on exigibility to tax?*
- v) *Whether amount yet to be received can be taxed on a hypothetical assumption arising from the amount to be received?"*

7. The judgement relied upon by the CIT(A) in the case of CIT Vs. Balbir Singh Maini in Civil Appeal No.15619 of 2017 is not applicable to the facts of the case. He relied on the following judgements:-

- i. Anita D. Kanjani Vs. ACIT (2017) 49 CCH 0043 Mum Trib.
- ii. Praveen Gupta Vs. ACIT ITAT, Delhi 'F' Bench (2011) 137 TTJ 0307
- iii. CIT Vs. S.R. Jeyashankar High Court of Madras (2015) 373 ITR 0120
- iv. Madhu Kaul Vs. CIT and another High Court of Punjab & Haryana (2014) 363 ITR 0054(P&H).
- v. CIT-III Vs. A. Suresh Rao High Court of Karnataka (2014) 223 Taxman 0228 (Karnataka).
- vi. CIT Vs. Ved Prakash Rakhra High Court of Karnataka (2015) 370 ITR 0762 (Karn).
- vii. Vinod Kumar Jain Vs. CIT & Ors. High Court of Punjab & Haryana (2012) 344 ITR 0501.
- viii. Pradeep Kar Vs. ACIT ITA 596/Bang/2014 dated 11.5.2016
- ix. ITO Vs. R. Sathyanarayana High Court of Karnataka (ITA 25 of 2001 dated 17.12.2007).

x. CIT Vs. B.K. Saroja (High Court of Karnataka) ITA No.328 of 2003 dated 13.12.2007.

8. He also relied on the CBDT Circular No.471 dated 15.10.1986.

9. On the other hand, Ld. D.R. submitted that date of acquisition of immovable property for the purpose of computation of cost of inflation of indexation to be the date considered on which the assessee got absolute sale deed in his favour. According to the Ld. D.R., the sale deed by Mysore Urban Development Authority (MUDA) was executed in favour of the assessee on 6.1.2004. According to the Ld. D.R., date of granting of possession certificate i.e. 23.6.1998 to be considered for the purpose of computing the indexation cost of the asset and which is related to A.Y. 1998-99. According to the Ld. D.R., allotment letter did not confer any right to acquire a property by the assessee and only created an interest to acquire the same, subject to terms & conditions as would be laid down in the agreement to be entered to purchase the said property.

10. We have heard the rival submissions and perused the materials available on record and gone through the orders of the authorities below. In the present case, assessee got allotment letter for site No.S-4, Siddharth Layout, Mysore on 20.5.1986. Payment of consideration was paid by assessee by 29.5.1986 and the possession certificate issued by the authorities on 23.6.1998. The sale deed was executed by MUDA in favour of the assessee on 6.1.2004. The said property was sold by assessee on 9.5.2012. The assessee's contention is that for the purpose of computation of capital gain, indexation cost of acquisition to be made from the date

of allotment of the site i.e. 20.5.1986. Contrary to this, A.O. considered date of grant of possession certificate as 23.6.1998 to determine the cost of inflation indexation so as to compute the capital gains. Now, the issue before us is whether the date of allotment of site or date of issue of possession certificate to be considered to determine the cost of inflation indexation. The Hon'ble Karnataka High Court in the case of CIT Vs. A. Suresh Rao 223 Taxman 228 (Karn) has analysed and explained at length. Hon'ble High Court analysed various provisions of the Act pertaining to computation of capital gain under various situations and also circulars issued by the CBDT on this issue. Relevant portion of the observation wherein the issue before us has been properly analysed is reproduced hereunder:

*"The definition as contained in Section 2 (42A) of the Act, though uses the words, "a capital asset held an assessee for not more than thirty-six months immediately preceding the date of its transfer", for the purpose of holding an asset, it is **not necessary that, he should be the owner of the asset, with a registered deed of conveyance conferring title on him.** In the light of the expanded definition as contained in Section 2(47), even when a sale, exchange, or relinquishment or extinguishment of any right, under a transaction the assessee is put in possession of an immovable property or he retained the same in part performance of the contract under Section 53-A of the Transfer of Property Act, it amounts to transfer. No registered deed of sale is required to constitute a transfer. Similarly, 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, also constitutes transfer and the assessee is said to hold the said property for the purpose of the definition of 'short-term capital gain'. In fact, the Circular No.495 makes it clear that transactions of the nature referred to above are not required to be registered under the Registration Act, 1908. Such arrangements confer the privileges of ownership without transfer of title in the*

building and are common mode of acquiring flats particularly in multistoried constructions in big cities. The aforesaid new sub-clauses (v) and (vi) have been inserted in Section 2(47) to prevent avoidance of capital gains liability by recourse to transfer of rights in the manner referred to above. A person holding the Power of Attorney is authorized the powers of owner, including that of making construction though the legal ownership in such cases continues to be with the transferor. The intention of legislature is to treat even such transactions as transfers and the capital gain arising out of such transactions are brought to tax. Further, the Circular No.4 71 goes to the extent of clarifying that for the purpose of Income-tax Act, the allottee gets title to the property on the issuance of the allotment letter and the payment of installments is only a follow up action and taking the delivery of possession is only a formality. In case of construction agreements, the tentative cost of construction is already determined and the agreement provides for payment of cost of construction in installments subject to the condition that the allottee has to bear the increase, if any, in the cost of construction. Therefore, for the purpose of capital gains tax the cost of the new asset is the tentative cost of construction and the fact that the amount was allowed to be paid in installments does not affect the legal position. Therefore, in construing such taxation provisions, what should be the approach of the courts and the interpretation to be placed is clearly set out by the Apex Court in the case of Smt. Saroj Aggarwal vs CIT 156 ITR 497 wherein it is held as under:-

"Facts should be viewed in natural perspective, having regard to the compulsion of the circumstances of a case. Where it is possible to draw two inferences from the facts and where there is no evidence of any dishonest or improper motive on the part of the assessee, it would be just and equitable to draw such inference in such a manner that would lead to equity and justice. Too hyper-technical or legalistic approach should be avoided in looking at a provision which must be equitably interpreted and justly administered Courts should, whenever possible unless prevented by the express language by any section or compelling circumstances of any particular case, make a benevolent and justice oriented inference. Facts must be viewed in the social milieu of a country."

Therefore, keeping the aforesaid principles in mind, when we look at Section 48, the language employed is unambiguous. The intention is very clear. When a capital asset is transferred, in order to determine the capital gain from such transfer, what is to be seen is, out of full value of the consideration received or accruing, the cost of acquisition of the asset, the cost of improvement and any expenditure wholly or exclusively incurred in connection with such transfer is to

be deducted. What remains thereafter is the capital gain. It is not necessary that after payment of cost of acquisition, a title deed is to be executed in favour of the assessee. Even in the absence of a title deed, the assessee holds that property and therefore, it is the point of time at which he holds the property, which is to be taken into consideration in determining the period between the date of acquisition and date of transfer of such capital gain in order to decide whether it is a short-term capital gain or a long term capital gain.”

10.1 Further, in the case of Richa Bagrodia in ITA No.3601/Mum/2012 dated 22.4.2014, the Tribunal considered similar issue and observed as under:

4. We heard both the parties and perused the orders of the Revenue Authorities as well as the judgments of the Hon'ble High Court and the decisions of the Tribunal cited by learned representatives of both the parties. The only issue that is to be decided is whether the date of allotment of the flat or the date of possession of the flat by the assessee should be considered as the date for computing the holding period of 36 months. On perusal of the cited orders of the Tribunal (supra), we find that an identical issue came up for adjudication before the Tribunal in the case of Meena A Hemnani (supra), order dated 17th January, 2014 wherein one of us (AM) is a party and the issue was decided in favour of the assessee by relying on various decisions of the Tribunal as well as the judgment of the Hon'ble Gujarat High Court in the case of CIT vs. Anilaben Upendra Shah (2003) 262 ITR 657 (Guj). Relevant discussion is given in paras 3 & 4 of the said order of the Tribunal which read as under:

3. There are couple of issues raised in this appeal. Rest of the grounds raised in the appeal are either consequential or general in nature. Accordingly, they are dismissed as general or consequential. The issues, which need to be adjudicated in this appeal are (0 if the capital gains earned by the assessee are in the nature of the short term as held by the AO or long term capital gains as offered by the assessee in the return. At the outset, Ld Counsel for the assessee mentioned that the assessee purchased a flat vide the allotment letter dated 9.9.2003 from the builder namely Prestige Estates Projects Pvt. Ltd. There was a construction agreement between the parties dated 1.12.2003 and the registered deed of the same was dated on 22.9.2006. The said flat was sold by the assessee to Bennet Coleman & Company on 10.11.2006. The assessee earned capital gains on this transaction and offered the same as long term capital gains reckoning the date of allotment i.e., 9.9.2003 for the purpose of determining the holding period of three years relevant for the long term capital gains. However,

*in the assessment proceedings, AO considered the date of registration i.e., 22.9.2006 the date of registration and determined the short term capital gains. Therefore, now the issue to be decided by the Tribunal relates to if the date of allotment should be considered for the purpose of computing the said long term capital gains. In this regard, Ld Counsel filed various decisions to suggest that the **date of allotment** must be considered for the purpose of computing the long term capital gains instead of date of registration. Ld Counsel filed the order of the Tribunal in the case of ACIT vs. Smt Vandana Rana Roy vide ITA No. 6173/M/2011 (A Y 2007-2008) dated 7.11.2012, wherein one of us (AM) is a party, and stated that the "date of allotment" should be reckoned as relevant date for computing the holding period for the purpose of computing the capital gains. In this regard, Ld Counsel brought our attention to para 7 and 8 of the said order of the Tribunal to support his case. The said judgment was decided considering the judgment of the Gujarat High Court in the case of CIT vs. Anilaben Upendra Shah (2003) 262 ITR 657 (Guj) apart from other decisions of the Tribunal in the case of Jitendra Mohan vs. ITO (2007) 11 SOT 594 (Del) and also another decision of the ITA T in the case of Pra vin Gupta vs. ACIT and the relevant propositions are extracted in para 7 of the Tribunal's order dated 7.11.2012. The said paras 7 and 8 from the order of the Tribunal in the case of Smt Vandana Rana Roy read as under:*

7. We have heard both the parties, perused the cited decisions and we find that there is no dispute on the facts. The only issue that is to be decided is whether date of allotment of the flat or the date of possession of the flat by the assessee should be considered as date of holding for computing the holding period of 36 months. In alternative, the "date of registration" should be the relevant date. On perusal of the said decisions relied upon by the Ld Counsel, we find that the decisions are relevant and applicable to the facts of the present case. The conclusion of the Hon'ble Gujarat High Court judgement in the case of CIT Vs. Jindas Panchand Gandhi reads as under:

"Assessee having sold the flat allotted to him by a co-operative housing society after a period of 36 months from the date of allotment, capital gains arising to him were long-term capital gains despite the fact that the physical possession of the flat was given to the assessee much later and, therefore he was entitled to deduction from such gains as per law"

*7.1 The conclusion of the **Hon'ble Gujarat High Court judgment in the case of CIT vs. Anilaben Upendra Shah** reads as under:*

"Assessee having held the shares and allotment of a flat in a co-operative housing society for a period of more than 36 months the capital gain arising from sale of said flat was longterm capital gain and assessee was entitled to benefit of section 80T irrespective of the fact that the assessee did not get

possession of the fiat in question at the time of allotment and it was constructed later on."

7.2 The conclusion of Hon'ble ITA T, Delhi Bench in the case of Jitendra Mohan vs. ITO reads as under:

"On the facts of the case, assessee held the capital asset (shed) allotted to it on installment basis from 2^e December, 1994, the date of payment of second installment and sale thereof on 1.5^o7 December, 2000, gave rise to long term capital loss even though possession of shed was handed over by DSIDC to assessee on 28^m May, 1998."

7.3 The conclusion of Hon'ble ITA T, Delhi Bench in the case of Praveen Gupta vs. ACIT reads as under:

"Assessee can be said to have held the flat when he made the payment to the builder and received the allotment letter, and therefore, benefit of indexation of cost of acquisition of the fiat has to be granted to the assessee from the date (1995) when he started making payment to the builder and not from the date of execution of conveyance deed in 2001."

8. *All the above decisions are uniform in concluding that the "date of allotment" is reckoned as the date for computing the holding period for the purpose of capital gains. The date of allotment in this case being 19.11.2001 and the date of sale is 23.8.2006, therefore, the holding period is much more than 36 months. In this case, the gains earned by the assessee on the sale of flat have to be computed as capital gains. Without prejudice, even if the date of possession, being 14.8.2003, is considered; the assessee is still entitled to the benefits of the Long Term Capital Gains. Therefore, in our opinion, order of the CIT (A) does not call for any interference. Accordingly, the grounds raised by the Revenue are dismissed."*

4. *Considering the above settled nature of this issue, we are of the opinion that the assessee must succeed on this issue. Accordingly, the relevant grounds of appeal are allowed."*

7. *From the above settled position of the issue, it can be safely concluded that the "date of allotment" should be reckoned as the date for computing the holding period for the purpose of capital gains. In the instant case, the date of allotment is 11.04.2003 (FY 2003-2004) and the date of sale of the property is 14.10.2007, therefore the holding period is more than 36 months. Therefore, the capital gains earned by the assessee on the sale of the flat have to be treated as 'long term capital gains'. The assessee paid the first installment on 11.4.2003, thereby conferring a right to hold a flat, which was later identified and possession delivered on later date. The Hon'ble Punjab & Haryana High Court in the case of Mrs. Madhu Kaul vs. CIT vide Income Tax Appeal No.89 of 1999, dated 17th January, 2014 held that the mere fact that possession was delivered later, does not detract from the fact that the allottee was conferred a right to hold*

*property on issuance of an allotment letter. Thus, the Id DR's arguments on non-existence of the flat at the time of issuing of allotment letter stands answered by the said judgment of the Hon'ble High Court of Punjab & Haryana (supra). The same view was supported by various decisions of the Tribunal as well as the judgments of the Hon'ble Gujarat High Court and the relevant conclusions were already extracted in the above paragraphs of this order. Regarding the judgments of the Hon'ble jurisdictional High Court relied on by the Ld DR are distinguishable on facts. Therefore, considering the above settled nature of the issue as well as the following the principle of consistency, we are of the considered opinion that the ground no.1 raised by the assessee should be allowed. Accordingly, ground no.1 is **allowed.**"*

11. Same view was taken by coordinate bench in the case of Bhatkal Ramarao Prakash Vs. ITO in ITA No.2692/Bang/2018 dated 4.1.2019. Being so in our opinion, in this case for computing the inflation cost of the asset, the date to be reckoned from the date of allotment of the property to the assessee and not the date on which possession certificate issued to the assessee. Further, a judgement relied by CIT in the case of CIT Vs. Balbir Singh Maini (SC) (supra) have no application and it was delivered on different context with reference to section 2(47)(v) of the Act and the judgement of Hon'ble High Court relied by the assessee's counsel in the case of A. Suresh Rao cited (supra) is a direct judgement applicable to the facts of the case. Being so, we have no hesitation in reversing the finding of the Ld. CIT(A) on this issue and direct the A.O. to consider the date of allotment of property i.e. 20.5.1986 for the purpose of determining the cost of inflation of the assets, while computing the cost of acquisition of property in terms of section 49 of the Act. This ground of the assessee is allowed.

12. Next ground for our consideration with regard to the non-granting cost of improvement, while computing the capital gain. The contention of the Ld. A.R. is that there was a building in the impugned property and the cost has to be considered while computing the cost of acquisition of the impugned property.

13. We have heard the rival submissions and perused the materials available on record and gone through the orders of the authorities below. There is no iota of evidence that there is an existing building in the impugned land. The only contention of the assessee is that assessee declared income from said property under the head “income from house property” in earlier assessment years. However, there was no evidence to show that there is a building therein. In our opinion, declaring income in the return of income from Siddharth Nagar Property does not suggest that there is a building in the impugned property. Since the assessee has not furnished any revenue record to show that there is a building or evidence regarding power connections or water connections, in the absence of this evidence, it has to be noted that there is no building in the scheduled property and the assessee is not entitled for any benefit of cost of improvement. This ground of appeal of assessee is allowed.

14. The last ground for our consideration is with regard to the non giving due credit towards TCS as per 26AS at Rs.18,165/-. The Ld. CIT(A) given a direction to the A.O. to give TCS credit to the assessee after due verification. Accordingly, the assessee shall produce the necessary evidence with regard to the TCS credit and the A.O. shall consider the same and give due credit as reflected in form 26AS. This ground of the assessee is allowed.

15. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 18th Nov, 2020

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 18th Nov, 2020.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.

1. Date of Dictation
2. Date on which the typed draft is placed
before the dictating Member
3. Date on which the approved draft comes to Sr. P. S
.....
4. Date on which the fair order is placed
before the dictating Member
5. Date on which the fair order comes back to the Sr.
P.S.
6. Date of uploading the order on
website.....
7. If not uploaded, furnish the reason for doing so
.....
8. Date on which the file goes to the Bench Clerk
.....
9. Date on which order goes for Xerox &
endorsement.....
10. Date on which the file goes to the Head Clerk
.....
11. The date on which the file goes to the Assistant
Registrar for signature on the order
.....
12. The date on which the file goes to dispatch section
for dispatch of the Tribunal Order
.....
13. Date of Despatch of Order.
.....
14. Dictation note enclosed.....