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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision : 11.09.2025

+ **ITA 390/2025**

PRAVEEN GUPTA

.....Appellant

Through: Mr. Rajesh Mahana Ms Silky Wadhwa, Mr. Mayank and Ms Ridhi Maha, Advs.

versus

DCIT CIRCLE INTL TAXATION (1) (3) (1), NEW DELHI

.....Respondent

Through: Mr. Debesh Panda, SSC, Ms. Zehra Khan, JSC and Ms. Anauntha Shankar and Ms. Ravicha Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE VINOD KUMAR

V. KAMESWAR RAO, J. (ORAL)

1. The challenge in this appeal under Section 260A of the Income Tax Act, 1961 is to an order dated 23.04.2025 passed by Income Tax Appellate Tribunal (Tribunal in short) in ITA 7304/Del/2019, which pertains to Assessment Year 2016-17, whereby the Tribunal has dismissed the appeal filed by the appellant herein by stating the following in paragraph 3 onwards:



“3. The assessee pleads the following substantive grounds in the instant appeal:

“1. On the facts and Circumstances of the case and in law the Ld CIT (Appeals) was incorrect and unjustified in making a addition o f Rs 412812.00 in Long Term Capital Gain o n the ground that as the builder buyer done from financial year 2010-2011 though the fl at payments were being made since Apr il 2007.

2. That having regard to the facts and circumstances of the case , Ld. CIT (A) has erred in law and on facts in making a addition of R s 4,12,812.00 on account of long term capital gain.

3. That having regard to the facts and circumstances of the case the L d CIT (A). has erred in no t allowing indexation n of the full value of property on the date of payment of EMI.

4. That On the facts and circumstances of the case the Assessing officer was wrong, incorrect and unjustified in issuing penalty notice under section 271(1)(c).”

4. It emerges at the outset that the assessee’s sole substantive grievance raises in the instant appeal challenges both the learned lower authorities’ respective findings denying him indexation benefits from the date of builder/buyer agreement thereby re-computing his long term capital gains resulting in addition of Rs.4,12,812/-, in the course of assessment framed on 18.12.2018 as upheld in the CIT(A)’s order.

5. We make it clear in this factual backdrop that the relevant facts herein are indeed in a very narrow compass. This is for the precise reason that the assessee had been allotted the relevant capital assets by M/s Omaxe Property in F.Y. 2007-08 and he admittedly started making payments since then only. This followed the builder/buyer agreement between the parties executed on 19.07.2010. The assessee thereafter sold/transferred the said capital asset along with his wife ; both having half share in the relevant previous year , and claimed indexation benefit from F.Y. 2007-08 which stands rejected by



both the learned lower authorities who have gone by the date of the above agreement i.e. on 19.07.2010.

6. It is in this factual backdrop that the assessee's case before us is that the impugned indexation benefit ought to be granted from F.Y. 2007-08 as against the Revenue's arguments placing reliance on Gulshan Malik vs. CIT (2014) 223 taxman.com 243 (Delhi) that the clinching date ought to be that of the builder/buyer agreement only. We observed from the documents placed on record that the assessee was provisionally allotted flat on 21.09.2007 by the builder and subsequently the assessee modified the provisional allotment of above flat with another flat, which is confirmed by the builder vide letter dated 13.11.2009. Even the new flat was also allotted provisionally vide above said letter dated 13.11.2009. Only on 26.03.2010, the final allotment was made by signing the allotment cum agreement dated 19.07.2010. Therefore, all the communications filed by the assessee indicates only provisional allotment. Further, assessee has made substantial payment based on the signed agreement subsequently. Therefore, we are not inclined to accept the plea of the assessee. The AO has fairly allowed the indexation subsequent to the date of agreement. Therefore, we inclined to dismiss the grounds raised by the assessee.

7. No other ground or argument has been pressed before us.

8. This assessee's appeal is dismissed in above terms. Order Pronounced in the Open Court on 23/04/2025."

2. The grievance of the appellant is against the addition of Rs.4,12,812/- made by the Assessing Officer as upheld by the CIT (Appeals) denying the indexation benefit from AY 2007-2008. The same is pursuant to a booking of an apartment in Greater Noida on 30.04.2007 by paying an amount of Rs.6,69,375/-. The letter of allotment dated 21.09.2007 reads the following :

"LETTER OF ALLOTMENT

SUB: ALLOTMENT OF APARTMENT IN OUR PROPOSED CROUP HOUSING PROJECT "OMAXE PALM GREENS SITUATED AT, SECTOR-MU, GREATER NOIDA



Dear Sir/Madam,

This has reference to your application dated 20/04/2007 for the allotment of an Apartment in our proposed Group Housing Project "Omaxe Palm Greens" at Sector-MU, Greater Noida. As per the tentative layout plan of the said project drawn by us, we allot to you Apartment No.504, on FIFTH FLOOR in SPEAR PALM-B TOWER, having a super area of approximately 157.94 Sq.mtrs./1700 sq. ft. in "Omaxe Palm Greens". The allotment is in accordance with the terms and conditions contained in the application form. A detailed allotment letter containing the terms and conditions will be executed soon.

We thank you for reposing faith in us and we assure you the best of our services at all times.

Thanking you,

Yours truly,

For OMAXE BUILDHOME PVT. LTD."

3. It appears that pursuant to the booking of a flat in Greater Noida, the appellant had requested for a change of allotment to a different project in Faridabad. In accordance thereof, a Cancellation and an Adjustment document dated 19.07.2010 was executed between the parties. Pursuant thereto a Builder Buyer Agreement was executed on the same day between the appellant and the Omaxe Ltd.

4. The amount of Rs.4,12,812/- was added to the income as a long term capital gain on the ground that the Builder Buyer Agreement was dated 19.07.2010. Thus, the AO gave benefit indexation from the Financial Year 2010-11 and not from 2007-2008. The same was upheld by the CIT (Appeals). The grounds of appeal of the appellant before the ITAT were the following:

“3. The assessee pleads the following substantive grounds in the instant appeal:



“1. On the facts and Circumstances of the case and in law the Ld CIT (Appeals) was incorrect and unjustified in making a addition o f Rs 412812.00 in Long Term Capital Gain o n the ground that as the builder buyer done from financial year 2010-2011 though the fl at payments were being made since Apr il 2007.

2. That having regard to the facts and circumstances of the case , Ld. CIT (A) has erred in law and on facts in making a addition of R s 4,12,812.00 on account of long term capital gain.

3. That having regard to the facts and circumstances of the case the L d CIT (A). has erred in no t allowing indexation n of the full value of property on the date of payment of EMI.

4. That On the facts and circumstances of the case the Assessing officer was wrong, incorrect and unjustified in issuing penalty notice under section 271(1)(c).”

5. The ITAT has relied upon the judgment of this court in ***Gulshan Malik vs. CIT (2014) 223 taxman.com 243 (Delhi)*** to reject the appeal filed by appellant.

6. The submission of Mr. Mahana is primarily that the allotment of flat gives a right in favour of the appellant in respect of that property and hence the addition in the manner done is unjustified. He also states that the change of project from Greater Noida to Faridabad is in continuance of the allotment letter initially issued on 21.09.2007 and as such the benefit of the same could not have been denied to the appellant from that AY 2007-2008. He states that the judgment as relied upon by the Tribunal is clearly distinguishable on facts.

7. On the other hand, Mr. Debesh Panda has drawn our attention to



contend that the letter dated 13.11.2009 issued to the appellant, clearly states that allotment is provisional and as such no rights have accrued in the property, which was allotted to the appellant.

8. We agree with the submission made by Mr. Panda in view of the judgment of this court in the case of **Gulshan Malik** (supra), wherein paragraph 8 of the judgment, this court has stated as under :

“8. This being the case, the only question that arises for consideration is whether the booking rights to the apartment accrued to the assessee on the date of application for allotment/confirmation of allotment or on the date of execution of the agreement to sell i.e. the buyer’s agreement. This Court is of the opinion that a right or interest in an immovable property can accrue only by way of an agreement embodying consensus ad idem. The nature of the right sought to be transferred here is the right to purchase the apartment and obtain title, termed “booking rights”. Only that agreement which intends to convey these rights according to both parties can be considered as the source of accrual of rights to the assessee. The confirmation letter dated 6.8.2004 (Annexure 3) specifically states first, that no right to provisional/final allotment accrues until the Buyer’s Agreement is signed and returned to the builders and second, that no right to claim title/ownership results from the confirmation letter itself. Thus, it is clear that the Builders do not intend to convey any right of provisional/final allotment or any right to claim title/ownership under the confirmation letter. There being no intention to convey rights in this document, it would be impermissible for this Court to find that the right to obtain title/“booking rights” emanated from the confirmation letter. These rights may only be located in the Buyer’s agreement, and thus, the date of acquisition of the capital asset must be considered the date of signing of said agreement i.e. 4.11.2004.”

9. In view of the conclusions drawn by this court, which are clearly



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applicable to the facts of this case, we do not see any substantial question of law arises for consideration in this appeal. The appeal being without any merit is dismissed.

V. KAMESWAR RAO, J

VINOD KUMAR, J

SEPTEMBER 11, 2025

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