IN THE INCOME TAX APPELLATE TRIBUNAL

MUMBAI BENCH "I", MUMBAI

BEFORE MS. PADMAVATHY S, ACCOUNTANT MEMBER

AND

SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER

ITA NO. 1011/MUM/2025 (A.Y: 2015-16)

Braj Kishore Singh 604, Lantana, Nahar Amrit Shakti, Chandivali, Maharashtra -400 072. **PAN: BQIPS8474H**	*Vs.*	**Assessing Officer Internatinal Tax Ward 4(2)91)** Room No. 632, Kautilya Bhavan, C-41 to C-43, G Block, Bandra Kurla Complex, Bandra (East), Mumbai-400051
(Appellant)		**(Respondent)**

Assessee Represented by	**:**	**Shri Suresh Kumar Gundher / Shri Abhishek Bothra, Ld. ARs.**
Department Represented by	**:**	**Shri Krishna Kumar, Ld. DR**
Date of conclusion of Hearing	**:**	**16.06.2025**
Date of Pronouncement	**:**	**23.06.2025**

O R D E R

PER RAJ KUMAR CHAUHAN (J.M.):

1. This appeal is filed by the appellant/assessee against the assessment order dated 17.12.2024 which was passed in pursuant to the direction of Ld. DRP u/s 144C(5) of the Act dated 21.11.2024 wherein the long term capital

gain (LTCG) of the assessee was assessed at Rs. 17,04,264/- for the AY 2015-16.

2. The brief facts as culled out from the order of lower authorities are that the assessee is an individual having residential status as non-resident during the FY 2014-15 relevant to the assessment year under consideration i.e. AY 2015-16. It was observed from the departmental data base that the assessee had sold immovable property for a consideration of Rs. 70,00,000/-; rent received Rs.96,250/-; paid Rs.3,20,500/- against credit card bills and interest received from Corporation Bank of Rs. 1,444/-. It was observed from e-filing portal of the department that the assessee had not filed return of income for the year under consideration which caused escapement of income. Since there was escapement of assessment of income to the tune of Rs. 74,18,194/- during the year under consideration, the assessment was reopened within the provision of section 147 of the Act by issuing notice u/s 148 of the Act dated 26.04.2022. In response to the notice issued u/s 148 of the Act dated 26.04.2022, the assessee filed his return of income for the A.Y. 2015-16 on 28.05.2022 declaring total income at Rs. 1,54,700/-. Further, notice u/s 142(1) of the Act dated 03.10.2022 along with questionnaire was issued and served upon the assessee and

asked to file the entire details of all immovable properties, copy of agreement of purchase/sale of property, details of payments for purchase of property, details of payments received on sale of immovable property, details of payment of credit card bill, etc. Since no reply was received from the assessee within stipulated time, penalty notice u/s 274 r.w.s. 271(1)(b) of the Act dated 17.10.2022 was issued and served upon the assessee. Subsequently, notice u/s 142(1) of the Act dated 14.10.2022 was issued and served upon the assessee requesting to submit details as per notice. In response to the same assessee submitted on 14.11.2022 wherein he has submitted copy of account statement of Union Bank, copy of passport, acknowledgement of ITR filed in response to the notice u/s 148 along with computation of income, bank account statement of Corporation bank, reply letter, index-II of the property purchased in 2007. Further, notice u/s 142(1) of the Act dated 26.08.2023 was issued to the assessee requesting to submit details of property sold along with working of LTCG, details of property purchased, etc. In response to the same, the assessee submitted his reply dated 13.09.2023 alongwith all necessary documents as called for.

3. The reply of the assessee was not found tenable on the ground that assessee had made purchase agreement in January 2007, but the

possession to the property was given in December 2010. Hence, the assessee was eligible to claim indexation from F.Y. 2010 only. Therefore, the LTCG on sale of immovable property was recomputed by the AO as under:-

Sale consideration of the property Rs.70,00,000

Cost of acquisition Rs.36,77,020

Indexed cost of acquisition 1024/711*36,77,020 Rs. 52,95,736

Long term capital gain Rs.17,04,264

4. In the draft assessment order, the AO concluded that the assessee has failed to furnish inaccurate particulars to conceal the income of Rs. 17,04,264/-, hence AO recommended for initiating penalty proceedings in this regard u/s 271(1)(c) of the Act and income of the assessee was computed as under:-

Sr. No.	Particulars of income	Amount in Rs.	Amount in Rs.
1.	House property income as per statement		(-)11,778
2.	Long term capital gain as discussed at para 4		17,04,264
3.	Income from other sources as per statement		29,602
	Gross total income		17,22,088
	Less : Deduction under chapter		29,602

	VIA as per statement		
	Total income		16,92,486
	Rounded off to		16,92,490

5. The draft assessment order framed u/s 144C(1) of the Act was forwarded to the assessee to exercise his option as provided in section 144C(2) of the Act.

6. The assessee filed the objections before the Ld. DRP and Ld. DRP observed that M/s Arihant Properties entered into an agreement to sale a flat on 16.11.2007 and as per the documents, possession of Flat B-707 (identified for the first time) was handed over to the assessee vide 'Possession Letter dated 16/12/2010. The appellant sold the property in question vide Sale deed dated 25/02/2015. As per the ROI filed LTCG qua property in question has been offered at Rs.1,66,482 (Indexation at 1024/551 x Cost of Acquisition Rs.36,77,020 = Rs.68,33,518), which has been recalculated to Rs. 17,04,264 (Indexation at 1024/711 x Cost of Acquisition Rs.36,77,020 = Rs. 52,95,264). It was further observed that the core of the dispute is concerning Explanation (iii) to section 48 of the Income-tax Act i.e. 'Indexed Cost of Acquisition'. Ld. DRP finally concluded that the appellant has been given ownership/possession of the flat only in year 2010 as per the possession letter submitted and as observed from para

13 of the 'Agreement to Sale'. Hence, the objection of the assessee was not considered and accordingly rejected.

7. In pursuance of the direction of Ld. DRP, the impugned assessment order was passed by the AO, against which the assessee in appeal before us and has raised the following grounds of appeal:-

> *1. On the facts and circumstances of the case and law, the notice issued u/s 148 dt. 26.04.2022 by the JAO, Int. Tax Ward 4(2)(1) is itself non-jurisdictional and invalid as per rules of National Faceless Assessment notification dt. 19.03.2022. Notice should be issued by FAO.*
>
> *2. On the facts and circumstances of the case and law, the capital gain has to be calculated from the date of payment and not from the date of possession/agreement. In appellant case, the first payment was made in FY 2006-07 and maximum payments were made till FY 2007-08 and registration was done on 16/11/2007. Final possession was given on 16/12/2010. In view of the facts and circumstances of the case and law, the indexation benefit must be allowed from the year of payment and not from the date of possession.*
>
> *3. On the facts and circumstances of the case and law, the Ld. DRP panel direction dated 21.11.2024 being calculation of LTCG of Rs. 17,04,264/-is incorrect on the facts and judicial pronouncement and liable for deletion, which has lost sight to various pronouncement, where in it was held that the indexation must be from the date of allotment.*
>
> *4. On the facts and circumstances of the case and law, the Ld. JAO order calculation of LTCG of Rs 17,04,264/- is incorrect on the facts and judicial pronouncement and liable for deletion.*

5. The appellant had not claimed additional amenities cost paid to builder at the time of assessment amounting to Rs 2,32,500/-. Ledger account copy from builder as well bank statement of appellant do confirm the payment, therefore, must be allowed from the calculation of long term capital gain.

6. On the facts and circumstances of the case and law, the Ld. JAO erred in confirming charging of interest under section 234A, 234B, 234C and 234D of Income Tax Act, 1961.

7. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming invocation of Penalty provision under Section 271(1)(c) of Income Tax Act, 1961.

8. Appellant craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing.

8. On perusal of the grounds, it is noticed that ground no. 2, 3 & 4 pertains to considering the date of acquisition for the purpose of computation of capital gain i.e. from the date of first payment in the FY 2006-07 or from the date of possession given on 16.12.2010. Accordingly, we proceed to decide the ground no. 2 to 4 jointly on merit which are the main grounds of the appeal.

9. We have heard the Ld. AR and Ld. DR and examined the record. Ld AR brought to our notice Paper book 1 filed by the assessee on 03.04.2025 containing 140 pages, Paper Book 2 filed by the assessee on 16.06.2025 and written submissions are filed by the assessee on 11.06.2025. **Firstly**, the

Ld. AR argued that the directions issued by the Ld. DRP on 21.11.2024 computing the LTCG at Rs. 17,04,264/- is factually and legally unsustainable because the Ld. DRP has not considered the legal position as settled by various judicial precedents to the effect that the indexation must commenced from the date of acquisition or allotment /payment and not the date of the possession. **Secondly**, the Ld. AR argued that the Ld. AO and Ld. DRP erred in restricting the indexation benefit for the cost of acquisition from FY 2010-11 (year of possession) instead of FY 2007-08 (year of agreement). **Thirdly**, Ld. AR submitted that the direction of the Ld. DRP is contrary to the provisions of Section 48 Explanation (iii) of the Act. **Fourthly**, Ld. AR argued that the interpretation of the Ld. DRP linking the word 'held' to 'possession' as used in the Explanation (iii) of section 48 of the Act, in the context of ownership for house property income, is misplaced for capital gains computation. **Fifthly**, Ld. AR submitted that the assessee shall be construed to have held the asset for the purpose of acquisition and computation of LTCG from the date of agreement to sale when substantial payment were made and not from the date of possession of the asset. **Sixthly**, Ld. AR submitted that in order to acquire the said property, the assessee has made the following payments:-

Financial Year	Amount Paid (Rs.)	Description
FY 2006-07	3,41,000	Booking amount to Purchase the Flat
FY 2007-08	21,94,700	Purchase cost + Stamp Duty & Registration Fee
FY 2008-09	10,38,000	Balance Purchase cost
FY 2009-10	2,32,500	Expenses to make a home habitable
FY 2010-11	1,04,000	Final Payment
Total	39,10,200	

Therefore, Ld. AR submitted that more than 50% i.e. 64.85% of total cost was paid till FY 2007-08. **Seventhly**, Ld. AR submitted that the assessee got right to hold the asset from the date of "Agreement to Sale" in January 2007 (FY 2007-08), therefore the indexation should commence from that year.

10. In support of his arguments, Ld. AR placed reliance on the judgment of the Hon'ble Supreme Court in the case of Sanjeev Lal vs. CIT [(2014) 365 ITR 389 (SC)], wherein the Hon'ble Court held as under:

> *23. Consequences of execution of the agreement to sell are also very clear and they are to the effect that the appellants could not have sold the property to someone else. In practical life, there are events when a person, even after executing an agreement to sell an immoveable property in favour of one person, tries to sell the property to another. In our opinion, such an act would not be in accordance with law because once an agreement to sell is executed in favour of one person, the said person gets a right to get the property transferred in his favour by filing a suit for specific performance and therefore, without hesitation we can say that some right, in respect of the said property, belonging to the*

appellants had been extinguished and some right had been created in favour of the vendee/transferee, when the agreement to sell had been executed.

24. Thus, a right in respect of the capital asset, viz. the property in question had been transferred by the appellants in favour of the vendee/transferee on 27th Dec., 2002. The sale deed could not be executed for the reason that the appellants had been prevented from dealing with the residential house by an order of a competent Court, which they could not have violated.

11. Ld. AR further relied on the judgment of Hon'ble Punjab and Haryana High Court in the case of Mrs. Madhu Kaul vs. CIT, Chandigarh (ITA No. 89 of 1999) dated 17.01.2014, the judgment of Hon'ble Allahabad High Court in the case of Nirmal Kumar Seth vs. CIT (2012) 17 taxmann.com 127 (Allahabad) and the decision of Coordinate Bench of ITAT in the case of Ms. Renu Khurana vs. ACIT in ITA No. 1368/Del/2022 dated 17.02.2023.

12. Ld. AR referred page 7 of the paper book 2 which is agreement to sale and pointed out that Flat No. B-707 on 7th floor, is clearly mentioned in the agreement to sale and Ld. DRP has wrongly concluded that Flat No. B-707 was mentioned first time at the time of possession. He further referred point no. 3 of page 8 of the Paper book-2 showing schedule of payment of the amount to show that substantial payment was to be made during the FY

2007-08. Therefore, Ld. AR requested that the grounds no. 2 to 4 needs to be allowed in favour of the assessee and the impugned order be set aside.

13. On the other hand, Ld. DR supported the order of AO and the directions of Ld. DRP and prayed for dismissal of the appeal.

14. We have considered the rival submissions and examined the material on record. We notice that the similar issue has been decided by the judgment of the Coordinate Bench of ITAT, Mumbai in ITA No. 851/Mum/2025 dated 04.06.2025 in which one of us was the Member of the Bench. For the sake of clarity, we proceed to extract para no. 11 to 17 of the said judgment as under:-

> *11. We have considered the rival submissions and examined the material on record. On perusal of the judgment of the Mumbai Tribunal in ITA No. 2489/Mum/2022(supra), we have noticed that the case of assessee, stand of the revenue, directions of Ld. DRP and the observations of the AO in the present case, are totally similar to the facts of the said ITA No. 2489/Mum/2022 (supra) and on the basis of said fact, the assessee has claimed that the present case is covered by the decision of Mumbai Tribunal and the appeal is required to be allowed. To appreciate the averments of the assessee, the following para 10 to 28 of the order of ITAT in ITA No. 2489/Mum/2022 are extracted below:-*
>
> > *10. From the aforesaid letter, the ld. counsel submitted as under:-*
> > *The Appellant has acquired the right to purchase the earmarked impugned flats subject to payment of consideration as per the agreed consideration schedule and other conditions. At*

para 2 of the allotment letter it is specifically mentioned that on fulfillment of the conditions by the Appellant i.e, making payment of the entire consideration, the developer will hand over the possession of the impugned flats to the assessee.

At Para 4 of the allotment letter the Developer had specifically identified and earmarked the impugned flats in the name of the Appellant along with the Flat No., area, total consideration, service tax and VAT payable thereon and the payment schedule as per the stated milestone of completion of the construction.

Thus, the Developer is bound to respect the same upon satisfying the conditions as laid down in the LOI. Accordingly, the letter dated 14-02-2011 is in essence the letter of allotment and not letter of intent.

11. He also drew our attention to various communication by the developer with the assessee requesting payment of money as agreed in the payment schedule on completion of the milestone as stated in the schedule of payment from the aforesaid communications, it is evident that the Developer had asked the assessee to make various payments on achieving milestones (as per the LOI). Also, such communications specifically mention the fact that these flats are earmarked. Further, the receipts along with the copies of the cheque were produced to evidence that the developer had received payment from the assessee towards the purchase of the impugned flats as mentioned in the respective receipts. In the aforesaid communication issued by the Developer there is a clause requesting the assessee to make the payments towards the amount mentioned in the said communication else the Developer has a right to cancel the earmarked flat. This means that if timely payment is made by the assessee the allotment made against the earmarked flats are ongoing and valid. Further, failure to make payment as mentioned in the communication would lead to cancellation of the allotment which means that there is a pre-existing right in the earmarked impugned flats created by the Developer in the favour of the assessee, Further, the total consideration as agreed in the LOI by the Appellant with the Developer in the year 2011 remained the same as evident in the agreement registered in the year 2017 Therefore, the Developer had always intended to sell the impugned flats to the assessee and accordingly, there was no hike in the price as agreed upon in the year 2011. In essence, the assessee had entered into a contractual arrangement to acquire an earmarked Immovable property at the agreed price and terms of payment with the developer. Merely different nomenclature used in the Letter dated 14-02-2011 would not e the substance of the transaction. The essence of the LOI

depends on the intention of the parties to the LOI and the substance of the LOI depends on the acts performed by the parties subsequent to the contract.

12. In the instant case, the Developer created a right in the earmarked impugned flats by issuing the letter of intent earmarking a specific and identified flat in favour of the assessee subject to payment of the consideration as agreed. Subsequently, the assessee acted upon the contract by making payment as and when the Developer completed the milestone as stated in the LOI and basis the communication made by the Developer. Ultimately, to understand the essence of the agreement and the intentions of the parties, the intention of the legislation or any precedent decision should not be considered but the private arrangement between the parties needs to be interpreted. The intention of the parties and above all the commercial decisions made between the parties determines the essence of the private agreement (in the instant case the LOI).

13. The assessee acquired the right to purchase the earmarked Kalpataru Properties in the initial stages of development of the Project. The LOI indicates that the completion of building is subject to the necessary approvals and obtaining the Occupation Certificate. Such clause is a standard industry norm and protects the interests of the assessee. The interpretation of the Learned AO that the builder as on the date of LOI is uncertain of these aspects is misplaced. He further submitted that, clause 3 and clause 8 of the LOI states that the amendment in the sanctioned layout is only to ensure optimal use of the space or if specifically required by any relevant authorities (including the MCGM). Further, it is also stated that the developer shall ensure that even where the number of floors in the building are increased, there is no variation in the areal position of the flat being earmarked to the assessee.

14. Reference to the clause 10 of the LOI was made wherein it was stated that upon entering into the LOI, the assessee had acquired the rights in the Kalpataru Properties to be constructed and these rights shall continue to vest so long as the assessee continues to comply with the conditions of the LOI. The said clause is in the interest of the Developer to ensure that the assessee does not claim his right in acquiring the Kalpataru Properties without payment of consideration. Reference to Clause 11 of the LOI was made wherein it was submitted that the assessee had acquired the right to purchase the specific earmarked impugned flats and payment of consideration as per the agreed milestones is merely a follow on condition which is required to comply with to continue to hold such right. Further, until 24 months prior to the date on which the assessee has transferred the

earmarked impugned flats, 95% of the consideration as per the Purchase Agreement was already discharged by the assessee. The developer was entitled to terminate the LOI only on account of non-payment of dues as agreed in the in the LOI towards the property specifically earmarked. Considering that the assessee had already discharged the payments, the developer could not terminate the LOI at his discretion.

15. Clause 12 of the LOI as referred by the Learned AO discusses the rights and obligations of the Appellant qua the Kalpataru Properties and not the right to acquire such Kalpataru Properties. The 'right' in question at the time of LOI is the right to acquire the earmarked Kalpataru Properties subject to the satisfaction of prescribed conditions.

16. Thus, he submitted that right in the impugned flats was always with the assessee from the date of the letter of intent dated 14.02.2011 issued by the developer.

17. In support of various contention, the ld. counsel as cited various judgments on the proposition that the period of holding is to be reckoned on the basis of issuance of letter of allotment and not from the date of registration. He also relied on some of the judgments which are as under:-

In the case of Mrs. Madhu Kaul v. CIT (2014) 363 ITR 54. the Hon'ble Punjab & Haryana High Court held that on allotment of the flat and upon payment of the first installment, a right to hold the flat is conferred and mere fact that the 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.

In the case of PCIT v. Vembu Vaidyanathan (2019) 413 ITR 248 the Hon'ble Bombay High Court the issue involved was whether the capital asset needs to be classified as long term from the date of execution of an agreement spelling out all the exact terms and conditions for acquisition or from the date of LOA, Reliance was placed on CBDT circulars dated 15 October 1986 and 16 December 1993 wherein it was clarified that date of allotment would be relevant date for the purpose of determining taxability of capital gains considering that such allotment is final unless it is cancelled or the allottee withdraws from the scheme and that it may be cancelled only under exceptional circumstances.

Further, the Income Tax department had filed an SLP before the Hon'ble Supreme Court of India which is dismissed -Principal Commissioner of Income Tax-3, Mumbai v. Vembu Vaidyanathan [2019] 108 taxmann.com 339 (SC)

In the case of Praveen Gupta v. ACIT (2012) 137 TTJ 307 the Hon'ble Delhi Tribunal observed that Explanation (iii) to section 48 and section 2(42A) of the Act requires a capital asset to be 'held'. It is not necessary that to constitute a capital asset, the Appellant must be an owner of the Capital Asset through registration of the conveyance deed. By entering into an agreement to allot a flat, the Appellant has identified a particular property which he intended to buy from the builder and that right of the Appellant itself is a capital asset. The builder is also bound to provide the applicant with that property by accepting certain advance amount and upon Appellant satisfying the terms of payment. Indexation must be computed computed on the basis of the dates on which payment is made.

In the case of Anita D Kanjani v. ACIT being ITA No. 2291/Mum/2015 (page 143-153 of paperbook), the Hon'ble Mumbai Tribunal held that the word used by the legislature was held and not owned. Thus, the intention of the legislature is clear that for the purpose of determining the nature of capital gain, the legislature was concerned with the न्याय apparently not concerned with absolute legal ownership of period during which the asset was held by the assessee for all practical purposes on de facto basis. The legislature was asset for determining the holding period. Thus, one needs to decide the point of time from which it can be said that assessee started holding the asset on de facto basis.

In the case of Jitendra Mohan v. ITO (2017) 11 SOT 594 (page 154-463 of paperbook). the Hon'ble Delhi Tribunal held that the word 'property' used in this section is of the widest amplitude which means that any right which a person can be called to hold in a capital asset would be included in the word 'property' used and included in the definition of 'capital asset' in section 2(14) of the Act. Accordingly, allotment of a shed and upon payment towards the dues, the assessee was entitled for computing LTCG as per the payments made."

18. Ld. Counsel also referred to the decision of the Mumbai Bench of this Tribunal wherein, it has been held that period of holding is to be computed from the letter of intent not from the date of registration in the case of Snehal Bimal Parekh Vs. PCIT in ITA No. 5489/Mum/2019 which was appeal against the order passed u/s 263.

19. On the other hand the ld DR strongly relied upon the order of the AO and submitted that here in this case is not a case of letter of allotment wherein, the assessee has been specifically allotted or given right in the said flats by the said letter but merely a letter of intent which showed that the assessee was intended to buy and developer is set out terms and conditions and the payment, For such intent to buy the flats which LOI cannot be treated as letter of allotment. Therefore, AO was justified in holding that the period of acquisition cannot be reckoned from the letter of intent. All the judgment which has been relied upon by the ld. counsel pertains to date from the letter of allotment. He further submitted that no right was vested to the assessee by said LOI and therefore, the AO has rightly taxed it as short term capital gain.

20. Before us the ld counsel during the course of hearing sought permission to file confirmation letter from the builder as to what was the date of allotment because the builder has clearly meant that impugned payment were to be allowed. Accordingly, he filed a letter dated 18.01.2023. Accordingly, the case was again put for clarification.

21. Both the parties were heard on this additional evidence on 03.03.2023. The reason for delay in filing of the letter is that the assessee was a non resident and was not available in India therefore, he has requested some time to file such letter which has bearing on the issues involved.

22. We have heard the rival submissions and perused the relevant findings given in the impugned order as well as evidence filed by the letter dated 18.01.2023. The core issue before us is, whether by virtue of letter dated 14.02.2011, can it be reckoned as a letter of allotment whereby the assessee had acquired the right of the flats allotted to him on the terms and conditions mentioned therein along with the payment schedule.

23 It is undisputed fact that the assessee had paid all the installments as per the schedule and according to the milestone laid down therein in pursuance of the said letter. If the said letter is not treated as allotment of flat and merely intent', ostensibly the said letter cannot be reckoned as date of acquisition of the rights of the flats. Though the letter mentions intent of both the parties, but the substance of the letter has to be examined and has to be seen in line of the various facts as brought out on the record. The said letter clearly earmarks the flats in the building and also specifies the consideration amount and also stated that the assessee has already deposited the sum of Rs. 10,00,000/-on the same date. The schedule of payment as incorporated above clearly specifies that the assessee has to

make the payment on certain milestone which has been duly adhered to by the assessee. Para 4 of said letter specially identifies and earmarks the impugned flat in the name of the assessee along with the flats and total consideration along with any service tax, works. contract tax, value added tax, goods & service tax Maharashtra value added tax etc. Once both the parties have treated the said letter as a contract for acquisition of the flats thus, in sum and substance it cannot be said that it is merely a letter of intent, when proposal and offer in the letter has been accepted alongwith the terms and conditions.

24. Further, important fact which is noted at para ara 12 clearly mentioned that it is merely a letter of intent and is not and does not purport to be an agreement for sale/ purchase of the said flat and the rights and obligations shall become effective only on execution of the agreement of sale and in terms thereof. Although, the obligations to pay the consideration amount has to be applied with and discharged irrespective of whether the agreement for sale has been executed or not. Thus, clause per se prima facie does not transfer any right to the assessee at the time of letter of intent despite builder has demanded the buyer to fulfill all the conditions.

25. On this point, specific query was raised to the Id. Counsel as to whether by way of this LOI any specific allotment or right was transferred to the assessee. He submitted that whole letter of intent has been actually treated as letter of allotment by the developer that is the reason why the assessee had made the payment and on the completion of payment the registration has been done on 20.12.2017, i.e., FY 2017-18. It was in this background the confirmation letter from the builder has been obtained by the assessee which has been filed before us. The builder in respect of the flats has stated that the virtue of letter of intent dated 14.02.2011; the flats were actually allotted to the assessee which was specifically earmarked in the said LOI. One. of the letter reads as under:-

"Madam/Sir,
1. Kindly refer to the Letter of Intent dated 14/02/2011 issued by us in respect of above referred Flat No. 162 at Kalpataru Sparkle. Pursuant to the above Letter of Intent, as per the terms of the letter, you have paid a sum of Rs. 10,00,000/- (Rupees Ten Lakhs only) vide cheque no. 470517 dated 14/02/2011 drawn on HSBC Bank, the receipt of which has been issued to We hereby confirm that upon acceptance of our letter of intent by paying an initial amount of Rs. 10,00,000/-, you had accepted our offer and we had allotted the above flat to you on 14/02/2011 Further the said Flat No. 162 as allotted to you was subsequently divided into Flat No. 162 and Flat No. 163 vide Modification Letter. We confirm that the

earmarked Flat No. 162 was merely converted from 1 (one) habitable unit to 2(two) separate habitable units; with above allotment being renumbered from Flat No. 162 to Flat No. 162 and Flat No. 163.

2. We further confirm that you have made all subsequent payments as per the agreed terms in the Letter of Intent. Pursuant to the allotment of the flat, as stated above, we have entered into a registered sale agreement with you in respect of the above flat vide sale deed dated 14/12/2017.

Yours Faithfully, For Kalpataru Enterprises

Narendra Lodha Director"

26. The aforesaid letter read alongwith the letter of intent, it is quite evident that the developer has clearly confirmed that upon the acceptance of the offer given in the letter of intent' by payment an initial amount of Rs. 10,00,000/- for each flat, the assessee had accepted the offer and he was allotted the specific flat on 14.02.2011 itself. He has also submitted that based on this letter of intent not only the flats have allotted but also subsequent payments have been made in terms of said letter itself. After the confirmation given by the developer at this stage along with the letter of intent are kept in juxtaposition, then the substance of the letter dated 14.02.2011 clearly indicates that only the flat was allotted to the assessee but also the assessee has made part payment of the contract by making the payment and agreed to the payment schedule and same has also been duly complied with by the parties.

27. This LOI is clearly a 'contract' for the allotment of the letter, if one sees alongwith the aforesaid letter filed by the assessee before us and once the assessee was allotted the flats on a consideration mentioned therein which was accepted and acted upon, the assessee did get the right on the said flat which has been accepted and honoured by the developer. Despite one of the paragraph developers has stated in para 12 of the said LOI (supra), in our opinion it cannot be held that the letter dated 14.02.2011 was merely a LOI, albeit it was contract between the developer and the assessee which has been acted upon and vested right had accrued to the assessee when offer was accepted along with the terms and conditions on the said flats in the furtherance of the said contract and the payment. Not only that, it has also been brought on record the entire 100% payment were made within 2-3 years and even the occupancy certificate were also issued on 25.01.2016 and the registration was done almost after 2 years i.e. on 14.12.2017. In such facts the date of registration i.e. 14.12.2017 cannot be held as the date on which the assessee has acquired the

immovable asset or the right because that right was already but vested upon the agreement of the contract by the developer and the assessee way back in FY 2010-11.

28. Hon'ble Punjab and Haryana High Court in case of Madhu Kaul vs. CIT 363 ITR 54 has held that on the allotment of a flat and upon payment of first installment, right to hold the flat has been conferred on impugned flat that passion of delivery letter does not detract from the fact that the allottee was conferred a right to hold the property of such issuance of allotment letter. Further, Hon'ble jurisdictional High Court in case of PCIT Vs. Vembu Vaidyanatha 412 ITR 248 had clearly held that for classifying long term and short term, what is required to be seen is the agreement spelling out the exact terms and condition for acquisition and date of allotment would be relevant date for the purpose of determination of taxability of capital gain. Here in this case we have already held that the said letter read with the confirmation by the builder, it is clear that both the parties had agreed to a certain terms and condition and the flat was actually allotted and therefore the assessee got the vested right to hold the property from the date of the said letter. Thus, we hold that date of acquisition for the purpose of computation of capital gain for the impugned immovable property/ flats has to be reckoned in FY 2010-1 i.e. from the date of the letter 14.02.2011. Accordingly, ground No. 2 is decided in favour of the assessee.

12. Ld. AR further relied on the following decision of Hon'ble High Courts as well as decision of the ITAT in support of his case which are discussed in brief by us:-

i) Hon'ble Punjab & Haryana High Court in case of Mrs. Madhu Kaul vs. ICT (363 ITR 54).

7. We find no distinction between the opinion recorded in the aforesaid judgment and the controversy in the present case. Admittedly, the flat was allotted to the appellant on 07.06.1986, vide letter conveyed to the assessee on 30.06.1986. The assessee paid the first installment on 04.07.1986, thereby conferring a right upon the appellant to hold a flat, which was later identified and possession delivered on a later date. 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. The payment of balance installments, identification of a particular flat and delivery of possession are consequential acts, that relate back to and arise from the rights conferred by the allotment letter.

8. In view of what has been recorded hereinabove, we have no hesitation in holding that the Income Tax Appellate Tribunal has erred in holding that the transaction does not envisage a long term capital gain. Consequently, we allow the appeal, set aside order dated 15.02.1999 and answer the substantial questions of law in favour of the assessee.

ii) Hon'ble Bombay High Court in case of PCIT vs. Vembu Vaidyanathan (413 ITR 248).

4. Having heard learned counsel for the parties, we notice that the CBDT in its circular No.471 dated 15th October, 1986 had clarified this position by holding that when an assessee purchases a flat to be constructed by Delhi Development Authority ("D.D.A." for short) for which allotment letter is issued, the date of such allotment would be relevant date for the purpose of capital gain tax as a date of acquisition. It was noted that such allotment is final unless it is cancelled or the allottee withdraw from the scheme and such allotment would be cancelled only under exceptional circumstances. It was noted that the allottee gets title to the property on the issue of allotment letter and the payment of installments was only a follow-up action and taking the delivery of possession is only a formality.

iii) ITA No. 2291/Mum/2015 in the case of Anita D. Kanjani vs. ACIT dated 13.02.2017:-

9. With a view to resolve this dispute, we have firstly analysed the provisions of section 2(42A) which defines 'short term capital asset' as under:-

"Section 2(42A) in the Income- Tax Act, 1961

(42A) "short- term capital asset" means a capital asset held by an assessee for not more than thirty- six months immediately preceding the date of its transfer":

Perusal of aforesaid definition shows that the legislature has used the expression 'held'. It is further noted by us that in various other allied or similar sections, the legislature has preferred to use the expression 'acquired' or 'purchased' e.g. in section 54 / 54F. Thus, it shows that the legislature was conscious while making use of this expression. The expressions like 'owned' has not been used for the purpose of determining the nature of asset as short term capital asset or long term capital asset. Thus, the intention of the legislature is clear that 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. Thus, we have to ascertain the point of time from which it can be said that assessee started holding the asset on de facto basis.

10. It is noted that the letter of allotment was issued to the assessee on 11-04- 2005, the letter of allotment makes a mention of the identity of the flat as office unit No.107, located at First Floor of Everest Grande. It also makes a mention that total consideration of the said property is a sum of Rs.29,64,000/- out of which a sum of Rs.5 lakhs was paid by the assessee on 04-04-2005 by cheque No.539104 as part payment against the said office unit. It is further noted by us that Hon'ble Karnataka High Court in the case of CIT vs A Suresh Rao 223 Taxmann 228 (Kar) dealt with similar issue wherein the significance of the expression 'held' used by the legislature has been 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:-

12. "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 cooperative 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 subclauses (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.471 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."

Thus, from the aforesaid judgment, it is clear that for the purpose of holding an asset, it is not necessary that the assessee should be the owner of the asset based upon a registration of conveyance conferring title on him.

11. Similarly, in the case of Madhu Kaul (supra), the Hon'ble Punjab & Haryana High Court analysed various circulars and provisions of the Act that on allotment of flat and making first installment the assessee was conferred with a right to hold a flat which was later identified and possession delivered on later date. The mere fact that possession was delivered later, would not detract from the fact that assessee (allottee) was conferred a right to hold the property on issuance of an allotment letter. The payment of balance amount and delivery of possession are consequential acts that relate back to and arise from the rights conferred by the allotment letter upon the assessee.

12. In the case of Vinod Kumar Jain vs CIT 344 ITR 501 it was held by Hon'ble Punjab & Haryana High Court that conjoined reading of section 2(14), 2(29A) and 2(42A) clarifies that holding period of the assessee starts from the date of issuance of allotment letter. Since allottee gets title of the property on the issuance of allotment letter and payment of first installment is only a consequential action upon which delivery of possession flows. Even if the sale deed or agreement to sell is executed or registered subsequently but the assessee always had a right in the property since the date of issuance of allotment letter. Therefore, it can be said that assessee held the property immediately from the date of allotment letter.

13. In the case of CIT vs K Ramakrishnan (supra), Hon'ble Delhi High Court analysed the provisions of the Act and held that date of allotment is relevant for the purpose of computing holding period and not the date of registration of conveyance deed. Similarly in the case of CIT vs S.R. Jeyashankar(supra), Hon'ble Madras High Court took a similar view following the aforesaid judgment and held that holding period shall be computed from the date of allotment. It is noted by us that similar view has been taken by other High Courts in the judgments which have been relied upon by the Ld. Counsel before us and mentioned in earlier part of our order.

14. In the assessment order, the Ld. AO has placed reliance upon the judgment of Hon'ble Supreme Court in the case of Suraj Lamps & Industries Pvt Ltd (supra) for the proposition that transfer of a property shall be effective only on registration of conveyance deed in view of section 54 of Transfer of Property Act. In our view, it is a settled proposition of law and there is no dispute on that. The absolute legal ownership of an immovable property shall take place in terms of various provisions of Transfer of Property Act which needs to be read with provisions of section 2(47) of Income-tax Act, 1961 for the purpose of computing tax liability arising on account of sale / purchase of immovable properties under Income-tax Act. But the issue here before us is different. As discussed earlier, the holding period is to be determined in terms of section 2(42A) of the Act which has been reproduced and discussed above. The issue of transfer of ownership is not the issue to be decided here for computing the holding period. Therefore, we find that application of the ratio of aforesaid judgment would not be appropriate here.

15. Thus, respectfully following the judgements of various High Courts wherein this very issue has been analysed in detail as discussed above at length, we find that holding period should be computed from the date of issue of allotment letter. If we do so, the holding period becomes more than 36 months and consequently, the property sold by the assessee would be long term capital asset in the hands of the assessee and the gain on sale of the same would be taxable in the hands of the assessee as Long Term Capital Gain. We direct accordingly.

16. As a result, grounds raised by the assessee are allowed in terms of our directions as given above. However, the alternative issue raised by the assessee is not being adjudicated at this stage.

17. In the result, the appeal of the assessee is allowed."

iv) ITA No. 5489/Mum/2015 in the case of Mrs. Sneha Bimal Parekh vs. PCIT dated 30.06.2016:-

9. We have heard the rival submissions and perused the material on record including the orders of authorities below and case laws relied upon by the rival parties. We find from the page No.36 of the paper book which is a letter of allotment dated 27.11.2006 accompanying the schedule of payment as filed at page 39 of the paper book reveals that the assessee was allotted the flat on 27.11.2006 and the assessee has also made payment of Rs.3,34,919/- as

booking advance. The flat was registered in the name of assessee on 31.4.2009(correct date is 30.4.2009) vide register sale-deed placed at pages 43 to 56 of the paper book. A copy of the sale deed dated 28.6.2011 transferring the flat is filed at pages 8 to 18. Now, issue before us to be adjudicated is whether the gain resulted from transfer of flat which was allotted on 27.11.2006 registered in the name of assessee on 30.11.2009 and sold on 28.6.2011 is a LTCG or STCG. If assets transferred is held for more than 36 months then the resultant gain would be LTCG and the assessee would be entitled to indexation of cost for the purpose of calculation of capital gain. In this case, the assessee has claimed to have been allotted the flat on 27.11.06 when the assessee was given letter of allotment and assessee made payment of Rs.3,34,919/- out of total purchase price of Rs.66,98,375. The flat in question was purchased for Rs.76,04,418/- including the stamp duty, registration value etc and sold for Rs.1,17,17,145/-. Upon looking into the facts of the case, we find that the assessee become owner of the flat on 27.6.2006 then the allotment letter was issued and advance amount/booking amount was paid to the builder. The case of the assessee also find strong support from the decisions cited before us during the course of hearing.

The case law relied upon by the ld.DR in this case are distinguishable on facts and are not applicable to the present case, we therefore, respectfully following the ratio laid down in the above decisions relied on by the ld.AR hold that the assessee acquired the ownership right in the flat on the date of letter of intent when the assessee booked the flat and paid booking amount and not on the date of registration and thus held the property for more than 36 months and is entitled for indexation while calculating the gain. In view of the above observations, we are of the considered view that revisionary powers exercised by the PCIT for setting aside the order framed by the AO u/s 143(3) that the date of ownership is the date of registration of flat of in the name of assessee and not the date of allotment is wrong and therefore, we set aside the order of PCIT. The appeals of the assessee is allowed.

v) ITA No. 1876/Mum/2015 in the case of Fatema Jaffer Ghadiali vs. ITO dated 17.02.2016:-

6.7. In addition to the above, in our considered view the holding period should be computed from the date of allotment of flat, as 'Right' in allotment was always a 'Right' in the property. Thus, when the assessee was given possession of the flat, the date of its holding period shall relate back to the date when the said flat was allotted to the assessee. We take support in this regard from the judgment of Hon'ble Punjab and Haryana High Court in the case of Vinod Kumar Jain v. CIT 344 ITR 501.

6.8. Thus, viewed from any angle, we find that holding period of the flat sold by the assessee is more than 36 months. Thus, keeping in view facts of the case brought before us and the aforesaid judgments, it is held that flat sold by the assessee was long term asset and accordingly capital gain arising on sale of such asset is held to be assessed as long term capital gain. Thus, ground no.4 is allowed.

13. It is thus evident from the order of Hon'ble Jurisdictional High Court of Bombay in the case of VambuVaidyanathan (2019) 413 ITR 248 (Bom) (supra) that the assessee gets title of the property on the basis of allotment letter and payment of installment was only a follow up action and taking delivery of possession is only a formality. Similarly Hon'ble Punjab & Haryana High Court in Mrs Madhu Kaul vs. CIT, Chandigarh (supra) has held that the first installment on 04.07.1986 has conferred a right upon the appellant to hold a flat, which was later identified and possession delivered on a later date and therefore the allottee was conferred a right to hold the property on issuance of allotment letter. The payment of balance installment, identification of particular flat and delivery of possession are consequential acts that relate back to and arise from the rights conferred by the allotment letter.

14. We have considered the letter of intent dated 14.02.2011 and examined its contents to ascertain if it qualifies to be an allotment letter so as to confer right upon the assessee from its date. The Ld. DR pointed out para 12 which is the last para and highly relied upon the lines "This writing is merely a letter of intent and is not and does not purport to be an agreement of sale /purchase of the said flat/the premises by you, your rights /obligations shall become effective only on execution of the agreement for sale and in terms thereof....." But, the subsequent lines of the said para clarifies everything unequivocally about the nature and connotation of this letter which reads "……..Though your obligations to pay the consideration amount as per annexure A shall be liable to be complied with and discharged irrespective of whether the agreement for sale has been executed or not." Thus, the conveyance of right to hold the property is complete by the

concluding lines when it is stipulated that the obligation to make the payment of consideration amount is absolute and not dependent on agreement for sale if executed or not. Further it is to be noticed that no separate allotment letter has been issued to the assessee and letter of intent dated 14.02.2011 embodies everything required to hold the capital asset for ascertaining "indexed cost of acquisition" as per explanation (iii) to section 48 of the Act.

15 The Ld. DRP in its conclusion seems to be confused between a right to hold and a right to acquire the capital asset and therefore has relied upon the case of Hon'ble Supreme Court in Suraj Lamp Industries Pvt. Ltd. Vs. State of Haryana and under that impression concluded that the period of holding for indexation purposes would be FY 2017-18 when the ownership and possession was acquired. The settled legal principles and followed legal precedents relied by assessee and referred by us in preceding paras categorically states and settled the issue of calculation of long term capital gain on account of indexed cost of acquisition and assuming the conferment of legal right and holding of the asset by allotment letter or in any other manner agreed and acted upon by the parties concerned which would amount to holding of the property for the above required purpose and possession and ownership of the capital asset for the said purpose is not essential requirement because said stage comes after completion of various formality including completion of all payments /installments and other legal requirements necessary for executing a registration deed for formally transferring an immovable property by execution of registered sale deed. For these reasons, we find that the contents of letter of intent dated 14.02.2011 are such which fulfils all the requirement of an allotment letter as it even bind the assessee to make the entire payment of consideration amount irrespective of non-execution of sale agreement.

16. The Ld. Lower authorities has not followed the judgment of Hon'ble Jurisdictional Tribunal relied as covered case by the assessee as it being an order

in assessee's own case with respect to other 4 flats in the same property on the ground that the revenue has challenged the same before the Hon'ble High Court. In that regard, we are of the considered view that the AO whose order is challenged before us which was passed in pursuance of the order of Ld. DRP, is bound to follow the order of the ITAT and of the Hon'ble High Court and mere challenging of the order in the superior appellate forum does not absolve him of his legal duty to follow the order of the superior authorities unless the said order is set aside or stayed. Our view is fortified by the decision of the Hon'ble Allahabad High Court, K. N. Agarwal Vs. Commissioner of Income Tax, order dated 11.01.1991, [1991] 189 ITR 769B (ALL) which says, "Indeed, the orders of the Tribunal and the High Court are binding upon the Assessing Officer and since he acts in a quasi-judicial capacity, the discipline of such functioning demands that he should follow the decision of the Tribunal or the High Court, as the case may be. He cannot ignore it merely on the ground that the Tribunal's order is the subject-matter of revision in the High Court or that the High Court's decision is under appeal before the Supreme Court. Permitting him to take such a view would introduce judicial indiscipline, which is not called for even in such cases." Thus the observation of AO in the impugned order dated 18.12.24 in para 4.2 i.e. "Moreover, the order of the Hon'ble ITAT has not been accepted by the revenue and has preferred an appeal before the Hon'ble High Court", are not in consonance with the settled legal principles and followed legal precedents.

17. The Ld. Coordinate Bench in ITA No. 2489/Mum/2022 AY 2019-20 (supra) has already decided the same issue in favour of the assessee with respect to Flat no. C-161, C-162, C-163 and C-164 at Kalpatru Sparkals, Bandra East and the present case pertains to Flat no. C-165 in the same property and the concerned AY is 2022-23. The Ld. Coordinate Bench had decided the ground no. 2 in favour of the assessee observing "Thus, we hold that date of acquisition for the purpose of computation of capital gain for the impugned immovable property /flats has to be reckoned in FY 2010-11 i.e. from the date of the letter 14.02.2011".

Therefore, we respectfully follow the decision of Ld. Coordinate Bench and accordingly decide the ground no. 1 and 2 in favour of the assessee. We accordingly direct the AO to consider the date of acquisition for the purpose of computation of capital gain as the date of letter of intent i.e. 14.02.2022 and compute the capital gains accordingly for the concerned AY 2022-23."

15. In the case of the assessee, we have examined the documents including the agreement for sale dated 16th November 2007 and at page 4 in clause 2, the flat has been identified as Flat No. B-707, 7th floor and it is mentioned "**The purchaser herby agrees to purchase and acquire Flat B-707, 7th floor, measuring 65 Sq.mtr built up area of the said unit in the said building known as Arihant Krupa being constructed on the said property, for a total considering of Rs. 34,57,000/,**". Clause 3 of the agreement to sale has given the schedule of payment. As per the payment made find mentioned in the written arguments and reproduced by us in para no. 9 of this order shows that the substantial amount has been paid in FY 2007-08. It was submitted that 64.85% of the total cost was already paid till FY 2007-08. Therefore, respectfully following the judgment of the Jurisdictional Tribunal in Anand Swarup Mehta vs. ITO in ITA 851/Mum/2025 (supra), we are of the considered opinion that the assessee /appellant has got the right to hold the asset from the date of 'agreement to sale' dated 16th November 2007 (FY

2007-08) and the arguments of the Ld. AR on behalf of the assessee are therefore cogent and convincing wherein he has argued that the indexation benefit should start from FY 2007-08. Thus, the assessee has justified his claim of considering the date of acquisition of the asset for the purpose of computation of capital gain from the date of agreement for sale dated 16th November 2007 and not from the letter of possession dated 16th December 2010 as has been proposed in the assessment order. For the above discussion and the reasons mentioned therein, the Ground No. 2, 3 & 4 are allowed in favour of the assessee. We accordingly direct the AO to consider the date of acquisition for the purpose of computation of capital gain as the date of agreement for sale dated 16th November 2007 and compute the capital gains accordingly for the concerned AY 2015-16.

Ground no. 1

16. Since the Ground no. 2 to 4 has been allowed in favour of the assessee and appellant has succeeded on merit, therefore the legal ground no. 1 kept open and we have not decided the same for the above reasons.

Ground no. 5.

17. Since the said ground has not been adjudicated earlier, the Ld. AO may consider the claim of the assessee with respect to the payment of Rs. 2,32,500/- as additional amenities cost paid to the builder to be allowed from the calculation of long term capital gain. The ground no 5 is restored to the file of Ld. AO for statistical purposes.

Grond no. 6 & 7

18. These grounds pertain to the charging of interest and penalty proceedings, which according to us is premature and accordingly not considered for decision at this stage by the Tribunal.

Ground no. 8

19. This ground is general in nature needs no specific adjudication.

20. In the result, the appeal is accordingly partly allowed for statistical purposes in the above terms.

Order pronounced in the open court on 23.06.2025.

Sd/-	**Sd/-**
(MS. PADMAVATHY S) **(ACCOUNTANT MEMBER)**	**(RAJ KUMAR CHAUHAN)** **(JUDICIAL MEMBER)**

Mumbai / Dated .06.2025
Dhananjay, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mumbai