

**ITAT DELHI :_ BHUPINDER SINGH JULKA VERSUS ASST.
COMMISSIONER OF INCOME TAX, CIRCLE INT TAX 2 (1) (2) ,
DELHI.,ITA No:- 1807/Del/2022**

Dated.- August 7, 2023

Facts & Issues involved :

Sale of capital asset - transfer of capital asset and compensation received on account of delay in construction by the builder of property - short term capital gain or long term capital loss - appellant had acquired the capital asset in the shape of right in an office space in 2007 - assessee is a non-resident Indian

HELD THAT:- In the instant case, admittedly, the allotment letter was issued back in the year 2007 and substantial payment had been made before the year 2018 when final payment was made. Therefore, we find merit into the contention that the AO erred in treating the surplus to be short term capital gain without giving benefit of indexation. We therefore, direct the AO to re-compute gain, if any after giving benefit of indexation as provided under law and decide the issue in the light of judgement of PCIT vs Vembhu Vidyanathan [2019 BOMBAY HIGH COURT] The ground raised by the assessee is allowed for statistical purpose.

What's the Nature of the receipt - Compensation received by the assessee from the builder - capital receipt or Revenue receipts -

HELD THAT:- As relying on Aaran R. Infrastructure Ltd [2018 DELHI HIGH COURT] we are of the considered view that the lower authorities were not justified in treating the amount as revenue receipts, the same deserves to be deleted.

The ground raised by the assessee is thus, allowed.