

**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD BENCH “DB”, ALLAHABAD**

(THROUGH VIRTUAL COURT),

**BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA No.143/ALLD/2017

Assessment Year: 2013-14

Mr. Sujit Majumdar Flat No. 1G, Maple Leave Residency, 40 & 41 Minto Road, Civil Lines, Allahabad- 211010 (U.P.)	v.	Income Tax Officer, Ward II(3) AayakarBhavan, 38, M.G. Marg Allahabad, Uttar Pradesh 211001
PAN: ADSPM7639L		
(Appellant)		(Respondent)

Appellant by:	Shri Ashish Bansal, Advocate
Respondent by:	Shri A.K. Singh, Sr. DR
Date of hearing:	06.07. 2021
Date of pronouncement:	09.07. 2021

ORDER

PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal filed by the assessee with Income Tax Appellate Tribunal, Allahabad Bench, Allahabad (hereinafter called “the tribunal”) has arisen from the appellate order dated 20.03.2017 passed by learned Commissioner of Income Tax(Appeals), Allahabad, U.P. (hereinafter called “ the CIT(A)”) u/s 250 of the

Income-tax Act, 1961 (hereinafter called “ the Act”) in appeal number 18/ITO/R-II(3)/Alld/15-16 for assessment year(ay) 2013-14, the appellate proceedings had arisen before learned CIT(A) from assessment order dated 21.01.2016 passed by learned Assessing Officer (hereinafter called "the AO") u/s143(3)of the 1961 Act for ay:2013-14. This appeal was heard through video conferencing mode through Virtual Court with the consent of both the parties.

2. The assessee has raised following grounds of appeal in memo of appeal filed with the tribunal:

“1. Because the Ld. Commissioner of Income Tax (Appeals), Allahabad while correctly holding that the Capital Gain on the impugned sale of property should be taxed in A.Y. 2012-13 instead of A.Y. 2013-14 as per law, has erred in giving further direction to the Assessing Officer that Freehold Conversion Charges of Rs.1,43,62,000/- should not be allowed either as cost of improvement or expenses relating to transfer of the said property, treating it as mere reimbursement of expenses by the buyer without considering the fact that conversion of property from leasehold to freehold was essential to cure the title of the said property before transferring it to the buyer and it was also clearly mentioned in the registered agreement to sell dated 11.07.2011.

2. Because the Ld. Commissioner of Income Tax (Appeals) erred in concluding that the entire process of conversion of the said property from leasehold to freehold has been undertaken by the appellant i.e. seller only on behalf of the buyers. The appellant i.e. seller has acted merely as “name landers” and cost incurred for conversion of the said property was never a cost (either as cost of acquisition / cost of improvement or expenses on transfer of said property).

3.Because the Ld. Commissioner of Income Tax (Appeals) erred by omission in deciding on the issue as per grounds the addition of Rs. 276000/- by the Assessing Officer on account of Interest Received on NHAI Bonds (Investment claimed as Exemption under Sec. 54 EC of the Act) on accrual basis without considering the fact that the appellant being an individual having salary and interest as only sources of income included, the said interest as income on receipt basis in the A.Y. 2014 -15 and paid income tax accordingly.

4. Because the Ld. Commissioner of Income Tax (Appeals) erred in charging interest u/s 234A,& 234 B & 234 C of the Income Tax Act.

5.Because the order of Ld. C.I.T. (Appeals), Allahabad was bad in law and facts.

The Appellant prays for adducing further or other grounds of Appeal before or at the time of hearing the appeal.”

3. The brief facts of the case are that the assessee is an individual and assessment was framed by AO u/s 143(3) of the 1961 Act in the case of assessee, vide assessment order dated 21.01.2016 , wherein, inter-alia, the AO brought to income-tax for ay: 2013-14 , income from Long Term Capital Gain which has arisen

on account of sale by assessee of his 25% share in immovable property situated at leasehold Nazul Plot no. 6 , Rajapur Bhandawa, Allahabad, U.P. along with house no. 9 and 9/2 New No. 10 and 41 respectively at Minto Road, Allahabad including 3 out houses bearing numbers 42/9/1 , 39/9/3 & 38/9/4 which stood over Nazul Plot no. 6 , Rajapur, Bhandwa, Allahabad, U.P. in the hands of the assessee, on the ground that aforesaid property was registered by assessee in favour of buyers vide sale deed executed in previous year relevant to ay: 2013-14, although the assessee had declared the income from long term capital gains on sale of his share in the aforesaid property in the return of income filed for ay: 2012-13. The Total area of land was 3,102 sq. yards i.e. 2,593.58 sq. mtrs. which was sold vide registered sale deed on 25th April, 2012 for total sale consideration of Rs.453,62,000/- and the market value of the aforesaid land was Rs.6,02,01,000/- on which stamp duty was paid, although registered agreement to sale was entered by the assessee for sale of his share of aforesaid property in previous year relevant to ay: 2012-13. The share of the assessee in the said property was 25% and hence total sale consideration with respect to share of the assessee was taken by the A.O was to the tune of Rs.1,50,50,250/-, and the income was computed by the AO of the assessee for ay: 2013-14 after giving benefit of indexed cost of acquisition of property on 01.04.1981 based on the then prevailing circle rate(assessee's share in property-25%),the legal expenses and cost of improvement on account of conversion of property from leasehold to freehold expenses(assessee's share in property -25%).

4. The assessee being aggrieved by an assessment framed by the AO bringing to tax income from long term capital gains from sale of share of assessee(25%) in the aforesaid property in ay: 2013-14 , as against income offered to tax by assessee in the return of income filed for ay: 2012-13 , filed first appeal before Id. CIT(A) challenging assessment framed by AO against the assessee. The Id. CIT(A) , vide appellate order dated 20thMarch, 2017 for ay: 2013-14 was pleased to hold that the

assessee income by way of long term capital gains arising from sale of share(25%) of assessee in aforesaid property is to be brought to tax in ay: 2012-13 and not in ay: 2013-14 as was done by the AO while framing assessment order. This issue has attained finality as neither assessee nor Revenue has challenged before tribunal this finding of ld. CIT(A) holding that income from long term capital gain arising from the sale of share(25%) of the assessee in aforesaid property is to be charged to income-tax in ay: 2012-13. However , while adjudicating the appeal filed by assessee for ay: 2013-14 , the learned CIT(A) also directed that no benefit should be given on account of cost of improvement on account of conversion of aforesaid property from leasehold to freehold , while computing income from long term capital gains for ay: 2012-13 on sale by assessee of his share(25%) in the aforesaid property . The assessee is aggrieved by the aforesaid direction given by ld.CIT(A) and has now filed an appeal before the tribunal, while it is not shown by ld DR that Revenue has filed any appeal with tribunal challenging the appellate order passed by ld. CIT(A).

5. This appeal is heard on 6th July 2021 by the Division Bench of Allahabad tribunal through video conferencing mode through Virtual Court ,with the consent of both the parties. The ld. counsel for the assessee produced before the Bench ,the appellate order dated 28.01.2021 passed by Division Bench of the tribunal in I.T. A. No. 68/Alld/2018 (Both of us were part of the DB who pronounced the order on 28.01.2021 in ITA No. 68/Alld/2018) for ay: 2012-13 in the case of brother of the assessee namely Mr. Sanjay Majumdar, who was also one of the co-owner of the aforesaid property with 25% share, wherein the issue raised by assessee in this appeal has been dealt with by tribunal. The said appellate order dated 28.01.2021 in ITA no. 68/Alld/2018 was passed by Division Bench of Allahabad tribunal in which both of us were part of the Division Bench who pronounced the said appellate order on 28.01.2021.It was submitted by ld. Counsel for the assessee that the tribunal while passing the aforesaid appellate order for ay: 2012-13 in the case of brother of

the assessee namely Mr. Sanjay Majumdar has held that the deduction with respect to amount paid for conversion of the said property from leasehold to freehold charges has to be allowed u/s 48 of the Act. The Id. Counsel for the assessee submitted that Id. CIT(A) has rightly held that income from long term capital gains arising from sale of share of the assessee in the aforesaid property is to be assessed to tax in ay: 2012-13 , but Id. CIT(A) exceeded in his jurisdiction in giving direction to A.O. by stipulating the manner in which assessment is to be framed for ay: 2012-13, wherein Id. CIT(A) directed that no deduction be allowed for amount paid for conversion of said property from leasehold to freehold. It was submitted that although Id. CIT(A) was seized of an appeal filed by assessee for ay: 2013-14, the Id. CIT(A) should have ordered the A.O. to decide the issue for ay: 2012-13 in accordance with law rather than giving directions to frame assessment in a particular manner. Our attention was drawn by Id. counsel for the assessee to the appellate order dated 20.03.2017 passed by Id. CIT(A) , Page No. 6 to 8, Para 4, which is reproduced hereunder:

"4. Decision

In view of the decisions of the Hon'ble Supreme Court and Allahabad High Court (supra) as cited by the Id.A.R in this regard. I hereby hold that the capital gain on sale of the impugned property had accrued in the F.Y.2011-12 relevant to the A.Y. 2012-13, the year in which agreement to Sale was executed. Thus ,Ground no. 1 as raised by the Assessee is allowed. Accordingly,the A.O. is directed to reopen the case of the assessee for the A.Y. 2012-13 (after recording proper reasons and completing all the necessary formalities) and then compute the capital gain as under:

Sale Consideration = The Circle Rate of the said property in the F.Y. 2011-12 or the total consideration received, whichever is higher.

Less:

Indexed cost of Acquisition as on 01.04.1981, which shall be computed as under:

Land:

As rightly pointed out by the A.O. that the valuer, while, estimating the value of land, has failed to give any instances of sale. Thus, the A.O's action in taking the then prevailing Circle rate of the land is most scientific & reasonable method. Accordingly, such action of the A.O is hereby confirmed.

Building:

The A.O will take the value of the building as on 01.04.1981 at Rs.1,84,800/- (which is the value adopted by the valuer) and then give indexation from 01.04.1981.”

4.1 As regards, the payment of Rs.1,43,62,000/- as fees and charges for converting the said land from leasehold to freehold, the same is merely a reimbursement of expenditure to the seller by the buyer and is not to be considered as cost of acquisition/ or cost of improvement in the hands of the assessee since such payment has been incurred by the sellers (i.e. the assessee) on behalf of the buyers, which is evident from the Agreement of Sale (dated 15.07.2011) wherein it has mentioned that Rs.1,43,62,000/- is being paid for the purposes of freehold conversion. In fact, at page 16 of the said agreement, it is expressly provided that "The Second Party (i.e. the buyers) shall not be entitled to claim any refund whatsoever from the first party (i.e. the sellers), in respect of the payments made by the 1st party under this Clause", Further, at para 5 of the same agreement states, it is stated,

"5 Whenever any demand is raised / made by or on behalf of the State Government for payment of the balance of the freehold conversion charges / premium etc. during the period of validity of this agreement to sell the Second Party shall forthwith pay to the first Party the amount so demanded out of the balance of the total sale consideration mentioned here in above On receiving the said amount from the Second Party the First Party shall without undue delay, deposit the same with the State Government."

4.2 Para 15 of the same agreement clinches the issue wherein it has been stated

"15 If due to unforeseen reasons (like government policies) the aforesaid property is not converted to freehold by the state Government in favour of the First party within 18 months from the date of execution of this agreement to sell, the Second Party shall forthwith pay a further sum of Rs.1,10,00,000/- (Rupees one crore and ten lacks only) to the first party and the first party shall hand over possession of the property to the Second party immediately thereafter. Further, on such an eventuality, the Second Party shall have the option, within the period of validity of this agreement to sell, of getting the transfer/sale deed executed in its favour by the First Party in respect of the aforesaid property on an "as is where is" basis without the land being converted to freehold. However, the balance amount of the sale consideration of Rs.1,06,33,000/- (Rupees one cores six lakhs and thirty three thousand only) which is the balance of the freehold conversion charges.....what has been provided hereinabove the same will be paid by the Second Party to the first party.

4.2.1 In this view of the matter, it is evident that the whole process of conversion of the impugned land from leasehold to freehold had been undertaken by the sellers (i.e the assessee) only on behalf of the buyers and were merely acting as "name lenders". Thus, this conversion amount paid/payable to the State Authority was never a cost (either cost of acquisition or the cost of improvement) to the assessee and therefore no deduction for the same is to be allowed. The A.O will not allow the same (or any portion thereof) while computing the capital gain of the assessee for the A.Y. 2012-13. Since, the capital gain is now to be computed for A.Y. 2012-13 the A.O will give benefit of the investment made u/s 54EC as per the law. This disposes of the other grounds of appeal as filed by the assessee. "

It was also submitted by ld. counsel for the assessee that the tribunal while passing appellate order dated 28.01.2021 in ITA no. 68/Alld/2018 for ay: 2012-13 in the case of the brother of the assessee namely Mr. Sanjay Majumdar who was also one of

the co-owners of the aforesaid property with 25% share, has held that the benefit of deduction towards cost of improvement for amount paid for conversion of aforesaid property from leasehold to freehold is to be allowed as deduction u/s 48 of the 1961 Act and prayers were made by ld. Counsel for the assessee that the A.O. be directed to follow the aforesaid tribunal order while framing assessment in the case of the assessee for ay:2012-13, as the issue before tribunal in this appeal is same as was before tribunal in the case of brother of the assessee namely Mr. Sanjay Majumdar. It was submitted that it is sale of the same property which was before the tribunal in ITA no. 68/Alld/2018 as in the instant appeal, as the aforesaid property was co-owned by four owners who sold their respective shares on which long term capital gains had arisen.

5.2. The ld. D.R on the other hand submitted that A.O be directed to pass the order after considering the appellate order passed by tribunal in the case of the brother of the assessee Mr. Sanjay Majumdar as the issue is common with respect to allowability of deduction u/s 48 of the 1961 Act , of the amount paid towards conversion of aforesaid property from leasehold to freehold and it is the sale of the same property which was before the tribunal while adjudicating appeal in Appeal No. ITA No. 68/Alld/2018 , as in the instant appeal before the tribunal, as the property was co-owned by four owners who sold their respective shares.

6. We have considered rival contentions and have perused the material on record. The issue before us is within narrow compass and concerns itself with the allowability of deduction u/s 48 towards cost of improvement with respect to amount paid by the assessee towards his share towards conversion of aforesaid property from leasehold to freehold. This issue was decided by tribunal in the case of Mr. Sanjay Majumdar (brother of the assessee) who was also one of the co-owners of the aforesaid property . The issue was decided by tribunal in ITA no. 68/Alld/2018 in the case of brother of the assessee namely Mr. Sanjay Majumdar ,

based on the facts of the case and after considering the entire material on record which ,inter-alia, included, agreement to sale , freehold deed and sale deed , vide appellate order dated 28.01.2021 (wherein both of us were part of the Division Bench who pronounced the said order), and this issue was decided by tribunal in favour of tax-payer namely Mr. Sanjay Majumdar, by holding as under:

"6. We have considered rival contentions and perused the material on record including orders passed by authorities. The adjudication of this appeal depends upon careful reading , analysis and interpretation of clauses of agreement to sell dated 15.07.2011, copy of deed of freehold dated 13.03.2012 and sale deed dated 25.04.2012 , which are placed in paper book filed by assessee. We have carefully gone through agreement to sell dated 15.07.2011, copy of deed of freehold dated 13.03.2012 and sale deed dated 25.04.2012 , which are all placed in paper book filed by assessee with tribunal.

6.2 Briefly stated that the assessee has sold his share(25%) in property namely leasehold Nazul Plot No. 6, RajapurBhandawa, Allahabad,U.P. along with HouseNo. 9 and 9/2 New No. 10 and 41 respectively at Minto Road, Allahabad including 3 out houses bearing Nos. 42/9/1, 39/9/3 & 38/9/4 which stood over Nazul Plot No. 6 Rajapur, Bandhwa, Allahabad. The total area of land was 2593.58 sq. meter. Shri Narain Das Majumdar was the lessee of the Nazul Plot No. 6, RajapurBandhawa, Allahabad by virtue of lease deed dated 18.10.1937 executed by the then Collector of Allahabad on behalf of Secretary of State in Council. The said lease deed was registered at Book No. 1, Jild No. 706/708 at Page Nos. 178/111-114 , document number 1912 at Sub-Registrar Chayal, District Allahabad , on 01.12.1937. The aforesaid lease was valid with effect from 23.11.1935 for a term of thirty years and further period of 30 years and 30 years, so that total period of lease was 90 years. Shri Narain Das Majumdar was also the owner of the house which stood on that land. Shri Narain Das Majumdar died on 31.10.1983 , hence legal heirs became the owner/inherent lessee of the said property. The assessee is one of the four surviving legal heirs of said Shri Narain Das Majumdar, who has now sold his share in the aforesaid property viz. 25%. There is no dispute between rival parties as to share of the assessee being 25% in the aforesaid property.

6.3 The aforesaid surviving four aforesaid legal heirs (including assessee) of Shri Narain Das Majumdar have entered into an registered agreement to sell with M/s Amity Infra Developers Private Limited on 15.07.2011 , for a total consideration of Rs.4,53,62,000/- , which sale consideration amount includes freehold premium, freehold conversion stamp duty amounting to Rs. 1,43,62,000/- . Thus, as per agreement the consideration value included freehold charges. The relevant clauses as is recorded in agreement to sell dated 15.07.2011, are reproduced hereunder:

"AND WHEREAS the Second Party aforesaid wants to purchase the aforesaid leasehold property including House No. 9 and 9/2 (New Nos.40 and 41 respectively) Minto Road, Allahabad and also including three outhouses bearing nos. 42/9/1, 39/9/3, and 38/9/4 along with Nazul Plot No. 6, Rajapur Bandbawa, Allahabad and the total Area of the aforesaid Nazul Land 3102 Sq. Yards = 2593.58 Sq, Metres,(together with all rights, title and interest) and has offered a sum of Rs.4,53,62,000/- (Rupees Four crores Fifty Three Lakhs and Sixty Two thousand only) (which amount includes freehold premium, freehold conversion stamp duty, etc. amounting to Rs.1,43,62,000/-) as its sale consideration which is the maximum and most adequate price which the aforesaid property could fetch at present. Accordingly, the First Party agrees to sell to the Second Party the aforesaid property with all their right, title and. interest in respect of the aforesaid property more fully desribed in the schedule annexed hereto for a

sale consideration of Rs. 4,53,62,000/- (Rupees Four crores Fifty Three Lakhs and Sixty Two Thousand only) subject to the terms and condition mentioned herein.

AND WHEREAS the execution of transfer deed and its registration in respect of the aforesaid property may be done after the aforesaid nazul land is converted into freehold land or as per lease deed mentioned aforesaid and as such the parties hereto have agreed to execute this deed of agreement and agree to abide by the terms and conditions enumerated hereunder:

As could be seen above , the sale consideration of Rs. 4,53,62,000/-, which amount included freehold premium, freehold conversion stamp duty etc. The agreement also provided that execution of transfer deed and its registration shall be done after the aforesaid Nazul land is converted into freehold land.

6.4 The agreement to sell dated 15.07.2011 further provided that the buyer namely Amity Infra Developers Private Limited have advanced a sum of Rs. 2,37,29,000/- to the sellers , which amount of advance , inter-alia, also included cheque of Rs. 37,29,000/- in favour of one of the 'Shri Sudeb Majumdar' towards making of freehold application with State Government. The sellers were obligated under the agreement to sell dated 15.07.2011 to make application with State Government. The relevant clause as are recorded in agreement to sell dated 15.07.2011 , are reproduced hereunder:

*"1. That the first party agrees to sell the aforesaid property comprising of House No.9 and 9/2 (New Nos.40 and 41 respectively) Minto Road, Allahabad, alongwith Nazul Plot No. 6, Rajapur Bandhawa, Allahabad and the Total Area of the aforesaid Nazul Land as stated above, is 3102 Sq. Yards =2593.58 Sq. Metres, and buildings standing thereon alongwith all rights title and interest, to the Second Party for a sale consideration of Rs.4,53,62,000/- (Rupee's Four Crores Fifty Three Lakhs and Sixty Two thousand Only) and the Second Party has paid a sum of Rs.2,37,29,000/- (Rupees Two Crores Thirty Seven Lakhs and Twenty Nine Thousand only) as advance through the following cheques/banker's cheque (1) Banker's Cheque No. 000928 dated 15 July 2011 Drawn on INS Vyaya Bank, Civil lines branch, Allahabad, for an amount of Rs.50,00,000/- (Rupees Fifty lacs only) , (2) Banker's Cheque No 000929 dated 15 July 2011 Drawn on ING Vysya Bank, Civil lines branch, Allahabad, for on amount of Rs.50,00,000/- (Rupees Fifty lacs only), (3) Banker's Cheque No.000930 dated 15 July 2011 Drawn on ING Vysya Bank, Civil lines branch, Allahabad, for an amount of Rs.50,00,000 /- (Rupees Fifty lacs only) (4) Banker's Cheque No 000931 dated 15 July 2011 Drawn on ING Vysya Bank, Civil lines branch, Allahabad, for an amount of Rs.50,00,000/- (Rupees Fifty lacs only), and (5) Cheque No 822977 dated 30 May 2011 drawn on ING Vysya Bank, Civil Lines branch, Allahabad in favour of Sudeb Majumdar for an amount of Rs.37,29,000/- **(for freehold application)** the receipt of which is hereby acknowledged by the First Party and the balance sale consideration of Rs.2,16,33,000/- (Rupees Two Crores Sixteen Lakhs Thirty Three Thousand only) shall be paid by the Second party to each of the First party as provided hereunder."*

Thus , it could be seen that Rs. 37,29,000/- out of total advance of Rs. 2,37,29,000/- was paid by buyers to sellers towards freehold application money to file application with State Government for conversion of leasehold Nazul land into freehold to perfect their ownership title of the property.

6.5 Before proceeding further, it is important to understand meaning and concept of Nazul land. We have observed that the Nazul land is a Land held by Government in public trust, in perpetuity , the possession of which can be transferred by way of lease or sale . It is the land which is confiscated from Zamindars, Rajas and Nawab etc.. There is a Uttar Pradesh Nazul Manual, 1949 which governed the Nazul lands in U.P. .Under the Nazul Manual, the Nazul land can be leased out. Under the provisions of Rule 22 of Nazul Manual, lease for Nazul land shall not ordinarily be for a period shorter than 30 years in the first instance and shall , in all cases , provide for renewal after expiry of first and subsequent terms upto a maximum period of 90 years. The granting of lease in perpetuity in respect of any Nazul land on any term is prohibited. Rule 67 of Nazul Manual read with Rule 22 , prohibits granting of lease in perpetuity of Nazul land. Under the provisions , the nazul land let out on lease for stipulated period is

required to be evacuated as and when the concerned lease terminates. Under the new Nazul Policy 1998, Nazul land can be disposed off by way of sale. If the sale deed is executed, then cost of land is to be recovered on the basis of market rate and stamp duty is to be paid on conveyance. If any Nazul land is transferred by way of sale or lease etc., execution of deed is required and stamp duty is chargeable as conveyance as laid down in Indian Stamp Act, 1899. There are mention of several of orders passed by U.P, Government in connection with Nazul land, in the freehold deed executed by His Excellency Governor of State of U.P, in favour of sellers which are applicable to the aforesaid Nazul land.

6.6 The agreement to sell further provided that execution and registration of the transfer/sale deed is possible in terms of the lease deed or could be transferred after getting it converted into freehold. The relevant clause in agreement to sell are reproduced hereunder:

"2. As mentioned above, the execution and registration of the transfer / sale deed is possible in terms of the lease deed or could be transferred after getting it converted into freehold land;

3. That the First Party shall file an application for conversion of the aforesaid Nazul Plot No.6 Rajapur Bandhawa, Allahabad to freehold measuring 3102 Sq. yards = 2593.58 Sq. Meters along with the application money (part payment of freehold premium) out of the money advanced as provided herein.

4. The liability for payment of the application money and further conversion charges / premium of conversion from nazul to freehold land of the aforesaid property, including all charges, expenses, stamp duty, registration charges, etc. present or future in respect of the aforesaid property for freehold conversion shall be of the First Party who will bear, the same out of the money advanced by the Second Party under this agreement.

The Second Party shall not be entitled to claim any refund whatsoever from the first Party, in respect of the payments made by the First Party under this clause.

5. Whenever any demand is raised/ made by or on behalf of the State Government for payment of the balance of the freehold conversion charges /premium, etc. during the period of validity of this agreement to sell, the Second Party shall forthwith pay to the First Party the amount so demanded out of the balance of the total sale consideration mentioned here in above. On receiving the said amount from the Second Party, the first party shall, without undue delay, deposit the same with the State Government.

6. As soon as the aforesaid Nazul land is converted and declared freehold and within the period of validity of this agreement to sell, the First Party shall give an intimation in writing to the Second Party named above at his address mentioned first and the Second Party shall pay the entire of the total sale consideration due, to the Seller First Party forthwith. Thereafter, the First Party shall execute the transfer / sale deeds in favour of the second party or his nominee/s. The Second Party or his nominee/s shall be given peaceful possession of the aforesaid property on the date of such registration."

Thus, land in question was 'Nazul Land' which was leased to father of the assessee by then Collector of Allahabad in 1935 for a period of thirty years(with further extensions of thirty years and thirty years) and transfer of this leased 'Nazul Land' was possible only when it is converted into freehold. The buyer has agreed to provide advance to sellers, out of total agreed consideration for getting the aforesaid leased 'Nazul Land' converted into freehold land so that the same could be transferred to buyers, and agreed sale consideration of Rs. 4,53,62,000/- included amount of freehold charges, stamp duty for freehold etc. which was estimated in this agreement to sell to be Rs. 1,43,62,000/-. The sellers were the co-owners/ inheritor of aforesaid leasehold 'Nazul land' and they were required to file application with State Government for getting the leased 'Nazul land' converted into freehold in their names, for which the buyers have agreed to fund the same to sellers as and when demand is raised by State Government

but it is clearly provided that it was the obligation of the sellers to get the said leased 'Nazul Land' converted into freehold within the currency of the agreement to sell dated 15.07.2011 , so that the land can be transferred to the buyers. Thus, there was clearly an impediment in the sale of the aforesaid leased 'Nazul land', which impediment to selling of the land can be removed by getting the said leased 'Nazul land' converted into freehold land, before being transferred to the buyers. Further, the conversion of leased Nazul land into freehold property shall certainly improve the title of the owners which shall become perfect on being converted into freehold property. The property consists of bundle of right and getting the said leased 'Nazul land' converted into freehold will certainly improve the title and marketability of the said land. Moreover, since it was a leased Nazul land , the ownership vested with Government till it is converted into freehold land and in that eventuality , the complete ownership of the property will get transferred to the assessee and his three brothers. Thus, presently title of the leased Nazul Land could have been transferred only after the land is converted into freehold land , deed is executed and conveyance charges/stamp duty paid for getting it converted into freehold in the name of sellers who are the registered lessee before ultimately transferring the land to the buyers, certainly the said freehold cost/charges were necessarily required to be incurred for removing the impediment to sale and getting the said land ultimately transferred to buyers. It will also improve the title and marketability of the property. The covenants between the two parties clearly provided that the total sale consideration was Rs. 4,53,62,000/-and the freehold charges to the tune of Rs. 1,43,62,000/- were included in the aforesaid sale consideration and was not to be paid by buyers over and above the said amount of sale consideration agreed between the buyers and sellers.

6.7 It is further provided in the agreement to sell, dated 15.07.2011 that in case the sellers fails to execute and get the transfer/sale deed registered , the buyers can after making full payment of sale consideration to the buyers shall have the right to get the transfer/sale deed executed and registered through the court of law. The relevant clause in agreement to sell, dated 15.07.2011 is reproduced hereunder:

"9. That if the First Party fails to execute and get the transfer/ sale deed registered as provided herein and after receipt of the full sole consideration, etc. from the Second Party, the Second Party shall have the right to get the transfer/sale deed executed and registered through court of law."

6.8 It is further provided in the agreement to sell, dated 15.07.2011 that the buyers will be fully responsible for conversion of aforesaid Nazul land to freehold and shall get the necessary paper work completed and filed before the concerned authorities of the Government and pursue the matter for expeditious conversion of the land to freehold so that the land becomes freehold within a period of thirty five months from the date of the agreement to sell and the sellers shall extend full co-operation and sign every lawful paper required for the same. The relevant clause in agreement to sell, dated 15.07.2011 is reproduced hereunder:

"12. The Second Party shall be fully responsible for conversion of the aforesaid Nazul land to freehold and shall get the necessary paperwork in this regard completed and filed before the concerned authorities of the Government and pursue the matter for expeditious conversion of the land to freehold so that the land becomes freehold within a period of thirty five (35) calendar months from the date of this deed of agreement to sell. The First Party shall extend full cooperation and sign every lawful paper required for the said purpose."

Thus, what transpires from this clause is that the buyers have taken the onus for getting the said leased 'Nazul land' converted into freehold including follow up with Government authorities , for which the sellers have to extend full co-operation so that it can be expeditiously converted into freehold , including signing of all documents etc. required in connection therewith. The funding was done by buyers for said conversion of land to freehold , such as payment of stamp duty, conversion charges etc., but the same was paid out of the total sale consideration agreed upon in the agreement to sell , dated 15.07.2011 viz. Rs. 4,53,62,000/-, as is emerging from the records.

6.9 The agreement to sell , dated 15.07.2011 further provided that the period of validity of the agreement is 36 months and immediately thereafter , the agreement to sell shall stand rescinded , and the sellers will forfeit all the amounts paid by buyers under this agreement. The relevant clause in the agreement to sell , dated 15.07.2011 is reproduced hereunder:

"14. That the period of validity of this agreement to sell shall be thirty six (36) months from the date of execution of this agreement to sell. Immediately thereafter, this agreement to sell shall stand automatically rescinded and the entire amount paid by the second party under this agreement to sell shall stand forfeited by the first party.

15. If due to unforeseen reasons (like government policies) the aforesaid property is not converted into freehold by the State Government in favour of the first party within 18 months from the date of execution of this agreement to sell, the Second Party shall forthwith pay a further sum of Rs.1,10,00,000/- (Rupees one crore and ten lakhs only) to the first party and the First Party shall hand over possession of the property to the Second Party immediately thereafter. Further, on such an eventuality, the Second Party shall have the option , within the period of validity of this agreement to sell, of getting the transfer/sale deed executed in its favour by the First Party in respect of the aforesaid property on an " as is where is " basis without the land being converted to freehold . However, the balance amount of the sale consideration of Rs. 1,06,33,000/- (Rupees one crore six lakhs and thirty three thousand only) which is the balance of the freehold conversion charges, etc., shall be paid by the Second Party to the First Party only when demand is raised by the State Government during the period of validity of this agreement to sell.

16. The entire stamp duty, registration charges, etc. in respect of the transfer/sale deed, whenever executed by the First Party as provided herein , shall be paid by the Second Party. Further, in case there occurs any increase in the freehold premium, freehold conversion charges stamp duty, etc. which is demanded / required by the Government more than what has been provided hereinabove, the same will be paid by the Second Party to the First Party. "

As is emerging from the above clauses that period of validity of agreement to sell is thirty six months and immediately thereafter, the amount paid under agreement to sell shall be forfeited by sellers. Under this eventuality Section 51 of the 1961 Act as was applicable for impugned ay shall got applicable and will take care of that eventuality . It is also provided in the agreement to sell that in case due to any unforeseen reasons such as government policy , the aforesaid property could not be converted into freehold within 18 months, then the buyers can pay the balance consideration of Rs. 1,10,00,000/- (exclusive of remaining unpaid freehold conversion charges, stamp duty etc as provided in agreement of sale) to the sellers and get the possession of the property in their favour and at their option get the transfer/sale deed executed in their favour. It also provided that in case, the freehold conversion charges, stamp duty etc. are increased by Government, then the buyers will pay for the same. This clause also takes care of the sellers getting assured net consideration for their property and since the period of agreement to sale is fairly long period of thirty six months, in the eventuality of change in government charges/ stamp duty, the buyers are to bear the same. In that eventuality, there will be adjustment in the sale consideration which will stood increased to that extent and consequently the deduction on account of cost/charges towards improvement to the property shall also go up, so much so that it will be tax neutral. These are terms agreed by two willing independent parties to contract and they are within their rights to arrange their affairs, so long as it does not result in defrauding Revenue or infringing statutory provisions . There is nothing unusual in these clauses, rather it strengthen the stand of the assessee that freehold conversion charges, stamp duty etc. are included in the sale consideration agreed upon by buyers and sellers, and are towards improvement of title to the property or for removing impediment in the transfer of the property, which are to be deducted while computing income from long term capital gains on sale/transfer of the aforesaid property. Thus, in our considered view the assessee has rightly claimed the deduction on account of improvement in the property being improvement in title

of the property on being converted from leasehold Nazul land to freehold property , as property is bundle of rights and getting property converted from leasehold to freehold will certainly improve the title and marketability of the property and also it is a Nazul land , getting the property freehold will grant perfect ownership rights/title in favour of the existing lessee's , who will then be in a position to transfer/sell the property.

6.10 We have also carefully gone through the Freehold deed dated 13.03.2012, which is placed in paper book. The said freehold deed was executed in the name of His Excellency Governor of Uttar Pradesh as seller of the land and is executed/granted in favour of Mr. Sudip Kumar Majumdar, Shri Sudeb Majumdar, Shri Sujit Majumdar and Shri Sanjay Majumdar, wherein freehold rights with respect to this property granted by State of U.P. in favour of above parties. The entire description of the property and leaseholder/inheritor, from the date of grant of lease rights of the Nazul land in 1935 till the date of execution of freehold deed are found mentioned in the deed. Thus, the freehold conversion of the property was done by State of U.P. in favour of the existing leaseholders and not in favour of the buyers. This also strengthens the view that sale consideration included freehold conversion charges, stamp duty etc. and as agreed upon the funding was done by sellers but the payments were made out of the sale consideration found mentioned in the agreement to sell. Thus, the assessee has rightly claimed the deduction on account of his share of freehold conversion charges, stamp duty etc. for converting the said property into freehold, being improvement in the property or otherwise as paid for removing impediment in the transfer/sale of the property. Thus, provisions of Section 48 of the 1961 Act were rightly applied with by the assessee, while computing income from long term capital gains chargeable to tax.

6.11 We have also gone through sale deed , dated 25.04.2012 . This sale deed was executed by sellers in favour of the buyers, after the said property was converted into a freehold property, There is nothing in the registered sale deed which can led us to any conclusion other than that the freehold conversion charges, stamp duty etc. were borne by the buyers which form part of the sale consideration as is agreed upon. The agreement to sell was valid for 36 months and sale deed was executed after the property was converted into freehold property. It is the covenant agreed by and between two independent willing parties as to the agreed sale consideration for the property, mode of payment and manner in which it is to be discharged. The parties are within their rights to arrange their affairs in the manner best suited to them , so long it does not violate statutory provisions or led to defrauding of Revenue. There was an impediment to transfer this leasehold Nazul Property unless the property is converted into freehold and hence to obviate the same , the agreement to sell was entered into with long currency period of 36 months so that sellers can get the aforesaid leasehold property converted into freehold in their names , in accordance with policy of U.P.State Government and there is a mention of several of orders passed by U.P.State Government in connection with dealing with Nazul leasehold land and its conversion into freehold. There is no material on record to suggest that any attempt is made by assessee to defraud Revenue. The Id. PCIT is of the view that full value of consideration of the said property was Rs. 6,02,01,000/- , while agreed sale consideration (including freehold conversion charges, stamp duty etc.) was to the tune of Rs. 4,53,62,000/- . It is observed that while computing income from capital gains, the assessee has adopted his share of full value of consideration of Rs. 6,02,01,000/- and not the agreed sale consideration of Rs. 4,53,62,000/- which is in consonance with provisions of Section 50C of the 1961 Act and in our considered view there should not be any grievance to Revenue to that effect, as the assessee computed income from capital gains by adoption of his share of full value of consideration of Rs. 6,02,01,000/- and not the sale consideration of Rs. 4,53,62,000/- as found mentioned in agreement to sell. There could be a legitimate grievance that the sellers got the aforesaid Nazul property converted into freehold from U.P.State Government without disclosing that an agreement to sell is already entered into by them with the buyers, but firstly there is no material on record to that effect which conclusively prove that this fact was concealed from Government and secondly we are concerned with proceedings under the 1961 Act and our scope is limited to computing the income chargeable to tax under the provisions of the 1961 Act and consequentially income-tax payable by the assessee.

6.12. *The Id. PCIT was of the view that AO has not conducted proper enquiries more-so no enquiries were conducted with the buyers and hence the assessment order is erroneous so far as is prejudicial to the interest of Revenue and hence revisionary proceedings u/s 263 of the 1961 Act were sought to be justified. In our considered view, the AO has made proper enquiries in the instant case. There was assessment proceedings going on for ay: 2013-14 and during the assessment proceedings for ay: 2013-14, two references were made by ITO , 1(5), Allahabad to Additional Commissioner of Income-tax, Range 1, Allahabad dated 30.10.2015 and 04.01.2016 , both u/s 144A of the 1961 Act in connection with sale/transfer of this property , which references were disposed of by Addl. CIT vide orders dated 18.12.2015 and 28.01.2016 respectively , which ultimately led to reopening of the assessment u/s 147/148 of the 1961 Act for the impugned ay: 2012-13. We have also gone through the reassessment order passed by AO u/s 147 read with Section 143(3) , dated 24.06.2016 and an order dated 27.02.2017 passed u/s 147 read with Section 143(3) and 154 of the 1961 Act and we are of the considered view that the AO has applied his mind before passing reassessment order. At the same time , we are in agreement with Id. CIT-DR that mistake has crept in reassessment order as cost of improvement is indexed by taking cost inflation index base of financial year 2012-13, while the entire payments were made for freehold charges / stamp duty etc in fy:2011-12. Thus, the cost inflation index base for fy: 2012-13 to be 852 was adopted while computing income from long term capital gains, while the cost inflation index for ay: 2011-12(ay:2012-13) was 785 which ought to have been applied to cost of improvement being freehold conversion charges, stamp duty etc. Rather, since the payment for freehold conversion charges, stamp duty etc. is made in the previous year relevant to impugned ay , there is no necessity of applying cost inflation index and actual payment made towards freehold conversion charges, stamp duty etc. ought to had been claimed/deducted while computing income chargeable to tax under the head income from long term capital gains. Similar, error crept in while indexing the cost of acquisition of the property by applying cost inflation index of 852 instead of 785. Thus, to this extent the reassessment passed by AO was erroneous so far as prejudicial to the interest of Revenue which requires to be revised by AO and proceedings u/s 263 of the 1961 Act are upheld to this extent, as the aforesaid error in adopting cost inflation index of 852 instead of 785 is certainly an error which has caused prejudice to the Revenue, which now need to be rectified for which directions are hereby issued. Thus, in nut-shell, we partly allow the appeal of the assessee and only to the limited extent of making correction in the base rate of cost inflation index for fy:2011-12(ay:2012-13) which was erroneously taken at 852 , instead of correct figure of 785 , while computing income chargeable to tax under the head 'Income from capital gains'. We order accordingly."*

Our observations in the aforesaid appellate order in ITA no. 68/Alld/2018 dated 28.01.2021 passed in the case of brother of the assessee namely Mr. Sanjay Majumdar who is also one of the co-owners of the aforesaid property , shall be applicable in the case of the assessee also , as the facts are identical and the same property was sold by brother of the assessee namely Mr. Sanjay Majumdar (share in the property 25%), wherein the assessee was also one of the co-owner of the aforesaid property with 25% share. Thus, Id. CIT(A) erred in holding in the case of the assessee that cost of improvement by way of amount paid for conversion of property from leasehold to freehold in the instant case shall not be available to the assessee in ay: 2012-13, which is contrary to our decision in ITA No. 68/Alld/2018

in the case of brother of the assessee namely Mr. Sanjay Majumdar. Thus, we allow the appeal of the assessee to that extent by holding that the assessee will be allowed as cost of improvement of the amount paid towards his share for conversion of aforesaid leasehold land to freehold, by following our own order dated 28th January, 2021 in the case of the brother of the assessee namely Mr. Sanjay Majumdar, in ITA No. 68/Alld/2018 for ay: 2012-13. Thus, we allow ground of appeal no. 1 and 2 raised by assessee in memo of appeal filed with tribunal. We order accordingly.

7. The ground of appeal number 3 raised by assessee in memo of appeal filed with tribunal concerns itself with the chargeability of interest income of Rs. 2,76,000/- on NHAI bonds which assessee claimed that the same was offered for taxation in the ay: 2014-15 on receipt basis , while the AO brought to tax said income on accrual basis in the year under consideration. The assessee has raised this ground specifically before ld. CIT(A) and the learned CIT(A) refers to this issue being raised by the assessee at page number 5 of its appellate order dated 20.03.2017 , but while adjudicating appeal, the learned CIT(A) did not adjudicate this issue. Thus, keeping in view facts and circumstances of the case and in the interest of justice , this issue is restored to the file of ld. CIT(A) for fresh adjudication on merits in accordance with law. The ld. CIT(A) shall give proper and adequate opportunity of being heard to the assessee while adjudicating this issue. Thus, ground of appeal number 3 raised by assessee before tribunal is allowed for statistical purposes. We order accordingly.

8. The ground of appeal no. 4 raised by assessee in memo of appeal filed with tribunal is concerning chargeability of interest u/s 234A, B and C which is consequential in nature and does not require separate adjudication and hence is dismissed. We order accordingly.

9. Ground of appeal No. 5 raised by assessee in memo of appeal filed with tribunal is general in nature and hence does not require separate adjudication and hence is dismissed. We order accordingly.

10. In the result, the appeal filed by assessee in ITA no. 143/Alld/2017 for ay: 2013-14 is partly allowed for statistical, as indicated above.

Order pronounced in open court on 09/07/2021 at Allahabad through video conferencing mode.

Sd/-

[VIJAY PAL RAO]
JUDICIAL MEMBER

DATED: 09/07/2021

Rohit, PS

Copy forwarded to:

1. Appellant – Mr. Sujit Majumdar
2. Respondent – CIT, Allahabad
3. CIT(A) , Allahabad, U.P.
4. CIT
5. DR -

Sd/-

[RAMIT KOCHAR]
ACCOUNTANT MEMBER

By order

Assistant Registrar