

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI AMARJIT SINGH (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 756/MUM/2018
Assessment Year: 2011-12**

Income Tax Officer- 23(2)(3), Room No. 110, 1 st floor, Matru Mandir, Mumbai.	Vs.	MIG Co-operative Housing Society Ltd., Office Shed Behind D-17, MIG Colony, Bandra-East, Mumbai-400051.
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Appellant	PAN No. AABAM0722B Respondent
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Revenue by	: Mr. Narendra Singh Jangpangi, CIT DR
Assessee by	: Mr. Yogesh Thar, AR

Date of Hearing : 16/12/2019
Date of pronouncement: 16/12/2019

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the Revenue. The relevant assessment year is 2011-12. The appeal is directed against the order passed by the Commissioner of Income Tax (Appeals)-33, Mumbai [in short 'CIT(A)'] assessment completed u/s 143(3) r.w.s. 147 of the Income Tax Act 1961, (the 'Act').

2. The ground raised by the revenue in this appeal is that the Ld. CIT(A) is not justified in holding that the amount received on account of corpus fund amounting to Rs.3,00,00,000/- is taxable under the head 'Capital Gains' instead of 'Income from Other Sources'.

3. Briefly stated, the facts of the case are that the assessee is a Co-operative Housing Society. During the course of assessment proceedings, the Assessing Officer (AO) asked the assessee to explain why the amount of Rs.3,00,00,000/- retained by it as corpus should not be taxed. The assessee filed a reply. However, the AO was not convinced with the reply of the assessee for the reason that the corpus fund cannot be a capital receipt as the contribution of capital of an organization should come from the members and as the sum of Rs.3,00,00,000/- was not received in accordance with the permissible parameters of the law applicable to the society and also not in respect of generating any asset and is just a receipt of non-recurring the nature, the same is to be brought to tax under the head 'Income from Other Source'.

4. In appeal, the Ld. CIT(A) *vide* order dated 02.11.2017 held that :

"95. I find that the same issue came for consideration of the Hon'ble Tribunal the case of MIG Co-operative Housing Society Group-II Ltd. vs ITO (supra), wherein the said society had received a fund of Rs.3.50 crore from the Developer in the re-development scheme. No tax was offered on this amount by claiming it as corpus fund of the society. The AO, in the assessment order, treated it as "Income from other Sources". Hon'ble Tribunal after appreciation of the facts has held that the said amount of Rs.3.5 crore received during the year is taxable but under the head Capital Gain. Respectfully following the decision in the above case, it is held that payment of Rs.3 crore received by appellant from the Developer cannot be treated as payment towards corpus of the Society and the same will be taxable during the instant year under the head "Capital Gain" instead of "Income from Other Sources".

5. Before us, the Ld. counsel for the assessee submits that the above issue has been decided by the ITAT 'J' Bench, Mumbai in assessee's own case for the impugned assessment year in ITA No. 492/Mum/2018.

The Ld. Departmental Representative (DR) also states that the above issue has been decided in favour of the assessee by the said order of the Tribunal.

6. We have heard the rival submissions and perused the relevant materials on record. In ITA No. 484/M/2018, the Tribunal *vide* order dated 31.07.2017 observed that the developer had made payments to the Society as well as to the members and they had offered the amounts received by them for taxation; once the members had shown the income received by them in their hands there cannot be any justification for taxing the same in the hands of the Society ; no double taxation and no double deduction is one of the well recognized and fundamental principles of taxation ; signing of agreement by the members or society cannot be base for taxing of income ; as per the scheme of the Act, income received by any person or income accrued to him has to be taxed; in the case under consideration, income was received by the members and they had offered the same for taxation.

The Tribunal, by following the judgment of the Hon'ble Bombay High Court in the case of *CIT v. Raj Ratan Co-op. Housing Society Ltd.* (ITA No. 2292 of 2001) and the order of the Co-ordinate Bench in the case of *MIG Co-op. Housing Society Group-II Ltd. v. ITO* (ITA No. 896/Mum/2016) deleted the addition of Rs.139,16,46,972/- as short term capital gains.

The Tribunal further observed that the ground number 10 to 13 in ITA No. 492/M/2018 which relate to taxing Rs.3,00,00,000/- receivable by the assessee towards the corpus as capital gains are nothing but alternative grounds. Accordingly, it held that as the relief has been given to the assessee on merits, the discussion in these grounds become academic.

7. Considering the above order of the Co-ordinate Bench, we dismiss the appeal filed by the Revenue.

Order pronounced in the open Court on 16/12/2019.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 16/12/2019

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Assistant Registrar)
ITAT, Mumbai