



ITA No.2150/Mum/2015
Shri Ram Nagar Trust No.1
Assessment Year: 2010-11

आयकर अपीलीय अधिकरण “ई” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing Through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.2150/Mum/2015
(निर्धारण वर्ष / Assessment Year:2010-11)

Shri Ram Nagar Trust No.1 315-G, New Charni Road Mumbai-400 004.	बनाम/ Vs.	DDIT (Exemption)-1(1) Piramal Chambers, Lalbaug Parel, Mumbai-400 012
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AAATR-0427-J		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Mihir Naniwadekar-Ld.AR
Revenue by	:	Shri Amit Pratap Singh-Ld. Sr.DR

सुनवाई की तारीख/ Date of Hearing	:	07/10/2020
घोषणा की तारीख / Date of Pronouncement	:	07/10/2020

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. The captioned matter has come up for hearing before this bench pursuant to the directions of Hon’ble Bombay High Court in Assessee’s Appeal, ITA No.542 of 2017 dated 18/06/2019 wherein the matter has been sent back by Hon’ble Court to Tribunal with following directions: -

6. In view of the fact that the Tribunal has rested its judgment only on the assessee's alternative contention and as pointed out by the learned counsel for the assessee that it may happen that this ground may fail on account of future developments, it is



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necessary that the assessee must get answer to its primary contention of the receipt not being taxable at all.

7. Under these circumstances, we request the Tribunal to decide this issue on merits. For this limited purpose, we place the proceedings back before the Tribunal for deciding this question in accordance with law.

It is evident that Hon'ble Court has directed the Tribunal to decide whether the receipts of Rs.2 Crores earned by the assessee pursuant to settlement and for withdrawing certain suit filed by the assessee in respect of an immovable property, were capital receipts and therefore not exigible to tax. The said issue was raised by the assessee by way of ground No.4 in the appeal filed before the Tribunal. The same read as under.

4. On facts and in circumstances of the case and in law the Commissioner of Income Tax (Appeals) {CIT (A)} erred in holding that the amount of Rs.2 Crores received by the appellant from Om Vishal Nagar Co-op. Housing Society Ltd. is not a capital receipt, and therefore, is a part of income of the appellant Trust. In doing so, the CIT(A) has grossly erred in holding that the said amount of Rs.2 Crores is liable to be taxable as income of the appellant Trust on the grounds of commercial principles and not exempt from the charge of income tax as claimed by the appellant, since it being in the nature of a capital receipt.

2. The learned Authorized Representative for Assessee (AR), Shri Mihir Naniwadekar, at the outset, submitted that learned Assessing Officer has not rendered any finding on this issue in the assessment order dated 25/03/2013 and correct factual matrix is required to be brought on record. The Ld. AR submitted that this alternative ground was taken up by the assessee for the first time before learned first appellate authority who dismissed the same vide para -9 of the order by opining that the income for the purpose of Sec.11 is to be computed in commercial manner without classification under various head and deductions under other machinery provisions under separate heads of income are not available under Sections 11, 12 & 13. However, no



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adjudication has been rendered as to the nature of receipts. In the above background, Ld. AR submitted that it is imperative to bring on record correct factual matrix which would require elaborate submissions as well as documentary evidences. Therefore, the fact of the case would demand that the matter be remitted to learned AO so as to enable proper adjudication of ground raised by the assessee. When the said proposition was put to learned Sr. DR, Shri Amit Pratap Singh, he acquiesced to the said proposition and pleaded for restoration of matter back to the file of learned AO.

3. Keeping in view the submissions made before us, we deem it fit to remit the matter back to Ld. AO for limited purpose of adjudicating ground no. 4 as raised before us. The learned AO is directed to admit the issue as raised by the assessee in ground no.4, bring correct factual matrix of the same on record and adjudicate whether the aforesaid receipts were capital in nature and hence not exigible to tax. Ground No.4, thus raised, stand allowed for statistical purposes.

4. The appeal stands allowed for statistical purposes.

Order pronounced in the open court on 07th October, 2020.

Sd/-

(Mahavir Singh)

उपाध्यक्ष / **Vice President**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 07/10/2020
Sr.PS, Jaisy Varghese



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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**