

**IN THE INCOME TAX APPELLATE TRIBUNAL), 'D' BENCH
MUMBAI**

BEFORE SHRI RAJESH KUMAR, AM

&

SHRI AMARJIT SINGH, JM

**ITA No.3526/Mum/2017
(Assessment Year :2010-11)**

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| Smt. Delilah Raj Mansukhani Flat No.1, Ground Floor 216, Shalimar Building Netaji Subhash Road Marine Drive Mumbai – 400 020 | Vs. | ITO 35(1)(3) Pratyakshkar Bhavan C-13, Bandra Kurla Complex, Bandra (E) Mumbai – 400 051 |
| PAN/GIR No. AGVPM1739P | | |
| (Appellant) | .. | (Respondent) |

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|------------------------------|-----------------------|
| Assessee by | Shri Mayur Kisnadwala |
| Revenue by | Shri Bharat Andhle |
| Date of Hearing | 06/01/2021 |
| Date of Pronouncement | 29/01/2021 |
| | |

आदेश / O R D E R

PER RAJESH KUMAR, ACCOUNTANT MEMBER:

The aforesaid appeal has been filed by the assessee against the impugned order dated 10/03/2017, passed by the CIT(A)-46, Mumbai, for the assessment year 2010-11.

2. This appeal has been decided by the order of Co-ordinate Bench dated 12/03/2019, however, inadvertently the ground Nos. 5 & 6 were omitted to be adjudicated and therefore, assessee moved Miscellaneous Application which was allowed by the Bench in MA No.460/Mum/2019 arising out of ITA.3526/Mum/2017 dated 22/01/2020 whereby the said order of the Co-ordinate Bench has been recalled to the limited extent of deciding the ground No.5 & 6 regarding enhancement of assessment on account of rental income for alternate accommodation of Rs.2,60,000/- by Id CIT(A). The grounds are reproduced as under:-

“5. On the facts and circumstances of the case and in law, the order of the Id. CIT(A) enhancing the assessment on account of rental income for alternate accommodation of Rs. 2,60,000/- is bad in law.

6. On the facts and circumstances of the case and in law, the Id. CIT(A) erred in enhancing the assessment holding that the rent received for alternate accommodation of Rs. 2,60,000/- is eligible to tax.”

3. The ground No.5 is qua jurisdiction of the Id. CIT(A), that Id. CIT(A) erred in enhancing the assessment on account of rental income of Rs.2,60,000/- which represented compensation for alternate accommodation by the developer and ground no. 6 is on merit challenging the enhancement made by the Id. CIT(A) in his order towards rental income for alternate accommodation of Rs.2,60,000/-.

4. We would like to first decide the ground No.6 which is on merit. The facts in brief are that during the course of appellate proceedings, the Id. CIT(A) found on the basis of details forwarded by from M/s. Calvin Properties that assessee has been given compensation for alternative accommodation of Rs.2,60,000/- as per in terms of Development agreement. According to the Id. CIT(A), the amount

received was over and above the rent actually paid by the assessee and therefore, the same has to be taxed accordingly. The Id. CIT(A) issued notice u/s.251(2) dated 24/02/2017 qua the proposed enhancement. This was replied by the assessee by submitting that assessee received monthly rental compensation during the year aggregating to Rs.2,60,000/- for the alternative accommodation which is a compensation on account of her family displacements from the accommodation and tremendous hardship and inconvenience to her caused thereby and submitted that the said compensation is towards meeting / overcoming the hardship and it is a capital receipt and therefore, is not liable to be taxed. The assessee relied on the decision of the Co-ordinate Bench in the case of Kushal K. Bangia vs. ITO in ITA No.2349/Mum/2011 for A.Y.2007-08 wherein the AO did not tax the displacement compensation as it was held to be a receipt not in the nature of income, however, the Id. CIT(A) has rejected the contentions of the assessee and enhanced the assessment to the extent of Rs.2,60,000/- by holding that assessee has not paid any rent.

5. After hearing the rival submissions and perusing the material on record, we find that compensation received by the assessee towards displacement in terms of Development Agreement is not a revenue receipt and constitute capital receipt as the property has gone into re-development. In such scenario , the compensation is normally paid by the builder on account of hardship faced by owner of the flat due to displacement of the occupants of the flat. The said payment is in the nature of hardship allowance / rehabilitation allowance and is not liable to tax. The case of the assessee is squarely supported by the decision of the Co-ordinate Bench in the case of Shri Devshi Lakhamshi Dedhia

vs. ACIT in ITA No.5350/Mum/2012 wherein similar issue has been decided in favour of the assessee, the relevant operative portion is reproduced hereunder:-

15. We have considered the rivals submissions and perused the materials on records. We note that the assessee received compensation of Rs. 19,50,873/- from the developer when the building in which the assessee owned flat went for re-development as per the agreement between the developers and flat owners dated 28.03.2008. The said compensation was paid towards hardship Rs, 13,45,278/-; rehabilitation Rs, 5,90,625/- and for shifting Rs. 15,000/-. We also note that the assessee paid Rs. 18,63,000/- to Joys Developers for acquiring additional area of 138 Sq Ft. It was also noted that the assessee shifted to his own house when the building went for re-development. Now the question before is whether the compensation upon re-development of property towards hardship, rehabilitation and shifting received by the assessee is taxable if the potential TDR/FSI is available to the land owner or society which owns the (and depending upon the terms of the de-development agreement without transferring the land). In the present case the assessee who was flat owner in the building was member of the society, As per the agreement each member of the society including the assessee was to be given a flat in lieu of the old one and the each member including the assessee was given compensation. We also note that In the decisions in ITA No 72/Mum/2012 assessment year 2008-09 Bench E and ITA No 5271/Mum/2012 assessment year 2008-09 Bench "D" the Tribunal held that the amounts received as compensation for hardship, rehabilitation and for shifting are not liable to tax We, therefore, respectfully, the above decisions are of the considered view that the amounts received by the assessee as hardship compensation, rehabilitation compensation and for shifting are not liable to tax and the order passed by the first appellate authority can not be sustained. Thus the order of CIT(A) is reversed and ground is allowed in favour of the assessee.

16. In the result, appeal of the assessee is partly allowed, as above.

6. Respectfully following the co-ordinate Bench decision, we set aside the findings of the Id. CIT(A) on this issue and direct the AO to delete the addition made of Rs.2,60,000/-. Accordingly, the ground No.6 is allowed.

7. Since, we allowed the issue on merit, we are not deciding the issue raised by assessee in ground No.5 on the jurisdiction of Id. CIT(A) to enhance income of the assessee by Rs.2,60,000/-.

8. Accordingly, the order dated 12/03/2019 passed in ITA No.3526/Mum/2017 stands modified to the above extent.

8. In the result, appeal of the assessee is allowed in part in terms of what is indicated hereinabove.

Order pronounced on 29/01/2021 by way of proper mentioning in the notice board.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Mumbai; Dated 29/01/2021
KARUNA, *sr.ps*

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai