

आयकर अपीलिय अधिकरण  
मुंबई पीठ "बी" मुंबई  
श्री विकास अवस्थी, न्यायिक सदस्य, एवं  
श्री अमरजीत सिंह, लेखाकार सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "B" BENCH  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER  
आ.आ.सं. ५८३०/मुंबई/२०१९ (नि.व. २०१६-१७)  
ITA No.5830/MUM/2019 (A.Y.2016-17)

Naresh Jaramdas Idnani  
101, Ashirwad Raheja Complex,  
Andheri  
Mumbai-400 061  
PAN No. AFDPI0010E

..... अपीलार्थी/Appellant

बनाम Vs.

Income Tax Officer (IT)-2 (2) (1)  
Room No.1725, 17<sup>th</sup> Floor,  
Air India Building, Nariman Point,  
Mumbai-400 021

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Sameer Dalal

प्रतिवादी द्वारा/ Respondent by : Ms. Vranda U. Matkari, Sr. AR

सुनवाई की तिथि/ Date of hearing : 17/02/2023

घोषणा की तिथि/ Date of pronouncement : 15/05/2023

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the Assessee is directed against the order of Commissioner of Income Tax (Appeals)-56, Mumbai (hereinafter referred to as "the CIT(A)") dated 08.07.2019, for the assessment year 2016-17.



2. Shri Sameer Dalal appearing on behalf of the assessee submitted that a Flat no. 7 in Khar Friends Co-operative Housing Society Limited, Khar (West), Mumbai was acquired by the grandmother of assessee in 1974. Subsequently, the said property was inherited by the assessee by way of Will. In the year 2000, a tri-party agreement between Khar Friends Co-operative Housing Society Limited, residents of the society and Shri Ahuja Properties Pvt. Ltd. (developer) was entered into for redevelopment of the society building. Originally, the grandmother of assessee owned a flat on the ground floor. After redevelopment, the assessee was allotted Flat no. B-303 on 3<sup>rd</sup> floor of Khar Friends Co-operative Housing Society Limited. As per the agreement, the developer paid compensation to all the flat owners for displacement and hardship caused during redevelopment of the building. The assessee also received compensation of Rs.10,79,000/- from the Developer for displacement and hardship. The assessee had reflected the aforesaid amount in his accounts as capital receipt. The assessee sold the flat in the period relevant to the assessment year under appeal for a total consideration of Rs.1,62,00,000/- vide Sale Agreement dated 04.02.2016. The assessee in return of income for AY 2016-17 offered to tax capital gains on sale of flat. The Assessing Officer (AO) while computing long term capital gain, reduced indexed cost of compensation received in the year 2000 from the indexed cost of acquisition of old Flat and made addition of Rs.27,02,385/-. The Ld. Authorised Representative (AR) pointed that the AO and CIT(A) have erred in coming to the conclusion that the amount received by the assessee by way of compensation in the year 2000 has to be reduced from indexed cost of acquisition of old flat. The assessee had received Rs.10,79,000/- in the year 2000 from the developer. The said amount was received as compensation by the assessee towards:

- Shifting from ground floor to the third floor
- Provisions for fixture, fittings and electrical accessories in new flat. The builder had handed over new flat in a raw shape, whereas the old flat which the assessee had to leave already had electrical fittings, fixed furniture and fixtures, other accessories, kitchen fittings etc. They all had to be scraped and were lost in demolition of ground floor. The assessee had to incur expenditure on furniture, fixtures, electrical etc. to making the new flat habitable.

The said compensation has nothing to do with sale of flat in FY 2015-16. The capital gain arising from the sale of flat in 2016 and compensation received for hardship and inconvenience in the year 2000 are two independent transactions having no bearing on each other.

3. Per contra, Ms. Vranda U. Matkari representing the Department vehemently defended the impugned order and prayed for dismissing appeal of the assessee.

4. We have heard the submissions made by rival sides and have examined the orders of authorities below. Insofar as the facts and sequence of events narrated by Ld. AR are concerned, they are not disputed by the Department. The issue in dispute is whether the amount of Rs.10,79,000/- received by the assessee in the year 2000 would have any bearing while computing capital gains on sale of flat in assessment year 2016-17. The assessee had received compensation of Rs.10,79,000/- in the year 2000 purportedly on account of displacement and hardship caused at the time of redevelopment of the residential building. The assessee



has placed on record copy of the tri-party agreement between Society, Residents and the Developer. The said agreement is at page 7 to 16 of the Paper Book. As per the agreement, the assessee has received Rs.10,79,000/- as compensation. Similarly, the other residents of the society have also received compensation from the Developer. The names of the assessee and other residents to whom compensation is paid by Developer is at page 16 of the Paper Book. The assessee has sold the flat in assessment year 2016-17 and in computation of income for the said assessment year, the assessee has disclosed long term capital gain of Rs.18,96,000/- on sale of flat. The AO while computing long term capital gain reduced the index cost of compensation from the index cost of acquisition of flat and made addition of Rs.27,02,385/- (i.e. index cost of compensation received in the year 2000). Purportedly, the assessee has already disclosed compensation received as capital receipt in the relevant AY. This fact has not been disputed by the Revenue. After having examined the facts on record, we are of considered view that the AO could not have taxed the compensation received by the assessee in Financial Year 2000-01 in AY 2016-17. The receipt of compensation in the year 2000 and sale of flat in the period relevant to the assessment year 2016-17 are two different independent transactions, with no relation to each other, except that both relate to some immovable asset. Merely for the reason that the compensation and long term capital gain accrued on same flat, it would not mean that the compensation received in the year 2000 would impact long term capital gain in the assessment year 2016-17. To put it in other words, the compensation received in the year 2000 could neither be reduced from indexed cost of acquisition nor it is taxable in the impugned assessment year. The compensation received in the year 2000 will have no bearing on long term capital gain on sale of flat in AY 2016-17.



We find merit in appeal of the assessee, the impugned order is set aside and appeal of the assessee is allowed.

Order pronounced in the open court on Monday the 15<sup>th</sup> day of May 2023.

**Sd/-**

(AMARJIT SINGH)

**लेखाकार सदस्य/ACCOUNTANT MEMBER**

मुंबई/Mumbai,

दिनांक/Dated: 15/05/2023

Mahesh R. Sonavane

**Sd/-**

(VIKAS AWASTHY)

**न्यायिक सदस्य/JUDICIAL MEMBER**

**प्रतिलिपी अग्रेषित Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/The Respondent.
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधी, आय. अपी. अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाईल/Guard file.

BY ORDER,

//True Copy//

(Dy. /Asst. Registrar)/  
Sr. Private Secretary  
**ITAT, Mumbai**