

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"I" BENCH, MUMBAI**

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA Nos. 533 & 534/MUM/2023  
(Assessment Years: 2015-16 & 2016-17)**

**Rajesh Jayvant Somnay**

1112, Hubtown Solaris, V N Phadke  
Road, Opp. Telli Galli, Andheri (East),  
Mumbai-400069  
[PAN: COTPS1185K]

..... **Appellant**

Vs

**Income Tax Officer,**  
International Taxation,  
Ward4(2)(1), Mumbai

..... **Respondent**

**Appearance**

For the Appellant/Assessee : None  
For the Respondent/Department : Shri Soumendu Kumar Dash,

**Date**

Conclusion of hearing : 03.05.2023  
Pronouncement of order : 30.05.2023

---

**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. These are the two appeals preferred by the Assessee pertaining to Assessment Years 2015-16 and 2016-17 involving common issues. Therefore, the appeals were heard together and are, therefore, being disposed by way of a common order.

**ITA No. 533/Mum/2023 (Assessment Year 2015-16)**

2. We would first take up appeal for the Assessment Year 2015-16 which is directed against the Assessment Order dated, 02.01.2023, passed under Section 147 read with Section 144C(13) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'], as per directions, dated 26.12.2022, issued by the Dispute Resolution Panel-2, Mumbai

(hereinafter referred to as 'the DRP') under Section 144C(5) of the Act pertaining to the Assessment Years 2015-16.

3. The Appellant has raised following grounds of appeal:

- "1. On the facts and in the circumstances of the case and in law, the proceedings initiated u/s 147 by issuance of notice u/s 148 of the act is invalid and bad in law.*
- 2. On the facts and in the circumstances of the case and in law, the order passed u/s. 147r.w.s. 144C(13) of the I T Act is invalid and bad in law.*
- 3. On the facts and in the circumstances of the case and in law, the learned A.O. erred in treating the appellant as a residential individual.*
- 4. On the facts and in the circumstances of the case and in law, the learned A.O. erred in making addition of an account of Rs.89,40,429/- as 'Addition on account of Hardship receipt'.*
- 5. On the facts and in the circumstances of the case and in law, the learned A.O. erred in denying the benefits of the provisions of section 54 of the act.*

*The appellant craves leave to add, alter, amend and/or delete any or all of the grounds of appeal."*

4. The solitary issue involved pertains to taxability of Hardship Compensation in the hands of the Assessee.
5. The relevant facts, in brief are that the Appellant filed return of income for the Assessment Year 2015-16 on 31.03.2017 declaring income of INR 73,000/- which was processed under Section 143(1) of the Act. Subsequently, the case of the Appellant was selected for scrutiny based upon the information received by the Assessing Officer that the Appellant has received Hardship Compensation of INR 88,40,429/- from DB MIG Realtors and Builders Private Limited (hereinafter referred to as 'the Developer') which has not been

offered to tax by the Appellant. The Appellant object to reopening of the assessment and contended that the Hardship Compensation was not liable to tax in the hands of the Appellant as it was not a revenue receipt and had been offered to tax the mother of the Appellant who was the owner of the flat surrendered to the Developer for redevelopment before she passed away on 17.04.2013. The Assessing Officer rejected the contention and proposed addition of INR 88,40,429/- in the Draft Assessment Order, dated 26.03.2022, passed under Section 147 of the Act.

6. The Appellant filed objections before DRP against the Draft Assessment Order which were rejected, vide order, dated 26.12.2022. Consequently, the Assessing Officer made addition of INR 88,40,429/- in the hands of the Appellant vide Final Assessment Order, dated 02.01.2023, passed under Section 147 read with Section 144C(13) of the Act.
7. Being aggrieved, the Appellant has preferred the present appeal before the Tribunal challenging the Final Assessment Order bringing to tax in the hands of the Appellant Hardship Compensation of INR 88,40,429/-.
8. When the appeal was taken up, none was present for the Appellant. We have heard the Learned Departmental Representative and perused the material on record.
9. We note that Reassessment proceedings are initiated against the Appellant under Section 147 of the Act after recording reasons for reopening the assessment, the relevant extract of which, as reproduced in Paragraph 4.3 of the Final Assessment Order, reads as under:

"4.3 *The assessee has filed certain objections in relation to the re-opening of his case and the same were disposed off vide this office letter dated 10.03.2022. Further, after considering the reply filed by the assessee, a show-cause Notice was issued on 10.03.2022. The same is re-produced as under:*

*"...During the course of assessment proceedings for A. Y. 2015-16, it is found from the details that you are a member of The Middle Income Group CHS Ltd. and the said housing society has entered into redevelopment agreement with M/s. MIG (Bandra) Realtors and Builders Pvt Ltd The developer has paid sum towards hardship allowance/compensation to the members of the society during FY 2014- 15 relevant to AY 2015-16 and the above you have received hardship allowance/compensation from the developer to Rs.88,40,429/- during the year under consideration.*

*It pertinent mention here that re-development of the property carried out by the society is the nature of commercial activity, the monetary consideration arising out of it directly distributed to its members being shareholders is akin to the dividend and therefore eligible to income-tax in the hands of the assessee under head 'Income from Other Sources'.*

*In view of above, the hardship allowance/compensation received hardship allowance/compensation from M/s. MIG (Bandra) Realtors and Builders Pvt. Ltd. amounting Rs.88,40,429/- during the year under consideration is taxable as "income from other Source" within the meaning of section 56. However, the same has not offered for taxation. The addition of similar nature have been made in your case in earlier assessment years also covering detailed law position in your case. view of above you are hereby show caused as to why the above hardship allowance/compensation amounting to Rs. 88,40,429/- during year under consideration, should not added under head "income from other Source" within meaning of section 56 of the IT Act, 1961..."*

10. In view of the reasons recorded for re-opening of the assessment, we are of the view that the re-assessment proceedings have been initiated based upon tangible material as per the requirement of Section 147 and 148 of the Act.

11. We note that according to the Revenue the Appellant was a member of Middle Income Group Co-operative Housing Society which had entered into Development Agreement with the Developer (i.e. DB MIG Realtors and Builders Private Limited). As per the aforesaid agreement each member of the society was to receive Hardship Compensation from the Developer in addition to a new flat in exchange of surrender of the old flat. During the relevant previous year, the Appellant received Hardship Compensation of INR 88,40,429/- in his personal capacity which was in the nature of a revenue receipt taxable under the head 'Income from Other Sources' as the said amount was received without corresponding consideration.

12. On the other hand, the contention of the Appellant, as recorded in paragraph 5 of the order passed by DRP, are as under:

*"5. Assessee's Submission*

*5.1 The arguments advance by the assessee in this regard are under*

*xx xx*

*BRIEF HISTORY THE PREMISES*

*In this connection humbly submit as under;*

*My mother MRS NEELA J SOMNAY (PAN BACPS1095Q) (NJS) was the member of the Middle Income Group CHS Ltd (MIG) since 1961-62 and as such she was one of the signatory to sign consent (along with other members) to the society for entering into a Development Agreement (DA) on behalf of all members with DB MIG REALTORS AND BUILDERS PVT LTD. (DEVELOPER) for undertaking the redevelopment. Pursuant thereto, a DA dated 31st October 2010 was entered with the Developer. This was later modified partly vide a DEED OF MODIFICATION (DOM) dated 23rd August 2014. Further a DEED OF CONFIRMATION (DOC) was entered by the society on*

*behalf of all members with the developer in order to give effect to the DA.*

*As per the DA my mother NJS was to receive a Total amount of Rs. 3,03,29,528/- (Rs. Three Crore Three Lakhs Twenty Nine Thousand Five Hundred Twenty Eight only) as Total Hardship Compensation from the Developers. In addition she was entitled to a Permanent Alternate accommodation of a carpet area of 2030 sq. ft. in the newly developed building. NJS during her lifetime received the following amounts from the Developer pursuant to the DA as under Assessment Year 2011-12 Rs. 33,16,363 (Rs Thirty Three Lakhs Sixteen Thousand Three Hundred Sixty Three only)*

*Assessment Year 2012-13 Rs. 22,10,910 (Rs Twenty Two Lakhs Ten Thousand Nine Hundred Ten only)*

*My mother who was a regular tax assessee filed her Return of Income for the year 2011-12 and 2012-13 with the jurisdictional ward officer and offered entire Hardship Compensation of Rs. 3,03,29,528/-(Rs. Three Crore Three Lakhs Twenty Nine Thousand Five Hundred Twenty Eight only) as a Capital receipt in the return of income for the assessment year 2011-12 on receivable basis visa vis Log Term Capital Gains and offered the same to Tax as Long Term Capital Gains. She however claimed exemption u/s 54 of the IT Act 1961 as she had invested and purchased a residential house property at Dadar on 12th December 2011 at a cost of Rs. 2,20,80,000 (Rs. Two Crore Twenty Lakhs Eighty Thousand only) (including stamp duty and registration etc.) The Income Tax assessments for the years 2011-12 and 2012-13 of NJS were completed by the ITO International Taxation u/s 144, although he had no jurisdiction over her case and treated the actual receipts as listed above as Income from Other Sources. NJS has filed appeals against the orders passed and is awaiting Appeal orders in the matter.*

*My mother passed away on or about the 17th day of April 2013 leaving behind her myself - Rajesh Somnay, my Brother Mohan J Somnay (PAN DBPPS7579D) and my sister Mrs Kumudi Wadgaonkar (PAN DKPPS4755M), as the only Class 1 Legal heirs to her property. Both my co legal Heirs are NON RESIDENTS.*

*As I am the eldest child of my Parent, my name was added in the society's record as a NOMINEE MEMBER during the lifetime of my mother and as mutually agreed between the legal heirs of my mother, the Developer as well as the MIG CHS Ltd agreed to correspond with me as the representative of the deceased member. I had not contributed any amount for acquiring the residential premises in MIG Colony in the year 1961-62, as I was then mere 3 years old child.*

*In the circumstances the residential premises and the membership of the MIG Society was solely and only owned by my Mother NJ Somnay.*

*The Moveable and the Immoveable assets of my late mother Neela J Somnay devolved on her three Class 1 legal heirs equally, as per the Hindu Succession Act.*

*The subsequent amounts of Rs. 88,40,429/- received in the assessment year 2015-16 and Rs. 40,21,244/- received in the year 2016-17 were inheritance amounts which were received by me from the developers as Hardship compensation are not subject to tax in the hands of the legal heirs, as the same has already been offered to tax in the hand of my mother who is the Original Member, in the year 2011-12 as Long Term Capital Receipt on receivable basis.*

*I have also paid off the shares of my co heirs share (after deducting expenses incurred) in the above amounts received by me as a custodian of the estate of the Late Mrs. Neela J Somnay as can be seen from the details of my Bank account annexed hereto.*

*In the circumstances object to the issue of the notice u/s 144C and pray before your good self to quash the notice u/s 148 issued on me by the learned assessing officer and instruct him to accept the original income tax return filed by me."*

13. Thus, the contention of the Appellant is that: (a) Entire Hardship Compensation has been offered to tax as long-term capital gains by the mother of the Appellant who was the owner of the flat surrendered in terms of the developed agreement. Since Appellant's mother had made investment of INR 2,20,80,000/- towards purchase

of residential house property at Dadar, she claimed exemption under Section 54 of the Act in respect of aforesaid long-term capital gains. Thus, Hardship Compensation could not be brought to tax again in the hands of the Appellant; (b) The Appellant received the amount under consideration from the Developer as a nominee of his mother after her death on 17.04.2013, and therefore, the amount received from the developer by the Appellant was on account of inheritance. The aforesaid inheritance was to be shared by the Appellant in equal proportion with the other 2 legal heirs as per Hindu Succession Act. The Appellant had provided name and Permanent Account Number of the other two legal heirs both of whom were non-residents; and (c) the Hardship Compensation was not in the nature of receipt liable to tax in the hands of recipient (as contended during the reassessment proceedings before the Assessing Officer and the DRP).

14. On perusal of the Draft Assessment Order and the order passed by the DRP, we find as under:

14.1. The Assessing Officer rejected the contention that the Hardship Compensation has been offered to tax the mother of the Appellant as long-term capital gains on the ground that Hardship Compensation received by virtue of development agreement cannot be taken into the category of a receipt accruing arising from transfer of a capital asset. The findings returned by the assessing officer is contrary to the facts recorded in 2.5 of the Draft Assessment Order wherein it has been stated as under:

*"The assessee one of the members of the said society by virtue of being shareholder. Thus, during the year under consideration i.e. FY.2014 - 15, the assessee has received an amount of INR 88,40,429/- being consideration for surrender of his old flat" (Emphasis Supplied)*

Thus, without making any enquiry into the factual aspects pleaded by the Appellant, the Assessing Officer simply rejected the contention that the income under consideration is already been offered to tax in the hands of the mother of the Appellant on the ground that the Hardship compensation cannot be taken into the category of a receipt accruing arising from transfer of a capital asset which was contrary to the facts recorded in paragraph 2.5 wherein it was stated that Hardship Compensation has been received in consideration for surrender of old flat.

- 14.2. The DRP also rejected the contention of the Appellant that hardship compensation has been offered to tax in the hands of the mother of the Appellant, albeit, for different reasons. Taking into account the assessment order, dated 22.12.2018, passed under Section 144 read with section 147 of the Act, in the case of mother of the Appellant in reassessment proceedings for the Assessment Year 2011-12, the DRP concluded that only unexplained cash credit income of INR 33,16,363/- has been brought to tax in the hands of the mother of the Appellant which is contrary to claim of the Appellant that the entire Hardship Compensation was offered to the by the mother of the Appellant. On perusal of the order passed by DRP we find that DRP has relied upon the ex-order passed the case of the mother of the Appellant for the Assessment Year 2011-12 in the reassessment proceedings initiated after the death of the mother of the Appellant on 17.04.2013 by issuance of notice under section 148 of the Act on 30.03.2015. Thus, despite being aware of the fact that the mother of the Appellant had passed away on 17.04.2013, the DRP has relied upon the aforesaid order, dated 22.12.2018, which is null and void in the eyes of law having been passed in the name of a dead person in proceedings initiated in the case of a dead person. We note that

there are no findings returned by the Assessing Officer or the DRP regarding the original return of income if any filed by the mother of the Appellant even though it was contended by the Appellant that his mother was a regular tax assessor and had filed original return of income for the Assessment Years 2010-11 and 2012-13 before the jurisdiction assessing officer. The Appellant had also stated that his mother had purchased property on 12.12.2011 for INR 2,20,80,000/- at Dadar and on the basis of the same had claimed deduction under Section 54 of the Act. We find no inquiry/verification was conducted in this regard. On perusal of the order passed by the DRP it is also not clear whether the Appellant was confronted with the aforesaid order dated 22.12.2018 passed in the case of the mother of the Appellant.

- 14.3. Further, we note that on page number 7 of 9 of the Assessment Order, the Assessing Officer has recorded as under:

*"6. It is important to discuss here that in the assessee own case for the AY 2011-12 and 2012-13 addition of Rs.33,16,363/- and Rs. 22,10,910/- had been made vide order dated 31.12.2018 and demand of INR 24,48,300/- and INR 13,12,950/- were raised. This order has not been contested by the assessee till date as such the order has been accepted"*

On perusal of the above it is clear that the Hardship Compensation of INR 33,16,363/- has been assessed in the hands of the mother of the Appellant in reassessment proceedings for the Assessment Year 2011-12, and the same amount has also been brought to tax in the hands of the Appellant in the Assessment Year 2011-12 before us. This aspect, which should have triggered deeper inquiry by the DRP in the contention raised by the Appellant that Hardship Allowance has been taxed in the hand of his mother, has escaped DRP's attention.

- 14.4. We note that in paragraph 6.7 of the order, the DRP has quoted from the Will executed by the mother of the Appellant wherein it has been stated that she is the owner of the flat at MIG Colony, Bandra East, Mumbai, and that after her death her children could disposed of the said flat and share the proceeds equally between them. However, despite noting as aforesaid the DRP has rejected the contention of the Appellant that the Hardship Compensation received by the Appellant was in his capacity as a nominee of his mother on behalf of all the 3 legal heirs by simply stating that the Appellant has failed to bring on record any evidence to support this contention. We failed to appreciate, what further could have been brought on record by the Appellant in support of his contention since even as per the provisions of the Hindu Succession Act the assets/property of the deceased mother was to devolve on the 3 surviving legal heirs in equal proportion as was contended by the Appellant. Thus, we find merit in the contention advanced on behalf of the Appellant before DRP that entire Hardship Compensation could not have been, in any case, brought to tax in the hands of the Appellant as the same was received by the Appellant as inheritance in capacity as nominee of her mother on behalf of all the three legal heirs.
- 14.5. As regards raised judicial precedents on which reliance was placed by the Appellant to contended that the Hardship Compensation was in the nature of capital receipt, we note that the DRP has, in paragraph 6.11 of its order, recorded as under:

*"6.11 As regards the reliance placed by the assessee on various judicial precedent, we are of the view that the case-laws relied upon by the assessee are clearly distinguishable. In none of the decisions, the applicability of section 56(2)(vii) of the Act with reference to hardship compensation received by the appellant is adjudicated on. These decisions have been rendered with reference "any capital gains*

*chargeable under Section 45 of the Act" included as income under section 2(24) of the Act."*

We note that Revenue has not challenged the nature of Hardship Compensation. The DRP has invoked provisions of Section 56(2)(vii) of the Act on the premise that the Hardship Compensation has been received without any corresponding consideration. Again, in our view, the findings returned by the Assessing Officer/DRP are contrary to the material on record as we have already noted that the Hardship Compensation has been received from the Developer on account of surrender of old flat and rights related thereto. The Assessing Officer/DRP was, therefore, not correct in rejecting judicial precedents relied upon by the Appellant on the ground that the same were not applicable to the facts of the present case. To the contrary we note that in identical facts, the Tribunal has held that the Hardship Compensation is in the nature of capital receipt not liable to tax in a recent decision in the case of Ajay Parasmal Kothari vs. Income Tax Officer 30(1)(1) [ITA No.2823/MUM/2022, Assessment Year 2013-14, dated 03.04.2023] by placing reliance on the earlier decisions of the Tribunal.

15. In view of the above, we delete the addition of INR 88,40,429/- made in the hands of the Appellant in respect of Hardship Compensation. Ground No. 4 raised in the Appeal is allowed. While Ground No. 1 to 3 raised by the Assessee are dismissed, while Ground No. 5 is disposed off as being infructuous.

**ITA No. 534/Mum/2023 (Assessment Year 2016-17)**

16. Since, the grounds raised in appeal for Assessment Year 2016-17 are identical to the corresponding grounds raised in appeal for the Assessment Year 2015-16, and there being no difference in the facts/circumstances, our findings, reasoning and adjudication in

appeal for the Assessment Year 2015-16 shall also apply to corresponding grounds in appeal for the Assessment Year 2016-17. Therefore, the addition of INR 40,21,244/- made in the hands of the Appellant in respect of Hardship Compensation is deleted. In view of the above, Ground No. 4 raised in the Appeal is allowed, Ground No. 1 to 3 raised by the Assessee are dismissed and Ground No. 5 of the Appeal is disposed off as being infructuous.

17. In result, both the appeals by the Appellant are partly allowed.

Order pronounced on 30.05.2023.

**Sd/-**  
**(Prashant Maharishi)**  
**Accountant Member**

**Sd/-**  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 30.05.2023  
Sr. PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,  
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai