

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

**SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 807/MUM/2023
(Assessment Year: 2015-16)
&
ITA No. 808/MUM/2023
(Assessment Year: 2016-17)**

Ramanan Sivaraman Eranath Vengali,
I-203, Ms. EVS Shaina, MIG Colony,
Jade Gardens, Bandra (East),
Mumbai - 400051
[PAN: AAOP7302F]

..... **Appellant**

**Income Tax Officer,
INT Tax Ward – 2(2)(1),**
Room No. 1725, 17th Floor,
Air India Building, Nariman Point,
Mumbai - 400021

Vs

Respondent

.....

Appearance

For the Appellant/Assessee : Shri Rajendra Kumar Jain
Shri Kunal Lunawat

For the Respondent/Department : Shri Anil Sant

Date

Conclusion of hearing : 12.07.2023
Pronouncement of order : 21.07.2023

ORDER

Per Bench

1. These are 2 appeals preferred by the Assessee for the Assessment Years 2015-16 and 2016-17. The appeals involved identical issues arising from the same factual matrix and therefore, the same were heard together and are being disposed of by way of a common

order.

ITA No. 807/MUM/2023 (Assessment Year: 2015-16)

2. We would first take up appeal for the Assessment Year 2015-16 which has been preferred by the Appellant against Assessment Order, dated 13/01/2023, passed under Section 143(3) read with Section 144C(13) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'] as per directions issued by CIT (Dispute Resolution Panel-1), Mumbai- [hereinafter referred to as 'the DRP'] under Section 144C(5) of the Act.
3. The Appellant has raised following grounds of appeal:
 - " 1. *The Ld. Assessing Officer has erred in law and on facts in reopening the assessment.*
 2. *The Ld. Assessing Officer has erred in treating the Hardship Allowance received by the Assessee as revenue receipt and taxing the same as income from other sources under Section 56.*
 3. *The Ld. Assessing Officer has erred in holding that the Assessee received compensation of INR 11,62,625/- during AY 2015-16 from the Developer.*
 4. *The Ld. Assessing Officer has failed to uphold the principle of judicial discipline, as the Revenue is bound by the orders passed by the courts of law.*
 5. *The Ld. Assessing Officer has erred in relying on the theory of "legal owner versus real owner", and the subsequent judgments of the Hon'ble Supreme Court in Commissioner of Income Tax, Bombay and Ors. v. Podar Cement Pvt. Ltd and Ors [AIR 1997 S 2523] and Mysore Minerals Limited, M.G. Road, Bangalore v. The Commissioner of Income Tax, Bangalore [AIR 1999 SC 3185].*

6. *The Ld. Dispute Resolution Panel has erred in dismissing the Appeal filed by the Assessee on the basis that the Appeal has been signed by authorized representative not by the Assessee himself. And same view was continued by the Ld.AO while farming the order.*
7. *The Ld. Dispute Resolution Panel has erred in not considering the grounds raised by the Assessee against the draft assessment order dated 04.03.2022 passed by the Assessing Officer and same were also not considered by the Ld.AO inspite of the fact that they were raised before the AO.*
8. *The Assessee craves leave to add, amend, alter, amend or drop or all Grounds of appeal at the time of the appeal proceedings."*

4. The relevant facts in brief are that the Appellant, a non-resident individual, did not file return of income for the Assessment Year 2015-16 as according to the Appellant there was no income liable to tax in the hands of the Appellant for the Assessment Year 2015-16.

4.1. Subsequently, based upon the information received by the Assessing Officer from ITO 23(2)(3), Mumbai vide letter, dated 07/03/2018, to the effect that the Appellant has received following payments from MIG (Bandra) Realtors and Builder Pvt. Ltd. under Development Agreement, dated 31/03/2010,

Sr. No.	Date of payment	Amount (INR)
1.	25/08/2014	11,62,625
2.	16/10/2014	62,82,466
		76,45,091

4.2. Therefore, notice under Section 148 of the Act, dated 29/03/2019, was issued to the Appellant. Subsequently, notice was also issued by the Assessing Officer asking the Appellant to show cause why hardship allowance of INR 76,45,091/- should not be treated as

undisclosed income liable to tax in the hands of the Appellant under the head 'Income from Other Sources'.

4.3. In response, the Appellant filed reply letter, dated 14/01/2021, wherein the Appellant stated the payment of INR 76,45,091/- was received by the Appellant as hardships compensation under the Development Agreement, dated 31/10/2010, entered into between the Middle Income Group Cooperative Housing Society Ltd. of which the Appellant is a member and DB MIG Realtors and Builders Pvt. Ltd. for the purpose of redevelopment cooperative society. It was explained to the Assessing Officer that out of the aforesaid amount of INR 76,45,091/-, only amount of INR 11,62,625/- was received during the relevant previous year while the balance amount of INR 62,82,466/- was received during the financial year 2015-2016 relevant to the Assessment Year 2016-2017. The Appellant relied upon the following decisions of the Tribunal to support the contentions that the hardship allowance was not liable to tax as income in the hands of the Appellant.

- Kushal K Bangia vs Income Tax Officer 21(1)(2), ITA No.2349/Mum/2011
- Jitendra Kumar Soneja vs Income Tax Officer, Ward6(3)(3), ITA No.291/Mum/2015
- Rajnikant D Shroff, Mumbai vs Asstt. Commissioner of Income Tax, Central Circle-38, ITA No. 4424/Mum/2014
- Lawrence Rebellow ITA No. 132/Ind/2020(2021) 63 CCH0065 Indore Trib

4.4. The Assessing Officer accepted the contention of the Appellant that only INR 11,62,625/- was received by the Appellant during the relevant previous year. However, the Assessing Officer rejected the

contention of the Appellant that the aforesaid amount was not taxable in the hands of the Appellant as income and proposed an addition of INR 11,62,625/- in the hands of the Appellant vide Draft Assessment Order, dated 04/03/2022, passed under Section 144C read with Section 147 of the Act. The Appellant, through authorized representative filed objections against the Draft Assessment Order, dated 04/03/2022 before the DRP. However, the DRP dismissed the objections as having been filed beyond time. Thus, confirming the addition proposed by the Assessing Officer. Accordingly, the Assessing Officer passed the Final Assessment Order, dated 13/01/2023 under Section 147 read with Section 144C(13) of the Act making an addition of INR 11,62,625/- in the hands of the Appellant holding the said amount to be income chargeable to tax under the head 'Income from Other Sources' during the relevant previous year.

5. Being aggrieved, the Appellant has filed the present appeal before the Tribunal on the grounds reproduced in paragraph 3 above.
6. When the appeal was taken up for the hearing, the Ld. Authorised Representative for the Appellant pressed into service Ground No. 2, 3 and 4 raised in the appeal dealing with merits of the addition. We have heard the rival submissions, perused the material on record in relation to the aforesaid grounds, and analyzed the position in law.
 - 6.1. We note that the Appellant has placed on record copy of the Development Agreement, dated 31/10/2010. As per the Annexure-I to the said Development Agreement, the name of the Appellant is placed at serial No. 64. The Appellant held Flat No. B-8/64 with carpet area of 615 square feet which was surrendered by the

Appellant in lieu of allotment of newly constructed flat with carpet area of 1280 square feet. Further, the Appellant was to receive hardship compensation of INR 92,43,693/- in installments in various years. The aforesaid hardship compensation was to be paid in various installments as per Annexure-J to the Development Agreement. Subsequently, a deed of modification to the Development Agreement dated 31/10/2010 was executed by the Middle Income Group Cooperative Housing Society Limited with MIG (Bandra) Realtors and Builders Pvt. Ltd. on 23/08/2014 according to which the members of the aforesaid society (including the Appellant herein) were to receive additional hardship compensation of INR 170 per square feet per month for the period specified therein. Therefore, there is no dispute that the amount received by the Appellant during the relevant previous year was in the nature of hardship compensation. The Assessing Officer was of the view that the hardship compensation received by the Appellant was in the nature of additional income received by the Appellant in his individual capacity and had nothing to do with the society of which the Appellant was a member. The Appellant received the aforesaid additional income on the basis of Appellant's bargaining capacity with the builder and therefore, the same was taxable in the hands of the Appellant as revenue receipt under the head 'Income from Other Sources'. The Appellant had placed the following decisions of the Tribunal before the Assessing Officer wherein, in the identical facts and circumstances, the Tribunal had rejected the contention of the Revenue that the hardship compensation was in the nature of revenue receipt and deleted the similar addition made in the hands of the assesseees in those cases:

- Kushal K Bangia Vs Income Tax Officer 21(1)(2), ITA

No.2349/Mum/2011 reported in [2012] 145 TTJ 37 (Mumbai)
(UO)[31-01-2012]

- Jitendra Kumar Soneja vs Income Tax Officer, Ward6(3)(3), ITA No.291/Mum/2015 reported in [2016] 161 ITD 269 (Mumbai)[12-08-2016]

6.2. However, the Assessing Officer declined to grant relief to the Appellant by following the above decision of the Tribunal observing as under:

"4.7 In the present case, as per the redevelopment agreement, the assessee is entitled for a flat beside that the assessee received an amount of Rs.11,62,625/-from the developer/builder in the financial year relevant to assessment year under consideration. The same includes compensation which is granted to meet the expenses involved in shifting residence. Thus character of the receipt is revenue in nature, consequently, the same is assessable to tax.

Now, with due regards to the judgement of the Hon'ble ITAT, Mumbai in the case of Kushal K Bangia and Jitendra Kumar Soneja, it is to state that it is gathered from the Department that in the case of Jitendra Kumar Soneja, the Department had not accepted the issue on merit and still of the view that such type of receipt chargeable to tax under the head of income from other sources."
(Emphasis Supplied)

6.3. On perusal of above it emerges that the Assessing Officer accepted that the issue was decided in favour of the Appellant by the Tribunal but chose not to follow the above decisions as the Revenue was in appeal against the said decisions of the Tribunal. Be that as it may, we are inclined to follow the decision of the Tribunal where identical issue stands decided against the Revenue and in favour of the assessee. In the case of Kaushal K Bangia (supra), the Tribunal has, in similar facts and circumstances, held as under:

"2. The issue in appeal lies in a narrow compass of undisputed facts.

The assessee before us is an individual and he had received a sum of Rs. 11,75,000 on account of what he now terms as, 'cash compensation'. It is taxability of this amount of Rs. 11,75,000 which is in dispute before us, and it is, therefore, necessary to understand the back ground in which this amount was received. The assessee was member of a housing society by the name of Vile Parle Ramesh CHS Ltd. This housing society, along with it's members, entered into an agreement with a developer, and, under the said agreement, the developer was to demolish the residential building owned by the housing society, and reconstruct a new multistoried building by using the FSI arising out of the property, and by utilizing outside TDR under Development control Regulations. Under this arrangement, the assessee, as a member of the housing society, received a slightly larger flat in the new building, which had an additional area of 173 Sq. ft, a displacement compensation of Rs. 6,12,000, which was computed @ Rs. 34,000 p.m. for the period of construction of the new building, and an additional compensation of Rs.11,75,000. On these undisputed facts, the Assessing Officer was of the opinion that the cash compensation of Rs. 11,75,000 is required to be treated as 'casual income', and, accordingly, taxable in the hands of the assessee. The Assessing Officer also brought to tax estimated value of additional area in the new flat, but since CIT(A) has deleted the same and revenue is stated to be not in appeal against the same, we are not really concerned with the same. Aggrieved, inter alia, by this addition of Rs. 11,75,000 on account of cash compensation, assessee carried the matter in appeal before the CIT(A) but without any success. The assessee is in further appeal before us.

3. We have heard the rival contentions, perused the material on record and duly considered factual matrix of the case as also the applicable legal position.

4. In our considered view, it is only elementary that the connotation of income howsoever wide and exhaustive, take into account only such capital receipts are specifically taxable under the provisions of the Income-tax Act. Section 2(24)(vi) provides that income includes "any capital gains chargeable under section 45", and, thus, it is clear that a capital receipt simplicitor cannot be taken as income. Hon'ble Supreme Court in the case of Padmaraje R. Kardambade v. CIT

[1992] 195 ITR 877/ 62 Taxman 456 has observed that "..., we hold that the amounts received by the assessee during the financial years in question have to be regarded as capital receipts, and, therefore, (emphasis supplied by us), are not income within meaning of section 2(24) of the Income-tax Act." This clearly implies, as is the settled legal position in our understanding, that a capital receipt in principle is outside the scope of income chargeable to tax and a receipt cannot be taxed as income unless it is in the nature of revenue receipt or is brought within the ambit of income by way of a specific provision in the Act. No matter how wide be the scope of income u/s.2(24) it cannot obliterate the distinction between capital receipt and revenue receipt. It is not even the case of the Assessing Officer that the compensation received by the assessee is in the revenue field, and rightly so because the residential flat owned by the assessee in society building is certainly a capital asset in the hands of the assessee and compensation is referable to the same. As held by Hon'ble Supreme Court, in the case of Dr. K George Thomas v. CIT [1985] 156 ITR 412/23 Taxman 46, "the burden is on the revenue to establish that the receipt is of revenue nature" though "once the receipt is found to be of revenue character, whether it comes under exemption or not, it is for the assessee to establish". The only defence put up by learned Departmental Representative is that cash compensation received by the assessee is nothing but his share in profits earned by the developer which are essentially revenue items in nature. This argument however proceeds on the fallacy that the nature of payment in the hands of payer also ends up determining its nature in the hands of the recipient. As observed by Hon'ble Supreme Court in the case of CIT v. Kamal Behari Lal Singha [1971] 82 ITR 460, "it is now well settled that, in order to find out whether it is a capital receipt or revenue receipt, one has to see what it is in the hands of the receiver and not what it is in the hands of the payer". The consideration for which the amount has been paid by the developer are, therefore, not really relevant in determining the nature of receipt in the hands of the assessee. In view of these discussion, in our considered view, the receipt of Rs. 11,75,000 by the assessee cannot be said to be of revenue nature, and, accordingly, the same is outside the ambit of income under section 2(24) of the Act. However, in our considered opinion and as learned counsel for the assessee fairly agrees, the impugned receipt ends up reducing the cost of acquisition of the asset, i.e. flat, and, therefore, the same will be taken into account

as such, as and when occasion arises for computing capital gains in respect of the said asset. Subject to these observations, grievance of the assessee is upheld.

5. In the result, the appeal is allowed in the terms indicated above."

- 6.4. The above decision of the Tribunal has been relied upon by the Tribunal in the case of Jitendra Kumar Soneja (supra) cited by the Appellant before the Assessing Officer during the course of the assessment proceedings wherein it has been held that hardship compensation received by member of the society is not in the nature of revenue receipt, However, the same shall end up reducing the cost of acquisition of the asset, i.e. the flat and therefore, the same shall be taken into account as such, as and when the occasion arises for computing capital gains in respect of the aforesaid asset. The relevant extract of the aforesaid decision of the Tribunal read as under:

"3.2 Nothing contrary was brought to my knowledge on behalf of Revenue. Facts being similar, so following same reasoning, I find that consideration for which the amount has been paid by the developer are, therefore, not relevant in determining the nature of receipt in the hands of the assessee. In view of these discussion, in my considered view, assessee (sic. receipt) could not be said to be of revenue nature, and, accordingly, the same is outside the ambit of income under section 2(24) of the Act. The impugned receipt ends up reducing the cost of acquisition of the asset, i.e. flat, and, therefore, the same will be taken into account as such, as and when occasion arises for computing capital gains in respect of the said asset. Subject to these observations, the appeal of assessee is allowed." (Emphasis Supplied)

- 6.5. In view of the above decisions of the Tribunal we hold that hardship compensation of INR 11,62,625/-received by the Appellant during the relevant previous year is not in the nature of revenue receipt chargeable to tax as income and the same being capital receipt

referable to the capital asset/flat shall be reduced from the cost of acquisition of the capital asset/flat as and when the occasion arises for computing capital gains in respect of such capital asset/flat. Accordingly, the addition of INR 11,62,625/- made by the Assessing Officer is deleted and Ground No. 2 to 4 are allowed in terms of the aforesaid. Ground No. 1, 5, 6, 7 and 8 are dismissed as being infructuous and/or not pressed as no argue were addressed in respect of the same.

ITA No. 808/MUM/2023 (Assessment Year: 2016-17)

7. We would now take up appeal for the Assessment Year 2016-17 which has been preferred by the Appellant against Assessment Order, dated 12/01/2023, passed under Section 143(3) read with Section 144C(13) of the Act as per directions issued by the DRP' under Section 144C(5) of the Act.

- 6.6. Since the issues raised in appeal for the Assessment Year 2016-17 are identical to the issue raised in appeal for the Assessment Year 2015-16, both the sides had agreed that our findings/adjudication in respect of issues raised in appeals for the Assessment Year 2015-16 shall apply mutatis mutandis to the grounds/issues raised in the appeals pertaining to the Assessment Years 2016-17 also. Accordingly, in view of paragraph 6 to 6.5 above, we hold that hardship compensation of INR 97,32,652/- received by the Appellant during the relevant previous year is not in the nature of revenue receipt chargeable to tax as income and the same being capital receipt referable to the capital asset/flat shall be reduced from the cost of acquisition of the capital asset/flat as and when the occasion arises for computing capital gains in respect of such

capital asset/flat. Accordingly, the addition of INR 97,32,625/- made by the Assessing Officer is deleted and Ground No. 2 to 4 are allowed in terms of the aforesaid. Ground No. 1, 5, 6, 7 and 8 are dismissed as being infructuous and/or not pressed as no argue were addressed in respect of the same.

8. In result, both the appeals preferred by the Assessee are partly allowed.

Order pronounced on 21.07.2023

Sd/-
(S. Rifaur Rahman)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 21.07.2023
Alindra, 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