IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI

BEFORE SHRI PAVAN KUMAR GADALE, JM &
MS PADMAVATHY S, AM

I.T.A. No. 4088/Mum/2023
(Assessment Year: 2013-14)

I.T.A. No. 4087/Mum/2023
(Assessment Year: 2014-15)

I.T.A. No. 4101/Mum/2023
(Assessment Year: 2015-16)

I.T.A. No. 4100/Mum/2023
(Assessment Year: 2016-17)

ITO (TDS)-2(3)(1) Room No. 909, 9th Floor, MTNL Building, Cumbala Hill, Peddar Road, Mumbai-400026.	Vs.	**Nathani Parekh Constructions Pvt. Ltd.** Nathani Heights, 2nd Floor, Junction of DR D B Marg & Bellasis Road, Opp. Mumbai Central Railway Station, Mumbai-400008 **PAN : AACCN3320K**
Appellant)	:	**Respondent**)

Appellant/Assessee by	:	Shri Rajiv Khandelwal, CA
Revenue/Respondent by	:	Shri Laxmi Kant, Sr. DR
Date of Hearing	:	06.05.2024
Date of Pronouncement	:	21.05.2024

O R D E R

Per Padmavathy S, AM:

These appeals by the revenue are against the orders of the CIT(A) for AYs 2013-14, 2014-15, 2015-15 & 2016-17 all dated 22.09.2023. The issue contended

in all these appeals are common and therefore, they were heard together and disposed of by this common order.

2. The assessee is a real estate developer and engaged in the business of development and construction. A survey action in TDS verification under section 133A(2A) was conducted on 15.11.2019 in the case of the assessee. During the survey proceedings, the Assessing Officer noticed that the assessee has debited the following amounts under the head "Alternate Accommodation/ rent".

AY	Amount – Rs.
2013-14	11,11,57,634
2014-15	12,25,69,671
2015-16	12,56,51,925
2016-17	8,34,82,130

3. The AO called on the assessee to explain whether tax has been deducted at source on the above said amount. The assessee submitted before the AO that it has entered into a re-development agreement dated 30.04.2017 with M/s Dalal Estate Co-operative Housing Society Ltd. which was encumbered with more than 300 tenants and that for the purpose of vacating the premises, the assessee had agreed to pay compensation of hardship according to the nature of tenancy occupied by each tenant. The assessee further submitted that these tenants could not be provided that alternate accommodation and therefore, the assessee agreed to pay the above amount as compensation for the hardship of the tenants. The assessee also submitted that the amount paid towards alternate accommodation/hardship allowance does not fall within the definition “Rent” and therefore, tax was not liable to be deducted at source on the said payments. The assessee accordingly submitted that no tax was deducted at source from the payment of alternate accommodation charges/rent.

4. The AO did not agree with the submissions of the assessee and held the same to be unacceptable. The AO held the payment to be rental compensation and therefore, is liable for tax deduction at source under section 194I of the Income Tax Act, 1961 (for short 'the Act'). Accordingly, the AO passed an order under section 201(1) / 201(1A) of the Act towards non-deposit of TDS and interest thereon. Accordingly the AO passed the order under section 201(1) / 201(1A) of the Act for all the assessment treating the assessee as an assessee in default.

5. On further appeal the CIT(A) gave relief to the assessee for AY 2013-14 to 2016-17 by relying on the decisions of the Co-ordinate Bench in the case of Jitendra Kumar Madan (32 CCH 59, Mumbai), Sahana Dwellers Pvt. Ltd. [2016] 67 taxmann.com 202 (Mum. Trib.) and Shanish Construction Pvt. Ltd. in ITA Nos. 6087 and 6088/Mum/2024 dated 11.01.2017.

6. The Revenue is in appeal against the order of the CIT(A) for AY 2013-14 to 2016-17 The common issue arising out of the various grounds raised by the Revenue is ***Whether the payment made by the assessee to the tenants of M/s Dalal Estate Co-operative Housing Society Ltd. towards alternate accommodation charges/hardship allowance/rent are liable for tax deduction under section 194I of the Act.***

7. The ld. DR submitted that the CIT(A) has given relief to the assessee stating that section 194I of the Act is not applicable with respect to the payment of alternate accommodation charges for the reason that there is no agreement between the assessee and the members/ tenants and also that the payment does not fall within the definition of rent since there is no use of land & building. The ld. DR in this regard submitted that the payment is covered by the re-development agreement

entered into by the assessee with the society and therefore, the CIT(A) is not correct in stating that there is no agreement. The ld. DR further submitted that as per Clause-14 (Page 51 of paper book) of the agreement dated 30.04.2007 the payment made is termed as "rent" and that as per Clause-15 (Page 52 of paper book), the assessee agreed to deduct TDS as per the applicable provisions of law. Therefore, the ld. DR argued that the assessee itself has agreed that the payment made is towards the rent and therefore, the AO has rightly held that tax needs to be deducted at source under section 194I. With regard to CIT(A)'s findings that there is no use of land and building, the ld. DR submitted that the assessee for the purpose of re-development has taken over the possession of the land and therefore, the payment made by whatever name called become taxable in the hands of the tenants and therefore, the provisions of section 194I is very much applicable. The ld. DR relied on the decision of the Hon'ble Supreme Court of India in the case of Japan Airline Company Ltd. Vs. CIT(A) (ITA No. 9875 of 2013) to submit that the development agreement serves as the lease agreement and the amount paid even if it is termed as a compensation is nothing but rent which attracts deduction of tax at source under section 194I of the Act.

8. The ld. AR on the other hand submitted that the impugned payment is made in lieu of the alternate accommodation which the assessee could not provide to the tenants / members of the society. The ld. AR drew our attention to the definition of term 'Rent' as per the provisions of section 194I which states that the payment which is made towards use of land or building. The ld. AR also submitted that in assessee's case the payment is made not towards the use of land or building but as a compensation for the hardship that the tenants would undergo by vacating the property for the purpose of re-development. The ld. AR submitted that the CIT(A) has correctly relied on the various decisions of the Co-ordinate Bench which has

been consistently holding that the amount paid towards compensation / hardship allowance is not taxable in the hands of the tenants for the reason that the same is not paid towards use of land or building but for the hardship in vacating the property for re-development. The ld. AR also drew our attention to the latest decision of the Hon'ble Bombay High Court in the case of Sarfaraz S. Furniturewalla Vs. Afshan Sharfali Ashok Kumar & Ors in Writ Petition No. 4958 of 2024, where the Hon'ble High Court has held that the "transit rent" i.e. the rent paid by the developer to the tenant who suffers due to dispossession is not a revenue receipt and is not liable to be taxed as a result there will not be any question of deduction of TDS from the amount payable by the developer to the tenant. Therefore the ld AR argued that the CIT(A) has correctly held that there is no requirement to deduct tax at source under section 194I.

9. We have heard the parties and perused the material on record. We notice that the assessee has entered into redevelopment agreement dated 30.07.2007 for the development with M/s. Dalal Estate Cooperative Housing Society Ltd. As per the terms of the agreement the assessee agreed to pay a fixed sum per Sq.ft for the temporary alternate accommodation to each of the tenants for the reason that the existing property is to be demolished for re-development. From the terms of the said agreement it is clear that the impugned payment made is in the nature of compensation towards hardship the tenants would have to undergo in order to handover the vacant possession of the property for demolition and towards the alternate accommodation charges which the tenant has to bear during the time of re-development. The contention of the AO is that the said payment is in the nature of rent and therefore TDS under section 194I ought to have been deducted. In this regard we notice that the Hon'ble Jurisdictional High Court in the case of Sarfaraz

S. Furniturewalla Vs. Afshan Sharfali Ashok Kumar & Ors (supra) has considered a similar issue and held that -

> *7. I have heard Mr. Dhanani and Mr. Pardiwala on the issue as to Whether there should be deduction of TDS on the amount payable to Petitioner and Respondent Nos.1 & 2 as "Transit Rent", by the developer / builder?.*
>
> *8. For the said purpose, it will be necessary, to consider section 194 (I) of the Income Tax Act.*
>
> *Sec. 194(I) of the Income Tax Act, reads as under :*
> ***Sec.194 (I) – Rent** "*
> *Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident] any income by way of rent, shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of –*
>
> *[(a) two per cent. for the use of any machinery or plant or equipment; and*
>
> *(b) ten per cent. for the use of any land or building (including factory building) or land appurtenant to a building (including factory building) or furniture or fittings:]*
>
> *Provided that no deduction shall be made under this section where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the aforesaid person to the account of, or to, the payee, does not exceed 5[two hundred and forty thousand rupees]:*
>
> *[Provided further that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such income by way of rent is credited or paid, shall be liable to deduct income-tax under this section:]*
>
> *[Provided also that no deduction shall be made under this section where the income by way of rent is credited or paid to a business trust, being a real estate investment trust, in respect of any real estate asset, referred to in clause (23FCA) of section 10, owned directly by such business trust.]*

Explanation.—For the purposes of this section,—
[(i) " rent" means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any,—
a. land; or
b. building (including factory building); or
c. land appurtenant to a building (including factory building); or
d. machinery; or e. plant; or
f. equipment; or
g. furniture; or
h. fittings,
whether or not any or all of the above are owned by the payee;]
(ii) where any income is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.]" [Emphasis Supplied]

8.1. The relevant factor which has to be borne in mind is that section 194 (I) of the Income Tax Act refers to Rent, and in explanation to the section, the term "Rent" is clarified.

9. It will also be necessary to consider the two authorities referred by Mr. Pardiwala of Income Tax Appellate Tribunal viz . (i) Smt. Delilah Raj Mansukhani in ITA No. 3526/MUM/2017 (Assessment Year : 2010-2011), and (ii) Ajay Parasmal Kothari in ITA No. 2823/MUM/(A.Y : 2013-2014) follows Delilah Mansukhani(Supra).

9.1. Paragraph No. 5 of the Delilah Mansukhani (Supra) reads as under :

> *"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 Dedhiavs. 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."*
>
> *[Emphasis Supplied]*

9.2. Ajay Kothari (supra) follows judgment of Delilah Mansukhani (supra). I hold that the view taken by Income Tax Appellate Tribunal, in both the judgments, is a correct view.

10. The ordinary meaning of Rent would be an amount which the Tenant / Licensee pays to the Landlord / Licensor. In the present proceedings the term used is "Transit Rent", which is commonly referred as Hardship Allowance / Rehabilitation Allowance / Displacement Allowance, which is paid by the Developer / Landlord to the tenant who suffers hardship due to dispossession. Hence, in my opinion 'Transit Rent' is not to be considered as revenue receipt and is not liable to be tax, as a result there will be no question of deduction of T.D.S. from the amount payable by the Developer to the tenant.

10. The Hon'ble High Court in the above decision has held that the transit rent which is paid to the tenant who suffers hardship due to dispossession does not fall within the definition "rent" under section 194I. As already stated, in assessee's case the payment is made towards compensation for handing over the vacant possession of the property and towards rent if any payable by the tenants in the alternate accommodation until the completion of the re-development. Therefore applying the ratio of the decision of the Hon'ble High Court we hold that the payment made by the assessee towards "Alternate accommodation charges / rent" is not liable for tax deduction under section 194I and accordingly we see no infirmity in the order passed by the CIT(A) for AY 2013-14 to 2016-17 setting aside the order of the AO treating the assessee as an assessee in default for non-deduction and non-payment of TDS under section 194I of the Act.

11. In result the appeals of the revenue for AY 2013-14 to 2016-17 are dismissed.

Order pronounced in the open court on 21-05-2024.

Sd/-	***Sd/-***
(PAVAN KUMAR GADALE)	**(PADMAVATHY S)**
Judicial Member	**Accountant Member**

**SK, Sr. PS*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai