

IN THE INCOME TAX APPELLATE TRIBUNAL  
Mumbai "SMC" Bench, Mumbai.

Before Shri Narender Kumar Choudhry (JM)  
&  
Smt. Renu Jauhari (AM)

I.T.A. No. 4760/Mum/2023  
(A.Y. 2011-12)

Abhay Shaligram Patil B-8/60 MIG Colony Kalanagar, Bandra-E Mumbai-400 051.  PAN : ABPPP1649G (Appellant)	Vs.	ITO-23(1)(1) 1 <sup>st</sup> Floor Room No. 106 Matru Mandir Grant Road Mumbai-400 007. (Respondent)
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Assessee by	Shri Yogesh Thar & Mr. Deep Chauhan
Department by	Shri Nagnath Pasale
Date of Hearing	28.05.2024
Date of Pronouncement	30.05.2024

ORDER

Per Narender Kumar Choudhry (JM) :-

In the instant case, on information to the effect that the assessee being a Member of MIG Cooperative Housing Society during assessment year under consideration, has received compensation of Rs. 27,73,108/- from M/s. DB MIG Realtors and Builders Private Limited, the case of the assessee was reopened under section 147 of the I.T. Act and consequently notice under section 148 dated 21.3.2018 was issued to the assessee. In response to the same, the assessee filed its return of income on 23.6.2018 declaring total income of Rs. 1,98,510/-.

The Assessing Officer perusing the financial of the assessee observed that the assessee is a member of the Middle-Income Group Cooperative Housing Society, who is the owner of the property and entered into an agreement dated 31.10.2010 for development of the property. To achieve this, society and its members executed a contract with M/s. DB MIG Realtors and Builders Pvt. Limited. As per terms of the said agreement, the developer has agreed to develop the property in such a manner that each member of the society could receive a new flat in exchange of surrender of old flat depending upon the size of the old flat alongwith interest in the additional FSI allotted by MHADA. The developer as per the agreement, has paid to the society being lawful owner of the property and the members, an aggregate monetary consideration of Rs. 1,49,89,52,000/- which was further distributed among the members of the society being shareholders, depending upon the size of their old flat. The assessee being a member of the said society by virtue of being shareholder, has also received an amount of Rs. 27,73,108/- being consideration for surrender of his old flat. The Assessing Officer ultimately treated the said receipt of Rs. 27,73,108/- 56 of the Act as revenue receipt in the form of dividend under the head ' income from other sources ' being taxable and un-exempted and consequently added the same in the income of the Assessee. The Assessing Officer also not allowed any expenditure to be deducted against said receipt/income, on failure by the assessee to furnish any details and documentary evidence, for having incurred any expenditure to earn said dividend income.

**2.** The assessee being aggrieved challenged the said addition before the learned Commissioner of Income Tax (in short "Id. Commissioner"). Before the Id. Commissioner, the assessee has claimed that receipt of Rs. 27,73,108/- in fact is a capital receipt and having cost of acquisition and

therefore not taxable and is exempted and therefore not liable to be considered as "revenue" receipt in the form of dividend under the head 'income from other sources.

**2.1** The Ld. Commissioner though considered the said claim of the assessee, but not being convinced, affirmed the said addition by mainly holding that since no transfer of the property took place and the assessee had received compensation in lieu of surrendering of the flat to the developer for re-development, therefore the Assessing Officer has correctly added the amount of Rs. 27,73,108/- under the head 'income from other sources' under section 56 of the Act.

**3.** Being aggrieved, the assessee is in appeal before us. Learned counsel Shri Yogesh Thar along with Shri Deep Chauhan at the outset drew our attention to page No. 140 of the paper book and submitted that in an identical situation, in the case of similarly placed member of the society namely Pramila Roongta and other members of the society who also received similar compensation/receipt as involved in the instant case, the objections dated 30.7.2018 were filed against the initiation of the proceedings under section 147/148 of the Act, which were disposed of by the Assessing Officer by rejecting the same.

**4.** Against the dismissal of the Objections, Pramila Roongta and others have filed writ petition bearing No. 2762/2018 with Hon'ble Bombay High Court. The Hon'ble Bombay High Court vide its order dated 16.2.2024 quashed the order rejecting the objections by the Assessing Officer and remanded the matter to the Assessing Officer for passing fresh order on the objections filed by the allottees/residents of the society in view of the judgements passed by Hon'ble Coordinate Benches of the Tribunal at

Mumbai and Indore respectively in the case of Smt. Delia Raj Mansul Vs. ITO-35(10)(3), Mumbai and Shri Lawrence Rebello Vs. ITO-1(3), Indore, wherein it was held that the amount which has escaped assessment as alleged in the reasons to believe, is not taxable.

**5.** In compliance to the directions of Hon'ble High Court, the Assessing Officer i.e. ITO-23, Mumbai vide order dated 29.4.2024 disposed of the objections and accepted the contentions of the assessee raised therein and dropped the proposed addition/disallowance by following the decisions of Hon'ble Coordinate Benches of the Tribunal to the effect **“that the receipt of the hardship compensation is held as capital receipt and not taxable”**. The Assessing Officer in Pramil Roongta's case also observed that though the aforesaid decision of the Tribunal has not accepted by the Department but further appeal under section 260A of the Act has also not been filed, as tax effect was below the monetary limit. The Assessing Officer in effect ultimately accepted the claim of the then assessee, qua receipt/compensation identical to the compensation/receipt as involved in the instant case, as capital receipt and not taxable.

**6.** Learned DR did not refute the aforesaid claim/submission made by the Advocate of the assessee. Hence, considering the peculiar facts and circumstances, as in identical situation and/or circumstances and/or issue as involved in the instant case, the revenue department has accepted the claim of the other members of the society and consequently made no addition qua receipt/compensation and the treated the same as capital receipt not taxable, therefore we are inclined to delete the addition under consideration. Consequently, the addition is deleted.

- 7.** In the result, the appeal filed by the assessee stands allowed.  
Order pronounced in the open court on 30- May, 2024.

Sd/-  
(Renu Jauhari)  
Accountant Member

Sd/-  
(Narender Kumar Choudhry)  
Judicial Member

Mumbai.; Dated : 30/05/2024

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

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