| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI RAHUL CHAUDHARY, HON'BLE JUDICIAL MEMBER

I.T.A. No. 3830/Mum/2023
Assessment Year: 2016-17

Viren Vashi 36-Block, 2nd Floor Hatkesh Kalpana 5th Road, JVPD Scheme Vile Parle West Maharashtra - 400056 **[PAN: AAAPV8425E]**	Vs	**Income Tax Officer, 16(3)(3), Mumbai**
अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

Assessee by :	Shri Anuj Kisnadwala, A/R
Revenue by :	Shri Himanshu Sharma, CIT, D/R

सुनवाई की तारीख/**Date of Hearing** : **04/07/2024**
घोषणा की तारीख /**Date of Pronouncement**: **22/07/2024**

आदेश/O R D E R

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order dt. 13/09/2023 by NFAC, Delhi pertaining to Assessment Year 2016-17.

2. The solitary grievance of the assessee is that the ld. CIT(A) erred in confirming the addition of Rs.24,00,000/- received from the developer.

3. Representatives of both the sides were heard at length. Case records carefully perused. Judicial decisions duly considered.

4. Briefly stated, the facts of the case are that the assessee is an Advocate having income from profession and also from other sources

and house property. During the year under consideration, on perusal of the agreement, the AO found that the assessee has received Rs.25,00,000/- from the builder. The AO was of the opinion that this receipt is a revenue receipt and is taxable under the head income from other sources. On receiving no plausible reply, the AO added an amount of Rs.25,00,000/- received by the assessee.

4.1. Assessee agitated the addition before the ld. CIT(A) and strongly contended that being a member of the society, assessee got compensation as the society went into re-development of the building in which the assessee had a flat. The assessee contended that, hardship compensation received from the developer at the time of re-development of the old and dilapidated building cannot be termed as income from other sources.

4.2. After considering the facts and submission and going through the relevant clauses of the development agreement, the ld. CIT(A) found that Rs.1,00,000/- was compensation for alleviating hardship suffered by the assessee for shifting/re-shifting and the remaining amount of Rs.24,00,000/- was received by the assessee only after giving his consent and concurrence for the re-development of the old building/allowing the owners to demolish the premises. The ld. CIT(A) was of the firm belief that the payment of license fee/rental of Rs.1,35,00,000/- per month for alternative accommodation to assessee was not liable to tax as same was paid to the assessee for providing alternative accommodation and Rs.1,00,000/- was given for

shifting/re-shifting, hence same should not be treated as income. The ld. CIT(A) went on to confirm Rs.24,00,000/-.

5. Before us, the ld. Counsel for the assessee reiterated what has been stated before the lower authorities and placed strong reliance on the decision of the Co-ordinate Bench in the case of *Vinod Murlidhar Chawal vs. ITO* in *ITA No. 3206/Mum/2022, order dt. 21/02/2023.*

6. We have given a thoughtful consideration to the orders of the authorities below. It is an undisputed fact that the builder paid Rs.25,00,000/- to the assessee being a member of the society, whose building went into re-development and for the hardship caused, the compensation was paid. In our considered opinion, whatever nomenclature is given to the said sum of amount, the fact remains that it has been paid to compensate the assessee to bear the hardship caused due to shifting/re-shifting of premises underwent re-development.

7. The Co-ordinate Bench in the case of *Vinod Murlidhar Chawal (supra)*, had the occasion to consider a similar grievance and held as under:-

> *"5. We have considered the rival submissions and perused the material available on record. The assessee is a member of the MIG Co-operative Housing Society Ltd. The society, who was the owner of the property, entered into an agreement for the development of the property, and to achieve this, the society and its members awarded a contract to M/s DB MIG Realtors and Builders Private Limited vide agreement dated 31/10/2010. As per the terms of the said agreement, the developer shall develop the property in such a manner that each member of the society shall receive a new flat in exchange of the surrender of the old flat depending upon the size of the old flat along with interest in the additional FSI allotted by MHADA. It is further to be noted that the property and the additional FSI are in the name of the society. Further, as per the said agreement, all the expenses, costs, and charges for*

the proposed project of redevelopment of the said property including for the purchase of additional FSI from MHADA, etc. shall be borne by the developers alone and the society and/or members shall not be liable to pay or contribute any amount toward the same. The developer, as per the agreement has paid to the society being the lawful owner of the property and the members an Page | 3 Vinod Murlidhar Chawal ITA no.3206/Mum./2022 aggregate monetary consideration. The said monetary consideration was distributed among the members of the society being shareholders, depending upon the size of their old flat. During the year under consideration, the assessee has received an amount of Rs.25,21,508, being the consideration for the surrender of his old flat. Since the assessee treated the said amount as capital receipt and did not offer the same to taxation, therefore, on the basis of information received from ITO-23(2)(3), Mumbai reassessment proceedings were initiated in the case of the assessee and vide assessment order passed under section 143 (3) r/w section 147 of the Act the aforesaid receipt of Rs.25,21,508, was treated as taxable in the hands of the assessee as „income from other sources". As per the assessee, the said payment is a hardship allowance to cover the cost of prospective loss of place of residence and the consequential hardship thereof, including loss of furniture, fixtures, and other inbuilt conveniences like fresh gas connections and various other facilities including relocation of residence. Thus, as per the assessee, this compensation is purely to compensate the personal loss and other inconveniences likely to be caused and therefore, can only be a capital receipt and can never be treated as a revenue receipt."

8. Further, in the case of *Shri Devshi Lakhamashi Dedhia vs. ACIT in ITA No. 5350/Mum/2012, order dt. 14/10/2015*, the Co-ordinate Bench has held as under:-

"15. We have considered the rival 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 us 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 land 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 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."

9. The Hon'ble Jurisdictional High Court of Bombay in the case of *Sarfaraz S. Furniturewalla v. Afsan Sharfali Ashok Kumar and Ors. In W.P. No. 4958 of 2024, dt. 15/04/2024,* had the occasion to consider a similar issue, though in the context of TDS to be deducted from transit rent, held as under:-

"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 ADN 504-WP-4958-2024 (C) .doc 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 ADN 504-WP-4958-2024 (C) .doc
(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 ADN 504-WP-4958-2024 (C) .doc 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 ADN 504-WP-4958-2024 (C) .doc 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 1TA 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 ADN 504-WP-4958-2024 (C) .doc 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. Considering the facts in totality in the light of the judicial decisions discussed hereinabove, we are of the considered view that the impugned receipt of money is a capital not liable to tax, therefore, we direct the AO to delete the impugned addition.

11. In the result, appeal of the assessee is allowed.

Order pronounced in the Court on 22nd July, 2024 at Mumbai.

Sd/-	***Sd/-***
(RAHUL CHAUDHARY)	**(NARENDRA KUMAR BILLAIYA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Kolkata, Dated 22/07/2024
SC SrPs

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. □ पीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (□ पील) / The CIT(A)-
5. विभागीय प्रतिनिधि , **आयकर अपीलीय अधिकरण, मुंबई** /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ **BY ORDER,**
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai