

IN THE INCOME TAX APPELLATE TRIBUNAL ‘F’ BENCH, MUMBAI

**BEFORE SHRI OM PRAKASH KANT, AM
AND MS. KAVITHA RAJAGOPAL, JM**

ITA No.1799/Mum/2024
(Assessment Year: 2017-18)

Vijay Kumar Bhan Flat No. 602, SurbharLokpuram, Hiranandani Meadows, Thane (W), Thane – 400 610	Vs.	ITO Circle 42(3)(1) Kautilya Bhavan, BKC, Bandra E, Mumbai-400 051
PAN/GIR No. ADWPB 4530 F		
(Assessee)	:	(Respondent)
Assessee by	:	Shri Dinesh R Shah
Respondent by	:	Shri Ashish Kumar
Date of Hearing	:	27.06.2024
Date of Pronouncement	:	24.09.2024

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) (‘ld.CIT(A) for short), National Faceless Appeal Centre (‘NFAC’ for short) passed u/s.250 of the Income Tax Act, 1961 (‘the Act’), pertaining to the Assessment Year (‘A.Y.’ for short) 2017-18.

2. The assessee has challenged the appeal on the following grounds:

1. *That the learned CIT (A) has erred on Law and facts of the case in not deleting the addition of Rs.3,99,000 being penalty paid by Builder for late possession of the flat which is a capital receipt & adjusted with the cost of the flat which was adjusted in the amount of the cost of flat & in that way it was a capital receipt & not the revenue receipt in my hands.*

2. *That the Learned CIT (A) erred in not deleting the addition made by the Ld Assessing officer in law and on facts of the case of Rs.3,99,000 u/s. 143(1) . As such adjustments which are debatable are not allowed under the referred section 143(1). Further the learned CIT (A) has erred in law and on facts of the case in treating the penalty for late possession of flat as the income of the Assessed on the basis of Form 26 AS under section*

56(2) (x) because, as mentioned above cost of the flat was adjusted in the amount of the cost of flat & in that way it was a capital receipt & not the revenue receipt in my hands

3. It is observed that the appeal has been filed with a delay of 793 days for which the assessee has filed an Affidavit for condoning the delay. On perusal of the same, we find that there is 'sufficient cause' for the delay. Hence, delay condoned.

4. Brief facts of the case are that the assessee is an individual and had filed his return of income on 04.08.2017, declaring total income at Rs.28,61,130/- as 'income from salary' and the same was processed u/s. 143(1) of the Act, where the learned Assessing Officer (ld. A.O. for short)/CPC vide intimation dated 14.06.2018 made an addition of Rs.3,99,000/- as 'income from other sources' which was not offered to tax by the assessee, though was reflecting in Form 26AS.

5. Aggrieved the assessee was in appeal before the first appellate authority, challenging the intimation of ld. A.O./CPC.

6. The ld. CIT(A) vide order dated 02.12.2021, upheld the addition made by the ld.A.O./CPC for the reason that the receipt of compensation for late possession of the flat received by the assessee from the builder would fall under the head 'income from other sources' as per section 56(2)(x) of the I. T. Act as being a 'revenue receipt'.

7. Further aggrieved, the assessee is in appeal before us, challenging the impugned order of the ld. CIT(A).

8. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has been non compliant before the ld. CIT(A) and

has also not filed the complete details before the first appellate authority. The Id. CIT(A) proceeded to dispose of the appeal with the available materials on record.

9. Before us, the learned Authorised Representative ('Id. AR' for short) for the assessee contended that the assessee had purchased a flat in Noida from the builder Mahagun Groups who had paid Rs.3,95,010/- to the assessee as compensation for delayed delivery of possession of the flat which was reflecting in Form 26AS and the Id. AR brought our attention to pg. no. 113 of the paper book where the builder had certified that the said amount was paid as 'penalty' for delayed possession as per the contractual obligation between the assessee and the builder. The Id. A.O. treated the same to be as 'income of the assessee' and the Id. CIT(A) upheld the said addition treating the same to be as a 'revenue receipt' under the head 'income from other sources' as per section 56(2)(x) of the Act. The learned Departmental Representative (Id. DR for short) for the Revenue, on the other hand, relied on the order of the Id. CIT(A).

10. It is observed that the lower authorities has not disputed the fact that the impugned amount was received as 'compensation from the builder' for delayed possession of flat purchased by the assessee from the builder. The only moot question to be adjudicated here is to whether the said compensation received by the assessee is a 'capital receipt' or 'revenue receipt'. The Id. AR for the assessee had relied on the following decisions:

- *Smt. Abha Bansal vs. PCIT(CG) Gurugum*[2021] 132 taxmann.com 231 (Delhi)
- *CIT vs. Saurashtra Cement Ltd.* [2010] 325 ITR 422 (SC)
- *Mumbai vs. Parle Soft Drinks Bangalore (P) Ltd.* [2018] 258 Taxman 61 (SC)

11. The above said decisions have reiterated that the compensation received out of breach of contract would amount to a 'capital receipt' and not a 'revenue receipt' in the

hands of the assessee, either for frustration of the contract or for breach of any of the terms and conditions of the contract. On perusal of the return of income filed by the assessee, the only source of income of the assessee was the 'salary income' received during the year under consideration. There is no doubt in the present case that the assessee was in receipt of the impugned amount as compensation for delayed handing over of the possession of the flat for which the assessee had entered into an agreement with the builder Mahagun Groups, which is in the nature of a 'capital receipt' received towards the capital asset. Any compensation received by the assessee which is in the nature of hardship compensation/transit rent/rehabilitation allowance/displacement allowance, etc. which is paid by the developer to the owner/occupant is held to be a 'capital receipt' and the compensation received for delayed possession is also akin to these which by no stretch of imagination could be a 'revenue receipt'. We, therefore, deem it fit to delete the impugned addition on the above observation.

12. As we have decided the issue on the merits, ground no.2 raised by the assessee requires no adjudication and is rendered academic.

13. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 24.09.2024

Sd/-

(Om Prakash Kant)
Accountant Member
Mumbai; Dated : 24.09.2024
Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)
Judicial Member

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai