

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

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER  
AND SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.2877/Mum/2024  
Assessment Year: 2020-21**

Gangaram Vallabhji Soni Adarsh Nagar, Prabhadevi S.O. Mumbai, Maharashtra-400025. <b>PAN: AKHPS 9016 R</b> (Appellant)	Vs.	DCIT, Circle-5(2)(1), Mumbai (Respondent)
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**Present for:**

Assessee by : Shri Bharat Kumar  
Revenue by : Shri Bhangapatil Pushkaraj Ramesh, Sr. DR

Date of Hearing : 09.10.2024  
Date of Pronouncement : 13.11.2024

**ORDER**

**PER AMARJIT SINGH, ACCOUNTANT MEMBER:**

This appeal of the assessee for the assessment year 2020-21 is directed against the order dated 06.05.2024 passed by the ld. Commissioner of Income-tax (Appeal), NFAC, Delhi. The assessee has raised the following grounds of appeal:

*"1. On the facts and circumstances of the case in law the ld. CIT(A) did not appreciate the facts the assessee received flat under development agreement.*

*2 On the facts and circumstances of the case in law the ld. CIT(A) erred in confirming addition u/s 56(2)(x) of Rs. 1,67,45,456/-.*

*3. Without prejudice to above, assessee prayed before your honours to allow the claim u/s 54/54F for benefit capital gain for acquisition of flat.*

*4. The assessee have right reserve to amend modify delete and make any additional grounds of appeal."*

2. Fact in brief is that return of income declaring total income of Rs. 4,54,240/- was filed on 24.03.2021. The case was subject to scrutiny assessment and notice u/s 143(2) was issued on 29.06.2021. After perusal of the detail filed the assessing officer noticed that during the year under consideration Flat No. 23B, Vraj Tiara Building No. 17, Adarshnagar Beach Corner, Veer Nariman Road, Worli, Mumbai-400030 was registered in the name of the assessee on 03.04.2019 and consideration paid for this property was Rs. 85,50,000/-. The market value was determined by the Registration Authorities at Rs. 2,66,83,000/-. The AO stated that one more flat in the aforesaid building was also registered in his name on 03.04.2019 i.e. flat no. 23A and total consideration paid was Rs. 85,50,000/- however market value determined by the Registration Authorities was Rs. 2,66,83,000/-. On query, the assessee claimed that he was in possession of flat no. 273 in the erstwhile Adarshnagar Beach Corner Co-operative Housing Society and this flat was purchased for a total consideration of Rs. 7,50,000/- on 13.02.1995/-. Subsequently, all the owners of 23 flats at the above referred Housing Society entered into a re-development agreement with M/s. Vraj Realtors for re-developing this flat after demolition the existing flats. The assessee who was having 410 sq. ft. flat in the old building was entitled for a total carpet area of 656 sq. ft. in the new building as per the terms of the agreement. The flats were handed over for demolition and re-development during the F.Y. 2015-16. Thereafter, the assessee received flat no. 23B and in accordance with the agreement and also purchased additional carpet area of

192 sq. ft. for a consideration of Rs. 85,50,000/-. The wife of the assessee was also a co-owner of a flat no. 266 in the erstwhile Adarshnagar Beach Corner Co-operative Housing Society. As per the copy of purchase deed Flat No. 266 was purchased on 14.08.2013 for a total consideration of Rs. 1,40,00,000/- from Shri Vikash Ankush Aklekar on 14.08.2013. Subsequently, in exchange of existing flat no. 266, on re-development of the society property, the assessee himself and his wife had also received flat no. 23A in accordance with agreement and also purchased additional carpet area of 192 sq. ft. for a consideration of Rs. 85,50,000/-. The stamp value of the same as determined as per the stamp value authority was of Rs. 2,66,83,000/-. Thereafter, the assessing officer computed the total carpet area purchased by the assessee for deemed exchange as per the terms of the agreement and extra carpet area received by the assessee as under:

<i>Flat No.</i>	<i>Total carpet area (new)</i>	<i>Due as per agreement</i>	<i>Excess</i>	<i>Purchase by assessee/ wife</i>	<i>Carpet area deemed to have been received free of cost</i>
23A	1160 sft	552 sft	608 sft	192 sft	416 sft
23B	1160 sft	656 sft	504 sft	192 sft	312 sft

3. Both the properties transferred to the assessee have been valued by the stamp duty registering authority at Rs. 2,66,83,000/- for each flat for carpet area measuring 1160 sq. ft. cost of each sq. ft., therefore, the AO worked the cost of each flat at Rs. 23,002/- per sq. ft. The extra carpet area of (416 sq. ft. + 312 sq. ft.) 728 sq. ft. as computed as above was treated as deemed income accrued to the assessee amounting to Rs. 167,45,456/- (Rs. 23,002/- x 728 sqf) as income from other sources.

4. Aggrieved assessee filed before the ld. CIT(A). However, the ld. CIT(A) has dismissed the appeal of the assessee. Even the assessee has filed alternative ground of appeal before the ld. CIT(A) to allow claim u/s 54 for benefit of capital gain for acquisition of flat. However, the ld. CIT(A) has not allowed the alternative claim of exemption of capital gain u/s 54 of the Act.

5. During the course of appellate proceedings before us, the ld. Counsel filed paper book comprising copies of agreement for purchases of the flat, copies of agreement for alternative accommodation and detail of stamp duty paid along with detail of allotment of the flats etc. The ld. Counsel submitted that assessee along with his wife were the rightful owners of the property and pursuant to a re-development claim, the assessee and his wife received properties against their existing owned properties and the assessee has not received any additional carpet area free of cost but has received additional carpet area in lieu of existing property owned by the assessee which was given for re-development. Alternatively, ld. Counsel also submitted since the assessee has made investment of higher amount being the stamp duty value of the property therefore, any capital gains arising on such transfer shall be considered as exempt u/s 54 of the Act. The ld. Counsel has also placed reliance on the following judicial pronouncements”

*“i. Hon’ble ITAT, Mumbai Bench in the case of Shri Dilip P. Ahuja ITA 6419/M/2012 for the A.Y. 2009-10.*

*ii. Hon’ble Bombay High Court in the case of Devdas Naik (2014) 49 taxmann.com 30 (Bomba).*

*iii. Hon'ble ITAT, Mumbai Bench in the case of Seema Heera (2024) 164 taxmann.com 329 (Mumbai – Trib.).*

*iv. Hon'ble Bombay High Court in the case of Pruthvi Brokers & Shareholders (2012) 23 taxmann.com 23 (Bom).*

*v. Hon'ble Bombay High Court in the case of B.G. Shirke Construction Technology (P) Ltd. (2017) 79 taxmann.com 306 (Bombay).”*

6. On the other hand, ld. DR supported the order of lower authorities.

7. Heard both the sides and perused the material on record. Without reiterating the fact as discussed above in this order, the assessee has ben allotted flat no. 23B and 23A in Vraj Tiara Building No. 17, Adarshnagar Beach Corner, Veer Nariman Road, Worli, Mumbai-400030 in exchange of existing flats no. 273 and 266 under the re-development project. The flat no. 234A was co-owned by the assessee along with his wife. As per the Registration Authorities, the market value of each flat was at Rs. 2,66,83,000/- and the assessee had also paid total consideration of Rs. 85,50,000/- for each flat as per the term of the agreement for purchasing additional carpet area for both the flats.

The ld counsel has also submitted that when two flats no. 23A and 234B were provided as exchange of old flts no. 266 and 273 as discussed as exchange of property no deemed income have accrued to the assessee or his wife. In respect of alternative claim of the assessee that he has made investment of higher amount being the stamp duty value of the property and capital gains arising on such transfer shall be considered as exempt as conditions of section 54 of the Act are duly fulfilled, we have

perused the decision of ITAT, Mumbai in the case of Shri Dilip P. Ahuja referred by the assessee wherein on similar issue and identical fact, ITAT, Mumbai vide ITA No.6419/M/2012 on 10.10.2014 held that assessee is entitled to avail deduction u/s 54 in respect of the cost of new flat obtained on transfer of old flat as per the re-development agreement entered by the assessee with the developers. The relevant extract of the decision of ITAT is reproduced as under:

*“5. We have heard the Ld. Representatives of both the parties and have also gone through the records. The Ld A.R for the assessee has submitted before us that the capital gains, that can be charged, were only in respect of transfer of additional FSI to which the assessee was entitled. The Ld A.R further submitted that assessee had not transferred nor was required to transfer the land of which the assessee was the owner along with the other occupants. Accordingly the Ld A.R submitted that the transfer was only in respect of additional FSI which the assessee had acquired as per the Government policy and further the said additional FSI had no cost of acquisition. Accordingly, the Ld A.R contended that the compensation received for transfer of additional FSI cannot be subjected to Capital gain tax, since there was no cost of acquisition. In this regard, the assessee mainly placed reliance on the decision of Mumbai bench of Tribunal rendered in the case of Jetha Lal D Mehta (2 SOT 422) and other decisions rendered by the co-ordinate benches.*

*6. However, a perusal of the agreement entered by the assessee with the developer, which is titled as “AGREEMENT (individual member agreement) FOR PERMANENT ALTERNATE AGREEMENT” would show that the Society, in which the flat owned by the assessee was located, has obtained the land from the Government and the said Society has become lessee of the Government in respect of the said land. This fact is in total contradiction to the submissions made by the assessee, i.e., it is the society which is the lessee of land and not the assessee and other members. Hence, it cannot be said that the assessee and other members have got the right of additional FSI. In fact, the assessee along with other owners of the flat and the society has collectively handed over the land and flats for re-development, meaning thereby, the existing right of the assessee over his flat got extinguished and in lieu thereof the assessee*

*has obtained a compensation of Rs.11,00,000/- and a new flat having an area of 660 Sq.ft. Hence, in our view, the Ld CIT(A) was justified in holding that the impugned transaction is liable for Capital gains tax.*

*7. In the case of Jethalal D Mehta (referred supra), the assessee therein was the owner of a Plot, which was reserved for public purposes. Hence, the assessee became eligible for Transferrable Development Rights (TDR). The question that was considered by the Tribunal was about the taxability of consideration received on transfer of TDR. However, in the instant case, the assessee has given his old flat and obtained compensation amount and new flat. Hence, in our view, the assessee cannot derive support from the above said decision, as the facts prevailing in both the cases are entirely different.*

*8. The other case laws relied upon by the assessee also, in our view, does not support the submissions made by the assessee, since in the instant case, the assessee has given his old flat and in turn obtained a new flat plus compensation. As stated earlier, the Society was the lessee of the plot, in which the impugned flat was located.*

*9. In view of the foregoing, we are of the view that the value of new flat and the compensation received is to be considered as the sale consideration received on giving of old flat. Against the same, the assessee is entitled to deduct the indexed cost of acquisition of old flat and the indexed cost of improvement, if any, incurred in respect of that flat in order to arrive at the Capital gain. Since the new flat is obtained on transfer of old flat, the assessee's claim for deduction u/s 54 of the Act is also justified, i.e., the assessee is entitled to avail deduction u/s 54 of the Act in respect of the cost of the new flat."*

8. We have also perused the provision of section 2(47) of the Act which define the terms 'transfer' to include various kinds of transactions. This section defines transfer as the 'transfer of capital asset including the sale, exchange relinquishment or extinguishment of the capital asset or extinguishment of any right therein or the compulsory acquisition thereof under any law'. Since in the case of the assessee there is an exchange of capital asset (old flats no. 266 and 273) for another capital assets (new

flats no. 23 and 23B) as discussed as per the re-development agreement entered with the developer therefore following the decision of ITAT as referred above, we direct the assessing officer to allow the claim of deduction u/s 54 of the Act as directed by the ITAT in the above referred case of Shri Dilip P. Ahuja vide ITA No. 6419/Mum/2012. Since we have allowed the alternative claim as per ground no. 3 of the assessee therefore grounds no. 1 & 2 are dismissed as infructuous. Accordingly, the appeal of the assessee is partly allowed.

9. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 13.11.2024.

**Sd/-**  
**(SANDEEP SINGH KARHAIL)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated: 13.11.2024  
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR

//True Copy//

By Order

Assistant Registrar  
ITAT, Mumbai Benches, Mumbai