

**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI**

**BEFORE SMT. BEENA PILLAI, JM**

**AND**

**SHRI ARUN KHODPIA, AM**

ITA No. 4130/Mum/2025  
(Assessment Year: 2018-19)

<b>Ratan Rajmal Mehta</b> 5, Harihar Niwas, Besant Road, Santacruz (West), Mumbai – 400054.	Vs.	<b>Income Tax Officer, Ward 22(3)(1), Mumbai</b>
<b>PAN/GIR No. BDIPM2252G</b>		
<b>(Appellant)</b>	:	<b>(Respondent)</b>

<b>Assessee by</b>	:	Shri Ketan Vajani (Virtually)
<b>Respondent by</b>	:	Shri Annavarani Kasuri, SR. AR.

<b>Date of Hearing</b>	:	01.09.2025
<b>Date of Pronouncement</b>	:	03.09.2025

**ORDER**

**Per Arun Khodpia, AM:**

The captioned appeal filed by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (in short ‘Id. CIT(A)’), passed u/s. 250 of the Income Tax Act, 1961 (in short ‘the Act’), dated 15.04.2025, for the Assessment Year (in short ‘A.Y.’) 2018-19 which in turn arises from the assessment order u/s. 147 r.w.s. 144B of the Act passed by Assessment Unit, Income Tax Department, dated 09.02.2023 and penalty order u/s. 270A of the Act, dated 31.08.2023, passed by Assessing Officer, (in short ‘Id. AO’) Ward 23(3)(1), Mumbai.



2. The grounds of appeal raised by the assessee are extracted as under:

*“1. On the facts and in the circumstances of the case, the Commissioner of Income-tax (Appeals) -NFAC, hereinafter referred to as the "CIT(A)", has erred in law and on facts in confirming the penalty of Rs. 1,75,440/- levied under section 270A of the Income-tax Act, 1961, in respect of the assessment year 2018-19.*

*2. The CIT(A) has failed to appreciate that the alleged under-reported income comprised of a capital receipt of Rs. 14,42,130/-, being rent received from the developer on account of redevelopment of the building in which the appellant was residing, which is not chargeable to tax as per settled position of law.*

*3. The appellant respectfully submits that her case is covered by clause (a) of sub-section (6) of section 270A of the Act and therefore the amount of Rs. 14,42,130/- cannot be considered to be underreported income in her case.*

*4. Without prejudice to any of the above grounds, the assessing officer has erred in rejecting the request for immunity u/s. 270AA of the Act on merely technical reasons. The CIT (A) has erred in confirming the penalty levied on account of such technical rejection of the immunity application.*

*5. The appellant, therefore, prays that the impugned penalty levied under section 270A of the Act may kindly be deleted or such other relief as may be deemed appropriate may please be allowed to the appellant.”*

3. Brief facts of the case are that the assessee herein is a senior citizen aged about 86 years, had income from interest only, have filed her ITR declaring income of Rs 3,62,505/- for the AY 2018-19. Subsequently, here case was reopened u/s 147, in response to which a return declaring income at Rs. 18,02,200/- has been filed and due taxes are paid along with the interest on additional income of rent received for Rs. 14,42,130/-. As per assessee’s bonafied belief, the rent so received by the assessee is a capital receipt though not taxable but offered for tax to buy piece of mind. As per information, the assessee was a member of Middle-Income Group (MIG) Housing Society Bandra East Group IV Ltd., had received an amount of Rs 19,53,678/- as hardship allowance from M/s Keystone



Realtors P. Ltd. as per redevelopment agreement. As per penalty order, the Ao had concluded that if the reassessment proceedings would not have been initiated the assessee would not have declared the correct income, thus, had under reported her income, accordingly, liable to be penalized under the provisions of section 270A of the Act. Penalty of Rs. 175440/- imposed on the assessee in terms of Clause (a) of subsection (2) of section 270A of the Act that “the income assessed is greater than the income determined in the return processed under clause (a) of sub-section (1) of section 143”.

4. Matter appealed before the Id. CIT(A), who dismissed the appeal of assessee with finding that “Where the assessee has voluntarily admitted an error in the return and accepted the addition either by way of filing a revised return or where the time period for the same has lapsed by filing a letter, penalty in respect of such addition so made by treating it as under reporting or misreporting could be avoided. But in present case the additional income is declared after issuance of notice for reopening assessment u/s 148, the same falls within the category of under reporting in consequence of misreporting. The AO therefore had rightly levied the penalty u/s 270A of the Act”.
5. Being aggrieved with aforesaid decision of Ld. CIT(A) vide the impugned order dated 15/04/2025, the assessee is in appeal before us with the present matter.



6. Ld. Counsel representing the assessee (in short “Ld. AR), submitted that, the assessee for the peace of mind had declared her income in the form of rent received as hardship allowance, which is a recorded fact in the assessment order itself. It is submitted that such receipts are capital in nature therefore does not qualify to be termed as income chargeable to tax under the provisions of income tax act. Reliance place on decision of ITAT Mumbai in the case of Smt. Delilah Raj Mansukhani V. ITO in ITA No 3526/MUM/2017 vide order dated 29.01.2021, held 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. Similar finding was given in the case of Shri devlakshmi Dedhia V. ACIT in ITA 5350/MUM/2012, that the amounts received as compensation for hardship, rehabilitation and shifting are not liable to tax. On this aspect Hon’ble Bombay High Court in the case of Sarfaraz S. Furniturewalla Vs. Afshan Sharfali Ashok Kumar (2024) 166 Taxman.com 425 (Bombay) / 467 ITR 230 (Bombay)(15-04-2024) has approved the decision of tribunal in the case of Smt. Delilah Raj Mansukhani (supra) and held that Hardship Allowance / Rehabilitation Allowance / Displacement Allowance, paid by the developer / landlord to the tenant who suffers hardship due to dispossession is not to be considered as revenue receipt and is not liable to be taxed.



7. Ld. AR further submitted that the assessee also applied for immunity in Form 68 on 13-04-2023, however the application was filed erroneously as an attachment with online reply, instead of uploading on the e-portal. It is just a procedural lapse, as the taxes pertaining to income offered were already paid by the assessee along with interest.
8. Backed by aforesaid submissions, Ld. AR prayed that the assessee had paid taxes only for buying the peace even on the receipts in the form of Hardship Allowance which are not in the nature of income chargeable to tax, levying penalty on such action of the assessee would be harsh and extraneous, the same therefore is liable to be deleted.
9. Ld. Senior DR, representing the revenue on the other hand strongly supported the orders of revenue authorities.
10. Having considered the rival submissions, on perusal of facts on record and the case laws relied upon by the parties, we observe that in present case the assessee had declared her receipts of hardship allowance as compensation from developer on account of redevelopment of the building. On perusal of various judgments referred to supra including the decision of Hon'ble jurisdictional High Court of Bombay in the case of Sarfaraz S. Furniturewalla Vs. Afshan Sharfali Ashok Kumar (supra), wherein it has been categorically held that the receipts in the



form of Hardship Allowance / Rehabilitation Allowance / Displacement Allowance, paid by the developer / landlord to the tenant who suffers hardship due to dispossession is not to be considered as revenue receipt and is not liable to be taxed. In the facts of present case as there is no dispute regarding the nature of receipt by the assessee that the same was Hardship Allowance for here dispossession in the wake of redevelopment of the building wherein, she was a resident, thus, such receipt is not revenue in nature, so as to liable to be taxed. It is also a fact that the assessee had furnished Form 68, but with some procedural errors. Since, the assessee had already paid taxes and interest even on an income which does not warrants any tax liability, imposing further penalty would cause hardship.

11. In view of such observations, we are of the considered opinion that the penalty levied on the assessee for under reporting of an income which actually was not a taxable income of assessee, where assessee had paid taxes and interest only for buying of peace would be undue hardship, the same therefore cannot survive. The decision of Ld. CIT(A) in the impugned order in confirming the penalty order of assessee thus set aside and the penalty-imposed stands deleted.



12. In result the appeal of assessee, stands allowed.

*Order pronounced in the open court on 03.09.2025*

**Sd/-  
(BEENA PILLAI)  
JUDICIAL MEMBER**

**Sd/-  
(ARUN KHODPIA)  
ACCOUNTANT MEMBER**

Mumbai; Dated: 03.09.2025  
Karishma J. Pawar (Stenographer)

**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