INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI

BEFORE SHRI M BALAGANESH, ACCOUNTANT MEMBER
AND SHRI VIMAL KUMAR, JUDICIAL MEMBER

ITA No. 2335/Del/2018
Assessment Year: 2014-15

Milan Saini, 37, Centrum Plaza, DLF Golf Course Road, Sector 53, Gurgaon (Haryana) **PAN: BRAPS1366P**	Vs.	DCIT, Circle-2. Gurgaon
(Appellant)		**(Respondent)**

Assessee by:	Shri Ajay Vohra, Sr. Adv. Shri Deepesh Garg, Adv. & Ms. Shaurya Jain, CA
Department by:	Ms. Harpreet Kaur Hansra, Sr. DR
Date of Hearing:	11.08.2025
Date of pronouncement:	28.10.2025

O R D E R

PER VIMAL KUMAR, JUDICIAL MEMBER:

The appeal filed by assessee is against order dated 22.01.2018 of Learned Commissioner of Income-Tax (Appeals)-1, Gurgaon (hereinafter referred as "the Ld. CIT(A)") under Section 250(6) of the Income Tax Act, 1961 (hereinafter referred as "the Act") arising out of assessment order dated 22.12.2016 of the Learned Assessing Officer/Deputy Commissioner of Income Tax, Circle-2, Gurgaon (hereinafter referred as "Ld. AO") under Section 143(3) of the Act for assessment year 2014-15.

2. Brief facts of case are that the assessee filed return of income declaring an income of Rs 33,79,30,580/- on 31.07.2014. The return was processed under Section 143(1). The case was picked up for scrutiny through CASS. Notice under Section 143(2) was duly served upon the assessee by the assessee on 28.08.2015. After the change of jurisdiction the case was transferred to DCIT, Circle-2, Gurgaon. Notice under Section 142(1) along with questionnaire was issued on 30.11.2016. In response to the notices, the counsel of assessee Shri Gaurav Singhal, Chartered Accountant attended the assessment proceedings and filed necessary information and details. On completion of assessment proceeding, Ld. AO passed the order dated 22.12.2016 making an addition of Rs.1,17,527/- being interest from S.B. Account jointly held by the assessee and his father.

3. Against order dated 22.12.2016 of Ld. AO, appellant/assessee preferred appeal before the Ld. CIT(A) which was dismissed vide order dated 22.01.2018.

4. Being aggrieved, appellant/assessee preferred present appeal with following concise grounds:

> "1. That on the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals) erred in not holding that the assessment order dated 22.12.2016 passed under section 143(3) of the Income tax Act, 1961 ('the Act') is beyond jurisdiction, bad in law and liable to be quashed.

2. That the CIT(A) erred on facts and in law in holding that compensation of Rs.33,55,12,980 received by the appellant from Thymelicus Holding B.V [shareholder of Cinepolis India Pvt Ltd. ('CIPL')] is taxable as 'salary' under section 17 of the Act, as against long-term capital gains offered to tax by the appellant in the return of income.

2.1 That the CIT(A) erred on facts and in law in drawing conclusion that there was employer-employee relationship between appellant and CIPL, which is contrary to the facts and documentation placed on record.

3. That the CIT(A) erred on facts and in law in alternatively upholding the case of the assessing officer that the compensation received by the appellant was taxable under section 28(iv) of the Act as 'profits and gains of business and profession', alleging the same to be in lieu of professional/ entrepreneurial services.

4. That the CIT(A) erred on facts and in law in holding (in alternate) that compensation arising for alleged transfer of rights is taxable as short-term capital gains and not long-term capital gains as returned by the appellant.

5. That the CIT(A)/ assessing officer erred on facts and in law in levying various false and baseless allegations that too without judiciously appreciating the documents on record, communications/ confirmation from the payer and the factual and legal submissions filed by the appellant."

5. The appellant/assessee submitted that additional ground of appeal through application dated 25.06.2024 as under:

"1. That on the facts and circumstances of the case and in law, the settlement compensation of Rs.33,12,18,930/- received by the appellant from Cinepolis Group on account of relinquishment of right to sue and settlement of disputes is a capital receipt not chargeable to tax."

5.1 The appellant/assessee filed application dated 25.06.2024 for admission of additional evidence.

6. Learned Authorized Representative for the appellant/assessee submitted that the appellant completed his bachelor's in electronic engineering from

Punjab Engineering College, Chandigarh in the year 1988 and master's in management from Standford University, USA in the year 2007. While pursuing his masters, the appellant along with Mr.Deepak Marda (former, joint managing director and co-founder of CIPL) came in contact with Mr. Miguel Mier (COO of Cinepolis Mexico) who was their classmate, expressing their interest in the potential of modern cinema industry in India. Mr. Miguel Mier suggested them to contact Cinepolis Group, a well-known operator of cinema theatres in Mexico and in other Latin American countries. The Group, on being contacted by the appellant and Mr. Deepak Marda for development and operation of cinema multiplex theatres in India, saw immense potential in the idea put forward, especially considering that the said group had no presence in Asia and agreed to the business proposal. As per the appellant, it was agreed between the parties that in consideration of the efforts put in by the said management team (including appellant), in establishing the business in India, after five years from the start of the prospective company in India (CIPL), the management team would be entitled to equity in the said company based on the internal rate of return (IRR) generated on the investment; that apart, the management team would also be entitled to a fixed compensation starting from USD 12,500/ month which would subsequently be enhanced to USD 18,000/ month after six months or signing of first lease agreement, whichever is earlier. The said understanding between the parties was captured in initial e-mails dated 06.10.2007 (page 156-162 of the paperbook) sent by the appellant and

acknowledged by the Cinepolis group vide e-mail dated 08.10.2007 (page 163 of the paperbook).

6.1 Considering the aforesaid, CIPL was incorporated under the Companies Act, 1956 on 06.11.2007 and as agreed the appellant and Mr. Deepak Marda were appointed as Joint Managing Directors of CIPL. Also, Mr. Deepak Marda was allotted 10,000 equity shares and the remaining shares of CIPL were allotted to Thymelicus Holding BV [parent company - Cinepolis Group] ('Thymelicus').

6.2 The aforesaid arrangement was not implemented upon by the Cinepolis Group and the equity/remuneration was consistently delayed for some or the other reasons. The ignorant attitude of the Cinepolis Group however did not have much impact on work performance of the appellant and Mr. Deepak Marda. Through their tremendous efforts, hard work and business acumen, the business of CIPL rose exponentially. However, in the year 2012, the Cinepolis Group finally revealed their malafide and fraudulent intentions, stating they would not be able to uphold/ implement arrangement made vide email dated 06.10.2007. Moreover, the Group started disputing the initial structure decided as per the aforesaid email. The appellant was in utter shock; all of a sudden, the aspirations and dreams of the appellant were shattered. Accordingly, the failure on part of the Cinepolis Group constrained the appellant and Mr. Deepak Marda to file various civil and criminal suits against the Cinepolis Group on account of

the aforesaid dispute and various other issues. More than 13 civil and criminal proceedings were pursued in various courts and legal forums. The following documents are illustratively placed on record to evidence denial of agreed arrangement to grant equity to the appellant by Cinepolis and consequential legal disputes arising on that account:

i) Copy of entire emails exchanges between the parties evidencing disputes- pages 163-192 of the paperbook;

ii) Copy of the suit filed by the appellant on 25.03.2013 before the division Civil Judge, Gurgaon against the unlawful action of the Cinepolis group- pages 199-237 of the paperbook;

iii) Copy of the order dated 08.04.2013 passed by the Civil Judge, Gurgaon restraining the Cinepolis group from terminating the agreement (email) dated 06.10.2007 without allocating the agreed equity shares to the appellant- pages 238-260 of the paperbook;

iv) Copy of the order dated 20.04.2013 passed by the Additional District Judge, Gurgaon denying injunction to the parties- pages 261-271 of the paperbook;

v) Copy of the interim order dated 14.05.2013 passed by the Company Law Board, New Delhi acknowledging dispute between the appellant, Sh. Deepak Marda and the Cinepolis Group and directing the parties to maintain status-quo- pages 272-274 of the paperbook;

vi) Copy of the criminal complaint dated 25.05.2013 filed by the appellant before the Haryana Police, Enquiry Officer, in charge economic offences, Gurgaon- pages 275-276 of the paperbook;

vii) Copy of FIR dated 17.08.2013 lodged at the Sushant Lok Police station, Gurgaon by the appellant and Sh. Deepak Marda against the Cinepolis Group- pages 277-289 of the paperbook;

viii) Copy of the letter filed by the appellant and Sh. Deepak Marda before the Commissioner of Police, Gurgaon- pages 290-301 of the paperbook;

ix) List of Civil and Criminal matter laid down at pages 330-332 of the paperbook;

x) The aforesaid legal battle was even widely reported in the Media. Copy of the relevant newspaper article published in April 2013 is placed at 193-198 of the paperbook.

6.3 Pertinently, during pendency of the afore-stated criminal and civil proceedings before various legal forums, in order to avoid prolonged litigation and resolve the aforesaid disputes, Cinepolis Gorup (mainly through Thymelicus) agreed to settle the disputes with the appellant and Mr. Deepak Marda, pursuant to which a Settlement Agreement dated 12.11.2013 was entered into between the parties [refer pages 308 to 345 of paperbook].

6.4. The perusal of the agreement clearly reveals that the sole/ dominant purposes of settlement agreement were for settlement of disputes and end of ligation and giving up of right to sue as is specifically highlighted below:

- The comprehensive withdrawal of litigations (Schedule B) and the resolution of all inter-se disputes (Recital E) provide strong evidence that the payment was intended to resolve disputes comprehensively.
- The agreement's structure, which ties payments to litigation withdrawal and dispute resolution, leaves no doubt about the nature of payment of compensation.
- The dominant intent thus was:

  i) peace-making and ending legal battles;
  ii) cessation of all litigation;
  iii) maintaining or cleaning up business relationships and reputation;
  iv) achieving a comprehensive resolution of all issue;
  v) ending all legal and financial liabilities between the parties;
  vi) the payment being tied to this closure suggests that the real aim is to clear up all legal entanglements;

6.5 In terms of the said agreement, it can be summarily concluded as under:

- Cinepolis Group agreed to pay the appellant lumpsum amount of Rs.33,55,12,980 towards full and final settlement of all disputes and differences; and
- In lieu thereof, the appellant in turn agreed to:

i) unconditionally and irrevocably relinquish his right and entitlement to any equity shares of CIPL in his favour;
ii) withdraw all the suits filed against the Cinepolis Group before various legal forums and provide documentary proof thereof. The settlement was focused in dropping all legal disputes, especially considering that cases were filed for criminal wrongdoings also.

- Importantly, the settlement was without prejudice to each parties' contentions on facts and law; no party had conceded on its claim by virtue of settlement.
- It is noteworthy that quantum of shares, value of shares etc. is not determined and compensation is not based on any value of shares; the same was based on mutual negotiations.

6.6 Accordingly, the amount of Rs.33,55,12,980 was paid by Cinepolis Group to the appellant during financial year 2013-14 [assessment year 2014-15]. In the return of income, the appellant reported and offered the said compensation as LTCG assuming that the same was for relinquishment of appellant's rights and interest in equity shares of CIPL.

6.7 At this juncture, it may be noted that though the appellant had offered to tax the compensation received, the appellant, before the lower authorities, contested that the same was not taxable (i) vide letter dated 09.11.2016 filed before the assessing officer, the appellant mentioned that since cost of acquisition is not determinate, the gains should not be taxable [refer pages 17-

70@ pg 20 onwards of paperbook]; and (ii) vide submissions dated 16.11.2017 filed before the commissioner, the appellant mentioned that the compensation is a capital receipt not liable to tax.

6.8 Compensation received by the appellant from Cinepolis Group for giving up the 'right to sue' is capital receipt not chargeable to tax

The settlement arrived at between the appellant and CIPL was towards full and final settlement of all disputes and differences between them, in lieu of which consideration was received by the appellant who in turn, inter alia, agreed to not seek enforcement of any right, title or interest in the shares of CIPL and withdraw all the suits/ complaints filed before various legal forums. Thus, in effect the settlement amount received by the appellant was a compensation for foregoing/ withdrawing his 'right to sue'.

a. Any compensation in lieu of foregoing right to sue for specific performance/ damaged is a capital receipt which is not chargeable to tax as capital gains.

b. Every receipt is not liable to tax under the provisions of the Act; tax under the Act is levied/ charged on "income" as defined in section 2(24) of the Act. Capital receipt is by its very nature, not "income" per se and is, unless otherwise specifically provided, not liable to tax under the provisions of the Act. Being so, only such capital receipts, which are taxable under the head "capital

gains" or under any other specific provision, are taxable under the provisions of the Act.

c. In the case of CIT vs. Shaw Wallace and Company: 2 Comp Cases 276, wherein their Lordships of the Supreme Court explained the term "income" in the following words:

> **"Income, their Lordships think, in this Act connotes a periodical monetary return 'coming in' with some sort of regularity, or expected regularity, from definite sources.** The source is not necessarily one which is expected to be continuously productive, but it must be one whose object is the production of a definite return, excluding anything in the nature of a mere windfall. Thus income has been likened pictorially to the fruit of a tree, or the crop of a field. It is essentially the produce of something which is often loosely spoken of as 'capital" (emphasis supplied)

d. The Supreme Court in the case of Kettlewell Bullen & Co. Limited: [1964] 53 ITR 261 (SC) held, "It may be broadly stated that what is received for loss of capital is a capital receipt; what is received as profit in a trading transaction is taxable income".

e. The Supreme Court in the case of Emil Webber vs. CIT: 200 ITR 483, held that the definition of "income" in clause (24) of section 2 of the Act is an inclusive definition; adds several artificial categories to the concept of income but on that account the expression "income" does not lose its natural connotation.

f. While considering the issue of taxation of compensation received on surrender of tenancy right, their Lordships of the **Bombay High Court** in the case of **Cadell Weaving Mills Company Ltd vs. CIT: 249 ITR 266** elucidated the principle relating to taxation of income in the following words: "..... **It is well-settled that all receipts are not taxable under the Income-tax Act. Section 2(24) defines "income". It is no doubt an inclusive definition. However, a capital receipt 'is not income under section 2(24) unless it is chargeable to tax as capital gains under section 45.** It is for this reason that under section 2(24)(vi) that the Legislature has expressly stated, inter alia, that income shall include any capital gains chargeable under section 45. **Under section 2(24)(vi), the Legislature has not included all capital gains as income. It is only capital gains chargeable under section 45 which has been treated as income under section 2(24),** If the argument of the Department is accepted then all capital gains whether chargeable under section 45 or not, would come within the definition of the word "income" under section 2(24). Further, under section 2(24)(vi), the Legislature has not stopped with the words "any capital gains". On the contrary, the Legislature has advisedly stated that only capital gains which are chargeable under section 45 could be treated as income. In other words, capital gains not chargeable to tax under section 45 fall outside the definition of the word "income" in section 2(24). It is true that section 2(24) is an inclusive definition. However, in this case, we are required to ascertain the scope of section 2(24)(vi) and for that purpose we have to read the sub-section strictly. We cannot widen the scope of sub-section by saying that the definition as a whole is inclusive and not exhaustive. In the present case, the words "chargeable under section 45" are very important. They are not being read by the Department. These words cannot be omitted." (emphasis supplied)

g. Aforesaid decision of the **Bombay High Court** has been affirmed by the **Supreme Court in the case of CIT vs. D.P. Sandu Bros. Chembur (P.) Ltd.: 273 ITR 1 (SC).**

h. Compensation for giving up litigation/ right to sue- capital receipt not liable to tax. Reliance in this regard is placed on the judgment of the **jurisdictional Delhi High Court** in the case of **CIT vs. J. Dalmia: [1984] 149 ITR 215 (Del) [Revenue's Special Leave Petition dismissed @ 189 ITR (St.) 122]** wherein it was held that amounts received by the assessee in pursuance of an arbitral award, whereby the assessee gave up on his claim/right to sue was not assessable as capital gains and was in effect a capital receipt.

i. Similar view has been adopted by the **Hon'ble Gujarat High Court** in the case of **Baroda Cement & Chemicals Ltd. vs. CIT: [1986] 158 ITR 636**

(Guj) wherein it was held that -the right to sue for damages is not an actionable claim, which is incapable of being transferred. Thus, any sum received by the assessee by way of compensation does not qualify as 'consideration in lieu of a transfer'. Resultantly, such compensation would not be amenable to tax under the head of capital gains and was in essence a capital receipt.

j. The **New Delhi Bench of AAR** in the case of **Lead Counsel of Qualified Settlement Fund (QSF), In re: [2016] 381 ITR 1** held that Settlement amount received for surrender of capital asset of 'right to sue' has to be treated as 'capital receipt' not liable to tax.

k. In the following cases, it is held that settlement compensation in lieu of giving up the right to sue/ claims is a capital receipt not liable to tax in the hands of the assessee:

(a) CIT vs. Abbasbhoy A. Dehgamwalla: [1992] 195 ITR 28 (Bombay)
(b) Bharat Forge Co Ltd vs CIT: [1994] 205 ITR 339 (Bombay)
(c) CIT v. Ashoka Marketing Ltd.: [1987] 164 ITR 664 (Cal.)
(d) Aberdeen-Claims-Administration-Inc-1.[2016] 65 taxmann.com 246 (AAR)
(e) Bhojison Infrastructure (P.) Ltd. vs. ITO: [2018] 173 ITD 436 (Ahm Trib)
(f) Popular Estate Management v. DCIT: ITA No. 2703/Del/2017 (Ahd)
(g) ITO vs. Ganeshsagar Infrastructure (P.) Ltd.: [2022] 135 taxmann.com 313 (Ahm Trib.)
(h) Chheda Housing Development Corpn. Vs. ACIT: [2019] 179 ITD 154 (Mum Trib.)
(i) ACIT vs Jackie Shroff: [2018] 172 ITD 425 (Mumbai)

(j) Satyam Food Specialties (P.) Ltd. v. Dy. CIT [2015] 68 SOT 449 (Jaipur - Trib.)
(k) Ishvakoo Grand Plaza v. DCIT: ITA No. 4537/Del/2017 (Del. Trib)
(l) **Ms. Padma Rao vs. CIT: [2024] 159 taxmann.com 30 (Del Trib.)**

6.9 Compensation received for sterilization of source of income-capital receipt

The settlement agreement entered into between the parties' results in the appellant giving up rights available to the assessee vide email dated 6.10.2007, i.e., any remuneration and also right to carry equity in CIPL. Since the appellant was over the years engaged full-fledged on the project of establishing cinema chain partnering with CIPL, the source of benefit expected to be accrued to the appellant in form of commitment as per email dated 6.10.2007 had, by virtue of settlement agreement, sterilized. The compensation so received by the appellant for termination of such source of income/benefit is clearly on capital account not liable to tax.

a. The amount received on sterilization of source of income is a capital receipt not chargeable to tax. It is settled law that compensation received against loss of source of income/ profit earning apparatus, is in the nature of capital receipt, which is not liable to tax under the provisions of the Act. Reliance in this regard is placed on the following decisions wherein it is held that consideration received in lieu of extinction of a source of income or a profit earning apparatus is a capital receipt not liable to tax:

(i) Kettlewell Bullen and Co. Ltd. v. CIT: (1964) 53 ITR 261 (SC)

(ii) CIT v. Saurashtra Cement Ltd: (2010) 325 ITR 422 (SC)

(iii) CIT vs. Bombay Burmah Trading Corporation: (1986) 161 ITR 386 (SC)

(iv) Oberoi Hotel Pvt. Ltd. v. CIT: 236 ITR 903 (SC)

(v) CIT v. Parle Soft Drinks (Bangalore) (P.) Ltd.: [2018] 400 ITR 108 (Bom)- SLP filed by the Revenue against the aforesaid decision was dismissed by the Hon'ble Supreme Court in CIT v. Parle Soft Drinks (Bangalore (P.) Ltd.) reported at [2018] 97 taxmann.com 136 (SC)

(vi) Khanna & Annadhanam vs. CIT: [2013] 351 ITR 110 (Del)

(vii) Pr. CIT vs. Aeren R. Infrastructure Ltd.: (2018) 404 ITR 318 (Del HC)

(viii) CIT vs. Shard Sinha [2016] 237 Taxman 111 (Del HC)

(ix) PCIT vs. Pawa Infrastructure (P.) Ltd.: [2023] 457 ITR 392 (Del HC)

(x) CIT v. Ambadi Enterprises Ltd.: (2004) 267 ITR 702 (Mad)

(xi) CIT v. J. L. Morrison (India) Ltd. [2014] 366 ITR 593 (Cal)

b. Section 28(ii)(e) of the Act provides that any compensation received/ receivable in connection with the termination or the modification of the terms and conditions of any contract relating to the business shall be taxable as business income; importantly, the said provision was introduced prospectively w.e.f. assessment year 2019-20. The same also supports that the compensation received prior to AY 2019-20 is a capital receipt not liable to tax.

6.10 <u>Re: Concise GOA Nos.1 to 5:</u> Compensation taxable as long-term capital gains is a capital receipt not liable to tax in the hands of the appellant. The amount of Rs.33.55 crores received as compensation could partake the character of long term capital gains since the compensation so received could at

best, be attributed to the right/ entitlement of the appellant to the carry equity shares of CIPL, in terms of the agreement (email dated 06.10.2007).

a. Since the right of enforcement of such entitlement for carry equity in CIPL clearly partakes the character of a "capital asset", in terms of section 2(14); the relinquishment/extinguishment of such capital asset in terms of the settlement agreement clearly constitutes "transfer" in terms of section 2(47) of the Act.

b. Reference in this regard may be made to the decision of the **Punjab & Haryana High Court** in the case of **Hari Brothers Pvt. Ltd. vs. ITO: [1964] 52 ITR 399 (P&H).** In the facts of that case, the petitioner company had renounced its preferential right to subscribe to the shares of M/s Dalmia Cement (Bharat) Limited in favour of a class of shareholders in lieu of which the petitioner received certain consideration. The petitioner contended that sale of rights in such preferential shares could not be treated as a capital asset. Negating such a contention, the Hon'ble High Court concluded as follows:

> "……Section 2(4A) defines **'capital asset' as being property of any kind held by as assessee, whether or not connected with his business, profession** or vocation, but does not include any stock-in-trade, etc., personal effects and land yielding agricultural income. The word 'property' is of wide amplitude. Section 12B provides that:
>
> (1) the tax shall be payable by an assessee under the head 'Capital gains' in respect of any profits or gains arising from the sale, exchange, relinquishment or transfer of a capital asset effect after 31st day of March, 1956....
>
> **The word 'relinquishment' has been newly inserted. I am inclined to agree with the contention on behalf of the respondents that a right to**

subscribe for shares is property and it is a capital asset" (emphasis supplied)

c. The legal position in this regard was again confirmed by the **Hon'ble Supreme Court** in the case of **Navin Jindal vs. ACIT: [2010] 320 ITR 708 (SC)** wherein it was held that the 'rights of the existing shareholders to subscribe to additional shares/ debentures is a separate, independent and distinct right which is capable of being transferred'. The relevant observations of the Hon'ble Apex Court are as follows:

> "8. We find merit in this batch of civil appeals filed by the assessee(s). The right to subscribe for additional offer of shares/ debentures on the strength of existing shareholding in the company, comes into existence when the company decides to come out with the rights offer. Prior to that, such right, though embedded in the original shareholding, remains inchoate. The same crystallizes only when the rights offer is announced by the company. Therefore, in order to determine the nature of gains/ loss or renunciation of right to subscribe for additional shares/debentures, the crucial date is the date on which such right to subscribe for additional shares/ debentures comes into existence and the date of transfer (renunciation) of such right. The said right to subscribe for additional shares/debentures is a distinct, independent and separate right, capable of being transferred independently of the existing shareholding, on the strength of which such rights are offered."

(d) The decision of the **Karnataka High Court** in the case of **Chittharanjan A. Dasannacharya vs. CIT: [2020] 429 ITR 570 (Kar)** wherein the assessee was provided an option to subscribe to the shares of the company at a time where the assessee was an independent consultant of company and there was no relationship of employer and employee between company and assessee. In the year under consideration, the assessee received a

net consideration of US $ 283,606 on account of cashless exercise of stock option which was offered to tax as long term capital gains. Considering the said facts, the High Court held that the cashless exercise of option therefore was a transfer of capital asset by way of a relinquishment/ extinguishment of right in capital asset in terms of Section 2(47) of the Act.

(e). The **Delhi High Court** in the case of **Simka Hotels & Resorts vs. DCIT: (2013) 213 Taxman 482,** also held that income/ consideration received by assessee from relinquishment of right in a plot of land has to be assessed under the head 'capital gains'.

(f). In the case of **CIT v. Vijay Flexible Containers: [1990] 186 ITR 693 (Bom),** the assessee firm, entered into an agreement to purchase immovable property and paid earnest money; as a result of a suit filed for breach of agreement, a decree for certain amount as damages was passed in assessee's favour. In such circumstances, compensation received less earnest money paid was held to be treated as capital gains in assessee's hand.

(g). Recently the **Delhi High Court** in the case of **Akash Poddar vs. ACIT: [2024] 165 taxmann.com 271** held that **where assessee received a lump sum amount from company towards full and final settlement of all disputes and differences with it, after his employment was terminated and in terms of settlement agreement, assessee unconditionally and irrevocably**

relinquished all his rights in respect of registration of shares held by him and to consequently hand over share certificates in original to company, said settlement amount was liable to be recognized as capital gains and not profits in lieu of salary.

(h). At this juncture, it is pertinent to mention that compensation of equal amount was also received by Mr. Deepak Marda (co-founder and managing director of CIPL) from Cinepolis Group, which was offered to tax as LTCG in the return of income filed for the assessment year 2014-15. The said return was selected for scrutiny assessment and was completed vide order dated 08.12.2016 passed under section 143(3) of the Act, accepting the returned income without making any adjustment/ variation. Copy of the said assessment order is placed at **pages 416-419 of the paperbook**. Further, an attempt was made by the Revenue to reassess the case of Mr. Deepak Marda which was quashed by the Bombay High Court (refer **pages 420-431 of the paperbook)**. Being so, the assessment of identical compensation as long-term capital gains has attained finality.

(i). Applying the ratio decidendi of above noted judicial pronouncements to the facts of the present case, it is respectfully submitted that the entire consideration (aggregating to Rs.33,55,12,980) received by the appellant in lieu of relinquishment of his rights/ interest in equity shares of CIPL, if at all, is

assessable under the head 'capital gains' arising from transfer of long-term capital asset.

6.11 Re: Attempt of lower authorities to tax compensation under the head 'Salary' or 'PGBP or as 'Short term capital gains' is invalid; rebuttal to allegations/ observations of the assessing officer and CIT(A)

(a). Ld. Assessing Officer has assessed the aforesaid compensation received from Cinepolis Group as income under the head PGBP applying provisions of section 28(iv) of the Act. Further, the CIT(A) held (i) the compensation received by the appellant from Cinepolis Group is taxable as 'salary'; (ii) alternatively, upheld the stand of the assessing officer that the same is otherwise assessable under PGBP; and (iii) further, on without prejudice basis, held that, in any case, the same is taxable as short-term capital gains and not long-term capital gains.

7. Learned Authorized Representative for the Department of Revenue relied on order of Ld. CIT(A). Ld. CIT(A) held - (i) the compensation received by the appellant from Cinepolis Group is taxable as 'salary'; (ii) alternatively, upheld the stand of the assessing officer that the same is otherwise assessable under PGBP; and (iii) further, on without prejudice basis, held that, in any case, the same is taxable as short-term capital gains and not long-term capital gains.

8. From examination of record in light of above rival contentions, it is crystal clear that additional ground of appeal is regarding the settlement

compensation of Rs.33,12,18,930/- received by assessee and settlement of dispute as a capital receipt not chargeable to tax.

8.1 Undisputedly, it is a material fact that Ld. AO vide order dated 22.12.2016 under Section 143(3) of the Act, assessed the income of assessee at Rs.33,80,48118 after making an addition of Rs.1,17,527/- being interest from saving bank account jointly held by assessee and his father. Ld. AO assessed compensation of Rs.33,12,18,930/- received from Cinepolis Group as income under the head "profit and gain of business and profession" in terms of section 28(iv) of the Act.

8.2 In appeal by the assessee, Ld. CIT(A) vide order dated 22.01.2018 held (i) the compensation received by assessee from Cinepolis Group as taxable being "salary" ; (ii) alternatively held the stand of the Ld. AO that the same is otherwise assessable under "profit and gain of business and profession"; and (iii) the compensation is taxable as "short term capital gain" and not "Long Term Capital Gain".

8.3 Assessee had received Rs.33,12,18,930/- from Cinepolis Group on account of relinquishment of rights to sue and settlement of disputes by virtue of settlement agreement dated 12.11.2018 (pages 308 to 345) of the paper books).

8.4 Hon'ble High Court of Delhi in case of CIT vs. J. Dalmia 149 ITR 215 (Del. HC) – Revenue's SLP was dismissed – 189 ITR 122 (SC) held that amounts received by the assessee in pursuance of an arbitral award, whereby the assessee gave up on his claim/right to sue was not assessable as capital gains and was in effect a capital receipt. The relevant extracts of the judgement are reproduced hereunder:

> "7. We are, therefore, left with the question as to whether the right to claim damages in the instant case is a 'property of any kind and thus, a 'capital asset' under section 2(14)of the Act. The further question as to whether there was a transfer of such a 'capital asset', would arise only if the right to claim damages is held to be a 'capital asset'. But, again, it will have to be examined if such a right could be transferred. Relying on the decision of the Bombay High Court in CIT v. Tata Services Ltd. [1980] 122 ITR 594 it was contended by Shri Wadhera the learned counsel for the revenue, that any right which can be called property will be included in the definition of 'capital asset' and that a contract for sale of land is capable of specific performance and is also assignable, and he referred to section 15 of the Specific Relief Act, 1963. Therefore, according to Shri Wadhera, a right to obtain conveyance of immovable property is clearly a property, as contemplated by section 2(14). This argument overlooks the fact that the right to specific performance had been specifically given up by the assessee, J. Dalmia, and what was left was a mere right to sue for damages. In the case of Tata Services Ltd. (supra), there was an agreement to purchase a residential plot and the purchaser had paid Rs. 90,000 as earnest money.
>
> The vendor was, however, in breach of the agreement as he wanted to sell this property to a third party at a higher price. Finally, there was a tripartite agreement between the purchaser (the assessee), the vendor, and the third party. and the purchaser was returned the earnest money as well as paid a sum of Rs. 5,00,000 'being the amount of consideration for the transfer and assignment' of his right, title and interest under the contract for sale. It was held that the amount of Rs. 5,00,000 was received by the assessee as consideration for assigning his rights under the agreement and these rights, which has been assigned, clearly fell within the definition of 'capital asset'. It will thus be seen that the facts of this case are quite

different and the authority does not help Shri Wadhera. It may, however, be noticed at this stage that Krishan Prasad constituted J. Dalmia as his nominee under the agreement and assigned his rights to J. Dalmia without any consideration. J. Dalmia as the nominee could maintain a suit for specific performance. We need not go into the validity of the nomination, though it was argued that the contract between Krishan Prasad and J. Dalmia, whereby the rights under the contract for sale were assigned to J. Dalmia, was void being without any consideration. The parties, however, did not dispute the right of J. Dalmia as a nominee under the contract for sale. In a recent decision of this Court in Hari Dass Sood v. Narinder Singh Oberai [R.F.A. (Ori.) No. 3 of 1977, decided on 16-12-1983], it was held that a nominee could maintain suit for specific performance. No doubt, the nomination in that case was not without consideration.

8. Shri Hari Har Lal, the learned counsel for the assessee, however, contended that a mere right to sue is not a property and it cannot be transferred. He referred to section 6 of the Transfer of Property Act. Relying on a decision of the Supreme Court in Swami Motor Transports (P.) Ltd. v. Sri Sankaraswamigal Mutt AIR 1963 SC 864, he also submitted that the right of the assessee under the contract for sale of immovable property was not in the nature of property in that the assessee was having no interest in or right of property. The Supreme Court was concerned with the question of right to purchase property by a tenant under the Madras City Tenants Protection Act, 1922, with reference to article 19(1)(f) of the Constitution of India. Reliance was placed on the following passage of the judgment:

> "... The law of India does not recognise equitable estates. No authority has been cited in support of the contention that a statutory right to purchase land is, or confers, an interest or a right in property. The fact that the right is created not by contract but by a statute cannot make a difference in the content or the incidents of the right: that depends upon the nature and the scope of the right conferred. The right conferred is a right to purchase land. If such a right conferred under a contract is not a right of property, the fact that such a right stems from a statute cannot obviously expand its content or make it any the less a non-proprietary right. In our view, a statutory right to apply for the purchase of land is not a right of property. It is settled law that a contract to purchase a property does not create an interest in immovable property...".

9. This is, however, not the question in the present case. We are not concerned whether the assessee acquired any interest in the immovable

property by virtue of the contract for sale. Under section 54 of the Transfer of Property Act, 1882, a contract for sale of immovable property does not of itself create any interest in or charge on such property. In Sidhrajbhai Sabbai v. State of Gujarat AIR 1963 SC 540, it was held that the word 'property' in article 19(1)(f) must doubtless be extended to all those recognized types of interest which have the insignia or characteristics of proprietary rights. We are to determine whether damages received by the assessee were in respect of transfer of a 'capital asset'. There was a breach of contract and the assessee received damages in satisfaction thereof. He had a mere right to sue for damages. Assuming the same to be 'property', this could not be transferred under section 6(e). The relevant provision may be reproduced:

> "6. Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force,
>
> (e) A mere right to sue cannot be transferred."

We do not find any exception under the Act though the word 'transfer' in relation to capital asset has been defined in section 2(47)which includes sales, exchange or relinquishment of the asset or the extinguishment of any right therein. The damages, which were received by the assessee, cannot be said to be on account of relinquishment of any of his asset' or on account of extinguishment of his right of specific performance under the contract for sale.

10. Under section 5 of the Transfer of Property Act, 'transfer of property' means an act by which a person conveys property to another and 'to transfer property' is to perform such act. A mere right to sue may or may not be property but it certainly cannot be transferred. There cannot be any dispute with the proposition that in order that a receipt or accrual of income may attract the charge of tax on capital gains, the sine qua non is that the receipt or accrual must have originated in a 'transfer' within the meaning of section 45, read with section 2(47), of the Act. Since there could not be any transfer in the instant case, it has to be held that the amount of Rs. 1,02,500 received by the assessee as damages was not assessable as capital gains."

8.5 In view of above material facts and well settled principles of law, it is held that the amount of Rs.33,12,18,930/- received by assessee in pursuance to

Final Settlement agreement/arbitral award dated 12.11.2018, whereby the assessee gave up his claim/'right to sue' was not assessable as capital gains and was in fact a capital receipt. Ld. CIT(A) erred in holding that the amount received by the assessee under the settlement agreement was taxable being "Salary"; "Profit and Gain of Business and Profession" or "Short Term Capital Gain" and not "Long Term Capital Gain". Therefore, the order of Ld. CIT(A) is set aside. Additional ground of appeal is allowed.

9. In view of findings on additional ground of appeal, the adjudication of grounds of appeal nos. 1 to 5 being academic in nature is left open.

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

Order pronounced in the open court on 28th October, 2025.

Sd/- (M BALAGANESH)	**Sd/- (VIMAL KUMAR)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 28 /10/2025
Mohan Lal

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi