

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "SMC" BENCH, MUMBAI

BEFORE SHRI SHAILENDRA KUMAR YADAV, JUDICIAL
MEMBER,

ITA. No. 291/Mum/2015
(Assessment Year:2007-08)

Jitendra Kumar Soneja
327, Wadala Udyog Bhawan,
Naigaon Cross Road, Wadala,
Mumbai 400 031

Appellant

Vs.

Income Tax Officer,
Ward 6(3)(3), Mumbai-400 020

Respondent

PAN: AKSPS9539A

अपीलार्थी की ओर से /By Appellant : Shri Subhash Chhajer &
Sunil T. Vankawala A.R.

प्रत्यर्थी की ओर से/By Respondent : Shri Chandra Vijay, D.R.

सुनवाई की तारीख/Date of Hearing : 09.08.2016

घोषणा की तारीख/Date of
Pronouncement : 12.08.2016

ORDER

PER SHAILENDRA KUMAR YADAV, J.M:

This appeal has been filed by assessee against the order of Commissioner of Income-Tax (Appeals)-12, Mumbai, dated 21.10.2014 for A.Y. 2007-08 on following grounds:

- “1. On the facts and circumstances of the case and in law, the learned assessing officer has erred in re-opening the assessment u/s.147.
2. On the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) has erred in confirming the addition to the total income as income from other sources amounting to Rs.22,00,000/-.
3. On the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) has erred in confirming the addition to the total income as income from other sources amounting to Rs.8,55,800/-.”

2. At the outset of hearing, ld. Authorized Representative did not press ground no.1. So, this ground is dismissed as not pressed.

3. The main issue is with regard to addition to the total income as income from other sources amounting to Rs.22 lacs. Assessing Officer made addition of Rs.30,55,800/-, consisting of a sum of Rs.22 lacs as corpus fund received by assessee during financial year 2006-07 and rental of Rs.8,55,800/- appearing as credited to his bank account, for which assessee failed to explain the reasons for non-disclosure in his return of income. Accordingly, Assessing Officer treated the same as unexplained credits and added the same to the assessee's income under the head 'Income from other sources', which was confirmed by CIT(A).

3.1 Regarding addition of Rs.22 lacs as income from other sources, Id. Authorized Representative drew my attention to page no.17. The stand of assessee has been that Assessing Officer made addition of Rs.22 lacs received as corpus fund was received towards hardship caused to assessee on redevelopment and as such receipt was in the nature of capital receipt and as such not taxable. Id. Authorized Representative drew my attention to the decision of ITAT Mumbai 'A' Bench in ITA No.2349/Mum/2011 in case of Kushal K Bangia vs. ITO, wherein Tribunal has held as under:

“3. We have heard the rival contentions, perused the material on record and duly considered factual matrix of the case as also the applicable legal position.

4. In our considered view, it is only elementary that the connotation of income howsoever wide and exhaustive, take into account only such capital receipts are specifically taxable under the provisions of the Income tax Act. Section 2(24)(vi) provides that income includes “any capital gains chargeable under section 45”, and, thus, it is clear that a capital receipt simplicitor cannot be taken as income. Hon’ble Supreme Court in the case of Padmraje R. Kardambande vs CIT (195 ITR 877) has observed that “..,, we hold that the amounts received by the assessee during the financial years in question have to be regarded as capital receipts, and, therefore, (emphasis supplied by us), are not income within meaning of section 2(24) of the Income tax Act....” This clearly implies, as is the settled legal position in our understanding, that a capital receipt in principle is outside the scope of income chargeable to tax and a receipt cannot be taxed as income unless it is in the nature of revenue receipt or is brought within the ambit

of income by way of a specific provision in the Act. No matter how wide be the scope of income u/s.2(24) it cannot obliterate the distinction between capital receipt and revenue receipt. It is not even the case of the Assessing Officer that the compensation received by the assessee is in the revenue field, and rightly so because the residential flat owned by the assessee in society building is certainly a capital asset in the hands of the assessee and compensation is referable to the same. As held by Hon'ble Hon'ble Supreme Court, in the case of Dr. George Thomas K vs CIT(156 ITR 412), "the burden is on the revenue to establish that the receipt is of revenue nature" though "once the receipt is found to be of revenue character, whether it comes under exemption or not, it is for the assessee to establish". The only defence put up by learned Departmental Representative is that cash compensation received by the assessee is nothing but his share in profits earned by the developer which are essentially revenue items in nature. This argument however proceeds on the fallacy that the nature of payment in the hands of payer also ends up determining its nature in the hands of the recipient. As observed by Hon'ble Supreme Court in the case of CIT vs. Kamal Behari Lal Singha (82 ITR 460), "it is now well settled that, in order to find out whether it is a capital receipt or revenue receipt, one has to see what it is in the hands of the receiver and not what it is in the hands of the payer". The consideration for which the amount has been paid by the developer are, therefore, not really relevant in determining the nature of receipt in the hands of the assessee. In view of these discussion, in our considered view, the receipt of Rs.11,75,000 by the assessee cannot be said to be of revenue nature, and, accordingly, the same is outside the ambit of income under section 2(24) of the Act. However, in our considered opinion and as learned counsel for the assessee fairly agrees, the impugned receipt ends up reducing the cost of acquisition of the asset, i.e. flat, and, therefore, the same will be taken into account as such, as and when occasion arises for computing capital

gains in respect of the said asset. Subject to these observations, grievance of the assessee is upheld.

5. In the result, the appeal is allowed in the terms indicated above.

3.2 Nothing contrary was brought to my knowledge on behalf of Revenue. Facts being similar, so following same reasoning, I find that consideration for which the amount has been paid by the developer are, therefore, not relevant in determining the nature of receipt in the hands of the assessee. In view of these discussion, in my considered view, assessee could not be said to be of revenue nature, and, accordingly, the same is outside the ambit of income under section 2(24) of the Act. The impugned receipt ends up reducing the cost of acquisition of the asset, i.e. flat, and, therefore, the same will be taken into account as such, as and when occasion arises for computing capital gains in respect of the said asset. Subject to these observations, the appeal of assessee is allowed.

4. Next issue in this appeal is regarding addition of Rs.8,55,800/-. In fact, this amount was given by Developer for paying rent while development of the project was taking place. In fact, assessee submitted before me that he has made expenditure of Rs.6,80,000/- towards rent while development activity of the project was taken place. So, Assessing officer is directed to allow the claim of assessee to same extent because it is nothing but compensation received

by assessee for paying rent. This cannot be said to be income of assessee. Assessing Officer is directed accordingly.

5. In the result, the appeal filed by assessee is partly allowed.

Pronounced in the open Court on this the 12th day of August, 2016.

Sd/-
(SHAILENDRA KUMAR YADAV)
JUDICIAL MEMBER

Mumbai: Dated 12/08/2016

True Copy

S.K.SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार,
आयकर अपीलीय अधिकरण, मुंबई।