IN THE INCOME TAX APPELLATE TRIBUNAL

"I" BENCH, MUMBAI

BEFORE SHRI G.S. PANNU, PRESIDENT AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.106/Mum./2023
(Assessment Year : 2015–16)

Narayan Devarajan Iyengar
A–63, Flat no.597, MIG Colony
Gandhi Nagar, Bandra (East)
Mumbai 400 051 PAN – ADCPI7958N ……. Appellant

v/s

Income Tax Officer
Ward–2(2)(1), Mumbai ……. Respondent

S.A. no.29/Mum./2023
(Arising out of ITA no.106/Mum./2023)
(Assessment Year : 2015–16)

Narayan Devarajan Iyengar
A–63, Flat no.597, MIG Colony
Gandhi Nagar, Bandra (East)
Mumbai 400 051 PAN – ADCPI7958N ……. Applicant
(Original Appellant)

v/s

Income Tax Officer
Ward–2(2)(1), Mumbai ……. Respondent
(Original Respondent)

Assessee by : Dr. K. Shivaram a/w
Shri Rahul Hakani
Revenue by : Shri Dilip K. Shah

Date of Hearing – 19/04/2023	Date of Order – 10/05/2023

O R D E R

PER BENCH

The present appeal has been filed by the assessee challenging the impugned final assessment order dated 15/11/2022, passed under section 147 r/w section 144C(13) of the Income Tax Act, 1961 (*"the Act"*), pursuant to the directions dated 26/10/2022 issued by the learned Dispute Resolution Panel–2, Mumbai–1 [*"learned DRP"*], under section 144C(5) of the Act for the assessment year 2015–16.

2. In this appeal, the assessee has raised the following grounds:–

"1. On facts, in circumstances of the case and in law, re opening of assessment, under section 147 is bad in law assessment, under section 147 is bad in law.

2. On facts, in circumstances of the case and in law, the Hon. Dispute Resolution Panel-2, Mumbai erred in confirming addition of rent for alternative accommodation of Rs. 8,93,672/- to the total income of the appellant.

3. On facts, in circumstances of the case and in law, the Hon. Dispute Resolution Panel-2, Mumbai erred in confirming addition of corpus/monetary consideration of Rs. 64,00,000/- to the total income of the appellant.

4. Without prejudice to above Ground Nos. 1, 2 & 3 above, on facts, in circumstances of the case and in law, the Hon. Dispute Resolution Panel ought to directed learned A.O. to tax rent for alternative accommodation and corpus/monetary consideration amount under the head long term capital gain of the year in which transfer of capital asset is complete.

5. Without prejudice to above Grounds Nos. 1, 2, 3 & 4 above, on facts, in circumstances of the case and in law, the Hon. Dispute Resolution Panel-2 ought to have directed learned A.O. to tax only share of the appellant in rent for alternative accommodation and corpus/monetary consideration and not the entire amount.

6. The appellant craves leave to add, alter, modify or delete any of the above Grounds of Appeal."

3. At the outset, the learned Sr. Counsel, appearing for the assessee, wishes to not press ground no.1 challenging the reopening of assessment under section 147 of the Act. Accordingly, ground no.1 raised in assessee's appeal is dismissed.

4. The issue arising in grounds no.2 and 3, raised in assessee's appeal, is pertaining to the addition on account of corpus fund and rent for alternate accommodation received by the assessee from the Developer/Builder.

5. The brief facts of the case pertaining to this issue are: The assessee is a non-resident Indian and filed his return of income, for the year under consideration, on 17/08/2015 declaring a total income of Rs. 1,93,007. The case of the assessee was reopened under section 147 of the Act on the basis of the information that pursuant to the Re-development Agreement between MIG CHS (Bandra East), Group-IV Ltd and M/s Keystone Realtors Pvt. Ltd. (Confirming Party) and M/s Rustomjee Constructions Pvt. Ltd. (Developer) on 17/09/2010, the assessee, being a member of the society, received a total payment of Rs. 74,98,179 (i.e. Rs.64 lakhs as corpus, Rs.10,85,679 as rent and Rs.12,500 as shifting allowance) which has not been offered for taxation and thus has escaped assessment. Accordingly, notice under section 148 of the Act was issued and served on the assessee on 31/03/2021. In response to the said notice, the assessee filed his return of income on 17/09/2021. Subsequently, notices under section 143(2) as well as section 142(1) of the Act along with a questionnaire were issued and served on the assessee. During the reassessment proceedings, the assessee was asked to provide the details of considerations received from M/s Keystone Realtors Pvt. Ltd. and M/s

Rustomjee Constructions Pvt. Ltd. In response thereto, the assessee submitted that amount of Rs.64 lakhs is a corpus fund and therefore, it is a capital receipt and is not taxable. The Assessing Officer ("*AO*") vide draft assessment order dated 29/01/2022 passed under section 144C of the Act held that the assessee received compensation towards the redevelopment of his flat as an additional benefit other than a new flat against the old one and therefore the amount of Rs.64 lakhs received as compensation from the Developer/Builder would not partake the nature of capital receipt and is an additional income of the assessee. Accordingly, the AO made an addition of the sum of Rs.64 lakhs received by the assessee from the Developer/Builder as '*Income from Other Sources*'. As regards the rent of Rs.10,85,679 received by the assessee, the AO accepted the contention of the assessee that the assessee's share is limited to only Rs.1,31,800, which has already been disclosed under the head '*Income from Other Sources'* in the return filed by the assessee.

6. The assessee filed detailed objections against the addition made by the AO vide draft assessment order before the learned DRP. Vide its directions dated 26/10/2022 issued under section 144C(5) of the Act, the learned DRP, inter-alia, rejected the objections filed by the assessee as regards the addition of Rs.64 lakhs. Further, pursuant to the issuance of notice of enhancement, the learned DRP rejected the contention of the assessee that assessee's share is only limited to Rs.1,31,800 already disclosed in the return of income and directed the AO to enhance the total income of the assessee by the balance amount of rent received of Rs.8,92,672. In conformity with the directions issued by the learned DRP, the AO vide impugned final assessment order

dated 15/11/2022 passed under section 147 r/w section 144C(13) of the Act made the addition on account of corpus money of Rs.64 lakhs and rent for alternate accommodation of Rs.10,85,679 received by the assessee. Being aggrieved, the assessee is in appeal before us.

7. We have considered the submissions of both sides and perused the material available on record. The assessee is a non-resident individual and derived his income, during the year under consideration, under the head '*Income from Other Sources*'. The assessee is one of the beneficiaries of the society consisting of 168 members, which went under the Re-development Agreement dated 17/09/2010 executed between the MIG Co-operative Housing Society (Bandra East) Group IV Ltd ("*Society*") and Keystone Realtors Private Ltd ("*Confirming Party*") and Rustomjee Constructions Private Limited ("*Developer*"). As per annexure-N of the said Re-development Agreement, forming part of the paper book from pages 10-37, the assessee's name appears at serial no.37 having his old flat "*A/63-Flat No. 597*" in the said society and is entitled to get a new flat of 1814 sq. ft. in place of his old flat of 907 sq. ft. along with the compensation amounting to total Rs.80 lakhs in instalments. As per the aforesaid Agreement, the compensation amount shall be handed over by the Developer to the Society for and on behalf of the members and the Society shall give a valid and sufficient discharge with regard to the same to the Developer, and the Society agrees and undertakes to forthwith hand over to the members the respective pay orders, only on such individual members signing and handing over to the Society the consent letter. Out of Rs.80 lakhs, the assessee received Rs.16 lakhs in the financial year

2013-14. As per the Revenue, the balance amount of Rs.64 lakhs was received by the assessee in the year under consideration. Since this amount was not considered as income by the assessee in his return of income by treating the same as capital receipts, reassessment proceedings were initiated in the case of the assessee and vide assessment order passed under section 147 r/w section 144C(13) of the Act, the aforesaid receipt of Rs.64 lakhs was treated as taxable in the hands of the assessee as '*Income from Other Sources*'. As per the assessee, the corpus amount is paid to the society/members during redevelopment in almost all redevelopment projects to compensate for hardship arising out of redevelopment, particularly huge outgoings post-redevelopment. Thus, as per the assessee, this compensation is purely to compensate the personal loss and other inconveniences likely to be caused and therefore, can only be a capital receipt and can never be treated as a revenue receipt.

8. We find that while dealing with a similar issue of taxability of hardship compensation, the coordinate bench of the Tribunal in Lawrence Rebello vs ITO, in ITA No.132/Ind./2020, vide order dated 29/09/2021, after considering various decisions passed by the coordinate bench of the Tribunal on a similar issue, observed as under:-

> *"11. On careful consideration of above rival submissions, we are of the considered view that in the reasons recorded the AO himself noted that the benefits received by the assessee from a bigger size of flat and impugned amount has been given in pursuance to agreement between the society and the developer and it was hardship compensation, ITA No.132/Ind/2020 rehabilitation compensation kind of benefit. The orders passed by the ITAT Mumbai Bench in case of Smt. Delilah Raj Mansukhani (supra), Jitendra Kumar Soneja (supra) and Kushal K Bangia(supra) including the order passed by the Mumbai Bench in the case of Shri Devshi Lakhamshi Dedhia (supra), it is amply clear that where the assessee being a flat owner in a housing society receives*

certain sum from developer as corpus fund towards hardship caused to flat owners on redevelopment, impugned amount has to be treated as capital receipt simplicitor which as per Section 2(24)(vi) of the Act is not taxable as income of the assessee. In this regard, we find it profitable to reproduce para 3.2 of the order of ITAT Mumbai Bench in the case of Jitendra Kumar Soneja (supra), which reads as under:-

> *"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."*

Respectfully following the above observations of the ITAT Mumbai Bench as well as the orders cited supra, we are compelled to hold that the benefit received by the assessee in the form of bigger size of flat and amount received as hardship allowance from the developer is a capital receipt, which cannot be treated as revenue receipt for taxing as income."

9. Since in the present case also the taxability of receipt of similar nature, i.e. hardship allowance is involved, therefore, respectfully following the aforesaid decision the addition of Rs.68 lakhs made by the AO vide impugned order is set aside and ordered to be deleted.

10. Separately, as per clause 4B of the aforesaid Re-development Agreement, it was agreed that in addition to the monetary consideration, in order to enable the members to meet their obligation for the alternate accommodation, the Developer shall pay to the members an amount to facilitate members arrange for temporary alternative accommodation to be computed on the basis of Rs.171 per sq. ft. per month of the existing carpet area of the members existing flat for the period of 34 months and on the basis of Rs.205 sq. ft. per month of the existing carpet area of the members existing flat for the remaining period of 10 months. Thus, the assessee was entitled to

an amount of Rs.52,73,298 for the first 34 months and Rs.18,59,350 for the next 10 months. Accordingly, in the year under consideration, the assessee received alternative accommodation rent of Rs.10,85,679 for the 1st block of 7 months. As per the assessee, he distributed this amount amongst the brothers and sisters as per the Will of his father. Since the property is ancestral in nature, the rent received was divided amongst the family (6 sons and 4 daughters) as per the aforesaid Will. Accordingly, in its return of income, the assessee disclosed an amount of Rs.1,31,800 being his share as '*Income from Other Sources*'. The AO vide draft assessment order accepted the submission of the assessee, however, the learned DRP directed the AO to enhance the total income of the assessee by an amount of Rs.8,93,672 on the basis that the assessee is a nominee and therefore is entitled to the entire rent received for the alternate accommodation. It is evident from the record that the rent for alternate accommodation is also in the nature of hardship allowance payable to the members to meet the expenditure post Re-development Agreement due to displacement. We find that in Smt. Delilah Raj Mansukhani vs ITO, ITA No. 3526/Mum./2017, vide order dated 29/01/2021, while deciding the issue of taxability of rent received for alternate accommodation, the coordinate bench of the Tribunal held the same to be in the nature of capital receipt since the property has gone into re-development and payment is made by the builder on account of hardship faced by the owner of the flat due to displacement of the occupants of the flat. In the present case, we find that the assessee has already offered to tax an amount of Rs.1,31,800, out of Rs.10,85,679, being his share of the rent for alternate accommodation and has only disputed the addition of Rs.8,93,672. Therefore, in view of the above and respectfully

following the decision of the coordinate bench of the Tribunal cited supra, we direct the AO to delete the addition of Rs.8,93,672 on account of rent for alternate accommodation received by the assessee. As a result, grounds no.2 and 3 raised in assessee's appeal are allowed.

11. Grounds no.4 and 5, raised in assessee's appeal, are alternative grounds and in view of our findings in respect of grounds no.2 and 3, the same are rendered academic and therefore are left open.

12. In the result, the appeal by the assessee is partly allowed.

13. Since the grounds raised by the assessee on merits are allowed, the stay application filed by the assessee, being S.A. No.29/Mum./2023, for the assessment year 2015-16, has become redundant and therefore is dismissed.

Order pronounced in the open Court on 10/05/2023

Sd/-	**Sd/-**
G.S. PANNU	**SANDEEP SINGH KARHAIL**
PRESIDENT	**JUDICIAL MEMBER**

MUMBAI, DATED: 10/05/2023

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The PCIT / CIT (Judicial);
(4) The DR, ITAT, Mumbai; and
(5) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Assistant Registrar
ITAT, Mumbai