

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

**BEFORE MS. KAVITHA RAJAGOPAL, JM AND
SHRI GIRISH AGRAWAL, AM**

ITA No. 1081/Mum/2024 (Assessment Year: 2016-17)

ITA No. 1082/Mum/2024 (Assessment Year: 2015-16)

ITA No. 1083/Mum/2024 (Assessment Year: 2012-13)

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| Monica Parmanand Mirchandani C-12/90, MIG Colony, Gandhi Nagar, Bandra East, Mumbai-400 051 | Vs. | Income Tax Officer 23(3)(3) Room No. 321, Aayakar Bhavan, M. K. Road, Mumbai-400 020 |
| PAN/GIR No. BKQPM 0588 L | | |
| (Assessee) | : | (Respondent) |
| Assessee by | : | Shri Mahavir Atal |
| Respondent by | : | Smt. Mahita Nair |
| Date of Hearing | : | 25.06.2024 |
| Date of Pronouncement | : | 23.09.2024 |

ORDER

Per Kavitha Rajagopal, J M:

These appeals have been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Years ('A.Y.' for short) 2012-13, 2015-16 & 2016-17.

2. As the facts are common in all the appeals, we hereby take ITA No. 1082/Mum/2024 for A.Y. 2015-16 as a lead case.

ITA No. 1082/Mum/2024 for A.Y. 2015-16

3. The assessee has raised the following grounds of appeal:

1. *Whether on the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) was justified in upholding the addition of Rs. 71,34,472/- in the hands of the appellant.*

2. *Whether on the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) was justified in disputing the source of income where the same was duly explained during the assessment proceeding as to arising out of hardship disallowance received from the Builder and the said fact was verified and not disputed by the Assessing officer.*
3. Brief facts of the case are that the assessee is an individual and is a tuition teacher by profession and had filed her return of income for the year under consideration, declaring total income at Rs.2,77,800/- as 'income from other sources'. The assessee's case was reopened vide notice u/s. 148 of the Act dated 29.03.2019 and the assessee had filed her return of income on 16.04.2019, pursuant to the said notice and had declared the same income as that of her returned income. The assessee was issued and served notices u/s. 143(2) and 142(1) of the Act.
4. The learned Assessing Officer ('Id. A.O.' for short) had passed the assessment order u/s. 143(3) r.w.s. 147 of the Act on 30.11.2019, determining total income at Rs.74,12,272/-, after making an addition of Rs.71,34,472/- on the amount received from DB MIG Realtors & Builders Pvt. Ltd. as 'revenue receipt'.
5. Aggrieved the assessee was in appeal before the first appellate authority who vide order dated 06.02.2024 upheld the addition made by the Id. A.O. on the ground that the assessee has failed to prove the source of the said receipt.
6. The assessee is in appeal before us, challenging the order of the Id. CIT(A).
7. The learned Authorised Representative (Id. AR for short) for the assessee contended that the Middle Income Group Housing Society Ltd. consisting of 176 members had entered into a development agreement with DB MIG Builders & Pvt. Ltd., wherein the existing apartments of the members of the society will be rebuilt by the

developer after duly vacating the existing members who were to hand over the vacant position to the developer for reconstruction of the housing society. The ld. AR further stated that as per the said agreement, hardship compensation was to be paid by the developers to all the residents of the society where the assessee also received the first installment during A.Y. 2012-13 and due to the delay in commencement of the project, there was modification of the said agreement. The ld. AR further contended that as per the modified terms and condition, the balance hardship compensation was to be received by the members of the society in seven installments. The ld. AR iterated that the ld. A.O. treated the hardship compensation received by the assessee as 'income from other sources' and made the impugned addition. The ld. AR placed reliance on the following decisions where some of which are in the case of the fellow resident of the same society, in whose case the Tribunal held in favour of the assessee :

- *Sarfaraz S Furniturewalla vs. Afshan Sharfalu Ashok Kumar & Others* (in W.P. No. 4958 of 2024 vide order dated 15.04.2024),
- *The Ajay Parasmal Kothari* (in ITA No. 2823/Mum/2022 reported in 159 taxman.com 570 (Mum) (Trib))
- *Smt. Delilah Raj Mansukhani vs. ITO* (in ITA No. 3526//Mum/2017 vide order dated 29.01.2021)
- *Rajesh Jayvant Somnay vs. ITO* (in ITA Nos. 533 & 534/Mum/2023 vide order dated 30.05.2023)
- *Abhay Shaligram Patil vs. ITO* (in ITA No. 4760/Mum/2023 vide order dated 30.05.2024)
- *Vinod Murlidhar Chawal vs. ITO* (in ITA No. 3206/Mum/2022 vide order dated 21.02.2023)
- *Lawrence Reblow vs. ITO* (in ITA No. 132/Ind/2020 vide order dated 22.09.2021)

8. The learned Departmental Representative (Id. DR for short), on the other hand, controverted the said fact that the hardship compensation should have been received by the assessee as onetime payment, whereas in the present case in hand, the assessee has received the hardship compensation in three years ranging from A.Ys. 2012-13, 2015-16 & 2016-17. The Id. DR further contended that the said receipt is the revenue receipt and relied on the order of the lower authorities.

9. We have heard the rival submissions and perused the materials available on record. The only moot question to be adjudicated in the present appeal is whether the amount received by the assessee from the developer is in the nature of hardship compensation and if so whether the same is 'capital receipt' or 'revenue receipt'. For this purpose, the Id. AR had brought our attention to the Development Agreement entered into by the builder and the assessee, which is enclosed in the paper book from pages 1 to 75 where at pg. no. 67 of the said agreement is Annexure 'J' which enumerates the mode and payment at which the hardship compensation shall be paid by the developer to the residents and further the deed of modification relied upon by the Id. AR is enclosed at pg. nos. 76 to 105 where at pg. no. 99 and pg. no. 102 contains the details of the said payments. On perusal of the same, it is observed that the developer is under the obligation to pay the hardship compensation in installments at various stages, commencing from execution of the MOU, handing over of vacant and peaceful possession and commencement of construction. The Id. A.O. has only disputed the nature of receipt as 'revenue receipt' and has not brought anything on record to show that the amount received by the assessee from the builder is anything other than the hardship

compensation. The Id. CIT(A), on the other hand, has merely stated that the hardship compensation should not have been received for two consecutive years for the same residential house and that the assessee has failed to disclose the source of the said receipt. We are in total disagreement with the finding of the Id. A.O. as well as the Id. CIT(A) for the reason that the assessee has well established the source of the said receipt which is from the builder and also her entitlement to the hardship compensation as per the development agreement and also the deed of modification to the development agreement. The only issue that remains for adjudication is whether the receipt received by the assessee is in the nature of 'capital receipt' or 'revenue receipt' for which the decisions relied upon by the Id. AR has categorically held the same to be a 'capital receipt' and not 'revenue receipt'. Support is drawn *qua* the decision of the Hon'ble Jurisdictional High Court in the case of *Sarfaraz S Furniturewalla vs. Afshan Sharfalu Ashok Kumar & Others* (supra), wherein it was held that the hardship allowance which is also termed as 'transit rent' received by the assessee from the developer as 'compensation towards displacement' as per the development agreement is not a 'revenue receipt' but constitute a 'capital receipt'. Further, the various other decisions of the co-ordinate bench relied upon by the assessee has also reiterated that the hardship compensation is nothing but a 'capital receipt' which is towards the hardship caused to the assessee as the name suggests, due to the displacement which is inevitable during redevelopment of the property where the developer compensates the assessee. The terms and conditions of the payment of such transit rent/displacement allowance/rehabilitation allowance depends upon the terms and conditions of the development agreement entered into by the developer and the assessee.

10. There is no iota of doubt that merely because the assessee has received the said amount from its builder, the same will not come under the purview of the income of the assessee within the meaning of section 2(24) of the I. T. Act unless it is a revenue receipt. As it is the settled proposition of law that the hardship compensation is a 'capital receipt', we deem it fit to direct the ld. A.O. to delete the addition made in the hands of the assessee in respect of the same. In view of the same, the grounds of appeal raised by the assessee is allowed.

ITA No. 1081/Mum/2024 (Assessment Year: 2016-17)

ITA No. 1083/Mum/2024 (Assessment Year: 2012-13)

11. The findings applied in ITA No. 1082/Mum/2024 will apply *mutatis mutandis* to these appeals also.

12. In the result, all the appeals filed by the assessee are allowed.

Order pronounced in the open court on 23.09.2024.

Sd/-

(Girish Agrawal)
Accountant Member

Mumbai; Dated : 23.09.2024

Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)
Judicial Member

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