

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर
IN THE INCOME TAX APPELLATE TRIBUNAL INDORE BENCH, INDORE
BEFORE SHRI C.M.GARG, JM & SHRI MANISH BORAD, AM

ITA No.132/Ind/2020

(निर्धारण वर्ष / Assessment Year : 2011-2012)

Shri Lawrence Rebello, 3, Nath Mandir Colony, South Tukoganj, Indore	Vs	ITO-1(3), Indore
PAN No. : ABEPR 2143 L		

(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारिती की ओर से / Assessee by	:	Shri Pankaj Shah, CA
राजस्व की ओर से / Revenue by	:	Shri P.K.Singh, Sr.DR

सुनवाई की तारीख / Date of Hearing	:	28/07/2021
घोषणा की तारीख/ Date of Pronouncement	:	29 /09 /2021

आदेश / O R D E R

Per C.M.Garg, JM :

This is an appeal filed by the assessee against the order dated 08.01.2020, passed by the CIT(A)-I, Indore for the assessment year 2011-2012 on the following grounds :-

1. *On the facts and circumstances of the case and in law the learned Commissioner of Income tax (Appeals)-I ("CIT(A)") erred in confirming the action of Assessing Officer in reopening the case and making reassessment under Section 147 of the Act which is prayed to be quashed and held as unwarranted, illegal and bad-in law.*
2. *On the facts and circumstances of the case and in law the learned CIT(A) erred in confirming the action of Assessing Officer determining total income at Rs.34,01,150/- as against declared income of Rs.6,28,040/- which is bad in law and excessive.*
3. *On the facts and circumstances of the case and in law the learned CIT(A) erred in confirming the action of Assessing Officer in making addition of RS.27,73,108/- on account of Hardship Compensation received by treating it revenue receipt instead of capital receipt. The appellant prays that the addition be deleted.*

4. *The Appellant craves leave to add to, alter and/or amend all or any of the foregoing grounds of appeal.*

2. Brief facts of the case are that the assessee is an individual and filed his return of income manually on 28.07.2011, declaring income of Rs.6,28,040/-. On the basis of information received from ITO-23(2)(3), Mumbai, regarding receipt of Rs.27,73,108/-, the AO recorded the satisfaction for reopening the case of the assessee for A.Y.2011-2012 u/s.148 of the Act. In pursuance to notice u/s.148 of the Act, the assessee filed his return of income declaring the income as declared in the original return. The AO asked the assessee regarding receipt of Hardship compensation of Rs.27,73,108/- from M/s DB MIG Realtors and Builders Pvt. Ltd. In this regard, the assessee submitted that he has not offered money receipt as Hardship Compensation for taxation for the relevant assessment year as Hardship Compensation for taxation is not a revenue receipt but a capital receipt. However, the AO did not accept the above contention of the assessee and treated that the compensation received by the assessee during the period under consideration as income of the assessee from other sources and charged to tax accordingly.

3. Against the order of AO, the assessee preferred appeal before the CIT(A) and the CIT(A) dismissed the appeal of the assessee.

4. Further aggrieved by the order of CIT(A), the assessee is in appeal before the Tribunal on the grounds as mentioned above.

Ground No.1

5. Learned Assessee's Representative (AR) submitted that the Id. CIT(A) has erred in confirming the action of AO in reopening the case and

making reassessment u/s.147 of the Act, which deserves to be quashed being unwarranted, illegal and bad-in-law. Ld. AR also submitted that the Id. First Appellate Authority (FAA) has also erred in confirming the action of the AO in initiating reassessment proceedings u/s.147 of the Act and issuing notice u/s.147 of the Act beyond six years without any legal and justified basis. Therefore, the entire reopening proceedings, notice and all consequent proceedings and orders deserve to be quashed being unsustainable and bad in law.

6. Replying to the above, Shri P.K.Singh, Id. Sr. Departmental Representative(DR) drew our attention towards page No.6 of assessee's paper book and vehemently contended that the AO has initiated reassessment proceedings u/s.147 of the Act and has issued notice u/s.148 of the Act by following all legal procedure, required approval and by pressing into service the provision of clause(b) of Explanation 2 to Section 147 of the Act and in para 4 of the reasons recorded, the AO has expressly mentioned that the assessee has not declared fully and truly income chargeable to tax for the F.Y.2010-2011 relating to the assessment year 2011-2012, therefore, no allegation can be levelled against the AO regarding initiation of reassessment proceedings and issuance of notice. Thus, the Id. Sr.DR submitted that the initiation of reassessment proceedings, issuance of notice and consequent proceedings and orders may kindly be upheld.

7. On careful consideration of above rival submissions, we are of the considered view that from the copy of reasons recorded by the AO vide

dated 13.03.2018 available at page 6 of assessee's paper book, it is amply clear that during the course of assessment proceedings in the case of M/s MIG Cooperative Society Ltd. for A.Y.2011-2012, it was noticed that the said society was entered into the development agreement with M/s DB MIG Realtors and Builders Pvt. Ltd. on 31.10.2010 and payments were made to flat owners shown as hardship allowance during the F.Y.2010-2011 and flat owners were eligible for a new flat in the newly developed building in lieu of their old flats. The assessee has also received flat of 1536 sq.ft. in lieu of old flat of 645 sq.ft. in addition to said hardship allowance. It has not been controverted that the said agreement was undertaken between the said two parties and assessee was also one of the beneficiary/flat owner in the said society. The Id. AR of the assessee has not pointed out any fact that the assessee has declared the said transaction before the department, therefore, the allegation levelled by the AO that the assessee has not declared fully and truly the income chargeable to tax for A.Y. 2010-2011 relevant to A.Y.2011-2012. We may also point out that at the time of initiation of proceedings, the assessee has to draw a prima facie inference and satisfaction that the income has escaped assessment but the AO has not debarred or stopped from granting relief to the assessee by dropping the reassessment proceedings if during the course of reassessment proceedings the assessee exclusively established and substantiate that there was no income chargeable to tax has escaped. Without commenting on merits of the case, we are of view that the initiation of reassessment proceedings and

proceedings u/s.147 of the Act by pressing into service clause (b) of Explanation 2 to Section 147 of the Act and issuance of notice u/s.148 of the Act is valid and has been based on sound legal principle and provisions of the Act. Therefore, we decline to grant any relief to the assessee on ground No.1 raised by the assessee. Consequently, ground No.1, being legal, is hereby dismissed.

Ground Nos.2 & 3:

8. Ld. AR submitted that on the facts and circumstances of the case and in law the learned CIT(A) erred in confirming the action of Assessing Officer determining total income at Rs.34,01,150/- as against declared income of Rs.6,28,040/- which is bad in law and excessive. Ld. AR vehemently contended that the ld. CIT(A) erred in confirming the action of Assessing Officer in making addition of RS.27,73,108/- on account of Hardship Compensation received by treating it revenue receipt instead of capital receipt flouting all principle of tax jurisprudence and accounting. Drawing our attention to the order of ITAT Mumbai Bench in the case of Jitendra Kumar Soneja Vs. ITO, [2016] 72 taxmann.com 318 (mum-Trib), ld. AR submitted that where the assessee was a flat owner in housing society and he received certain sum from the developer as corpus fund towards hardship caused to flat owners on redevelopment, impugned amount would be in nature of capital receipt simplicitor not includible in income as per section 2(24)(vi) of the Act. Ld. AR also submitted that the ITAT Mumbai Bench in the case of Smt. Delilah Raj Mansukhani Vs. ITO, ITA No.3526/Mum/2017, order dated 29.01.2021 by following the order of

coordinate bench of the Tribunal in the case of Shri Devshi Lakhamshi Dedhia vs. ACIT in ITA No.5350/Mum/2012 concluded that the amount received by the assessee as hardship compensation, rehabilitation compensation and for shifting are not liable to tax and, therefore, the Bench directed to delete the addition.

9. Replying to the above, Id. Sr. DR supported the reassessment as well as first appellate order and submitted that the assessee has not come with clean hands and has not declared the impugned amount received by it before the taxation authorities. Ld. Sr.DR also submitted that in absence of required details it cannot be considered as capital receipt, therefore, the orders of authorities below may kindly be upheld.

10. Placing rejoinder to the above, Id. AR drew our attention to the page No.6 of the assessee's paper book and submitted that in para 3 of the reasons, the AO himself noted that the assessee was to receive a flat of 1536 sq.ft. in lieu of old flat of 615 sq.ft., in addition to that he was also to receive total hardship allowance due to members as per DA in the period between 01.04.2010 to 31.03.2011 of Rs.9,243,693/-, therefore, it cannot be alleged against the assessee that the assessee could not establish the fact that it was capital receipt.

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,

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.

Accordingly, ground Nos.2 & 3 are allowed and the AO is directed to delete the addition.

12. Ground No.4 is general in nature, which requires no separate adjudication.

13. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 29 /09/2021.

Sd/-

(मनिष बोराड)

(MANISH BORAD)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(सी.एम. गर्ग)

(C.M.GARG)

न्यायिक सदस्य / JUDICIAL MEMBER

दिनांक Dated 29 / 09 /2021

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
Shri Lawrence Rebello,
3, Nath Mandir Colony,
South Tukoganj, Indore
2. प्रत्यर्थी / The Respondent-
ITO-1(3), Indore
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, इन्दौर/DR, ITAT, Indore
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, इन्दौर /ITAT, Indore