IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "D" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA No. 6513/Mum/2024
Assessment Year : 2016-17

Mohammed Fakhre Alam Shaikh, New Usmaniya Washing, Noor Mansion, 111, Janjikar Street, Crawford Market, Mumbai-400003. PAN : BHOPS3293R	vs.	The Assessing Officer, Ward-17(2)(3), Mumbai.
(Appellant)		(Respondent)

For Assessee :	Shri Vimal Punmiya
For Revenue :	Shri R.R. Makwana

Date of Hearing :	27-03-2025
Date of Pronouncement :	07-04-2025

O R D E R

PER B.R. BASKARAN, A.M :

The assessee has filed this appeal challenging the order dt.17-10-2024 passed by the Ld. Commissioner of Income Tax (Appeals)-52, Mumbai ['Ld.CIT(A)'] and it relates to AY.2016-17. The assessee is aggrieved by the decision of the Ld.CIT(A) in confirming the addition of Rs. 2.59 crores made by the AO u/s. 56(2)(vii)(b) of the Income Tax Act, 1961 ('the Act') and also in confirming the disallowance of deduction claimed u/s. 54F of the Act.

2. The facts relating to the case are stated in brief. The assessee is an individual and he filed his return of incomefor the year under consideration declaring a total income of Rs.11.04 lakhs. The AO noticed from AIR information that the assessee has carried out a property transaction for a value of Rs. 2.59 crores. When questioned about the same, the assessee submitted that he was occupying a portion of land in Survey No. 243 of Tardeo Division and the above said land underwent development. The developer was M/s. Neel Kamal Realtors and Builders Pvt. Ltd.The assessee surrendered his rights on that property and in lieu of the same, the said developer has allotted a flat on ownership basis in the building named, 'Orchid Enclave'. Accordingly, the assessee submitted that there was Long Term Capital Gain of Rs. 2.45 crores against which the deduction u/s. 54F of the Act was claimed. Since it resulted in NIL capital gain, the same not declared in the return of income.

2.1. The AO, however, noticed that the assessee was an illegal occupant in the said land. In view of the illegal occupation, the assessee was allotted a flat having a value of Rs. 2.59 crores. The AO also noticed that the assessee has not claimed any deduction u/s. 54F of the Act in the return of income. The AO also took the view that the illegal occupation of the assessee was not approved by MCGM and/or MHADAas per the list of tenants certified by those Government authorities. Accordingly, the AOtook the view that the assessee was not able to prove the existence of any asset, if any, and the long term nature of the asset. Accordingly, the AO held that the assessee will not be eligible for deduction u/s. 54F of the Act and also took the view that the value of new flat allotted (i.e., Rs. 2.59 crores) is assessable to tax u/s. 56(2)(vii)(b) of the Act. Accordingly, the AO assessed the above said income as the income of the assessee and also denied the deduction claimed u/s. 54F of the Act. The Ld.CIT(A) confirmed the order passed by the AO and hence, the assessee filed this appeal before the Tribunal.

3. The Ld.AR submitted that the assessee was occupying a shed illegally in the land proposed to be developed by M/s. Neel Kamal Realtors and Builders Pvt. Ltd. Since the assessee's name was not included in the list of tenants that was submitted to the MCGM and/or MHADA, the assessee filed a suit against the builder claiming to be a lawful occupant. When the suit was pending, a court settlement was reached between the assessee and the said builder, as per which the assessee was allotted a flat. He submitted that the assessee was occupying the shed for so many years and hence, the compensation received by the assessee shall constitute Long Term Capital Asset against which, the cost of new flat should be allowed as deduction u/s. 54F of the Act. In the alternative, the Ld.AR submitted that the assessee has illegally occupied the part of land and he has created nuisance to the builder. Hence the compensation received by the assessee from the builder for clearing the nuisance shall constitute capital asset in the hands of the assessee. Hence it is not taxable. In this regard, the Ld.AR placed reliance on the decision rendered by theCo-ordinate Bench of the Tribunal in the case of Shri Kishre D.P. vs. Income Tax Officer in ITA No. 3796/Mum/2014 (AY. 2008-09), dt. 17-02-2017.

4. The Ld.DR, on the contrary, supported the order passed by the Ld.CIT(A).

5. We heard the rival contentions and perused the record. The fact discussed above would show that the assessee has illegally occupied a portion of land which underwent for development. The above fact would get support from the list of tenants certified by the MCGM and/or MHADA; wherein the name of the assessee did not find place. Since the assessee was not shown as a certified tenant, he was denied any flat in the re-developed property. Hence, he filed a suit against the builder and finally the dispute was resolved in a court settlement, as per whichthe assessee was allotted a flat worth of Rs. 2.59 crores. The

above facts would show that the assessee has created nuisance to the developer/builder and the said flat was allotted to the assessee as compensation for removing nuisance created by the assessee. The question that arises is whether the compensation so received by the assessee is liable for taxation under the Income Tax Act? We notice that an identical issue has been considered by the Co-ordinate Bench of the Tribunal in the case of Shri Kishre D.P. vs. Income Tax Officer (supra); wherein it was held that the compensation received for creating a nuisance is a capital receipt. For the sake of convenience, we extract below the decision rendered by the Co-ordinate Bench of the Tribunal in the above said case:-

"3. The only surviving issue remains is as against the order of CIT(A) confirming the action of the AO in treating the receipts of compensation from developer to compensate for a nuisance / inconvenience due to extension of work untaken by the builder for building "Kailas Jyot No.2", as income from other sources u/s 56 as against the claim of the assessee being capital receipt. For this assessee has raised following ground No.1: -

> *"The Honorable CIT (A) -10, erred in upholding that the receipt of Rs.2,41,333/- being compensation received from Developers to compensatefor nuisance/ inconvenience caused due to extension work undertaken of the Building "Kailas Jyot No. 2", as casual income u/s 56 of the Income Tax Act, 1961, ax against charging it as Long Term Capital Gain by holding the cost as Nil by the 40 22 (1), without appreciating the fact that the compensation was received for nuisance/ inconvenience caused to the resident for construction of additional floors which was treated as Capital receipt being nontaxable contrary to the fact that there is no transfer of right or interest in the property and therefore the receipt of Rs. 2,41,333/- be treated as capital receipt as claimed.: -*

4. We have heard the rival contentions and gone through the facts and circumstances of the case. Briefly stated facts are that the AO tax this sum of Rs. 2,41,333/- being amount received on compensation from developer. The assessee claimed that this compensation is capital receipt received from developer of the society, wherein, the assessee is one of the flat owner and compensation was received in lieu of inconvenience caused due to extension of work undertaken by the developer. for building "Kailas Jyot No.2". The AO assessed the sum as income from other sources as casual income u/s 56 of the Act. The CIT(A) also confirmed the action of the AO. Now, before us the learned Counsel for the assessee stated that this issue is squarely covered in favour of assessee by the decision of coordinate Bench in various case and one of the case of co-ordinate Bench in case of Kushal K Bangla v. Income Tax Officer (2012) 50 SOT 1 (MUM), wherein

exactly on identical facts, Tribunal has held the similar receipt as capital receipt in taxable by observing in Para 4 as under: -

> *"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 beregarded 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 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 it's nature in the hands of the Assessment year: 2007-08 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 opinionand 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."*

When a query was put to the learned Sr.DR he fairly conceded the position.

5. Respectfully following the co-ordinate Bench decision in the present case, facts being exactly identical, we allowed the appeal of the assessee."

5.1. Accordingly, following the above said decision of the Co-ordinate Bench of the Tribunal, we hold that the value of flat received by the assessee as compensation for removing nuisance shall constitute capital receipt in the hands of the assessee and the same is not taxable. Accordingly,we set aside the order passed by the Ld.CIT(A) and direct the AO to delete the cost of new flat amounting to Rs. 2.59 crores.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 07-04-2025

Sd/-	Sd/-
[ANIKESH BANERJEE]	[B.R. BASKARAN]
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai,
Dated: 07-04-2025

TNMM

Copy to :

1) The Appellant
2) The Respondent
3) The CIT concerned
4) The D.R, ITAT, Mumbai
5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai