

**IN THE INCOME TAX APPELLATE TRIBUNAL
'F' BENCH, MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No.1409/Mum/2018
(Assessment Year: 2012-13)**

**ITA No.1411/Mum/2018
(Assessment Year: 2014-15)**

Vile Parle Prarthana CHS Ltd., 19, TPS, Prarthana Samaj Road Vile Parle (E), Mumbai – 400057 Maharashtra	Vs.	ACIT – 25(3) Mumbai, Maharashtra
PAN/GIR No.AAAAV0984F		
(Appellant)	..	(Respondent)

Assessee Represented by	Shri Vimal Punmiya
Revenue Represented by	Smt. Kavita P. Kaushik, Sr.AR
Date of Conclusion of Hearing	30.04.2025
Date of Pronouncement	20.05.2025

आदेश / O R D E R

PER AMIT SHUKLA (JM):

These aforesaid appeals are filed by the assessee against separate orders dated 10.01.2018, passed by Ld. Commissioner of Income Tax-37, Mumbai (hereinafter in short “ld. CIT(A)”) for the quantum assessment passed u/s.143(3) of the Income Tax Act, 1961 (in short “Act”) for the A.Y. 2012-13 & A.Y. 2014-15.

2. Earlier in this case, the Tribunal has passed the order on 24.09.2019. However, on one ground the order has been recalled vide order dated 01.06.2021 in MA. Nos. 91 & 92/MUM/2020. Accordingly the only ground needs to be adjudicated in A.Y. 2012-13 and A.Y. 2014-15, which is with regard to Mesne Profits of Rs. 2,00,00,000/- which has been treated as capital receipt by the assessee in A.Y.2012-13; and Rs.39,23,278/- in A.Y. 2014-15 which ld. AO has held to be revenue receipts chargeable to tax.

3. Brief facts qua the issue involved are that assessee is a cooperative housing society located in Vile Parle, Mumbai and has been deriving rental income from commercial premises on the ground floor and partly in the basement. The background and the various events leading to determination of Mesne Profit are discussed as under: -

- i. The Society building was constructed between 1982 and 1984 and it was occupied from 1.1.1985. The Central Bank of India (Bank, for short), had advanced a loan to the Society and also taken on rent commercial premises consisting of ground floor and basement, admeasuring 4100 sq.ft and 2000 sq.ft, respectively. The lease rent initially for ten years was Rs.6 per sq.ft per month. As per the finance agreement with the Bank, as long as the loan was outstanding, the lease could not be terminated. The loan, along with the interest was fully paid in 2001.
- ii. Although the going market rate of rent in the area was close to Rs. 100 per sq.ft per month in 2002, the Bank continued to pay

only the old rent at the rate of Rs.6 per sq.ft per month till 2005, in spite of continuous efforts by the Society to revise the rent.

- iii. In December 2006, the Society issued a legal notice to the Bank for vacating the premises. The statutory period of one month from such notice expired on 8.1.2007. However, the Bank continued to occupy the premises paying only the old rent till 30.11.2008.
- iv. In February, 2007, the Society initiated legal proceedings against the Bank for getting the premises vacated and recovery of mesne profits for the period of illegal occupation by the Bank after 8.1.2007. These legal proceedings involved Small Causes Court at Bandra, Appeal Court at Bandra, Bombay High Court and even the Supreme Court. Finally in September, 2008, the Bank signed consent terms with the Society before the High Court of Bombay, agreeing to vacate the premises on 30.11.2008. On 30.11.2008, the Bank finally vacated the premises.
- v. In 2008, the society filed application before the Bandra Small Causes Court for determination and recovery of mesne profits for the period from 9.1.2007 to 30.11.2008. In October, 2010, Bandra Small Causes Court issued a decree against the Bank to pay mesne profits to the Society at the rate of Rs.200 per sq.ft per month, together with interest at the rate of 6% per annum from 9.1.2007 till 30.11.2008. This decree was not appealed against by the Bank during 90 days period allowed for appeal. On 31.3.2011, the Bandra Court Registrar executed the decree after ascertaining the decretal amount at Rs.3.32 crores. This amount was paid by the Bank under protest.

- vi. In April, 2011, the Bank filed a request before Bandra Appeal Court for condonation of delay in filing the appeal and also filed the appeal. The Appeal Court granted the condonation of delay and admitted the appeal. However, at that time, the Appeal Court also ruled that out of the decretal amount of Rs.3.32 crores, the Society be allowed to withdraw an amount of Rs.2 crores as interim disbursement against the undertaking from the Society that in the event during appeal, any amount is decided as payable back out of this amount of Rs.2 crores, the Society shall undertake to repay the same. The Bank went in appeal to the Bombay High Court against the appeal order. However, in June, 2011, the Hon. Bombay High Court upheld the decision of the Appeal Court, provided that the Society, in addition to the undertaking, shall also give a bank guarantee to the Bandra Small Causes Court, as a precondition for interim disbursement of Rs.2 crores.
- vii. Due to some procedural delays, the interim disbursement could not be received by the Society till October, 2011. In the meantime, in July, 2011, the Bandra Appeal Court disposed of the appeal filed by the Bank, allowing it partially in which the decretal amount stood reduced from Rs.3.32 crores to Rs.2.40 crores. The Bank was not satisfied with even this verdict and decided to go in appeal before the High Court.
- viii. The Appeal Court on 9.9.2011, allowed the Society to claim interim disbursement of Rs.2 crores, as per the High Court order of 21.6.2011. Accordingly, on 10.10.2011, the Bandra Small Causes Court paid the amount of interim disbursement of Rs.2 crores to the Society on 10.10.2011, against the

submission of Rs. 10 lakhs as bank guarantee and the undertaking to repay full amount if required, by any of the Appellate Courts.

- ix. The Bank filed appeal, by way of Writ in the High Court in October, 2011, which was later converted to Civil Revision Application in March, 2012. Subsequently, on 3.10.2012, the High Court dismissed the Civil Revision Application filed by the Bank.

4. Thus, total amount of Rs. 2.40 Crores was granted by the Small Causes court as Mesne Profits to the assessee's society. For the sake of ready reference the relevant part of the decree passed by the Small Causes Court dated 11.10.2011 is reproduced below: -

"It is ordered that-

A. Mesne Profit application No. 17 of 2008 is allowed as under :

- (i) Defendant shall pay to the Plaintiffs Mesne Profits @ 200/- Per sq.ft. per month together with interest @ 6% p.a. From 9.1.2007 till (30.11.2008), realization thereof.*
- (ii) Decree be drawn up accordingly.*

Given under my hand & seal of the court

This the 11th day of October of 2010.

*Sd/-
(V.S.Kulkarni)
Judge, C.R.32."*

5. Ld. AO after considering the assessee's submissions held that the Mesne Profits cannot be considered as capital receipt. Since assessee was receiving rent from bank since 1982 and had

applied before the court for enhancing the rent amount being received by the bank, which Court had ordered the bank to pay rent @ Rs.200 per sq. feet per month with interest @6% for overdue amount. Thus, it amounts to rental receipts only. There is no deprivation from the property or infringement of the rights. He thus held that an amount of Rs.2.40 crores received in A.Y.2012-13 and A.Y. 2013-14 is to be taxed as revenue receipts.

6. Ld. CIT(A) has upheld the order of the ld. AO after giving partial relief to the following extent: -

1. *In AY 2012-13, the addition of Rs.2.40 crores, by way of mesne profits was reduced to Rs.2 crores, because during the relevant financial year, the Society had only received a sum of Rs.2 crores, out of the total amount of mesne profits of Rs.2.40 crores.*
2. *In AY 2014-15, the addition of Rs. 39,23,278/-, by way of mesne profits.*

7. We have heard both the parties, perused the rival material placed on record as well as the various judicial judgments relied upon by the parties. Ld. Counsel before us submitted that, this issue has been covered by the decision of the **Special Bench of the Tribunal of Five Members** in the case of **Narang Overseas P. Ltd., v. ACIT reported in [2008] 300 ITR AT(1)(Mum) (SB)**, according to which Mesne Profits, including interest received for the deprivation of the use and occupation of the property, would be a capital receipts not chargeable to tax. He further relied upon various other judgments of the Hon'ble High Courts. He submitted that ld. CIT (A) relied upon various judgments to

decide against assessee which has been duly considered by the Special Bench of the Tribunal. In so far as reliance placed by the ld. CIT(A) on the Judgment of CIT *v.* Goodwill Theatres P. Limited [400 ITR 566], the Hon'ble Supreme Court has only directed the Hon'ble Bombay High Court to decide the issue of exemption of Mesne profits on merits.

8. On the other hand, ld. DR relied upon the judgment of the **Hon'ble Delhi High court in the case of Skyland Builders (P.) Ltd., *v.* ITO reported in [2020] 429 ITR 255 (Delhi)**, wherein the Hon'ble High Court has held that Mesne Profits and interest on Mesne profits received under the direction of Civil Court for un-authorised occupation of immovable property of the assessee by erstwhile tenants of the assessee is liable to tax u/s. 23(1) of the Act. Thus, it was held to be a revenue receipts.

9. We find that this Tribunal in the case of **ACIT vs. Amrut Enterprises in ITA No. No.1215/Mum/2020, 1017& 1018/Mum/2020 vide judgment and order dated 02/01/2023**, has discussed this issue of Mesne profits, whether it is a capital or revenue receipt after discussing the judgment of the Hon'ble Madras High Court in the case of CIT *vs.* P Mariappa Gounder reported in 147 ITR 176 and judgment of Hon'ble Delhi High Court in the case of Skyland Builders (P) Ltd., reported in 429 ITR 255. The Tribunal finally referring to various judgments held holding that it is a capital receipt. The relevant observation and the finding are as under:-

18. The core issue before us is, whether, the mesne profits received by the Assessee from SBI by the order of the Court, is revenue receipt or capital receipt. Though, the term "mesne profit" has not been defined in the income tax Act, albeit it has been defined in [section 2 \(12\)](#) of the Code of Civil Procedure, 1908 as „those profits is the person in wrongful position of such property actually received or might with ordinary diligence have received there from, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession'. In short, it means a any receipt against wrongful possession of property. The term 'mesne profits' relates to the damages or compensation recoverable from a person who has been in wrongful possession of immovable property. The Mesne profits are nothing but a compensation that a person in the unlawful possession of others property has to pay for such wrongful occupation to the owner of the property. The definition of 'Mesne Profits' under [section 2\(12\)](#) of Code of Civil Procedure 1908 clearly takes within it scope any receipt against wrongful possession of property. The nature of deprivation suffered by the assessee is crucial for the purpose of determination of nature of receipt of mesne profits. Where the compensation is paid for deprivation of capital asset, or source of income, it would be a capital receipt in the hands of recipient of the compensation.

19. In short, mesne profits are a nature of damages for deprivation of for use and occupation of the property which is some kind of which is not in the nature of avoiding or arrear rents. In order to, understand whether the mesne profit which has been awarded by the court which in the nature of damages for a wrongful occupation of the property or not, it would be relevant to note down the following chronology of event.....

20.
21.
22.
23.
24.

25. Before us, the department has relied upon, the decision of Hon'ble Madras High Court as referred to by the Assessing Officer

and another judgment of Hon'ble Delhi High Court in the case of *Sky Land Builders P. Ltd vs. ITO*, (2020) 121 taxman.com 151. Ld. DR has also relied upon, another decision of Hon'ble Madras High Court in the case of *Kenpadevammaa vs. CIT* (2002) 121 taxman 35.

26. On the other hand, the Assessee has relied upon the decision of Hon'ble Bombay High Court in the case of *Good Will Creators P. I.T.A. No. 1017,12 15 & 1018 /Mum/2020 AMRUT ENTERPRISES Ltd. 386 ITR 394*; decision in the case of *M/s. Annamma Alexander 191 ITR 551 Kerala High Court*; and judgment of Calcutta High Court in the case of *Smt. Leela Ghosh 205 ITR 9*. The Hon'ble Bombay High Court in the case of "*CIT vs. Good Will Creators P. Ltd (Supra)*" held that, mesne profits received by the Assessee from a person on a wrongful possession of his property is a capital receipt not chargeable to tax, conforming the view of the Tribunal relying upon the decision of the special bench of the Tribunal in the case of *Narang Overseas P. Ltd* reported in 111 ITT 1.

27. Hon'ble Kerala High Court in the case of *CIT vs. M/s Annamma Alexander (Supra)*, has considered and distinguished the view taken by the Hon'ble Madras High Court in *P. Mariappa Gounder* case in the following manner:-

"The decision of the Madras High Court in *P Mariappa Gounder's* case (supra) at p. 681 prima facie supports the plea of the revenue that mesne profits awarded by the Court for wrongful possession are liable to be assessed as income. The discussion is contained in p. 681 With great respect to the learned Judges, who rendered the said decision, we are of the view that *the said decision* fails to give due effect to the decision of the Judicial Committee of the Privy Council in *Girish Chunder Lahiri's* case (supra) and the decision of the Supreme Court in *Lucy Kochuvareed's* case (supra) at p. 158, para 24. It is also not in accord with the earlier Bench decision of this Court in *Periyar & Pareekanni Rubbers Lid's* case (supra) and the decision of the Patna High Court in *Rani Prayag Kumari Debi's* case (supra). To the extent the said decision of the Madras High Court holds that mesne profits awarded by the Court for wrongful possession are liable to be assessed as income, we

express our respectful dissent, in view of the clear character of the receipt mesne profits- as a capital receipt.

The Hon'ble Court went event to the extent of holding that amount of interest received on mesne profit cannot be treated as revenue receipts taxable in the hands of the Assessee. The court has referred to the various decisions and also the report of Judicial Committee of the principle laid down by Privy Council in Girish Chandar Lahari vs. Sakshi" and many other decisions of the Hon'ble Supreme Court.

28. Further, Hon'ble Calcutta High Court in the case of [CIT vs. Smt Leela Ghosh](#), wherein Hon'ble Calcutta High Court after referring to various decisions rendered on mesne profit and definition given in [the CPC](#) have also deferred from the view taken by the Hon'ble Madras High Court. Relevant observations of their Lordships in this regard read as under:-

17. All the aforesaid cases clearly support the assessee in this reference. Since the mesne profits are only damages for loss of property or goods, these are not in the nature of revenue receipts. The receipt of Rs. 2 lakhs is clearly capital in nature. The counsel for the revenue, however, invited our attention to a decision of the Madras High Court in CIT v. P. Mariappa Gounder [1984] 147 ITR 676. In that case, the assessee agreed to purchase a Tile Factory under an agreement dated 22-5-1950. The vendor, contrary to the agreement and in breach thereof, sold it to another person and put him in possession. The assessee sued the vendor for specific performance. This suit was decreed in favour of the assessee and the same was affirmed by the Supreme Court. The Supreme Court also decreed mesne profits payable to the assessee as fixed by the trial Court. The Madras High Court held that a claim to mesne profits is usually directed against the one who has deprived the true owner of possession of his' property and who has thereby prevented the true owner from enjoying the income therefrom or usufruct of the property. When in such a suit or proceeding, the Court awards mesne profits to the true owner, it represents a just recompense to the true owner for the deprivation of the income which ought to have come into his hands, but for the interference of the person in wrongful possession of the

property. It is in recognition of this principle that the true owner is entitled to the income from the property and the person who is in wrongful possession is to compensate the true owner by paying either the actual income from the property or a reasonable estimate of that income. Consequently, the mesne profits are also a species of taxable income.

18. With great respect to the learned Judges, we could not persuade ourselves to agree with the views expressed by the Madras High Court in the aforesaid decision so far as it holds that mesne profits awarded by the Court for wrongful possession are liable to be assessed as income. Neither the decision of the Privy Council in Girish Chunder Lahiri's case (supra) nor the decision of the Supreme Court in Lucy Kochuvareed's case (supra) was either cited or noticed by the learned Judges of the Madras High Court. In fact, even the decision of the Patna High Court in Rani Prayag Kumari Debi's case (supra) and that of the Kerala High Court in [Perriyar & Pareekanni Rubbers Ltd.](#)'s case (supra) were neither noticed nor considered by the Madras High Court. In our view, on the facts of this case, the Tribunal was justified in holding that the mesne profits of Rs. 2 lakhs received by the assessee in this case were in the nature of damages and, therefore, capital receipt.

29. In view of the, aforesaid decisions and the way has been deferred by the two High Court the Reliance placed by the department in case of "P. Mariappa Gounder" is not followed and accordingly, respectively following the judgment of Jurisdictional High Court in the case of good will creators P. Ltd. this issue is decided in the favor of the Assessee.

30. In so far as the decision of Hon'ble Delhi High Court in the case of [Sky Land Builders P. Ltd.](#) (supra) vs. ITO, the Hon'ble High Court referred to the decision of Supreme Court in P. Mariappa Gounder and held that, since Madras High Court decision has been confirmed, therefore the Calcutta High Court and Kerala High Court cannot be followed. But that in case before the Hon'ble Supreme Court the only issue was year of taxability and nowhere there was any issue raised, whether the mesne profit receipts for illegal occupation of property is revenue receipt

or capital receipt. Thus, the decision of Hon'ble Delhi High Court is not being followed for this reason and accordingly, we are following the decision of M/s. Annamma Alexander 191 ITR 551 Kerala High Court; judgment of Calcutta High Court in the case of Smt. Leela Ghosh 205 ITR 9; and more importantly the judgement of Hon'ble Jurisdictional High Court in the case of [CIT vs. Good Will Creators P. Ltd \(Supra\)](#). Thus, we hold that entire receipts of Rs. 6,31,49,000/- is capital receipts is not chargeable to tax.

10. Thus, we find that there are divergent opinions by different High Courts on this issue, therefore, the judgment of Hon'ble **Kerala High Court** in the case of **CIT vs. Annamma Alexander 191 ITR 551 Kerala High Court**; and judgment of **Calcutta High Court in the case of Smt. Leela Ghosh 205 ITR 9** is being followed. It is a well settled law that, if there are two divergent views of different High Courts, then one favour to the assessee should be followed. Accordingly, we hold that Mesne profit is treated as capital receipt not chargeable to tax. In the result, this issue is decided in favour of the assessee for both the A.Yrs. 2012-13 and 2014-15.

11. In the result, both the appeals of the assessee are allowed.

Order pronounced on 20th May, 2025.

Sd/-
(PRABHASH SHANKAR)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai; Dated 20/05/2025
Giridhar, sr.ps

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai