

Receipt of cash compensation by an assessee on the redevelopment of a Housing Society is not taxable – Income Tax Appellate Tribunal, Mumbai

In the matter of *Jitendra Kumar Soneja vs. ITO*, [2016]161ITD269(Mum) the Income Tax Appellate Tribunal ("ITAT"), Mumbai, dealt with the issue of the tax treatment of any cash compensation received by an assessee towards any hardship caused to the assessee and towards rent/ alternate accommodation during the period of redevelopment. The ITAT Mumbai held that the cash compensation and the amounts received towards rent, being in the nature of the capital receipts, are not taxable in the hands of the Assessee.

Facts: In *Jitendra Soneja's* case, the Assessee had received a total amount of Rs. 30,455,800/- from the developer, comprising of Rs. 22,00,000/- as compensation for the hardship caused to the Assessee due to redevelopment, for the financial year of 2006-2007 and Rs. 8,55,800/- as compensation towards rent. During the assessment, the Assessing Officer ("AO") added these amounts to the Assessee's income under the head '*Income from other sources*', treating these amounts as unexplained credits, appearing in the bank account of the Assessee. The AO's order was confirmed by the Commissioner of Income Tax (Appeals) ("CIT (A)"). This order of CIT (A) was challenged by the Assessee before the ITAT.

Issues: It was contented by the Assessee that the amount of Rs. 22,00,000/- received by the Assessee on redevelopment was in the nature of capital receipt and therefore it cannot form part of the total income of the Assessee, a similar contention was made by the Assessee regarding the amounts received by him towards rent. Therefore, the question before the ITAT was what is the nature of these amounts received by the Assessee from the developer during the redevelopment, i.e whether the amounts were in the nature of capital receipts, and therefore not taxable in the hands of Assessee or in the nature of revenue receipts and therefore taxable.

Judgment: Considering the issues involved in the matter, the ITAT placed reliance on its own decision

in the case of *Kushal K Bangia vs. ITO* [2012] 50 SOT 1 (Mum) wherein a similar issue was raised and decided in favour of the assessee. In *Kushal Bangia's* case, the nature of compensation as a capital receipt was extensively discussed. Based on the observations made therein, the ITAT held that the amounts received by an assessee cannot be said to be in the nature of a revenue receipt and accordingly these amounts cannot form part of the total income. Therefore, these amounts are outside the ambit of income as defined under Section 2(24) of the Income Tax Act, 1961 ("**the Act**").

It was also observed that the amount of Rs. 22,00,000/-, being in the nature of a capital receipt, would reduce the cost of acquisition of the asset i.e. the flat in the said case. In effect the amount of Rs. 22,00,000/- would be taken into account, when the flat is transferred and when there is a capital gain in respect of the same. With regard to the amounts received towards rent while the development was taking place, it was held that those amounts were also in the nature of compensation to the extent that the actual expenses were incurred by the assessee towards rent. Accordingly, the assessee's appeal was allowed.

Analysis: In *Kushal Bangia's* case the assessee was member of the housing society ("**Society**"). The Society along with its members, entered into an agreement with the developer. As per the agreement, the developer was to demolish the

residential building owned by the Society and reconstruct a new multistoried building by utilizing the FSI and TDR arising under Development Control Regulations. Accordingly, the assessee being a member in the Society, was given displacement compensation and an additional compensation. The AO treated the aforesaid compensation amounts as casual income and therefore taxable in the hands of the assessee.

It was held by the ITAT, Mumbai, that Section 2(24) of the Act, which defines income provides that income includes "any capital gains chargeable under Section 45 of the Act". However, it is a settled legal position 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 a revenue receipt or is brought within the ambit of income by way of a specific provision of the Act. Therefore, a capital receipt by the assessee cannot be included as income. It was further observed that no matter how wide the scope of Section 2(24), it cannot obliterate the distinction between a capital receipt and a revenue receipt. Observations of the Supreme Court in the case of George Thomas K vs. CIT (156 ITR 412) were also relied upon by the ITAT in Kushal Bangia's judgment, where Supreme Court

has observed that the burden is on the revenue to establish that the receipt is of the revenue nature.

In *Kushal Bangia's* case, reliance was also placed on a judgment of the Supreme Court in the case of CIT vs. Kamal Behari Lal Singha (82 ITR 460). Where it was observed that in order to find whether an amount is a capital receipt or a revenue receipt, one has to see what is it in the hands of the receiver and not what it is in the hands of payer. In view thereof, the ITAT held that the consideration for which the amount has been paid is therefore not relevant in determining the nature of the receipt in the hands of the assessee.

Conclusion: On the basis of the aforesaid decisions, it can be concluded that the cash compensation received by an assessee towards the hardship caused due to redevelopment and the amounts received from the developer towards rent for the period of the redevelopment will be in the nature of capital receipt and therefore is not taxable.

The content of this article is intended to provide a general guide to the subject matter and should not be construed as legal advice.