

RENTAL COMPENSATION RECEIVED FROM A BUILDER FOR REDEVELOPMENT OF FLATS IS A CAPITAL RECEIPT AND NOT LIABLE TO TAX

INTRODUCTION:

*The Income Tax Appellate Tribunal, Mumbai in its decision in **Ajay Parasmal Kothari vs Income Tax Officer 30(1)(1)**¹, observed that even if the assessee had not utilized the rent received for accommodation, he however faced hardship by vacating the flat for redevelopment and also adjusted himself during the period. Accordingly, receipt of compensation for hardship was in the nature of capital receipt and not assessable to tax.*

FACTS:

The Assessee ("**Appellant**") was an individual dealing in shares, trading business and also received commission and consultancy income.

The Appellant filed his return of income for the Assessment Year 2013-14 on 27th March, 2013, declaring total income of Rs. 16,90,830/- (Rupees Sixteen Lakhs Ninety Thousand Eight Hundred and Thirty only). The return of income was processed under section 143(1) of Income Tax Act, 1961 ("**said Act**").

The return of income was then selected for scrutiny under computer assisted scrutiny system ("**CASS**") and notices under section 143(2) and 142(1) of the said Act were issued and served on the Appellant. In response, the representative of the Appellant attended and submitted the relevant information as was called for by the Assessing Officer.

During the assessment proceedings, it was observed by the Assessing Officer that the capital account submitted by the Appellant reflected a receipt of Rs. 3,73,191/- (Rupees Three Lakhs Seventy-Three Thousand One

Hundred and Ninety-One only) as a capital accounts receipt received from a builder.

The Appellant submitted that he had a flat in Satsang Bharti CHS Ltd., Malad (E), Mumbai and which building was undergoing redevelopment. The amounts received by the Appellant were basically a monthly rental compensation from the builder towards rent of alternate accommodation.

It was further submitted on behalf of the Appellant that the amounts received from the builder in the nature of hardship compensation, were in the nature of capital receipt and therefore not taxable in the hands of the Appellant.

The Assessing Officer rejected the submissions of the Appellant and treated the amounts as income and taxed under the head "income from other sources".

Aggrieved by the finding of the Assessing Officer, the Appellant preferred an appeal before the Commissioner of Income Tax (Appeals), who after considering the submissions made by the Appellant upheld the additions made by the Assessing Officer.

¹ ITA NO.2823/MUM/2022 (A.Y: 2013-14)

In view of the above, the Appellant preferred an appeal against the findings of the Commissioner of Income Tax (Appeals).

ISSUE FOR CONSIDERATION:

The main issue for consideration before the Income Tax Appellate Tribunal was as follows:

Whether rental compensation received from a builder for alternate accommodation was a capital receipt and not chargeable to tax?

JUDGMENT:

The Income Tax Appellate Tribunal ("ITAT") observed that even though the Appellant had not utilized the rent received for his accommodation, the Appellant, however, faced hardship by vacating the flat for redevelopment.

The ITAT relied on the judgment of a coordinate bench of the ITAT in **Smt Delilah Raj Mansukhani v. ITO**², wherein it was observed as follows:

"5. After hearing the rival submissions and perusing the material on record, we find that compensation received by the assessee towards displacement in terms of Development Agreement is not a revenue receipt and constitute capital receipt as the property has gone into

redevelopment. In such scenario, the compensation is normally paid by the builder on account of hardship faced by owner of the flat due to displacement of the occupants of the flat. The said payment is in the nature of hardship allowance / rehabilitation allowance and is not liable to tax....."

The ITAT was of the view that although the Appellant had not utilized the rent received towards an alternate accommodation, the Appellant had however faced hardship by vacating the flat for redevelopment and adjusted himself during such period.

The ITAT observed that receipt of compensation for hardship was therefore in the nature of capital receipt.

In view of the above, the ITAT allowed the appeal and deleted the addition made by the Assessing Officer.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

² ITA. No. 3526/Mum/2017