

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "SMC", MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

**ITA No.1139/Mum/2024
Assessment Year: 2011-12**

Sonal Samit Vartak 66, C-9, MIG Colony, Bandra (E), Mumbai-400051. PAN: AFNPP 2913 H (Appellant)	Vs.	ITO, Ward-35(3)(3), Mumbai [Now assessed with Income Tax Officer, Ward-42(3)(4), Mumbai (Respondent)
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Present for:

Assessee by : Shri V.G. Ginde a/w Shri Kumar Kale
Revenue by : Shri R.R. Makwana, SR. DR

Date of Hearing : 12.06.2024
Date of Pronouncement : 16.08.2024

ORDER

PER PRASHANT MAHARISHI, ACCOUNTANT MEMBER:

1. ITA 1139/Mum/2024 is filed by Sonal Samit Vartak for A.Y. 2011-12 against the appellate order passed by the National Faceless Appeal Centre, Delhi ('ld. CIT(A)') dated 17.12.2018 wherein the appeal filed by the assessee against the re-assessment order passed u/s 143(3) r.w.s. 147 of the Act by the Income Tax Officer, Ward-35(3)(3) ('the ld. AO') was dismissed.
2. Assessee is aggrieved and preferred this appeal raising following grounds:

"i. The ld. CPC erred in adding the amount of Rs. 20,00,000/- to the total income of the assessee where the amount was received by the assessee from his real brother (being an NRI) as a gift out of natural love and affection.

ii. The ld. CPC erred in adding the amount of Rs. 40,504/- to the total income of the assessee which is already considered in

the respective head of income from other sources and considered for the computation of total income.

iii. The ld. CIT(A) erred in confirming interest under section 234B and 234C of the Income Tax Act 1961.

iv. The appellant craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing.”

3. The only grievance in the appeal is regarding addition of Rs. 25,21,508/- made by the ld. AO being hardship compensation received from builder for vacating the existing flat for re-development purposes taxed as income from other sources. The claim of the assessee is that such receipt is a capital receipt and not income.
4. The brief fact of the case shows that assessee has not filed any return of income for the impugned assessment order. The information was received that assessee being member of MIG Co-op Housing Society Ltd., has received a payment of Rs. 25,21,508/- during the F.Y. 2010-11 from D.B. MIG Realtors and Builders when that co-operative society has gone for re-development.
5. Notice u/s 148 was issued to the assessee. Assessee submitted that above sum is hardship allowance received from the builder. She also submitted the development agreement between co-operative housing society and the builder. The ld. AO questioned the same as according to him the above amount is not exempt. Assessee submitted that is a capital receipt and relied upon several judicial precedents.

The ld. AO rejected the same and made the addition of the amount.

6. The total income of the assessee was assessed at Rs. 25,16,780/- by re-assessment order passed u/s 143(3) r.w.s. 147 of the Act by order dated 17.12.2018.
7. Assessee aggrieved with the same preferred an appeal before the ld. CIT(A) and reiterated the above submission. The ld. CIT(A) held that assessee has wrongly claimed that compensation received is a capital receipt accordingly, the appeal of the assessee was dismissed.
8. Assessee preferred appeal before us and submitted that issue is now squarely covered in favour of the assessee by the decision of the Hon'ble Bombay High Court in Writ Petition No. 4958 of 2024 in case of Sarfaraz S. Furniturewala dated 15.04.2024 wherein it has been held that the hardship allowance paid by the developer is not to be considered and is not liable to be taxed as revenue receipt. Therefore, the issue is squarely covered in favour of the assessee. Several other judicial precedents of the coordinate benches were also cited.
9. The ld. Departmental Representative supported the orders of the ld. Lower Authorities.
10. We have carefully considered the rival contentions and perused the orders of the ld. Lower Authorities. We have also carefully perused the decision of the Hon'ble Bombay High Court in Writ Petition No. 4958 of 2024 in case of Sarfaraz S.

Furniturewall dated 15.04.2024 wherein the Hon'ble High Court has held that any hardship allowance and rehabilitation allowance which is paid by the developer who suffers hardship due to dispossession cannot be considered as revenue receipt and same is not liable to be taxed. It is undisputed fact that assessee is also receiving the hardship allowance from the developer. Thus, the amount of hardship allowance received by the assessee of Rs. 25,21,508/- is not income of the assessee. Therefore, respectfully following the decision of Hon'ble Bombay High Court, we allow ground no. 1 of the appeal and direct the ld. Assessing Officer to delete the addition of Rs. 25,21,508/- made in the hands of the assessee.

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

Order pronounced in the open court on 16.08.2024.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Mumbai, Dated: 16.08.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR

//True Copy//

ITA No.1139/Mum/2024
Sonal Samit Vartak
A.Y. 2011-12

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai