

ITAT MUMBAI, MAYANK KISHOR TEJURA VERSUS ITO WARD- 19 (2) (2) MUMBAI, ITA No. 3777/Mum/2023

Dated.- March 11, 2024

Correct head of income - compensation received for vacating the flat - income from other sources or capital gain - denying the assessee's claim for deduction u/s. 54F

Fact the company OIPL received an amount Rs. 2,01,00,000/- from Mr. Puri, the landlord. As agreed in the MOU and also the resolution dated 13-4-2012 passed at the meeting of the shareholders of the company, the company paid Rs. 75 Lakhs each to both Mr. Mayank Tejura and Mr. Rakesh Tejura. The payment of these amounts was made on surrendering of the vacant and peaceful possession so as to enable the company to meet its commitment given in the consent terms and hand over the possession to the landlord The payment of Rs. 75 Lakhs each was made to Mr. Mayank Tejura and Mr. Rakesh Tejura on 8th December, 2012 after handing over of vacant and peaceful possession of the flat.on 30th July, 2014, Mr. Mayank Tejura and Mr. Rakesh Tejura purchased a residential flat, being Flat No. 9D, Lands End, 29D Doongersi Road, Mumbai 400 006 for the purpose of their residence,While filing the Return of Income for A.Y. 2013-14, both the assesseees have shown the amount of Rs. 75 Lakhs as Long Term Capital Osins arising on transfer of right of occupancy of the Flat No. 15, 4th Floor, Park Vi View Building, Little Gibbs Read, Malabar Hill, Mumbai-400 006. The transfer of right of occupancy arises on account of extinguishment of such right on account of the MOU signed collectively by the appellant and joint family members occupying the flat & subsequent consent terms agreed by the company OIPL with Mr. Puri, the landlord,Since the cost of acquisition in the case of the appellant was NIL, the entire amount of Rs. 75 Lakhs had been reflected as Long Term Capital Gains. Further, the appellants claimed exemption under section 54F of the Act in respect of the Long Term Capital Gains on transfer of the right of occupancy by way of extinguishment of the said rights. However, the Id. AO held that the

amount of Rs. 75,00,000/- is taxable in the hands of the assessee as 'income from other sources'. The reason being that assessee has received this amount not on account of surrender of transfer of tenancy rights as assessee was never the sub-tenant of the said flat by virtue of any legal agreement or by payment of any rent to the tenant. The landlord had paid sum of Rs. 2,01,00,000/- towards purchase price in respect of alternative terms that the company may acquire in lieu of suit premises

Observation and decision,

It is not in dispute that the company OIPL was a tenant in the residential flat pursuance of leave and license agreement dated 01/05/1965 and thereafter, the company continued to have the possession of the flat. For vacating the flat, a suit filed by the landlord against OIPL. The Court ruled against the Landlord and it was held that OIPL is a deemed tenant of the residential flat. Thereafter, various suits were filed by the landlord for eviction. Finally, consent terms were agreed into and out of Court settlement was made between landlord and OIPL for vacating the flat an in lieu thereof, a sum of Rs. 2,01,00,000/- was paid to OIPL by the Landlord for vacating the flat. Now, the assessee is contending that, since assessee and his family members (directors in the OIPL) and were staying in the said flat rented by OIPL for more than 40 years and they had to vacate flat to find an alternative accommodation, therefore, the company had paid an amount of Rs. 75,00,000/- to each of the Director. Thus, the compensation received from the company for vacating the flat is for the occupancy rights, that is, they will not evoke any possessory or occupancy rights in respect of the said flat and therefore, surrender of said rights amounts to capital asset. However, we are unable to agree with the contention raised by the assessee, because, as rightly held by the Id. AO, assessee was neither a sub-tenant nor there was any kind of sub-licensing of the property by the company to the assessee from his family members. Though assessee might have resided in the property taken on rent by the company but it does not translate into any right in the property in the name of the assessee. Assessee was occupying the property on behalf of the company which company had

allowed them to stay. There is also nothing on record that a separate consent between assessee and the landlord had also been agreed upon or assessee was part of the legal suit filed by the landlord. Further, it is also not on record the directors had paid any rent to the company nor did the company had shown any such perquisite given to its director. Thus, we agree, with the observation of the Id. AO to the extent that it is not chargeable to tax under the head 'capital gain' in the hands of the assessee, because only company had a sole right in the tenancy in the property and company alone can show the entire compensation amount as its income from Capital Gain from surrender of tenancy right. There is nothing on record to suggest that assessee had any kind of right in the said property for which they were to be compensated separately by the Landlord.

However, the amount of Rs. 75,00,000/- received by the assessee cannot be taxed in the hands of the assessee for the reason that:

- firstly, the amount has been received from the company out of its own income which was received in the form of compensation chargeable to tax under the head 'capital gains' entirely in the hand of the company and any amount given to the assessee out of such taxable income amounts to application of income by the company.
- Secondly, the capital gains for the entire compensation received is taxable in the hands of the company OIPL and if any such amount paid to the assessee by the company is out of its income, which cannot be taxed as 'income from other sources' in the hands of the assessee. The reason being, the amount has been received by the assessee from the company so that company can honour the consent term with the landlord for peaceful vacation of the flat and assessee had no role in the consent term.

- Thirdly, the amount to be taxed in the hands of the assessee has to be in the nature of income which assessee had earned from company carrying out any activity or surrendering any right or asset in favour of the company which can be assessable under any head. Here the money has been received by the assessee from the company so that company can discharge its obligations; it has nothing to with the assessee. In the hands of the assessee it is purely a capital receipt which he has received from the company so that company can give undertaking to vacate the premises in the favour of the landlord for which company was paid compensation.

- Lastly, If at all, the amount of entire compensation was taxable in the hands of the company which we find that it has offered as a capital gain in the return of income. However, it has claimed deduction for such payment made to the assessee. Such a claim is allowable or not the issue before us, because it is not a cost incurred on tenancy right albeit its application of income. Since, it is not the subject matter of issue before us therefore, we are refraining to go on this issue.

In so far as issue before is concerned, whether it is taxable in the hands of the assessee, we hold that, the amount received from the company is neither chargeable under the head 'capital gains' nor as income from other sources, albeit, it is a capital receipt in the hands of the assessee because the amount received from the company out of its own income, is an application of income by the company. The entire amount of compensation is capital gains in the hands of the company, which has been declared, albeit its computation and deduction is subject matter of examination there and since this not the issue before us so we refrain from any such adjudication. Thus on this ground, the addition made by the Id. AO is deleted.