IN THE INCOME TAX APPELLATE TRIBUNAL,
"A" BENCH, MUMBAI.

Before Shri B.R.Mittal, Judicial Member and
Pramod Kumar, Accountant Member

I.T.A No.2349/ Mum/2011
Assessment year: 2007-08

Kushal K Bangia, ... ***Appellant***
7, Rithika Apartments, Opp Ram Krishna Society,
Juhu, Mumbai-49
PA No.AAFPB 0206 Q

Vs

Income Tax officer 21(1)(2) ..... ***Respondent***
C-10, 6th floor, Pratyakshakar Bhavan,
B.K.C. Bandra (E),
Mumbai-51

Appearances:

Gajendra Golchha, *for the appellant*
P.K.B.Menon, *for the respondent*

Date of Hearing : 12.1.2012
Date of pronouncement : 31 .1.2012

O R D E R

Per Pramod Kumar:

1. By way of this appeal, the assessee has called into question correctness of CIT(A)'s order dated 9th December, 2010, in the matter of assessment under section 143(3) of the Income tax Act, 1961, for the assessment year 2007-08 on the following grounds:

> *"1. The ld CIT(A) has erred in confirming the addition at Rs.11,75,000 received by the assessee as cash compensation. He has further erred in confirming the said addition to the income under the head income from other source. The reasons assigned by him doing the same are wrong and insufficient. Provisions of the act ought to have been properly*

construed and applied. Regard being had to the facts and the circumstances of the case, the said addition ought to have been deleted, being in the nature of capital receipt.

2. Without prejudice to ground No.1, and as an alternative ground of appeal, the ld CIT(A) has erred in confirming the addition of rs.11,75,000 received by the assessee as cash compensation under the head income from other sources, instead of long term capital gain. The reasons assigned by him doing the same are wrong and insufficient. Provisions of the act ought to have been properly construed and applied. Regard being had to the facts and the circumstances of the case, the said addition ought to have been assessed as capital gains."

2. The issue in appeal lies in a narrow compass of undisputed facts. The assessee before us is an individual and he had received a sum of Rs.11,75,000 on account of what he now terms as, 'cash compensation'. It is taxability of this amount of Rs.11,75,000 which is in dispute before us, and it is, therefore, necessary to understand the back ground in which this amount was received. The assessee was member of a housing society by the name of Vile Parle Ramesh CHS Ltd. This housing society, alongwith it's members, entered into an agreement with a developer, and, under the said agreement, the developer was to demolish the residential building owned by the housing society, and reconstruct a new multistoried building by using the FSI arising out of the property, and by utilizing outside TDR under Development control Regulations. Under this arrangement, the assessee, as a member of the housing society, received a slightly larger flat in the new building, which had an additional area of 173 Sq. ft, a displacement compensation of Rs.6,12,000, which was computed @ Rs.34,000 p.m. for the period of construction of the new building, and an additional compensation of Rs.11,75,000. On these undisputed facts, the Assessing Officer was of the opinion that the cash compensation of Rs.11,75,000 is required to be treated as 'casual income', and, accordingly, taxable in the hands of the assessee. The Assessing Officer also brought to tax estimated value of additional area in the new flat, but since CIT(A) has deleted the same and revenue is stated to be not in appeal against the same, we are not really concerned with the same. Aggrieved, *inter alia,* by this addition of Rs.11,75,000 on account of cash compensation, assessee carried the

matter in appeal before the CIT(A) but without any success. The assessee is in further appeal before us.

3. We have heard the rival contentions, perused the material on record and duly considered factual matrix of the case as also the applicable legal position.

4. In our considered view, it is only elementary that the connotation of income howsoever wide and exhaustive, take into account only such capital receipts are specifically taxable under the provisions of the Income tax Act. Section 2(24)(vi) provides that income includes "any capital gains chargeable under section 45", and, thus, it is clear that a capital receipt simplicitor cannot be taken as income. Hon'ble Supreme Court in the case of Padmraje R. Kardambande vs CIT (195 ITR 877) has observed that "..,, we hold that the amounts received by the assessee during the financial years in question have to be regarded as capital receipts, and, therefore, (emphasis supplied by us), are not income within meaning of section 2(24) of the Income tax Act…." This clearly implies, as is the settled legal position in our understanding, 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 revenue receipt or is brought within the ambit of income by way of a specific provision in the Act. No matter how wide be the scope of income u/s.2(24) it cannot obliterate the distinction between capital receipt and revenue receipt. It is not even the case of the Assessing Officer that the compensation received by the assessee is in the revenue field, and rightly so because the residential flat owned by the assessee in society building is certainly a capital asset in the hands of the assessee and compensation is referable to the same. As held by Hon'ble Supreme Court, in the case of Dr. George Thomas K vs CIT(156 ITR 412), "the burden is on the revenue to establish that the receipt is of revenue nature" though "once the receipt is found to be of revenue character, whether it comes under exemption or not, it is for the assessee to establish". The only defence put up by learned Departmental Representative is that cash compensation received by the assessee is nothing but his share in profits earned by the developer which are essentially revenue items in nature. This argument however proceeds on the fallacy that the nature of payment in the hands of payer also ends up determining it's nature in the hands of the

recipient. As observed by Hon'ble Supreme Court in the case of CIT vs. Kamal Behari Lal Singha (82 ITR 460), "it is now well settled that, in order to find out whether it is a capital receipt or revenue receipt, one has to see what it is in the hands of the receiver and not what it is in the hands of the payer". The consideration for which the amount has been paid by the developer are, therefore, not really relevant in determining the nature of receipt in the hands of the assessee. In view of these discussion, in our considered view, the receipt of Rs.11,75,000 by the assessee cannot be said to be of revenue nature, and, accordingly, the same is outside the ambit of income under section 2(24) of the Act. However, in our considered opinion and as learned counsel for the assessee fairly agrees, the impugned receipt ends up reducing the cost of acquisition of the asset, i.e. flat, and, therefore, the same will be taken into account as such, as and when occasion arises for computing capital gains in respect of the said asset. Subject to these observations, grievance of the assessee is upheld.

5. In the result, the appeal is allowed in the terms indicated above.

Pronounced in the open court on 31st January, 2012

Sd/-	Sd/-
(B.R.Mittal)	(Pramod Kumar)
Judicial Member	Accountant Member

Mumbai, Dated 31st January, 2012
Parida

Copy to:
1. The appellant
2. The respondent
3. Commissioner of Income Tax (Appeals),32, Mumbai
4. Commissioner of Income Tax,City-21 , Mumbai
5. Departmental Representative, Bench 'A' Mumbai

//TRUE COPY// BY ORDER

ASSTT. REGISTRAR, ITAT, MUMBAI