2024:BHC-AS:19925

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4958 OF 2024

Sarfaraz S. Furniturewalla ...Petitioner
Versus
Afshan Sharfali Ashok Kumar & Ors. ...Respondents

Adv. Rustom Pardiwala i/b. Adv. Rushab V. Thacker for the Petitioner.

Adv. Zaid Ansari a/w. Adv. Anmol Menion i/b. Zaid S. Ansari & Associates for Respondnet Nos. 1 and 2.

Adv. Manal Dhanani i/b. Cue Legal for Respondent No.3.

CORAM : RAJESH S. PATIL, J.

DATED : 15 APRIL 2024

JUDGMENT :

1. The papers are allowed to be produced at 2.30 p.m., in view of urgency

2. Mr. Pardiwala has moved this matter seeking a clarification as regards to paragraph No.10 (viii) of Order dated 2 April 2024.

3. He submits that line No.11 the words “with the

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interest" should be deleted as according to him, the amount which has been withdrawn from the Court of the Small Causes, would be paid by his client towards compensation/license fee of the premises in which his client is residing. Therefore, according to him, if at all the Court comes to a conclusion that the amounts are to be returned by his client, the said amounts cannot be with the clause "Interest".

4. In paragraph No.10 (viii) of the order dated 2 April 2024 I have very specifically mentioned that the "interest, if any, as directed by the Court of the Small Causes". Hence, the submissions of Mr. Pardiwala made before this Court today, can be advanced by him at the time of hearing and final disposal of the R.A.D Suit and it will be the total discretion of the Judge of the Court of Small Causes Court, who hears the R.A.D. suit, to decide whether interest would be payable.

5. Mr. Dhanani, sought directions from this Court that both the parties i.e., the petitioner, respondent nos. 1 and 2, be directed to provide photo copy of their Pan Cards, so that his client will deduct the TDS from the amount payable to them as "transit rent".

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6. Mr. Pardiwala submitted that there is no question of deduction of TDS from the transit rent. Mr. Pardiwala submitted that the said issue has already been covered by two orders passed by Income Tax Appellate Tribunal in the matter of (i) ***Smt. Delilah Raj Mansukhani*** in ***ITA No. 3526/MUM/2017 (Assessment Year : 2010-2011),*** and ***(ii) Ajay Parasmal Kothari*** *in* ***ITA No. 2823/MUM/(A.Y : 2013-2014)***

7. I have heard Mr. Dhanani and Mr. Pardiwala on the issue as to *Whether there should be deduction of TDS on the amount payable to Petitioner and Respondent Nos.1 & 2 as "Transit Rent", by the developer / builder?.*

8. For the said purpose, it will be necessary, to consider section 194 (I) of the Income Tax Act.

> Sec. 194(I) of the Income Tax Act, reads as under :
>
> ***Sec.194 (I) - Rent***
>
> *" Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident] any income by way of rent, shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the*

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rate of -

[(a) two per cent. for the use of any machinery or plant or equipment; and

(b) ten per cent. for the use of any land or building (including factory building) or land appurtenant to a building (including factory building) or furniture or fittings:]

Provided that no deduction shall be made under this section where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the aforesaid person to the account of, or to, the payee, does not exceed 5[two hundred and forty thousand rupees]:

[Provided further that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such income by way of rent is credited or paid, shall be liable to deduct income-tax under this section:]

[Provided also that no deduction shall be made under this section where the income by way of rent is credited or paid to a business trust, being a real estate investment trust, in respect of any real estate asset, referred to in clause (23FCA) of section 10, owned directly by such business trust.]

Explanation.—For the purposes of this section,—

*[(i) "**rent**" means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any,—*

(a) land; or

(b) building (including factory building); or

(c) land appurtenant to a building (including factory building); or

(d) machinery; or

(e) plant; or

(f) equipment; or

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(g) furniture; or

(h) fittings,

whether or not any or all of the above are owned by the payee;]

(ii) where any income is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.]"

[Emphasis Supplied]

8.1. The relevant factor which has to be borne in mind is that section 194 (I) of the Income Tax Act refers to Rent, and in explanation to the section, the term "*Rent*" is clarified.

9. It will also be necessary to consider the two authorities referred by Mr. Pardiwala of Income Tax Appellate Tribunal viz . (i) Smt. Delilah Raj Mansukhani in ITA No. 3526/MUM/2017 (Assessment Year : 2010-2011), and (ii) Ajay Parasmal Kothari in ITA No. 2823/MUM/(A.Y : 2013-2014) follows Delilah Mansukhani(Supra).

9.1. Paragraph No. 5 of the ***Delilah Mansukhani (Supra)*** reads as under :

"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 re-development. 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 case of the assessee is squarely supported by the decision of the Co-ordinate Bench in the case of Shri Devshi Lakhamshi Dedhiavs. ACIT in ITA No.5350/Mum/2012 wherein similar issue has been decided in favour of the assessee, the relevant operative portion is reproduced hereunder:-

15. We have considered the rivals submissions and perused the

materials on records. We note that the assessee received compensation of Rs. 19,50,873/- from the developer when the building in which the assessee owned flat went for re-development as per the agreement between the developers and flat owners dated 28.03.2008. The said compensation was paid towards hardship Rs, 13,45,278/-; rehabilitation Rs, 5,90,625/- and for shifting Rs. 15,000/-.We also note that the assessee paid Rs. 18,63,000/- to Joys Developers for acquiring additional area of 138 Sq Ft. It was also noted that the assessee shifted to his own house when the building went for re-development. Now the question before is whether the compensation upon re-development of property towards hardship, rehabilitation and shifting received by the assessee is taxable if the potential TDR/FSI is available to the land owner or society which owns the (and depending upon .the terms of the de-development agreement without transferring the land . In the present case the assessee who was flat owner in the building was member of the society, As per the

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agreement each member of the society including the assessee was to be given a flat in lieu of the old one and the each member including the assessee was given compensation. We also note that In the decisions in 1TA No 72/Mum/2012 assessment year 2008-09 Bench E and ITA No 5271/Mum/2012 assessment year 2008-09 Bench "D" the Tribunal held that the amounts received as compensation for hardship , rehabilitation and for shifting are not liable to tax We, therefore , respectfully , the above decisions are of the considered view that the amounts received by the assessee as hardship compensation, rehabilitation compensation and for shifting are not liable to tax and the order passed by the first appellate authority can not be sustained. Thus the order of CIT(A) is reversed and ground is allowed in favour of the assessee.

16.In the result, appeal of the assessee is partly allowed, as above."

[Emphasis Supplied]

9.2. ***Ajay Kothari (supra)*** follows judgment of ***Delilah Mansukhani (supra)***. I hold that the view taken by Income Tax Appellate Tribunal, in both the judgments, is a correct view .

10. The ordinary meaning of *Rent* would be an amount which the Tenant / Licensee pays to the Landlord / Licensor. In the present proceedings the term used is "*Transit Rent*", which is commonly referred as Hardship Allowance / Rehabilitation Allowance / Displacement Allowance, which is paid by the Developer / Landlord to

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the tenant who suffers hardship due to dispossession. Hence, in my opinion '*Transit Rent*' is not to be considered as revenue receipt and is not liable to be tax, as a result there will be no question of deduction of T.D.S. from the amount payable by the Developer to the tenant.

(RAJESH S. PATIL, J.)

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