IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.635 OF 2003

The Commissioner of Income Tax .. Appellant
Versus
Yogesh M. Kothari .. Respondent

Mr. Suresh Kumar for appellant
Mr. Raghav Gupta with Mr. Kashish Mainkar i/b. Wadia Ghandy & Co. for the respondent.

CORAM : M.S.SANKLECHA &
SANDEEP K. SHINDE, JJ.

DATE : 13th June 2018.

P.C.

1] This appeal under Section 260 A of the Income Tax Act, 1961 arises from the order dated 28th April 2003 of the Income Tax Appellate Tribunal. This appeal was admitted on 20th October 2004 on the following substantial question of law:-

"Whether the amount of Rs.4.75 Crores received by the assessee on retirement from the partnership firm M/s. D.S.Prabhudas & Co. is a revenue receipt and liable for income tax?"

2] It is an agreed position between the parties that the issue raised herein stands concluded against the appellant – Revenue and in favour of the respondent – Assessee by the decision of this Court in the case of Prashant S. Joshi Vs. The Income Tax Officer Ward 19(2)(4), reported in 324 ITR 154.

3] In the above case, this Court was concerned with reopening notice issued under section 148 of the Act. The reasons recorded for reopening was that the amounts received by retiring partner of a firm had to be taxed in his hands as income. This Court negatived the contention by placing reliance upon the decision of the Supreme Court in Additional Commissioner of Income Tax, Gujarat Vs. Mohanbhai Pamabhai reported in 165 ITR 166 and Sunil Siddharthbhai Vs. Commissioner of Income Tax (1985) 156 ITR 509.

4] Further the decision of this Court in Prashant S. Joshi (supra) has been followed by this Court in CIT Vs. Riyaz A. Sheikh (Income Tax Appeal No.1969 of 2011) decided on 26th February

2013 to hold that amounts received on retirement of a partner of a firm is not taxable under the Act.

5] In the above view, the question as admitted is answered in the negative i.e. in favour of respondent – assessee and against the appellant – Revenue i.e. it is not liable to income tax.

6] Thus the appeal is dismissed.

(SANDEEP K. SHINDE, J) (M.S.SANKLECHA, J.)