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

INCOME TAX APPEAL NO. 427 OF 2004

Shevantibhai C. Mehta .. Appellant

v/s.

Income Tax Officer, Ward 2(5), Pune ..Respondent

Mr. Ruturaj Gurjar i/b S.N. Inamdar for the appellant
None for the respondent

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

DATED : 14th JUNE, 2018.

P.C.

1. This appeal under Section 260A of the Income Tax Act, 1961 (the Act) from the Income Tax Appellate Tribunal was admitted on 4th July, 2006 on the following substantial question of law :-

> *"Whether on the facts and in the circumstances of the case, the appellate Tribunal was right in law in holding that the sum of Rs.34,43,700/- received by the appellant was liable to tax as capital gains?"*

2. At that time, the respondent Revenue was reprsented and the advocate for the Revenue had waived service on behalf of the

respondent. Inspite of the above, none appears on behalf of the respondent. Although the notice of this appeal being on board was given to the parties and advocates as far back as on 30th May, 2018.

3. This appeal is in respect of Assessment Year 1995-96.

4. The impugned order of the Tribunal held the amounts received by the appellant on a retirement was chargeable to tax as capital gains by following the decision of this Court in ***N.A. Mody Vs. Commissioner of Income Tax, 162 ITR 420***. This decision in turn followed the earlier decision of this Court in *Commissioner of Income Tax Vs. Tribhuvandas G. Patel 115 ITR 95*. However, the decision of this Court in Tribhuvandas G. Patel (supra) was reversed by the Apex Court in *Tribhuvandas G. Patel Vs. Commissioner of Income Tax, 263 ITR 515* by following judgment of the Supreme Court in *Sunil Siddharthbhai Vs. Commissioner of Income Tax, 156 ITR 509*.

5. Mr. Gurjar, learned Counsel appearing for the appellant assessee invites our attention to the decisions of this Court in ***Commissioner of Income Tax Vs. Riyaz A. Shaikh*** (Income Tax Appeal No.1969 of 2011) dated 26th February, 2013 and in ***Prashant S. Joshi Vs. Income Tax***

Officer and Anr. 324 ITR 154 wherein it has been held that amount received by a partner on retirement from the firm is not taxable in the hands of the retiring partner. Consequenly, the same cannot be brought to tax under the head "capital gains".

6. In the above view, the substantial question of law is answered in the negative i.e. in favour of the appellant assessee and against the respondent Revenue.

7. Thus, the appeal is allowed.

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