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

INCOME TAX APPEAL NO.340 OF 2017

Hemant Prabhakar Pradhan .... Appellant

versus

The Asst. Commissioner of
Income Tax. Circle – 1 ... Respondent

…....

- Mr.Mohan Deshpande, Advocate for Appellant.
- Mr.Sham Walve, Advocate for Respondent.

CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.
DATE : 15th MARCH, 2019.

P.C. :

1. This Appeal is filed by the assessee to challenge the judgment of Income Tax Appellate Tribunal. Following questions are presented for our consideration;

(i) *Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT erred in holding that the receipt of Rs.2,00,000/- in question constituted a revenue receipt in the hands* *of the Appellant u/s 28(va) of the Act, when admittedly the Appellant was not carrying out any business in the relevant previous year and in the absence thereof, the receipt could not be taxed under the head of 'profits and gains of business or profession'?*

(ii) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT failed to appreciate that the amount in question was received by way of transfer of whole business and was not limited to any 'activity' in relation to the business, and thus the provisions of S.28(va) would have no application whatsoever?

2. Learned Counsel for the Appellant-Assessee fairly pointed out that the similar questions were examined by this Court in case of ***Arun Toshniwal, Mumbai, Vs. Deputy Commissioner of Income-tax 1(3), reported in (2015) 59 taxmann.com 274 (Bombay).*** In the said decision while dismissing the assessee's Appeal, the Court made following observations;

(10) It is only vide the Finance Act, 2002 which came into effect from 1st April, 2003 the said capital receipt was now taxable under section 28(va). Accordingly, the Court held that there dichotomy between the receipt of compensation by the assess for loss of business arising out of the negative covenant compensation for loss of agency would be a revenue receipt as noted in the decision in the case of Gillanders Arbuthnot & Co. Ltd. V. CIT [1964] 53 ITR 283 (SC). The assessee in that case was dealing with explosives. That agency was terminated and by way of compensation, Imperial Chemical Industries (Export) Ltd. Paid two fifths of the commission accrued on past sales an took a formal undertaking from the assessee to refrain from selling or accepting any agency for explosives. This was considered by the Supreme Court and it was held that the said amount received for non-compete agreement was not taxable upto 1st April, 2003 and, therefore, in that case, the amount received is not liable to be taxed. It is clarified by the Supreme Court that section 28(va) of the Act was amendatory and not clarifactory and, therefore the amount received before the said date was not taxable under section 28(va) of the Act.

11. Following the aforesaid decision, we are of the view that in the present case, as well the amount received by the assessee was taxable under section 28(va) of the Act. In the present case, it is evident that had the assessee not entered into an agreement of non-compete, he would have earned the amount from the business carried on out of the division which was sold to Thermo Electron LLS India Pvt. Ltd. It is the sale of the said division that has deprived him of the income and part of the sale consideration itself, he was required to execute an agreement of non-compete and the compensation received under the said agreement was relatable on a consideration for sale of the business of the division and, therefore, for these reason also, we are of the view that the amount is taxable under Section 28(va). Furthermore, in the present case, both the assessee have received the amount pursuant to the agreement dated 2nd June, 2008 that is well after 1st April, 2003 and would be covered by the provisions of Section 28(va) of the Act. We are accordingly of the view that no relief can be granted to the appellants. The appeals do not raise any substantial questions of law and the same are dismissed. No order as to costs."

3. In the result, this Appeal is dismissed.

(SARANG V. KOTWAL, J.) **(AKIL KURESHI, J.)**