

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

INCOME TAX APPEAL NO.1755 OF 2016

**Pr. Commissioner of Income Tax
Central – 2 Mumbai : Appellant.
Versus
Smt. Hemlata S Shetty : Respondent.**

**Mr. Suresh Kumar a/w Ms. Samiksha Kanani for the Appellant.
Mr. Ruturaj Gurjar for the Respondent.**

**CORAM : AKIL KURESHI &
M.S.SANKLECHA, JJ.**

DATE : 05th MARCH 2019.

P.C.:

1 This Appeal under Section 260A of the Income Tax Act, 1961 (Act) challenges the order dated 01/12/2015 passed by the Income Tax Appellate Tribunal (“**the Tribunal**” for short). This Appeal relates to Assessment Year 21006-2007.

2 Although multiple questions have been raised in the memo of appeal, the essence of these questions is in the following question pressed by the Revenue :-

“Whether, on the facts and circumstances of the case and in law, the Tribunal is justified in holding that the amount received by the assessee on retirement from partnership firm is not taxable in the head capital gain in the hands of the partner, ?”

3 The Respondent Assessee is an individual. On 16/09/2005, she joined a partnership firm M/s. D. S. Corporation as a partner making a capital contribution of Rs.52.50 lakhs. Thereafter the assets of the firm were revalued. On 27/03/2016 Respondent retired from the firm and at the time of her retirement she received a sum of Rs.30.87 crores from the said firm. The Assessing Officer by an order dated 31/12/2008 passed under Section 143(3) r/w Section 153A of the Act, brought to tax the amount of Rs.30.87 crores being the amount received by the Respondent on her retirement from the said partnership firm M/s. D. S. Corporation.

4 Being aggrieved, the Respondent filed an Appeal to the Commissioner of Income Tax (Appeals) (“CIT(A)” for short), but without success.

5 On further appeal by the Respondent, the Tribunal by the impugned order noted the fact that in view of Section 45(4) of the Act the amounts received by a partner on his retirement from a partnership firm is not liable to capital gain in the hands of the partner. However, it is the partnership firm which is liable to pay the tax. In support, a reliance was placed upon a decision of this Court in the case of Prashant S Joshi v/s. Income Tax Officer, Ward 19(2)(4) reported in (2010) 189 Taxman 1 (Bombay) and in the case

of *Commissioner of Income Tax – III Pune v/s. Riyaz A Sheikh* reported in *(2014) 41 taxman.com.455 (Bombay)*. The impugned order also records the fact that the assessment of the partnership firm has been reopened for the purpose of bringing to tax the amounts paid to the Respondent on her retirement. Thus allowed the appeal of the Respondent.

5 Mr.Suresh Kumar the learned counsel for the Revenue in support of the appeal submits that the Respondent had become a partner on 06/09/2005 in the previous year relevant to the subject Assessment Year and during the same Assessment Year i.e. on 27/03/2006 the Respondent retired from the firm and received a sum of Rs.30.87 crores on her retirement. In these facts it is submitted that the Respondent is liable to pay the tax on the amounts received by her on her retirement from the partnership firm.

6 We find that impugned order of the Tribunal placed reliance upon the decision of this Court in Prashant Joshi's case (supra) and Riyaz Sheikh's case (supra) to hold that amount received by a partner on his retirement and the partnership firm is not subjected to tax in the retiring partner's hands in view of Section 45(4) of the Act. The liability, if any, to pay the tax is on the partnership firm in view of Section 45(4) of the Act. Besides, the duration of a person being a partner in the firm does not decide the applicability of Section 45(4) of the Act, as it is not so provided therein.

7 In view of the fact that the question as proposed stands concluded by the decision of this Court, the question does not give rise to any substantial question of law. Hence not entertained.

8 Accordingly Appeal dismissed.

[M.S.SANKLECHA,J.]

[AKIL KURESHI, J]