IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Tax Case Appeal No.730 of 2010

The Commissioner of Income Tax-VI
Chennai. ... Appellant

Vs.

M.Krishnamoorthy ... Respondent

Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'B' Bench, Chennai dated 18.12.2009 in I.T.A.No.1874 /Mds/2008 against the order dated 20.06.2008 made in PAN No. AABPK3108J on the file of the Commissioner of Income Tax (Appeals) VIII, Chennai for the Assessment year 2001-2002 against the order dated 28.12.2007 made in PAN/GIR No. AABPK3108J on the file of the Income Tax Officer Range III(2) Chennai for the Assessment year 2001-2002.

For Appellant : Mr.M.Swaminathan
Senior Standing Counsel

For Respondent : Mr.A.S.Sriraman
For Mr.S.Sridhar

JUDGMENT
(Judgment of the Court was delivered by DR.VINEET KOTHARI, J.)

Revenue has filed this Tax Case Appeal under Section 260-A of the Income Tax Act, aggrieved by the order passed by the Income Tax Appellant Tribunal dated 18.12.2009 in respect of Assessment Year 2001-02, holding that the non-compete fee received by the assessee to the extent of Rs.4 Crore was a capital receipt and not revenue receipt.

2. Section 28 (va) of the Income Tax Act, was inserted by the Finance Act, 1992, with effect from 1.4.2003 holding that such non-compete fee shall be revenue receipt includible under the Head Profits and Gains of business taxable under Section 28 of the Act. Prior to 1.4.2003, a controversy involved in the

present case was decided not only by a Division Bench of this High Court in the case of K.Ramaswamy Vs. Commissioner of Income Tax (261 ITR 356), but also in the decision of the Honourable Supreme Court in Guffic Chem (P) Ltd Vs. Commissioner of Income Tax ((2011) 332 ITR 602). Para 7 of the said Supreme Court decision is quoted below for ready reference:

> "7. Two questions arose for determination, namely, whether the amounts received by the appellant for loss of agency was in normal course of business and therefore whether they constituted revenue receipt? (emphasis supplied). The second question which arose before this Court was whether the amount received by the assessee (compensation) on the condition not to carry on a competitive business was in the nature of capital receipt? It was held that the compensation received by the assessee for loss of agency was a revenue receipt whereas compensation received for refraining from carrying on competitive business was a capital receipt. This dichotomy has not been appreciated by the High Court in its impugned judgment. The High Court has misinterpreted the judgment of this Court in Gillanders Arbuthnot & Co. Ltd.'s case (supra). In the present case, the Department has not impugned the genuineness of the transaction. In the present case, we are of the view that the High Court has erred in interfering with the concurrent findings of fact recorded by CIT(A) and the Tribunal. One more aspect needs to be highlighted. Payment received as non-competition fee under a negative covenant was always treated as a capital receipt till Assessment Year 2003-2004. It is only vide Finance Act, 2002 with effect from 1-4-2003 that the said capital receipt is now made taxable [see Section 28 (va)]. The Finance Act, 2002 itself indicates that during the relevant assessment year compensation received by the assessee under non-competition agreement was a capital receipt, not taxable under the 1961 Act. It became taxable only with effect from 1-4-2003. It is well settled that a liability cannot be created retrospectively. In the present case, compensation received under Non-Competition Agreement became taxable as a capital receipt and not as a revenue receipt by specific legislative mandate vide section 28(va) and that too with effect from 1-4-2003. Hence, the said

section 28(va) is amendatory and not clarificatory (emphasis supplied). Lastly, in CIT v. Rai Bahadur Jairam Valji (1959) 35 ITR 148 it was held by this Court that if a contract is entered into in the ordinary course of business, any compensation received for its termination (loss of agency) would be a revenue receipt. In the present case, both CIT(A) as well as the Tribunal, came to the conclusion that the agreement entered into by the assessee with Ranbaxy led to loss of source of business; that payment was received under the negative covenant and therefore the receipt of Rs.50 lakhs by the assessee from Ranbaxy was in the nature of capital receipt. In fact, in order to put an end to the litigation, Parliament stepped in to specifically tax such receipts under the non-competition agreement with effect from 1-4-2003."

3. In view of the above, the controversy is no longer res integra and the questions of law framed in the present Tax Case (Appeal) viz.,

"1.Whether on the facts and circumstances of the case the Appellate Tribunal was right in law in deleting the addition made by the assessing officer to the tune of Rs.4 crore as non-compete fee received by the assessee as capital receipt is valid?

2.Whether on the facts and circumstances of the case the Appellate Tribunal was right in law in deleting the addition made by the assessing officer to the tune of Rs.4 crore as capital receipt, even though the assessing officer computed the income under the head "Income from other sources" on the materials available on record?"

deserves to be answered in favour of the Assessee and against the Revenue by holding that the non-compete fee received by the assessee during the Assessment Year 2001-02 would be a capital receipt and not a revenue receipt.

4. The Tax Case (Appeal) filed by the Revenue is, accordingly, dismissed. No order as to costs.

-s/d-
Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

To

1. Income Tax Appellate Tribunal,
'B' Bench, Chennai.

2.The Commissioner of Income Tax
(Appeals)VIII
Chennai

3.The Income Tax Officer
Range III(2), Chennai

T.C.A.No.730 of 2010

GMR(CO)
SP(28/02/2020)