

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH "D", KOLKATA**

**BEFORE SH. J.SUDHAKAR REDDY, ACCOUNTANT MEMBER &  
SH.S.S.VISWANETHRA RAVI, JUDICIAL MEMBER**

**ITA No.2569/KOL/2017  
(ASSESSMENT YEAR-2003-04)**

Abhishek Chatterjee, C/o-Mr.R.K.Chatterjee, M/s. S.S.Sen & Co., Chartered Accountants, Commerce House, 8 <sup>th</sup> Floor, Room-8D & 8E, 2, Ganesh Chandra Avenue, Kolkata-700013. PAN-ABWPC7740C	<b>vs</b>	DCIT, Circle-22, 54/1, Rafi Ahmed Kidwai Road, Kolkata- 700016.
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>Appellant by</b>	Sh. I.Banerjee, FCA	
<b>Respondent by</b>	Sh. C.J.Singh, Sr.DR	
<b>Date of Hearing</b>	26.11.2018	
<b>Date of Pronouncement</b>	16.01.2019	

**ORDER**

**PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER**

This appeal filed by the assessee against the order dated 23.10.2017 passed by CIT(A)-21, Kolkata u/s 143(3) of the Income Tax Act, 1961 (in short "Act") for AY 2003-04.

2. Ground No.1 is general in nature and requires no adjudication.
3. Ground Nos. 2 & 3 are relating to confirmation of addition made on account of receipt of premature cessation and termination of retirement from partnership.
4. Heard both parties and perused the material available on record. Ld.AR brought to our notice on similar issue basing on identical facts, this Tribunal vide its order dated 11.12.2015 in ITA No.1866/Kol/2012 in the case of *Ajay Kumar Doshi vs ACIT* deleted the addition. Ld.AR pointed out to relevant portion at para Nos. 2,3, 4 & 7. We find that the issue decided by this Tribunal is similar to the issue raised before us in the present

appeal. The relevant portion of facts at paras 3 & 4 are reproduced herein below: \_

3. *“The assessee in the present case is an individual, who is a Chartered Accountant by profession. The return of income for the year under consideration was filed by him on 27.11.2003 declaring total income of Rs.72,35,276/-. In the said return, the sum of Rs.1,46,00,000/- was claimed to be exempt by the assessee from tax and the following note was appended to the return to support and substantiate the said claim:-*

*“Income exempt from tax- capital receipts- during the year, I have received Rs.1,46,00,000/- from EYLLP through accounting partners trust upon termination of my employment with Ernst & Young Pvt. Limited. Since the payment is received neither from my employer nor on behalf of my employer ( & since there was no obligation upon my employer to pay such amount to me), it is not taxable as profits in lieu of salary under the Income Tax Act, 1961. Further, Courts have held that consideration received for giving up employment right is a capital receipt. Hence, applying this principle, the amount received by me is not taxable”.*

4. *During the course of assessment proceedings, it was also submitted by the assessee that the sum of Rs.1,00,00,000/- (net of tax) was received from Ernst & Young LLP through Accounting Partners Trust-1 upon his cessation of employment with Ernst & Young. It was contended that since the said amount was in the nature of capital receipt, it was exempt from tax and the same, therefore, was not included as part of total income declared in the return. Reliance in support of this contention was placed by the assessee on the decision of the Hon'ble Supreme Court in the case of Naresh Narayan Saxena -vs.- CIT reported in 220 ITR 19. This stand of the assessee was not found acceptable by the Assessing Officer and the sum of Rs.1,46,00,000/- was brought to tax by him in the hands of the assessee as income from salary for the following reasons given in paragraphs no. 4.1 and 4.2 of the assessment order:-*

*“4.1. I have considered the submission of the assessee. The decision of the Hon'ble Supreme Court cited by the assessee is not applicable here as the facts of the said case are not similar to the present case. I wanted to examine the terms and conditions of the deed of the Accounting Partners Trust-1 through which the assessee claims to have received the said money which the assessee claims as compensation. The Office of the Trust is at New Delhi. The Trustee of the said trust has stated that the money was received from the Ernst & Young Global Services, in short EYGS, for payment to the retiring partners. A copy of the balance sheet of the trust as on 31.03.2003 sent by the Trustee is enclosed. Unfortunately, the copy of the trust deed was not made available to me for examination. They have expressed inability to furnish the copy of the deed. It has been stated that the assessee was paid the above money by the said trust as per the balance sheet and Statement of Receipts & its Application (enclosed as Annexure 'B' to this order). It is not clear why the said trust was formed and on which grounds the said money was paid to him. The assessee claims that he was paid the same upon his cessation of employment with his employer Ernst & Young Pvt Ltd. The assessee has wanted to make it a point*

*that he has received the said amount as compensation for the loss of source of income which he would have been receiving had he continued as an employee. I have stated earlier that the terms of the deed could not be examined. I should mention here that the assessee was also a partner in a firm namely, M/s. S. R. Batliboi & Co. from where he had retired during this year. The money was received by the assessee upon his cessation of employment and retirement from partnership firm. It may be noted that the said amount was not paid by his employer or his firm directly. It is not clear in absence of the deed of the trust or clarification of the trustee whether the money was paid to the assessee on cessation of employment or retirement from partnership firm. The said money termed as compensation was received on premature cessation or retirement either from employer or partnership. The salaried persons are being paid compensation upon voluntary retirement prior to the normal date of retirement. The said compensation is being taxed as salary income under the Act. The Act has not exempted the compensation of salary income. The present case is very similar. The assessee states that he has received compensation upon cessation of employment in lieu of the regular income by way of salary. Therefore, in my view, the compensation of Rs.1,46,00,000/- received by the assessee upon his retirement is a salary income chargeable to tax. If the assessee was paid the said compensation on premature retirement from the firm, then the compensation would be the professional income chargeable to tax. Here, upon the version of the assessee and without prejudice to my second finding made above, the receipt of Rs.1,46,000/- is chargeable to tax as salary income of the assessee.*

*4.2. It appears that the assessee has misunderstood the meaning of "loss of source of income". In my considered view the loss of source of income is one which is beyond the control of the employee. The assessee has voluntarily opted for retirement. Therefore, the amount received due to his retirement is in lieu of salary. It makes no difference whether the retirement benefit is paid by the employer or by any trust created for providing retirement benefit. In absence of trust deed, it is not ascertainable as to what were the objects of the trust, who were contributors of the trust corpus and what were the terms and conditions for payment of retirement benefit to retiring partner. However, one fact is obvious that the assessee has received the benefit only because of his continuation in the employment in past for which he has received salary. Therefore, in my view, the compensation of Rs.1,46,00,000/- received by the assessee on his cessation of employment is in lieu of salary and hence it is a salary income chargeable to tax".*

5. The finding of the Tribunal at paras 7 & 8 are reproduced herein below:-

*7. "In Ground No. 2, the assessee has disputed the addition of Rs.22,56,250/- made by the Assessing Officer and confirmed by the ld. CIT(Appeals) on account of share of goodwill received by the assessee on his retirement from the partnership firm of M/s. S.R.. Batliboi & Co.*

8. During the year under consideration, the assessee had retired from the partnership firm of M/s. S.R. Batliboi & Co. Upon his retirement, he was paid, inter alia, a sum of Rs.22,56,250/- in lieu of the goodwill from the said firm and the same was claimed to be exempt by the assessee from tax being in the nature of capital receipt. The claim made by the assessee in this regard was that the said amount could not be taxed even as capital gains since there was no transfer of goodwill. This claim of the assessee was not accepted by the Assessing Officer and the sum of Rs.22,56,250/- received by the assessee as his share of goodwill from M/s. S.R. Batliboi & Company on his retirement was brought to tax by the Assessing Officer in the hands of the assessee under the head "income from other sources" for the following reasons given in paragraph no. 5.1 of the assessment order:-

*"5.1. The firm created goodwill and apportioned the same amongst the partners and credited the value of the goodwill to the accounts of the partners according to the profit sharing ratio. On creation of the goodwill, it does not ipso facto become any income in the hands of the firm but the value of the goodwill depends on the reputation and the quantum of income generated/earned in the post. Therefore, when it is paid to the partner on retirement, the partner's share in the profit and loss ratio assumes the character of distribution of the firm's accumulated income in the form of goodwill which was not taxed in the firm's hands. The money received from the firm by a partner on account of his capital is a capital receipt because what is received by the partner is his own capital which was either contributed by him or was out of accumulation of profit subjected to tax. But when it is received on account of goodwill, it is not his capital contribution or out of income accumulation subjected to tax in firm's hands. As he receives any money in lieu of goodwill, the said money becomes his income as he gets it by virtue of his being a partner and in exercise of his profession. Moreover, any income has to be taxed either in the hands of the earner or receiver of income in beneficial capacity. Therefore, I do not agree with assessee's contention that his share in goodwill received on retirement is a capital receipt, rather it is casual receipt in the nature of income which was not taxed in the hands of firm. Moreover, this receipt is not liable to be taxed under any of the heads from A to E of section 14 of the Act. In view of the opening sentence of section 56 of the Act, such receipt of income is liable to be taxed as income from other sources. Accordingly, I treat the assessee's share of goodwill of Rs.22,56,250/- as income from other sources and include the same in assessee's total income".*

6. In view of the above discussion made by the Co-ordinate Bench in the case of Ajay Kumar Doshi (supra), we hold that the amount in question received by the assessee as his share of goodwill on retirement from the firm is not chargeable to tax being capital receipt. Therefore, the addition made by the AO as confirmed by the CIT(A) is deleted. Ground Nos.2 & 3 raised by the assessee are allowed.

7. In the result, the appeal of the assessee is allowed.

**Order pronounced in the open court on 16.01.2019.**

**Sd/-**  
**(J.SUDHAKAR REDDY)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(S.S.VISWANETHRA RAVI)**  
**JUDICIAL MEMBER**

*Date:-16.01.2019*

*\*Amit Kumar\**

Copy forwarded to:

1. Appellant- Abhishek Chatterjee, C/o-Mr.R.K.Chatterjee, M/s. S.S.Sen & Co., Chartered Accountants, Commerce House, 8<sup>th</sup> Floor, Room-8D & 8E, 2, Ganesh Chandra Avenue, Kolkata-700013.
2. Respondent- DCIT, Circle-22, 54/1, Rafi Ahmed Kidwai Road, Kolkata-700016.
3. CIT-Kolkata
4. CIT(Appeals)-Kolkata
5. DR: ITAT -Kolkata Benches

By order

**AR/H.O.O**  
**ITAT, KOLKATA**