

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, HON'BLE ACCOUNTANT MEMBER**

**ITA.NO.3526 & 3527/MUM/2012
(A.Ys. 2006-07 & 2007-08)**

M/s. D.S. Corporation
M/s. Thar & Co., Chartered Accountants,
203, Capri, Opp. HDIL Tower
Anant Kanekar Marg,
Bandra (E), Mumbai – 400 051

v. I.T.O, Ward 21(1)(4)
C-11, Pratyakshakar Bhavan,
BKC, Bandra (E),
Mumbai – 400 051

PAN NO: AAFFD 2266 C

(Appellant)

(Respondent)

**ITA.NO.3882 & 3883/MUM/2012
(A.Ys. 2007-08 & 2006-07)**

I.T.O, Ward 21(1)(4)
Room No. 606, 6th Floor,
C-10, Pratyakshakar Bhavan,
BKC, Bandra (E),
Mumbai – 400 051

v. M/s. D.S. Corporation
M/s. Thar & Co., Chartered Accountants,
203, Capri, Opp. HDIL Tower
Anant Kanekar Marg,
Bandra (E), Mumbai – 400 051

PAN NO: AAFFD 2266 C

(Appellant)

(Respondent)

Assessee by : Shri Dr. K. Shivaram
Revenue by : Shri Chaudhary Arun Kumar Singh
Date of Hearing : 29.03.2019
Date of Pronouncement : 03.04.2019

ORDER

PER C.N. PRASAD (JM)

1. This order is passed in confirmity with the view of the Hon'ble Vice President, the Third Member. My Ld. Brother was of the view that the money equivalent to enhanced portion of the asset revalued constitutes capital asset for the purpose of section 45(4) r.w.s. 2(14) of the I.T. Act and therefore there is transfer of capital asset on dissolution of firm or "otherwise" within the meaning of section 45(4) r.w.s. 2(14) when the money equivalent is paid by the partnership firm to the retiring partner. Thus, the view point of the Ld. Assessing Officer has been accepted. However, since I am in agreement with the view of the Ld.CIT(A) that money equivalent to enhanced portion of the asset revalued and credited in capital account of the partner is not a capital asset and distribution of such money equivalent to the partners on retirement did not constitute transfer of capital asset on dissolution of the firm or "otherwise" within the meaning of section 45(4) r.w.s. 2(14) of the Act, there was difference of opinion between my Learned Brother and myself and the point of difference was referred to Third Member by the Hon'ble President u/s.255(4) of the Act. Pursuant to the reference made by the Hon'ble President, the Hon'ble Vice President as Third Member framed the following questions on the point of dispute: -

- (1) *Whether on the facts and in the circumstances of case, where on revaluation of asset being land held by the partnership firm which resulted into enhancement of value of asset and this enhanced amount credited in capital account of partners and when a retiring partner takes amount in his capital account including enhanced value of asset, it gives rise to Capital Gain under section 45(4) r.w. Section 2(14) of the Income Tax Act.*
- (2) *Whether on the facts and in the circumstances of the case, is there any transfer of capital asset on dissolution of firm or "otherwise" within the meaning of Section 45(4) r.w. Section 2(14), in case the money equivalent is paid by partnership firm to the retiring partner and whether this money equivalent to enhanced portion of the asset revalued constitutes capital asset for the purpose of Section 45(4) r.w. Section 2(14) of the Income Tax Act."*

2. By a detailed order dated 10.01.2019 the Hon'ble Third Member answered both the questions in the negative and in favour of the assessee agreeing with the view of the Judicial Member. Since the Majority view of the Members is against the Revenue, the grounds raised by the Revenue in both the appeals are decided against the Revenue in conformity with the order passed by the Third Member.

3. As far as the assessee appeals are concerned, the ground raised challenging the jurisdiction of Assessing Officer in passing the Assessment Order since withdrawn by assessee the same is dismissed as withdrawn. The other ground raised on the reopening of the assessment proceedings u/s. 147 of the Act is concerned the same has been rejected by our concurrent orders for the reasons explained therein. Therefore, the grounds raised by the assessee in its appeals stood rejected.

4. In the result, both the appeals of the Revenue as well as the Assessee are dismissed.

Order pronounced in the open court on the 03rd April, 2019

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER
Mumbai / Dated 03/04/2019
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file. //True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum

