

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

**BEFORE SHRI S. RIFAUH RAHMAN, HON'BLE ACCOUNTANT MEMBER AND  
SHRI AMARJIT SINGH, HON'BLE JUDICIAL MEMBER**

**ITA NO. 64/MUM/2021 (A.Y: 2011-12)**

ACIT – 19(3) 2 <sup>nd</sup> Floor, Room No. 206 Matru Mandir, Tardev Road Mumbai – 400 007	v.	Mrs. Ramona Pinto Flat NO. 52, Ivorick, St. Cyrils Road Mumbai - 400050  <b>PAN: AGIPP7514N</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	<b>:</b>	<b>Shri Nitish Joshi</b>
<b>Department by</b>	<b>:</b>	<b>Shri T. Shankar</b>
<b>Date of Hearing</b>	<b>:</b>	<b>07.02.2022</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>26.04.2022</b>

**ORDER**

**PER S. RIFAUH RAHMAN (AM)**

**1.** This appeal is filed by the revenue against order of the Learned Commissioner of Income Tax (Appeals)-32, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 29.01.2020 for the A.Y.2011-12.

**2.** Brief facts of the case are that information was received by the Assessing Officer from the ITO - 17(3)(3), Mumbai, that an amount of

₹.28,00,00.000/was agreed to be paid to the assessee as settlement through Arbitration Award by M/s. P.N. Writer & Co. out of which an amount of ₹.300,00,000/- was paid to the assessee in the A.Y.2011-12. The Assessing Officer called for the case records of M/s. P.N. Writer & Co. from ITO-17(3)(3), Mumbai, and after going through them it was observed by the Assessing Officer that prima facie there was material on record which showed that income had escaped assessment. Therefore, after recording reasons, a notice u/s.148 of the Act was issued on 20.03.2014 which was duly served on the assessee. Subsequently, notices u/s 143(2) and 142(1) dated 18.06.2014 were also issued and served on the assessee. The assessee had filed objections against the reopening of assessment which were disposed off vide order dated 21.08.2014. The assessee had filed a writ petition against this order dated 21.08.2014 which was treated as dismissed by the Hon'ble Bombay High Court as the same was withdrawn. Thereafter, notice u/s 142(1) was again issued on 23.02.2015 requesting the assessee to provide various details. After considering the various submissions made by the assessee, the re-assessment was completed u/s 143(3) r.w.s. 147 of the Act.

**3.** Further, the facts are that the assessee was a partner in M/s P.N.Writer & Co. A fresh partnership deed was executed in 1997 wherein

the name of the assessee was excluded from the partnership firm. However, as claimed by the assessee, this new partnership deed was prepared without her consent and she was shown as retired from the said firm without her knowledge. The assessee, therefore, filed various suits against the partners, firm and various entities held by the partnership firm. Ultimately, the assessee was granted arbitration award of ₹.28,00,00,000/- on 25.09.2009 by the Arbitrator appointed by the Hon'ble Supreme Court as per mutually agreed Consent Terms for relinquishment of all her rights and benefits in the firm and for withdrawal of all claims against the partners, firm and entities held by partners. The arbitration award, however, made no mention of whether the assessee was actually retired from the firm in 1997.

**4.** During the course of assessment proceedings, the assessee was asked to explain on what basis the arbitration award of ₹.28,00,00,000/- was granted in her favour. The assessee submitted that arbitration award was granted to her in terms of consent terms signed by her and partners of M/s P.N. Writer & Company. Copy of the Consent Terms was also submitted. On perusal of the Consent Terms, the AO observed the following:

*(i) The Consent Terms did not speak anything about retirement of Mrs. Ramona Pinto from the partnership firm M/s P.N, Writer & Company.*

*(ii) It was nowhere mentioned in Consent Terms that the arbitration amount of Rs. 28 crores was an amount awarded to Mrs. Ramona Pinto for her retirement from M/s P.N. Writer & Company.*

*(iii) The amount awarded to the appellant was also for withdrawal of her rights and bequests made to her under the Will dated 16.09.1990 of her late father Shri Charles D'Souza.*

*(iv) The arbitration award was given not only for withdrawal of Suit against partners and partnership firm but it was also granted for withdrawing all the Suits against entities owned and controlled by the partners.*

*(v) Condition No.9 of Consent Terms stated that the appellant and her husband Etienne Pinto had no interest in properties listed in clause 9 and they would ensure execution of necessary documents for transfer of properties which presently stood in their names in favour of existing partners. This condition had no reference with the retirement of the appellant from the partnership firm.*

*(vi) As per condition no.12, the appellant's husband was also required to sign the Consent Terms in acceptance of his obligations as set out in the Consent Terms. Though her husband had no relation to M/s P.N.Writer & Co., it was agreed that the husband shall also sign Consent Terms and shall also transfer back assets mentioned in condition no.9 which was in the name of the appellant as well as in the name of her husband.*

**5.** The Assessing Officer was of the view that all the above facts showed that the arbitration award of ₹.28 crores was not awarded only with reference to the retirement of the assessee from the partnership firm. The assessee was asked to provide details of basis on which arbitration award was claimed and awarded. No specific basis could be given by the assessee, but from the details submitted by the assessee it could be inferred that the market value of assets held by the firm could be the

basis. The assessee submitted that she had provided list of assets held by M/s P.N.Writer & Co. before the Arbitrator and on the basis of market value of these assets, she claimed a hefty arbitration award which was settled at Rs. 28 crores.

**6.** The Assessing Officer had also issued summons w/s 131 of the Act and recorded the statement of Shri Denzil Dsouza, partner of M/s.P.N.Writer & Co., which has been scanned and reproduced at pages 13 to 16 of the assessment order. In his statement, Shri Denzil Dsouza had stated that the arbitration amount of ₹.28 crores was not an amount paid to retiring partner as she was already given her share as per the family arrangement earlier. That there was no balance available in her capital account and there was no accumulated profit in the firm. That the amount of crores was given for relinquishing of rights, claims and demands of any nature whatsoever, against the firm and partners. That there was no basis for determining the amount of ₹.28 crores between the assessee and partners of M/s P.N. Writer & Co., but the amount was settled at ₹. 28 crores for relinquishment of all the rights, claims and demand and withdrawing all court cases against partners and partnership firm and entities of partners. The Assessing Officer also observed that there was no positive balance of the assessee in her capital account with

M/s. P.N.Writer & Co. and the question of the balance in her capital account being returned back to her did not arise. There were also no accumulated profits of the firm to the extent of ₹.28 crores.

**7.** In view of all the above, the Assessing Officer held that the arbitration award of ₹.28 crores received by the assessee was not for retirement from partnership firm but was in lieu of relinquishment of all her rights, claim and demand of any nature whatsoever against the partnership firm M/s P.N.Writer & Co. and all other entities owned and controlled by the firm and partners and for withdrawing all the Suits against all the entities. The Assessing Officer was of the view that the assessee's rights and claims were converted into money terms through mutually agreed consent terms of Arbitration award and, hence, the amount of ₹.28,00,00,000/was held as taxable u/s 28(iv) of the Act. The AO was also of the view that without prejudice to the taxability of the amount u/s 28(iv), the same was also alternatively taxable as capital gain.

**8.** A detailed show cause notice dated 18.03.2015 incorporating all the above observations of the Assessing Officer was issued asking the assessee to explain as to why the arbitration award of ₹.28 crores should not be taxed u/s 28 (iv) and also alternatively as capital gains. This show

cause notice has been scanned and reproduced by the Assessing Officer at pages 27 to 38 of the assessment order. The assessee submitted her replies vide letters dated 24.03.2015 and 26.03.2015 wherein she reiterated her stand that the arbitration award of ₹.28 crores was received on account of her retirement from M/s P.N.Writer & Co. which was not taxable. The assessee also did not agree with the statement given by Shri Denzil Dsouza.

**9.** The submissions filed by the assessee were duly considered by the Assessing Officer but were not found tenable. Besides the observations mentioned earlier, the Assessing Officer further observed that as per the records of Registrar of Partnership of Firm, the assessee's name appeared in the records as a partner till the year in which the Arbitration Award was passed. Even after receipt of the Arbitration Award, the name of the assessee was not removed from the record of Registrar of Partnership Firm. The Assessing Officer was of the view that till such date the assessee's name appeared as a partner in the records of Registrar of Partnership Firm, she could not be treated as retired from the firm. On declaration of arbitration order, the assessee wrote a letter to the Registrar of Firm on 17.09.2009 intimating that earlier she had caused a notice dated 31.07.2006 to desist from registering any form or deeds in

connection with M/s P.N. Writer & Co and now she was withdrawing the said notice and that she had no objection to the Registrar for taking on record any Forms and Deeds in respect of M/s P.N. Writer & Co. The Assessing Officer observed that this was thus a withdrawal of intimation of notice dated 31.07.2006 and not any agreement submitted for retirement on the basis of which the assessee's name can be struck off in the records of the Registrar as a partner of M/s P.N. Writer & Co. That even after this, her name continued to be a partner in M/s P.N. Writer & Co in the records of Registrar of Partnership Firm.

**10.** Considering all the facts and circumstances of the matter, the Assessing Officer was of the view that the Arbitration Award was not just for retirement of the assessee from the firm as the Consent Terms stipulated that certain assets held in the name of the assessee and her husband were to be transferred in favour of the partners of M/s P.N, Writer & Co. That the Arbitration Award also included consideration for withdrawing all claims that the assessee had made against partners, partnership firm and several other entities held by the partners. That the rights and benefits claimed by the assessee through filing suits were converted into money terms through this Arbitration Award. The Assessing Officer, accordingly, held that the Arbitration Award of ₹. 28

crores was taxable u/s 28(iv) of the Act. It was also alternatively held to be taxable as capital gains as per provisions of section 2(47) and 45(4) of the Act in view of various judicial pronouncements relied upon by the Assessing Officer. The Arbitration Award of ₹.28 crores which was received during the period relevant to A.Y. 2010-11 was therefore, added back to the income of the assessee.

**11.** Aggrieved assessee preferred an appeal before the Ld.CIT(A) and filed detailed submissions before him Ld.CIT(A) decided the issue in favour of the assessee.

**12.** Aggrieved revenue is in appeal before us raised following grounds in its appeal: -

*"1. Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in deleting the addition of Rs.3,00,00,000/- made by A.O under the head 'Income From Other Sources' without considering the merits of the addition and without considering the facts that the demand of A. Y. 2011-12 has not yet attained finality and decision of the Hon'ble Tribunal for A. Y. 2011-12 is contested by the assessee before the Hon'ble Bombay High Court."*

*2. "The appellant prays that the order of the Ld.CIT(A) on the above grounds be set aside and that of the AG be restored."*

*3. "The appellant craves leave to amend or after or add a new ground which may be necessary."*

**13.** At the time of hearing Ld. AR brought to our notice similar issue was adjudicated by the ITAT in A.Y. 2010-11 in ITA.No. 3523/Mum/2017 and decided the issue in favour of the assessee Therefore the appeal is directly covered in favour of the assessee.

**14.** On the other hand, Ld.DR relied on the orders of the lower authorities.

**15.** Considered the rival submissions and material placed on record, we observed that exactly similar issue was considered and decided by the Coordinate Bench in assessee's own case in ITA.No. 3523/Mum/2017 dated 02.04.2018, the relevant decision is reproduced below: -

*"20. As regards the merits of the case, we find that the assessee has received an arbitration award for Rs.28 crores, upon relinquishment of her rights in the partnership of M/s. P. N. Writer & Co. Here it may be gainful to recount the brief history of the case which leads to the arbitration award. The assessee was a partner in M/s P.N.Writer & Co. A fresh partnership deed was executed in 1997 wherein the name of the assessee was excluded from the partnership firm. However, as claimed by the assessee, this new partnership deed was prepared without her consent and she was shown as retired from the said firm without her knowledge. The assessee, therefore, filed various suits against the partners, firm and various entities held by the partnership firm. Ultimately, the assessee was granted arbitration award of Rs.28,00,00,000/- on 25.09.2009 by the Arbitrator appointed by the Hon'ble Supreme Court as per mutually agreed Consent Terms for relinquishment of all her rights and benefits in the firm and for withdrawal of all claims against the partners, firm and entities held by partners, The arbitration award, however, made no mention of whether the assessee was actually retired from the firm in 1997.*

21. *In this regard, it may also be gainful to refer to certain points of the consent term which read as under:*

*(i) The Consent Terms did not speak anything about retirement of Mrs. Ramona Pinto from the partnership firm M/s P.N. Writer & Company.*

*(ii) It was nowhere mentioned in Consent Terms that the arbitration amount of Rs. 28 crores was an amount awarded to Mrs. Ramona Pinto for her retirement from M/s P.N. Writer & Company.*

*(iii) The amount awarded to the appellant was also for withdrawal of her rights and bequests made to her under the Will dated 16.09.1990 of her late father Shri Charles D'Souza.*

*(iv) The arbitration award was given not only for withdrawal of Suit against partners and partnership firm but it was also granted for withdrawing all the Suits against entities owned and controlled by the partners.*

*(v) Condition No.9 of Consent Terms stated that the appellant and her husband Etienne Pinto had no interest in properties listed in clause 9 and they would ensure execution of necessary documents for transfer of properties which presently stood in their names in favour of existing partners. This condition had no reference with the retirement of the appellant from the partnership firm.*

*(vi) As per condition no.12, the appellant's husband was also required to sign the Consent Terms in acceptance of his obligations as set out in the Consent Terms. Though her husband had no relation to M/s P.N.Writer & Co., it was agreed that the husband shall also sign Consent Terms and shall also transfer back assets mentioned in condition no.9 which was in the name of the appellant as well as in the name of her husband.*

22. *When the above facts are viewed in the light of the fact that there are no positive balance of the capital account of the assessee with M/s. P. N. Writer & Co., the question of the balance in her capital account being returned back to her certainly does not arise. The above facts clearly indicate that the arbitration award was received by the assessee not for retirement from partnership firm but was in lieu of relinquishment of all her rights, claim and demand of any nature whatsoever against the partnership firm M/s P.N.Writer & Co. and all other entities owned and controlled by the firm and partners and for withdrawing all the Suits against all the entities. It is further*

*to be noted here that as per para 9 of the concerned terms, the assessee and her husband who had nothing to do with the said firm in any capacity are to execute all necessary documents to facilitate transfer of properties (listed at a. to f. under para 9 of Consent Terms) presently standing in their names either to the other partners of the firm and/or to persons nominated by them. The Id. Commissioner of Income Tax (Appeals) has further found that this property and assets included the following :*

*i. 55 equity shares of Rs.1,000 each fully paid up in Ocean air Transport and Investment Company Pvt. Ltd. held in the name of the appellant which has no connection with her interest in the firm or the assets of the firm.*

*ii. 2001 equity shares of Rs. 1,000 each fully paid up in JOSCO International Shipping Agency Pvt. Ltd. held in the name of Mr. Etienne Pinto, husband of the appellant, which has no connection with her interest in the firm or the assets of the firm.*

*23. From the above, we agree with the Id. Commissioner of Income Tax (Appeals) that when the arbitration award was given in consideration of the assessee giving certain rights and interests in assets which included rights and interests in assets which have not even a remote connection with her interest in the firm or the assets of the firm, the Arbitration Award cannot be said to be given on account of her retirement from the firm. Further, as rightly observed by the authorities below, the accepted practices upon retirement from the firm is that the share in the partnership ship is worked out by drawing of accounts in the manner prescribed by the relevant provision of the partnership law. His/her share in net partnership asset after deduction of liabilities and prior charges is determined and the same is given to him. In the present case, no such determination regarding the share of the assessee in the partnership firm has been done. The assessee despite request made in this regard by the Assessing Officer has not been able to provide the working of the share in the net asset of the firm and has generally stated that it was based on the market value of the asset of the firm. Before the Id. Commissioner of Income Tax (Appeals) also no detail working has been given except for submitting the valuation report of the assets by way of additional evidence.*

*24. Thus from the above, it is clear that neither the Arbitration award nor the concerned terms made any mention or a declaration or a decision for a finding that the assessee retired from the firm in the year 1997. Neither does the Arbitration Award or Consent Terms anywhere specify that the sum of Rs.28 crores represents the payment to the assessee for her retirement from P.N.Writer & Co. As*

*a matter of fact, the basis of the Arbitration Award was never given. As rightly observed by the Id. Commissioner of Income Tax (Appeals) that the retirement of a partner from the firm has to be an evident fact and is not required to be indirectly inferred or to be guessed in substance. The assessee has received a consideration in lieu of a composite bundle of conditions which included giving up her rights and interests in assets which have no connection with her interest in the firm or its assets and also for withdrawal of all suits/legal proceedings filed by her against the other persons and against firms and entities owned or controlled by them.*

*25. As rightly held by the Id. Commissioner of Income Tax (Appeals) since the Arbitration Award is in cash on the touch stone of the Hon'ble jurisdictional High Court decision in the case of Mahindra & Mahindra Limited v CIT 261 ITR 501, section 28(iv) cannot be invoked. However, the Id. Commissioner of Income Tax. (Appeals) is very correct in holding that the same is taxable u/s. 56(1) as income from other sources. The fact remains that the assessee has received benefit of Arbitration Award for conditions, which included giving up her rights and interests in assets which have no connection with her interest in the firm or its assets and also for withdrawal of all suits/legal proceedings filed by her against the respondents (other partners) and against firms and entities owned or controlled by them. This should also be viewed in light of the fact that there is no positive balance of her in the partnership account.*

*26. Hence, we agree with the Id. Commissioner of Income Tax (Appeals) that it is judicially settled that the special income must be considered in its wider sense. The definition of income is an inclusive one having a wide amplitude. Section 56(1) provides that income of every kind which is not to be excluded from the total income in this Act shall be chargeable to tax income under the head 'income from other sources' if it is not chargeable to income tax under any of the head as specified in section 14. Accordingly, in the background of the aforesaid discussion and precedent, we uphold the order of the Id. Commissioner of Income Tax (Appeals).*

*27. The alternate claim of the Id. Counsel of the assessee that the receipt is actually receipt on account of family settlement has not been arising out of the grounds raised by the assessee. Except for making the claim, no detail has been furnished whatsoever by the Id. Counsel of the assessee as to how the receipt from the arbitration award amount to a family settlement. There is no mention whatsoever in the arbitration award as to how the said amount has been determined or that it is a family arrangement. In the absence of any detail thereof, the amount received cannot be held to be a receipt on account of family arrangements. Accordingly, in the*

*background of the aforesaid discussion and precedent we do not find any infirmity in the order of the Id. Commissioner of Income Tax (Appeals). Accordingly, we uphold the same."*

**16.** Respectfully following the above said decision, we are inclined to dismiss the appeal filed by the Revenue.

**17.** In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 26.04.2022.

Sd/-  
**(AMARJIT SINGH)**  
**JUDICIAL MEMBER**  
Mumbai / Dated 26.04.2022  
Giridhar, Sr.PS

Sd/-  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT 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**