

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.345/M/2024
Assessment Year: 2014-15**

DCIT-19(3), 513, 5 th Floor, Piramal Chambers, Lalbaugh, Parel, Maharashtra - 400 012	Vs.	Shri Ramona Pinto, Flat No.52, Ivoric, Sant Cyrills Road, Bandra West, Maharashtra - 400 050 PAN: AGIPP7514N
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Milin Datani, C.A.
Revenue by : Smt. Mahita Nair, Sr. D.R.

Date of Hearing : 04 . 06 . 2024

Date of Pronouncement : 31 . 07 . 2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Revenue against the order dated 25.11.2023, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) u/s 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2014-15.

2. Relevant facts for adjudication of the instant appeal are as under:

The Assessee was a partner in the firm M/s. P.N. Writer & Co. who by executing fresh partnership deed in 1997 retired the Assessee herein, however, the Assessee claimed that this fresh partnership deed was prepared without her consent and she was shown as retired from the said company without her knowledge. Therefore, she filed various suits against the partners, firm and various entities held by partnership firm which resulted into appointment of Ld. Arbitrator, who ultimately passed an arbitration award, according to which the amount of Rs.28 crores was awarded on 25.09.2009 i.e. during the period relevant to A.Y. 2010-11 received/receivable by the Assessee in following installments:

December 2009	7,00,00,000/-
December 2010	3,00,00,000/-
December 2011	3,00,00,000/-
December 2012	3,00,00,000/-
December 2013	3,00,00,000/-
December 2014	3,00,00,000/-
Balance receivable	6,00,00,000/-
Total	28,00,00,000/-

3. Vide assessment order dated 30.03.2015 u/s 143(3) r.w.s. 147 of the Act, the aforesaid amount of Rs.28 crores was taxed on accrual basis in the A.Y. 2010-11. In effect, the amount of Rs.28 crores was taxed as business income u/s 28(v) and 2(47) r.w.s. 45(4) of the Act. Since the Assessee received only Rs.7 crores in the A.Y. 2010-11 and balance amount was to be received in various years, as per chart given above and therefore the Assessing Officer (AO) show caused the Assessee, as to why the amount of Rs.3 crores received during the A.Y. 2014-15 should not be taxed on receipt basis, as done in the A.Y. 2011-12 by passing protective assessment order.

3.1 In response to the show cause, the Assessee replied vide letter dated 07.09.2016 which reads as under:

"i. The whole of the amount of Rs. 28 crore awarded to the assessee as per the Arbitration Award dated 25.09.2009 is already taxed/added to the income of the assessee by the Assessing Officer in the A.Y. 2010-11;

ii. During A.Y. 2014-15, the assessee has received part amount of Rs. 3 crore which cannot be taxed again as this would amount to double taxation of the same amount, once on accrual basis and again on receipt basis; such double taxation is impermissible in law;

iii. No reasons furnished to the assessee for proposed addition on protective basis.

iv. The amount received by the assessee of Rs. 3 crores from M/s. P. N. Writer & Co. is not income and therefore cannot be taxed."

4. The AO though considered the aforesaid submissions/reply of the assessee, however, not being satisfied, found the same not acceptable mainly on the reasons that the method of accounting followed by the assessee is subject to finality as to whether the said awarded amount is to be taxed on receipt basis or accrual basis. The AO also observed that without prejudice to the fact that the entire arbitration award of Rs.28 crores was taxed in the A.Y. 2010-11 on accrual basis, however, Rs.3 crores has received during the previous year relevant to A.Y. 2014-15 and therefore is liable to be added in the income of the assessee for the year on receipt basis to protect the interest of the Revenue. The AO ultimately vide order dated 30-11-2016 added the amount of Rs.3 crores u/s 28(v) of the Act on the receipt basis or

alternatively taxable u/s 2(47) r.w.s. 45(4) of the Act as capital gain in the hands of the assessee.

5. The Assessee being aggrieved challenged the aforesaid addition before the Ld. Commissioner, who by following the decision 08.11.2023 of the Jurisdictional High Court *"wherein the amount of Rs.28 crores was directed to be considered as amount received by a partner upon retirement from the firm, not chargeable to tax, while deciding the Assessee's case i.e. Income Tax Appeal No.2610/2018, wherein the impugned order dated 02.04.2018 passed by the Tribunal (ITAT) whereby the validity of the reassessment proceedings and assessment of assessee's sum of Rs.28 crores receivable by the assessee pursuant to arbitration award was affirmed as income"*, ultimately held that since the quantum addition does not survive, the protective assessment made in the year under consideration u/s143(3) of the Act cannot be sustained and the AO is directed to delete the same.

6. The Revenue Department being aggrieved is in appeal before us.

7. We have given thoughtful considerations to the peculiar facts and circumstances of the case and the rival contentions of the parties and the order dated 27.10.2023 whereby the Hon'ble Jurisdictional Bombay High Court has clearly held the amount of Rs.28 crores received by the assessee as per the arbitration award, not chargeable to tax. Though SLP has been filed by the Revenue Department against the order passed by the Hon'ble Jurisdictional Bombay High Court dated 27.10.2023 (supra), however, there is no stay against the said order. Accordingly, the impugned order does not require any interference as the same do not suffers from any perversity, impropriety and/or illegality.

8. In the result, the appeal filed by the Revenue Department stands dismissed.

Order pronounced in the open court on 31.07.2024.

**Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.