

Non-compete fee received under negative covenant is taxable w.e.f. 1-4-2003 only and not retrospectively

Summary – The High Court of Karnataka in a recent case of Prakash Ladhani, (the Assessee) held that since amendment in Finance Act, 2002 was not clarificatory but amendatory in nature, non-competition fee received under a negative covenant is taxable only with effect from 1-4-2003, and not retrospectively.

The Apex Court, in the case of *Guffic Chem (P.) Ltd. v. CIT* [\[2011\] 332 ITR 602](#), held that payment received as non-competition fee under a negative covenant was always treated as a capital receipt till the assessment year 2003-04. It is only *vide* the Finance Act, 2003, with effect from 1-4-2003, that the said capital receipt was made taxable.

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 become taxable only with effect from 1-4-2003. It is well settled that a tax liability cannot be created retrospectively.

In the case of *CIT v. K. Chandrakanth Kini* [\[2012\] 347 ITR 388 \(Kar.\)](#), it was held that the amendment brought about in 2002 with effect from 1-4-2003 is not clarificatory but amendatory. Therefore, when the said provision is held to be not clarificatory, but amendatory, it follows earlier to the said provision, the said amount was not taxable. The said provision was not inserted by way of clarification. It was introduced only by way of amendatory, and to tax such income with effect from 1-4-2003.

In the light of the aforesaid law declared by the Apex Court and this Court, the substantial question of law in these appeals is answered in favour of the assessee and against the revenue. Hence, there is no merit in these appeals.