(2000) 11 CAL CK 0008

Calcutta High Court

Case No: IT Appeal No. 276 of 2000 and G.A. No. 2682 of 2000 7 November 2000

Commissioner of Income Tax		APPELLANT
	Vs	
Kanoria Chemicals and Industries Ltd.		RESPONDENT

Date of Decision: Nov. 7, 2000

Acts Referred:

- Income Tax Act, 1961 - Section 260A, 41(2)

Citation: (2001) 165 CTR 35

Hon'ble Judges: Ranjan Kumar Mazumdar, J; Ajoy Nath Ray, J

Bench: Full Bench

Judgement

By the Court

We have heard the assessee, who opposed the department''s application for leave to appeal u/s 260A.

2. In our opinion, there are two main points involving the sums on which the department sought to appeal.

The first sum is Rs. 2,72, 110.

This sum represents the part of the insurance cover received by the assessee (the aggregate received being Rs. 74,28,849) which was in excess of the cost of fully damaged machinery.

This sum was offered to tax u/s 45 by the assessee but the assessee retracted its offer before the Tribunal.

The Tribunal accepted the assessee''s contention in that regard.

3. On the authority of the Vania Silk Mills (P) Ltd. Vs. Commissioner of Income Tax, Ahmedabad [OVERRULED], , it is a settled position that this amount cannot be

treated as a capital receipt in the hands of the assessee as there was no transfer of capital but the rights and property of the assessee merely got extinguished, somewhat ironically, by fire.

4. The second sum in relation to which the appeal is intended is Rs. 16,63,668. This represents a part of the receipt from the insurance company, in respect of partly damaged machinery, for the repair of which the assessee spent a sum of Rs. 4,58,170, but even after such expenditure, it had the balance of the sum of Rs. 16,63,000 and odd in its hands. The point was whether it could be taxed as a revenue receipt u/s 41(2), as it stood at the material time.

The said sub-section without the provision is quoted below :

"(2) Where any building machinery, plant or furniture which is owned by the assessee and which was or has been used for the purposes of business or profession is sold, discarded, demolished or destroyed and the money payable in respect of such building, machinery, plant or furniture, as the case may be, together with the amount of scrap value, if any, exceed the written down value, so much of the excess as does not exceed the difference between the actual cost and the written down value shall be chargeable to Income Tax as income of the business or profession of the previous year in which the moneys payable for the building, machinery, plant or furniture became due."

5. On almost exactly similar facts, the Supreme Court held in the The Commissioner of Income Tax, Andhra Pradesh, Hyderabad Vs. Sirpur Paper Mills Ltd., Hyderabad, that section 41(2) was not applicable.

In that case the respondent- assessee had received from the insurance company for fire loss of Rs. 9,41 lakhs approximately it spent Rs. 1.58 lakh approximately, for restoration of the building. The Supreme Court held that the balance of Rs. 7.03 lakh approximately was not chargeable u/s 41(2), because, according to the Supreme Court, it could have no application to a case where the plant or machinery was merely damaged (and not destroyed), and by repairing, the damaged plant or machinery was restored to working condition.

6. Therefore, there is no question of law which survives for decision by the High Court in regard to the said sum of Rs. 16,00,000 and odd either.

Accordingly, leave to appeal u/s 260A is refused. The application is rejected. The questions about the comparatively small sums regarding entertainment are, in our opinion, matters of fact and not matters of law.

The further questions framed on behalf of the department be kept on record countersigned by the court officer.