(2007) 05 AHC CK 0364

In the Allahabad High Court

Case No : IT Appeal No. 100 of 1999

Chandra Talkies APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 15-05-2007

Acts Referred:
Income Tax Act, 1961 — Section 260A

Citation : (2007) 05 AHC CK 0364

Hon'ble Judges : R.K. Agrawal, J;Bharati Sapru, J

Bench : Division Bench

Advocate : Krishna Agrawal, for the Appellant; R.K. Upadhyaya, for the Respondent

Final Decision : Allowed

Judgement

1. The present appeal filed u/s 260A of the income tax Act, 1961 by the assessee has been admitted by this Court vide order dated 7-8-2000 on the following substantial question of law:- (i) Whether on the facts and in the circumstances of the case, the Tribunal is legally justified in treating the grant in aid under the government order dated 21-7-1986 as a revenue receipt and the income of the appellant inasmuch as, under the government order, the said grant-in-aid was provided to promote the construction of Cinema building was connected with the construction of Cinema buildings.?

The appeal relates to the assessment year 1990-91.

2. Briefly stated facts giving rise to the present appeal are as follows:-

The assessee had constructed a cinema in a rural area having population of less than 1 lac. In terms of a scheme formed by the State Government, entertainment tax realised and paid by the assessee during the year under consideration amounting to Rs. 3,26,622 was reimbursed to it. The amount was credited to the personal accounts of the partners. The contention of the assessee before the Assessing Officer was that the amount was not a revenue receipt but it was not accepted by the Assessing Officer who assessed it as income of the assessee. The claim was upheld in first appeal.

3. Feeling aggrieved, the revenue preferred an appeal before the Tribunal which was allowed the appeal.

4. We have heard Shri Krishna Agrawal, learned counsel for the appellant and Shri R.K. Upadhyaya, learned Standing Counsel for the revenue.

5. We find that the controversy raised is clearly covered by the division Bench of this Court in the case of Kalpana Palace Vs. Commissioner of Income Tax, wherein this Court has held that grant in aid given for the construction of Cinema Hall was a capital receipt.

6. Respectfully following the aforesaid decision, we are of the considered opinion that the grant in aid received by the appellant is to be treated as capital receipt and the Tribunal''s view cannot be treated as correct. The appeal succeeds and is allowed.

