**(1993) 01 BOM CK 0028**

**In the Bombay High Court**

**Case No :** Income-tax Reference No. 460 of 1978

Commissioner of Income Tax APPELLANT

Vs

Jaydwar Textiles RESPONDENT

**Date of Decision :** 29-01-1993

**Acts Referred:**
Contract Act, 1872 — Section 73
Income Tax Act, 1961 — Section 43, 43(5)

**Citation :** (1993) 202 ITR 569

**Hon'ble Judges :** U.T. Shah, J;B.P. Saraf, J

**Bench :** Division Bench

**Advocate :** G.S. Jetley, for the Appellant;

## Judgement

Dr. B.P. Saraf J.

1. By this reference u/s 256(1) of the Income Tax Act, 1961, made at the instance of the Revenue, the following question has been referred to us for opinion by the Income Tax Appellate Tribunal :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the contract with Jam Manufacturing Co. Ltd. and the other contract with Sayaji Mills No. 2 resulting in the payment of compensation did not amount to a speculative transactions and in directing the allowance the allowance of the loss of Rs. 26,943 as a business loss ?"

2. From the statement of the case, it is clear that the amount paid in this case by the assessee was on account of the compensation for breach of contract, and that being so, we find that it would not amount to a speculative transaction within the meaning of section 43(5) of the Income Tax Act, 1961.

3. In view of the judgment of the Supreme Court in Commissioner of Income Tax, Bombay City-III Vs. Shantilal P. Ltd., , while interpreting clause (5) of section 43 of the Act, the Supreme Court, in the above case, has held as under (at page 60) :

 

"Is a contract for the purchase or sale of any commodity settled when no actual delivery or transfer of the commodity is effected, and instead, compensation is awarded under an arbitration award as damages for the breach of the contract ? A contract can be said to settled if instead of effecting the delivery or transfer of the commodity envisaged by the contract the promise, in terms of section 63 of the Contract Act, accepts, instead of it, any satisfaction which he think fit. It is quite another matter where instead of such acceptance the parties raise a dispute and no agreement can be reached for a discharge of the contract. There is a breach of the contract and by virtue of section 73 of the Contract Act the party suffering by such breach becomes entitled to received from the party who broke the contract compensation for any loss or damage caused to them thereby. There is no reason why the sense conveyed by law relating to contracts should not be imported into the definition of ''speculative transaction''. The award of damages for breach of a contract is not the same thing as a party to the contract accepting satisfaction of the contract otherwise then in accordance with the original terms thereof. It may be that in a general sense the layman would understand that the contract must be regarded as settled when damages are paid by way of compensation for its breach. What is really settled by the award of such damages and their acceptance by the aggrieved party is the dispute between the parties. The law, however, speaks of a settlement of the contract, and a contract is settled when it is either performed or the promise dispenses with or remits, wholly or in part, the performance of the promise made to him or accepts instead of it any satisfaction which he thinks fit. We are concerned with the sense of law, and it is that sense which must prevail in clause (5) of section 43. Accordingly, we hold that a transaction cannot be described as a ''speculative transaction'' within the meaning of clause (5) of section 43 of the Income Tax Act, 1961, where there is a breach of the contract and on a dispute between the parties damages are awards as compensation by an arbitration award."

4. In view of the above judgment of the Supreme Court, we answer the question referred to us in the affirmative that is in favour of the assessee and against the Revenue.

5. No order as to costs.

 