(1998) 01 DEL CK 0089

In the Delhi High Court

Case No : Income Tax R. No''s. 242 and 243 of 1989

Commissioner of Income Tax APPELLANT

Vs

Smarts (P.) Ltd. RESPONDENT

Date of Decision : 12-01-1998

Acts Referred:
Income Tax Act, 1961 — Section 2(24), 28

Citation : (1998) 233 ITR 243

Hon'ble Judges : R.C. Lahoti, J;Dalveer Bhandari, J

Bench : Division Bench

Advocate : Sanjiv Khanna and Prem Lata Bansal, for the Appellant; S.K. Aggarwal, for the Respondent

Judgement

1. These are two references u/s 256(1) of the Income Tax Act, 1961, made at the instance of the Revenue, arising out of the assessment years 1982-83 and 1983-84, seeking the opinion of the High Court on the following question of law :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that cash compensatory support which was declared by the assessed as a trading receipt, was not taxable by following the decision of the Income Tax Appellate Tribunal in the case of Gedore Tools which has not been accepted by the Department ?"

2. The Finance Act, 1990, has incorporated Clause (iiib) in Section 28 and Clause (vb) in Section 2(24) of the Income Tax Act, 1961, the effect whereof is that cash assistance (by whatever name called) received or receivable by any person against exports under any scheme of the Government of India is included in income chargeable to tax under the head "Profits and gains of business or profession". This amendment has been given retrospective effect from April 1, 1967, and hence would apply to the assessment years 1982-83 and 1983-84 also. In view of this amendment it has to be held that the Tribunal was not right in holding that the amount received as cash compensatory support was not taxable income.

3. For the foregoing reasons, the question is answered in the negative, i.e., in favor of the Revenue and against the assessee.

