(2008) 01 AHC CK 0035

In the Allahabad High Court

Sharda Chitra Mandir APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 22-01-2008

Acts Referred:

Citation : (2008) 301 ITR 230

Hon'ble Judges : Sushil Harkauli, J;Sudhir Agarwal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The question of law on which this appeal has been admitted is as follows:

Whether, on the facts and circumstances of the case, the Income Tax Appellate Tribunal was legally justified in holding that the grant-in-aid of Rs. 6,07,788.94 received by the appellant under the scheme of the State Government, introduced with the object to promote the construction of new and permanent cinema halls in backward areas as per the Government policy dated July 21, 1986, as revenue receipt rather than capital receipt in the hands of the assessee

2. An identical question was considered by a Division Bench of this Court in the case of Kalpana Palace Vs. Commissioner of Income Tax, , and answered in favour of the assessee by holding the subsidy to be a capital receipt and not a revenue receipt. On the facts we do not think that the present case to be different than the case of the Kalpana Palace Vs. Commissioner of Income Tax,

3. Although, learned standing counsel for the Income Tax Department has submitted that because the subsidy is post-construction, therefore, it should be treated not as capital receipt but as revenue receipt but we find that all these aspects have already been taken into consideration by a Division Bench of this Court in the case of Kalpana Palace Vs. Commissioner of Income Tax,

It has not been shown to us that the Department has not accepted the law shown in the case of Kalpana Palace Vs. Commissioner of Income Tax, and has carried the matter higher to the Supreme Court.

4. Considering all these facts and circumstances, we allow the present appeal also holding that for the assessment year 1992-93, the money received by the appellant-assessee under the State Government Scheme intended to promote construction of cinema theatres in backward areas will be treated to be capital receipt and not revenue receipt. The appeal is allowed as above.

