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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 25th April, 2018

\+ ITA 235/2017

\+ ITA 236/2017

PRINCIPAL COMMISSIONER OF INCOME TAX-(C)-2 ..... Appellant

Through Mr.Sanjay Kumar and Mr.Rahul Chaudhary, Standing Counsels.

versus

M/S AEREN R INFRSTRUCTURE LTD. ..... Respondent

Through Mr.Inder Paul Bansal and Mr.Vivek Bansal, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE VINOD GOEL

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

1 Revenue's appeals in these two cases question an order of the ITAT. The issue concerns the treatment of damages and compensation awarded to the assessee. The Assessment Officer (AO) rejected the assessee's claim that these were towards capital receipts and ruled that they have fallen in the revenue stream. The CIT(A) rejected the assessee's appeal.

2 The facts are that the assessee engages itself in the business of real estate and had entered into a consortium agreement with its associates which defines the role, rights and responsibilities. This consortium entered into an agreement to sell with one JMA Buildcom Private Limited for purchase of 10 acres of land for a consideration of Rs.15 crores. The seller JMA Buildcom defaulted in its commitment within the prescribed and extended time limit. Ultimately, upon parties resorting to the Dispute Settlement Arbitration; a settlement was arrived at and an award was made based upon the parties' eventual settlement. The amount received by the assessee as a part of its entitlement (as consortium) was credited in its books of accounts as a capital stream. The AO and the CIT(A) held that the amounts were revenue in nature as the land would have been part of the stock-in-trade. The ITAT in its judgment after noticing the Supreme Court's judgment in *Universal Radiators Vs. Commissioner of Income Tax* [1993] 201 ITR 800(SC) held that in the facts of this case, the amount which was intended to be ultimately used as stock-in-trade purposes were immobile and sterilised, hence rendered non-offerable and therefore when received, as part of the arbitration award, fell into the capital stream. The relevant discussion in the impugned order of the ITAT is as follows:-

> *"It was damaged for non-performance of the contractual obligation by the AIK. It was contended that the authorities below while deciding the issue against the assessee have not appreciated the injury caused to the profit making apparatus and that the knowhow was foundation of the business of the assessee. Appreciating*

the same, huge compensation was awarded by the arbitrator. The basis of award remained the lost profit due to non-supply of the knowhow and not on loss of profit and that newly installed machinery in absence of supply of knowhow have gone completely wasted. Reliance was placed on several decisions. After dealing with the issue in detail, the ITAT has decided the issue in favour of the assessee. When we examine the facts of the present case in view of the above cited decisions of Pune Bench of the ITAT, we find that in the present case before us also the injury was caused to the profit making apparatus as the land which was profit making apparatus for the assessee was not supplied by JMA Buildcom (P) Ltd. as per the agreement entered into between the assessee and associates, and JMA Buildcom (P) Ltd. Appreciating the same, compensation was awarded in the arbitration proceedings initiated against JMA Buildcom (P) Ltd. In other words, the basis of award remained the lost profit due to non-supply of the land i.e. profit making apparatus and not on loss of profit. We thus find that the only inference can be drawn is that the compensation received by way of reward due to non-supply of land by JMA Buildcom (P) Ltd. under the agreement was capital receipt. We hold as such. The ground No.2 is accordingly allowed. In view of this finding, the remaining grounds 5,6 7 and 9 have become academic only and these grounds are accordingly disposed off."

3 The judgment in *Universal Radiators* *(supra)* pertinently examines both situations first, where a direct link exists between the products or the ultimate purpose which the assessee intends to put the

equivalent and second, expanding the amounts and what is the eventual income on one hand, and on the other hand, conclusions on the stock-in-trade as well. The relevant observations are extracted as follows:

> *"The assessee carried on business of manufacturing radiators and not ingots. They were imported to be converted into strips and sheets at Bombay. The link which could create direct relationship between the finished goods and raw material was snapped even before it reached Bombay. Payment made for loss of such goods did not bear any nexus with assessee's business. May be that if it would have reached, it could have been after conversion into strips and sheets used as raw material. But so long as it did not reach Bombay and was not converted into raw material, the connection it bore with the assessee's business was remote. And any payment made in respect of it could not be said to accrue from business. In Strong & Co. of Ramsey Ltd. v. Woodifield (Surveyor of Taxes) 5 TC 215, a converse case where the assessee claimed deduction of certain payments made to a customer, for the injury caused to him by falling off a chimney due to the assessee's servant's negligence, ..."*
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> ....
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> *8. Even assuming it was stock-in-trade, it was held by this Court in Canara Bank Ltd.'s case (supra) that stock-in-trade, if it gets blocked and sterilised and no trading activity could be carried with it, then it ceased to be stock-in-trade, and any devaluation surplus arising on such capital due to exchange rate would be capital and not revenue. Applying the ratio of this case, the copper*

ingots, which even if assumed to be stock-in-trade, were blocked and sterilised due to hostilities between India and Pakistan, and, therefore, it ceased to be stock-in-trade and any surplus arising due to exchange ratio in the circumstances was capital receipt only."

4 Similar observations were made by the Supreme Court in *Commissioner of Income Tax vs. Bombay Burmah Trading Corpn.* [1986] 161 ITR 386 (SC); in an earlier point of time; are extracted as follows:-

"It is, therefore, necessary as mentioned hereinbefore to examine whether the acquisition of forest [leases by assessee were acquisitions of capital assets. Though, we will refer to some of the decisions to which our attention was drawn and which were referred to by the High Court, it is well to bear in mind the basic principles. These are; if there was any capital asset, and if there was any payment made for the acquisition of that capital asset, such payment would amount to a capital payment in the hands of the payee. Secondly, if any payment was made for sterilization of the very source of profit-making apparatus of the assessee, or a capital asset, then that would also amount to a capital receipt in the hands of the recipient. On the other hand if forest leases were merely stock-in-trade and payments were made for taking over the stock-in-trade, then no question of capital receipt comes. The sum would represent payments of revenue nature or trading receipts. Whether in a particular case, for the contracts of the type with which we are concerned, payments were capital receipts or not would depend upon the facts and circumstances of the case. In this

connection it is important to bear in mind that normally in trade there are two types of capital, one circulating capital and the other fixed capital. Fixed capital is what the owner turns to profit by keeping it in his own possession; circulating capital is what he makes profit by parting with it and letting it change hands. Therefore, circulating capital is capital which is turned over and in the process being turned over, yields profits or loss. It is well settled as the high Court observed in the judgment under appeal that what is capital assets in the hands of one person may be trading assets in the hands of the other. The determining factor is the nature of the trade in which the asset was employed. Compensation received for immobilisation, sterilization, destruction or loss, total or partial of a capital asset would be capital receipt. If a sum represented profit in a new form then that was income but where the agreement related to the structure of assessee's profit-making apparatus and affect the conduct of the business, the sums received for cancellation or variation of such agreement would be a capital receipt."

5 In the present case too, the purpose of the ultimate use of the assessee's land when acquired was rendered irrelevant on account of the seller/JMA Buildcom Private Ltd defaulting in its commitment. This rendered the amount expanded by the assessee immobile. The eventual receipt of the amounts determined as compensation/damages, therefore, clearly fell into the capital stream and not revenue as was contended by the Revenue/appellant in this case.

6 In the circumstances, no question of law arises because the findings of the ITAT are well reasoned and based upon appreciation on the point of law.

7 The appeals are consequently dismissed.

S. RAVINDRA BHAT, J

VINOD GOEL, J

APRIL 25, 2018
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