

## LATEST SUPREME COURT 6 TH JULY 2009 RULING IN NECTAR BEVERAGES CASE

Supreme Court on Section 41(1) in Nectar case:

"

". . According to the Department, notwithstanding, the deletion of Section 41(2), since the assessee had obtained the benefit of depreciation in the earlier years as allowance or deduction in respect of expenditure incurred by it when it bought bottles and crates, on recoupment in the assessment years in question, such recoupment was liable to be taxed as deemed income under Section 41(1). We do not find merit in the argument of the Department. Prior to 1.4.1988, Section 41(1) and Section 41(2), both, existed on the statute book. Section 41(2) specifically brought to tax the balancing charge as a deemed income under the 1961 Act. It stated that where any plant owned by the assessee and used for business purposes was sold, discarded or destroyed and the moneys payable in respect of such plant exceeded the written down value, then, so much of the surplus which did not exceed the difference between the actual and the written down value was made chargeable to tax as business income of the previous year in which moneys payable for the plant became due. In other words, as stated above, Section 41(2) made the balancing charge taxable as business income. In our view, if the argument of the Department herein of reading the balancing charge under Section 41(2) into Section 41(1) was to be accepted then it was not necessary for Parliament to enact Section 41(2) in the first instance. In that event, Section 41(1) alone would have sufficed. In our view, Section 41(1), Section 41(2), Section 41(3) and Section 41(4) operated in different spheres. One more aspect needs to be highlighted. Each of the sub-sections to Section 41 deal With different and distinct circumstances. For example, Section 41(1) deals with Recoupment of trading liability. Section 41(2) dealt with the balancing charge. Section 41(3) specifically deals with balancing charge in respect of assets relating to scientific research whereas Section 41(4) deals with recovery of bad debts earlier allowed. Therefore, each of the sub-sections deal with different and distinct topics and one cannot read recoupment under one sub-section into another...."