

Marybong And Kyel Tea Industries Ltd.

Vs

Commissioner of Income-Tax.

Civil Appeals Nos. 3909 And 3910 Of 1983, Civil Appeal No. 3909 Of 1983 Was From The Judgment And Order Dated December 7, 1979, Of The Calcutta High Court In I.T.R. No. 409 Of 1974. The Decision Of The High Court Is Reported As Marybong And Kyel Tea Estates Ltd. V. Cit [1981] 129 Itr 661 (Cal)

(S. C. Agarwal, K. S. Paripoornan JJ)

13.02.1997

JUDGMENT

In these appeals, the appellants (assesseees) had received compensation from the insurers under policies for insurance against fire and the question that was referred for the opinion of the High Court (see [1981] 129 ITR 661) was whether there was a "transfer" as defined in section 2(47) of the Income-tax Act, 1961, and the excess sum of compensation after deducting the original cost of the assets destroyed by fire had been properly brought to tax as capital gains under section 45 of the Income-tax Act, 1961. By the impugned judgment in Civil Appeal No. 3909 of 1983, the Calcutta High Court has answered the said question against the assessee and has placed reliance on the decision of the Gujarat High Court in CIT v. Vania Silk Mill (P.) Ltd. [1977] 107 ITR 300. The said decision in Civil Appeal No. 3909 of 1983 was followed by the said High Court in the judgment which is under challenge in Civil Appeal No. 3910 of 1983. The decision of the Gujarat High Court in CIT v. Vania Silk Mills (P.) Ltd. [1977] 107 ITR 300 came up in appeal before this court and has been reversed in Vania Silk Mills P. Ltd. v. CIT [1991] 191 ITR 647, wherein it has been held that in cases where an insurance company pays for the total loss or damage of the property and takes over the property or whatever is left of it there is no transfer for the purpose of capital gain under section 45 of the Income-tax Act. This matter is thus fully covered by the said decision of this court reported in Vania Silk Mills P. Ltd. v. CIT [1991] 191 ITR 647. For the reasons given in the said judgment, the appeals are allowed and the question referred in both the cases is answered in favour of the assessee and against the Revenue. No order as to costs.