



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

% Judgment delivered on: 25.11.2008

+ **ITA 1313/2008**

**COMMISSIONER OF INCOME TAX** ... Appellant

- versus -

**SHRI SANJIV MISHRA** ... Respondent

**Advocates who appeared in this case:**

For the Appellant : Ms Prem Lata Bansal with Mr Mohan Prakash Gupta and  
Ms Anshul Sharma

For the Respondent : None

**CORAM:-**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED**

**HON'BLE MR JUSTICE RAJIV SHAKDHER**

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

**BADAR DURREZ AHMED, J (ORAL)**

1. This appeal is from the order dated 31.03.2008 passed by the Income-tax Appellate Tribunal in ITA No. 3834/Del/04 relating to the assessment year 1997-98. The only question that had been raised before the tribunal by the revenue in its appeal against the order passed by the Commissioner of Income tax (Appeals) was that the letter had



erred in deleting the addition of Rs 35,07,000/- by treating the same as a capital receipt. The only facts that need to be noted are that the assessee entered into an agreement on 14.10.1994 which contained a negative covenant that the assessee could not, directly or indirectly, without the prior written consent of M/s Intron Ltd (in which company the assessee was working), establish or associate himself in a business in India including that for the design, manufacture, marketing, sale, import or export of specified household appliances. It was also agreed that the assessee shall not compete in any manner whatsoever with the business of Intron Limited or of its associated companies. In consideration for entering into this negative covenant / non-compete agreement, the assessee was paid a sum of Rs 35,07,000/- by AB Electrolux. The issue arose as to whether this receipt was a capital receipt and was, therefore, exempt from tax ?

2. The tribunal has examined the issue in detail and following its decision in the cases of *Inder Kumar Khosla* and *Saurav Srivastava v. DCIT* held that the receipt was in the nature of a capital receipt and, therefore, was not exigible to income-tax. It may be noted that the tribunal's decision in the case of *Inder Kumar Khosla* was taken in appeal by the revenue before this court and the same was dismissed by this court holding that no substantial question of law arose for



consideration. This is recorded in paragraph 4 of the impugned order itself.

3. In any event, we find that this issue stands entirely covered by the decisions of this court in the cases of *Rohitasava Chand v. Commissioner of Income Tax* (ITA 611/2007 decided on 20.03.2008) and *CIT v. S. Dhanbal* (ITA No.1228/2007 decided 04.09.2008). In view of the ratio laid down in those decisions, the finding of the tribunal that the receipt was in the nature of a capital receipt, cannot be faulted. Consequently, we find that no substantial question of law arises for our consideration.

The appeal is dismissed.

**BADAR DURREZ AHMED, J**

**RAJIV SHAKDHER, J**

**November 25, 2008**

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