

**(1979) 11 DEL CK 0036**

**In the Delhi High Court**

**Case No : Income-tax Reference No. 7 of 1972**

Fabindia

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

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**Date of Decision : 28-11-1979**

**Acts Referred:**

**Citation : (1981) 130 ITR 143**

**Hon'ble Judges : S. Ranganathan, J;D.R. Khanna, J**

**Bench : Division Bench**

**Advocate : Bishamber Lal, for the Appellant; M.L. Verma and S. Mukherjee, for the Respondent**

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## **Judgement**

1. The facts leading to this reference u/s 256(1) of the I.T. Act, 1961, can be briefly stated. The assessed is a foreign incorporated company doing business in cloth. The assessment year in question is the year 1967-68 and the corresponding previous year is the year ended on December 31, 1966. The assessed was exporting cloth to England and America. It exported goods valued at ₹ 723 to England and \$ 1,561 to the United States of America before 6th June, 1966. On that date, the Indian rupee was devalued. The result was that the company received in terms of rupees a sum of Rs. 26,757 as the price of the goods sold by it instead of Rs. 16,998 which it would have received had there been no devaluation. The assessed claimed before the ITO and the AAC and the Appellate Tribunal that the excess amount realised by it was a capital receipt, but the ITO treated the excess receipt as business profit. The Tribunal observed that the surplus or excess was an integral part of the sale transactions which was a routine day to day operation of the carrying on of the assessed's business. It had nothing to do with the permanent framework or the fixed apparatus or the structure of the assessed's business. The amount was, Therefore, held to have been rightly included as business profit in the hands of the assessed.

2. Thereafter, at the instance of the assessed, the following question of law has been referred to us for decision :

"Whether, on the facts and in the circumstances of the case, the surplus of Rs. 9,758 realised by the assessed as a result of devaluation of the Indian rupee was a business profit or a capital gain ?"

3. It appears to us that the answer given by the Tribunal is the only answer that can be given on the facts and circumstances of the present case. The excess amount received by the assessed was the excess price received by it in respect of the sale of its stock-in-trade. It was an integral part of the routine operations of the assessed's business. It is not the assessed's case that this amount had been segregated or that it had been sterilised or utilised in any other manner such as, for example, for capital investment or otherwise. Recently, in the case of *Sutlej Cotton Mills Limited Vs. Commissioner of Income Tax, Calcutta*, , the Supreme Court, after reviewing the earlier decisions, has summarised the position thus (p. 13):

"The law is well settled that where profit or loss arises to an assessed on account of appreciation or depreciation in the value of foreign currency held by it, on conversion into another currency, such profit or loss would ordinarily be trading profit or loss if the foreign-currency is held by the assessed on revenue account or as a trading asset or as part of circulating capital embarked in the business."

4. The Tribunal, Therefore, came to the right conclusion. Shri Bishamber Lal, counsel for the assessed, invited our attention to the decision of the Kerala High Court in *Commissioner of Income Tax Vs. Union Engineering Works*, . In that case, the assessed-firm which carried on business of manufacturing and selling tea chest fittings and battery covers imported curtain raw material which were found to be in damaged condition. The goods had been insured with an insurance company. The assessed entered into an agreement with the insurer whereby it was agreed to accept the rusty sheets at a discount and, according to the agreement, the insurer issued a cheque drawn in favor of the assessed on a bank in London which the assessed received on May 26, 1966. But a few days thereafter on June 6, 1966, the Indian rupee was devalued and the assessed received an amount of Rs. 13,455.75 in excess of what it would have got if the amount had been realised immediately on the receipt of the cheque. The Kerala High Court held that the amount settled with the insurer did not include any excess profit and the profit that arose was wholly due to devaluation. We do not think that this decision is of any help to Mr. Bishamber Lal. The Kerala High Court has in this judgment referred to its two earlier decisions in *M. Shamsuddin and Co. Vs. Commissioner of Income Tax*, and in UK: case of *Bank of Cochin Ltd. Vs. Commissioner of Income Tax*, . *Shamshuddin's* case directly applies here. In that case, the amount received represented the sale consideration of the goods in respect of which the assessed was carrying on a trade and the Kerala High Court held that the excess received by the assessed was a receipt arising from business and consequently a trading receipt. Similarly, in the case of *Bank of Cochin*, the bank which was dealing in foreign exchange purchased cheques, demand orders and other documents and in the process made an excess

realisation on devaluation. That was also held to be part of the trading receipts of the assessed. The case of the present assessed is on all fours with those considered by the Kerala High Court in Shamshuddin's case.

5. We, Therefore, answer the "question referred to us by saying that the amount of Rs. 9,758 was a business profit which was rightly assessed to tax. In the circumstances, however, we make no order as to costs.