
(1978) 09 KAR CK 0019

In the Karnataka High Court

Case No : Income Tax R.C. No. 128 of 129 of 1975

Ibcon P. Ltd.

APPELLANT

Vs

Commissioner of Income Tax, Karnataka

RESPONDENT

Date of Decision : 11-09-1978

Acts Referred:

Income Tax Act, 1922 — Section 4 (3) (vii)

Citation : (1979) 119 ITR 519

Hon'ble Judges : D.M. Chandrashekhar, C.J.; E.S. Venkataramaiah, J

Bench : Division Bench

Advocate : V.S. Kumar, for the Appellant; S.R. Rajasekharamurthy, for the Respondent

Judgement

D.M. Chandrasekhar, C.J.—These two references were made by the Income Tax Appellate Tribunal, Bangalore Bench (hereinafter referred to as "the Tribunal"), at the instance of the assessee. The questions of law referred therein are practically identical.

2. The question of law referred in I. T. R. C. No. 128 of 1975 reads :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the surplus of Rs. 1,00,998 realised by the applicant consequent on the devaluation of the Indian rupee on June 6, 1966, was not on capital account as claimed by the applicant but a revenue receipt taxable in the assessment year 1967-6 ?"

3. The question of law referred in I. T. R. C. No. 129 of 1975 reads :

"Whether, on the facts and in the circumstances in the case, the Tribunal was right in holding that the surplus of Rs. 34,082 realised by the applicant consequent on the devaluation of the Indian rupee on June 6, 1966, was not on capital account as claimed by the applicant but a revenue receipt taxable in the assessment year 1969-7 ?"

4. For the purpose of these references, the material facts and these : The assessee is a private limited company carrying on the profession of technical consultants in India and Sri Lanka. For technical advice given in Sri Lanka, the assessee received fees in the currency of that country. The assessee was following the mercantile system of accounting. The relevant assessment years are 1967-68 and 1969-70 for which the accounting years are from September 1, 1965, to August 31, 1966, and from September 1, 1967, to August 31, 1968, respectively. The assessee had kept in a bank in that country its earnings and was transferring them to this country from time to time. On June 6, 1966, the Indian rupee was devalued in relation to the rupee of Sri Lanka. After such devaluation, the assessee transferred its funds during these two accounting years. Due to such devaluation, the amounts so transferred appreciated resulting in profits of Rs. 1,00,998 and Rs. 34,082 in these two accounting years respectively. The ITO treated such profits as income in each of these two assessment year and subjected them to tax.

5. The assessee failed in its successive appeals to the AAC of Income Tax and the Tribunal.

6. Sri V. S. Kumar, learned counsel for the assessee, submitted that, since the assessee was following the mercantile system of accounting, the amounts so transferred had already been subject to tax as incomes in the years in which they accrued and before they were transferred to this country, that the funds so transferred were non stock-in-trade of the assessee's business, and hence the amounts so transferred should be regarded as capital, and that any accretion thereto due to devaluation of the Indian rupee, should be treated as capital gain and not as income and hence no tax could be levied on such profits realised by the assessee due to devaluation.

7. In support of his contention Sri Kumar strongly relied on the decision of the Madras High Court in ADDL. COMMISSIONER OF Income Tax, MADRAS-II Vs. CHETTINAD CORPORATION (P.) LTD., There, the profits realised by the assessee from its business in Sri Lanka could not be repatriated to India prior to June 6, 1966, due to the restriction placed by the Government of Sri Lanka for transfer of funds from that country to India. After the removal of such restrictions, the assessee transferred its funds to India and received larger amounts due to devaluation. It is in those circumstances that the Madras High Court held that the excess realised by the assessee, due to devaluation, was in the nature of capital gain and not income.

8. The above case is clearly distinguishable inasmuch as in the accounting years ending March 31, 1964, and March 31, 1965, the profits realised by the assessee therein could not be remitted to India and had been blocked. In the present cases, it has not been shown that there was any restriction for transfer of amounts earned in Sri Lanka to India.

9. Sri Kumar next relied on the decision of the Supreme Court in Commissioner

of Income Tax, Bombay City Vs. Tata Locomotive and Engineering Co., Ltd., . The facts of that case were briefly these : The assessee which was carrying on the business of manufacturing locomotives and locomotive boilers in India, was also acting as the selling agent for an American firm and in such agency business it had earned a commission \$36,123 which amount was paid in the U. S. A. with the sanction of the exchange control authorities. That sum had been retained in the U. S. A. for purchase of capital goods there. In the meanwhile, due to devaluation of pound sterling and with it the Indian rupee in relation to the American dollars, the said amount appreciated in terms of the Indian rupee and such profit was sought to be taxed as incidental to its business. The Supreme Court held that though originally the sum of \$ 36,123 was in the nature of revenue receipt under the agency, it became a capital asset of the assessee since that amount was retained in America with the sanction of the Reserve Bank of India to buy capital goods and that such purchase of capital goods was an independent transaction and any accretion to such amount was a capital gain.

10. We do not see how the above decision can be of any assistance to the assessee in the present cases. Merely because the assessee chose to retain in Sri Lanka the profits earned therein and to transfer them to India subsequently, such profits did not get transformed into capital. That such profits had already been subjected to tax in India before they were so transferred to India, is also an irrelevant circumstance to ascertain whether they had become capital.

11. The facts of these cases are similar to those in Hindustan Aircraft Ltd. Vs. Commissioner of Income Tax, Mysore, There, the assessee which carried on business in assembling and overhauling different types of aircraft, held with its bank in America, dollars which were partly received from its with its customer for the repairs and overhaul done to their aircraft and partly out of the remittances made by the assessee. Such dollar holdings were utilised by it in the course of its business either for the payment of salaries to technicians employed in its factory in the U. S. A. or for purchasing spare parts. On account of devaluation of pound sterling and along with it the Indian rupee in relation to the American dollars, such dollar holding appreciated in terms of rupees. The profit due to such appreciation was treated as income and was subjected to tax. Such levy of tax was upheld by this court, on the ground that such profit arose from the assessee's business within the meaning of s. 4(3) (vii) of the Indian I. T. Act, 1922.

12. In view of the decision of this court in Hindustan Aircraft Ltd. Vs. Commissioner of Income Tax, Mysore, we answer the questions referred to us in the affirmative and in favour of the revenue and against the assessee.

13. Having regard to the circumstances of the case, we direct the parties to bear their own costs.