(2002) 04 DEL CK 0166

Delhi High Court

Case No: IT Ref. No''s. 258 to 261 of 1982 and 190, 228 and 229 of 1983 29 April 2002

Commissioner of Income Tax		APPELLANT
	Vs	
Quantas Airways Ltd.		RESPONDENT

Date of Decision: April 29, 2002

Citation: (2002) 175 CTR 98

Hon'ble Judges: S.B. Sinha, C.J; A.K. Sikri, J

Bench: Full Bench

Advocate: Sanjiv Khanna, R.C. Pandey, R.D. Jolly and Ms. Premlata Bansal, for the Revenue Anoop Sharma, for the assessee, for the Appellant;

Judgement

S. B. Sinha, C. J.

All these references made at the instance of the revenue in terms of sub-section (1) of section 256 of the Income Tax Act, 1961 (hereinafter referred to as, ''the Act''), by the Income Tax Appellate Tribunal, Delhi Bench ''B'', New Delhi (hereinafter referred to as ''the Tribunal''), involving common questions of law and fact were taken up for hearing together and are being disposed of by this common judgment.

2. The questions, which have been referred for opinion of this court, are as follows :

"1. Whether on the facts and in the circumstances of the case, the Tribunal is correct in law in upholding the order of the Commissioner (Appeals) in excluding the profits arising from the sale of capital assets located outside India from the word ''income''?

2. Whether on the facts and in the circumstances of the case, the Tribunal is correct in law in upholding the order of Commissioner (Appeals) that the profit due to change in exchange rate of the Australian dollars is a capital gain?"

3. However, in IT Ref. No. 228 of 1983, only the second question and in IT Ref. No. 229 of 1983, only the first question has been referred to this court for its opinion.

4. The factual matrix of the matter is not in dispute. The assessed is a non-resident company incorporated in Australia. Its shares are owned by the Government of Australia and the assessed carries on worldwide air-transport business and maintains the centralized accounts in Australia. It had sold the aircrafts, which were its capital asset. Such sales are effected outside India.

5. The question; which arises for consideration, is as to whether the sale of such capital assets would be ''income'' proportionately assessable in terms of the provisions of the Act ?

6. Although the Inspecting Assistant Commissioner held that the profits arising out of sale of capital assets would come within the purview of income at the hands of the assessed, the Commissioner (Appeals) and the Tribunal held otherwise.

7. Mr. Sanjiv Khanna, the learned counsel appearing on behalf of the revenue, would submit that having regard to the provisions contained in sub-section (2) of section 5 of the Act, such income would be deemed to be an income arising in India.

8. The learned counsel would urge that as in terms of the aforementioned provisions, the income derived by sale of capital assets would come within the net of assessment as the same accrued or arose or deemed to accrue or deemed to arise outside the territorial jurisdiction of India, in view of the legal fiction created and the same must be given its full effect.

9. The learned counsel would contended that the expression ''attributable to'' is of wide amplitude and in support of the said contention reliance has been placed on Cambay Electric Supply Industrial Co. Ltd. Vs. The Commissioner of Income Tax, Gujarat-II, Ahmedabad, and Commissioner of Income Tax, Karnataka Vs. Sterling Foods, Mangalore,

10. The learned counsel would contend that there does not exist any dispute that having regard to its worldwide network, the assessed had been having computation of worldwide profit and, thus, is liable to pay ''tax'' in terms of the Act.

11. The learned counsel would submit that having regard to the provisions contained in section 9 and rule 10(1) of the Income Tax Rules, 1962 (hereinafter referred to as ''the Rules''), the sale of the capital assets would also come within the concept ''income'' inasmuch as capital gains also come within the purview thereof. Reliance in this connection has been placed on Union of India and another etc. etc. Vs. A. Sanyasi Rao and other etc. etc., , Commissioner of Income Tax, Madras Vs. G.R. Karthikeyan, Father Epharam Vs. Commissioner of Income Tax, and Emil Webber Vs. Commissioner of Income Tax, V and M, Nagpur,

12. The learned counsel would contend that there cannot be any doubt whatsoever that the capital gains would be income within the meaning of section 9 of the Act, even if the sale of the capital assets of the assessed takes place outside India.

13. The learned counsel would argue that for the purpose of answering the question, a converse case may be taken into consideration inasmuch had the sale of the aircrafts took place in India, the proportionate income could have been assessed in Australia upon setting off the amount of tax paid in India Reliance in this connection has been placed on K.V.A.L.M. Ramanathan Chettiar by Lrs. Vs. Commissioner of Income Tax , Madras,

14. Mr. Anoop Sharma, the learned counsel appearing on behalf of the assessed, on the other hand, would point out that the capital assets of the respondent were purchased outside India.

15. The sale of such capital assets, the learned counsel would contend, being not connected with the business activity of the assessed and the transaction of sale and purchase of the capital assets having taken place outside India, no part of income can be said to have accrued within India and thus it has rightly been held by the Commissioner (Appeals) and the Tribunal to be not "income" arising in course of business in India.

16. The learned counsel would submit that in a case of this nature, section 9 of the Act will have no application. In support of the said contention, reliance has been placed on CIT v. Quantas Airways Ltd. (2001) 251 ITR 264 Commissioner of Income Tax, Punjab Vs. R.D. Aggarwal and Company,) Carborandum Co. Vs. Commissioner of Income Tax, Madras, and Commissioner of Income Tax, Andhra Pradesh Vs. Toshoku Ltd., Guntur and Others, .

17. On the second question, reliance has been placed by the learned counsel on CIT v. Tata Locomotive & Engineering Co. Ltd. (1960) 60 ITR 405 , Sutlej Cotton Mills Limited Vs. Commissioner of Income Tax, Calcutta, South India Shipping Corporation Ltd. Vs. Addl. Commissioner of Income Tax, and Commissioner of Income Tax, Gujarat Vs. Arvind Mills Ltd., .

18. Before adverting to the questions involved, we may notice the relevant provisions of the Act and the Rules, which are as under :

"Section 2 In this Act, unless the context otherwise requires,

....

(13) "business"" includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture;

(14) "Capital asset" means property of any kind held by an assessed, whether or not connected with his business or profession, but does not include :

(i) any stock-in-trade, consumable stores or raw materials held for the purposes of his business or profession;

(ii) personal effects, that is to say, movable property (including wearing apparel and furniture, but excluding jewellery) held for personal use by the assessed or any member of his family dependent on him.

....

(24) "income" includes :

(i) profits and gains;

....

(vi) any capital gains chargeable u/s 45;

Section 5. Scope of total income.(1) Subject to the provisions of this Act, the total income of any previous year of a person who is a resident includes all income from whatever source derived which :

(a) is received or is deemed to be received in India in such year by or on behalf of such person; or

(b) accrues or arises or is deemed to accrue or arise to him in India during such year; or

(c) accrues or arises to him outside India during such year:

Provided that in the case of a person not ordinarily resident in India within the meaning of sub-section (6) of section 6, the income which accrues or arises to him outside India shall not be so included unless it is derived from a business controlled in or a profession set up in India.

(2) Subject to the provisions of this Act, the total income of any previous year of a person who is a non-resident includes all income from whatever source derived which :

(a) is received or is deemed to be received in India in such year by or on behalf of such person; or

(b) accrues or arises or is deemed to accrue or arise to him in India during such year.

Explanation 1.Income accruing or arising outside India shall not be deemed to be received in India within the meaning of this section by reason only of the fact that it is taken into account in a balance-sheet prepared in India.

Explanation 2.For the removal of doubts, it is hereby declared that income which has been included in the total of a person on the basis that it has accrued or arisen or is deemed to have accrued or arisen to him shall not again be so included on the basis that it is received or deemed to be received by him in India.

Section 9. Income deemed to accrue or arise in India.(1) The following incomes shall be deemed to accrue or arise in India :

(i) all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through the transfer of a capital asset situated in India :

Explanation.For the purposes of this clause :

(a) in the case of a business of which all the operations are not carried out in India, the income of the business deemed under this clause to accrue or arise in India shall be only such part of the income as is reasonably attributable to the operations carried out in India;

(b) in the case of a non-resident, no income shall be deemed to accrue or arise in India to him through or from operations which are confined to the purchase of goods in India for the purpose of export;

(c) in the case of a non-resident, being a person engaged in the business of running a news agency or of publishing newspapers, magazines or journals, no income shall be deemed to accrue or arise in India to him through or from activities which are confined to the collection of news and views in India for transmission out of India;

(d) in the case of a non-resident being

(1) an individual who is not a citizen of India; or

(2) a firm which does not have any partner who is a citizen of India or who is resident in India; or

(3) a company which does not have any shareholder who is a citizen of India or who is resident in India, no income shall be deemed to accrue or arise in India to such individual firm or company through or from operations which are confined to the shooting of any cinematograph film in India;

Section 22. Income from house property.The annual value of property consisting of any buildings or lands appurtenant thereto of which the assessed is the owner, other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which are chargeable to Income Tax shall be chargeable to Income Tax under the head "income from house property".

Section 45. Capital gains.(1) Any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save as otherwise provided in sections 54, 54B, 54D, 54E, 54EA, 54EB, 54F, 54G and 54H, be chargeable to Income Tax under the head "Capital gains", and shall be deemed to be the income of the previous year in which the transfer took place."

"Rule 10. Determination of income in the case of non-residents.In any case in which the assessing officer is of opinion that the actual amount of the income accruing or

arising to any non-resident person whether directly or indirectly, through or from any business connection in India or through or from any property in India or through or from any asset or source of income in India or through or from any money lent at interest and brought into India in cash or in kind cannot be definitely ascertained, the amount of such income for the purposes of assessment to Income Tax may be calculated :

(i) at such percentage of the turnover so accruing or arising as the assessing officer may consider to be reasonable, or

(ii) on any amount which bears the same proportion to the total profits and gains of the business of such person with profits and gains being computed in accordance with the provisions of the Act, as the receipts so accruing or arising bear to the total receipts of the business, or

(iii) in such other manner as the assessing officer may deem suitable."

19. The expression ''income'' in terms of the interpretation clause as mentioned above in sub-section (24) of section 2 of the Act would include profits and gains and any capital gains chargeable u/s 45 of the Act.

20. Section 5 of the Act provides for the scope of the total income, but the said provisions are subject to other provisions of the Act, which would include sub-section (2) thereof.

21. In case of a non-resident, it would include all income from whatever source derived, which is received or is deemed to be received in India in such year by or on behalf of such person or accrue or arise or is deemed to accrue or arise to him in India during such year.

22. What would be the scope of the legal fiction created in terms of section 5 of the Act, as specified in section 9 of the Act ?

23. Such income, as noticed hereinbefore, must arise or accrue (i) from any business connection in India, or (b) from any property in India, or (c) from any asset or source of income in India, or (d) through the transfer of a capital asset situate in India. The income in question had not arisen from business connection in India or from any asset or source of income in India or through transfer of a capital asset situate in India.

24. The only question, Therefore, remains for consideration, is as to whether the purported ''income'' arises through or from any business connection in India.

25. The expression ''business connection'' has not been defined in the Act. In absence of any definition, the ordinary meaning of the said expression must be taken recourse to.

26. The meaning of expression "business", according to Collins Cobuild English Language Dictionary 1991 Edn., is as under :

"..... Business'' is work relating to the production, buying and selling of goods or services;

and/or

"Business'' is the activity of buying, selling or exchanging goods in deal with people or companies."

27. Rule 10(2) of the rules more or less uses the same expression as has been used in section 9 of the Act. The assessed carried on business of operating air-transport business. The business activity of the assessed for the purpose of the Act must be held to be confined to the transport of passengers.

28. Section 9(i) of the Act per se can be said to have any application in the instant case inasmuch as the answer to the question referred has to be made in terms of section 9 of the Act alone. The Explanation (a) appended to clause (i) of sub-section (1) of section 9 of the Act will not be of much significance inasmuch as the same is confined to a case where all operations of the business are carried out in India and only in that event, that part of income as is reasonably attributable to the operations carried out in India can be treated to be income arising in India. In that view of the matter, the meaning of expression "attributable to" is held to have a wide expression. Thus, the decision in Sterling Foods'' case (supra) cannot be said to have any application in the instant case.

Therein a question arose whether the assessed was entitled to use the import entitlements itself or sell the same to others and/or whether sale of such import entitlements would be profit and gain in the context of section 80HH of the Act and it was held that the expression "attributable to" would be of wider import. This court in not concerned with the question raised therein.

29. There cannot be any doubt that capital gain may be an income, but in our opinion, the same would have been so, if the transaction would have taken place either in India or through or from any property in India or from any asset or source of income in India or through the transfer of the capital asset situate in India.

30. The assessed only had some part of its business operation in India. Its capital assets have nothing to do with its business connections in India. The words ''business connection'' for the purpose of sections 5 and 9 of the Act must be kept confined to profits arising out of business. When an income accruing or arising from a business by reason of a legal fiction becomes assessable, it must be held that the same must be kept confined to receipts out of the business and not out of the sale of capital assets.

31. In R.D. Aggarwal & Co.''s case (supra), it has been held :

".....The expression "business connection" postulates a real and intimate relation between trading activity carried on outside the taxable territories and trading activity within the territories, the relation between the two contributing to the earning of income by the non-resident in his trading activity. In this case such a relation is absent."

32. In Carborandum Co.''s case (supra), it has been held :

"The High Court was wrong in its view that activities of the foreign personnel lent or deputed by the American company amounted to a business activity carried on by that company in the taxable territory. The finding of the Tribunal in that regard was specific and clear and was unassailable in the reference in question. The American company had made the services of the foreign personnel available to the Indian company outside the taxable territory. The latter took them as their employees, paid their salary and they worked under the direct control of the Indian company, The service rendered by the American company in that connection was wholly and solely rendered in the foreign territory. Even assuming however, that there was any business connection between the earning of the income in the shape of the technical fee by the American company and the affairs of the Indian company, yet no part of the activity or operation could be said to have been carried on by the American company in India. And in the absence of such a sustainable finding by the High Court the provisions of section 42, either of sub-section (1) or of sub-section (3), were not attracted at all."

33. Yet again in Toshoku Ltd. case (supra), the matter has been discussed in the following terms :

".....It is urged that the commission amounts should be treated as incomes deemed to have accrued or arisen in India as they, according to the department, had either accrued or arisen through and from the business connection in India that existed between the non-resident assessed and the statutory agent. This contention overlooks the effect of clause (a) of the Explanation to clause (i) of sub-section (1) of section 9 of the Act which provides that in the case of a business of which all the operations are not carried out in India, the income of the business deemed under that clause to accrue or arise in India shall be only such part of the income as is reasonably attributable to the operations carried out in India. If all such operations are carried out in India, the entire income accruing there from shall be deemed to have accrued in India. If, however, all the operations are not carried out in the taxable territories, the profits and gains of business deemed to accrue in India through and form business connection in India shall be only such profits and gains as are reasonably attributable to that part of the operations carried out in the taxable territories. If no operations of business are carried out in the taxable territories, it follows that the income accruing or arising abroad through or from any business connection in India cannot be deemed to accrue or arise in India (See Commissioner of Income Tax, Punjab Vs. R.D. Aggarwal and Company, and

Carborandum Co. Vs. Commissioner of Income Tax, Madras, , which are decided on the basis of section 42 of the Indian Income Tax Act, 1922, which corresponds to section 9(1)(i) of the Act."

34. In Quantas Airways Ltd.''s case (supra), a Division Bench of this court observed :

"..... For the purpose of determination of income in the case of non-residents, the modalities to be followed is percentage of turnover so accrued or arisen as the Income Tax Officer may consider to be reasonable or on any amount which bears the same proportion to the total profits and gains or the business of such person, as the receipt so accruing or arising bears to the total receipts of the business or in such other manner as the Income Tax Officer may deem suitable.

In the case at hand, there is no dispute that the assessed as well as the assessing authorities have gone by the proportion method, the income which has been treated as accruing or arising from the business carried out in India as an airliner. It has to be noted that no income can be said to have accrued or arisen, either directly or indirectly, either through or from any asset or source of income of India. It is not shown as to how the assessed had or was in receipt of any income through or from any money lent at interest and brought in India either in cash or in kind. assessed has also not received any income from any transfer of capital assets situate in India. The income of business which can be treated as deemed income u/s 9 must be one which has accrued or arisen in India and the same forms part of the income derived from business carried out in India.

35. Legal fiction, as is well known, should not be extended beyond its object and purport. It shall not be applied beyond the purpose for which it was created.

36. In D.K. Jain & Ors. etc. v. State of Haryana & Ors. 1995 LAB i C 722, it was observed that in the case of The Bengal Immunity Company Limited Vs. The State of Bihar and Others, , it was held :

"Whichever view is taken of the Explanation it should be limited to the purpose the Constitution makers had in view when they incorporated it in clause (1). It is quite obvious that it created a legal fiction. Legal fictions are created only for some definite purpose."

37. In Commissioner of Sales Tax, Uttar Pradesh Vs. The Modi Sugar Mills Ltd., , it was observed :

"A legal fiction must be limited to the purposes for which it has been created and cannot be extended beyond its legitimate field."

38. In Braithwaite and Co. (India) Ltd. Vs. The Employees'' State Insurance Corporation, , it was held :

"A legal fiction is adopted in law for a limited and definite purpose only and there is no justification for extending it beyond the purpose for which the legislature

adopted it."

39. It is now well-settled principles of law that a statute should be construed firstly having regard to the literal meaning, which can be assigned thereto. Having regard to the purport and object thereof, if the words "business connection in India" were wide enough to cover all transactions including transactions is capital assets, in our opinion, there was no reason for the Parliament to specifically include income (a) through or from any property in India, (b) through or from any asset or source of income from India; and (c) through or from sale of capital asset situate in India.

40. The very fact that in terms of section 9 of the Act, the transfer of capital asset situate in India has brought within the purview of the deemed income u/s 9 of the Act and rule 10(2) of the Rules, the intention of the Parliament was not to bring within its purview any income derived out of sale or purchase of a capital asset effected outside India.

41. In M/s. Dalmia Cement (Bharat) Ltd. Vs. M/s. Galaxy Traders and Agencies Ltd., , while interpreting section 38 of the Negotiable Instruments Act, it was held :

"3. The Act was enacted and section 138 thereof incorporated with a specified object of making a special provision by incorporating a strict liability so far as the cheque, a negotiable instrument, is concerned. The law relating to negotiable instruments is the law of commercial world legislated to facilitate the activities in trade and commerce making provision of giving sanctity to the instruments of credit which could be deemed to be convertible into money and easily passable from one person to another. In the absence of such instruments, including a cheque, the trade and commerce activities, in the present day world, are likely to be adversely affected as it is impracticable for the trading community to carry on with it the bulk of the currency in force. The negotiable instruments are in fact the instruments of credit being convertible on account of legality of being negotiated and are easily passable from one hand to another. To achieve the objectives of the Act, the legislature has, in its wisdom, thought it proper to make such provisions in the Act for conferring such privileges to the mercantile instruments contemplated under it and provide special penalties and procedure in case the obligations under the instruments are not discharged. The laws relating to the Act are, Therefore, required to be interpreted in the light of the objects intended to be achieved by it despite there being deviations from the general law and the procedure provided for the redressal of the grievances to the litigants. Efforts to defeat the objectives of law by resorting to innovative measures and methods are to be discouraged, lest it may affect the commercial and mercantile activities in a smooth and healthy mariner, ultimately affecting the economy of the country."

42. Furthermore, it is well known that in case of any doubt or dispute and if two interpretations are reasonably possible, the constructions, which would favor the asseesees and which has been acted and accepted by the revenue should be given

effect to. [See Birla Cement Works Vs. Central Board of Direct Taxes,

43. It is also well known that requirements in fiscal statutes are required to be strictly complied with. [See Excise Superintendent, Warangal Distt. Warangal and Ors. v. Deluxe Bar, Kazipet, Warangal and Ors., (2001) 9 SCC 497

44. Yet again in Reva Investment Pvt. Ltd. Vs. Commissioner of Gift Tax, Gujarat II, , it has been held :

"10. Ordinarily, a gift is a transfer of property without consideration; but for the purpose of the Act a transfer for inadequate consideration is to be deemed to be a gift u/s 4(1)(a). By the inclusive definition in section 2(xii) of the Act a "deemed gift" is also a gift. The provision of deemed gift in section 4(1)(a) is intended to bring within the purview of the tax such transactions, which are entered between the parties to evade the tax.

11. The question, which arises for determination in this case, is whether the transaction made by the assessed can be said to be a "deemed gift" u/s 4(1)(a) of the Act. For invoking the deeming provisions of section 4(1)(a) of the Act enquiries have to be made regarding(i) the existence of a "transfer of property", and (ii) the extent of consideration given i.e. whether the consideration is adequate. It is necessary for the assessing officer to show that the property has been transferred otherwise than for adequate consideration. The finding as to inadequacy of the consideration is the essential sine qua non for application of the provisions of "deemed gift". The provision is to be construed in a broad commercial sense and not in a narrow sense. In order to hold that a particular transfer is not for adequate consideration the difference between true value of the property transferred and the consideration that passed for the same must be appreciated in the context of the facts of the particular case. If the transaction involves transfer of certain property in lieu of certain other property received then the process of evaluation of the two items of property should be similar and on such evaluation if it is found that there is appreciable difference between the value of the two properties then the transaction will be taken as a "deemed gift" to the extent as provided in the section. It is to be found that the transaction was on inadequate consideration and the parties deliberately showed the valuation of the two properties as the same to evade tax. Such a conclusion cannot be drawn merely because according to the assessing officer there is some difference between the valuation of the property transferred and the consideration received."

45. In the aforementioned backdrop, the decisions cited by Mr. Sanjiv Khanna may be considered.

46. In A. Sanyasi Rao''s case (supra) and G.R. Karthikeyan''s case (supra), the Apex Court was considering the meaning of the word "income" in the context of Entry 82, List I of the 7th Schedule of the Constitution of India. Interpretation of an entry should be broad based is a well known concept, but the same would not having

regard to the specific provisions contained in the Act be brought into services for the purpose of construction word "income" used in other context.

47. In Father Epharam''s case (supra), a Division Bench of the Karnataka High Court was considering the meaning of the word "income" having regard to the scheme of sections 2(24), 4, and 10 of the Act. The question, which arose for consideration, was "receipts at the hands of the assessed were referable to his occupation or vocation or not" The said decision, Therefore, was rendered in the affirmative in fact situation obtaining therein and no dicta has been laid down therein, which has a direct nexus with the subject-matter of the present case.

48. In G.V.K. Industries Limited and Another Vs. Income Tax Officer and Another, a Division Bench of the Andhra Pradesh High Court was interpreting the provisions of clause (vii)(b) of sub-section (1) of section 9 of the Act, which shows that income by way of fees for technical services payable by a person, who is a resident, would be an income. In that case, the question arose as to whether the person residing in India has any business connection with it as a non-resident as an agent.

49. In K.V.A.L.M. Ramanathan Chettair''s case (supra), the assessed was doing money-lending business, although in Malaya as well as in India. Therein the Apex Court held that a sum of Rs. 1,92,816 had suffered double taxation, in this case, the question of set off does not arise.

50. In Commissioner of Income Tax Vs. M/s. Bharat Heavy Electricals Ltd., a Division Bench of this court was concerned with a question as to whether a particular expenditure is capital or revenue in nature. Thus, the same has no application in the case at hand.

51. For the reasons aforementioned, we are of the opinion that the first question must be answered in the affirmative, in favor of the assessed and against the revenue.

52. So far as the second question is concerned, having regard to the answer to the question No. 1, the same does not subsist.

53. The said question, however, is also covered in Tata Locomotive & Engineering Co. Ltd.''s case (supra), Sutlej Cotton Mills Ltd.''s case (supra), Arvind Mills Ltd.''s case (supra) and a recent decision of this court in Bharat Heavy Electricals Ltd.''s case (supra) therein the question, which arose for consideration, inter alia was :

"1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in upholding the deletion of the disallowance of Rs. 7,65,21,000 on account of additional liability on the charge of rupee-rouble parity ratio ?"

54. The aforesaid question was answered stating :

"……..Thus, the answer to the first question whether the additional liability which the assessed had incurred on account of change in the rupee-rouble parity ratio would necessarily depend on the answer to the question whether the additional liability pertains to the trading asset or capital asset. In the statement of the case, the Tribunal has stated that the fact that the claim in question related to the increase in the existing liabilities outstanding against the assessed in respect of the supply of material made by the USSR on deferred credit facility basis was not disputed. As noticed above, even the stand of the assessing officer was that even if the money was originally related to raw material inputs from the USSR but it changed its character when it was blocked under the deferred payment account, giving also an enduring advantage to the assessed. We find that the said findings, which are pure findings of fact, are not sought to be challenged as perverse in the proposed question. Therefore, in the present case, admittedly the initial liability arose on account of purchase of new material, a trading debt, and after it had arisen, nothing happened to divest it of the character of a trading debt. In this view of the matter, applying the principles of law adumbrated in Sutlej Cotton Mills Limited Vs. Commissioner of Income Tax, Calcutta, we are of the opinion that the Tribunal came to the correct conclusion that the additional liability incurred by the assessed on the change of the rupee-rouble parity ratio was allowable as a trading liability."

55. These references are accordingly disposed of without any order as to costs. IT Ref. No. 190 of 1983

S.B. Sinha, C.J.

This reference is disposed of in terms of the orders passed in IT Ref. No. 258 of 1982.

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