IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.390 OF 2001

The Commissioner of Income-tax....Appellant

Vs.

M/s.Asia Foundation & Constructions Ltd.Respondent

Mr. P.S. Sahadevan, for the Appellants.

Ms.Vissanji i/b. Mr.S.J. Mehta for the respondent

CORAM : F.I. REBELLO &
R.S. MOHITE, JJ.
DATED : 7TH JANUARY,2008

P.C.

. Revenue has preferred this Appeal against the order dated 12th March, 2001 passed in ITA No.2114/BOM/92 for the assessment year 1989-90. Along with that Appeal two other Appeals were also disposed of. The Revenue has preferred this appeal on the following question:-

"Whether on the facts and in the circumstances of the case & in law, the Tribunal was justified in holding that the loss arising on the sale of Units of UTI shown as investment in the balance sheet, was a business loss &not a capital loss?

2. After elaborate discussion as can be seen in para.23 the learned ITAT came to the conclusion that the object and sale of the unit was to enhance the working capital and not the fixed capital and as such enriching the working capital of the business in order to meet the current expenses and

payments in a normal incident of the business. After so recording and dealing with the issue of stock in trade held that the loss arising on the sale of units, therefore, amounts to a loss arising in the course of the business and incidental thereto.

3. These are purely findings of fact based on material which was available on record. The question of law as framed would not arise and consequently Appeal dismissed.

(R.S.MOHITE, J.) **(F.I. REBELLO, J)**