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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO.913 OF 1998

International Computers (India)
Private Limited ..Applicant
Versus
The Commissioner of Income Tax
Bombay City-II, Bombay. ..Respondent

....

Mr. H. Toor a/w Sameer Chitnis i/b. M/s. Crawford Bayley & Co. for the applicant.

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CORAM: M. S. SANKLECHA &
A. K. MENON, JJ.

DATE : 10th AUGUST, 2016

P.C.:

By this Reference under Section 256(1) of the Income Tax Act, 1961 (the Act) the Income Tax Appellate Tribunal (Tribunal) seeks our opinion on the following question of law:-

"(i) Whether on the facts and in the circumstances of the case the Tribunal was right in holding that for the purpose of computing the excess of reserve for gratuity over the gratuity liability it is the gratuity liability determined on actuarial basis which has to be taken into account and not such gratuity liability net of tax, a provision for which would, perhaps, have been in order according to the opinion expressed by the Research Committee of the Institute of Chartered Accounts of

India on "Statement on the treatment of retirement gratuity in accounts?"

2. Mr. Toor, the learned counsel for the applicant-assessee in support of the Reference very fairly states that the question as raised herein stands concluded against the applicant-assessee by the decision of the Supreme Court in ***Commissioner of Income Tax v/s. Jyoti Ltd. 219 ITR 388*** and ***Tuticorin Alkali Chemicals and Fertilizers Ltd. v/s. Commissioner of Income Tax 227 ITR 172*** in respect of two issues which arise in the question as posed for our opinion. Accordingly, the question is answered in the affirmative i.e. against the applicant-assessee and in favour of the Respondent-Revenue.

3. Reference is disposed of in above terms. No order as to costs.

(A. K. MENON, J.) **(M. S. SANKLECHA, J.)**

wadhwa