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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO.911 OF 1998

Borosil Glass Works Ltd. ..Applicant
Versus
The Commissioner of Income Tax
City V Mumbai. ..Respondent

....

Mr. Harinder 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.:

Mr. Toor, the learned counsel appearing for the applicant-assessee in support of the Reference files an affidavit of service dated 26th July, 2016 with evidence of having served the Reference upon the Respondent-Revenue on 22nd December, 1998.

2. This is a Reference under Section 256(1) of the Income Tax Act, 1961 seeks our opinion on the following question of law:-

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the surtax payable by the assessee for the assessment year 1977-78 was not allowable

either under Section 28 or under Section 37 of the Income Tax Act, 1961?"

3. Mr. Toor very fairly invites our attention to the decision of Apex Court in ***Eskayef v/s. Commissioner of Income Tax 245 ITR 116*** and states that the issue stands concluded against the assessee and in favour of the Revenue. Therefore the question as raised for our opinion following the decision of Eskayef (supra) is answered in the affirmative i.e. in favour of the Respondent-Revenue and against the applicant-assessee.

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

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

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