IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 156 OF 2000

M/s. Mahindra & Mahindra Ltd. .. Applicant
v/s.
The Commissioner of Income Tax,
City-IV, Bombay .. Respondent

Mr. B.V. Jhaveri for the applicant
None for the respondent

CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.
DATED : 22nd JULY, 2016.

P.C.

1. This Reference under Section 256(1) of the Income Tax Act, 1961 (the Act) by 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 justified in holding that the additional liability on account of exchange rate fluctuation amounting to Rs.15,45,930/- (Rs.1,00,294/- for assessment year 1988-89) was allowable as a deduction in the computation of the applicant's business profits, only when the actual payment was made and, till then, it was contingent in nature, after, in particular, having held that such fluctuation was on revenue account and after having seen that the liability was precisely determined on the basis of the foreign exchange rate obtaining as on the date of the closing of its account for the year ended

31.10.1986 (31.10.1987 for assessment year 1988-89)?

2. The Tribunal while allowing the Revenue's appeal followed its order in the case of the applicant assessee for Assessment Year 1985-86 on an identical issue. The applicant assessee being aggrieved filed an application for Reference to the Tribunal and it on an identical question a Reference was made to this Court by Reference No. 271 of 1997.

3. On 21st August 2014, this Court answered the identical question referred to it in Reference No. 271 of 1997 in favour of the applicant assessee and against the Revenue. This by following the decision of the Apex Court in ***Commissioner of Income Tax Vs. Woodward Governor India Pvt. Ltd. 312 ITR 254***.

4. In the above view, the question raised for our opinion is answered in the negative i.e. in favour of the applicant assessee and against the Revenue.

5. The Reference is disposed of in the above terms. No order as to costs.

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