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

INCOME TAX REFERENCE NO. 752 OF 1998

M/s. Bharat Forge Ltd. .. Applicant
v/s.
Commissioner of Income Tax, Pune .. Respondent

Mr. Mihir Naniwadekar for the applicant
Mr. Suresh Kumar i/b Ms. Samiksha Kanani for the respondent

CORAM : M.S. SANKLECHA &
S.C. GUPTE, J.J.
DATED : 23rd AUGUST, 2016.

P.C.

1. This Reference under Section 256(1) of the Income Tax Act, 1961 by the Income Tax Appellate Tribunal (Tribunal) seeks our opinion on the following substantial questions of law :-

> *(i) Whether in the facts and circumstances of the case and in law, the Tribunal was correct in law to hold that the guarantee commission amounting to Rs.9,54,951/- relatable to the period after the machineries were put to use is capital expenditure and part of cost u/s 43(1) and not allowable as revenue expenditure in the computation of its business income.*

2. The relevant Assessment Year is A.Y. 1990-91.

3. It is an agreed position between the parties that the issue arising herein stands concluded in favour of the applicant assessee by the

decision of this Court in ***Kinetic Engineering Ltd. Vs. Commissioner of Income Tax, 233 ITR 762***.

4. We notice that the order of the Tribunal dismissing the applicant assessee's appeal before it had relied upon a decision of Gujarat High Court in ***Commissioner of Income Tax Vs. Vallabh Glass Ltd. 137 ITR 389***. This Court in *Kinetic Engineering Ltd. (supra)* after consideration of the decision of the Gujarat High Court in *Vallabh Glass Ltd. (supra)* dissented from the view taken therein by placing reliance upon the Apex Court decision in ***India Cements Ltd. Vs. Commissioner of Income Tax , 60 ITR 52***.

5. In the above view, the question as posed for our opinion being covered by the order of jurisdictional High Court is answered in the negative i.e. in favour of the applicant-Assessee and against the respondent Revenue.

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

(S.C. GUPTE, J.) **(M.S. SANKLECHA, J.)**