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

INCOME TAX REFERENCE NO.982 OF 1998

The Commissioner of Income-tax,
Bombay City – III, Bombay .... Applicant
Vs.
The New India Assurance Co. Ltd. .... Respondent

Mr. Suresh Kumar with Ms Samiksha Kanani for the Applicant.

Mr. F.V. Irani with Mr. Rajesh Poojary i/by Mulla & Mulla & C.B. & Caroe for the Respondent.

CORAM: S.C. DHARMADHIKARI &
SMT. VIBHA KANKANWADI, JJ.

DATE : AUGUST 29, 2017

P.C:

1. This income tax reference at the instance of the Revenue, though not on Board, on request, it is taken up for hearing. The following question of law has been referred for opinion and answer by this Court:-

"Whether, on the facts and in the circumstances of the

> *case, the Tribunal was right in law in holding that rule 4 of the Second Schedule to the Companies (Profits) Surtax Act, 1964 is not applicable in respect of the deductions obtained by the assessee in terms of Chapter VI-A of the Income-tax Act, 1961 in computing the capital of the company for purpose of Surtax?"*

2. The above question of law arises for the Assessment Year 1973-74. Relying upon the order of 15-5-1978, it was proposed to be answered but the Tribunal found that in view of the decision for the Assessment Years 1971-72 and 1972-73, as also some decisions of this Court and the Karnataka High Court, it would be proper to seek an opinion and answer to this question from this Court.

3. Hence, this reference.

4. We have heard Mr. Suresh Kumar, appearing for the Revenue and Mr. Irani, appearing for the respondent.

5. With their assistance, we have perused a compilation of the orders tendered by Mr. Irani.

6. Mr. Irani would submit that the question has been answered by the Hon'ble Supreme Court of India in *Civil Appeal Nos.771 to 776 of 1976, decided on 14-9-1990* **{Income Tax Officer & Anr. Vs. Stumpp Schuele & Somappa (P) Ltd.}**, (1991) 187 ITR 108, in favour of the assessee and against the Revenue.

7. The said Judgment has been followed in the case of ***Commissioner of Income Tax Vs. HICO Products (P) Ltd. (No.3)***, reported in (1993) 201 ITR 666, by this Court as also in the case of **Commissioner of Income Tax Vs. Cynamid India Ltd.**, reported in (1993) 204 ITR 231.

8. Mr. Suresh Kumar could not dispute this legal position and nothing contrary was brought to our notice by him.

9. As a result, this question of law is answered in favour of the assessee and against the Revenue.

10. The reference accordingly stands disposed of. No costs.

(SMT. VIBHA KANKANWADI, J.) (S.C. DHARMADHIKARI, J.)