IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.178 OF 2015

COMMISSONER OF INCOME TAX – 7)...APPELLANT

V/s.

M/S.HINDUSTAN CIBA-GEIGY LTD.)...RESPONDENT

Ms.S.V.Bharucha, Advocate for the Appellant.

Mr.J.D.Mistri, Senior Counsel, a/w. Mr.B.D.Damodar i/b. Kanga and Co., Advocate for the Respondent.

CORAM : S.V.GANGAPURWALA & A. M. BADAR, JJ.

DATE : 31st JULY 2017

__P.C.__ :

1 This appeal pertains to Asssessment Year 1993-1994.

2 The learned counsel for the appellant states that the appellant has assailed the order of the Tribunal passed in Miscellaneous Application No.77 of 2013 dated 4th April 2014. According the learned counsel, the present appeal is filed on the following question :

(a) Whether on the facts and the circumstances of the case and in law the Hon'ble ITAT was justified in directing the AO to examine and verify the actuary valuation certificate and the agreement with the company and the employees and if he finds that the liability on account of VRS scheme has been calculated on scientific basis may allow the claim of Rs.30,39,70,700/- without appreciating the fact that assessee was given adequate opportunity during fresh assessment proceedings while passing order on 28.08.2013 ?

(b) Whether on the facts and circumstances of the case and in law the Hon'ble ITAT was justified in setting aside the order of the AO on the issue of disallowance of depreciation on Kandla Plant even though the assessee has not produced any material before ITAT to substantiate its claim ?

3 According to the learned counsel, there was no need to remit the matter to the Assessing Officer for a fresh decision.

4 Mr.Mistri, the learned senior advocate for the respondent submits that as far as the ground (a) raised is concerned, the same is already a subject matter of consideration in the appeal filed by the assessee as well as the Revenue bearing Income Tax Appeal Nos.852 of 2013 and 292 of 2013 admitted on 3rd February 2015. The learned counsel submits that as far as ground (b) is concerned, the same was never raised by any of the parties in the appeal filed by the Revenue as well as the assessee against the order of the Tribunal in appeal. In rectification application, while disposing of the rectification application, the Tribunal had clarified that the Assessing Officer is directed to verify whether the plant was actually used in earlier years and if satisfied, the depreciation may be allowed. Save and except the above, no further order has been passed in the miscellaneous application. As such, ground (b) raised by the appellant, infact, was already a subject matter of decision of the Tribunal while

deciding the Income Tax Appeal bearing no.334 of 1997 decided on 29th June 2012.

5 We have considered the grounds raised in the appeal filed by the Revenue as well as the assessee against the judgment of the Tribunal in Income Tax Appeal No.334 of 1997. The ground with regard to setting aside of the order of the Assessing Officer on the issue of allowance of depreciation was not raised in appeal. The same does not appear to have been raised or pressed before the court. The appeal is admitted basically on a question as framed as Question (a) in the present appeal. In the miscellaneous application, no substantial change has been made in the order of the Tribunal except clarifying that the Assessing Officer is directed to verify as to whether the plant was actually used in earlier years and if satisfied, depreciation may be allowed.

6 In light of the above, no substantial question of law arises. The appeal is dismissed. No costs.

(A. M. BADAR, J.) **(S.V.GANGAPURWALA), J.)**