IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFRENCE NO. 94 OF 2002

M/s. Indian Rayon & Industries Ltd. ....Appellant
V/s.
The Commissioner of Income-tax,
Central-I, Bombay. ....Respondent

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Mr. Nitesh Joshi a/w. Mr. Arjun Gupte, i/by. Dave Girish & Co., Advocate for the appellant.

CORAM :- M.S. SANKLECHA, &

SANDEEP K. SHINDE, JJ.

DATE :- 2ND JULY, 2018.

P.C. :-

1. None appears for the respondent-Revenue. This inspite of the applicant-assessee having served the respondents the copy of the reference application on 10th June, 2003. Mr. Joshi, tenders a copy of the affidavit of service dated 23rd November, 2004.

2. This reference under Section 256(1) of the

Income-tax Act, 1961 (the Act) by the Income Tax Appellate Tribunal (the Tribunal) seeks our opinion on the following question of law :

> *"Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in reversing the allowance of investment allowance additional depreciation on computer ?"*

3. This reference relates to Assessment Year 1984-85.

4. The relevant portion of the statement of case with regard to the aforesaid question of law reads as under :

> *"The assessee has purchased computer in its Rayon Division, Insulator Division, Halol and Midnapur Division respectively. It was claimed that besides office use the computer were also used for data procession and production programming. The machines are installed in office buildings of the various units. The Tribunal rejected the claim of the assessee by*

following the decision of the Calcutta High Court rendered in the case of Technico Enterprises P. Ltd. (206 ITR 36)(cal.).

5. Mr. Joshi, the Learned Counsel appearing in support of the Reference states that, this very issue was a subject matter of consideration in the appeal filed by the Revenue in the appellant-assesseee's own case relating to Assessment Year 1991-92 and 1992-93. An identical question as raised herein by the assessee was raised by the Revenue. This Court, by order dated 25th March, 2010 dismissed the Revenue's Appeal on the admitted position that the question as raised is covered against the Revenue by the decision of this Court in **Commissioner of Income Tax V/s. Emirates Commercial Bank Ltd., [2003] Vol. 262 ITR 55**. The above decision dated 25th March, 2010 rendered by this Court in the Revenue's Appeal in the respondent-assessee's case is reported in **Commissioner of Income-Tax v. Indian Rayon and Industries Ltd., [2011] 336 ITR 479 (Bom)**.

6. We are informed that, the position in law

continues to be the same in the Assessment Year 1984-85 and 1991-92. In the above view, the question as framed for our opinion is answered in the negative i.e. in favour of the appellant-assessee and against the respondent-Revenue. Reference disposed of in above terms.

(SANDEEP K. SHINDE, J) **(M.S. SANKLECHA, J)**