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

INCOME TAX REFERENCE NO. 01 of 2002

M/s. Standard Batteries Ltd.
Vakola, Santacruz (East)
Mumbai – 400 055 .. Applicant

v/s.

Commissioner of Income Tax, Mumbai
City II, Mumbai .. Respondent

Ms. Aarti Sathe with Mr. Rajesh Poojary i/b Mint and Confreres for the applicant
Mr. P.C. Chhotaray for the respondent

CORAM : M.S. SANKLECHA &
SANDEEP K. SHINDE, J.J.

DATED : 27th APRIL, 2018

P.C. :-

1. 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 two questions of law.

(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in law to hold that the excise duty paid by the assessee is not to be excluded from the total turnover for purposes of computation of deduction under Section 80HHC of the Income Tax Act, 1961?

(ii) Whether on the facts and the circumstances of the case and in law, the Tribunal was right in law to hold that the assessee had acquired the ownership rights in the technical know-how included in the agreement in contra-distinction to lease of rights in such know-how and accordingly the assessee was entitled to deduction under Section 35AB as against under Section 37(1) of the Act ?

2. This Reference relate to Assessment Year 1987-88.

3. For the reasons recorded in our order dated 27th April, 2018 passed in Income Tax Reference No.13 of 2001 raising same questions as referred to us in this Reference, we answer the questions raised for our opinion as under :-

Question No.(i) :- In the negative i.e. in favour of the applicant assessee and against the respondent Revenue.

Question No.(ii) :- In the affirmative i.e. in favour of the respondent Revenue and against the applicant assessee.

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

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