

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****INCOME TAX REFERENCE No. 49 of 1998****For Approval and Signature:****HONOURABLE MR.JUSTICE R.S.GARG****HONOURABLE MR.JUSTICE M.R. SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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**COMMISSIONER OF INCOME TAX - Applicant(s)****Versus****PARAMOUNT POLLUTION CONTROL PVT. LTD. - Respondent(s)**

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**Appearance :**

MR MANISH R BHATT for Applicant(s) : 1,  
SERVED BY RPAD - (N) for Respondent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE R.S.GARG****and****HONOURABLE MR.JUSTICE M.R. SHAH****Date : 31/08/2006****ORAL JUDGMENT****(Per : HONOURABLE MR.JUSTICE R.S.GARG)**

Ms Mona Bhatt, learned counsel for the revenue. None for the assessee, though served.

2. At the instance of the revenue, the Income Tax Appellate Tribunal, Ahmedabad Bench "C" in relation to Income Tax Appeal No.2834/Ahd/1992 relating to assessment year 1987-88, has referred the following question to this Court for its opinion.

"Whether on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the assessee is entitled to investment allowance on the cost of computer.?"

3. The short facts necessary for disposal of the present Reference are that the assessee company is engaged in the business of rendering technical advice on pollution control, erecting waste water treatment plant and was taking contracts to provide turnkey pollution control project. The assessee claimed investment allowance under section 32A of the Income Tax Act on an amount of Rs.2,20,560/- submitting that it was the cost of computer system and the computers were used for providing projects, so also for providing technical

advice.

4. The Assessing Officer disallowed the said claim holding that the computer system was not used in the business of the assessee.

5. On appeal, the CIT (A) relying on the decision of the Bombay High Court in the case of CIT V. IBM World Trading Corporation, 130 ITR 739 directed the Assessing Officer to grant investment allowance on the said computer. On further appeal by the revenue, the Tribunal placing reliance upon its earlier order dated 28-6-1994 passed in Income Tax Appeal No.706/Ahd/1990 in the case of Paramount Pollution Control Private Limited, confirmed the order passed by the revenue. A reference came to be made in the case of Paramount Pollution Control Private Limited, which was listed as ITR No.90 of 1996 on 30-8-2006, we have answered the said Reference in favour of the assessee. Ordinarily, there could be no problem for us to follow our own judgment in the matter of Paramount Pollution Control Private Limited but Ms Bhatt submits that in the said matter, the computers were used as an integral part of the business, while in the present matter, the computers are used as office appliances. In

our considered opinion, the use of the computers in the present matter, is not as an office appliances or an office machine but the computers are used by the assessee for rendering services in providing advices on pollution control, erecting waste water treatment plant and after the said advices are accepted by the consumer, the assessee undertakes the contract. The computers in fact are used for the business activities and the assessee would be entitled to investment allowance. The Tribunal, in our considered opinion was absolutely justified in deciding the matter in favour of the assessee.

6. The question referred to us, is answered against the interest of revenue. It stands disposed of. No costs.

(R.S.GARG,J.)

(M.R.SHAH,J.)

shekhar/-