IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 79 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

HONOURABLE MR.JUSTICE Z.K.SAIYED

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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

LOK PRAKASHAN 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 D.A.MEHTA

and

HONOURABLE MR.JUSTICE Z.K.SAIYED

Date : 29/01/2008

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1. Income Tax Appellate Tribunal, Ahmedabad Bench-A has referred the following question at the instance of the Revenue under sec. 256(1) of the Income Tax Act, 1961 ('the Act').

> 1. "Whether, the Appellate Tribunal is right in law and on facts in deleting the gratuity provision of Rs. 4,49,100/-?"

2. The assessment year is 1982-83 and the relevant accounting period is the financial year ended on 31.3.1982. Heard Mrs. M.M. Bhatt learned Standing Counsel for the applicant – Revenue. Though served, none appears for the respondent-assessee.

3. Mrs Bhatt has fairly invited attention to the fact that similar claim of gratuity payment was made in earlier assessment year and the Assessing Officer having followed his own order for earlier years disallowed the claim on the ground that as the assessee was following cash system in respect of the gratuity from 1977-78 onwards amount of Rs. 4,49,100/- cannot be allowed in the year under consideration but is allowable as and when payment is actually made to the employees. The Tribunal has followed its own order for earlier assessment year. Mrs. Bhatt has invited attention to the unreported judgment of this Court dated 18.2.2003 between the

same parties in Income Tax Reference No. 10 of 1989, wherein, identical issue was raised.

4. For the reasons stated in the aforesaid judgment dated 18.2.2003 in assessee's own case, the deduction claimed is held to have been rightly allowed by the Tribunal considering the provisions of sec. 36(1)(v) of the Act.

5. The question referred for the opinion of this Court is, therefore, answered in the affirmative, that is, in favour of assessee and against the revenue. The Reference stands disposed of accordingly with no order as to costs.

(D.A. MEHTA, J.)

(Z.K. SAIYED, J.)

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