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

INCOME TAX APPEAL NO. 2202 OF 2013

The Commissioner of Income Tax .. Appellant

v/s.

M/s. Johnson & Johnson Ltd. .. Respondent

Mr. Suresh Kumar a/w Ms. Samiksha Kanani for the appellant
Mr. Subhash S. Shetty for the respondent

CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.

DATED : 28th MARCH, 2016.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 18th January, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). This appeal is in respect of impugned order for Assessment Year 1998-99.

2. Although numerous questions have been formulated in the Memo of Appeal, Mr. Suresh Kumar, learned Counsel for the Revenue urges only the following question for consideration of this Court as under :-

(i) Whether on the facts and in the circumstances of the case and in law the Tribunal was justified in holding that modvat credit

receivable by the Assessee Company at the end of the year should not be included in the valuation of closing stock?

3. The respondent assessee in its balance sheet filed along with the Return of Income had not included un-utilized modvat credit of Rs.2.92 crores receivable by it in valuing its closing stock. The Assessing Officer in its assessment order did not accept the stand of the respondent assessee and added to amount of Rs.2.92 crores as income as it has not been included in valuing its closing stock.

4. In an appeal, the Commissioner of Income Tax (Appeals) allowed the respondent assessee's appeal holding that the issue has been decided by the Tribunal in an earlier assessment year in favour of the respondent assessee. Consequently, the aforesaid addition of Rs.2.92 crores was deleted.

5. On further appeal by the Revenue before the Tribunal, it was urged that Section 145-A of the Act has been brought into force w.e.f. 1st April, 1999. Consequently, un-utilized modvat credit receivable by the respondent assessee has to be included in the value of the closing stock. The Tribunal by the impugned order did not accept the

Revenue's contention and following its order for the earlier assessment orders as well as the decision of the Apex Court in Commissioner of Income Tax Vs. Indo Nippon Chemicals Co. Ltd. 261 ITR 275, dismissed the Revenue's appeal.

6. We find that the issue as raised for the subject assessment year namely Assessment Year 1998-99 stands concluded in favour of the respondent assessee by the decision of the Apex Court in Indo Nippon Chemicals Co. Ltd. (supra). The insertion of Section 145-A of the Act w.e.f. 1st April, 1999 would not govern the issue arising for an earlier assessment year i.e. A.Y. 1998-99. Moreover, the Tribunal's stand as found in the impugned order is concluded by the decision of the Apex Court in India Indo Nippon Chemicals Co. Ltd. (supra). Therefore, for the subject assessment year, the question as framed does not give rise to any substantial question of law. Thus, not entertained.

7. Accordingly, the appeal is dismissed. No order as to costs.

(A.K. MENON, J.) **(M.S. SANKLECHA, J.)**