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

INCOME TAX APPEAL NO. 2197 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 1999-2000.

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 its decision regarding the issue of inclusion of Modvat in opening stock as rendered for A.Y. 1999-2000 in the light of Section 145A of the Act is consistent with its decision deleting modvat from the valuation of closing stock rendered for immediately preceding assessment years A.Y. 1997-98 and A.Y. 1998-99?

3. We find that the impugned order of the Tribunal after holding that Section 145-A of the Act, which was brought into effect on 1st April, 1999 holds it would have application while determining the income chargeable to tax for the Assessment Year 1999-2000.

4. In the above view, the impugned order of the Tribunal set aside the order of the Commissioner of Income Tax (Appeals) at the instance of the Revenue and restored the issue to the Assessing Officer for *de novo* adjudication in accordance with the provisions of Section 145A of the Act. The Tribunal further placed reliance upon the decision of this Court in ***Commissioner of Income Tax Vs. Mahalaxmi Glass Works P. Ltd. 318 ITR 116*** which has followed the decision of Delhi High Court in ***CIT Vs. Mahavir Alluminum Ltd. 297 ITR 77***, to hold that if to give effect to Section 145A of the Act, if there is any change in the closing

stock at the end of the year, then there must necessarily be a corresponding adjustment made to the opening stock of that year.

5. The grievance of the Revenue that for earlier Assessment Years i.e. Assessment Years 1997-98 and 1998-99, the Tribunal had deleted Modvat from the valuation of closing stock. Therefore, it is obliged on the principle of consistency to have not directed the inclusion of Modvat in the valuation of opening stock. This submission completely overlooks the change in law with effect from 1st April, 1999 due to introduction of Section 145A in the Act. In the above view, no occasion to invoke the principle of consistency can arise. Thus, there is no merit in the above submission.

6. In the above view, no substantial question of law arises for our consideration in this case.

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

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