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

INCOME TAX APPEAL NO. 1069 OF 2014

The Commissioner of Income Tax
(Large Tax Payer Unit), Mumbai .. Appellant
v/s.
M/s. Johnson & Johnson Ltd. .. Respondent
Mumbai

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

CORAM : M.S. SANKLECHA &
G.S.KULKARNI, J.J.
DATED : 5th OCTOBER, 2016.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 15th February, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2000-01.

2. The appellant Revenue urges following questions of law for our consideration :-

(i) Whether on the facts and in the circumstances of the case and in alw, the Tribunal was right in overlooking the fact that the loss worked out by the Assessing Officer by way of under-pricing was with reference to the actual cost of production and not with reference to the sale value of products to the

subsidiary?

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in directing further adjustment / reduction towards expenses, thereby ignoring the fact that the overheads are common to all the products manufactured by the assessee which had been duly and correctly taken into account by the Assessing Officer in working out the loss and that such overheads cannot become less when products are sold to a 100% subsidiary?

(iii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in observing that no one had examined as to the price margin on sales overlooking the fact the Assessing Officer had taken into account the printed sale price list of all the products manufactured by the Assessee Company at the assessment stage?

(iv) 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. 2000-2001 in the light of Section 145A is consistent with its decisions deleting modvat from the valuation of closing stock rendered for preceding assessment year A.Y. 1997-98 and A.Y. 1998-99?

(v) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in allowing depreciation on testing equipment provided to laboratories and hospitals free of charge even though such testing instruments were not used by the Assessee?

3. **Re. question nos. (i), (ii) and (iii) :-**

Mr. Suresh Kumar, learned Counsel appearing for the appellant Revenue, on instructions, states that the Revenue does not wish to press these questions. In the above view, no occasion arise to examine the aforesaid questions arises. Thus, not entertained.

4. **Re. question nos. (iv) and (v) :-**

It is an agreed position between the parties that the issues arising herein from a common impugned order of the Tribunal for Assessment Year 2001-02 and subject Assessment Year stand concluded against the Revenue and in favour of the respondent assessee. This by virtue of the order of this Court dated 4th July, 2016 in Income Tax Appeal No. 2441 of 2013 (CIT Vs. M/s. Johnson & Johnson) in the challenge to the same impugned order to the extent it relates to Assessment Year 2001-02. In the above view, questions (iv) and (v) as proposed do not give rise to any substantial question of law. Thus, not entertained.

5. Therefore, the appeal is dismissed. No order as to costs.

(G.S. KULKARNI, J.) **(M.S. SANKLECHA, J.)**