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

INCOME TAX APPEAL NO. 605 OF 2014

The Commissioner of Income Tax,
Mumbai .. Appellant
v/s.
M/s. Johnson & Johnson Ltd. .. Respondent

Mr. Suresh Kumar i/b 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 28th June, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 1999-2000.

(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in directing the Assessing Officer to delete the penalty levied u/s 271(1)(c) of the Income Tax Act by the Assessing Officer amounting to Rs.52,50,000/- even though the deposit made by the assessee to the National Pharmaceutical Pricing Authority was penal in nature and the assessee had claimed it as revenue in nature?

2. The impugned order dated 28th June, 2013 of the Tribunal while dismissing the Revenue's Appeal from Order dated 24th February, 2012 of the Commissioner of Income Tax (Appeals) [CIT(A)] upheld the deletion of penalty imposed by the Assessing Officer under Section 271(1)(c) of the Act. The basis of the impugned order was that in quantum proceedings, it upheld the stand of the respondent assessee that the payment made to the National Pharmaceutical Price Authority was revenue in nature. In the above view, the impugned order dismissed the Revenue's Appeal.

3. Mr. Suresh Kumar, learned Counsel for the Revenue in support of the appeal states that the Revenue has filed an appeal from the order of the Tribunal in quantum proceedings, for the subject assessment year. This being Income Tax Appeal No.2207 of 2013 and the same has been admitted by this Court on 19th January, 2016 as giving rise to substantial question of law. Therefore, it is submitted that this appeal also be admitted.

4. In the facts of the present case, none of the Authorities under the Act have held that there was any concealment of particulars of income or that the details supplied by the respondent assessee were incorrect /

erroneous / false while making a claim of a revenue expenditure while making a payment to National Pharmaceutical Pricing Authority. The Apex Court in ***Commissioner of Income Tax Vs. Reliance Petroproducts Pvt. Ltd., 322 ITR 158***, has held that mere making of a incorrect claim by itself would not warrant any imposition of penalty. The *sine qua non* for imposition of penalty would be suppressing details and / or supplying erroneous / false details. A mere making of a claim which may be found on examination to be not sustainable in law by itself will not amount to furnishing inaccurate particulars of the assessee's income. Moreover, in the facts of this case even a merits of the claim made in quantum proceedings is debatable. This is evident from the fact that the Tribunal in quantum proceedings upheld the claim made by the respondent assessee.

5. In the present case, irrespective of the decision which this Court may take in the quantum proceedings, the view taken by the Tribunal in the present facts is in consonance with the decision of the Apex Court in Reliance Petroproducts Pvt. Ltd. (supra). Therefore, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

6. The appeal is dismissed. No order as to costs.

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