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

INCOME TAX APPEAL NO.199 OF 2017
WITH
INCOME TAX APPEAL NO.220 OF 2017

Commissioner of Income Tax TDS-2 .... Appellant

versus

Unichem Laboratories Ltd. ... Respondent

…....

- Mr.Suresh Kumar, Advocate for Appellant.
- Mr.Percy Pardiwalla, Senior Counsel a/w Mr.Nitesh Joshi a/w Mr.Ashok Boghani i/b. Mr.Ashok Boghani & Co. Advocate for Respondent.

CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.
DATE : 15th APRIL, 2019.

P.C. :

1. These Appeals are filed by the revenue to challenge the judgment of Income Tax Appellate Tribunal. The issues being common, they are decided by this common order. We may record facts from Income Tax Appeal No.199/17. Following question is presented for our consideration;

> *"Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is correct in holding that the relationship between the assessee and distributors is in the nature of Principal to Principal and not that of Principal to Agent and held that the assessee company was not liable to deduct TDS u/s. 194H of the I.T. Act?"*

2. The Respondent-Assessee is a Pharmaceutical company manufacturing various drugs. The assessee filed the return for the assessment year 2010-2011. The Assessing Officer raised an issue of non-deduction of tax source by the assessee while making payment to its distributors. The assessee contended that the relationship between the assessee and the distributors was not one of principal and agent. The distributors were the customers of the assessee and therefore there was no requirement to deduct tax at source in terms of section 194H of the Income Tax Act, 1961 (for short 'the Act'). The Assessing Officer however rejected the said contention and the issue reached to CIT (Appeals) who allowed the appeal. In further appeal by the revenue the tribunal confirmed the view of CIT (Appeals).

3. The tribunal in the impugned judgment has come to the conclusion that the assessee company would sale the goods to its distributors on principal to principal basis. Thus, the property in case would transfer to distributors with all its risks and rewards. The distributor was thus customer of the assessee-company. The tribunal also took into account the fact that in certain situations, the assessee accepted the expired drugs and returned the sale price to the said distributor. However, in the opinion of the tribunal this would not change the character of the relationship between the assessee and its distributors.

4. Perusal of the judgment of tribunal would show that the tribunal has taken all material factors into consideration in order to come to the conclusion that the transaction between the assessee and its distributor was one of the purchase and sale of goods simplicitor. There was no agency element. The tribunal has also examined the point of time when the title in goods would pass.

5. We are broadly in agreement with the view of the tribunal. No question of law arises. Income Tax Appeals are dismissed.

(SARANG V. KOTWAL, J.) **(AKIL KURESHI, J.)**