

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL (L) NO.2065 OF 2009

The Commissioner of Income Tax -7, Bombay ..Appellant.

Versus

M/s.Zandu Pharmaceuticals Works Limited ..Respondent.

Ms.Suchitra Kamble for the appellant.
None for the respondent.

CORAM : V.C. DAGA & J.P. DEVADHAR, JJ.

DATE : 9TH SEPTEMBER 2009

PC. :

1. Heard learned counsel for the revenue.
2. The question sought to be raised in this appeal relates to the effect of retraction of statement made on 19-12-1999, after a lapse of more than six months. The tribunal has considered this aspect and recorded finding of fact, which reads as follows :

“6. ----- The second exception is where the statement has been given under some mistaken belief either of fact or law. If a person is not liable to tax in respect of any receipt, he cannot be made liable to pay tax merely because he has agreed to pay the tax in the statement u/s 132. He can

always retract in such situation. As said above, in the case under consideration, if it is presumed that the assessee by making statement u/s 132 (4) stop the revenue for making further investigation, but that is not the situation in the case under consideration because the statement was u/s 132 (4) recorded on 18-12-1999 whereas the search action was continued and concluded thereafter on 25th March' 00. It means the revenue did not satisfy with the statement and they carried on their investigation up to 25th March'00 after making the disclosure u/s 132(4). Even if it assumed that the assessee did not intimate about the retraction to the department immediately but the same was intimated by filing affidavit along with the return of income, but even after that the revenue did not take any action.”

3. In the above view of the matter, the tribunal has also considered the issue on merits and came to the conclusion that the assessee has already disclosed income of Rs.18,00,000/- while filing block return and no contrary material is available on record to take other view. According to the assessee, based on this statement no further addition can be made. The tribunal has accepted this. This being a finding of fact based on appreciation of evidence, no substantial question of law can be said to arise in this appeal. The appeal is thus dismissed *limine* with no order as to costs.

(J.P. Devadhar, J.)

(V.C. Daga, J.)