

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

**INCOME TAX APPEAL (IT) NO. 148 OF 2003
WITH
INCOME TAX APPEAL (IT) NO. 103 OF 2003**

M/s. Johnson and Johnson Ltd. **...Appellant**
Versus
The Deputy Commissioner of Income Tax **...Respondent**
Special Range-23, Mumbai

Mr. Subhash S. Shetty i/b Mr. Atul K. Jasani for Appellant.
Mr. Suresh Kumar for Respondent-Revenue.

**CORAM: K. R. SHRIRAM &
DR. NEELA GOKHALE, JJ.**
DATED: 2nd February 2024

PC:-

The facts in both these appeals are identical and the questions of law proposed are also identical, save and except the amounts differ. Both appeals are also against a common order passed by the Income Tax Appellate Tribunal (“**ITAT**”) on 19th August 2002. Since we have considered the facts in Income Tax Appeal (IT) No. 148 of 2003, we reproduced the questions of law framed therein. In Income Tax Appeal (IT) No. 103 of 2003, the amount will be Rs. 24,83,212/-.

INCOME TAX APPEAL (IT) NO. 148 OF 2003 :

1. On 23rd September 2004, the appeal was admitted and three substantial questions of law were framed.

2. Mr. Shetty stated at the outset that question (a) is not being pressed and question (c) is basically a repetition of question (b). Therefore, the Court needs to consider only question (b), which reads as under :

“(b) Whether on the facts and in the circumstances of the case the Tribunal erred in coming to the conclusion that the appellant was not entitled to the deduction of Rs. 60,99,426/- representing the excise duty claimed under Section 43B of the Income Tax Act, 1961 as this would amount to double deduction ?”

3. The ITAT in its impugned order dated 19th August 2002, on the issue at hand, came to a factual finding that the Assessing Officer (“AO”), by allowing deduction of Rs. 980.74 lakhs has allowed Rs. 60,99,426/- as part of Rs. 2,08,08,346/- and therefore, if that amount of Rs. 60,99,426/- was again allowed in the assessment, it would amount to double deduction, which is not permissible. The Tribunal also relied upon a judgment of the Calcutta High Court in the case of *CIT v. Burger Paints (India) Ltd.*¹, to come to the conclusion that assessee was not entitled to the deduction of Rs. 60,99,426/- representing the ‘Excise Duty Claim’ under Section 43B of the Income Tax Act, 1961 (“**the Act**”). That judgment of the Calcutta High Court has been reversed by the Apex Court in *Burger Paints (India) Ltd. v. CIT*² in favour of assessee.

1. 254 ITR 498.

2. 266 ITR 99.

4. What needs to be considered is whether the finding of Tribunal that the AO has allowed Rs. 60,99,426/- as part of Rs. 2,08,08,346/- towards the excise duty paid.

5. Having heard the Counsels and considered the documents before us, assessee was correct in submitting that the excise duty in case of unsold stocks held by them at the end of previous year is not treated as expenses in the accounts, but has been separately claimed and allowed in the income tax assessments. In the statement forming part of the appeal paper-book giving month-wise payments of excise duty for Assessment Year 1986-1987, the summary reads as under :

<u>Particulars</u>	<u>Rs.</u>
Opening Balance	1,47,08,920/-
<u>Add</u> : Payments debited to Profit & Loss Account	9,80,74,762/-
<u>Less</u> : Refunds credited to Income Account	1,43,357/-
<u>Less</u> : Excise Duty transferred to Pre-paid Account and added to Closing Stock of Finished Products	<u>2,08,08,346/-</u>
Closing Balance of Excise Duty Account	<u>9,18,31,679/-</u>

This would show that the excise duty amounting to Rs. 2,08,08,346/- was transferred to pre-paid account and added to the closing stock of finished products. If the opening balance of Rs. 1,47,08,920/- is reduced, that would leave a sum of Rs. 60,99,426/- in the pre-paid account.

6. While computing the total income for Assessment Year 1986-1987, appellant had claimed the deduction in respect of excise duty

amounting to Rs. 60,99,426/- being the differential excise duty attributable to opening and closing stock of the finished goods held by them during the previous year ended 29th December 1985. Excise duty paid and included in the closing stock has to be claimed separately as a deduction otherwise appellant would not be claiming the entire excise duty paid in the year of its payment. Section 43B of the Act, which came to be introduced from Assessment Year 1984-1985 onwards, provides that the excise duty would be deductible only on the payment basis in the year in which it is actually paid. Therefore, while computing the total income for Assessment Year 1986-1987, assessee had claimed a deduction of excise duty amounting to Rs. 2,08,08,346/- actually paid in the year 1985 and included in closing stock less excise duty paid and included in closing stock of 1984 already claimed, amounting to Rs. 1,47,08,920/-. Therefore, in our view, the Tribunal was not correct in coming to a conclusion that this amount of Rs. 60,99,426/- would amount to double deduction.

7. In the circumstances, we allow the appeal and answer question (b), as framed, in the affirmative.
8. Appeal disposed.

INCOME TAX APPEAL (IT) NO. 103 OF 2003 :

1. Learned Counsel states that the findings recorded in Income Tax Appeal (IT) No. 148 of 2003 will squarely apply to this appeal as well. Therefore, appeal is allowed and question (b), as framed, is answered in the affirmative.

2. Appeal disposed.

(DR. NEELA GOKHALE, J.)

(K. R. SHRIRAM, J.)