

Rekha Patil

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

INCOME TAX APPEAL NO. 2892 OF 2018

Pr. Commissioner Of Income Tax- 15 ...Appellant
Versus
Zydus Nycomed Healthcare Pvt Ltd. ...Respondent

Mr. Akhileshwar Sharma (through V.C.) for the Appellant-
Revenue.
Mr. B. V. Zhaveri with Ms. Bhargavi Raval, for the Respondent.

CORAM: SUMAN SHYAM &
GAUTAM A. ANKHAD, JJ.

DATED: 8th OCTOBER, 2026.

PC:-

1. Heard Mr. Akhileshwar Sharma, learned Counsel appearing (through V.C.) for the Appellant. Also heard Mr. B. V. Zhaveri learned Counsel appearing for the Respondent.

2. This Appeal, preferred under Section 260A of the Income Tax Act, 1961, is directed against the Judgment and Order dated 14th March, 2018, passed by the learned Income Tax Appellate Tribunal (for short 'TTAT'), Mumbai, in Income Tax Appeal No. 2670/Mum/2016 (Assessment Year 2007-2008).

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3. The Department has proposed the following Substantial Questions of Law:-

“ A. Whether the computation of the fair selling price of drug intermediate by the Income Tax Appellate Tribunal for the purpose of section 10B(7) read with section 80-IA(10) is in accordance with law?

B. Whether the claim of exemption u/s 10B of the Income-tax Act 1961 allowed by the Income Tax Appellate Tribunal is in accordance with law?

4. Mr. B. V. Jhaveri, learned Counsel appearing for the Respondent has opposed the admission of the Appeal, primarily by contending that those are neither substantial questions of law nor do they arise for consideration by this Court in the present Appeal. According to Mr. Jhaveri, the projected question(s) of law have already been answered by this Court in the cases of i) **Commissioner of Income-tax-7 vs. Schmetz India (P) Ltd.**¹, ii) **Pragati Aroma Oil Distillers (P) Ltd. vs. Deputy Commissioner of Income-tax**²

5. Mr. Jhaveri has further argued that by following the aforementioned decisions, another Division Bench of this Court

1 [2012] 26 taxmann.com 336 (Bom.)

2 [2026] 187 taxmann.com 31 (Bombay)

has recently dismissed the Appeal of the Department, raising identical issues, by the order passed in **Principal Commissioner of Income-tax vs. Persistent Systems (P) Ltd.**³. Therefore, this Appeal is also liable to be dismissed.

6. After going through the record and upon considering the submissions made by the learned Counsel for the Parties, we have observed two things; firstly, the questions projected by the Department are effectively questions of facts in disguise. Those, in our considered opinion, cannot be treated as Substantial Questions of Law. It is no doubt correct that perversity is question of law. However, in order to per-take the character of “Substantial Questions of Law”, even a question of perversity will have to be raised by laying down the proper foundational facts, indicating the factual background, based on which the same arise in the Appeal, which is absent in the present Appeal.

7. In the present case, save and except, proposing a bald question, as to whether the decision of the learned Tribunal is perverse, there is no other projection made by the learned

3 [2026] 188 taxmann.com 859 (Bombay)

Departmental Counsel so as to convince us that any substantial questions of law would in fact arise in this Appeal.

8. Secondly, even if it is accepted that the factual projections in Appeal would warrant further scrutiny of the legal issues by this Court, even then, those legal issues appear to have been conclusively dealt with by this Court in the decisions rendered in **Schmetz India (P) Ltd.(supra)** and **Pragati Aroma Oil Distillers (supra)**.

9. As noted above, by taking note of the decisions in the case of **Schmetz India (P) Ltd.(supra)** and **Pragati Aroma Oil Distillers (supra)**, this Court had passed an order in **Persistent Systems (P) Ltd.(supra)**. The observations made in paragraph Nos. 5, 6 and 7 of the said decision are reproduced herein-below for ready reference.

“5. The decision in **Schmetz India (P) Ltd. (supra)** was followed in **Pragati Aroma Oil Distillers Private Ltd. v/s. Deputy Commissioner of Income Tax [(2026) 187 taxmann.com 31(Bombay)]** and the appeal was admitted on the following substantial question of law :

“Whether in the facts and circumstances of the case and in law, the Appellate Tribunal was justified in

comparing and adopting net profit margin of sister concern Pragati Aroma Oil Distillers Pvt. Ltd. (as existed during the relevant Assessment Year), even in the absence of any arrangement as contemplated in Section 10B (7) read with section 801A (10) of the Income Tax Act, 1961?"

The said substantial questions of law have been answered by this Court against the Revenue and in favour of the Assessee."

6. After going through the decision of the Coordinate Bench in the case of Pragati Aroma Oil Distillers Private Ltd. (supra), more particularly, the observations in paragraph Nos. 24 and 25 of the said decision, we find ourselves in agreement with the submission of Mr. Lala, learned Counsel for the Respondent. Mr. Khanchandani, learned Counsel for the Appellant has also, in all fairness, submitted that the issue is covered under the decision of this Court in Pragati Aroma Oil Distillers Private Ltd.(supra).

7. In view of the above, there is no substantial question of law which arises for consideration of this Court in the present Appeal. The Appeal therefore, stands dismissed by affirming the Judgment and Order dated 12th July, 2017 passed by the learned Income Tax Appellate Tribunal, Pune Bench."

10. For the foregoing reasons, we are of opinion that, viewed from any angle, the projections of "substantial questions of law" made in the Appeal filed by the Department, do not merit further

consideration by this Court. Therefore, we do not find any good ground to admit the Appeal.

11. The Appeal is, therefore, dismissed.

(GAUTAM A. ANKHAD, J.)

(SUMAN SHYAM, J.)