आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, 'एफ',मुंबई।

IN THE INCOME TAX APPELLATE TRIBUNAL

MUMBAI BENCHES "F", MUMBAI

श्री जोगिन्दर सिंह, उपाध्यक्ष **एवं**

श्री जी. मंजूनाथ, लेखा सदस्य**,** के समक्ष

Before Shri Joginder Singh, Vice President, and
Shri G. Manjunatha, Accountant Member

ITA NO.4435/Mum/2017

Assessment Year: 2007-08

Unichem Laboratories Limited 8, Unichem Bhavan Prabhat Estate Swami Vivekanand Road Jogeshwari (West) Mumbai-400072	**बनाम**/ Vs.	DCIT Range-5(3) Aaykar Bhavan, M.K.Road Churchgate Mumbai-400020
निर्धारिती /Assessee)		(राजस्व /Revenue)
P.A. No.AAACU0551B		

निर्धारिती **की ओर से /** Assessee by	Shri Nitesh Joshi-AR
राजस्व **की ओर से** / Revenue by	Shri A. Gimson-DR

सुनवाई की तारीख / **Date of Hearing :**	**20/11/2018**
घोषणा की तारीख/**Date of Pronouncement**	**20/11/2018**

आदेश / O R D E R

Per Joginder Singh (Vice President)

The Assessee is aggrieved by the impugned order dated 27/03/2017 of the Ld. First Appellate Authority, Mumbai on the grounds stated in the grounds of appeals.

2. During hearing the Ld. Counsel for the Assessee, Shri. Nitesh Joshi, contended that an ex-parte order has been passed by the Ld. Commissioner of Income Tax (Appeal) for which our attention was invited to para 4 of the impugned order stating various dates along with remarks contained therein. It was pleaded that on the last date of hearing i.e. 21/02/2017, a public holiday was declared for which the Ld. Counsel filed a notification dated 08/02/2017 on account of Zilla Parishads Election (page 3 of the paper book). The Ld. CIT DR Shri A. Gimson, though defended the impugned order but did not controvert that on 21/02/2017, a public holiday was declared.

2.1 We have considered the rival submissions and perused the material available on record. We note that the assessee company is engaged in the business of pharmaceuticals products, declared income of Rs.69,66,568/- in its return filed on 27/10/2009, which was processed under section 143(3) of the Income Tax Act, 1961 (hereinafter the Act), determining the total income at Rs.1,04,62,93,078/- under section 115JB, by making disallowances. Thereafter, the assessee filed the appeal before the Ld. Commissioner of Income Tax (Appeal), wherein an ex-parte order was passed as the Assessee sought adjournments as mentioned in para 4 of the assessment order. However, on 21/02/2017, the Assessee again filed an adjournment petition. It is noted that this adjournment petition was filed without mentioning that 21/02/2017 has been declared a public holiday due to election. However, fact remains that it was declared as a public holiday. As per section 250(3) of the Act, the Ld. Commissioner of Income Tax (Appeal) has power to adjourn the hearing of appeal from time to time. At the same time it is the duty of the Assessee to make effective representation before the Authority concerned. The assessee has been very casual in its approach as is evident from record, however, by taking a lenient view, we direct the assessee to approach the office of the Ld. Commissioner of Income Tax (Appeal), within fifteen days from the receipt of this order. The Ld. First Appellate Authority is at liberty to dispose of the appeal on merit, a fresh, on a mutually pre-decided date. If the Assessee still fails to appear either within fifteen days (As directed above) or on a mutually decided date, the Ld. First Appellate Authority is free to dispose of the appeal on the basis of material available on record. The assessee be given an opportunity of being heard as indicated above. Thus the appeal of the Assessee is allowed for statistical purposes.

Finally, the appeal of the assessee is allowed for statistical purposes only.

This order was pronounced in open Court in the presence of Ld. Representatives from both sides at the conclusion of the hearing on 20/11/2018.

Sd/-	**Sd/-**
(G.Manjunatha)	(Joginder Singh)
लेखा सदस्य / ACCOUNTANT MEMBER	उपाध्यक्ष /VICE PRESIDENT

मुंबई Mumbai; दिनांक Dated : 20/11/2018

*Thirumalesh, P.S./*नि.स.,

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त,(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**