

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.639 of 2022

Principal Commissioner of Income Tax (PCIT) I, Patna, 2nd Floor, Central
Revenue Building, Beer Chand Patel Path Marg, Patna- 800001, Bihar.

... .. Appellant/s

Versus

Alkem Laboratories Limited Exhibition Road, Patna- 800001.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Archana Sinha @ Archana Shahi Senior Standing Counsel, Income Tax Ms. Shilpi Keshri, Advocate Mr. Alok Kumar, Advocate Ms. Swarna Roy, Advocate Ms. Komal, Advocate Ms. Nisha Kumari, Advocate Ms. Richa Rajiv Singh, Advocate
For the Respondent/s	:	Mr. Ajay Rastogi, Sr. Advocate Ms. Smriti Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

Date : 20-04-2026

1. This is a Miscellaneous Appeal, assailing an order, dated 20th of June, 2022, passed by the Income Tax Appellate Tribunal, Patna Bench, Patna (hereinafter referred to as the “Tribunal” for short) in ITA No. 24/PAT/2021 for Assessment Year 2015-2016 on the following substantial questions of law: -

*(i) Whether the honourable
ITAT is correct in law that the claim of
assessee regarding deduction under
section 35(2AB) with reference to the*



certificate in 3CL issued by DSIR, dated 14.8.2017 is accepted only on the ground that the same has been dropped by the Principal Commissioner of Income Tax Mumbai.

(ii) Whether the honourable ITAT was not justified in law as it restricts/infringes upon the power conferred on the PCIT under section 263 of the Income Tax Act to direct the AO to reframe order on the issues where no proper enquiry/investigation has been made as such assessment order is erroneous and prejudicial to the interest of the revenue.

(iii) Whether on the facts and circumstances of the case the honourable ITAT was justified in holding that Principal Commissioner of Income Tax was not authorised to explore as to why the entire amount of Rs. 20,17,86,432 / was not offered to tax even in view of the fact that no proper enquiry has been made by the AO before finalizing the assessment on this particular issue.

(iv) Whether on the facts and circumstances of the case the honourable ITAT was justified in quashing order under section 263 of the Income Tax Act on the issue of commission payments to



M/S Reynold Petrochem Ltd., amounting to Rs. 1,61,83,762/-, when the PCIT has observed that such commission has been allowed without proper verification and enquiry made by the AO.

(v) At any other ground that may be urged at the time of hearing.

2. Factual matrix, leading to filing of the instant Appeal is that the assessee filed its return of income on 28th of November, 2015, declaring total income at Rs. 5,13,71,110/-. The assessee has also shown income of Rs. 381,18,39,146/- under Section 115JB of the Act. The Assessment Officer took up the case for scrutiny on service of notice under Section 143(2) of the Income Tax Act (hereinafter referred to as “I.T. Act” for short). Subsequently the return was scrutinized according to law and the Assessing Officer passed scrutiny assessment order on 31st of May, 2017 under Section 143(3) of the I.T. Act. The assessment order was reviewed by the Commissioner of Income Tax and the same was found to be erroneous as well as prejudicial to the interest of the revenue. Therefore, the Commissioner issued a notice to show cause under Section 263 of the Income Tax Act. The Principal Commissioner of Income Tax-I, Patna, by an order, dated 27th of March, 2021 cancelled and set aside the assessment order



under Section 143(3) of the I.T. Act, dated 31st of May, 2017, for assessment year 2015-2016, passed by the Assessment Officer on the ground that proper enquiry and verification were not made by the Assessing Officer on:- (i) Taxability of payment of Rs. 20,17,86,432/- made by the assessee to Avenue Venture Real Estate Fund (AVREF); (ii) Claim of deduction under Section 35(2AB) of the I.T. Act, 1961 with reference to the certificate of 3CL issued by DSIR, dated 14th of August, 2017; and (iii) Genuineness of services rendered by M/s Reynolds Petro Chems Limited, corresponding to the claim of commission expenditure amounting to Rs. 1,61,83,762/- during Financial Year 2014-2015, relevant to Annual Year 2015-2016.

3. The Assessment Officer was directed to make fresh enquiry, investigation and verification on the above-mentioned points and finalize the assessment in accordance with law.

4. The respondent Company challenged the said order in appeal, bearing ITA No. 24/PAT/2021 before the ITAT, Patna Bench, Patna. The said appeal was disposed of on 20th of June, 2022, setting aside and quashing the order passed under Section 263 of the I.T. Act, by the PCIT, Patna.



Accordingly the Tribunal allowed the appeal, reversing the judgement passed by the PCIT, Patna.

5. The judgement of the ITAT, Patna Bench, Patna is assailed in the instant appeal by the Principal Commissioner of Income Tax-I, Patna.

6. The learned Advocate appearing on behalf of the appellant submits taking together the above-mentioned questions of law involved in the instant appeal. At the outset, it is submitted by the learned Advocate appearing on behalf of the appellant that Section 263 of the I.T. Act empowers the CIT to revise the assessment orders, deemed erroneous and prejudicial to the revenue's interest. Such order can only be made when an Assessing Officer's order lacks enquiry, fails to apply the law or misappreciates evidence to the resulting in loss of revenue. The order of Assessing Officer was overturned by the Principal CIT on his finding that an amount of Rs. 20,17,86,432/- was not offered to tax even in view of the fact that no proper enquiry has been made by the Assessing Officer before finalizing the assessment. Similarly, the Principal CIT was well within its authority to held that a sum of Rs. 1,61,83,762/- was not paid to Ms. Reymonds Petro Chem Limited as commission. If the aforesaid amount was



added, the tax liability of the assessee would have been enhanced to many fold. Non-consideration of the aforesaid issues caused loss of revenue and this Court is well within its jurisdiction to reconsider the question of law being substantial in nature in the instant appeal.

7. The learned Senior Advocate appearing on behalf of the respondent submits that the purported questions of law that have been agitated by the appellant to set aside are actually question of fact and in the absence of any substantial question of law, this appeal cannot be entertained.

8. In order to substantiate his contention, learned Sr. Advocate on behalf of the Respondent submits that declaration of income by the assess was included in return. So return is a document which necessitates factual consideration, and enquiry on such return is a question of fact which has already been decided up to ITAT. Secondly, it is submitted by the learned Sr. Counsel on behalf of the respondent that a proceeding under Section 263 of the I.T. Act was initiated earlier and the same was dropped. In view of such circumstances, second proceeding under the same provision of law is not permissible. It is also submitted by him that when the assessment order was passed on 31st of Mary, 2017, the



appellant cannot rely upon an order, dated 11th of April, 2016.

9. In support of his contention, he refers to paragraph 23 of the impugned judgement. Paragraph 23 of the impugned judgement runs as hereunder: -

“23. Apart from the above reply, the assessee has filed copies of the invoices issued by Reynolds Petro Chems Ltd., details of TDS etc. After going through these replies, the Assessing Officer has accepted the stand of the assessee. On the strength of these details, it was submitted by the ld. Counsel for the assessee that even though there is no discussion made by the Assessing Officer in the assessment order but, it does not mean that enquiry was not conducted. He submitted that passing of an assessment order is the prerogative of the Assessing Officer and the assessee has no control over the language or the manner in which the assessment order is to be drafted. But on account of non-discussion of an issue, the assessee should not suffer a second round of proceedings. It has to be examined whether the details were filed by the assessee before the Assessing Officer and the Assessing Officer has applied his mind on all these details and



after being satisfied with the contention, he had taken a plausible view accepting the stand of the assessee, without making any finding. For buttressing this contention, he relied on the judgment of the Hon'ble Patna High Court in the case of CIT vs. Mukul Kumar reported in (2009)

4 PLJR 417. He placed on record a copy of this decision. He also placed reliance on the following case-laws:-

➤ *Banco Products (India) Ltd. v. DCIT (2018) 405 ITR 318/258 Taxman 244 (Guj) (HC)*

➤ *CIT v. Claris Lifesciences Ltd. [2010] 326 ITR 251/[2008] 174 Taxman 113*

➤ *Commissioner of Income Tax v. Sandan Vikas (India) Ltd., [2011] 335 ITR 117 (Del)*

➤ *CIT D. TVS Electronics Ltd. (2019) 419 ITR 187/263 Taxman 164 (Mad.) (HC)*

➤ *ACIT v. Eastern Silk Industries Ltd. (2019) 179 ITD 22/184 DTR 406 (Kol) (Trib.)*

➤ *DCIT. STP Ltd. (2021) 187 ITD 538/86 ITR 14 (Kol.) (Trib)''*

10. It is submitted by the learned Senior Advocate



appearing on behalf of the respondent, relying on a Division Bench Judgment of this Court in *Commissioner of Income Tax, Patna v. Mr. Mukul Kumar*, reported in (2009) 4 PLJR 417 that the ITAT set aside the order of the PCIT under Section 263 of the I.T. Act on appreciation of pure question of fact that the Assessing Officer had undertaken and held reasonable enquiry by calling for explanations from the assessee and in view of such finding it interfered with the order of Commission, who had erroneously come to a finding that proper enquiry was not held by the Assessing Officer. Thus, there being materials on record to show that enquiry was made regarding the expenditure claimed, the Division Bench of this was pleased to hold that the ITAT was justified in quashing the order of the Commissioner.

11. Last but not the least, we are inclined to record that the question as to whether the Assessing Officer made enquiry and passed the order or passed the order without enquiry, is a question of fact, which has been finally decided by the ITAT.

12. For the reasons stated above, we are of the view that the issues which have been raised as substantial question of law are really question of fact and there being no



substantial question of law, the instant appeal is set aside.

(Bibek Chaudhuri, J)

(Chandra Shekhar Jha, J)

skm/-

AFR/NAFR	N.A.F.R.
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