IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.193 of 2009

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1. The Commissioner of Income Tax-1, Patna
2. Assistant Commissioner of Income Tax, Circle II, Patna

.... Appellants

Versus

M/s. Alkem Laboratories Ltd., Exhibition Road, Patna

.... Respondent

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Appearance :

For the Appellant/s : Mrs. Archana Sinha, Sr. S.C. (Income Tax) with Mr. Suman Kr.Mishra, Jr. S.C.

For the Respondent/s : Mr. A.K.Rastogi with Mr. Parijat Saurav, Advocates

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

12 31-03-2015 Heard learned counsel for the appellant-Revenue and learned counsel for the respondent.

The appeal has been filed challenging the order dated 28.8.2008 passed by the Income Tax Appellate Tribunal, Patna Bench, Patna in IT (SS) No. 34/PAT/2007 by which the appeal filed by the Revenue has been dismissed.

In essence the only substantial question of law sought to be argued by the appellant is that the Tribunal by refusing to allow the additional grounds to be taken at the time of hearing and not adjudicating upon them has committed an error contrary to the provisions of Rules 11 and 15 of the Income Tax Appellate Tribunal Rules, 1963.

Learned Sr. Standing Counsel for the Income Tax Department has sought to argue on the basis of the grounds taken by the Department in appeal as stated in the relevant paragraphs Nos. 37 to 46 of the order of the Tribunal. It is submitted that it was open to the Tribunal in terms of Rule 11 to have considered the additional grounds taken by the appellant in the appeal before it.

From a perusal of the order of the Tribunal we find that essentially the Tribunal has refused to enter into those additional grounds on the fact that the Revenue could not produce any material before the Assessing Officer or the CIT appeal for taking a contrary stand to consider the additional grounds as it required collection of facts and more material and further the Department had also failed to produce copies of various documents including the seized documents which could have enabled the Tribunal to have considered the said additional grounds. It has also rejected the additional grounds on account of the certain findings recorded by the Assessing Officer on the basis of the remand report dated 16.2.2006 filed by the AO with regard to Rs.13.40 crores being excise duty paid. The Tribunal has also allowed additional ground No.9 with regard to charging of interest under Section 158BFA(1) of the Act.

We thus do not find anything in the order of the Tribunal against which any substantial question of law could be raised by learned counsel for the appellants. As a matter of fact, we do not find any applicability of Rule 11 in the present matter as it is not a case where the Tribunal has not considered additional grounds raised by the Revenue at the time of hearing rather it has considered and rejected most of the grounds on the basis of the materials on the record.

The appeal being devoid of merit is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

(Anjana Mishra, J)

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