IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.401 of 2008

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

.... Appellants

Versus

Alken Laboratories Ltd, Exhibition Road, Patna

.... Respondent

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Appearance :

For the Appellant/s : Mrs. Archana Sinha, Sr. SC, IT
Mr. Suman Kr. Mishra, Jr. SC, IT

For the Respondent/s : Mr. Ajay Kumar Rastogi, Advocate
Mr. Parijat Saurav, Advocate

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

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 31-03-2015

Heard learned senior Standing Counsel for the Income Tax Department and learned counsel for the respondent.

The appeal has been filed challenging the order dated 29.2.2008 passed by the Income Tax Appellate Tribunal, Patna Bench, Patna in ITA No. 218/Pat/2007 with respect to assessment year 2003-04 by which the appeal of the Revenue has been dismissed.

Learned counsel for the Revenue has sought to raise two issues of law before this Court. The first relates to 10% of expenditure on the doctors which was deleted by the CIT (Appeals) and subsequently upheld in appeal by the ITAT also. In support of the stand learned counsel relies upon the reasoning given by the Assessing Officer for making 10% disallowance of the expenditure on doctors.

The Tribunal has agreed with the detailed reasoning given by the CIT (Appeals) for deleting the disallowance. Upon a consideration of the materials on the record, we do not find the said reasoning as unacceptable.

The second issue raised by the Revenue is that the Tribunal was not justified in deleting the addition against delayed payment of employer's contribution under Section 43B of the Income Tax Act.

It is the stand of learned counsel for the Revenue that the second proviso to the said Section was omitted with effect from 1.4.2004 whereas the present matter related to assessment year 2003-04 and thus clearly the second proviso would apply and the deletion is not justified.

From a perusal of the order of the Tribunal, it is evident that while doing so it has relied upon a decision of the Supreme Court dated 7.3.2007 in the case of CIT Vs. Vinay Cements Limited which decision has been reiterated in the case of

Commissioner of Income Tax Vs. Alom Extrusions Ltd.: (2009) 319 ITR 306 (SC).

In view of the law having been settled by the Supreme Court the said ground also does not have any legs to stand on.

We, thus, find that no substantial question of law arises in the present appeal. It is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

S.Pandey/-

(Anjana Mishra, J)

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