IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.404 of 2008

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

.... Appellants

Versus

Alkem Laboratories Ltd., Exhibition Road, Patna.

.... Respondent

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Appearance :
For the Appellants : Mrs. Archana Sinha
Mr. Suman Kumar Mishra.
For the Respondent : Mr. A.K. Rastogi

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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)

15 30-03-2015 Heard learned counsel for the appellants and learned counsel for the respondent.

The appeal has been filed against the order dated 15.2.2008 passed by the Income Tax Appellate Tribunal, Patna Bench, Patna in I.T.A. No.472/Pat/2004 with respect to the assessment year 2000-01, by which the Tribunal has allowed the appeal of the assessee.

Learned counsel for the appellants submits that two substantial questions of law arise in the present matter.

The first is as to whether the Income Tax Appellate Tribunal has erred in allowing deduction under Section 80HHC without reducing the deduction under Section 80IB, when specific legislation under Section 80IB(9) permitted deduction under Section 18HHC.

In this regard, learned counsel for the respondent submits that the question is no longer res integra and has referred a judgment of the Supreme Court in the case of Joint Commissioner of Income Tax vs. Mandeep Eng. And PKG Ind. P. Ltd.: (2007) 292 ITR 1 (SC).

Learned counsel for the appellants does not dispute the above position.

It is clear from the aforesaid decision in the case of Mandeep Eng.(supra) that the said question no longer survives.

The other substantial question of law, according to learned counsel for the appellants, is as to whether the Tribunal has erred in law by not allowing the apportionment of the Director's remuneration to income of new unit for calculating the deduction under Section 80IB.

The reason for the Tribunal taking the view in favour of the assessee was that there is no material on record to hold that there was any nexus between the remuneration paid to the Director and the earning of income from the new unit set up by the assessee, as it is evident from the material brought on the record by the assessee and nothing to contradict the same by the

Revenue, that any additional remuneration was paid to the Director on account of setting up of the new Jagadia Unit.

Learned counsel for the appellants is unable to show how the said issue has been wrongly decided by the Tribunal and how any substantial question of law arises in view of the said finding.

Thus, in the light of the aforesaid discussions, we find no merit in the appeal and it is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

(Anjana Mishra, J)

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