IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.238 of 2023

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Parikshit Singh S/o Abhimanyu Singh Near Railway Station Gahmar, Gazipur, Uttar Pradesh- 232327 also at Truck Syndicate, Buxar- 802101.

... ... Appellant/s

Versus

1. The Principal Chief Commissioner of Income Tax-1, C.R. Building, Bir Chand Patel Patna- 800001.
2. The Commissioner of Income Tax, C.R. Building, Bir Chand Patel Path, Patna.
3. The Joint Commissioner of Income Tax, Patna.
4. The Deputy Commissioner of Income Tax, Patna.
5. Assistant Commissioner of Income Tax, Cir-1, Patna.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Dhananjay Kumar, Advocate Mr. Rajnish Kumar, Advocate
For the Respondent/s	:	Ms. Archana Sinha @ Archana Shahi, Sr. Advocate Mr. Alok Kr. Shahi, Advocate Ms. Swarna Roy, Advocate Ms. Richa Rajiv Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

Date : 30-10-2025

The unsuccessful assessee has filed the instant appeal challenging the order of the Income Tax Tribunal, Patna in I.T.A. No. 251/PAT/2019 delivered on 05th September 2022.

2. The Tribunal found the above-mentioned appeal not maintainable under the law and accordingly dismissed the appeal.

3. It is also held by the Appellate Tribunal that the appellant ought to have filed two separate appeals, and the relief claimed by the appellant cannot be granted by the Tribunal in the above-mentioned Tax Appeal.

4. In order to dispose of the instant appeal, it is necessary to state the following facts:-

Income Tax file of the appellant/assessee for the assessment year 2012-13 was examined and checked under Section 143(3) read with Section 144 by the assessing officer after serving notice to the assessee and the assessing officer came to the following finding:-

"It was judicially held by Hon'ble Supreme Court in the case of Pandian Chemicals Ltd. Vs Commissioner of Income Tax on 24th April 2003 that the legislature intended to cover receipts from sources other than the actual conduct of the business. Further the derivation of profits on the deposit made with electricity board cannot be said to flow directly from the industrial undertaking. In this decision the case of Cambay Electric Supply Industrial Co. ltd. Vs. CIT (1978) was also discussed that the expression "derived from" had a narrower connotation than the expression "attributable to". Thus interest income cannot be said to be derived directly from eligible business of contract.

It is also relevant to mention here that all the funds used for making the investments in FDRs and NSC were surplus funds of the assessee and the assessee was free to utilize these funds in any manner. Source of interest income is FDR and NSC which is different and separate from contract receipts. Even if contract business is stopped, the assessee can continue to receive interest and vice versa. Thus interest received from NSC and FDR cannot be considered as part of the contract receipts while estimating income from the business of civil construction contracts. (DCIT vs Allied construction (2006).

As such audit observed that as the legislature intended to cover receipts from the business of civil construction work only, the matter was required to be examined keeping in view the decision given by the Hon'ble Supreme Court.

In the circumstances determination of income of the assessee from contract receipt of Rs. 9,19,22,462/- only was required to be estimated @10% and interest income (Net) amounting to Rs. 13,86,304/- should have been added separately treating it as income from sources other than civil construction work.

Further, it is stated that time extension charge should be shown in the balance sheet as the recovery of time extension is *refundable if work is completed in stipulated time or delay is justified with suitable reasons otherwise it is treated as penalty if delay is not justified. In both the situation, it cannot be debited in P&L account. Any deduction of penalty as an expense is not allowable u/s 30 to 43 of 1.T. Act and as the case was assessed on estimation basis, hence, time extension could not be deduced from estimated income. Hence, time extension of Rs.28,79,229/- should be added back to assessed income.*

Further, it is stated that as the case was assessed u/s 143(3) r.w.s. 144, hence, no further deduction was allowable after estimation. Therefore, depreciation amount of Rs.21,98,508/- should be added back to assessed income.

These mistake resulted in short computation of income and tax thereon, detail as below:-

Assessed income	*Rs. 53,96,050*
Add: interest income (1386304- 10% of 1386304)	*Rs. 1247674*
Add: Time Extension	*Rs. 2198508*
Total	*Rs. 11721461 or Rs. 11721460*

Tax on Rs. 11721460 at normal rate	*Rs. 3368438*
Add: EC @ 35	*Rs. 101053*
Total	*Rs. 3469491*
Less: TDS-	*Rs. 1406312*
Balance	*Rs. 2063179*

Interest u/s 234B for 84 months = 20631 x 84 = 17,33,004

TAX EFFECT

	T1	***IT+EC***	***234A***	***234 B***	***234 C***	***Total***
As per audit	*11721460*	*3469491*	*Nil*	*742716*	*Nil*	*4212207*
As per deptt	*5396050*	*1514939*	*Nil*	*39096*	*Nil*	*1554035*
Short levy of tax & interest						*2658172*

In reply department stated that reply would follow after verification of concerned records."

5. The order of assessment under Section 143(3) of the Income Tax Act was challenged by the appellant before the Principal Commissioner of Income Tax-1, Patna, and upon hearing, he passed an order dated 27th March 2017, holding, *inter alia*, that the assessing officer passed the assessment order without proper application of mind and without making the requisite investigation/enquiry, which he was legally bound to do before the assessment under Section 143(3) of the I.T. Act.

6. The Principal Commissioner of Income Tax further held that before passing any such order, with a view to granting an opportunity of being heard, a notice under Section 263 of the Income Tax Act, 1961, was issued on 15th March 2017 for compliance by 22nd March 2017, but on the said date, no

compliance was made. Therefore, the Principal Commissioner of Income Tax disposed of the review proceeding, directing the assessing officer to conclude the assessment afresh on the basis of materials available on record, which the assessing officer did not examine at the time of making the assessment.

7. Thus, the assessing officer failed to assess the income tax of the assessee as per the direction of the Hon'ble Apex Court in the case of ***Commissioner of Income Tax vs. Malabar Industrial Company***, reported in ***243 ITR 83 (SC) 2000.*** Thus, the above-mentioned assessment order was rejected on the ground that it was prejudicial to the interest of the revenue, and the said order was set aside with a direction to the assessing officer to examine the matter afresh.

8. The assessing officer assessed the income under Section 143(3), read with Sections 144 and 263 of the Income Tax Act, *vide* order dated 31st December 2017, and found the total assessed income of the assessee to the tune of Rs. 95,22,953/-. On the basis of the said income, the assessing officer held that the assessee is liable to pay net tax of Rs. 20,06,561/-. The said order is under challenge in the instant appeal.

9. Chapter XIV of the Income Tax Act, 1961, provides for the procedure for assessment. Section 143 of the said Act

prescribes the detailed procedure as to how the income tax return shall be processed.

10. An order under Section 143 read with Section 144 of the said Act is subject to revision by the Principal Commissioner of Income Tax under the provisions of Section 263 of the said Act if the assessment order is prejudicial to the revenue. If the order is found to be erroneous insofar as it is prejudicial to the interest of the revenue, the Principal Commissioner of Income Tax may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass an order on assessment as the circumstances of the case justify.

11. In the instant appeal, the appellant challenged both the order under Section 263 of the I.T. Act passed by the Principal Commissioner of Income Tax *vide* order dated 27th March 2017. By passing such order, the Principal Commissioner directed the assessing officer to re-assess the income tax return of the appellant. The assessing officer issued notice to the assessee under Section 142(1) of the I.T. Act, requiring him to furnish the details of his self-assessment, but the appellant failed to furnish the details.

12. Subsequently, the assessing officer passed the assessment order on 31st December 2017, determining the taxable

income of the assessee. Before the Principal Commissioner, I.T., the appellant challenged the order dated 27th March 2017 in revision by the Principal Commissioner of Income Tax, and the final assessment order dated 31st December 2017 passed by the assessing officer.

13. The Tribunal rightly held that against the order dated 31st December 2017, the appeal lies under Section 246(1) before the learned Commissioner and not before the Appellate Tribunal. The Tribunal also held that against the order dated 27th March 2017, passed by the Principal Commissioner of Income Tax, the appeal lies before the Income Tax Appellate Tribunal. Both the appeals cannot be clubbed together in a single appeal before the Tribunal. Moreover, the appeal was filed before the Tribunal on 28th November 2019, almost after a expiry of two and a half years. No application for condonation of delay was filed; therefore, the appeal was barred by limitation.

14. On careful consideration of the impugned order, we do not find any error on fact or law in the order passed by the Income Tax Tribunal.

15. For the reasons stated above, we are of the view that the instant appeal is devoid of any merit and the same is liable to be set aside. Accordingly, the instant appeal is dismissed, and the

impugned order dated 5th September 2022, passed by the Income Tax Appellate Tribunal, is affirmed.

(Bibek Chaudhuri, J)

(Sunil Dutta Mishra, J)

Suraj Dubey/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	10.11.2025
Transmission Date	10.11.2025