

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA-PATNA 'E-COURT', KOLKATA  
[Virtual Court Hearing]**

**Before Shri Rajpal Yadav, Vice-President(KZ)  
&  
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 22/PAT/2021  
Assessment Year: 2012-2013  
&  
I.T.A. No. 23/PAT/2021  
Assessment Year: 2014-2015**

***Alkem Laboratories Limited, .....Appellant  
Exhibition Road,  
Patna-800001  
[PAN:AABCA9521E]***

***-Vs.-***

***Principal Commissioner of Income Tax-1,.....Respondent  
Patna,  
2<sup>nd</sup> Floor, Central Revenue Building,  
Beer Chand Patel Marg,  
Patna-800001, Bihar***

**Appearances by:**

*Shri A.K. Rastogi, Sr. Advocate, for the Appellant  
Shri Sanjay Mukherjee, CIT(D.R.), for the Respondent*

Date of concluding the hearing : February 15, 2022  
Date of pronouncing the order : March 09, 2022

**O R D E R**

**Per Rajesh Kumar, Accountant Member:-**

These two appeals by the assessee are filed against the orders passed by the ld. Principal Commissioner of Income Tax, Patna-1 dated 24.03.2021 (hereinafter called as PCIT) for the assessment years 2012-13 and 2014-15..

2. The assessee has challenged the revisionary jurisdiction exercised by the ld. PCIT under section 263 of the Act. The ground taken by the assessee First of all, we would like to adjudicate the legal issue raised by the assessee. The legal grounds are reproduced as under:-

*“(1) For that the ld. CIT has erred in initiating proceedings u/s 263 in respect of an issue which was not subject matter of proceedings u/s 147 concluded vide re-assessment order u/s 143(3)/147 dated 31.12.2018 and thus the notice issued dated 15.01.2021 is barred by limitation.*

*(2) For that in absence of any allegation in the notice u/s 263 dated 15.01.2021 to the effect that re-assessment order u/s 143(3)/147 dated 31.12.2018 is erroneous in so far as prejudicial to the interest of the revenue the notice itself is ab-initio void, illegal and without jurisdiction”.*

3. The issue raised in the Grounds No. 1 & 2 is that the order of ld. PCIT is barred by limitation under the Act as the period of two years under section 263(1) of the Act is to be reckoned from the date of original assessment framed under section 143(3) dated 31.03.2016 and not from the dated reassessment order passed under section 143(3) read with section 147 of the Act dated 31.12.2018.

4. The facts in brief are that the assessee filed its return of income on 29.11.2012 declaring total income of Rs.53.34 crores under the normal provisions of the Act and Rs.455.10 crores under section 115JB as book profit. The case of the assessee was selected for scrutiny and assessment was framed under section 143(3) of the Act vide order dated 31.03.2016. Thereafter the case of the assessee was reopened under section 147 of the Act by issuing notice under section 148 of the Act by recording the reasons to believe under section 148(2) of the Act that the Assessing Officer has accepted the claim under section 35(2AB) of the Act amounting to Rs.71.43 crores and consequently the income has escaped assessment. Thereafter the assessment was framed under section 143(3) read with section 147 of the Act vide order dated 31.12.2018 determining the total income at Rs.169.21 crores under the normal provisions of the Act, which was later on rectified under section 154 of the Act vide order dated 23.02.2019 determining the total income at Rs.174.91 crores under the normal provisions and Rs.503.44 crores u/ 115JB of the Act.

5. On examination of the assessment records, the Id. PCIT observed that the assessment order under section 143(3) read with section 147 dated 31.12.2018 passed by the Assessing Officer was erroneous in so far as prejudicial to the interest of the Revenue within the meaning under section 263 of the Income Tax Act on the ground that the assessment has been framed without making inquiries and verification of bogus commission paid to M/s. Reynolds Petro Chems Limited amounting to Rs.1,05,33,882/-. Accordingly, the Id. PCIT issued show-cause notice under section 263 of the Act dated 15.01.2021 as to why the assessment framed under section 143(3) read with section 147 of the Act dated 31.12.2018 should not be revised as being erroneous in so far as prejudicial to the interest of the Revenue, which was replied by the assessee which is extracted in para 4 of the revisionary order passed under section 263 of the Act. Finally the Id. PCIT noted that the assessee has paid commission of Rs.1,05,33,842/- on account of sales services provided by M/s. Reynolds Petro Chems Limited, which on the basis of information available on record showed that the said commission is not genuine and a sham/arranged transaction. While passing the order, the Id. PCIT referred to the survey operation conducted on M/s. Reynolds Petro Chems Limited by the Investigation Wing, Mumbai on 16.04.2015 and also the statement recorded during the course of survey of Mr. Jagdish Chandra Somani, who was managing the affairs of the recipient company. Finally Id PCIT cancelled and set aside the assessment framed under section 143(3) read with section 147 of the Act dated 31.12.2018 with a direction to the Assessing Officer to frame the assessment *denovo* by making fresh inquiries regarding the issue of commission and finalize the assessment in accordance with law after affording reasonable opportunity of hearing to the assessee.

6. The Id. A.R. vehemently submitted before the Bench that the order passed by the Id. PCIT by exercising his jurisdiction under section 263 of the Act is not in accordance with the provisions of the Act as the

revisionary jurisdiction has been exercised beyond the period of limitation as prescribed in section 263(2) of the Act, which provides that no order shall be made under sub-section (1) of section 263 after expiry of two years from the end of financial year in which the order sought to be revised was passed and thus the order is hopelessly barred by limitation. The ld. A.R. submitted that the assessment in this case was framed under section 143(3) vide order dated 31.03.2016 after raising various issues in the questionnaire issued by the Assessing Officer during the assessment proceedings which were duly replied and responded during the course of assessment proceedings by the assessee. The ld. A.R. submitted that the act of the ld. PCIT in setting aside the assessment framed under section 143(3) read with section 147 of the Act dated 31.12.2018 is incorrect and against the provisions of the Act as the re-assessment proceedings were initiated for the limited issue of examining the allowance of deduction under section 35(2AB) of the Act and the commission paid to M/s. Reynolds Petro Chems Limited was neither subject matter of the re-opening nor it came to the notice of the AO during re-assessment proceedings. The ld. A.R. submitted that in the re-assessment proceedings, there was no occasion before the Assessing Officer to examine the issue of payment of bogus commission to M/s. Reynolds Petro Chems Limited and it is only in the original assessment proceedings, where the Assessing Officer has unlimited powers of examining all the issues, whereas in the reassessment proceedings, the scope of powers is completely different. The ld. A.R. submitted that since the reassessment proceeding was initiated for limited issue and during the course of re-assessment proceedings, the Assessing Officer did not come across any other income, which has escaped or any other allowance which has been claimed wrongly by the assessee, therefore, the reassessment proceeding was framed as stated above. The ld. counsel for the assessee Mr. Ajoy Kumar Rastogi vehemently argued that the revisionary jurisdiction cannot be exercised in respect of the reassessment order framed under section 143(3) read with section 147

dated 31.12.2018 over an issue which is not subject matter of re-assessment but it could have been exercised only with respect to the original assessment framed under section 143(3) vide order dated 31.03.2016. The ld. counsel argued that the issue of payment of bogus commission could be examined by the Assessing Officer during the course of original assessment proceeding and, therefore, if at all the order is erroneous in so far as prejudicial to the interest of the Revenue, that is only original assessment order dated 31.03.2016. The ld. Sr. Counsel submitted Before the Bench that in view of this fact, the period of limitation of two years has to be reckoned from the end of financial year in which the assessment under section 143(3) dated 31.03.2016 was passed meaning thereby that the period of two years from the end of financial year, i.e. 31.03.2016 expired on 31.03.2018. It was for this reason the revisionary jurisdiction exercised by the ld. PCIT under section 263 of the Act was barred by limitation, as the show-cause notice under section 263 of the Act was issued on 15.01.2021. In defence of his arguments, Ld. Sr. Counsel relied on the series of decisions, namely –

- (i) CIT –vs.- Alagendran Finance Limited (2007) 293 ITR 1 (SC);
- (ii) CIT –vs.- ICICI Bank Limited (2012) 343 ITR 74 (Bom.).

The ld. A.R. submitted that in both these decisions, the Hon'ble Courts have held that the two years period of limitation shall run from the end of financial year in which the original assessment was framed and not from the end of financial year in which the reassessment was framed when the issue on which the assessment was revised was not subject matter of reassessment proceedings. The ld. A.R. also submitted that in view of this settled position of law, the revisionary proceeding as exercised by ld. PCIT under section 263 of the Act and the consequent order may be quashed as being barred by limitation.

7. Per contra, the ld. D.R. relied heavily on the order of ld. PCIT by submitting that no prejudice is going to be caused to the assessee if the

assessment order is revised by the Assessing Officer as the assessee would be given reasonable and sufficient opportunity during the set aside assessment proceeding also and the assessee is free to present its case on merit before the Assessing Officer. The Id. D.R. also submitted that the Id. PCIT has only directed the Assessing Officer to verify the issue proposed in the impugned order and frame the order in accordance with law after making the fresh enquiry and affording reasonable opportunity of being heard to the assessee and therefore, the same needs to be affirmed by the dismissing the legal issue raised by the assessee.

8. Having heard the rival contentions and perusing the material available on record, we note that the assessment under section 143(3) was framed vide order dated 31.03.2016 though the issue of payment of commission was admittedly not enquired/investigated by the Assessing Officer during the course of assessment proceedings. Thereafter the assessment was reopened by the Assessing Officer under section 147 read with section 148 of the Act on 12.01.2018 after recording the reasons to believe under section 148(2) of the Act that income has escaped assessment due to incorrect allowance of deduction under section 35(2AB) amounting to Rs.71.43 crores and not in respect of the commission payments. The reassessment proceeding concluded and culminated vide order dated 31.12.2018 passed under section 143(3) read with section 147 of the Act. It is undisputed that the assessee has made the payment of commission of Rs.1,05,33,882/- to M/s. Reynolds Petro Chems Limited in lieu of sales services rendered by the said party. It is pertinent to state that the survey under section 133 of the Act was conducted on M/s. Reynolds Petro Chems Limited on 16.04.2015 and during the course of survey, the key person Mr. Jagdish Chandra Somani, who was managing the affairs of the said recipient company, admitted that the commission paid was not genuine and was a sham transaction. The DDIT(Inv.), Unit-3(3), Mumbai vide his report dated 11.04.2016 communicated the fact to the Assessing Officer that the assessee has paid

bogus commission of Rs.1,05,33,882/-. Now the issue before us for adjudication is whether the revisionary jurisdiction exercised by the Id. PCIT under section 263 of the Act is barred by limitation. The scope of powers of the AO in original assessment proceedings and reassessment proceedings are not same. In order to decide the issue at hand we would like to dwell the powers of the AO in the original assessment proceedings and the reassessment proceedings. In the original assessment proceedings the AO has vast powers whereas in the reassessment proceedings the powers are limited though the AO has the power to assess any other item of income which is not subject matter of the reasons u/s 148(2) of the Act which comes to notice during the course of proceedings but subject to the condition that the addition is made in respect of escaped income as recorded in the reasons u/s 148(2) of the Act. We note that in assessment proceedings which culminated under section 143(3) order dated 31.03.2016 the AO did not examine this issue of commission payment. In the reopened assessment under section 147 read with section 148 of the Act as finalised vide order dated 31.12.2018, this issue did not come to the notice of the AO during the proceedings.

9. Considering the facts of the case vis a vis the and the provisions of section 263(2) of the Act and also the citations made by the Id. Sr. Counsel before us, we are of the considered view that it is the original assessment order passed under section 143(3) of the Act which could be considered as erroneous and prejudicial to the interest of the Revenue if the commission paid to M/s. Reynolds Petro Chems Limited is found to be fictitious and bogus and not the reassessment as framed under section 143(3) read with section 147 of the Act vide order dated 31.12.2018. In our opinion, the limitation runs from the end of the financial year in which the original assessment under section 143(3) of the Act was framed, i.e. 31. 03.2016 and the limitation period expired on 31.03.2018, whereas the Id. PCIT has set aside and revised the reassessment order under section 143(3) read with section 147 dated 31.12.2018 and

consequently the revisionary jurisdiction of the Id. PCIT cannot be sustained. The case of the assessee finds force from the decision in the case of CIT -vs.- Alagendran Finance Limited (supra), wherein the Hon'ble Apex Court has held that the period of limitation has to run from the date of order of assessment and not from the date of order of reassessment, where the item/issue in respect of which order is revised under section 263 of the Act by the Id. PCIT is not the subject matter of reassessment proceedings. The facts before the Hon'ble Apex Court were that , the Id. PCIT had sought to revise the part of the order of assessment, which related the lease equalisation fund. The reassessment proceeding was initiated and culminated under section 143(3) read with section 147 of the Act in which the issue of lease equalisation fund was not the subject matter and the Hon'ble Court has, therefore, held that doctrine of merger did not apply in the case of this nature and the period of limitation commences from the date of original assessment and not from the date of reassessment since the latter had not anything to do to lease equalisation fund and this was not a case where subject matter of assessment and subject matter of re-assessment were same. The Hon'ble Apex Court while passing the order has relied on the decision of Coordinate Bench in the case of CIT -vs.- Arbuda Mills (1998) 231 ITR 50 (SC). Similar ratio as laid down by the Hon'ble Bombay High Court in the case of CIT -vs.- ICICI Bank Limited(Supra) wherein the Hon'ble Bombay High Court has held that where the jurisdiction under section 263(1) of the Act is sought to be exercised with reference to an issue which is covered by the original order of assessment under section 143(3) of the Act and which does not form the subject matter of the reassessment, the limitation must necessarily begin to run from the date of order passed under section 143(3) by observing and holding as under:-

*"Held, dismissing the appeal, that neither in the first reassessment nor in the second reassessment was any issue raised or decided in respect of the deductions under section 36(1)(vii), (viia) and the foreign exchange rate difference. The order of the Commissioner under section 263(2) had not been passed with reference to any issue*



*which had been decided either in the order of the first reassessment or in the order of second reassessment but sought to revise issues decided in the first order of assessment passed under section 143(3) on March 10, 1999, which continued to hold the field as regards the three issues in question. The order dated March 10, 1999, did not merge with the orders of reassessment in respect of issues which did not form the subject matter of the reassessment. Consequently, Explanation 3 to section 147 would not alter that position. Explanation 3 only enables the Assessing Officer, once an assessment is reopened, to assess or reassess the income in respect of any issue, even an issue in respect of which no reasons were indicated in the notice under section 148(2). This, however, will not obviate the bar of limitation under section 263(2). The invocation of the jurisdiction under section 263(2) was barred by limitation”.*

10. In the instant case before us also the issue on which the ld. PCIT proposed the revision of reassessment order dated 31.12.2018, we note that the issue of payment of bogus commission was not the subject matter of reassessment proceedings. Therefore, the period of limitation has to run from the date of assessment as framed under section 143(3) dated 31.03.2016. In view of this, we incline to hold that the revisionary jurisdiction exercised by the ld. PCIT is hopelessly barred by limitation. In view of the ratio laid down by the Hon'ble Courts as discussed herein above, the appeal of the assessee is allowed. The issues raised on merit by the assessee challenging the exercise of revisionary jurisdiction become academic at this stage and are not being adjudicated.

**11. In the result, the appeal of the assessee is allowed.**

**12. ITA No. 23/PAT/2021:-**

The issue involved in this appeal is similar to one as has been decided by us in **ITA No. 22/PAT/2021** hereinabove. The only difference is with regard to the fact that in ITA No. 22/PAT/2021, the Assessing Officer did not have the occasion to examine the issue of payment of bogus commission to M/s. Reynolds Petro Chems Limited, whereas in A.Y. 2014-15, this issue has examined in the original assessment framed under

section 143(3) of the Act. Therefore, our decision in ITA No.22/PAT/2021 would *mutatis mutandi* apply to this appeal as well, accordingly the appeal of the assessee is allowed.

**13. In the result, both the appeals of the assessee are allowed.**

Order pronounced in the open Court on March 09, 2022.

<b>Sd/-</b> <b>(Rajpal Yadav)</b> <b>Vice-President (KZ)</b>	<b>Sd/-</b> <b>(Rajesh Kumar)</b> <b>Accountant Member</b>
<b>Kolkata, the 9<sup>th</sup> day of March, 2022</b>	

*Copies to :*

- (1) **Alkem Laboratories Limited,**  
**Exhibition Road, Patna-800001, Bihar**
- (2) **Principal Commissioner of Income Tax-1, Patna,**  
**2<sup>nd</sup> Floor, Central Revenue Building,**  
**Beer Chand Patel Marg, Patna-800001, Bihar**
- (3) *Commissioner of Income Tax- ,*
- (4) *The Departmental Representative*
- (5) *Guard File*

TRUE COPY

By order

*Assistant Registrar,*  
*Income Tax Appellate Tribunal,*  
*Kolkata Benches, Kolkata*

**Laha/Sr. P.S.**