IN THE HIGH COURT FOR THE STATE OF TELANGANA: HYDERABAD

*** * ***

WRIT PETITION No.21429 of 2026

Between:
M/s. Premier Solar Power tech Private Limited.

Petitioner

VERSUS

The Principal Commissioner of Income Tax,
Hyderabad-4, 2nd Floor, 'A' Block, I.T. Towers,
AC Guards, Masab tank, Hyderabad - 500004,
and 2 Others.

Respondents

ORDER PRONOUNCED ON: 20.07.2026

THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE NARSING RAO NANDIKONDA

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes

2. Whether the copies of judgment may be marked to Law Reporters/Journals? : Yes

3. Whether His Lordship wishes to see the fair copy of the Judgment? : **Yes**

P.SAM KOSHY, J

*** THE HON'BLE SRI JUSTICE P.SAM KOSHY**

AND

THE HON'BLE SRI JUSTICE NARSING RAO NANDIKONDA

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Respondents

! Counsel for petitioner(s) : Mr. Karan Talwar.

^Counsel for the respondent(s) : Mr. Mr. Kamasuni Sudhakar Reddy, learned Senior Standing Counsel for Income Department.

<GIST:

> HEAD NOTE:

? Cases referred
1) (2026) 488 ITR 65
2) (2005) 276 ITR 165
3) [2024] 163 taxmann.com 470 (Telangana)

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ORDER: *(per Hon'ble Sri Justice P.Sam Koshy)*

Heard Mr. Karan Talwar, learned counsel for the petitioner; and Mr. Kamasuni Sudhakar Reddy, learned Senior Standing Counsel for Income Tax Department appearing on behalf of the respondents.

2. The instant Writ Petition under Article 226 of the Constitution of India has been filed by the petitioner challenging the order dated 27.03.2026, passed by respondent No.1 under Section 264 of the Income Tax Act, 1961 (for short the 'Act'). The petitioner also prayed the Court to further direct the respondent No.1 to revise the

intimation dated 02.11.2022 pursuant to application dated 03.04.2024 filed by the petitioner under Section 264 of the Act.

3. *Vide* the impugned order, the respondent No.1 declined to interfere with the intimation dated 02.11.2022 issued under Section 143(1) of the Act for the assessment year 2021-22 and rejected the petitioner's application dated 03.04.2024 under Section 264 of the Act, seeking modification of the said Intimation by reducing the income offered for the assessment year 2021-22 by Rs.6,85,02,377/-.

4. The facts of the case are that the petitioner company was engaged in the business of Engineering, Procurement and Construction of solar power projects, and had been awarded a contract for setting up of a 100 MW (AC) Grid Interactive Solar PV Power Project by M/s. NLC India Limited (for short 'NLC Limited') vide Letter of Award dated 09.02.2018, during the financial year 2017-18. The project, though scheduled for completion by 23.04.2019, was actually completed only on 09.09.2019, and the contract levied liquidated damages at the rate of 2% of the contract price per month, or part thereof, for delay in execution. Consequent upon completion, the petitioner during the financial year 2019-20, charged to its Statement of Profit & Loss an amount of Rs.16,04,12,000/- towards liquidated damages for the delay, in

accordance with Accounting Standard 7 and Accounting Standard 29, and claimed the same as a deduction in its Return of Income for the assessment year 2020-21, filed on 06.11.2020. The said provision came to be reversed in subsequent years upon settlement of the claim by NLC Limited, the amounts so reversed being duly credited to the Statement of Profit & Loss and offered to tax; accordingly, during the financial year 2020-21 (relevant to the assessment year 2021-22), the petitioner reversed liquidated damages to the extent of Rs.9,79,12,000/-, a sum which included an amount of Rs.6,85,02,377/-, and offered the same to tax, filing its original Return of Income on 14.03.2022 and a revised Return on 15.03.2022, declaring a total income of Rs.1,91,27,266/-, inclusive of the said credit of Rs.9,79,12,000/-.

5. Meanwhile, the petitioner's case for the assessment year 2020-21, having been selected for scrutiny under CASS, culminated in an order dated 25.09.2022 passed by the Faceless Assessing Officer under Section 143(3) read with Section 144B of the Act, restricting the claim of Liquidated Damages to Rs.9,19,09,623/- and disallowing the balance of Rs.6,85,02,377/- under Section 28 of the Act, a disallowance that, though pertaining to the assessment year 2020-21, came to be effected only on 25.09.2022, that is well after the petitioner had already offered

the very same amount to tax for the assessment year 2021-22 vide its return filed on 15.03.2022, and also well after the last date for filing a revised return for the assessment year 2020-21, being 31.05.2021, thereby foreclosing any possibility of the petitioner correcting the position for that year. The petitioner accepted the said disallowance and paid the entire tax raised thereon; being aggrieved, by the resultant double taxation of Rs.6,85,02,377/-, it filed a petition under Section 264 of the Act on 28.10.2022 for the assessment year 2021-22 before respondent No.1, seeking reduction of the income offered for that year by the said sum which application respondent No.1 rejected vide order dated 25.03.2024, solely on the ground that, as on the date of its filing, no order for the assessment year 2021-22 existed which could be revised under Section 264 of the Act.

6. In the meanwhile, the revised Return of Income for the assessment year 2021-22 was processed by way of an Intimation dated 02.11.2022 under Section 143(1) of the Act, with an addition of Rs.24,20,004/-, computing the total income at Rs.2,15,47,270/- as against the returned income of Rs.1,91,27,266/-, and raising a demand of Rs.7,54,410/-. Aggrieved by this adjustment, the petitioner filed a rectification application on 30.11.2022, pursuant to which the Intimation was

rectified under Section 154 of the Act vide order dated 24.01.2023, recomputing the total income at Rs.1,91,27,266/-, the income as originally returned and reducing the demand to nil. Both the Intimation under Section 143(1) and the order as rectified under Section 154 continued to include the credit of Rs.9,79,12,000/-, and consequently the amount of Rs.6,85,02,377/-. Since the petitioner’s application under Section 264 of the Act concerning the double taxation of this very amount was at that stage already pending, the petitioner did not press this issue in the Section 154 rectification proceedings.

7. From the above sequence of events, it stood evident that the amount of Rs.6,85,02,377/- had been brought to tax twice in the petitioner's hands: firstly, by being offered to tax in the assessment year 2021-22 as a part of the reversal of Rs.9,79,12,000/- vide the Return filed on 15.03.2022 and which stood accepted under Section 143(1) of the Act and as rectified under Section 154 of the Act; and secondly, by disallowance in the assessment year 2020-21 vide the assessment order dated 25.09.2022 passed under Section 143(3) read with Section 144B of the Act, on which the entire tax stood paid and which had since attained finality.

8. Upon receiving the order dated 25.03.2024, rejecting the earlier petition *in limine*, the petitioner filed a fresh application under Section 264 of the Act on 03.04.2024 before respondent No.1 for the assessment year 2021-22 seeking modification of the Intimation dated 02.11.2022 by reducing the income offered under the head 'Profits and Gains from Business or Profession' by Rs.6,85,02,377/-, being the amount already disallowed and taxed in the assessment year 2020-21 and once again subjected to tax in the assessment year 2021-22. In support of the said application, the petitioner filed a detailed written submission dated 12.01.2026, followed by an additional written submission dated 25.02.2026 before respondent No.1 furnishing a complete reconciliation of the turnover of the NLC project as per Form 26AS and the books of account together with a complete reconciliation of the liquidated damages of Rs.16,04,12,000/- charged in the previous year 2019-20 and reversed in subsequent years upon settlement.

9. The respondent No.1, vide the impugned order dated 27.03.2026, declined to interfere with the Intimation dated 02.11.2022 and rejected the petitioner's application under Section 264 of the Act. It is this action of the respondent No.1 which is under challenge in this instant Writ Petition.

10. Learned counsel for the petitioner relied on Section 264(1) of the Act and submitted that it was nowhere expressly stated that there is a requirement of an 'error apparent on record' and a summary rejection is not tenable under Section 264. Further, he already stated out rightly in the facts that there was a glaring error apparent on the face of the record since there was a double taxation and the error can be committed by an assessee in its return of income.

11. Learned counsel for the petitioner relied on the case of **Swaminarayan Mandir Trust vs. CIT**[1] wherein the Bombay High Court held that the provisions of Section 264 would cover within its ambit a scenario where the assessee commits any error / mistake in the return of income. The relevant portion of the judgment is extracted below for ease of reference:

> *"**17.** Secondly, the question under consideration is whether the prescribed authority can exercise its power under section 264 to make good the mistakes/errors which are committed by the assessee itself in the return of income. This aspect is no longer res integra. This court has time and again held that the powers conferred on the Commissioner under section 264, are not only wider in its scope but are also intended for the purpose of preventing miscarriage of justice and for providing relief to an assessee, which it is otherwise entitled to. This court in the case of Pramod R. Agrawal v. Pr.*

[1](2026) 488 ITR 65

CIT [(2024) 464 ITR 367 (Bom); 2023 SCC OnLine Bom 2271.] held as under (page 373 of 464 ITR):

> *"11. The other submission of Mr. Suresh Kumar also cannot be accepted in view of the wide powers conferred on respondent No. 1 under section 264 of the Act. As held by this court in Smita Rohit Gupta v. Pr. CIT [(2023) 459 ITR 369 (Bom); 2023 SCC OnLine Bom 1861.] , section 264 confers wide jurisdiction on the Commissioner. The proceedings under section 264 of the Act are intended to meet a situation faced by an aggrieved assessee, who is unable to approach the appellate authorities for relief and has no other alternate remedy available under the Act. The Commissioner is bound to apply his mind to the question whether the petitioner was taxable on that income and his powers are not limited to correct the error committed by the subordinate authorities but could even be exercised where errors are committed by the assessee. It would even cover situation where the assessee because of an error has not put forth legitimate claim at the time of filing the return and the error is subsequently discovered and is raised for the first time in an application under section 264 of the Act." (emphasis [Here printed in italics.] supplied)*

18. *Similarly, in the case of Diwaker Tripathi v. Pr. CIT [(2024) 466 ITR 371 (Bom); 2023 SCC OnLine Bom 2961.] , where the assessee committed errors in filing the return of income, this court held as under (page 375 of 466 ITR):*

> *"8. Therefore, as the power conferred under section 264 of the Act is very wide, in our view, the Commissioner is duty bound to apply his mind to the application filed by the assessee and pass such order thereon. Section 264 of the Act also empowers*

> *respondent No. 1 to call for the record of any proceedings under the Act in which any order has been passed and make such inquiry or cause such inquiry to be made and pass such order as he thinks fit. Therefore, if respondent No. 1 feels that detailed inquiry is necessary and he will be hard pressed for time, he may cause such inquiry made by the Assessing Officer and direct the Assessing Officer to file a report.*
>
> *9. In the present case, as per the petitioner in his return of income he has made mistakes as noted earlier in this order. Looking at the mistake, it is rather obvious that it was not a deliberate mistake or an attempt to gain some unfair advantage or to evade any tax.*
>
> *10. In the circumstances, we quash and set aside the order dated March 27, 2017 passed under section 264 of the Act, order dated September 21, 2021 under section 154 of the Act and intimation dated October 17, 2015 issued under section 143(1) of the Act and remand the matter for de novo consideration to respondent No. 1 to dispose of the petitioner's application under section 264 of the Act on the merits."*

19. ***<u>Considering the above, we are of the view that the provisions of section 264 would cover within its ambit even a scenario where the assessee commits any error/mistake in the return of income.</u>***

20. *Thirdly, as regards the decision of the hon'ble apex court in the case of Goetze (India) Ltd. v. CIT [(2006) 284 ITR 323 (SC); 2006 SCC OnLine SC 1446.] , relied upon by Mr. Chatterjee, we find that this court in the case of Bahar InfoconsPvt. Ltd. v. Pr. CIT [(2025) 476 ITR 615 (Bom); 2024 SCC OnLine Bom 3102.] has already dealt with the said* *argument of the Revenue (in the context of section 264 itself) and has held as under (page 622 of 476 ITR):*

> *"17. Now coming to the decision as cited by Mr. Mohanty, we are not persuaded to accept that the decision in Goetze (India) Ltd. v. CIT [(2006) 284 ITR 323 (SC); 2006 SCC OnLine SC 1446.] in the facts of the present case would at all be applicable. Such decision is not in the context of the revisionary powers as conferred under the provisions of section 264 of the Income-tax Act, but in the context of deduction claimed by the assessee by a letter, after the return was filed, without filing of a revised return."*

21. *Further, this court in the case of Hapag Lloyd India Pvt. Ltd. v. Pr. CIT [(2022) 443 ITR 168 (Bom); 2022 SCC OnLine Bom 11849.] held as under (page 172 of 443 ITR):*

> *"13. Mr. Thakkar was justified in placing reliance on a Division Bench judgment of this court in the case of Geekay Security Services Pvt. Ltd. v. Dy. CIT [2018 SCC OnLine Bom 21391; (2019) 101 taxmann.com 192 (Bom).] wherein the Division Bench considered an identical question as to whether the revisional authority was justified in rejecting the revision application solely on the ground that the applicant had not claimed the benefit in the original return. After adverting to the previous pronouncements of various High Courts, this concurred with the view that section 264 does not limit the power to correct errors committed by the sub-ordinate authorities and could even be exercised where errors are committed by the assessee and there is nothing in section 264 which places any restriction on the Commissioner's revisional power to give relief to the assessee in a case where the*

assessee detects mistakes after the assessment is completed.

14. The aforesaid pronouncement is on all fours with the facts of the case at hand."

23. *We are, therefore, of the view that respondent No. 1 ought to have considered the revision application under section 264 of the petitioner even though the mistakes/errors were committed by the petitioner itself in the return of income. Thus, in view of the foregoing discussion, we quash and set aside the impugned order dated March 29, 2024 pertaining to the assessment year 2018-2019 whereby the application filed by the petitioner under section 264 of the Income-tax Act, 1961 was rejected, and pass the following order:*

(i) The petition stands allowed.

(ii) The impugned order dated March 29, 2024 stands quashed and set aside.

(iii) The revision application stands restored to the file of respondent No. 1 and remitted back for a de novo consideration. Respondent No. 1 shall consider the representation of the petitioner with respect to the errors/mistakes committed by the petitioner in the return of income or audit report and grant the relief as claimed, if tenable in law.

(iv) Respondent No. 1 shall provide an effective opportunity of hearing to the petitioner with adequate advance notice, and decide the revision application in accordance with law within a period of 12 weeks from the communication of this order. The petitioner shall be entitled to submit its explanation/documentary evidence/submissions before respondent No. 1.

12. Learned counsel for the petitioner additionally relied on the case of **S.R. Koshti vs. CIT**[2] wherein the High Court of Gujarat held that regardless of whether revised returns were filed or not, once an assessee is in a position to show that he has been 'over-assessed' under the provisions of the Act, regardless of whether the over-assessment is a result of the assessee's own negligence or otherwise, the Commissioner has the power vested with him under Section 264 of the Act to correct such an assessment and he is further duty bound to give relief to the assessee. The relevant portion of the judgment again for ready reference is reproduced hereunder:

> *"**19.** As to what is the scope of the powers of the Commissioner in revisional proceedings under section 264 of the Act, is well-settled by a decision of this court in C. Parikh and Co. v. CIT (1980) 122 ITR 610. In the said case, the petitioner was assessed under section 143(3) of the Act on the basis of the return of income submitted by the petitioner. The returned income was accepted along with a lump sum addition. However, subsequently, it was found by the assessee that, in the balance-sheet submitted along with the return, there was a discrepancy on the basis of which the petitioner was over-assessed when the assessment order was passed. The petitioner, therefore, undertook close examination of the books of account and detected mistakes and ultimately, moved the Commissioner under section 264 of the Act, seeking relief to the extent of Rs. 20,000. The Commissioner was of the view that his revisionary powers did*

[2](2005) 276 ITR 165

not extend to giving relief to an assessee on account of the assessee's own mistake which the assessee detects after the assessment is completed, and thus, rejected the petition. This court, on an analysis of the powers of the Commissioner under section 264 of the Act, has observed thus at pages 613 and 614 of the Report:

> *"It is clear that under section 264, the Commissioner is empowered to exercise revisional powers in favour of the assessee. In exercise of this power, the Commissioner may, either of his own motion or on an application by the assessee, call for the record of any proceedings under the Act and pass such order thereon not being an order prejudicial to the assessee, as he thinks fit. Sub-sections (2) and (3) of section 264 provide for limitation of one year for the exercise of this revisional powers, whether suo motu, or at the instance of the assessee. Power is also conferred on the Commissioner to condone delay in case he is satisfied that the assessee was prevented by sufficient cause from making the application within the prescribed period. Sub- section (4) provides that the Commissioner has no power to revise any order under section 264(1) : (i) while an appeal against the order is pending before the Appellate Assistant Commissioner, and (ii) when the order has been subject to an appeal to the Income-tax Appellate Tribunal. Subject to the above limitation, the revisional powers conferred on the Commissioner under section 264 are very wide. He has the discretion to grant or refuse relief and the power to pass such order in revision as he may think fit. The discretion which the Commissioner has to exercise is undoubtedly to be exercised judicially and not arbitrarily according to his fancy. Therefore, subject to the limitations prescribed in section 264, the*

Commissioner in exercise of his revisional power under the said section may pass such order as he thinks fit which is not prejudicial to the assessee. There is nothing in section 264 which places any restriction on the Commissioner's revisional power to give relief to the assessee in a case where the assessee detects mistakes on account of which he was overassessed after the assessment was completed. We do not read any such embargo in the Commissioner's power as read by the Commissioner in the present case. It is open to the Commissioner to entertain even a new ground not urged before the lower authorities while exercising revisional powers. Therefore, though the petitioner had not raised the grounds regarding under totalling of purchases before the Income-tax Officer, it was within the power of the Commissioner to admit such a ground in revision. The Commissioner, was also not right in holding that the over-assessment did not arise from the order of assessment. Once the petitioner was able to satisfy that there was a mistake in totalling purchases and that there was under-totalling of purchases to the tune of Rs. 20,000, it is obvious that there was overassessment. In other words, the assessment of the total income of the assessee is not correctly made in the assessment order and it has resulted in over-assessment. The Commissioner would not be acting de hors the Income-tax Act, if he gives relief to the assessee in a case where it is proved to his satisfaction that there is over-assessment, whether such over-assessment is due to a mistake detected by the assessee after completion of assessment or otherwise. In our opinion, the Commissioner has misconstrued the words 'subject to the provisions of this Act' in section 264(1) and read a restriction on his

> *revisional power which does not exist. The Commissioner was, therefore, not right in holding that it was not open to him to give relief to the petitioner on account of the petitioner's own mistake which it detected after the assessment was completed. Once it is found that there was a mistake in making an assessment, the Commissioner had power to correct it under section 264(1). In our opinion, therefore, the Commissioner was wrong in not giving relief to the petitioner in respect of over-assessment as a result of under totalling of the purchases to the extent of Rs. 20,000."*

20. *The position is, therefore, that, regardless of whether the revised return was filed or not, once an assessee is in a position to show that the assessee has been over-assessed under the provisions of the Act, regardless of whether the over-assessment is as a result of the assessee's own mistake or otherwise, the Commissioner has the power to correct such an assessment under section 264(1) of the Act. If the Commissioner refuses to give relief to the assessee, in such circumstances, he would be acting de hors the powers under the Act and the provisions of the Act and, therefore, is dutybound to give relief to an assessee, where due, in accordance with the provisions of the Act.*

21. *In the present case, the respondent-Commissioner has nowhere stated that the petitioner is not entitled to the relief under section 10(10C) of the Act. In fact, the said position is undisputed. The Assessing Officer himself had passed an order under section 154 of the Act, granting such relief. In the circumstances, even the order under section 264 of the Act made on March 29, 2004, cannot be sustained.*

22. *A word of caution. The authorities under the Act are under an obligation to Act in accordance with law. Tax can be collected only as provided under the Act. If an assessee,* *under a mistake, misconception or on not being properly instructed, is over-assessed, the authorities under the Act are required to assist him and ensure that only legitimate taxes due are collected. This court, in an unreported decision in the case of Vinay Chandulal Satia v. N.O. Parekh, CIT, Special Civil Application No. 622 of 1981, rendered on August 20, 1981, has laid down the approach that the authorities must adopt in such matters in the following terms:*

> *"The Supreme Court has observed in numerous decisions, including Ramlal v. Rewa Coalfields Ltd., AIR 1962 SC 361; State of West Bengal v. Administrator, Howrah Municipality, AIR 1972 SC 749, and BabhutmalRaichandOswal v. Laxmibal R. Tarte, AIR 1975 SC 1297, that the State authorities should not raise technical pleas if the citizens have a lawful right and the lawful right is being denied to them merely on technical grounds. The State authorities cannot adopt the attitude which private litigants might adopt."*

23. *In the result, the orders dated March 29, 2004, made under sections 263 and 264 of the Act are quashed and set aside, and the order dated March 27, 2003, made by the Assessing Officer under section 154 of the Act shall prevail. The respondent is directed to not only issue the refund due in accordance with the order under section 154 of the Act dated March 27, 2003, but also grant interest under section 244A of the Act, till the date of payment of the refund at appropriate rate, as may be prevalent from time to time. The respondent is directed to ensure that the refund along with the interest due is paid within a period of three weeks from the date of receipt of a writ of this court, or a certified copy of this judgment and order, whichever is earlier."*

Relying on the aforesaid judgments, learned counsel of the petitioner submitted that the petitioner did not consciously make a choice to suffer a double taxation on the amount of Rs.6,85,02,377/- and that the Commissioner is duty-bound under Section 264 of the Act to grant relief to the petitioner, and that the legislative intent behind the said provision is to provide remedy because the time for filing a revised return under Section 139(5) of the Act had elapsed.

13. Learned counsel for the petitioner further relied upon a judgment of this very High Court in the case of **BSCPL Infrastructure Ltd. vs. Union of India**[3] wherein a Division Bench had dealt with an identical situation of the same income being taxed twice in different assessment years and how Article 265 of the Constitution of India negates the levy or retention of tax twice on the same income in the hands of the same assessee. The relevant portion of the judgment is again for ready reference reproduced hereunder:

> *"**16.**The Delhi High Court in the case of Vijay Gupta was (cited 2nd supra), although dealing with ambit and scope of Section 264 of the Act, based its findings on the principle following from Article 265 of the Constitution of India and opined that when it is not in dispute that an amount of tax is recovered beyond the entitlement, technicalities cannot create a road block for the assessee. Thus, as rightly pointed out by the learned counsel for*

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[3] [2024] 163 taxmann.com 470 (Telangana)

the petitioner, the fundamental reason for interference is founded upon Article 265 of the Constitution of India. If, it could be established with accuracy and precision that amount of tax is paid beyond permissible limit, it falls within the ambit of error apparent on the face of record. The only caveat, for that purpose is that no long drawn argument should be required to establish the error and such error should be clear, apparent and palpable.

17. *We find support in our view from the judgments of Hon'ble Supreme Court and different High Courts. It is apposite to go through the legal journey:*

a) The Apex Court examined the 'levy' and 'retention' of excise duty on the touchstone of Article 265 of Constitution and poignantly held in Mafatlal Industries Limited vs. Union of India (1997) 5 SCC 536 as follows:

> *"278. In conclusion, I hold that the Government is permitted to levy and retain only that much of excise duty which can be lawfully levied and collected under the Central Excise Act read with the Central Excise Tariff Act, 1985 and the Central Excise Rules and various notifications issued from time to time. Anything collected beyond this is unlawful and cannot be retained by the Government under any pretext. The illegal levy and collection of duty violates not only the Central Excise Act and the Rules but also offends Article 265 of the Constitution of India."*

b) In the case of CIT vs. Shelly Products [2003] 261 ITR 367 (SC), the Hon'ble Supreme Court ruled that if an assessee, due to error, inadvertence, or because of lack of awareness, includes an amount in their income which is exempt from income tax or not considered as income under the law, they may inform the Assessing Officer. If satisfied, the Assessing officer may provide necessary relief and refund any excess tax paid.

c) Similarly in CIT vs. Bharat General Reinsurance Co. Ltd. (1971) 81 ITR 303 (Delhi), the Delhi High Court opined that mere inclusion of income in a tax return for a specific year erroneously, does not grant the tax department jurisdiction to tax that income for that year if it legally does not belong to it.

d) In Balmukund Acharya vs. Deputy CIT (2009) 310 ITR 310 (Bom) the Bombay High Court affirmed that tax collection must adhere strictly to the provisions of the law. If an assessee is over- assessed due to a mistake, misconception, or lack of proper guidance, authorities under the law are obligated to assist him and ensure that only due taxes are collected.

e) In Nirmala L. Mehta vs. A. Balasubramaniam, CIT (2004) 269 ITR 1 (Bom), the Bombay High Court emphasized that no 'estoppel' can arise against the statute. Article 265 of the Constitution of India expressly lays down that taxes can only be levied or collected through the authority of law. Hence, 'acquiescence' cannot deprive a party of rightful relief when taxes are levied or collected without legal authority.

f) A similar issue was addressed by the Jammu & Kashmir High Court in Smt. Sneh Lata Jain vs. CIT [2004] 192 CTR (J&K) 50, wherein, a return of income was filed by an assessee without claiming exemption under Section 54F of the Act and the same was processed under Section 143(1) of the Act. Upon noticing the error, the assessee filed a revision petition under Section 264 of the Act. The Commissioner rejected the petition, contending that since a return filed under Section 139(1) of the Act was accepted, revisional powers couldn't be invoked for claims not made in the return. The assessee then filed a writ petition challenging the order of the Commissioner. It was thereby held by the High Court as under:

> *"Though the assessing authority was not aware of the purchase of the property by the petitioner and proceeded on the basis of the admitted facts disclosed in the return.*

However, the revisional authority could not be oblivious of its duty to accept the contention of the assessee when the facts were brought to its notice about the capital gain being not chargeable to tax under law. What to say of its duty to advice the assessee the revisional authority rejected the contention of the petitioner only on technical grounds. When the substantive law confers a benefit on the assessee under a statute, it cannot be taken away by the adjudicatory authority on mere technicalities. It is settled proposition of law that no tax can be levied or recovered without authority of law. Article 265 of the Constitution of India and Section 114 of the State Constitution imposes an embargo on imposition and collection of tax if the same is without authority of law. Admittedly, on the basis of facts disclosed before the revisional authorities and this Court, the petitioner is not liable to tax on the capital gain. Once it is found that the petitioner has no tax liability, the respondents cannot be permitted to levy the tax and collect SP,J & NTR, J WP_8663_2022 the same in contravention to Article 265 of the Constitution of India, which provides a constitutional safeguard on levy and collection of tax. It is true that this Court is not to act as Court of appeal while exercising the writ jurisdiction, but at the same time where the admitted facts disclosed non- exercise of jurisdiction by an adjudicatory authority and a citizen is subjected to tax not payable by him, interference by this Court is warranted. The respondent No. 2 is directed to reassess the taxable income of the petitioner, by taking into consideration the benefit available to her under Section 54F of the Income-tax Act and pass appropriate order."

(Emphasis Supplied)

14. Learned counsel for the petitioner further contended that the impugned order passed by respondent No.1 was in direct

contravention to the **Circular No.14 (XL-35) of 1955, dated 11.04.1955**, issued by the CBDT, the relevant portion of which is also reproduced below:

> *"Officers of the department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a tax payer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the officers should take the initiative in guiding a tax payer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the department, for it would inspire confidence in him that he may be sure of getting a square deal from the department. Although, therefore, the responsibility for claiming refunds and reliefs rests with the assessees on whom it is imposed by law, officers should;*
>
> *(a) draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or other;*
>
> *(b) freely advise them when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs".*

15. On the contrary, learned Senior Standing Counsel for the Income Tax Department argued on the following points:

a) That the provisions of Section 264 of the Act cannot be invoked to grant relief against a voluntary act of the assessee, particularly when such claim was not revised through filing of a revised return within the prescribed time.

b) That the contention regarding 'double taxation' is not acceptable in the facts of the present case as the taxation in assessment year 2020-21 and the offering of income in assessment year 2021-22 arise from distinct events, namely disallowance of provision in one year and voluntary reversal in a subsequent year.

c) It is a settled position that the powers under Section 264 are discretionary and are to be exercised in cases where the order sought to be revised is 'erroneous and prejudicial to the assessee'. In the present case, the order under Section 143(1) dated 02.11.2022 is 'neither erroneous nor prejudicial in law' as it merely accepts the income declared by the assessee.

16. Having heard the contentions put forth on either sides and on perusal of records, the question that falls for consideration in this case is 'whether the power of revision vested under Section 264 of the Act extends to granting relief to an assessee against double taxation of the same income across two assessment years and whether respondent No.1 was justified in declining to exercise such revisional power on the ground that the claim was not made through a revised return within the time prescribed under Section 139(5) of the Act, and that the Intimation dated 02.11.2022 was, in itself, neither erroneous nor prejudicial?'

17. At this juncture, it would be relevant to take note of Section 264(1) of the Act, which for ready reference is reproduced hereunder:

> *"**Revision of other orders.***
> ***264.** (1) In the case of any order other than an order to which section 263 applies passed by an authority subordinate to him, the Principal Commissioner or Commissioner may, either of his own motion or on an application by the assessee for revision, call for the record of any proceeding under this Act in which any such order has been passed and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such order thereon, <u>not being an order prejudicial to the assessee</u>, as he thinks fit."*

A plain reading of the Section 264(1) of the Act makes it clear that it confers upon the Principal Commissioner or Commissioner the power either *suo motu* or on an application by the assessee, to call for the records of any proceeding and to pass such orders thereon, not being an order prejudicial to the assessee, as he thinks fit. The width of this power and the beneficial purpose is intended to sub-serve and has been the subject of consistent judicial exposition, upon which learned counsel for the petitioner has placed considerable reliance and in our view is a well-founded reliance.

18. In **S.R. Koshti** (supra) it was authoritatively held that there is nothing in Section 264 which places any restriction on the Commissioner's revisional power to grant relief to an assessee who

has detected mistakes resulting in over-assessment, whether such mistake was committed by the assessee or otherwise, and that the words 'subject to the provisions of this Act' occurring in Section 264(1) do not import any such restriction. This position was reiterated in **S.R. Koshti** (supra) itself, wherein it was held, in terms we consider directly applicable to the facts before us, that regardless of whether a revised return was filed, once an assessee demonstrates over-assessment, the Commissioner is duty-bound to grant relief, and a refusal to do so on technical grounds would be an act *de hors* the powers conferred under the Act.

19. This line of authority finds further and more recent reinforcement in **Swaminarayan Mandir Trust** (supra) wherein it was held in no uncertain terms that the power under Section 264 is not confined to correcting errors committed by subordinate authorities, but extends equally to errors committed by the assessee itself, including situations where a legitimate claim was not put forth at the time of filing the return and is raised for the first time in the Section 264 application. The Bombay High Court, in the aforesaid case went to the extent of quashing the order of rejection and remitting the matter for *de novo* consideration on merits, a course we find squarely applicable to the case at hand.

20. We are also in respectful agreement with the proposition emerging from the Division Bench judgment of this very Court in **BSCPL Infrastructure Ltd.** (supra) which is the touchstone for interference in matters of this nature and which mandates that no tax shall be levied or collected except by authority of law. Further, it can be established with accuracy and precision that when an amount of tax has been recovered, or is sought to be retained, in excess of what is lawfully due, such a circumstance falls squarely within the ambit of an error apparent on the face of the record and cannot be defeated by resorting to technicalities. This Court, in **BSCPL Infrastructure Ltd.** (supra), drew support from the law laid down by the Hon'ble Supreme Court wherein it reiterated the singular theme that the Revenue cannot retain tax collected without the authority of law and that no estoppel operates against the assessee in this regard, and that revisional or adjudicatory authorities cannot decline relief on mere technicalities where the substantive entitlement of the assessee stands established on facts.

21. Tested against this settled legal position, we find the three grounds urged by learned Senior Standing Counsel for the Income Tax Department, which are: (a) that Section 264 cannot be invoked in respect of a voluntary act of the assessee, unaccompanied by a revised return within time; (b) that the taxation in assessment year

2020-21 and the offering of income in assessment year 2021-22 arise from distinct events and hence do not constitute double taxation; and (c) that the Intimation dated 02.11.2022 is neither erroneous nor prejudicial, being a mere acceptance of the returned income, to be wholly untenable.

22. As regards the first ground, the very authorities discussed above negate the proposition that the relief under Section 264 is unavailable merely because the assessee did not, or could not, file a revised return within the time prescribed under Section 139(5). Indeed, the underlying rationale of Section 264 is precisely to furnish a remedy in situations where the limitation for filing a revised return has expired and the assessee is otherwise without recourse; to hold that the provision cannot be invoked for want of a revised return would be to render the provision largely otiose in the very class of cases it is designed to address.

23. As regards the second ground, we are unable to appreciate the submission that the disallowance in assessment year 2020-21 and the offering of income in assessment year 2021-22 constitute 'distinct events' such that no double taxation results. On a plain reading of the record, the amount of Rs.6,85,02,377/- was admittedly part of the sum of Rs.9,79,12,000/- reversed by the petitioner and offered to tax in assessment year 2021-22 vide

return filed on 15.03.2022, and the very same amount of Rs.6,85,02,377/- was subsequently disallowed and brought to tax in assessment year 2020-21 vide order dated 25.09.2022, an order passed after the petitioner had already offered the amount to tax for assessment year 2021-22, and after the window for revising the assessment year 2020-21 return was already closed on 31.05.2021. That the two events are separated in point of time, or arise under different assessment years does not detract from the fundamental fact that one and the same sum has been subjected to tax twice over in the hands of the very same assessee, a state of affairs that Article 265 of the Constitution of India does not countenance, and which respondent No.1, being an authority constituted under the Act was bound to remedy rather than perpetuate through a semantic distinction between 'disallowance and voluntary reversal'.

24. As regards the third ground that the Intimation dated 02.11.2022 was neither erroneous nor prejudicial since it merely accepted the returned income, we find this submission to be self-defeating rather than exculpatory. It is precisely because the Intimation mechanically accepted the income as returned without accounting for the fact that a component of that returned income Rs.6,85,02,377/- had by the time the Section 264 application came to be considered, already been taxed once over in assessment year

2020-21 and the error came to be perpetuated. The error apparent on the face of the record in the present case does not lie in any infirmity intrinsic to the processing of the return, but in the resultant over-assessment flowing from the cumulative effect of two orders passed by the Department itself at different points of time in relation to the very same amount. This is squarely the class of error that Section 264, on the authorities discussed above, is intended to correct.

25. We may also advert to Circular No.14(XL-35) of 1955, dated 11.04.1955, which continues to bind the officers of the Department and which enjoins them not to take advantage of an assessee’s ignorance of his rights, but to affirmatively assist the assessee in claiming and securing legitimate reliefs. The petitioner’s grievance is not one born of ignorance; it made repeated and detailed representations including a Section 264 application as early as on 28.10.2022, again on 03.04.2024, and a comprehensive written submissions with reconciliations placing the entirety of the double-taxation on record before respondent No.1. That such a case, made out with this degree of diligence and documentary support, should not result in outright rejection as it is difficult to reconcile with the spirit of the aforesaid Circular, which continues to hold the field and bind the Revenue.

26. Therefore, we find considerable force in the petitioner’s contention that it never consciously chose to suffer double taxation on the amount of Rs.6,85,02,377/-, that the anomaly arose entirely on account of the sequence and timing of the Department’s own orders, the assessment order for assessment year 2020-21 having been passed after the return for assessment year 2021-22 already stood filed, and after the limitation for revising the former had already lapsed, therefore the respondent No.1 was in these circumstances duty-bound under Section 264 to examine the merits of the claim rather than dispose of it on the technical premise that the Intimation, viewed in isolation, disclosed no error.

27. It also requires to be noticed that the approach adopted by respondent No.1, in declining to grant relief to the petitioner on the ground that the claim was not made through a revised return within the prescribed time, and that the double reversal / disallowance resulted, at least in part, from the petitioner's own conduct in offering the amount to tax, proceeds on a premise more appropriate to the exercise of revisional power under Section 263 of the Act than to the power sought to be conferred under Section 264. Section 263 is a provision enacted for the protection of the interests of the Revenue; it empowers the Principal Commissioner or Commissioner to revise an order passed by a subordinate

authority only where such order is found to be erroneous and prejudicial to the interests of the Revenue, and the enquiry under that provision is accordingly directed at whether the exchequer has been short-changed, and at correcting orders that operate to the detriment of the Revenue. Section 264, by contrast, occupies an entirely opposite field: it is a 'beneficial and remedial provision engrafted for the protection of the assessee', enabling the Commissioner to revise any order either *suo motu* or on application, that is prejudicial to the assessee, precisely in order to correct instances where the assessee, and not the Revenue, has suffered prejudice on account of over-assessment or, as in the case at hand, 'double taxation of the same income'.

28. Viewed in this light, respondent No.1's insistence that the petitioner ought to have first corrected its position through a revised return, and its characterisation of the reversal of Rs.6,85,02,377/- as a "voluntary act" disentitling the petitioner to relief, effectively translates to a Revenue-protective enquiry under Section 263 onto a proceeding that was, in law, required to be conducted under the assessee-protective framework of Section 264. Where the prejudice complained of is prejudice suffered by the assessee as it unquestionably was here, the very same sum having been brought to tax twice over, the Commissioner's obligation

under Section 264 to grant relief does not depend upon nor is it diminished by an enquiry into whether the resultant over-assessment was occasioned by the assessee's own voluntary act of offering the amount to tax, by an involuntary disallowance at the hands of the Assessing Officer, or by a combination of both. The authorities discussed hereinabove make it clear that the source of the error whether traceable to the assessee or to the Department is wholly immaterial to the exercise of power under Section 264; what is material, is the existence of prejudice to the assessee and the consequent duty of the Commissioner to correct it. Respondent No.1, by conflating the voluntary character of one limb of the double taxation with a supposed disentitlement to relief has in substance imported into a Section 264 proceeding a standard of scrutiny that finds no warrant either in the language of that provision or in the body of judicial precedent interpreting it, and has thereby failed to discharge the very obligation that Section 264 casts upon him. The inevitable consequence of this mechanical rejection has been that the Government continues to retain tax collected twice over on one and the same sum of Rs.6,85,02,377/-, a state of affairs that results in nothing short of unjust and undue enrichment of the exchequer at the cost of the petitioner and it was precisely to guard against such enrichment that the wide and beneficial power under Section 264 came to be conferred upon the Commissioner in the first place.

29. We are constrained to observe before parting that the manner in which respondent No.1 has dealt with the petitioner's application leaves much to be desired. Despite detailed written submissions, reconciliations, and repeated representations placed before it over a period spanning more than a year, respondent No.1 chose to summarily reject the claim on grounds that stand squarely negated by binding precedent and by the constitutional mandate under Article 265 without any real engagement with the substance of the petitioner's grievance or the reconciliations furnished. The authorities exercising quasi-judicial power under a beneficial and remedial provision such as Section 264 are expected to apply their mind to the merits of the claim placed before them, particularly where the assessee has done everything within its power to bring the anomaly to the Department's notice at the earliest available opportunity. A mechanical rejection of this nature, resulting in an assessee being made to bear tax twice over on the same income does little credit to the standards of fairness that the Revenue is expected to observe.

30. For all the aforesaid reasons, the impugned order dated 27.03.2026, passed by respondent No.1 under Section 264 of the

Act, deserves to be and is accordingly set aside. The matter is remanded back to respondent No.1 for a fresh consideration of the petitioner's application dated 03.04.2024 under Section 264 of the Act, on merits and in accordance with law in light of the observations made hereinabove.

31. The instant Writ Petition accordingly stands allowed.

32. As a sequel, miscellaneous petitions pending if any, shall stand closed. However, there shall be no order as to costs.

P. SAM KOSHY, J

NARSING RAO NANDIKONDA, J

Date: 20.07.2026
Note: L.R. copy to be marked.
(B/o)GSD