Supreme Court restricts scope of Revision under Section 264 denying admissibility of claim not made in the return

Income Tax Act, 1961 ('the Act') is governed by the fundamental rule that an assessee is required to pay only such tax as is lawfully due; the principle emanates from the mandate of Article 265 of the Constitution of India which provides that *no tax can be recovered/ retained contrary to the provisions of the statute.* This legal doctrine has found repeated acceptance and reiteration by the Apex Court in cases such as *Mafatlal Industries*[1] and *Shelly Products*[2].

This doctrine has protected and safeguarded taxpayers, not only against over-zealous and over-aggressive revenue officers, but also from genuine and bona-fide misconceptions and misapplications of the legal position which have had the effect of over assessment of tax. The Courts have repeatedly emphasised on the duty of revenue officers to assess only such tax as is lawfully due from an assessee, instead of acting as mere tax collectors for the Government.[3]

Omission to claim benefit in ROI – whether fatal?

An offshoot of the aforesaid position is that mere errors and omissions in the return of income, shall not result in denial of tax relief or over assessment of tax. It is trite law that there can be no estoppel against law.

Accordingly, it has generally been accepted that mere adoption of an incorrect legal position while filing the return of income would not estop[4] an assessee from claiming tax relief which is otherwise lawfully made out, unless specifically barred by the terms of the statute.

In case the tax return is picked up for scrutiny, then, fresh claim can be raised in appeal(s) that may be filed against the assessment order since the AO may not entertain the fresh claim in view of the law laid down in *Goetze.*[5]

Difficulty, however, arises in case where the return is accepted and not picked up for scrutiny. In such cases, one of the provisions which has received substantial attention is **Section 264** which provides for revision of "any order" passed in any proceedings under the Act, not being an order prejudicial to the assessee.

Section 264 has been accorded a wide amplitude covering any order passed by any authority in the course of any proceeding under the Act, on the rationale that such power of revision is to be exercised keeping in view the fundamental principle that the Revenue is ultimately entitled to assess real income of a taxpayer as per the provisions of the Act. In that spirit, various

[1] *Mafatlal Industries Ltd. vs. Union of India* (1997) 5 SCC 536

[2] *CIT vs. Shelly Products* [2003] 261 ITR 367 (SC)

[3] Circular No.14 dated 11.4.1955 issued by the Central Board of Direct Taxes

[4] *Anchor Pressings (P) Ltd. vs. CIT* [1986] 161 ITR 159 (SC), *CIT vs. Bharat General Re-Insurance Co. Ltd.* [1971] 81 ITR 303 (Del), *HCL Technologies vs. ACIT* [2015] 377 ITR 483 (Del)

[5] *Goetze (India) Ltd. vs. CIT* [2006] 284 ITR 323 (SC)

High Courts have, for the most part, extended the scope of revision under Section 264 to any order, including an intimation issued under Section 143(1) of the Act.[6]

Further, High Courts have gone to the extent of stating that revision under Section 264 is permissible even to allow an assessee to raise fresh claims and/ or resile from a position erroneously taken while filing the return of income, without insisting on revision of the return of income.[7]

In other words, the power of revision under Section 264 at the instance of a taxpayer, has not been limited to cases where an erroneous or incorrect order is passed by a subordinate authority, but has been extended to be exercisable even in cases where the requisite claim or position was not put forward in the return of income, but made for the first time in the application for revision filed under Section 264 of the Act.

Supreme Court in *Om Siddhakala Associates* -whether restricts scope of 264?

The aforesaid position, which has generally and consistently received approval from various High Courts, appears to have been unsettled by the recent decision of the Supreme Court in the case of ***Om Siddhakala Associates.***[8]

Although the facts forming the basis of the ruling are not exhaustive, it appears that the controversy arose when the assessee failed to make a claim in the return of income on account of the tolerance limit(s) under Section 43A of the Act. Once the return was processed under Section 143(1) resulting in tax demand, the assessee filed revision petition under Section 264 of the Act which came to be rejected by the Commissioner of Income Tax ('CIT'). While the High Court remanded the matter to the file of the CIT, the matter was challenged further at the instance of the Revenue.

The principal argument taken on behalf of the taxpayer was that the High Court has simply remanded the matter back to the CIT and therefore, all contentions could be raised before the appropriate authority.

Repelling the aforesaid argument, the Supreme Court, by way of a short order, held that *the assessee having not made the claim in the return of income, could have revised the same within the time provided under the Act; since such revision was not done,* "***there is no question of revision under Section 264, which would be an attempt to revise the return under the garb***

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[6] *Vijay Gupta vs. CIT* [2016] 386 ITR 643 (Del), *Puneet Dhanda vs. Pr. CIT* [WP(C) 5906/2022; decided on 25.09.2023] (Del), *Interglobe Enterprises (P.) Ltd. vs. Pr. CIT* [2023] 148 taxmann.com 121 (Del), *Rites Ltd vs. CIT* [2017] 249 Taxman 244 (Del), *Dinesh Vazirani vs. PCIT* [2022] 445 ITR 110 (Bom), *Hindustan Diamond Company (P.) Ltd. vs. CIT* [2003] 175 Taxman 91 (Bom), *Shah Brothers vs. CIT* [2003] 259 ITR 741 (Bom), *Aafreen Fatima Fazal Abbas Sayed vs. ACIT* [2021] 434 ITR 504 (Bom), *Ms. Asmita A. Damale vs. CIT* [WP No.676/2014; decided on 09.05.2014] (Bom), *Smita Rohit Gupta vs. CIT* [2023] 459 ITR 369 (Bom), *Pramod R. Agarwal vs. Pr. CIT* [2023] 156 taxmann.com 126 (Bom), *Hindalco Industries Ltd vs. Union of India* [2024] 464 ITR 236 (Bom), *Sarda Paper Ltd vs. PCIT* [2024] 161 taxmann.com 362 (Bom), *C. Parikh & Co. vs. CIT* [1980] 122 ITR 610 (Guj), *Agarwal Yuva Mandal (Kerela) vs. Union of India* [2017] 395 ITR 502 (Ker), *S.R. Koshti vs. CIT* [2005] 276 ITR 165 (Guj), *Sri. Selvamuthu Kumar vs. CIT* [2017] 394 ITR 247 (Mad)

[7] *Rajesh Kumar Aggarwal vs. CIT* [2017] 78 taxmann.com 265 (Del), *Transformers & Electricals Kerala Ltd. vs. DCIT* [2016] 75 taxmann.com 298 (Ker), *Adani Gas Ltd. vs. PCIT* [2024] 167 taxmann.com 282 (Guj), *Kamal Pasricha vs. ITO* [2025] 171 taxmann.com 620 (Bom), *EPCOS Electronic Components SA vs. Union of India* [2019] 266 Taxman 23 (Del), *Assam Roofing Ltd vs. CIT* [2014] 43 taxmann.com 316 (Gau), *Utanka Roy vs. DIT (Int'l Tax)* [2017] 390 ITR 109 (Cal)

[8] ***DCIT vs. Om Siddhakala Associates* [2026] 189 taxmann.com 305 (SC)**

of revision"; on that reasoning, the Supreme Court rejected the revision petition of the assessee and directed the recovery of tax arising under Section 143(1) of the Act.

VA Comments

The short judgment of the Supreme Court is, with respect, sub-silentio inasmuch as the judgement does not refer to nor considers the available judicial precedents on the issue referred supra; rather it appears that vital arguments were not advanced and hence not considered on the scope of section 264, principle of unjust enrichment, Article 265, etc.

Be that as it may, the decision appears to significantly deviate from the generally accepted principles relating to the scope of revision and the exercise of powers under Section 264 of the Act which have been the subject matter of consideration by various High Courts consistently adopting a liberal, pragmatic, purposive and expansive construction, enabling use of the said provision to advance the case of taxation as per the strict rule of chargeability under the Act. At the same time, the Court appears to have assigned weightage to the technical omission made in the return of income as opposed to the merits of the substantive claim of the assessee.

While the principle emanating from the decision of the Apex Court is of far-reaching impact, a reading of the same, as stated above, appears to indicate that the significant body of law on the subject was never considered or brought to the notice of the Court.

It will be interesting to note how the observations contained in the judgment of the Apex Court are likely to be considered by the Courts in the context of fresh claims being filed; the decision is likely to, at least momentarily, stifle the range of claims made by taxpayers by way of recourse to Section 264 of the Act, after missing the bus of revising their return of income.

Way forward would depend upon individual facts and circumstances, the taxpayers would, apart from the Section 264 route, be also well advised to consider recourse to Section 119 of the Act to put forward legitimate claims, not made in the return of income.

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