

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.10.2019

Delivered on : 23.10.2019

CORAM

THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.18185 of 2019

M/s.Sharp Tools  
Represented by its Partner  
K.R.Pandian

..Petitioner

vs

The Principal Commissioner of Income Tax-1  
63, Race Course  
Coimbatore 641 018.

..Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent-Principal Commissioner of Income Tax-1, Coimbatore in his file C.No.121(9)/264/PCIT-1, CBE/2017-2018 dated 18.03.2019 for assessment year 2013-2014 directing the respondent to entertain and consider the revision petition on merits.

For Petitioner :  
For Respondent :

Mr.R.Kumar  
Mr.A.N.R.Jayapratap  
standing counsel for  
Mr.A.P.Srinivas,  
Senior Standing Counsel

**ORDER**

Challenge made in this writ petition is against the order of the respondent dated 18.03.2019 passed under Section 264 of the Income Tax Act, 1961 (for brevity "IT Act") relevant to the assessment year 2013-2014.

2. The case of the petitioner, in short, is as follows:

The petitioner is carrying on business as manufacturer of Engineering goods. For the relevant assessment year, the petitioner filed their return on 30.09.2013 declaring total income as "Nil" after setting off of earlier year losses. In column No.14 of the said return of income, under the head "Debits to Profit and Loss Account", "compensation to Employees", the petitioner entered the figure as Rs.1,38,59,509/- against the correct amount of Rs.1,87,82,244/-. The claim of Rs.1,87,82,244/- comprises of Labour charges to the tune of Rs.56,12,426/- Wages to the tune of Rs.75,14,652/- and Salary and Bonus to the tune of Rs.56,55,166/-. The difference on account of the wrong entry being Rs.49,22,735/- was reckoned as the income of the petitioner in the intimation dated 04.05.2014 issued under Section 143(1) of the IT Act and demand of Rs.17,37,280/- was raised comprising tax and interest. After adjusting tax credit of Rs.3,17,381/- the balance tax payable was determined

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as Rs.14,19,900/-. On receipt of the said intimation and realizing the mistake, which has crept in inadvertently while filling up the quantum in column No.14(i) of the return, a rectification return was filed on 09.01.2016. The said return was not processed by the Central Processing Centre, since the return was considered as revised return filed beyond the specified time under Section 139(5) of the IT Act. The petitioner made an application to the Assistant Commissioner of Income Tax, for rectification under Section 154 of the IT Act. The Assessing Officer, rejected the plea for rectification, by his order dated 24.10.2017, stating that the claim was belated. Thereafter, the petitioner filed revision petition under Section 264 of the IT Act on 25.01.2018 before the respondent stating that the claim of Rs.49,22,735/-, being the difference between actual expenditure of Rs.1,87,82,244/- and the expenditure shown in the returns, duly supported by profit and loss account filed along with the return of income and that the mistaken claim of Rs.1,38,59,509/- was due to typographical error. However, the respondent, by the impugned order has disposed the revision by observing that the petitioner has to file a revised return of income and however, the time for filing the same had already expired. Therefore, the present writ petition is filed before this Court.

3. The respondent filed a counter affidavit, wherein, it is stated as

follows:

The Assessee filed the petition dated 22.01.2018 under Section 264 of the IT act, to process the rectified return and to correct the mistake in the assessed income. The Assessee has filed the revised return claiming certain inadvertent errors that had crept in the original return and the processing of the same had resulted in a demand, that the Assessee felt was flawed. The revised return of income filed on 09.01.2016 was not taken up for processing, since the revised return was filed beyond the due date provided under Section 139 of the IT Act. The remedy in the present case to the pleas of the Assessee would not lie under Section 264 of the IT Act. The logical remedy is to rectify the entries made in the return of income under the relevant columns, obviously by filing a revised return of income, for which, the time period had already been expired. The revision petition filed by the Assessee was thoroughly examined and decided on merits and in accordance with law.

4. A rejoinder is also filed by the petitioner disputing the contentions raised in the counter affidavit.

5. The learned counsel for the petitioner, after reiterating the

contentions raised in the affidavit filed in support of this writ petition, further submitted as follows:

The Commissioner has power under Section 264 of the IT Act, to grant the relief. The Commissioner has accepted in his order that the Assessee had committed an error inadvertently while making the entries. The Commissioner has also advised the Assessee to file a revised return for seeking the relief and however, further observed that the time for filing such revised return had already expired. Even if the revised return is not filed, the Commissioner, by exercising his power under Section 264 of the IT Act, can grant the relief. The respondent failed to note that Circular No.14 of 1955 dated 11.04.1955 empowers the authorities to permit the correction of mistake and that the Department must not take advantage of ignorance of an Assessee as to his rights. The application under Section 264 of the IT Act, was filed before the respondent within one year from the date of rejection of the rectification return.

6. In support of the above contention, the learned counsel for the petitioner relied on the following decisions:

**(i) [2016] 75 taxmann.com 298 (Ker), Transformers & Electricals**

***Kerala Ltd., Vs. Deputy CIT.***

***(ii) [2017] 394 ITR 247 (Mad), Sri Selvamuthukumar Vs. CIT.***

***(iii) [2018] 402 ITR 271 (Mad), M/s.Bali Trading Pvt. Ltd., Vs.***

***Principal CIT.***

***(iv) [2016] 386 ITR 643 (Del.), Vijay Gupta Vs. CIT.***

7. Per contra, the learned standing counsel for the respondent, after reiterating the contentions raised in the counter affidavit, has further submitted as follows:

The original return was filed on 30.09.2013 and intimation under Section 143(1) was given on 04.05.2014. Only after receiving the intimation, the rectification of return was filed by the Assessee on 09.01.2016, that too, with a delay of two years. It is not the revised return and on the other hand, it is only the rectification return. Section 139(5) of the IT Act, contemplates that a revised return has to be filed within one year from the date of filing of the original return. The Commissioner can exercise his power under Section 264 of the IT Act, subject to the provision of the Act and therefore, he cannot extend the time for filing the revised return as there is no power for the Commissioner to condone the delay for filing such return. Therefore, the impugned order

was rightly passed by the respondent.

8. Heard both sides and perused the materials placed before this Court.

9. The petitioner is an Assessee under the respondent-Department. For the assessment year 2013-2014, the petitioner filed their return on 30.09.2013. While filling up the columns therein, the petitioner, in Column No.14, under the head "Debits to Profit and Loss Account", "Compensation to Employees" and "Total Compensation to Employees", has entered the figure of Rs.1,38,59,509/- , which according to the petitioner is incorrect figure and on the other hand, the actual figure towards the "Total Compensation to Employees" ought to have been entered is Rs.1,87,82,244/-. The break up details is also given by the petitioner as to how such sum is arrived as follows:

(i) Labour Charges	Rs. 56,12,426/-
(ii) Wages	Rs. 75,14,652/-
(iii) Salary & Bonus	Rs. 56,55,166/-
<b>Total</b>	<b>Rs. 1,87,82,244/-</b>

Therefore, it is contended that the above mistake is pure and simple

typographical error.

10. The above claim of the petitioner is not without any material support. On the other hand, it is not in dispute that the profit and loss account filed along with the return of income supports the above claim of the petitioner. Therefore, it is evident that only due to typographical error, lesser figure was entered, in column "Total Compensation to Employees" as Rs.1,38,59,509/-, instead of Rs.1,87,82,244/-. No doubt, such error can be rectified by filing a revised return as contemplated under Section 139(5) of the IT Act, any time before the end of the relevant assessment year or before completion of the assessment, whichever is earlier. Though the petitioner has not filed any revised return within such time, however, on receipt of an intimation under Section 143(3) of the IT Act, dated 04.05.2014, the petitioner had realized the mistake and filed a rectification return on 09.01.2016. It is true that rectification return was filed nearly after two years from the date of receipt of Section 143(1) intimation. The said rectification return was rejected by the Assessing Officer by proceedings dated 24.10.2017 on the reason that the same was not filed within the time and thus, it is not valid and cannot be sustained. Thereafter, the Assessee filed an application under

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Section 264 of the IT Act on 25.01.2018, admittedly, within one year from the date of the order rejecting the rectification return. The respondent before whom, the said revision was filed, passed the impugned order, wherein at Paragraph Nos.9, 10, & 11 he observed as follows:

*"9. The Assessee in its P&L account had claimed expenditure under the grouping "Compensation to Employees" inclusive of labour charges of Rs.56,12,426/- wages of Rs.75,14,652/- and salary and bonus of Rs.56,55,166/-. However, as against the total of Rs.1,87,82,244/- the Assessee had entered an amount of Rs.1,38,59,509/-. The difference on account of the wrong entry being Rs.49,22,735/- the amount that was reckoned as the income of the Assessee for the assessment year in question.*

*10. It would be of significance to mention that the Assessee had in the certified copy of P&L account uploaded along with the return of income, placed on records and perused by me, has booked the expenditures on account of labour charges at Rs.56,12,426/-, wages at Rs.75,14,652/- and Salary & bonus at Rs.56,55,166/-.*

*11. From the aforesaid it would be clear that the Assessee had committed an error, though inadvertent, for which he would be fully responsible, in its return of income which had resulted in the adoption of income by CPC at Rs.49,22,738/- and the consequent raising of demand of tax."*

11. Perusal of the above findings of the respondent would show that he

in fact, found that the error committed by the Assessee was inadvertent and that the expenditure shown under the head "Compensation to Employees" are genuine, since such expenditures are supported by the certified copy of the Profit and Loss Account uploaded along with the return of income. However, after finding so, the respondent, though advised the Assessee to file a suitable revised return, has also made an observation that the time stipulated for filing such revised return had already expired. Thus, in effect, the respondent though found that the mistake is inadvertent and that the claim is *bona fide*, has not granted any relief to the petitioner.

12. Under the above stated facts and circumstances, it is to be seen as to whether the respondent is justified in passing the impugned order without granting any relief to the petitioner. Section 264 of the IT Act, deals with the procedure for filing revision and the power and scope of the respondent herein to consider such revision, which reads as follows:

**Section 264 : Revision of other orders**

*(1) In the case of any order other than an order to which section 263 applies passed by an authority subordinate to him, the 4[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, not being an order prejudicial to the assessee, as he thinks fit.*

(2) The [Principal Commissioner or Commissioner] shall not of his own motion revise any order under this section if the order has been made more than one year previously.

(3) In the case of an application for revision under this section by the assessee, the application must be made within one year from the date on which the order in question was communicated to him or the date on which he otherwise came to know of it, whichever is earlier:

Provided that the [Principal Commissioner or Commissioner] may, if he is satisfied that the assessee was prevented by sufficient cause from making the application within that period, admit an application made after the expiry of that period.

(4) The [Principal Commissioner or Commissioner] shall not revise any order under this section in the following cases -

(a) where an appeal against the order lies to the Deputy Commissioner (Appeals) or to the 4[Principal Commissioner or Commissioner] (Appeals) or to the Appellate Tribunal but has not been made and the time within which such appeal may be made has not expired, or, in the case of an appeal to the 4[Principal Commissioner or Commissioner] (Appeals) or to the Appellate Tribunal, the assessee has not waived his right of appeal; or

(b) where the order is pending on an appeal before the Deputy Commissioner (Appeals); or

(c) where the order has been made the

subject of an appeal to the 4[Principal Commissioner or Commissioner] (Appeals) or to the Appellate Tribunal.

(5) Every application by an assessee for revision under this section shall be accompanied by 1[a fee of five hundred rupees].

[(6) On every application by an assessee for revision under this sub-section, made on or after the 1st day of October, 1998, an order shall be passed within one year from the end of the financial year in which such application is made by the assessee for revision.

Explanation: In computing the period of limitation for the purposes of this sub-section, the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.]

[(7) Notwithstanding anything contained in sub-section (6), an order in revision under sub-section (6) may be passed at any time in consequence of or to give effect to any finding or direction contained in an order of the Appellate Tribunal, 3[National Tax Tribunal,] the High Court or the Supreme Court.]

Explanation 1: An order by the 4[Principal Commissioner or Commissioner] declining to interfere shall, for the purposes of this section, be deemed not to be an order prejudicial to the assessee.

Explanation 2: For the purposes of this section, the Deputy Commissioner (Appeals) shall be deemed to be an authority subordinate to the 4[Principal Commissioner or Commissioner].

13. A careful perusal of the above provision of law would undoubtedly show that it empowers the Principal Commissioner or the Commissioner to exercise the revisional jurisdiction over "any order" other than the order to which Section 263 applies, and that such power is wider and conferred on such authority to set right things, wherever he finds that an injustice has been done to the Assessee. No doubt before passing any order under Section 264 of the IT Act, it is open to the said authority to make such enquiry or cause such enquiry to be made. However, such order should not be prejudicial to the Assessee.

14. The power and scope under Section 264 of the IT Act, have been considered by the Courts. In a decision rendered by the High Court of Kerala, reported in **[2016] 75 taxmann.com 298 (Ker), Transformers & Electricals Kerala Ltd., Vs. Deputy CIT.**, observed at Paragraph No.8 as follows:

*8. In fact the judgment in Goetze (India) Ltd. (supra) was with reference to the power of the Tribunal under Section 254 of the IT Act which can have no basis for the power to be exercised by the Commissioner under Section 264 of the IT Act. Very wide powers have been conferred on the Commissioner under Section 264 of the IT Act to conduct an enquiry to be made and to pass such orders, as he thinks fit. In the impugned order, the Commissioner proceeds on the basis that the*

*petitioner had not filed a revised return for the year 2008-09. It is pointed out by the petitioner that the time for filing a revised return had already expired and once the said period has expired, revised return cannot be filed. The question is whether, in the absence of filing a revised return, a claim for deduction for the aforesaid amount is permissible for the assessment year 2008-09. As held by a Division Bench in Parekh Brothers (supra), there is no limit to exercise the jurisdiction under Section 264 of the IT Act. That was also a case in which the claim was not made by the assessee in the return or at the time of arguments when the assessment was made. In such an instance, the Division Bench held that, even assuming that the assessment order was correct, still it is open for the assessee to seek the revisional jurisdiction in respect of an item which was not made by way of a mistake. Therefore, the jurisdiction of the Commissioner to pass orders even if a revised return is not filed, is very much available.*

15. In **[2017] 394 ITR 247 (Mad), Sri Selvamuthukumar Vs. CIT**, the

Division Bench of this Court has observed at Paragraph Nos.9 & 13 as follows:

9. Mr. Swaminathan would refer to the judgment of the Division Bench of the Andhra Pradesh High Court in **M.S. Raju Vs. Deputy Commissioner of Income Tax (MANU/AP/0956/2007 : 298 ITR 373)** which has expressed a view to the effect that the import of the word 'record' as set out in the Circular (supra) would be restricted to the power under section 263 only and not section 264. The distinction noted by the Division Bench in that

case was that the power of revision under section 263 of the Act was intended to be exercised in cases where the interests of revenue were prejudiced and it was for this reason that the inquiry of the Commissioner of Income Tax was not limited only to material available before the assessing officer, but also material obtained subsequently. The power under section 264 of the Act is, in fact as wide a power, and one that is intended to prevent miscarriage of justice. Courts have consistently taken a view that the conferment of powers under section 264 of the Act is to enable the Commissioner to provide relief to an assessee, where the law permits the same. Reference may be made to the decisions of the Gujarat High Court in C.Parikh and Co. Vs. Commissioner of Income Tax (MANU/GJ/0013/1979 : 122 ITR 610); Ramdev Exports Vs. Commissioner of Income Tax (MANU/GJ/0313/2001 : 251 ITR 873); Kerala High Court in Parekh Brothers Vs. Commissioner of Income Tax and Calcutta High Court in Smt. Phool Lata Somani Vs. Commissioner of Income Tax (MANU/WB/0081/2005 : 276 ITR 216). In this view of the matter, we see no reason to take a different view on the interpretation of the word 'record' occurring in section 264 of the Act from that expressed by the Central Board of Direct Taxes in the Circular extracted above. The order under section 144A dated 31.12.2007 is thus part of the record and ought to have been taken into consideration in deciding the petition under section 264 of the Act.

*13. The relief provided in terms of section 139(5) is specific to the correction of a wrong statement or an omission in the original return by way of a revised return. The power under section 264 of the Act extends to passing any order as the*

*Principal Commissioner or Commissioner may think fit after making an inquiry and subject to the provisions of the Act, either suo-moto or on an application by the assessee. Though the remedies over lap, power under section 264 is significantly wider and the wisdom of choosing one over the other would really depend on the facts and legal position of each case.*

16. In **[2018] 402 ITR 271 (Mad), M/s.Bali Trading Pvt. Ltd., Vs. Principal CIT.**, the learned Single Judge of this Court observed that power under Section 264 of the IT Act, is a wider power and intended to prevent miscarriage of justice. It is also observed therein that the powers under Section 264 of the IT Act, is to enable the Commissioner to provide relief to an Assessee, where the law permits the same.

17. In **[2016] 386 ITR 643 (Del.), Vijay Gupta Vs. CIT**, the Division Bench of the Delhi High Court, after referring to the Circular No.14/1955 dated 11.04.1955 has observed at Paragraph Nos. 22, 35, 36 & 39 as follows:

22. Circular No. 14(XL-35) :  
MANU/DTCR/0004/1955 of 1955, dated 11.4.1955, issued by the Central Board of Direct Taxes and relied upon by the Petitioner reads as under:

"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 assesses 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".

35. From the various judicial pronouncements, it is settled that the powers conferred under section 264 of the Act are very wide. The Commissioner is bound to apply his mind to the question whether the petitioner was taxable on that income. Since section 264 uses the expression "any order", it would imply that the section does not limit the power to correct errors committed by the subordinate authorities but could even be exercised where errors are committed by assesses. It would even cover situations where the assessee because of an error has not put forth a 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.

36. An assessee is liable to tax only upon such receipt as can be included in his total income and is assessable under the Income-tax Act. There is nothing in S.264, which places any restriction on the

Commissioner's revisional power to give relief to the assessee in a case where the assessee detracts mistakes because of which he was over-assessed 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 s. 264(1). 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.

39. When the commissioner was called upon to examine the revision application under section 264 of the Act, all the relevant material was already available on the record of the assessing officer. The commissioner instead of merely examining whether the intimation was correct based on the material then available should have examined the material in the light of the Circular No. 14(XL-35) : MANU/DTCR/0004/1955 of 1955, dated 11.4.1955 and Article 265 of the Constitution of India. The commissioner has erred in not doing so and in failing to exercise the jurisdiction vested in him on mere technical grounds.

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18. Perusal of the above decisions would show that the powers conferred on the Commissioner under Section 264 of the IT Act, is not only wider in its scope and also intended for the purpose of preventing miscarriage of justice and for providing relief to an Assessee, which he is otherwise

entitled to, but for the order under challenge in revision.

19. No doubt Section 139(5) provides for filing a revised return within one year for correcting any mistake. It is true that the petitioner has not exercised such option within such time. However, the petitioner filed a rectification return after receipt of intimation under Section 143(1). It is true that there is a delay in filing such return. But the said rectification return was rejected on 24.10.2017 and immediately, within one year, the petitioner approached the Commissioner under Section 264 of the IT Act, and filed the revision. Since the Commissioner is empowered to entertain the revision under Section 264 of the IT Act, against any order other than the order to which Section 263 applies, the revision filed by the petitioner herein within one year from the date of rejection of their rectification return, is certainly maintainable and consequently, the Commissioner ought to have exercised his power and considered the relief sought for by the petitioner and pass the order to that effect, more particularly, when he has found that the Assessee had committed the error inadvertently and that the expenditure claimed by the Assessee under the head "Total Compensation to Employees" is also supported by the certified copy of "Profit and Loss Account". Therefore, when the

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Commissioner is approached by the Assessee within one year from the date of an adverse order passed against the Assessee, the Commissioner is empowered and entitled to look into the grievance of the Assessee and pass such order thereon notwithstanding the fact that the Assessee has not approached the Assessing Officer within the time stipulated for filing the revised return. If such technical objection is allowed to stand in the way of the Commissioner in exercising his jurisdiction/power under Section 264 of the IT Act, it would certainly, result in defeating the very purpose and object of granting such ample and wider power to the Commissioner under Section 264 of the IT Act. An apparent injustice or miscarriage of justice need to be set right, notwithstanding the technical objections, if any. While the substantial justice is the King, technicalities are only his soldiers. Certainly, the King can do no wrong and thus, let the soldiers do not stand in his way.

20. At this juncture, it is very relevant and useful to quote the observation of the Apex Court reported in [2013] 4 SCC 97, *Laxmibai (Dead) through LRs and another Vs. Bhagwantbuva (Dead) through LRs and others*, that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. The

Apex Court has also gone to the extent of saying that the Courts may in the larger interests of administration of justice may excuse or overlook a mere irregularity or a trivial breach of law for doing real and substantial justice to the parties. The relevant observation made at Paragraph 49, is extracted hereunder:

*"When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred and the Courts may in the larger interests of administration of justice may excuse or overlook a mere irregularity or a trivial breach of law for doing real and substantial justice to the parties and pass orders which will serve the interest of justice best."*

21. Likewise, the Apex Court in [2013] 4 SCC 186, *Union of India and others Vs. Ex-Gnr Ajeet Singh*, has observed at Paragraph Nos. 24 & 26 as follows:

*24. The expression "failure of justice" would appear, sometimes, as an etymological chameleon. The Court has to examine whether there is really a failure of justice or whether it is only a camouflage. Justice is a virtue which transcends all barriers. Neither the rules of procedure, nor technicalities of law can stand in its way. Even the law bends before justice. The order of the court should not be prejudicial to anyone. Justice means*

*justice between both the parties.*

*26. Justice is the virtue by which the Society/Court/Tribunal gives a man his due, opposed to injury or wrong. Justice is an act of rendering what is right and equitable towards one who has suffered a wrong. Therefore, while tempering justice with mercy, the Court must be very conscious, that it has to do justice in exact conformity with some obligatory law, for the reason that human actions are found to be just or unjust on the basis of whether the same are in conformity with, or in opposition to, the law.*

22. It is contended by the learned counsel appearing for the Revenue by that exercise of power and granting the relief to the Assessee under Section 264 of Income Tax Act, 1961, is subject to the provision of the Income Tax, Act and therefore, the Assessee herein, having not filed revised return within the time stipulated under Section 139(5) of the IT Act, is not entitled to the relief even under Section 264 of the IT Act.

23. I am unable to appreciate the above contention, as it appears that the Revenue by making such contention, is sought to justify the collection of excess tax over and above the tax payable by the Assessee, even though they admit that only due to inadvertent mistake, a wrong entry was made by the Assessee with lessor figure of the relevant expenses than the actual expenses

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met out. At this juncture, it is relevant to note that Article 265 of the Constitution of India specifically states that no tax shall be levied or collected except by authority of law. Therefore, both the levy and collection must be done with the authority of law, and if any levy and collection, later are found to be wrong and without authority of law, certainly, such levy and collection cannot withstand the scrutiny of the above constitutional provision and thus, such levy and collection would amount in violation of Article 265 of the Constitution of India.

24. Therefore, it is apparent on the facts and circumstances of the present case, that a mere typographical error committed by the Assessee cannot cost them payment of excess tax as collected by the Revenue. Certainly, the denial for repayment of such excess collection would amount to great injustice to the Assessee.

25. Even though the Statute prescribes a time limit for getting the relief before the Assessing Officer by way of filing a revised return, in my considered view, there is no embargo on the Commissioner to exercise his power and grant the relief under Section 264 of the IT Act. In other words, for granting the

relief to an Assessee, which the Commissioner finds that the Assessee is entitled to otherwise, no time restriction is provided under Section 264 of the IT Act, if such revisional jurisdiction is invoked by the Assessee by making an application under Section 264 of the IT Act. However, the Commissioner is not entitled to revise any order under Section 264 on his own motion, if the order has been made more than an year previously. Thus, it is manifest that only suo-motu power of the Commissioner under Section 264 of the IT Act, is restricted against an order passed within one year, whereas no such restriction is imposed on the Commissioner to exercise his power in respect of an order, which has been passed more than on year, if such revisional power is sought to be invoked at the instance of the Assessee by making an application under Section 264 of the IT Act.

26. Considering the above stated facts and circumstances, this Court is of the firm view that the order of the respondent impugned in this writ petition cannot be sustained. Accordingly, this Writ Petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the respondent for considering the claim of the petitioner and pass appropriate orders in the light of the observations and findings rendered supra. The

respondent shall, accordingly, pass such fresh order within a period of six weeks from the date of receipt of a copy of this order. No costs.

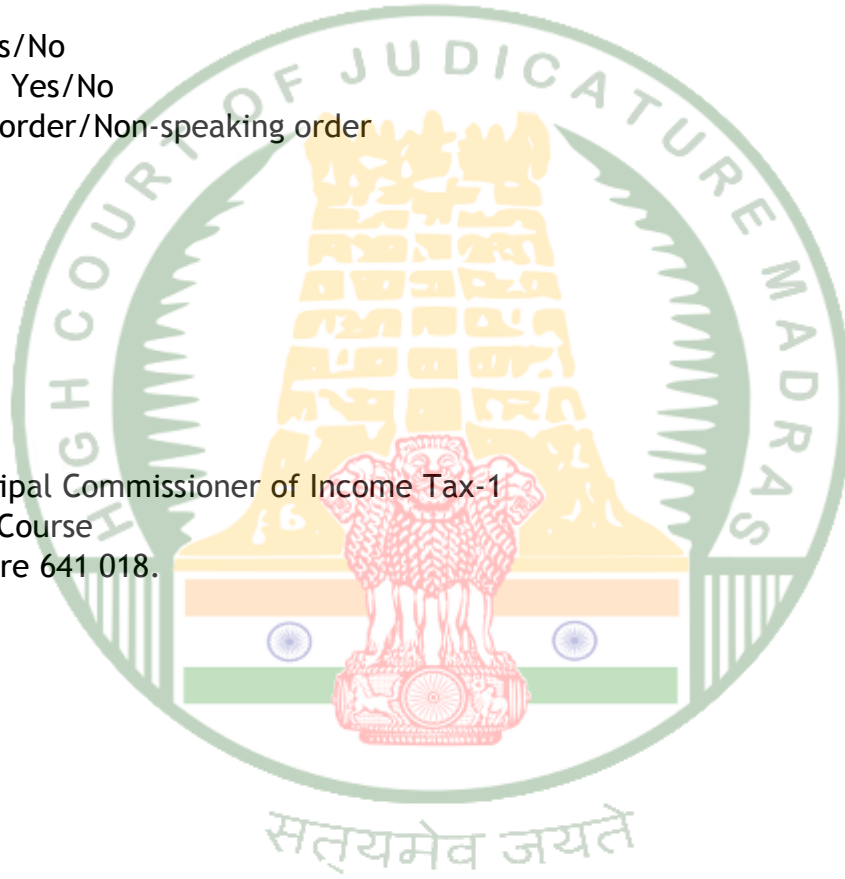
23.10.2019

Index: Yes/No  
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Speaking order/Non-speaking order

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To

The Principal Commissioner of Income Tax-1  
63, Race Course  
Coimbatore 641 018.



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K.RAVICHANDRABAABU, J.,

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23.10.2019

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