



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1475 OF 2012

M/s. Universal Packaging & Ors. ..Petitioners
versus
The Commissioner of Income Tax-14 ..Respondent

Mr. Jitendra Jain alongwith Mr. Jas Sanghavi i/b
PDS Legal for the Petitioners.

Mr. Tejveer Singh for the Respondent.

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**CORAM : S.J.VAZIFDAR &
M.S.SANKLECHA, JJ.**

DATE : 30th July, 2012.

(JUDGMENT PER M.S.SANKLECHA, J)

1 Rule. By consent the Rule is made returnable forthwith and the writ Petition is heard finally.

2 By this petition under Article 226 of the Constitution of India, the Petitioner challenges the order of the Commissioner of Income Tax dated 26.03.2012 passed in Revision under Section 264 of

the Income Tax Act, 1961 ('the Act') as being an order in breach of natural justice.

3 Briefly, the facts leading to this petition are as under :

a) The Petitioner is a partnership firm engaged in the business of manufacturing corrugated paper boxes, corrugated rolls and sleeves.

b) On 30.10.2007, the Petitioner filed its return of income declaring taxable income of Rs. 7.44 lacs after claiming a deduction of Rs.5.83 lacs being the salary paid to its working partners for the period ending on 31.03.2007 (Assessment year 2007-2008)

c) For the first time, from the assessment year 2007-2008, the procedure of filing return of income was changed by the respondent from the manual to E-filing. Consequently, on 30.10.2007, the Petitioner's Chartered Accountant filed its return of income by E-filing the same on the Internet. However, by mistake the taxable income was declared in the return at Rs.13.27 lacs

instead of Rs.7.44 lacs i.e. difference on account of remuneration paid to working partners, which is allowed as deduction not being reflected in the taxable income.

d) On 05.03.2009, the Assistant Commissioner of Income tax issued an intimation under Section 143(1) of the Act, accepting the return income at Rs.13.27 lacs and raising a demand of Rs.1.58 lacs. On receipt of the above intimation, the Petitioner filed an application for rectification under Section 154 of the Act on 30.03.2009. However, the Assistant Commissioner of Income Tax by order dated 15.12.2011 rejected the rectification application on the ground that the claim cannot be entertained in the absence of revised return of income, as held by the Supreme Court in the matter of Goetz India reported in 284 ITR 323.

e) Therefore, on 23.01.2012, the Petitioner filed a Revision application under Section 264 of the Act, with the Commissioner of Income Tax, in respect of order dated 15.12.2011.

f) On 26.03.2012, the Commissioner of Income Tax rejected the Petitioner's Revision Application by stating as under :

"4. I have considered the petition of the assessee under Section 264. The Assessing Officer has rejected the assessee's application for rectification under Section 154 vide his order dated 15.12.2011. As such, the assessee has the option for filing the appeal before the Commissioner of Income Tax (Appeals). Further, I also do not find any good reason to revise the order under Section 154 passed by the Assessing Officer.

In view of the above, the assessee's petition under Section 264 is rejected.

4 Mr. Jitendra Jain, Counsel for the Petitioner submits that the order dated 26.03.2012 passed by the Commissioner of Income Tax is an order in breach of principle of natural justice inasmuch as it does not consider the petitioner's Revision application and merely rejects the same on the ground that the petitioner has a option of filing an appeal before the Commissioner of Income Tax (Appeals). It is his submission that when the Petitioner has exercised his right to invoke the jurisdiction of the Commissioner in revision under

Section 264 of the Act, he has necessarily waived his rights to prefer an appeal before the Commissioner of Income Tax (Appeals).

5 Mr. Tejveer Singh, Counsel for the respondent supports the order dated 26.03.2012 of the Commissioner of Income Tax.

6 We find the order dated 26.03.2012 passed by the Commissioner of Income Tax is a non speaking order inasmuch as, it does not consider the petitioner's case on merits and dismissed the same on the ground that the Petitioners have an alternative remedy of filing an appeal. It is well settled position in law that one of the basic principle of natural justice is that the Authority concerned must pass a speaking order, so as to enable a party to know the reasons, as to why his application is being either accepted or rejected. This giving of reasons also ensures due application of mind to the facts by the Authority concerned. The order dated 26.03.2012 is bereft of reasons and

therefore, quashed and set aside.

7 We direct the Commissioner of Income Tax to dispose of the petitioner's Revision application under Section 264 of the Act, after giving the Petitioner a personal hearing and considering all the relevant contentions raised by the petitioner.

8 The Petition is disposed of in above terms. No order as to costs.

(M.S. SANKLECHA, J.)

(S.J.VAZIFDAR, J.)