

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE SHEEL NAGU

&

HON'BLE SHRI JUSTICE VIRENDER SINGH

W.P. No.4671 of 2020

Between:-

**RAJENDRA SINGH,
AGED ABOUT: 63 YEARS,
OCCUPATION: AGRICULTURIST,
RESIDENT OF GRAM KARAH I PAWAI
BAGAHA, TEHSIL-RAGHURAJ NAGAR,
SATNA(M.P.)**

.....APPELLANT

(BY SHRI SAPAN USRETHE, ADVOCATE)

AND

- 1. UNION OF INDIA,
THROUGH SECRETARY,
MINISTRY OF FINANCE(REVENUE),
SOUTH BLOCK,
NEW DELHI.**

2. **PRINCIPAL COMMISSIONER
OF INCOME TAX-2 CENTRAL REVENUE
BUILDING, NAPIER TOWN,
JABALPUR(M.P.).**
3. **INCOME TAX OFFICER WARD SATNA,
CENTRAL REVENUE BUILDING, CIVIL
LINE CHOWK SATNA.**

....RESPONDENTS

***(BY SHRI SANJAY LAL, ADVOCATE FOR
RESPONDENT NO.2 & 3)***

AND

W.P. No.4673 of 2020

Between:-

**SMT. KAITESHWARI DEVI,
AGED: 54 YEAR, OCCUPATION:
AGRICULTURIST, RESIDENT OF KILLA,
WARD NUMBER 2, MAIHAR, DISTRICT
SATNA(M.P.).**

.....APPELLANT

(BY SHRI SAPAN USRETHE, ADVOCATE)

AND

1. **UNION OF INDIA,
THROUGH SECRETARY,
MINISTRY OF FINANCE(REVENUE),
SOUTH BLOCK,
NEW DELHI.**
2. **PRINCIPAL COMMISSIONER
OF INCOME TAX-2 CENTRAL REVENUE
BUILDING, NAPIER TOWN,
JABALPUR(M.P.).**
3. **INCOME TAX OFFICER WARD SATNA,
CENTRAL REVENUE BUILDING, CIVIL
LINE CHOWK SATNA.**

...RESPONDENTS

***(BY SHRI SANJAY LAL, ADVOCATE FOR
RESPONDENTS NO.2 & 3)***

Reserved on : 24.08.2022

Passed on : 02.09.2022

Per : Justice Sheel Nagu :

ORDER

Both the petitions bearing W.P. No.4671/2020 and W.P. No.4673/2020 involve same question of law based on similar factual matrix and therefore, are being decided by this common order.

2. Taking the facts from W.P. No.4671/2020, it is seen that the sole grievance of petitioners is that against the order of assessment dated 16.12.2018, petitioners instead of filing appeal under the Income Tax Act, 1961 (for brevity '**the Act**') to the first appellate authority allowed the period of limitation for filing appeal to expire and thereafter preferred an application u/S 264 of the Act invoking revisional jurisdiction of the revisional authority. During pendency of revision, an application for withdrawal of revision was moved vide Annexure P/7 on 07.10.2019. The revisional authority dismissed the revision by the impugned order dated 10.10.2019 as not maintainable after holding that withdrawal of the revision petition shall not serve any purpose because revision is not maintainable in view of the law laid down by Bombay High Court in the case of *Simplex Enterprises and others vs. Union of India and others*, (2002) 257 ITR 689.

3. Learned counsel for petitioners submits that once an application for withdrawal of revision petition was filed on 07.10.2019, the only option available with the revisional authority was to allow the application and to dismiss the revision petition as withdrawn without going into merits of the case. It is submitted that ignoring the prayer for withdrawal of revision and deciding the revision on merits, revisional authority has foreclosed all other

options before the petitioners-assessee including the statutory remedy of appeal.

3.1 It is further submitted by learned counsel for petitioners that the decision of Bombay High Court in the case of *Simplex Enterprises and others* (supra) was based on a distinct set of facts where Bombay High Court was compelled to disallow the application for withdrawal of revision on the ground that the assessee has not cooperated in the assessment proceedings. It is further submitted that in the present case, petitioners have fully cooperated in the assessment proceeding which is not denied by learned counsel for the Revenue.

4. Shri Lal, learned senior standing counsel for Income Tax Department has tried to justify passing of impugned order u/S 264 of the Act by contending that petitioners ought to have availed the remedy of appeal. Not having done so, it is submitted that the petitioners now cannot turn back to avail the remedy before the appellate Court especially when the same has become time barred.

5. For ready reference and convenience, Section 264 of the Act is reproduced hereinbelow in toto:

“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 [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 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 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 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 Commissioner (Appeals) or] to the Appellate Tribunal.

(5) Every application by an assessee for revision under this section shall be accompanied by [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 re-heard 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, [National Tax Tribunal,] the High Court or the Supreme Court.]

Explanation 1. – An order by the [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 [Principal Commissioner or Commissioner].”

5.1 Bare perusal of the aforesaid provision reveals that Section 264 of the Act is revisional jurisdiction made available to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income Tax Department which can be invoked on an application or *suo moto* to assess the legality, validity and propriety of any order passed except order u/S 263 of the Act, by any authority subordinate to the revisional authority. The Revisional Authority is empowered to pass any

order as it thinks fit provided such order sought to be revised is not more than one year old. Section 264 of the Act places further restrictions in entertaining a revision petition to the following extent:-

(i) When an appeal lies against the order sought to be revised and no such appeal is preferred and the period of limitation of appeal is not expired.

(ii) When an order has been made, subject to an appeal to Commissioner (Appeals) or to the Appellate Tribunal.

5.2 The period of limitation u/S 264 of the Act is one year to approach the revisional authority with further power to the revisional authority to condone the delay if sufficient, causes for delay is shown.

6. The said provision u/S 264 of the Act is an extra-ordinary one which is made available to the assessee, in addition to the remedies of appeals under the Income Tax Act. Option has been given to the assessee to avail the remedy of revision u/S 264 of the Act within a period of one year provided the assessee has not filed an appeal and the period of limitation for preferring appeal has expired.

7. In the instant case, against the order of assessment dated 16.12.2018, petitioners preferred revision petition on 15.03.2019 within one year of limitation provided for filing revision and also after the expiry of period of limitation for preferring an appeal.

8. It is trite law that whenever a litigant invokes a particular remedy available under a Statute, then the authority before whom the *lis* is preferred and pending, is ordinarily duty bound to decide the same on merits. It is also settled in law that the aggrieved person who initiates *lis* has a right to withdraw the same before it is finally decided. This right of withdrawal is absolute but it is subject to the fact that withdrawal can be declined if there are cogent reasons.

8.1 In the instant case, petitioners sought to expressly withdraw the revision petition filed u/S 264 of the Act. This prayer for withdrawal was made when the revision petition u/S 264 of the Act was pending. The revisional authority rejected the prayer of withdrawal by following the judgment of Bombay High Court in the case of *Simplex Enterprises and others* (supra).

8.2 The said judgment in *Simplex Enterprises and others* (supra) is based on a set of facts which are distinct as compared to the factual matrix attending herein. The case before the Bombay High Court was a case where no such prayer for withdrawal was made for the revision petition and therefore the said case is of no avail to the Revenue.

9. In view of above discussion, what comes out loud and clear is that by not allowing the prayer for withdrawal and proceeding to decide the revision on merits, the revisional authority wrongly exercised jurisdiction vested in it.

9.1 This Court, thus, deems it appropriate to set aside the impugned order dated 10.10.2019 passed by respondent No.2 and remand the matter to the revisional authority to re-consider the application for withdrawal said to be filed by the petitioners on 07.10.2019, as expeditiously as possible.

10. It is made clear by this Court that this Court has not commented upon the justification or bonafide of the cause shown in the withdrawal application and therefore, it is left to the discretion and wisdom of the revisional authority dwell upon the same. It is thus open to the revisional authority to dismiss the application for withdrawal of revision provided there are cogent reasons for doing so.

11. The aforesaid order be complied with within a period of 60 days.

12. The petition is **disposed of**.

(SHEEL NAGU)
JUDGE

(VIRENDER SINGH)
JUDGE

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