



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

WRIT PETITION NO. 2484 OF 2019

Aditya Marine Limited. ... Petitioner.
V/s.
The Deputy Commissioner of Income Tax
(International Taxation) and others. ... Respondents.

Mr.Madhur Agrawal with Mr.P.C.Tripathi i/b. Mr.Atul Jasani
for the Petitioner.

Mr.Arvind Pinto for the Respondents.

CORAM : M.S. SANKLECHA AND
NITIN JAMDAR, JJ.

DATE : 3 October 2019.

P.C. :

This petition under Article 226 of the Constitution of India challenges the order dated 9 April 2019 passed by the Deputy Commissioner of Income Tax (International Taxation) under the Income Tax Act, 1961 (Act). By the impugned order dated 9 April 2019, the Petitioner's refund application for the excess amount paid as tax in respect of assessment year 2005-06 came to be rejected.

2. The impugned order dated 9 April 2019 was passed consequent to the directions of this Court dated 1 March 2019 issued in Writ Petition No.344/2019 filed by the Petitioner wherein the Assessing Officer was directed to dispose of the Petitioner's representation regarding refund claim dated 24 January 2019 within a period of six weeks from the date of the order i.e. 1 March 2019.

3. At the very outset, we asked Mr.Agrawal, the learned counsel appearing for the Petitioner whether there is an alternate remedy available under the Act to have the Petitioner's grievance redressed. It was pointed out to us that there is no alternate remedy available under the Act as the impugned order is not appellable under section 246A of the Act. It was also pointed out to us that revision under section 264 of the Act would not be available as there is no order passed under any of the provisions of the Act which would enable the Petitioner to file revision application. Mr.Agrawal also submitted that the application for refund filed by the Petitioner relates to the assessment year 2005-06 and the delay by itself makes it a fit case where extra ordinary jurisdiction should be exercised by this Court and the Petitioner should not be relegated to any alternate remedy under the Act.

4. On the other hand, Mr.Pinto for the Revenue, supports the impugned order dated 9 April 2019.

5. We agree with the submission of the Petitioner that no appeal under the Act from the impugned order is available to the Petitioner. This as the order in the nature of the impugned order has not been made appellable under section 246A of the Act. However, what remains for consideration is whether revision under section 264 of the Act is available. The relevant portion of section 264 of the Act reads as under:

“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, not being an order prejudicial to the assessee, as he thinks fit.

.....”

6 From the above, it is self evident that a revision would lie to the Commissioner of Income Tax from any order passed by the authority subordinate to him in respect of any proceeding under the Act. In the present case, the order has been passed by the officer subordinate to the Commissioner of Income Tax and the same has been passed in respect of proceeding initiated by the Petitioner seeking refund. The impugned order dated 9 April 2019 adjudicates a lis between the Revenue and the Petitioner. This requires an

examination of facts for adjudication of the dispute. Moreover, the impugned order has been passed under the Act. The Assessing Officer i.e. Deputy Commissioner of Income Tax can only pass an order under the Act as the Petitioner was seeking refund of excess amount paid as tax under the Act. We, therefore, do not find any substance in the submission of the Petitioner that no revision would be available against the impugned order as it is not an order passed under the Act. Thus, remedy of revision under section 264(1) of the Act would be available to the Petitioner.

7. Our attention was drawn by the learned counsel for the Petitioner to the decision of this Court in the case of *Larsen & Toubro Ltd. v. Assistant Commissioner of Income Tax*¹ to contend that only the order passed under the specific provision of the Act will alone be amenable to the revisional jurisdiction of the Commissioner. In the facts of the above case i.e. *Larsen & Toubro Ltd.* (supra), an order passed under section 197 of the Act was subject of consideration. In that context, it was held that the order passed under section 197 of the Act require application of mind to the facts of the case before it in a revision under section 264 of the Act. In fact, the Court while construing the words “any order” in section 264 of the Act ruled that it is very wide and in that context an order under section 197 of the Act would be subject to revision. However, the above case does not anywhere hold that for the revision being available to the assessee from the order of the officer sub-ordinate to

1 (2010) 326 ITR 514 (Bom)

the Commissioner of Income Tax, it is necessary to be passed under the specific provision of the Act.

8. In fact, if one contrasts section 264 of the Act with section 246A of the Act which provides for appeal, it would be noticed that unlike section 246A of the Act which specifies sections of the Act from which an appeal would lie, section 264 of the Act provides for revision from 'any order' under the Act. This is another indication that the Commissioner of Income Tax has very wide powers to correct any order passed by an officer subordinate to him.

9. In the above view, we are not inclined to entertain this petition as an efficacious alternate remedy is available to the Petitioner under the Act.

Accordingly, the writ petition is dismissed.

NITIN JAMDAR, J.

M.S. SANKLECHA, J.