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

WRIT PETITION NO. 2658 OF 2024

Bahar Infocons Pvt. Ltd. ...Petitioner

Versus

Principal Commissioner of Income Tax, Mumbai-2 & Ors. …Respondents

And

WRIT PETITION NO. 2664 OF 2024

Bahar Infocons Pvt. Ltd. ...Petitioner

Versus

Principal Commissioner of Income Tax, Mumbai-2 & Ors. …Respondents

And

WRIT PETITION NO. 3444 OF 2024
(NOT ON BOARD TAKEN ON BOARD)

Bahar Infocons Pvt. Ltd. ...Petitioner

Versus

Principal Commissioner of Income Tax, Mumbai-2 & Ors. …Respondents

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Dr. K. Shivaram, Senior Advocate i/b. Rahul Hakani, for the Petitioner.
Mr. N. C. Mohanty, for the Respondents.

CORAM: G. S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.

DATED: 23 SEPTEMBER 2024

JUDGMENT (Per G. S. Kulkarni, J.)

1. Rule, made returnable forthwith. Heard finally by consent of the parties. These are three petitions filed by the petitioner/assessee, assailing the orders passed by the Principal Commissioner of Income Tax

under Section 264 of the Income Tax Act, 1961 (for short '**the Act**'), whereby the petitioners' revision applications filed against the intimation under Section 143(1) of the Act for the Assessment Years 2019-20, 2020-21 and 2021-22 are rejected. As the issues of law and fact are common except for the amounts being different, the petitions are being disposed of by this common judgment.

2. Writ Petition no.2664 of 2024 which is for the Assessment year 2019-20 is argued as the lead matter, hence, we refer to the facts of the said case.

3. The petitioner filed its return of income for the Assessment year 2019- 20 declaring income of Rs.1,89,71,207/-. It is the petitioner's case that the petitioner was making a provision for bonus, ex-gratia and incentives (collectively referred as '**bonus**') payable to employees, at the time of preparation of the financial statements. It is stated that the actual payment was dependent on various factors, and on an aggregate basis the amount could be lower or equal to the provisions made. The petitioner contends that in the previous year the petitioner Company had made provision of Rs.1,30,00,000/- in the accounts for payment of bonus, and factually paid bonus of Rs.1,18,62,953/- before the due date of filing return of income, for the assessment year 2018-19, and thus disallowed excess provision of Rs.11,37,047/- in the return of income for the assessment year

2018-19 under Section 43B of the Act. The computation of income is placed on record at Exhibit B.

4. It is contended that such excess provision of Rs. 11,37,047/- made in the assessment year 2018-19 had been written back by crediting to the salary account in the year under consideration, that is in the year relevant to assessment year 2019-20. This position is pointed out to us from the ledger account annexed at Exhibit C.

5. The petitioner, however, contends that while computing the income for the assessment year 2019-20, inadvertently, the excess provision of Rs 11,37,047/- was not reduced from the income which resulted in double taxation of excess provision. The calculation of the said amount is as under:

Provision made in Assessment Year 2018-19:	Rs.1,30,00,000
Less: Paid before due date of filing of Return of Income for Assessment Year 2018-19:	Rs. 1,18,62,953
Excess provision disallowed in Asst. Year 2018-19	Rs. 11,37,047/-

6. It is thus stated that the excess provision of Rs.11,37,047/- which was written back in Assessment Year 2019-20, and credited to salary account, however was not adjusted, from the income returned.

7. The petitioner's return of income for Assessment Year 2019-2020 was processed by respondent No 2. An intimation under Section 143(1) was received by the petitioner on 4 December 2019, accepting the returned income. It is the petitioner's case that while preparing the return of income for Assessment Year 2022-2023, the petitioner realized the inadvertent mistake of double taxation of excess provision for bonus in Return of income for Assessment Years 2019-2020, 2020-2021 and 2021-2022.

8. In the aforesaid circumstances, the petitioner filed an application for revision under Section 264 against the intimation under Section 143(1) dated 4 December 2019 on 7 November 2022 with a view to reduce the excess provision of Rs 11,37,047/- from the returned income. The petitioner also filed an application dated 17 February 2023 for condonation of delay. In the said proceedings, the petitioner placed on record a chart showing summary of bonus provisions written back relevant to the Assessment Years along with an explanation in brief.

9. Respondent No.1 considered the petitioner's case, however, by the impugned order dated 23 February 2024 by rejecting the petitioner's application under Section 264 of the Act on the ground that the petitioner should have filed a revised return of income. It is in these circumstances the present petition has been filed praying for the following substantial reliefs:

> "(a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India calling for the records of the Petitioner's case and after examining the legality and validity thereof quash and set aside the impugned order dated 23rd February, 2024 **(Exhibit-A)** passed by Respondent No.1 and the order dated 4th December, 2019 **(Exhibit-H)** passed by the Respondent No.2.
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> (b) that this Hon'ble Court may be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India ordering and directing the Respondent No.1 and/or Respondent No.2 to allow the reduction of excess provisions of Rs. 11,37,047/- from the returned income."

10. We have heard Dr. K. Shivaram, learned Senior Counsel for the petitioners and Mr. Mohanty, learned Counsel for the respondents/revenue.

11. Mr. Shivaram would submit that the time limit to file revised return of income under Section 139(5) had expired after which the petitioner realized it's inadvertent mistake that while filing return of income for the Assessment Year 2019-2020. He submits that the petitioner had no option but to file revision under Section 264 of the Act for all the assessment years in question, when there was certainly an error in the return of income filed by the Assessee. He would submit that Section 264 of the Act confers wide powers on the commissioner and they are meant to do justice, with a view that no tax is paid / collected which is not in accordance with law, being also the mandate of Article 265 of the Constitution of India. It is his contention that this is a clear case wherein there was an inadvertent

mistake of double taxation of excess provisions made qua the bonus, in the return of income for the relevant assessment years, and which was required to be reduced from the income, failing which it would result in a situation, of an undue tax being deposited without there being any warrant in law. It is his submission that it is in these peculiar circumstances and as the time limit to file the revised return under Section 139(5) of the Act had expired, the petitioner has no remedy but to file revision under Section 264 of the Act which is the whole intent and purpose of the said provisions. In support of his contentions Dr. K. Shivaram has relied on the decisions in **Selvamuthukumar vs. Commissioner of Income-tax & Anr.**[1]; **Hapag Lloyd India Pvt. Ltd. vs. Principal Commissioner of income-tax and Anr.**[2], **and Ena Chaudhuri vs. Assistant Commissioner of Income-tax**[3].

12. On the other hand Mr. Mohanty in opposing the petitions would submit that respondent No.1 has taken a correct view of the matter and more particularly referring to the decision of the Supreme Court in **Goetze (India) Ltd. vs. Commissioner of Income-tax**[4]**.** He has also relied on the decision of the Division Bench of the Andhra Pradesh High Court in **M.S. Raju vs. Deputy Commissioner of Income-tax**[5] in support of his contentions.

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[1](2017) 394 ITR 247 (Mad.)
[2](2022) 443 ITR 168 (Bom.)
[3](2023) 148 taxmann.com 100 (Calcutta)
[4](2006) 284 ITR 323 (SC)
[5](2008) 298 ITR 373 (AP)

13. Having heard learned Counsel for the parties and having perused the record, we are of the opinion that there is much substance in the contentions as urged on behalf of the petitioners. Insofar as the revisional powers are concerned, Section 264 *interalia* empowers the Commissioner, either on his own motion or on an application made by the assessee, to call for the record of any proceeding under the Act and pass such order thereon not being an order prejudicial to the assessee. It is well settled that such power is conferred on the Commissioner to enable him to give relief to an assessee also in cases of over-assessment, however, such power is required to be exercised by the Commissioner subject to the limitations prescribed in the provision. This would include a situation that after an assessment is completed, if an assessee detects mistakes on account of which he was over-assessed, the revisional jurisdiction can be invoked by the assessee. Such power is not confined merely to erroneous orders passed by the lower authorities. In such context Dr Shiravaman's reliance on the decision of the decision of the Division Bench of the Madras High Court in **Selvamuthukumar vs. Commissioner of Income-tax & Anr. (supra)** is apposite. The court in the context which are relevant to the present proceedings made the following observations:-

> "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 overlap, 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. The facts in the present case are to the effect that the petition under section 264 was filed on 12.03.2009 once it became clear that the 144A directions issued in the case of SASTRA were in fact being accepted and applied by the Revenue in the re-assessments of the appellant dated 21.10.2008, 24.12.2008 and 14.12.2009 (AY 2003-04, 2004-05 and 2005-06), by which time, limitation under Section 139(5) for filing a revised return, being 31.3.2008, had lapsed. Suffice it to say that, on the facts of this case, the remedy under section 264 is appropriate and ought to have been exercised in favour of the appellant by the Commissioner of Income tax."

14. The observations of the Division Bench of Calcutta High Court in **Ena Chaudhuri vs. Assistant Commissioner of Income-tax**[6] on the powers as conferred under section 264 of the Act are required to be noted, which reads thus:

> "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 Income-tax 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 Income-tax Act, if such revisional jurisdiction is invoked by the assessee by making an application under section 264 of the Income-tax 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 Income-tax 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.
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> 26. Considering the facts and circumstances of the case as appears from record, submission of the petitioner and ratio laid down in the judgments cited, I am of the considered view that the respondent Commissioner of Income Tax concerned in the facts and circumstances of the case has committed error in law in

[6] (2023) 148 taxmann.com 100 (Calcutta)

> dismissing the revision applications of the petitioner filed under section 264 of The Income Tax Act, 1961, by refusing to consider the claim of the petitioner on merit that the income in question was exempted from tax and not liable to tax under The Income Tax Act, 1961, which according to the petitioner was included in her return as taxable income due to bonafide mistake and which she could not rectify by filing revised return since original return itself was belatedly filed and petitioner had no other remedy except taking recourse to filing of revision application under section 264 of The Income Tax Act, 1961."
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> (emphasis supplied)

15. Considering the aforesaid position in law which we respectfully endorse, in our opinion, in the present case the Commissioner was not correct in rejecting the revision application filed by the petitioner on the ground that the petitioner had not filed a revised return within the prescribed limitation.

16. In our opinion, Section 264 is a salutary provision which also bridges the gap and / or removes vacuum to remedy a *bona fide* mistake and / or for correction of an inadvertent situation, which may take place in the assessment proceedings. By remedying such mistake by orders being passed under Section 264 of the Act, any illegality or injustice which would otherwise be caused to the assessee can be corrected so as to maintain a lawful course of action being followed in the course of assessment. The object of such provision also appears to be that the law would not be oblivious to any *bona fide* human mistake which may occur at the end of the assessee and which if otherwise permitted to remain, may lead to injustice or the provisions of law being breached.

17. Now coming to the decision as cited by Mr Mohanty, we are not persuaded to accept that the decision in **Goetze (India) Ltd.** (supra) in the

facts of the present case would at all be applicable. Such decision is not in the context of the revisionary powers as conferred under the provisions of section 264 of the Income Tax Act, but in the context of deduction claimed by the assessee by a letter, after the return was filed, without filing of a revised return. Also the decision as rendered by the Division Bench of the Andhra Pradesh High Court in **M.S. Raju** (supra), would also not support the respondent's case. In such case the the assessee had made payment of 30 lakhs as damages much after the assessment in question. No material was placed to show that the audit report for the previous year had made any reference to the subsequent event of payment of damages. However in the subsequent assessment year the assessee did not claim any deduction of 30 lakhs. On such facts the assessee filed a revision requesting the Commissioner to direct the assessing officer to allow a deduction of 30 lakhs paid by the assessee as damages. The Commissioner rejected the request holding that the assessment for the relevant year made no reference to any claim for deduction of the said amount in the profit and loss account. In such circumstances, the Court in the facts of the case held that since the "record" under the provisions of section 264(1) is only the record of the proceedings before the assessing authority and as assessee did not claim any such deduction in the return of income filed by him before the assessing authority, he was not entitled to raise such question for the first time in

revision proceedings under Section 264(1). Thus, not only the facts of the case are quite distinct but also even otherwise on the position in law the decision is not applicable to the case in hand.

18. In the light of the aforesaid discussion, in our opinion, the Commissioner has certainly erred in law in rejecting the revision application filed by the petitioner merely on the ground that the petitioner had not filed a revised return. The petition needs to succeed. It is accordingly allowed in terms of prayer clause (a).

19. The revision proceedings are accordingly restored to the file of Respondent No.1 for appropriate orders to be passed under the provisions of Section 264 of the Act, in the light of the above observations on the merits of the adjustment as claimed by the petitioner.

Writ Petition No.2658 of 2024 and Writ Petition No.3444 of 2024

20. These petitions also raise similar issues as noted hereinabove which are for the Assessment Years 2020-21 and 2021-22. In view of the reasons as contained in the our aforesaid judgment, these writ petitions are also required to be allowed in terms of prayer clause (a) of each of these petitions which read thus:

Writ Petition No.2658 of 2024

"(a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India calling for the records of the Petitioner's case and after examining the legality and validity thereof quash and set aside the impugned order dated 26th February, 2024 (Exhibit-A) passed by Respondent No.1 and the order dated 30/6/2022 (Exhibit-H) passed by the Respondent No.2."

Writ Petition No.3444 of 2024

"(a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India calling for the records of the Petitioner's case and after examining the legality and validity thereof quash and set aside the impugned order dated 26th February, 2024 (Exhibit-A) passed by Respondent No.1 and the order dated 22nd December 2021 (Exhibit-H) passed by the Respondent No.2."

21. The revision proceedings are accordingly restored to the file of Respondent No.1 for appropriate orders to be passed under the provisions of Section 264 of the Act in the light of the above observations, on the merits of the adjustment as claimed by the petitioner.

22. Disposed of in the above terms. No costs.

(SOMASEKHAR SUNDARESAN, J.) (G. S. KULKARNI , J.)