IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2564 OF 2015

M/s Punit Construction Co.,
Mumbai 400 053 ... Petitioner
v/s
Union of India and others ... Respondents

Mr P.J. Pardiwalla, Sr. Counsel with Ms Aarti Sathe and Mr Kalpesh Turalkar for Petitioner.
Mr Arvind Pinto for Respondents.

CORAM : M.S. SANKLECHA AND B.P. COLABAWALLA JJ.

DATE : 27th JANUARY, 2016

P.C.:-

1. Rule. Respondents waive service. Returnable forthwith. At the request of counsel finally heard.

2. This Petition under Article 226 of the Constitution of India assails the order dated 25th March 2015 passed by the Principal Commissioner of Income Tax dismissing the Petitioner's Application for Revision under Section 264 of the

Income Tax Act 1961 (the Act) made from an assessment order dated 17th November 2011 passed for AY 2009-10.

2. The grievance of the Petitioner is that the impugned order has refused to entertain the Petitioner's Revision application by invoking sub-section (4) of section 264 of the Act which reads as under :-

> "264(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 Commissioner (Appeals) or to the Appellate Tribunal but has not 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;"

It has been pointed out to us that so far as the subject Assessment Year is concerned viz. AY 2009-10, the Petitioner has not preferred any appeal from the order of assessment dated 17th November 2011 passed by the assessing Officer. In the above view, it is the contention of the Petitioner that sub-section (4) of section 264 of the Act could not have been invoked to reject the Petitioner's Revision Application.

3. Briefly, the relevant facts are that :-

(a) The Petitioner had for the Assessment year 2011-12 claimed an expenditure of Rs.14.21 crores being the Urban Land Ceiling charges payable by them to the authorities under the Urban Land Ceiling Act. It was disallowed by the Assessing Officer in his assessment order dated 25th March 2014 for the AY 2011-12. The Petitioner preferred an Appeal from the order dated 25th March 2014 of the Assessing Officer for AY 2011-12.

(b) In Appeal, the Commissioner of Income Tax (Appeals) (CIT(A)) by his order dated 28th August 2014 held that the liability to pay the amount of Rs.14.21 crores to the Urban Land Ceiling authorities either arose in the assessment year 2009-10 or it may arise in the future when the Petitioner's Writ Petition which is pending in Bombay High Court challenging the order of the Competent Authority is disposed of. In the above view, the CIT(A) negatived the Petitioner's claim for the expenses in the AY 2011-12.

(c) Being aggrieved by the order dated 28th August 2014 of the CIT(A), the Petitioner has preferred an appeal to the Income Tax Appellate Tribunal, Mumbai and the same is awaiting disposal.

4. In the aforesaid facts, as admittedly no appeal has at all been filed from the order dated 17th November 2011 of the Assessing Officer for AY 2009-10, we find that sub-section (4) of section 264 of the Act would have no application. This is so as the Revision sought by the Petitioner is of the order dated 17th November 2011 passed for AY 2009-10. Before us, it is an admitted position that the order dated 17th November 2011 of the Assessing Officer for AY 2009-10 is not and was never subject to any appellate proceedings. In the circumstances, the order which is sought to be revised viz. the order dated 17th

November 2011 in respect of AY 2009-10 does not fall in any of the sub-clauses of sub-section (4) of section 264 of the Act.

5. Mr Pinto, learned counsel for the Respondents, is unable to point out how and why section 264(4) of the Act is at all applicable in respect of the order dated 17th November 2011 passed for the AY 2009-10, which is being sought to be revised.

6. It is not disputed by the Revenue that no appeal has been preferred by the Petitioner from the order dated 17th November 2011 passed for AY 2009-10. Thus, the reliance by the impugned order on the decision of the Madras High Court in Farm Tea Estates Syndicate v/s Assistant ITO, reported in 87 ITR 444 is in the present facts inappropriate as in that case an appeal was admittedly filed from an order in respect of which revision was sought. In these facts we are not called upon to opine on the correctness of the decision of Madras High Court in Farm Tea Estates Syndicate (supra).

7. In the above view, the impugned order dated 25th March 2015 of the Commissioner of Income Tax refusing to

entertain / examine the Petitioner's Revision application on the ground that its jurisdiction is barred by virtue of section 264(4) of the Act is without any basis and is set aside.

8. The Commissioner of Income Tax will consider de novo the Revision Application filed by the Petitioner from the order dated 17th November 2011 for AY 2009-10. It is made clear that the Commissioner of Income Tax will deal with the Revision Application and the condonation of delay application, if any, on its own merits without being influenced by any observations made herein.

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

(B.P.COLABAWALLA, J.) (M.S. SANKLECHA, J.)