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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1588 OF 2021**

Sevval Padmanabhan Vasudevan

....Petitioner

V/s.

Income Tax Officer Ward-23(3)(3) and ors.

....Respondents

Mr. Madhur Agrawal a/w. Mr. Fenil Bhatt, i/b. Mr. Atul K. Jasani for petitioner.
Mr. Sham V. Walve for respondent- Revenue.

**CORAM : K.R. SHRIRAM, &
M.S. KARNIK, JJ
DATED : 17th SEPTEMBER 2021**

P.C. :

This is a petition impugning an order dated 12th February, 2021 passed by respondent no.2 rejecting the application filed by petitioner under Section 264 of the Income Tax Act, 1961 (the said Act). Under Section 264 of the said Act, in the case of any order other than an order to which Section 263 applies passed by an authority subordinate to him, a Principal 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, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit.

2. Respondent no.2 has dismissed the application filed by petitioner on the ground that the same was not maintainable as an appeal lies against the order against which the application has been made for revision and assessee

has not also waived their right of appeal before the Commissioner of Income Tax (Appeals), as reply under Section 264 (4) of the said Act.

3. An identical order was passed on the same day as order impugned and we are informed by the same gentleman, which came to be decided by a judgment dated 8th April, 2021 in Writ Petition (L) No. 6096 of 2021 ***Aafreen Fatima Fazal Abbas Sayed vs. Assistant Commissioner of Income Tax and another¹*** where the Division Bench of this Court set aside the order impugned and remanded back the matter for *denovo* consideration.

4. Mr. Agrawal states that the facts of this case will also be covered by the said judgment. Mr. Walve, as an officer of this Court, states that he had appeared in that matter and concurs with the statement made by Mr. Agrawal. In the circumstances, the order dated 12th February, 2021 is quashed and set aside.

5. Respondent no.2 is directed to consider the application that was filed by petitioner under Section 264 of the said Act and pass such orders on merit as he deems fit.

6. We will clarify that we have not made any observation on the merits of the case.

7. Petition disposed with no order as to costs.

(M.S. KARNIK, J.)

(K.R. SHRIRAM, J.)

1. 127 Taxmann.com 819 (Bom.)