

CWP-12477-2021(O&M),
CWP-12545-2021(O&M) &
CWP-12567-2021(O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1. CWP-12477-2021(O&M)

M/S SAHIL MACHINES INDIA PVT. LTD.Petitioner
Vs
UNION OF INDIA AND ORSRespondents

2. CWP-12545-2021(O&M)

M/S SAHIL ALLOYS & MACHINE TOOLS PVT. LTD.
.....Petitioner
Vs
UNION OF INDIA AND ORSRespondents

3. CWP-12567-2021(O&M)

NAVJOT SINGH SIDHUPetitioner
Vs
UNION OF INDIA AND ORSRespondents

Date of Decision:-03.12.2021

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Chetan Bansal , Advocate
for the petitioner(s).

Mr. Vivek Sethi, Senior Standing Counsel with
Mr. Varun Issar, Junior Standing Counsel
for the respondents.

PANKAJ JAIN, J.

By this judgment, we intend to decide three writ petitions.

All of them involve common questions of law.

Petitioners have prayed for issuance of writ in the nature of

certiorari for quashing of orders passed by respondent No.2 (in all the writ petitions) of different dates, whereby their respective revisions filed under Section 264 of the Income Tax Act, 1961 have been dismissed asking them to file appeal. It will be apposite here to notice the fact that all the three impugned orders under the revision petitions have been passed by the same office, who has been impleaded as respondent No.2 in all the cases. Incidentally the same officer passed the three orders. The operative part in all the three orders is common and the same reads as under:-

“There is no case either of ignorance of the law on the part of the petitioner since the revision petition has been made well within the time allowed under that section and the prayer contained therein is also in order. Therefore, there was no reason why the petitioner did not prefer regular appeal under Section 246 of the Act by making 20% of the payment towards outstanding demand. Even on merits, there are no grounds to proceed as the applicant has never attended before the AO to plead its case on the merits of the case and instead raised defects in the speaking order of the AO and other technicalities as discussed in para 03 above, which were duly met before initiating proceeding in the case. The unexplained share application money introduced through paper/shell entities have been added to income and that is how matters stand. Further, this issue should have been rightly agitated before the

CIT (Appeals). Therefore, I do not find any special reasons to delve into the merits of the case under revisionary powers. Moreover the application is not found on sound legal footing to be considered for intervention. In view of the observations discussed hereinabove and in the absence of exigent circumstances, I am constrained not to intervene in this matter. The Assessee is advised to file an appeal in accordance with law and to apply for condonation of delay.”

In CWP No.12477 of 2021, the following facts need to be noticed:-

The petitioner-company has filed its return of income for the Assessment year 2012-13 on 27.09.2012 declaring income of Rs.1,77,448/-. A survey u/s 133A of the Income Tax Act, 1961 was conducted at the business premises of the petitioner company on 12.02.2015 by the Deputy Director of Income Tax (Investigation). Amritsar and on the basis of information gathered by the department, the Assistant Commissioner of Income Tax, Circle-2, Amritsar (hereinafter referred as ACIT, Circle 2, Amritsar) recorded reasons to believe and reopened the assessment for the assessment year 2012-2013 under Section 147 of the Income Tax Act, 1961 after obtaining necessary approval of the Joint Commissioner of Income Tax, Range-2, Amritsar. The Assessing Officer issued notice u/s 148 of the Act on 08.06.2016. That in response to the aforesaid notice, the petitioner

submitted a letter dated nil received in the Office of the Additional Commissioner of Income Tax. Range-2, Amritsar on 08.09.2016 stating that the return already filed by the petitioner may be treated as return filed in response to the notice under Section 148 of the Income Tax Act 1961. Thereafter, the assessment proceedings were started and the Assessing Officer called various details and explanations from time to time. The ACIT Circle 2 Amritsar completed the assessment under Section 144 read with Section 147/148 of the Act on 12.12.2017 at the assessed income of Rs.91,84,300/- against returned income of Rs.1,77,448/-. While completing the assessment, Assessing Officer has made an addition of Rs.49,06,748 and Rs.40,00,000/- to the income of the petitioner company on account of estimation of net taxable income by applying net profit rate of 5% on gross turnover declared and on account of unexplained credits found in the form of share application money respectively besides addition of Rs.1,00,115/- on account of shortage of stocks found during survey being treated as sales outside of books of account against the above-said erroneous assessment, the petitioner expressly waived his right to file appeal before Commissioner Income Tax (Appeal) and filed a revision petition under Section 264 of the Act on 28.12.2018.

In CWP No.12545 of 2021, the following facts need to be noticed:-

The petitioner company has filed its return of income for the

Assessment year 2012-13 on 30.09.2012 declaring income of Rs.35,34,582/-. A survey u/s 133A of the Income Tax Act, 1961 was conducted at the business premises of the petitioner company on 12.02.2015 by the Deputy Director of Income Tax (Investigation). Amritsar and on the basis of information gathered by the department, the Assistant Commissioner of Income Tax, Circle-2, Amritsar (hereinafter referred as ACIT, Circle 2, Amritsar) recorded reasons to believe and reopened the assessment for the assessment year 2012-13 under Section 147 of the Income Tax Act, 1961. The Assessing Officer issued notice u/s 148 of the Act on 08.06.2016. That in response to the aforesaid notice, the petitioner submitted a letter dated nil received in the Office of the Additional Commissioner of Income Tax. Range-2, Amritsar on 08.09.2016 stating that the return already filed by the petitioner may be treated as return filed in response to the notice under Section 148 of the Income Tax Act 1961. In the said letter, the petitioner also requested to provide certified copy of the reasons recorded and approval obtained, if any for the issuance of notice under reference to enable it to raise its objections. The Assessing Officer provided the copy of reasons recorded to the petitioner. Thereafter, the assessment proceedings were started and the Assessing Officer called various details and explanations from time to time. The ACIT Circle 2 Amritsar completed the assessment under

Section 144 read with Section 147/148 of the Act on 12.12.2017 at the assessed income of Rs.4,13,84,580/- against returned income of Rs.35,34,582/- to the income of the petitioner company on account of unexplained credits found in the form of share application money. That against the above-said erroneous assessment, the petitioner expressly waived his right to file appeal before Commissioner Income Tax (Appeal) and filed a revision petition under Section 264 of the Act on 28.12.2018.

In CWP No.12567 of 2021, the following facts need to be noticed:-

The petitioner filed his income tax return of the assessment year 2016-17 on 19.10.2016 declaring total income of Rs.9,66,28,470/- vide acknowledgment receipt No.514550651191016. However assessment under Section 143(3) of the Act was completed by the Assessment Officer on 21.12.2018 at the assessed income of Rs.13,19,66,530 after making addition of Rs.3,53,38,067/- and the said order was served upon the petitioner on 31.03.2019. The petitioner expressly waived his right to file appeal before Commissioner Income Tax (Appeal) and filed a revision petition under Section 264 of the Act taking various grounds as stated in the grounds of petition filed before respondent No.3.

Reliance has been placed upon the decision of the

Karnataka High Court dated 20.02.2018 in the case of M/s Nataraju (HUF) V/S PCIT in W.P No.54836/2017.

In the present petitions, the petitioners have impugned the aforesaid order(s) passed by respondent No.2.

Counsel for the petitioner has submitted that the revisional authority misread Section 264 of the 1961 Act to hold that the revision lies only where appeal is not maintainable. In order to derive support to his submissions, learned counsel for the petitioner has relied upon **Nataraju (HUF) versus Pr. Commissioner Income Tax-2018 (254) Taxman 357 and Paradigm Geophysical Pty. Ltd vs Commissioner of Income Tax- W.P. © 6052 of 2017.**

Per contra, learned counsel appearing for the respondents has asserted that a well-reasoned and speaking order has been passed by the Assessing Officer and there was no merit in the revision filed by the petitioner. He has relied also upon judgement in the case of **M/s Nataraju (HUF) versus Pr. Commissioner Income Tax in WP No.54836 of 2017.** The counsel for the respondents has vehemently argued that revision under Section 264 of the 1961 Act is not an alternate remedy and the same cannot be invoked in a routine manner.

We have heard learned counsel for the parties.

In our considered opinion, the two questions which arise for consideration of this Court are:-

A. Whether revision under Section 264 of the 1961 Act is an alternate remedy to the remedy of regular appeal provided under Section 246 of the 1961 Act or not?

B. Whether the authority ought not have proceeded to give findings on merits after holding that revision was not maintainable?

To answer the first question, it will be apposite to reproduce the provision of Section 264 of the IT Act:-

“1. *In the case of any order other than an order to which section 263 applies passed by an authority subordinate to him, the 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 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 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*
- 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 3 4 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 twenty-five rupees Explanation 1-An order by the 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 5 Deputy Commissioner (Appeals)] shall be deemed to be an authority subordinate to the Commissioner. F.- General.”

In our opinion prescription of waiver of right of appeal as *sine qua non* for entertaining revision leads to an inevitable conclusion that the remedy available under Section 264 of the 1961 Act is an alternate remedy to the appeal. The provision itself provides for the cases in which the authority shall not revise any order which are enumerated in sub-Section 4. The Commissioner's power of revision under this Section is subject to the certain conditions including:-

1. The order must be passed by an authority subordinate to the Principal Commissioner or Commissioner.
2. In case the order is appealable, the Commissioner cannot exercise his revisional jurisdiction till the time within which the appeal

can be filed expires. However, if an appeal lies against the order to the Commissioner (Appeals) or to the Appellate Tribunal, the assessee must have waived his right of appeal.

3. If an appeal has been made to the Deputy Commissioner (Appeals), revisional power cannot be exercised during pendency of appeal.

4. Once an order has been made a subject of an appeal to the Commissioner (Appeals) or to the Appellate Tribunal, the Commissioner cannot exercise his revisional power.

It is not the case of respondents that the case of the petitioner is barred on any of the aforesaid counts. Thus, in our view, the revisional authority erred in dismissing the revision petition filed by the petitioner merely on the ground that the same was not maintainable. As already held hereinabove, remedy under Section 264 of the 1961 Act is an alternate remedy to the appeal under Section 246 of the 1961 Act. Once the petitioner chose to revoke the revisional jurisdiction, the authority was under obligation to decide the same in accordance with the provisions of Section 264 of the 1961 Act only. Division Bench of Delhi High Court in the case of **Paradigm Geophysical Pty. Ltd vs Commissioner of Income Tax- W.P. © 6052 of 2017** has held that:-

“ Thus, a Revision Petition u/s 264 of the Act can be filed

against any order (including an assessment order) passed by a subordinate officer, which is otherwise appealable before Commissioner (Appeals) under Section 264A of the Act or under Section 253 of the Act before the Tribunal, where such appeal has not been filed and limitation period for invoking remedy has expired and the assessee has waived his right to appeal. The statutory bar is that Revision Petition cannot be entertained when an appeal has been filed before Commissioner (Appeals) or before the Tribunal in respect of such order or if no such appeal has been filed, the time limit for filing such appeal has not expired. Right to file an appeal should be waived for a revision petition to be maintainable. The objective and purpose is to ensure that the assessee does not assail the same order before two forums and that it can elect between either filing an appeal or a revision. The Assessee cannot avail of both remedies against the same order for the same Assessment Year. If the time period for filing the appeal has not expired, the revision cannot be entertained-only to ensure that after filing of Revision, the assessee does not thereafter file an appeal. Even thereafter, the requirement is that the assessee should have waived his right to appeal.

Similar is the view of Karnataka High Court in **Nataraju (HUF) Versus Pr. Commissioner Income Tax in WP No.54836 of 2017**, wherein the Karnataka High Court held as under:-

“At the outset, we wish to clarify that, if an assessee is aggrieved by the assessment order, then he could either prefer an appeal before the Commissioner (Appeals) under Section 246A of the

Act, which is a statutory appellate remedy or, in the alternative, could also prefer a revision petition under Section 264 of the Act. Admittedly, in the instant case, the appellants/assesseees did not choose to file an appeal. However, they filed a revision petition under Section 264 of the Act before the revisional Authority, as they were aggrieved by the order of the Assessing Officer. Therefore, the assesseees were well within their right to have opted for the remedy by way of a revision. Hence, we find that, the learned Single Judge was not right in making observations with regard to the fact that, the assesseees choose to file a revision under Section 264 of the Act, instead of filing an appeal under Section 246A of the Act.”

With regard to the second question, we need to observe that it is a trite law that in case the Court wishes to non-suit the litigant on the issue of maintainability, it ought not enter into the merits of the case as held in (2009) 5 SCC 162 Nawab Shaqafath Ali Khan & Ors. Versus Nawaz Imdad Jah Bahadur & Ors. However, in the present case(s), the revisional authority has not only dismissed the revision petition as not maintainable but has also non-suited petitioner(s) on the merits of the case.

Keeping in view the aforesaid discussions, we hold that the impugned order is erroneous on both the counts. Consequently, we deem it appropriate to set aside the orders passed by the revisional authority in all the three petitions. The matter is remanded to the Commissioner to decide the revision petitions afresh in accordance

with law.

Needless to say that we have not expressed any view on the merits of the case. The revision authority shall decide all the three cases in accordance with law.

(AJAY TEWARI)
JUDGE

(PANKAJ JAIN)
JUDGE

03.12.2021
Amandeep

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No