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

WRIT PETITION NO.1313 OF 2025

Nikunj Parmanand Shah .. Petitioner

Versus

Principal Commissioner of Income Tax-17,
Mumbai & Ors. .. Respondents

UTKARSH KAKASAHEB BHALERAO
Digitally signed by UTKARSH KAKASAHEB BHALERAO Date: 2026.01.09 13:58:07 +0530

Mr.Percy Pardiwalla, Senior Adovcate a/w Dharan Gandhi, Aanchal Vyas, Advocates for the Petitioner.

Mr.Ravi Rattesar, Advocate for the Respondents.

CORAM : B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE : JANUARY 05, 2026

P. C.

1. The above Writ Petition challenges the order dated 27th February 2024 passed by Respondent No.1 under Section 264 of the Income Tax Act, 1961.

2. We find from the record that the Assessing Officer as well as the 1st Respondent (under Section 264) have held that the capital gains are to be assessed in A.Y.2022-23 and which were not originally brought to tax, and the time to file a revised return of income also expired on 31st December 2022. It is in this light that the application under Section 264 was rejected as the Commissioner was of the opinion that this was an attempt to conceal the particulars of income before filing of the return of income. However, before us, an entirely new argument is canvassed on behalf of the Revenue, namely that the capital gains are not assessable at all in A.Y.2022-23 but would be assessable in the previous year in which the certificate of completion for whole or part of the project is issued by the Competent Authority. In other words, before us what is pressed into service is Section 45(5A) of the Income Tax Act. We find that this argument canvassed before us is diametrically opposite to what has been held by the Commissioner under Section 264.

3. Considering these facts and circumstances, we are of the opinion that this is a fit case where the order passed under Section 264 needs to be set aside and the Commissioner be directed to give a *de novo* hearing on all aspects to the Petitioner.

4. Accordingly, we hereby set aside the impugned order dated 27th February 2024 and restore the application filed by the Petitioner under Section 264 to the file of the Commissioner to be heard *de novo*.

5. All contentions of parties in this regard are expressly kept open to be agitated before the Commissioner.

6. We would request the Commissioner to dispose of the application filed by the Petitioner (under Section 264), as expeditiously as possible, and preferably on or before 31st March 2026.

7. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.] **[B. P. COLABAWALLA, J.]**