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

WRIT PETITION NO. 1904 OF 2025

Raj Rayon Industries Limited .. Petitioner

Versus

Principal Commissioner of Income Tax
PCIT, Mumbai – 3 and Ors. .. Respondents

Adv. Satish Modi*, a/w Adv. Jitendra Singh and Adv. Rajesh Gaikwad, for the Petitioner.*

Adv. Arjun Gupta (through V.C.)*, for the Respondent.*

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE: FEBRUARY 3, 2026

P. C.

1. Rule. Respondents waive service. With the consent of the parties, Rule is made returnable forthwith and heard finally.

2. The above Petition is filed *inter alia* challenging the order dated 30th December 2023 rejecting response of the Petitioner, and declaring the Return of the Petitioner as invalid under Section 139(9) of the Income Tax Act, 1961 (for short "**IT Act**"). Additionally, the order dated 28th March 2025 passed by Respondent No.1 under Section 264 is also assailed in this Petition.

3. The facts of the present case are in a very narrow compass. The Petitioner filed its Return of Income for A.Y. 2022-2023 on 2nd November 2022, declaring a total loss of Rs.45.47 Crores. After the Return of Income was filed, the Petitioner was served with the notice dated 14th December 2022 issued under Section 139(9) of the IT Act. This notice was issued by Respondent No.2 stating that the Return filed by the Petitioner for the said Assessment Year was defective as the Petitioner had claimed gross receipts or income under the head "Profits and gains of Business of Profession" of more than Rs. 10 Crores, and despite that, the books of accounts were not audited under Section 44AB of the IT Act.

4. The Petitioner responded to the aforesaid notice and contended that since its turnover was less than Rs.10 Crores, it was not required to have its books of accounts audited as required under Section 44AB of the IT Act. However, Respondent No.2, via an unreasoned order, merely held that the Return of Petitioner is invalid. Being aggrieved by this, the Petitioner filed an application before the 1st Respondent under Section 264 of the IT Act. The 1st Respondent, by the impugned order, held that the declaration of the Return of Income of the Petitioner as invalid, is not an order as contemplated under Section 264. He, therefore, dismissed the Revision Application as being not maintainable.

5. After having heard the learned Counsel appearing for the Petitioner as well as Mr. Gupta, the learned Advocate appearing on behalf of the Revenue, we are clearly of the view that the 1st Respondent has completely misdirected himself when he held that declaring the Petitioner's Return as invalid [by the CPC] is not an order as contemplated under Section 264. In fact, the 1st Respondent referred to the definition of the word 'order' to be a mandate, precept, command or authoritative direction. Despite noting the aforesaid definition (in the dictionary), the 1st Respondent went on to hold that the so-called communication addressed by the CPC to the Petitioner was not an order as contemplated under Section 264. We are clearly of the view that a declaration given under Section 139(9) of the IT Act is clearly an order which is revisable under Section 264. It is certainly a mandate, or at the very least, an authoritative direction.

6. What is interesting to note is that in the case of ***TPL-HGIEPL Joint Venture Vs. Union of India [(2025) 173 taxmann.com 540 (Bombay)]***, it was the case of the Revenue itself that any declaration given under Section 139(9) of the IT Act was certainly revisable under Section 264.

In fact, this submission of the Revenue was accepted by this Court and the Writ Petition filed by the Petitioner therein was not entertained, relegating the said Petitioner to invoke the remedy under Section 264 of the IT Act. The relevant portion of the decision in *TPL-HGIEPL Joint Venture (supra)* reads as under:-

> ***"31. Mr. Sharma submitted that a revision under Section 264 of the IT Act lies against "any order" other than an order to which Section 263 applies. He submitted that the impugned order under Section 139(9) of the IT Act was certainly revisable. Even Mr. Shah did not dispute that the impugned order under Section 139(9) was revisable. However, he submitted that since the issue was covered by the decision of the Gujarat High Court, the Petitioner should not be relegated to the alternate remedy, and this Court should exercise its extraordinary jurisdiction and declare that the return was valid.***
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> *32. Though the Hon'ble Gujrat High Court's decision prima facie supports the Petitioner's contention, we still think that this matter would require deeper scrutiny of returns, profit and loss accounts, and other documents accompanying the income tax returns. The Commissioner exercising revisional jurisdiction under Section 264 of the IT Act can more conveniently undertake such an exercise. Even the guidance note of the ICAI would require interpretation in the context of the provisions of Section 44AB of the IT Act.*
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> *33. Recently, in the case of Oberoi Constructions Ltd. v. Union of India Writ Petition (L) No.33260 of 2023 & connected matters decided on 11-11-2024/[2024] 169 taxmann.com 413/[2025] 95 GSTL 101 (Bombay), we considered several precedents on the exhaustion of alternate remedies. By following the reasoning in the said decision, we do not think that this is a matter which falls within the exceptions or that this is an exceptional case where the rule of exhaustion of alternate remedies must be bypassed.*

> ***34. For the reasons indicated above, the Petitioner is best placed to avail of the alternate remedy under Section 264 of the IT Act. At the same time, we believe that the Respondents must create a system in which their CPC or portal demonstrates thoughtful consideration, and the essence of the orders is not like the "inscrutable face of a sphinx." Resorting to Artificial Intelligence (AI) is certainly welcome. However, when the application of thoughtful consideration through actual intelligence is required, it cannot be cast aside simply because AI and automation represent the expedient future. The principles of natural justice and fairness are too valuable to be sacrificed at the altar of AI and automation expediency.***
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> *35. Accordingly, we decline to entertain this Petition but relegate the Petitioner to avail of the alternate remedy under Section 264 of the IT Act. Suppose such a revision is instituted within four weeks from today. In that case, we direct the Revisional Authority to dispose of the revision petition as expeditiously as possible and, in any event, within three months of its institution. Needless to add, the Revisional Authority must give the Petitioner an opportunity of hearing and pass a reasoned order on merits and not remand the matter to CPC."*
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> *(emphasis supplied)*

7. In view of the foregoing discussion, we are clearly of the view that the order passed by the 1st Respondent is unsustainable in law and has to be quashed and set aside. It is accordingly so ordered.

8. The Revision Application filed by the Petitioner is now restored to the file of the 1st Respondent for a *de novo* consideration. We direct that the Revisional Authority shall dispose of the Revision Application of the

Petitioner as expeditiously as possible and in any event within a period of 12 weeks from the date of communication of this order.

9. Before passing any order, the 1st Respondent shall provide an effective opportunity of hearing to the Petitioner with adequate advance notice and decide the Revision Application in accordance with law.

10. It is needless to add that the Revisional Authority shall pass a reasoned order on merits and not remand the matter to the CPC.

11. Rule is made absolute in the aforesaid terms, and the Writ Petition is also disposed of in terms thereof. However, there shall be no order as to costs.

12. 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.]**

Darshan Patil

Signed by: Darshan Patil
Designation: PA To Honourable Judge
Date: 05/02/2026 17:11:37