Unclaimed relief can be sought through a revision application to CIT under section 264

Benefit of substantive law cannot be taken away by TO on mere technicalities – TOs not to take advantage of taxpayer's error or mistake

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In brief

The Delhi High Court (HC) in a case has held that the revision powers conferred under section 264 of the Income-tax Act, 1961 (the Act), on the Commissioner of Income-tax (CIT) were very wide and could give relief to the taxpayer in a case where the taxpayer detected mistakes due to which he was over-assessed.

Further, it held that when a substantive law confers a benefit on the taxpayer under a statute, it could not be taken away by the adjudicatory authority on mere technicalities.

Furthermore, it held that the Tax Officer (TO) should not take advantage of any error or mistake that a taxpayer committed.

In detail

Facts

The taxpayer[1], an individual, furnished a return of income (RoI) declaring income from short-term capital gains (STCG) on sale of shares received from his mother as a gift. He paid tax thereon at 10%.

The Tax Officer (TO) issued an intimation under section 143(1)[2] of the Act accepting the returned income; however, he levied tax at 30% on such income. Against this intimation, the taxpayer submitted a rectification application under section 154[3] of the Act, claiming that he erroneously offered to tax the gains arising on sale of shares as STCG instead of long-term capital gains (LTCG) exempt from tax. The TO first passed a rectification order allowing relief in part by computing the tax at 10%, but then passed another rectification order rejecting the taxpayer's application on the ground that the taxpayer had not claimed any refund in the RoI

[1] TS-163-HC-2016(Delhi)

[2] It is the communication from tax department to intimate the tax payer about any tax and interest payable or the refunds due.

[3] It provides that the Income Tax authority may rectify the mistake apparent from records.

furnished, and the issue of refund did not fall under section 154 of the Act.

Thereafter, the taxpayer furnished a revision application under section 264 of the Act, with the CIT impugning the intimation and second rectification order. The CIT rejected this application holding that:

- A prescribed fee was not paid.
- The scope of section 154 of the Act was very limited and had to be strictly based on the RoI furnished.
- No material was available on record to allow calculation of capital gains by including the years 1987 or 2005 (i.e., the year when mother first acquired the shares)[4].
- Intimation under section 143(1) of the Act was not an order and thus not amenable to revisionary jurisdiction.

The taxpayer filed a writ petition before the Delhi HC against the rejection of the abovementioned revision application.

Issues before the High Court

Whether the revision application under section 264 of Act was maintainable?

Taxpayer's contentions

The taxpayer argued that Revenue did not dispute that the gains disclosed in the RoI were exempt from tax. Further, it was not disputed that, while filing the RoI, the taxpayer had calculated his shareholding period from the date on which he received the said shares as a gift from his mother, and not from the date when the mother acquired the shares. Thus, he had erroneously computed the share-holding period and consequently erroneously declared income from transfer of shares as taxable STCG instead of exempt LTCG.

To support his claim, the taxpayer relied on Circular No. 14(XL-35), 1955 issued by the Central Board of Direct Taxes, which states that a department officer must not take advantage of a taxpayer's ignorance of his rights.

High Court ruling

The Delhi HC, while allowing the writ in the taxpayer's favour and restoring the matter back to the CIT's files for his consideration on merits, held that the CIT had erred in not exercising the jurisdiction vested in him on mere technicalities.

It was held that the powers conferred under section 264 of the Act were very wide. The CIT was bound to apply his mind to the question whether the taxpayer was taxable on that income. Since section 264 used the expression "any order", it would imply that the section did not limit the power to correct errors committed by the subordinate authorities, but could even be exercised where errors were committed by taxpayers. It would cover situations where the taxpayer, because of an error, had not put forth a ***legitimate*** claim in his RoI, and such error was subsequently raised for the first time in application under section 264 of the Act. Reliance was placed on the judgments by various courts [*Pt. Sheonath Prasad, OCM Limited, C Parikh, Parekh Brothers, Digvijay Cement Co., Smt. Sneh Lata*[5]*].*

Further, it was held that when the substantive law conferred a benefit on the taxpayer under a statute, it could not be taken away by the adjudicatory authority on mere technicalities. In deciding so, the Delhi HC relied on the settled proposition of law that no tax could be levied or recovered without authority of the law, as per Article 265 of the Constitution of India[6]. The Delhi HC also relied on the Supreme Court's (SC) judgement in *Shelly Products*[7] and HC judgements in *Balmukund Acharya, Bharat General Reinsurance, Nirmala L. Mehta*[8] and Circular No. 14(XL-35) of 1955 (discussed above). By relying on this circular and the SC judgement in *Rajesh Jhaveri,*[9] the Delhi HC observed that TOs were obliged to advise the taxpayer, guide them and not take advantage of any error or mistake they committed.

Furthermore, by relying on the judgement of *K.V. Manakram, Assam Roofing and S.R. Koshti*[10] it was held that the intimation under section 143(1) of the Act was regarded as an order for the purpose of section 264 of the Act. In deciding so, the Delhi HC also noted that in the case under consideration, the taxpayer was not only impugning the intimation under section 143(1) but also the order rejecting the rectification application under section 154 of the Act. On the

[4] In the process of determining the nature and computation of capital gains, the period of holding a capital asset which becomes the property of the taxpayer through a gift, the period for which the asset was held by the previous owner shall be included.

[5] Pt. Sheonath Prasad Sharma *v.* CIT [1967] 66 ITR 647 (Allahabad); O.C.M. Limited (London) *v.* ITO [1977] 110 ITR 722 (Allahabad); C. Parikh and Co. *v.* CIT [1980] 122 ITR 610 (Gujarat); Parekh Brothers *v.* CIT [1984] 150 ITR 105 (Kerala); Digvijay Cement Co. Limited *v.* CIT and another [1994] 210 ITR 797 (Gujrat); Smt. Sneh Lata Jain *v.* CIT [2004] 192 CTR 50 (Jammu & Kashmir).

[6] Art.265 provides that no tax shall be levied or collected except by the authority of law.

[7] CIT *v.* Shelly Products and another [2003] 261 ITR 367 (SC).

[8] CIT *v.* Bharat General Reinsurance Co. Limited [1971] 81 ITR 303 (Delhi); Balmukund Acharya *v.* DCIT, CIT and UOI [2009] 310 ITR 310 (Bombay) and Nirmala L. Mehta *v.* A. Balasubramanian, CIT [2004] 269 ITR 1 (Bombay).

[9] CIT *v.* Rajesh Jhaveri Stock Brokers (P) Limited [2007] 291 ITR 500 (SC).

[10] CIT *v.* K.V. Manakram & Co. [2000] 111 Taxman 439 (Kerala); Assam Roofing Limited *v.* Commissioner of Income Tax [2014] 43 taxmann.com 316 (Gauhati); S R Koshti *v.* CIT [2005] 276 ITR 165 (Gujarat).

basis of material available on record, it observed that the CIT, instead of merely examining the material available at the time of intimation, should have considered ***all*** the material already available with the TO. In support of its contention (of consideration of all the material on record), the HC relied on Circular No. 14 and Article 265 of the Constitution of India[6] (discussed above).

On payment of the prescribed fee after filing a revision application, the Delhi HC held that rejection of application on the technical ground of non-payment would be taking a hyper-technical view; non-payment of the requisite fee would be a mere irregularity which could be corrected at a later stage, and thus could not be a ground of application rejection.

Analysis

The judgment reinforces the well-established understanding that the nature of proceedings under section 264 of the Act is of quasi-judicial nature, in disposal of which the statutory authority ultimately vests or divests rights of citizens, and thus, it should not refuse to interfere on grounds that are neither reasonable nor proper.

Further, it also reinforces that except the area reserved for revision jurisdiction under section 263 of the Act, the taxpayer can approach the CIT for revision under section 264 in respect of any order.

The takeaways

The judgement reinforces the concept that the tax department cannot tax an item of income wrongly declared as a result of *bonafide* mistake, or by denying due relief just because the taxpayer is not aware of his rights. This judgement would help the taxpayer in putting forth claims where a *bonafide* error was made in the RoI through a revision petition under section 264 of the Act.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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