

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 11528 of 2023

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE A.S. SUPEHIA

and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Approved for Reporting	Yes	No
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SHUSHILABEN JAYANTIBHAI PATEL

Versus

THE PRINCIPAL COMMISSIONER OF INCOME TAX VADODARA - 1 &
ANR.

Appearance:

MR. TUSHAR HEMANI, SENIOR COUNSEL WITH MS VAIBHAVI K
PARIKH(3238) for the Petitioner(s) No. 1MR RUTVIJ R PATEL, SENIOR STANDING COUNSEL for Respondent No.1
KARAN G SANGHANI(7945) for the Respondent(s) No. 2CORAM: **HONOURABLE MR. JUSTICE A.S. SUPEHIA**

and

HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 11/11/2025

ORAL JUDGMENT

(PER : **HONOURABLE MR. JUSTICE A.S. SUPEHIA**)

1 **RULE** returnable forthwith. Learned Senior Standing Counsel Mr.Rutvij R Patel, waives service of notice of rule on behalf of the respondent No.1.

2 Since short issue is involved, the matter is taken up for final hearing.

3 The writ petition is filed by a 82 year old senior citizen challenging the order passed by the respondent authority under the provisions of section 264 of the Income Tax Act, 1961 and by the respondent No.2, under section 144 of the

Income Tax Act,1961 along with the consequential demand notice under Sec.156 of the Income Tax Act for the Assessment Year 2017-18.

4 At the outset, learned Senior Advocate Mr.Tushar Hemani, while pointing out the decisions of the Division Bench of this Court in the case of C.Parikh & Co., vs. Commissioner of Income Tax, (Special Civil Application No. 935 of 1979 - decided on 19.07.1979), [1980] 4 Taxmann 224 (Gujarat), has submitted that the Commissioner has failed to exercise his discretion as per the provisions of section 264 of the Income Tax Act and has mainly placed reliance on the proceedings before the Assessing Officer for rejecting her application under section 264 of the Income Tax Act seeking revision of the assessment. He has submitted that in fact, the respondent-Commissioner should have examined the documentary evidence as well as the vital aspect of paying the tax of Rs.3,79,710/- for the Assessment Year 2017-18 along with the Audit Reports of the Assessment Year 2017-18.

4.1 It is submitted that the petitioner is a senior citizen suffering from hyper tension, diabetes, type 2 depression Alzhemier disease from last seven years and due to ill health and inadvertence of her Accountant & Manager, she was unable to file a return of income for the Assessment Year 2017-18. It is thus submitted that the impugned order may be set aside. Reliance is also placed by learned Senior Advocate on a recent decision of this Co-ordinate Bench dated 01.10.2024 passed in Special Civil Application No.9157 of

2024 in support of his submissions.

5 Per Contra, learned Senior Standing Counsel Mr.Rutvij Patel appearing for the respondent No.1, has vehemently opposed the submissions advanced by the learned Senior Advocate Mr.Tushar Hemani.

5.1 It is submitted that despite the notices issued to the petitioner, she did not respond and despite having given ample opportunity to represent her case during the assessment proceedings and later even during proceedings under section 264 of the Income Tax Act, as she did not utilize the opportunity, the respondent department was constrained to pass the impugned order under section 264 of the Income Tax Act rejecting the revision application.

5.2 It is submitted that the petitioner - assessee had deposited cash of amount of Rs.17,46,000/- during the demonitization period and she failed to file the return of income even after availing the opportunity given during the proceedings and as it is urged that the petition may not be granted.

6 We have heard the learned advocates appearing for the respective parties.

6.1 At the outset, we have noticed that the Audit Report which are placed on record and the other documents of return of income shows that the petitioner has been regularly filing

her return of income for the Assessment Years from 2014-15, 2015-16, 2018-19 and 2020-21, however, she was unable to file the return of income for the Financial Year 2017-18. However, it is not in dispute that she has paid tax of Rs.3,79,710/- on 16.05.2020 through chalan and Audit Report of the Assessment Year 2017-18 were also enclosed.

6.2 It is also not denied by the respondents that she is 82 years of age and is suffering from Alzheimer disease along with hyper tension and diabetes and is on medication. A categorical stand was taken by the petitioner in her application before the respondent - Commissioner to the extent that it was due to the default of the Accountant & the Manager, who had not informed the filing of return for Assessment Year 2017-18, she could not file the return of this year. However, the Commissioner has simply rejected the application of the petitioner as being not tenable by recording that it was the responsibility of the assessee to file her income tax returns as per the section 139 of the Income Tax Act, 1961.

6.3 The documents on the record also reveal that there has been cash on hand in the balance sheet for the Assessment Years as mentioned hereinabove. At this stage, we may refer to the observations of the Division Bench of this Court in the case of **C.Parikh & Co.(supra).**, wherein, the Co-ordinate Bench has after examining the provisions of section 264 of the Income Tax Act, 1961 has held thus:

“The only question which arises for our determination is whether the Commissioner, in exercise of powers under

section 264, could have given relief to the petitioner in respect of the under-totalling of the purchases to the extent of Rs.20,000. Section 264(1) which is relevant for our purpose reads as under:

“264.(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.”

It is clear that under section 264, the Commissioner is empowered to exercise revisional powers in favour of the assessee. In exercise of this power, the Commissioner may, either of his own motion or on an application by the assessee, call for the record of any proceeding under the Act and pass such order thereon not being an order prejudicial to the assessee, as he thinks fit. Sub-section (2) and (3) of section 264 provide for limitation of one year for the exercise of this revisional power, whether suo motu, or at the instance of the assessee. Power is also conferred on the Commissioner to condone delay in case he is satisfied that the assessee was prevented by sufficient cause from making the application within the prescribed period. Sub-section (4) provides that the Commissioner has no power to revise any order under section 264(1): (i) while an appeal against the order is pending before the AAC, and (ii) when the order has been subject to an appeal to the Income-tax Appellate Tribunal. Subject to the above limitation, the revisional powers conferred on the Commissioner under section 264 are very wide. He has the discretion to grant or refuse relief and the power to pass such order in revision as he may think fit. The discretion which the Commissioner has to exercise is undoubtedly to be exercised judicially and not arbitrarily according to his fancy. Therefore, subject to the limitation prescribed in section 264, the Commissioner in exercise of his

revisional power under the said section may pass such order as he thinks fit which is not prejudicial to the assessee. There is nothing in section 264 which places any restriction on the Commissioner's revisional power to give relief to the assessee in a case where the assessee detects mistakes on account of he was over assessed after the assessment was completed. We do not read any such embargo in the Commissioner's power as read by the Commissioner in the present case. It is open to the Commissioner to entertain even a new ground not urged before the lower authorities while exercising revisional powers. Therefore, though the petitioner has not raised the grounds under-totalling of purchases before the Income-tax Officer, it was within the power of the Commissioner to admit such a ground in revision. The Commissioner was also not right in holding that the over-assessment did not arise from the order of assessment. Once the petitioner was able to satisfy that there was a mistake in totalling purchases and that there was under-totalling of purchases to the tune of Rs.20,000, it is obvious that there was over-assessment. In other words, the assessment of the total income of the assessee is not correctly made in the assessment order and it has resulted in over-assessment. The Commissioner would not be acting de hors the Income-tax Act, if he gives relief to the assessee in a case where it is proved to his satisfaction that there is over-assessment, whether such over-assessment is due to a mistake detected by the assessee after completion of assessment or otherwise. In our opinion, the Commissioner has misconstrued the words "subject to the provisions of this Act" in holding that it was not open to him to give relief to the petitioner on account of the petitioner's own mistake which it detected after the assessment was completed. Once it is found that there was a mistake in making an assessment, the Commissioner had power to correct it under section 264(1). In our opinion, therefore, the Commissioner was wrong in not giving relief to the petitioner in respect of over-assessment as a result of under-totalling of the purchases to the extent of Rs.20,000."

6.4 The aforesaid view of the Division Bench has been

followed by the Co-ordinate Bench in the judgement dated 01.10.2024 passed in Special Civil Application No.9157 of 2024. The Coordinate Bench in the judgement dated 01.10.2024 has on an identical issue with regard to the scope and ambit of the exercise of powers under section 264 of the Income Tax Act has discussed and ultimately it is held that the language of the section 264 of the Income Tax Act provides ample powers to the Commissioner of the Income Tax to make or cause such inquiry to be made as he thinks fit which would include taking into consideration relevant material that would have a bearing on the issue for consolation.

6.5 A consistent view has been taken by the Courts wherein it is reiterated that the power under Section 264 of the Income Tax Act is in fact a wide power and one that is intended to prevent miscarriage of justice. It is held that under Section 264 of the Income Tax Act, the Commissioner is empowered to provide relief to an assessee where the law permits the same.

6.6 Thus, in view of settled legal precedent, we are of the opinion that the Commissioner while exercising the powers under the provision of section 264 of the Income Tax Act , ought to have examined positively in favour of the petitioner without rejecting her application on technical grounds. However, we also find that the petitioner has also committed a mistake in not timely responding to the show cause notices and to provide the material. But, at the same time, her age and her ailment cannot be ignored.

7 On the overall appreciation of the facts and the documentary records, we set aside the order dated 29.03.2022 passed by the respondent - Commissioner under the provisions of section 264 of the Income Tax Act and the matter is remanded to the respondent No.1 to re-examine the assessment of the petitioner and pass appropriate orders in light of the observations made by us under the provisions of section 264 of the Income Tax Act. Necessary orders shall be passed within a period of 12 (twelve) weeks from the date of receipt of order of this Court. Rule is made absolute.

(A. S. SUPEHIA, J)

(PRANAV TRIVEDI,J)

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