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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Date of decision: 25.09.2023*+ **W.P.(C) 5906/2022****PUNEET DHANDA**

..... Petitioner

Through: Mr Krishnan S., Adv.

versus

**PRINCIPAL COMMISSIONER OF INCOME  
TAX & ANR.**

..... Respondents

Through: Mr Gaurav Gupta, Sr Standing  
Counsel with Mr Shivendra Singh and  
Mr Puneett Singhal, Adv.**CORAM:****HON'BLE MR JUSTICE RAJIV SHAKDHER****HON'BLE MR JUSTICE GIRISH KATHPALIA****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J.: (ORAL)**

1. This writ petition concerns Assessment Year (AY) 2018-19.
2. The petitioner/assessee, *via* the instant writ petition, seeks to challenge the order dated 05.03.2021 passed by the Principal Commissioner of Income Tax [in short, "PCIT"].
3. *Via* the impugned order, the PCIT rejected the petitioner/assessee's application preferred under Section 264 of the Income Tax Act, 1961 [in short, "Act"].
  - 3.1 This application was filed by the petitioner/assessee to revise the intimation issued to him under Section 143(1) of the Act.



4. The petitioner/assessee sought to trigger the provisions of Section 264 of the Act for the purpose of enabling him to claim a loss amounting to Rs.36,66,650/- concerning Future and Option contracts, which according to him, resulted in a loss as he had carried on non-speculative business during the period in issue.

5. The petitioner claimed that he had overlooked the fact that he could set off this loss, against the income from business and profession.

6. PCIT, however, concluded that the power available to him under Section 264 enabled him only to revise those orders which are prejudicial to the interest of the petitioner/assessee. Taking this rationale further, PCIT also observed that since the intimation issued under Section 143(1) of the Act was not prejudicial to the interest of the assessee, he could not exercise his revisionary power under Section 264 of the Act.

7. Mr Krishanan S., who appears on behalf of the petitioner/assessee says that PCIT has committed an error in failing to exercise his revisionary power under the provisions of Section 264 of the Act. According to Mr Krishanan, a plain reading of the said provision would show that PCIT could exercise revisionary jurisdiction either himself or based on the application moved by the assessee [in this case, the petitioner] in any order, other than an order to which the provisions of Section 263 applied.

7.1 It is, therefore, Mr Krishanan's submission that since the petitioner/assessee inadvertently did not claim set off concerning future and option losses, this was an error which the PCIT could have corrected under Section 264 of the Act.

7.2 In support of the above, submission, Mr Krishanan seeks to place reliance on the judgment of a coordinate Bench of this court rendered in



***Vijay Gupta vs. Commissioner of Income-Tax and Another*** [2016] 386 ITR 643 (Delhi) and the judgment of the Bombay High Court in ***Aafreen Fatima Fazal Abbas Sayed vs. Assistant Commissioner of Income-Tax and Another*** [2021] 434 ITR 504 (Bom.).

8. Mr Gaurav Gupta, learned senior standing counsel, who appears on behalf of the respondents/revenue, cannot but accept that the application needs to be re-examined on merits, given the position of law articulated by this court in ***Vijay Gupta case***.

9. According to us, PCIT has committed a material irregularity in not exercising the jurisdiction conferred on him under Section 264 of the Act. As correctly submitted by Mr Krishanan, the PCIT was invested with the necessary revisionary powers to correct the intimation issued under Section 143(1) of the Act, even if the said intimation was a product of a mistake made by the assessee in not claiming set off concerning a loss which according to him, was available under the provisions of the Act.

10. The rationale behind conferring such revisionary power is that the revenue ultimately is entitled to assess the real income of an assessee; *albeit* as per the provisions of the Act.

11. Therefore, if a particular deduction is amenable within the periphery of the Act and inadvertently an assessee has not claimed the same, Section 264 can be triggered for making such correction.

12. At this stage, we are informed by Mr Krishanan that since the petitioner/assessee passed away during the pendency of the writ petition, necessary steps were taken for bringing the legal heirs of record. Similar steps will also be taken by Mr Krishanan to bring his legal heirs on record before the concerned statutory authorities.



13. Thus, for the foregoing reasons, we are inclined to set aside the impugned order.

14. PCIT will re-examine the application filed by the petitioner/assessee (which is now sought to be progressed by his legal heirs), and render a decision on it afresh.

15. The writ petition is disposed of, in the aforesaid terms.

**RAJIV SHAKDHER, J.**

**GIRISH KATHPALIA, J.**

**SEPTEMBER 25, 2023 / pmc**