

# kcmFlash

Corporate Tax

October 06, 2024

## Section 264 being salutary provision covers rectification of intimation under section 143(1)

### Snapshot

Taxpayer, while filing the return of income for AY 2018-19 had disallowed excess bonus provision amounting to INR 11,37,047 (i.e., provision of INR 1,30,00,000 less actual payment of INR 1,18,62,953). The said amount was subsequently written off in the books of accounts in AY 2019-20 and offered to tax in the return of income for the said year amounting to double taxation of excess provision. The taxpayer filed an application under section 264 of the Act in order to reduce the excess provision of INR 11,37,047 from its returned income for AY 2019-20 since the time limit to file revised return had lapsed. The Hon'ble High Court held that intimation under section 143(1) could be revised *vide* application under section 264 of the Act. HC further stated that section 264 conferred wide powers on the Commissioner to rectify *bona fide* mistakes and serve justice with a view that no tax is paid / collected which is not in accordance with the law.

### Facts of the case

The Taxpayer<sup>1</sup> while finalizing its books of accounts for AY 2018-19 had made a provision for bonus payable to employees amounting to INR 1,30,00,000. However, the taxpayer had factually paid bonus amounting to INR 1,18,62,953 before the due date of filing return of income for the year under consideration. Resultantly, the taxpayer had disallowed excess provision amounting to INR 11,37,047 while filing the income tax return for the year under consideration.

Subsequently in AY 2019-20, the taxpayer had written back the excess provision for bonus in the books of accounts and consequently the income of the taxpayer for AY 2019-20 had increased by the said amount. However, inadvertently, the said excess provision amounting to INR 11,37,047 was not reduced by the taxpayer from its taxable income and resultantly, offered the said income to tax in the income tax return filed for AY 2019-20. Pursuant to it, *vide* intimation under section 143(1) of the Income Tax Act, 1961 ('the Act') the Revenue accepted the returned income.

Further, while preparing the income tax return for AY 2022-23, the taxpayer realized the inadvertent mistake of double taxation of excess provision for bonus in return of income for AYs 2019-2020, 2020-2021 and 2021-2022. The taxpayer filed an application for revision with the Commissioner of Income tax under section 264 of the Act against the intimation under section 143(1) of the Act in order to reduce the excess provision of INR 11,37,047 from its returned income for AY 2019-20. However,

<sup>1</sup> Bahar Infocons Pvt. Ltd. [WP No. 2658 of 2024 (Bombay HC)]

the Hon'ble CIT rejected the application of the taxpayer on the ground that the taxpayer should have filed a revised return of income for the year under consideration.

Aggrieved by the aforesaid order, the taxpayer filed petitions for all the relevant AYs before the Hon'ble High Court of Bombay.

### Taxpayer's Arguments

At the outset, before the Hon'ble High Court, the taxpayer outrightly admitted that there was an inadvertent mistake committed by the taxpayer in offering taxable income in the income tax return for AY 2019-20 and pursuant to its realization, the time limit to file the revised return had already lapsed. Therefore, the only option remaining with the taxpayer was to file revision under section 264 of the Act. Further, it was also submitted that section 264 of the Act conferred wide powers on the Commissioner to ensure that no tax is paid / collected that is not in accordance with the law which is also the mandate of Article 265 of the Constitution of India.

### Revenue's Arguments

The Revenue rebutted that the Commissioner had taken a correct view in the present matter and had strongly placed its reliance on the decision of the Supreme Court of India in case of Goetze (India) Ltd<sup>2</sup>.

### Decision of Hon'ble High Court

The Hon'ble Bombay HC opined that section 264 of the Act being a salutary provision bridges the gap and / or removes vacuum to remedy a *bona fide* mistake and / or for correction of an inadvertent situation, which may take place in the assessment proceedings. By remedying such mistake by orders being passed under section 264 of the Act, any illegality or injustice which would otherwise be caused to the taxpayer could be corrected so as to maintain a lawful course of action being followed in the course of assessment. Bombay HC further stated that apparently the object of such provision would be that the law would not be oblivious to any *bona fide* human mistake which may occur at the end of the taxpayer and which if otherwise permitted to remain, may lead to injustice or the provisions of the law being breached.

The Bombay HC differentiated the present case with Goetze (India) Ltd. The Hon'ble Court highlighted that the present case dealt with the revisionary powers as conferred under the provisions of section 264 of the Act, however the case of Goetze (India) Ltd was in relation to claiming deduction by filing letter before the Assessing Officer without filing a revised return. In the case of Goetze (India) Ltd, powers conferred under the provisions of section 264 of the Act was never a question.

<sup>2</sup> Goetze (India) Ltd [2006] 284 ITR 323 (SC)

### KCM Comments

Certainly, this judgement provides an in-depth insight of the powers conferred under section 264 of the Act and aligns with the taxpayer's charter that the Revenue shall collect only the correct amount of tax which is payable as per the provisions of the Act. From perusal of the aforesaid judgement, it can also be deduced that intimation under section 143(1) of the Act can be revised through filling of application under section 264 of the Act. Further, it also opens a remedy for the taxpayers to rectify an inadvertent bona fide mistake by filing application under section 264 of the Act.

The said judgement reflects the ideology of our judiciary that an innocent person should not be

deprived of its fundamental rights on account of mere inadvertent and bona fide mistakes.

The above Hon'ble High Court decision is a welcome judgement for the taxpayers as it envisions providing remedies to all the taxpayers who were deprived on account of inadvertent and bona fide mistakes committed in the return of income after the time limit to file the revised return has lapsed.

This document is prepared exclusively for the benefit and use of member firms of KCM Network and their clients. This should not be used as a substitute for professional advice. Reasonable care has been taken for ensuring the accuracy and the authenticity of the contents of this alert. However, we do not take any responsibility for any error or omission contained therein on any account. It is recommended that the readers should take professional advice before acting on the same.

For further analysis and discussion, you may please reach out to us.

### Locations

#### Ahmedabad Arpit Jain

Level 11, Tower B,  
Ratnaakar Nine Square,  
Vastrapur,  
Ahmedabad - 380 015

Phone: +91 79 4910 2200  
[arpit.jain@kcmehtha.com](mailto:arpit.jain@kcmehtha.com)

#### Bengaluru Dhaval Trivedi

4/1, Rudra Chambers, First  
Floor, 4<sup>th</sup> Main, B/W 8<sup>th</sup> & 9<sup>th</sup>  
Cross Road, Malleshwaram,  
Bengaluru - 560 003

Phone: +91 80 2356 1880  
[dhaval.trivedi@kcmehtha.com](mailto:dhaval.trivedi@kcmehtha.com)

#### Mumbai Bhadresh Vyas

315, The Summit Business Bay,  
Nr. WEH Metro Station,  
Gundavali, Andheri East,  
Mumbai - 400 069

Phone: +91 22 2612 5834  
[bhadresh.vyas@kcmehtha.com](mailto:bhadresh.vyas@kcmehtha.com)

#### Vadodara Milin Mehta

Meghdhanush,  
Race Course,  
Vadodara - 390 007

Phone: +91 265 2440 400  
[milin.mehta@kcmehtha.com](mailto:milin.mehta@kcmehtha.com)