KPMG

#KPMG josh

TAX FLASH NEWS

18 February 2022

Revision petition before CIT is maintainable for claims which are not made in the original or revised tax returns and where assessment is completed

Recently, the Bombay High Court in the case of Hapag Lloyd India Private Limited[1] (the taxpayer) dealt with the issue of maintainability of revision petition under Section 264 of the Income-tax Act, 1961 (the Act) for a refund of excess Dividend Distributed Tax (DDT) not claimed in original as well as the revised return of income and where the assessment was completed. The Bombay High Court observed that the provision of Section 264 does not limit the power to correct errors committed by the subordinate tax authorities and could even be exercised where errors are committed by the taxpayer. There is nothing in Section 264 which places any restriction on the Commissioner's revisional power to give relief to the taxpayer in a case where the taxpayer detects mistakes after the assessment is completed. Since the Principal Commissioner of Income Tax (PCIT) had not considered the revision application on merits, the High Court remitted the application back to PCIT for consideration on merits.

Facts of the case

The taxpayer, an Indian entity, is engaged in the shipping business. It is a successor of another Indian entity (UASAC), engaged in the shipping business, which was amalgamated with the taxpayer with effect from 1 April 2019, pursuant to an order by the National Company Law Tribunal (NCLT).

UASAC (a predecessor company) had distributed dividend to its holding company (resident of Kuwait). During the Assessment Year 2016-17, UASAC paid DDT at the rate of 16.91 per cent. The assessment was finalised under Section 143(3). Subsequently, the taxpayer realised that it had inadvertently failed to claim the benefit of Article 10 of the India-Kuwait tax treaty (tax treaty), under which the dividend distribution was taxed at a lower rate. The taxpayer thus preferred a revision application under Section 264.

PCIT rejected the revision application as untenable primarily on the ground that the UASAC had not claimed the return of excess DDT at the time of filing the original return of income as well as the revised return of income. Consequently, the assessment order under Section 143(3) was passed. Thus, there was no apparent error on the record in the said assessment order, which warranted exercise of jurisdiction under Section 264.

Aggrieved, the taxpayer filed a writ petition on the ground that PCIT had completely misconstrued the scope of jurisdiction under Section 264. This incorrect approach of the PCIT had resulted in an unjustified refusal to exercise the jurisdiction vested in him by Section 264. Thus, the order passed by the tax department to be set-aside and the matter should be remitted back to the tax department for determination on merits.

High Court decision

From the perusal of the PCIT's order, it is evident that two factors weighed with the PCIT. First, the taxpayer had not claimed a refund in the original and revised return and, thus, there was no error in the assessment order passed under Section 143(3) on 18 December 2018. Second, PCIT was of the view that the jurisdiction under Section 264 was confined to correct the order which is found to be apparently erroneous. The High Court observed that PCIT was justified in recording that the taxpayer had not claimed a refund of excess tax paid by it in the original and revised return. However, PCIT committed an error in constricting the scope of revisional jurisdiction, in the backdrop of the said undisputed factual position. In fact, the very foundation of the application under Section 264 was that the taxpayer had inadvertently failed to claim the benefit of Article 10 of the tax treaty, under which the dividend distribution was taxed at a lower rate.

[1] Hapag Lloyd India Private Limited v. PCIT (writ Petition No. 2322 of 2021) – Taxsutra.com

The High Court observed that the approach of PCIT in refusing to exercise the jurisdiction under Section 264 on the premise that it can be lawfully exercised only where such a refund was claimed and considered by the AO, is neither borne out by the text of Section 264 nor the construction put thereon by the precedents. The aforesaid reasoning indicates that PCIT failed to appreciate the distinction between revisional and review jurisdiction. The principles which govern the exercise of the review were sought to be unjustifiably imported to the exercise of power under Section 264 and thereby imposing limitations which do not exist on the exercise of such power. Undoubtedly, revisional jurisdiction is not as wide as an appellate jurisdiction. At the same time, revisional jurisdiction cannot be confused with the power of review, which by its very nature is limited.

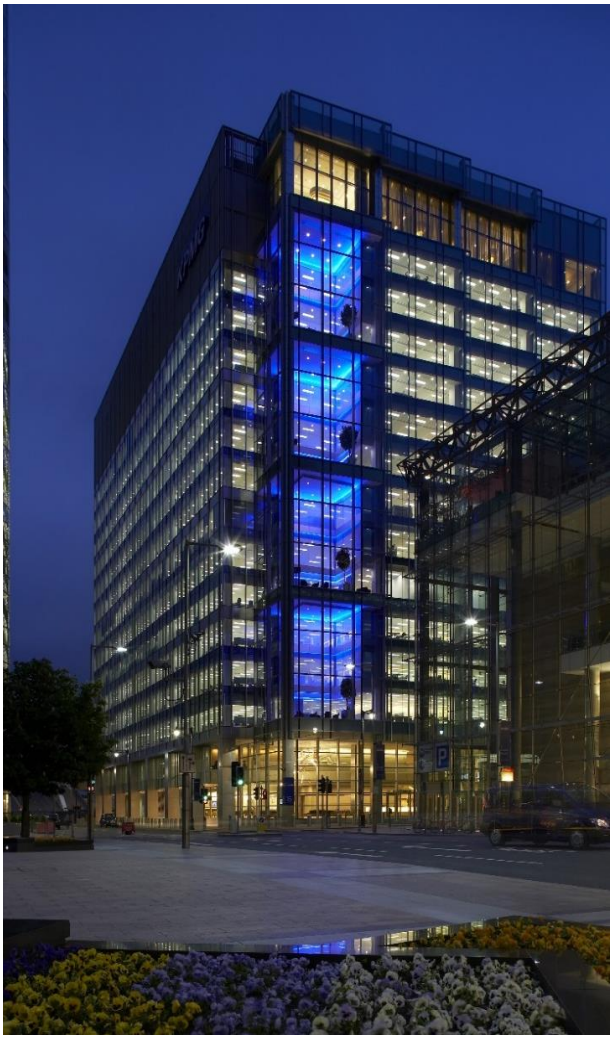
The taxpayer was justified in placing reliance on a decision of the Bombay High Court in the case of Geekay Security Services (P) Ltd.[2] where the Court had considered an identical question as to whether the revisional authority was justified in rejecting the revision application solely on the ground that the applicant had not claimed the benefit in the original return. After adverting to the previous pronouncements of various High Courts, the Court concurred with the view that Section 264 does not limit the power to correct errors committed by the subordinate authorities and could even be exercised where errors are committed by the taxpayer and there is nothing in Section 264 which places any restriction on the Commissioner's revisional power to give relief to the taxpayer in a case where taxpayer detects mistakes after the assessment is completed.

Since PCIT had not considered the revision application on merits, the High Court remitted the application back to PCIT for consideration on merits.

Our comments

The issue with respect to the maintainability of the revision petition under Section 264 by the CIT has been a matter of debate before the Courts. The Bombay High Court in the case of Geekay Security Services (P.) Ltd while dealing with the issue of deduction of employees' contribution to PF held that since PF was erroneously not claimed in the tax return and all payments towards employee's contribution to PF had been paid before the due date of filing of the return, the Commissioner was not justified in refusing to entertain taxpayer's claim on merits.

The Bombay High Court in the present case has relied on Geekay Security Services (P.) Ltd and held that revision petition under Section 264 is maintainable for claims which erroneously were not claimed in the original as well as revised tax return and where the assessment was completed. There is nothing in Section 264 which places any restriction on the Commissioner's revisional power to give relief to the taxpayer in a case where the taxpayer detects mistakes after the assessment is completed.



[2] Geekay Security Services (P) Ltd. v. DCIT [2019} 101 taxmann.com 192 (Bom)

KPMG in India addresses:

Ahmedabad
Commerce House V, 9th Floor,
902, Near Vodafone House, Corporate Road,
Prahlad Nagar,
Ahmedabad – 380 051.
Tel: +91 79 4040 2200

Bengaluru
Embassy Golf Links Business Park,
Pebble Beach, 'B' Block,
1st & 2nd Floor,
Off Intermediate Ring Road, Bengaluru – 560071
Tel: +91 80 6833 5000

Chandigarh
SCO 22-23 (1st Floor),
Sector 8C, Madhya Marg,
Chandigarh – 160 009.
Tel: +91 172 664 4000

Chennai
KRM Towers, Ground Floor,
1, 2 & 3 Floor, Harrington Road,
Chetpet, Chennai – 600 031.
Tel: +91 44 3914 5000

Gurugram
Building No.10, 8th Floor,
DLF Cyber City, Phase II,
Gurugram, Haryana – 122 002.
Tel: +91 124 307 4000

Hyderabad
Salarpuria Knowledge City,
6th Floor, Unit 3, Phase III,
Sy No. 83/1, Plot No 2, Serilingampally Mandal,
Ranga Reddy District,
Hyderabad – 500 081.
Tel: +91 40 6111 6000

Jaipur
Regus Radiant Centre Pvt Ltd.,
Level 6, Jaipur Centre Mall,
B2 By pass Tonk Road,
Jaipur – 302 018.
Tel: +91 141 - 7103224

Kochi
Syama Business Centre,
3rd Floor, NH By Pass Road,
Vytilla, Kochi – 682 019.
Tel: +91 484 302 5600

Kolkata
Unit No. 604,
6th Floor, Tower – 1,
Godrej Waterside,
Sector – V, Salt Lake,
Kolkata – 700 091.
Tel: +91 33 4403 4000

Mumbai
2nd Floor, Block T2 (B Wing),
Lodha Excellus, Apollo Mills Compound, N M Joshi Marg,
Mahalaxmi, Mumbai- 400011
Tel: +91 22 3989 6000

Noida
Unit No. 501, 5th Floor,
Advant Navis Business Park,
Tower-A, Plot# 7, Sector 142,
Expressway Noida,
Gautam Budh Nagar,
Noida – 201 305.
Tel: +91 0120 386 8000

Pune
9th floor, Business Plaza,
Westin Hotel Campus, 36/3-B,
Koregaon Park Annex,
Mundhwa Road, Ghorpadi,
Pune – 411 001.
Tel: +91 20 6747 7000

Vadodara
Ocean Building, 303, 3rd Floor,
Beside Center Square Mall,
Opp. Vadodara Central Mall,
Dr. Vikram Sarabhai Marg,
Vadodara – 390 023.
Tel: +91 265 619 4200

Vijayawada
Door No. 54-15-18E,
Sai Odyssey,
Gurunanak Nagar Road, NH 5,
Opp. Executive Club, Vijayawada,
Krishna District,
Andhra Pradesh – 520 008.
Tel: +91 0866 669 1000

---

home.kpmg/in

#KPMG josh

home.kpmg/in/socialmedia

KPMG Assurance and Consulting Services LLP, Lodha Excelus, Apollo Mills Compound, NM Joshi Marg, Mahalaxmi, Mumbai - 400 011
Phone: +91 22 3989 6000, Fax: +91 22 3983 6000