

Dipti Enterprises v. Assistant Director of Income Tax, Centralised Processing Centre & Ors.

ID: F2J-C-2526 Court: Bombay High Court

Case: WRIT PETITION NO. 2621 OF 2023 Date: 2025-11-17

Complete searchable public court-text reproduction. This clean reference PDF is generated by Finin2min; the linked public source remains controlling.

[Cites 15, Cited by 0]

Bombay High Court Nishita Rajesh Jadhav vs Municipal Corporation Of Greater ... on 17 November, 2025 Author: B. P. Colabawalla Bench: B. P. Colabawalla 2025:BHC-OS:21494-DB

4-WP-2621-2023.doc

IN THE HIGH COURT OF JUDICATURE AT BOMBAY ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2621 OF 2023

Dipti Enterprises .. Petitioner

Versus

Assistant Director of Income Tax, Centralised Processing Centre and Ors. ... Respondents

Mr. Devendra Jain, a/w Mr. Shashank Mehta, Mr. Saukhya Lakade, i/b Mr. Kashyap Chothani, for the Petitioner.

Ms. Sushma Nagaraj, a/w Mr. Abhinav Palsikar, for the Respondent.

CORAM: B. P. COLABAWALLA & AMIT S. JAMSANDEKAR, JJ.

DATE: NOVEMBER 17, 2025

P. C.

1. Rule. Respondents waive service. With the consent of the parties, Rule made returnable forthwith and heard finally.

2. The above Writ Petition has been filed to quash and set aside the impugned order dated 28.03.2023 passed by Respondent No.2 under Section 264 of the Income Tax Act, 1961 ("the IT Act") whereby Respondent No.2 rejected the Revision Application filed by the Petitioner against the intimation dated 30.12.2021 issued under Section 143(1) of the IT Act for Page 1 of 16 NOVEMBER 17, 2025 Darshan Patil 4-WP-2621-2023.doc Assessment Year 2020-21 imposing tax pursuant to the provisions of section 115JC [also known as 'Alternate Minimum Tax' or 'AMT'].

3. Mr. Jain, the learned Counsel for the Petitioner, submitted that the Petitioner is a partnership firm engaged in the business of real estate development. The Petitioner had undertaken a housing project which was approved by the local authority for the purpose of claiming deduction of 100% of the profit from the said housing project under Section 80-IB(10) of the IT Act in the year 2006. The said housing project undertaken by the Petitioner was completed in March 2012. The Petitioner has been claiming deduction of 100% of its profit from the housing project from A.Y. 2010-11 under Section 80-IB(10) of the IT Act. "Chapter XII-BA - Special Provisions Relating To Certain Persons Other Than A Company" was introduced in the Income Tax Act, 1961, by the Finance Act, 2011, w.e.f. 1st April 2012, i.e. A.Y. 2012-13 in respect of Limited Liability Partnerships. Subsequently, these provisions of Section 115JC were also made applicable to other categories of persons (other than a company) with effect from 01.04.2013, i.e. A.Y. 2013-14.

4. The relevant Assessment Year under consideration is Assessment Year 2020-21, for which the Petitioner had filed the report of a Chartered Accountant in Form 10CCB in support of its claim for deduction Page 2 of 16 NOVEMBER 17, 2025 Darshan Patil 4-WP-2621-2023.doc under Section 80-IB(10). Further, the deduction under Section 80-IB(10) of Rs. 2,12,19,211/- was also claimed in the Return of Income filed for the said Assessment Year. As per the petition, the taxable income for the relevant Assessment Year was Rs. 5,66,290/-.

5. According to the Petitioner, whilst filing the Return of Income for the relevant Assessment Year, the Income Tax Return preparation utility (hereinafter referred to as 'the ITR utility') automatically calculated the tax liability based on the deeming provisions of Section 115JC (known as the AMT provisions). The deemed total income pursuant to the provisions of Section 115JC was computed automatically as Rs. 2,17,85,501/- by the ITR Utility. The said tax computation was auto-populated and un-amendable. Since the tax payable on the total income (determined in accordance with regular provisions of the Act) was lower than the tax payable on the deemed total income determined in accordance with the AMT provisions, the total liability determined was Rs. 49,97,467/- based on the AMT provisions. This was paid before the filing of the said Return of Income.

6. The Return of Income filed by the Petitioner was processed under Section 143(1), and the income as returned therein was accepted. In short, the Petitioner was subjected to tax pursuant to the provisions of Section 115JC. Page 3 of 16 NOVEMBER 17, 2025 Darshan Patil 4-WP-2621-2023.doc

7. According to the Petitioner, the provisions of Section 115JC can be made applicable only to housing projects approved by the relevant authority on or after 01.04.2013. In other words, the provisions of Section 115JC cannot be applied to eligible projects which were already approved prior to the date on which Section 115JC came into force. In the case of the Petitioner, the housing project was approved and completed prior to the said date of enforcement, and hence, the said provisions were inapplicable to it.

8. Considering these circumstances, the Petitioner then filed an application before Respondent No.2 praying that the tax liability computed and paid pursuant to the impugned provisions of Section 115JC were not applicable in its case. Accordingly, the intimation issued under Section 143(1) ought to be revised, and the amount of extra tax paid be refunded. In support of its contention that the provisions of Section 115JC were inapplicable to it, the Petitioner placed reliance on the decision of the jurisdictional Income Tax Appellate Tribunal, Mumbai, in the case of S.K. Ventures vs. ITO [order dated 05.03.2019 bearing ITA No.: 1248/Mum/2018] against which the Revenue had filed an appeal before this Court and was pending for disposal at that point of time.

9. Respondent No.2 then afforded a hearing to the Petitioner, and requisite explanations/documents were submitted. Respondent No.2, then Page 4 of 16 NOVEMBER 17, 2025 Darshan Patil 4-WP-2621-2023.doc passed its impugned order under Section 264 on 28.03.2023, rejecting the Revision Application of the Petitioner on the ground that the decision rendered by the jurisdictional Tribunal in the case of S.K. Ventures vs. ITO (supra) was not acceptable to the revenue department. It was also stated by Respondent No.2 that no relief can be granted under Section 264 in respect of claims not made in the return.

10. In this factual backdrop, Mr. Jain, the learned Counsel for the Petitioner, contended that the Revision Application of the Petitioner filed under Section 264 was wrongfully rejected by the Respondent No.2. Placing reliance on the decision of jurisdictional Tribunal in the case of S.K. Ventures vs. ITO (supra), he contended that the provisions of Section 115JC were inapplicable to the case of the Petitioner and the tax which was paid by the Petitioner for the liability computed pursuant to the provisions of Section 115JC, was in violation of Article 265 of the Constitution of India.

11. It was the submission of the Petitioner that the jurisdictional Tribunal in the case of S.K. Ventures vs. ITO (supra) held that the provisions of Section 115JC of the IT Act, as brought in the statute by Finance Act (No.2) w.e.f. 01.04.2013 would apply prospectively and to the projects claiming deduction under Section 80IB(10) of the IT Act, which have been approved on or after that date. Accordingly, the said provisions cannot be applied Page 5 of 16 NOVEMBER 17, 2025 Darshan Patil 4-WP-2621-2023.doc retrospectively to projects completed or approved upto 31.03.2012. Accordingly, since the case of the Petitioner was identical to the facts of the case cited above, it ought to have been followed by Respondent No. 2 even in the case of the Petitioner, being a decision of the jurisdictional Tribunal. It was also submitted that merely because the said decision of the jurisdictional Tribunal is not acceptable to the revenue, does not mean that the respondents are not bound by the same. Mere filing of an appeal by the revenue against the said decision would not absolve the revenue from following binding judicial precedents. He, therefore, submitted that the impugned order dated 28.03.2023 be set aside and the matter be remanded to Respondent No.2 to pass a fresh order.

12. On the other hand, Ms. Sushma Nagraj, the learned Counsel on behalf of the Respondent, opposed the Petition on the ground that the decision of the Tribunal in the case of S.K. Ventures vs. ITO (supra) was rendered in the year 2019 whereas the Petitioner has filed the revision petition before Respondent No.2 after the order in the case of S.K. Ventures vs. ITO (supra) was passed. According to her, it is a belated claim and hence rightly rejected by Respondent No.2. It was also submitted that the revenue's appeal before this Court against the order of jurisdictional Tribunal in the case of S.K. Ventures vs. ITO (supra) was disposed of as withdrawn in PCIT vs. S.K. Ventures [ITXA 2879/2019; order dated 09.04.2025] on Page 6 of 16 NOVEMBER 17, 2025 Darshan Patil 4-WP-2621-2023.doc account of low tax effect albeit leaving the question of law open. She, therefore, submitted that there was no merit in the Writ Petition and the same be dismissed with costs.

13. Per contra Mr. Jain submitted that provisions of Section 264(3) permits the assessee to file a Revision Application within a period of one year from the date on which the order sought to be revised was passed. Hence, the revision petition filed by the Petitioner was within the statutory limitation period. He further submitted that due to auto-population of data in the ITR utility, the tax under Section 115JC was levied automatically, and there was no facility to correct the said auto-populated and unamendable data. He also submitted that even though the calculation pursuant to Section 115JC forms part of the Return of Income, still there is no estoppel against law. He states that if a person makes some assertion about a provision of law, either under circumstantial pressure or under a wrong understanding of the law or under any other situation whatsoever, he can not be stopped from later relying on the correct proposition of law. The doctrine of estoppel prevents a person from adopting a different stand which is contrary to his earlier stand. However, the same does not act as a bar in taxing statutes, and a person is entitled to take a different/new stand which is in consonance with the Act/law. If the same is not permitted, it will result in violation of Article 265, and in turn, amount to the levy or collection of tax without the authority of Page 7 of 16 NOVEMBER 17, 2025 Darshan Patil 4-WP-2621-2023.doc law. In taxing statutes, acquiescence cannot take away from a person the relief that he is entitled to. In this regard, he placed reliance on the decision of this court in the case of Nirmala L. Mehta vs. CIT [2004] 269 ITR 1 (Bombay) and in the case of Balmukund Acharya vs. DCIT [2009] 310 ITR 310 (Bombay).

14. We have heard the parties at length. We find that the Petitioner had filed a Revision Application under Section 264 before Respondent No.2 against the intimation issued under Section 143(1) wherein the returned income was accepted. However, the Petitioner was aggrieved by the automatic/auto-populated levy of tax pursuant to the provisions of Section 115JC in the ITR utility whereby a sum of Rs. 49,97,467/- was determined as the tax liability. Respondent No.2 rejected the Revision Application, stating that for the relevant Assessment Year 2020-21, the provisions of Section 115JC were applicable because the same came into force from 01.04.2013. Respondent No.2 also declined to follow the decision of the jurisdictional Tribunal in the case of S.K. Ventures vs. ITO (supra) because the revenue had filed an appeal before this High Court, and it was pending for disposal at that point of time. It was also stated that the Petitioner cannot claim the benefit of the ratio laid down in the case of S.K. Ventures vs. ITO (supra) as the Petitioner was not a party in that case. Page 8 of 16 NOVEMBER 17, 2025 Darshan Patil 4-WP-2621-2023.doc

15. One of the reasons cited by Respondent No.2 for not following the decision of the Jurisdictional Appellate Tribunal in the case of S.K. Ventures vs. ITO (supra) was because the said decision was not accepted by the revenue, and the revenue had filed an appeal before this High Court. This approach of the revenue to disregard a judicial precedent on the ground of it being challenged before a superior Court is unacceptable. Merely because the order of the appellate authority is "not acceptable" to the department, and is the subject matter of an appeal, can furnish no ground for not following a judicial precedent, unless its operation has been suspended by a competent Court. If this healthy rule is not followed, it would lead to undue harassment to assesseees and result in chaos in the administration of tax laws.

16. In this regard, the reliance placed by the Petitioner to the decision rendered by this Court in the case of Samp Furniture Pvt. Ltd. Vs. ITO [WP NO.: 3290/2024; order dated 05.08.2024], is well founded. In this decision it was held as under:

"11. This apart we also find that quite absurd and unwarranted statements are made by the JAO in paragraph 12 of the reply affidavit, when he says that the department does not agree with the judgment of this Court in Hexaware Technologies Limited (Supra). It may be that the Revenue has not "accepted" the judgment but it would not mean that till the same is set aside in a manner known to law, the same has lost its binding force as the deponent intends to say in paragraph 12, so as to proceed as if there is no such decision of this Court, and much less a binding decision. It is noteworthy that this very approach of treating judgments being "not acceptable" is in the teeth of the law as Page 9 of 16 NOVEMBER 17, 2025 Darshan Patil 4-WP-2621-2023.doc laid down by the Supreme Court deprecating such conduct of the authorities..."

(emphasis supplied)

17. Further, the Hon'ble Apex Court in the case of Godrej Sara Lee Ltd. vs. The Excise And Taxation Officer [Civil Appeal no.5393 OF 2010; order dated 01.02.2023] inter-alia held as under:

"34. In our view, the Revisional Authority might have been justified in exercising suo motu power to revise the order of the Assessing Authority had the decision of the Tribunal been set aside or its operation stayed by a competent Court. So long it is not disputed that the Tribunal's decision, having regard to the framework of classification of products/tax liability then existing, continues to remain operative and such framework too continues to remain operative when the impugned revisional orders were made, the Revisional Authority was left with no other choice but to follow the decision of the Tribunal without any reservation. Unless the discipline of adhering to decisions made by the higher authorities is maintained, there would be utter chaos in administration of tax laws apart from undue harassment to assesses. We share the view expressed in Kamlakshi Finance Corporation Ltd. (supra)"

(emphasis supplied)

18. Thus, we hold that filing of an appeal by the revenue against the order of the Appellate Tribunal ipso-facto would not absolve the revenue authorities from adhering to the applicable binding judicial precedents.

19. Secondly, we hold that the doctrine of binding precedents plays a vital role in tax jurisprudence. It is first required to be ascertained whether, in the facts and circumstances of the case and in law, a particular judicial precedent is factually and legally in consonance with the case in hand or not. Page 10 of 16 NOVEMBER 17, 2025 Darshan Patil 4-WP-2621-2023.doc If it is found that the precedent relied upon is distinguishable, then such parameters based on which it is distinguishable need to be described in the order. In the present case, Respondent No.2 has not assigned any cogent reasons for distinguishing the decision of the jurisdictional Tribunal in the case of S.K. Ventures vs. ITO (supra) from that of the Petitioner. The Petitioner has categorically stated that its grievance about the levy of tax pursuant to the provisions of Section 115JC was a decided issue by the jurisdictional Tribunal in the case of S.K. Ventures vs. ITO (supra). If the assessee is pleading that its interpretation of the applicability of Section 115JC has already been decided by the jurisdictional Tribunal, then in such a case, Respondent No.2 ought to have considered the facts and law of the said case. If the facts are identical, then it ought to have been followed. Instead, Respondent No.2 states that the doctrine of binding judicial precedents would apply only when the decision of the superior authority/Court is rendered in respect of the same party. It is the claim of Respondent No.2 that because the Petitioner was not a party to the decision in the case of S.K. Ventures vs. ITO (supra), the ratio laid down therein would not apply to the Petitioner. We are of the view that if in the facts and circumstances of the case and in law, the case of the Petitioner is in consonance with the facts in the decision rendered by the jurisdictional Tribunal, then it ought to be followed as a matter of judicial discipline. Page 11 of 16 NOVEMBER 17, 2025 Darshan Patil 4-WP-2621-2023.doc

20. With regard to the argument pleaded by the Respondents that the revision under Section 264 cannot be allowed for claims which are not made in the Return of Income or with respect to claims which are accepted in the return of income, we are not inclined to endorse this contention. Firstly, in the return of income, the computation of AMT was automatic and un-amendable. Hence, it cannot be said that Petitioner had accepted the tax computed under Section 115JC. It was to challenge the automatic levy of tax under Section 115JC that the Petitioner filed the Revision Application under Section 264 against the intimation issued under Section 143(1) wherein such tax was sustained. Further, even though in the return of income the taxes were determined and paid pursuant to Section 115JC, the same can be challenged by the Petitioner if being levied without the authority of law. Just because an assessee is under a bonafide mistake of law paid tax which was not exigible as such, cannot by itself, with nothing more, be a ground for Respondent No. 2 for not granting legitimate relief under the law.

21. In this regard, Mr. Jain, the learned Counsel for the Petitioner, has correctly brought to our attention the decision of this court in the case of Nirmala L. Mehta vs. CIT [2004] 269 ITR 1 (Bombay) wherein it was held as under:

"There cannot be any estoppel against the statute. Article 265 in unmistakable terms provides that no tax shall be levied or collected Page 12 of 16 NOVEMBER 17, 2025 Darshan Patil 4-WP-2621-2023.doc except by authority of law. Acquiescence cannot take away from a party the relief that he is entitled to where the tax is levied or collected without authority of law."

22. Further, this Court in the case of Balmukund Acharya vs. DCIT [2009] 310 ITR 310 (Bombay), held as under:

"Having said so, we must observe that the Apex Court and the various High Courts have ruled that the authorities under the Act are under an obligation to act in accordance with law. Tax can be collected only as provided under the Act. If any assessee, under a mistake, misconceptions or on not being properly instructed is over assessed, the authorities under the Act are required to assist him and ensure that only legitimate taxes due are collected. If particular levy is not permitted under the Act, tax cannot be levied applying the doctrine of estoppel."

23. Further, we also draw support from the decision rendered by this Court in the case of Hapag Lloyd India (P.) Ltd. vs. PCIT [2022] 139 taxmann.com 128 (Bombay), where the Commissioner dismissed the Revision Application filed under Section 264 on the ground that the Petitioner not having claimed relief/allowance in the return and not having filed a revised return, cannot raise a claim in a Revision Application under Section 264. This Court held as under:

"Mr. Thakkar was justified in placing reliance on a Division Bench Judgment of this Court in the case of Geekay Security Services (P.) Ltd. v. Dy. CIT [2019] 101 taxmann.com 192/261 Taxman 152 wherein the Division Bench 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 advertent to the previous pronouncements of various High Courts, this concurred with the view that Section 264 does not limit the power to correct errors committed by the sub-ordinate authorities and could even be exercised where errors are committed by the assessee and there is nothing in Section 264 which places any Page 13 of 16 NOVEMBER 17, 2025 Darshan Patil 4-WP-2621-2023.doc restriction on the Commissioner's revisional power to give relief to the assessee in a case where assessee detects mistakes after the assessment is completed."

(emphasis supplied)

24. Hence, we are of the view that provisions of Section 264 would also cover within its ambit a claim which is not made in the Return of Income.

25. Further, in the present case, the subject matter of the Revision Application is the intimation issued under Section 143(1) dated 30.12.2021, wherein the tax pursuant to Section 115JC was sustained.

26. Mr. Jain has brought to our notice a decision of this Court in the case of Gopal Vazirani v. Pr. CIT [2024] 161 taxmann.com 120/298 Taxman 515/466 ITR 376 (Bombay) wherein this Court followed its earlier decision in the case of Diwaker Tripathi vs. Principal Commissioner of Income-tax [2023] 154 taxmann.com 634 (Bombay)/[2023] 295 Taxman 532 (Bombay)/[2024] 466 ITR 371 (Bombay)/[29-08-2023] and inter-alia held that an intimation under Section 143(1) was amenable to revision jurisdiction under Section 264 of the IT Act. Page 14 of 16 NOVEMBER 17, 2025 Darshan Patil 4-WP-2621-2023.doc

27. Thus, we are of the view that provisions of Section 264 would also cover within its ambit a scenario where intimation is issued under Section 143(1) accepting the returned income of the Petitioner.

28. In view of the foregoing discussion, we deem it fit to allow the Writ Petition, and hereby quash and set aside the impugned order dated 28.03.2023 passed under Section 264 of the Act. The matter is now remanded to Respondent No. 2 to pass a fresh order on the application of Petitioner to consider the applicability of the decision of the jurisdictional Tribunal in the case of S.K. Ventures vs. ITO (supra). We direct Respondent No.2 to ascertain whether the relevant facts in the case of S.K. Ventures vs. ITO (supra) viz-a-viz facts of the present case are identical or not (w.r.t. ascertaining the applicability of the provisions of Section 115JC) within a period of four weeks from the date of uploading of the present order. If it is found that the facts in the case of S.K. Ventures vs. ITO (supra) are identical to the present case, then the ratio laid down in the said order should be followed.

29. We may hasten to add that this order should not be construed to mean that we have endorsed the view taken by the jurisdictional Tribunal in the case of S.K. Ventures vs. ITO (supra). We have decided the present matter purely on the basis that once there was an order of the jurisdictional Page 15 of 16 NOVEMBER 17, 2025 Darshan Patil 4-WP-2621-2023.doc Tribunal, the same ought to have been followed, if the facts of the present case fell within the parameters of the judgment of the jurisdictional Tribunal. In other words, what we have held is that judicial discipline ought to be maintained and cannot be deviated from on the ground that the order passed by the superior authority is "not acceptable" to the department.

30. Rule is made absolute in the aforesaid terms, and the Writ Petition is also disposed of in terms thereof. However, there shall be no order as to costs.

31. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order. [AMIT S. JAMSANDEKAR, J.] [B. P. COLABAWALLA, J.] Page 16 of 16 NOVEMBER 17, 2025 Darshan Patil Signed by: Darshan Patil Designation: PA To Honourable Judge Date: 20/11/2025 10:51:51