

Sec. 143(1) intimation is regarded as an order for purposes of revision under sec. 264

Summary – The High Court of Delhi in a recent case of Vijay Gupta., (the Assessee) held that Intimation under section 143(1) is regarded as an order for purposes of section 264; application under section 264 is maintainable against intimation order passed under section 143(1)

Non-payment of prescribed fee prior to institution of application for revision under section 264 cannot be ground for rejection of such an application

Facts

- The assessee-petitioner, in his return of income, offered to tax gains arising from sale of shares as short term capital gain. Subsequently the assessee filed an application under section 154 before the Assessing Officer contending that the capital gains on transfer of shares were actually long term capital gains exempt from tax under section 10(38).
- The Assessing Officer however rejected application under section 154 on the ground the assessee had not claimed any refund during time prescribed in section 139.
- The Commissioner also rejected assessee's application under section 264 on the ground that the assessee had not filed prescribed fee along with application under section 264 and secondly the intimation under section 143(1) could not be regarded as an order for purpose of section 264.
- On writ Petition:

Held

- It is an admitted position that the requisite fee was paid during the pendency of the revision petition. The rejection of the application on the technical ground of non-payment of fee would be taking a hyper technical view. The condition requiring the payment of fees prior to the filing of the revision application would be directory in nature. From a reading of the provisions of section 264, it cannot be gathered that the non-payment of the prescribed fee prior to the institution of the application for revision would be fatal. The non-payment of the requisite fee would be a mere irregularity which could be cured at a later stage. The applicant can always be called upon to pay the requisite fee and make good the deficiency. If the deficiency is cured, the irregularity would be rectified. In the present case, the petitioner paid the requisite fee, though belatedly and thus cured the irregularity. The finding returned by the Commissioner that the application was not maintainable on this account cannot be sustained and is accordingly set aside.
- From the various judicial pronouncements, it is settled that the powers conferred under section 264 are very wide. The Commissioner is bound to apply his mind to the question whether the petitioner was taxable on that income. Since section 264 uses the expression 'any order', it would imply that the section does not limit the power to correct errors committed by the subordinate authorities but

could even be exercised where errors are committed by assessees. It would even cover situations where the assessee because of an error has not put forth a legitimate claim at the time of filing the return and the error is subsequently discovered and is raised for the first time in an application under section 264.

- An assessee is liable to tax only upon such receipt as can be included in his total income and is assessable under the Income-tax Act. 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 detracts mistakes because of which he was over-assessed 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). When the substantive law confers a benefit on the assessee under a statute, it cannot be taken away by the adjudicatory authority on mere technicalities. It is settled proposition of law that no tax can be levied or recovered without authority of law. Article 265 of the Constitution of India and section 114 of the State Constitution imposes an embargo on imposition and collection of tax if the same is without authority of law.
- The Commissioner further erred in rejecting the application under section 264 holding that intimation under section 143(1) could not be regarded as an order and was thus not amenable to revisionary jurisdiction under section 264. The Intimation under section 143(1) is regarded as an order for the purposes of section 264. He failed to appreciate that the petitioner was not only impugning the intimation under section 143(1) but also the rejection of the application under section 154.
- When the Commissioner was called upon to examine the revision application under section 264, all the relevant material was already available on the record of the Assessing Officer. The Commissioner instead of merely examining whether the intimation was correct based on the material then available should have examined the material in the light of the Circular No. 14(XL-35) of 1955, dated 11-4-1955 and Article 265 of the Constitution of India. The Commissioner has erred in not doing so and in failing to exercise the jurisdiction vested in him on mere technical grounds.
- In view of the above, the impugned order is set aside. The revision application under section 264 is restored to the file of the Commissioner.