

## Sec. 264 revision couldn't be allowed if recovery proceedings were initiated against assessee: HC

**Summary – The High Court of Madhya Pradesh in a recent case of Rohit Agrawal, (the Assessee) held that where despite several opportunities, assessee did not account for amount deposited in his saving account and as a result *ex parte* assessment order was framed, in view of fact that it was only when penalty order was passed and recovery proceedings started that assessee filed a revision, there was no infirmity in order of Principal Commissioner in dismissing said revision**

### Facts

- From an AIR Information submitted by the bank, it came to the knowledge of Income-tax Department that the deposit of an amount was credited in the assessee's saving account during the financial year 2009-10, therefore, after notice under sections 148 and 142(1) an *ex parte* assessment order was framed, not only holding that the assessee was liable to pay tax but also penalty under sections 271F and 271(1)(c). This order was not challenged in appeal.
- According to the assessee, it was only when the demand notice was served on him, he became aware of this assessment order, therefore, he challenged it in revision under section 264 before the Principal Commissioner.
- The Principal Commissioner dismissed the revision petition.
- On petition:

### Held

- No infirmity or illegality is found in the order of the Principal Commissioner. The Principal Commissioner has analysed the facts in detail and thereafter has dismissed the revision.
- The order passed under section 264 is a detailed order with reasons and after considering the law laid down by the Supreme Court in the various decisions as mentioned in the order itself, it cannot be said by any stretch of imagination that it is a cryptic order. From perusal of the order impugned, it is clear that despite several opportunities, assessee did not avail any opportunity to account for the amount deposited in his saving account and as a result, *ex parte* assessment order was framed. Assessee was also given notice to pay the penalty, this too was not availed of by him and it was only when the penalty order was passed and recovery proceedings started, the assessee filed a revision under section 264. If one accedes to submissions of the assessee, then in each case assessee will be allowed to proceed *ex parte* and after limitation for filing appeal is over ask for quashing of *ex parte* assessment order by invoking section 264. This cannot be the legislature in proving remedy under section 264.

- From the material available on record, it is clear that petitioner is to thank himself for inviting all these troubles by not responding to the various notices issued to him by the Assessing Officer. Therefore, no merit and substance is found in the petition.