



TEL HC: Double Taxation Due To Timing Of Tax Orders Qualifies As Error, Rectifiable U/S 264; Remands Matter

Facts and Issues:

Premier Solar Power Tech Private Limited ("the Assessee") was engaged in engineering, procurement and construction of solar power projects. During FY 2017-18, it was awarded a contract by NLC India Limited for setting up a 100 MW (AC) Grid Interactive Solar PV Power Project. Though the project was scheduled for completion by 23 April 2019, it was completed on 9 September 2019. The contract provided for liquidated damages at 2% of the contract price per month or part thereof for delay.

During FY 2019-20, the Assessee charged liquidated damages of Rs. 16.04 crore to its Statement of Profit and Loss and claimed the amount as a deduction for AY 2020-21. Following settlement with NLC India Limited, the provision was reversed. During FY 2020-21 relevant to AY 2021-22, the Assessee reversed liquidated damages of Rs. 9.79 crore, including Rs. 6.85 crore, and offered the amount to tax.

The assessment for AY 2020-21 was completed on 25 September 2022. The Assessing Officer allowed liquidated damages of Rs. 9.19 crore but disallowed Rs. 6,85,02,377 u/s 28 of the Act. Since the Assessee had already offered this amount to tax in AY 2021-22, the same amount came to be taxed twice. The Assessee accepted the disallowance and paid the consequential tax.

The Assessee's first application u/s 264 was rejected on 25 March 2024 because, when filed, no order for AY 2021-22 was available for revision. After processing and rectification of the AY 2021-22 return, the Assessee filed a fresh section 264 application on 3 April 2024 seeking reduction of business income by Rs. 6,85,02,377. The Principal Commissioner rejected the application on 27 March 2026. The Assessee challenged the order before the Telangana High Court.

Contentions of the Assessee:

The Assessee submitted that section 264 confers wide revisional powers and permits correction even where the mistake was committed by the assessee. Reliance was placed on *Swaminarayan Mandir Trust v. CIT* [(2026) 488 ITR 65 (Bom)] and *S.R. Koshti v. CIT* [(2005) 276 ITR 165 (Guj)].

It was also submitted, relying on *BSCPL Infrastructure Ltd. v. Union of India* [2024] 163 taxmann.com 470 (Telangana), that tax cannot be retained beyond what is lawfully due. The double taxation resulted from the AY 2020-21 assessment being completed after the amount had already been offered to tax for AY 2021-22, when the time for revising the earlier return had expired.

Contentions of the Revenue:

The Revenue contended that section 264 could not be used to grant relief against the Assessee's voluntary act, particularly when no revised return was filed u/s 139(5). It argued that there was no double taxation because the disallowance and reversal arose from separate events and assessment years.

The Revenue further submitted that the section 143(1) intimation merely accepted the income declared and was neither erroneous nor prejudicial to the Assessee.

**Observations & Ruling of Telangana High Court:**

The Telangana High Court held that section 264 was a beneficial provision conferring wide powers to correct over-assessment, including where the mistake arose from the assessee's own return. Relying on *S.R. Koshti* and *Swaminarayan Mandir Trust*, the Court held that absence of a revised return does not bar relief u/s 264.

The Court also applied Article 265 of the Constitution and held that tax could not be retained beyond what is lawfully due. Since the same amount of Rs. 6,85,02,377 had been taxed in both AY 2020-21 and AY 2021-22, the double taxation was established with precision and could not be denied on technical grounds.

The Court noted that CBDT Circular No. 14(XL-35) of 1955 requires tax authorities to assist taxpayers in securing legitimate relief. It therefore set aside the Principal Commissioner's order dated 27 March 2026 and remanded the matter for fresh consideration on merits. The writ petition was allowed without costs.

Citation:

M/s. Premier Solar Power Tech Private Limited v. Principal Commissioner of Income Tax TS-1235-HC-2026(TEL)

Our comments:

The Telangana High Court held that section 264 can be invoked to remedy double taxation, even where the assessee could not file a revised return within the prescribed time. Relief cannot be denied on technical grounds where the same income has demonstrably been taxed twice. The decision reinforces that revisional jurisdiction u/s 264 must be exercised to ensure that only the tax legally payable is collected and that procedural limitations do not defeat substantive justice. Tax authorities are required to examine the complete factual and tax position and grant appropriate relief where an assessee has suffered an over-assessment, including due to an inadvertent error in its own return.

In the present case, the Court found that the same amount of Rs. 6,85,02,377 had actually been subjected to tax twice in the hands of the Assessee. The fact that the two tax events occurred in different assessment years and resulted from different departmental proceedings did not alter the fact of double taxation. The Court held that once such over-assessment is established from the records, with accuracy and precision, technical considerations should not prevent the grant of legitimate relief.

The judgment also reinforces the principle that the Revenue cannot retain tax beyond what is lawfully payable and that Article 265 of the Constitution acts as a safeguard against such excess collection. Accordingly, section 264 can provide an effective remedy in cases where the statutory time for filing a revised return has expired and the assessee is otherwise left without an effective remedy against the resultant over-assessment.