

**(2011) 11 P&H CK 0219**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** CM No. 13511 of 2011 in CWP No. 13232 of 2009

Shree Sanatan Dharam Mandir  
Sabha

APPELLANT

Vs

Commissioner of Income Tax,  
Karnal and another

RESPONDENT

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**Date of Decision:** Nov. 11, 2011

**Acts Referred:**

- Income Tax Act, 1961 - Section 260A, 80G

**Hon'ble Judges:** M.M. Kumar, J; J, J; aswant Singh, J

**Bench:** Full Bench

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### **Judgement**

M.M. Kumar, J.

Through the instant application, the applicant has requested for recall of order dated 23.12.2009 passed by this Court dismissing the writ petition as withdrawn with liberty to file an appeal u/s 260A of the Income Tax Act, 1961 (for brevity "the Act"). It has come on record that the order passed by the Commissioner of Income Tax on 8.9.2005 (P.1) was subject matter of challenge in the writ petition alongwith order dated 26.9.2008 (P.7) passed by the Income Tax Appellate Tribunal, Delhi Bench, Delhi (for brevity "the Tribunal")) in appeal. However, the writ petition was dismissed by this Court on 23.12.2009 as withdrawn by allowing liberty to the petitioner to file an appeal u/s 260A of the Act.

2. Mr. Deepak Aggarwal, learned counsel for the applicant-petitioner has argued that the Tribunal did not have the jurisdiction to entertain an appeal in respect of the order dated 8.9.2005 (P.1) which passed u/s 80-G(5)(vi) of the Act by the Commissioner of Income Tax, Karnal because the amendment making such an order appealable was made effective from 1.6.2007. Therefore, the order of the Commissioner of Income Tax would not be appealable before the effective date namely 1.6.2007 and the appeal before the Tribunal was not infact maintainable.

3. Mr. Yogesh Putney, learned counsel for the Revenue, however has argued that if the amendment has been made during the currency of the appeal before the Tribunal then the appeal would still be maintainable although it was directed against an order dated 8.9.2005 (P.1)

4. Having heard the learned counsel for the parties and perusing the record with their able assistance, we are of the considered view that the order dated 23.12.2009 deserves to be recalled because the order of the Commissioner of Income Tax would not be appealable u/s 260A of the Act as the remedy of appeal became available only on 1.6.2007. Accordingly, the instant application is allowed, order dated 23.12.2009 is recalled and the writ petition is restored to its original number because against the order dated 8.9.2005 (P.1) passed by the Commissioner of Income Tax only writ petition would be competent. The writ petition be listed as per roster.