

## Non-consideration of ruling of High Court or Supreme Court by ITAT is an apparent mistake and rectifiable

**Summary – The High Court of Punjab & Haryana in a recent case of R.M. Exports., (the Assessee) held that where Tribunal had sustained addition in hands of assessee under section 43B on account of delay in contribution towards ESI and PF, though various judicial precedents were available which held same to be allowable, it was a mistake apparent from record to be rectified under section 254.**

### Facts

- The assessee was a partnership firm carrying on the business of manufacturing and export of rubber goods.
- In scrutiny it was found that assessee had delayed the deposits of various amounts of employees contributions towards ESI and EPF.
- The assessee submitted that as all of the aforesaid amounts stood deposited much before the due date applicable in its case for filing of the return, in light of the post-amended provisions of section 43B, no addition of the aforesaid amounts was liable to be made in the hands of the assessee.
- The Assessing Officer made an addition holding the assessee firm in default for depositing the aforesaid amounts beyond the stipulated time period.
- The Commissioner (Appeals) deleted disallowance.
- However, the Tribunal sustained the addition.
- On appeal, the assessee submitted that Tribunal sustained the additions without considering judicial precedents and non-consideration of decision of the jurisdictional High Court or of the Supreme Court is a 'mistake apparent from record' which is rectifiable under section 254(2).

### Held

- In the present case, the assessee had deposited the amounts under ESI and EPF contributions prior to the filing of the return under section 139(1). Section 43B was interpreted by this Court judgment delivered on 5-9-2006 in *CIT v. Avery Cycle Industries (P.) Ltd.* [\[2007\] 292 ITR 198/\[2008\] 170 Taxman 152](#) and on 7-3-2007 delivered by the Supreme Court in *CIT v. Vinay Cement Ltd.* [2007] 213 CTR 268. The said decisions were prior in point of time to the decisions of the Tribunal on 5-11-2007 and 23-11-2007. Once that is so, applying the enunciation of law as laid down by the Supreme Court in *Asstt. CIT v. Saurashtra Kutch Stock Exchange Ltd.* [\[2008\] 305 ITR 227/173 Taxman 322](#), the Tribunal was in error in declining to rectify the mistake which was apparent on the face of the record.