

## **Tribunal can't reverse its order in guise of rectification**

**Summary – The High Court of Madras in a recent case of Sri. Ponkumar Magnesite Mines Lorry Transport Operator Periyagollapatti., (the Assessee) held that In guise of rectifying mistake, Tribunal cannot reverse its order**

**Where on merits Tribunal had recorded finding that order passed by Assessing Officer was one within provisions of section 237, revenue could not challenge said finding in guise of rectification of order**

### **Facts**

- The assessee had filed return of income for relevant assessment year and claimed refund of advance tax.
- The Assessing Officer rejected the claim of refund, as the return was filed belatedly, but advised the assessee to file a petition for condonation of delay and to seek refund.
- The Commissioner (Appeals) dismissed the assessee's appeal holding that the order passed by the Assessing Officer was not under section 237 and, thus, no appeal could lie.
- The Tribunal allowed the appeal filed by the assessee holding that the communication from the Assessing Officer amounted to an order under section 237.
- Revenue filed rectification petition before the Tribunal contending that no order was passed by the Assessing Officer under section 237. The Tribunal dismissed the petition.
- On appeal before the High Court:

### **Held**

- A reading of the order of the Tribunal reveals that the Tribunal, while disposing of the miscellaneous petition filed by the revenue, was of the view that the grievance of the department could be resolved by way of appeal and, therefore, there is no scope for passing an order under section 254(2).
- The Tribunal has power under section 254(2) when there is an error apparent on the face of the record; however, in the guise of rectifying mistake, it cannot reverse its own order. One of the important reasons for giving the power of rectification to the Tribunal is to see that no prejudice is caused to either of the parties appearing before it by its decision based on a mistake apparent from the record. The Tribunal, while exercising the power of rectification, can recall its order, if it is satisfied that on account of mistake, manifest error or omission attributable to the Tribunal, prejudice is caused to the party.
- In the instant case, the Tribunal, on merits, had come to the conclusion that the order passed by the Assessing Officer is one within the provisions of section 237. When the Tribunal had arrived at such a finding, it is not open to the revenue to file a miscellaneous petition challenging the said finding in

the guise of rectification of the order. The revenue has a remedy of appeal as against the findings of the Tribunal. Without resorting to such a remedy, the revenue has filed the miscellaneous petition.

- In the light of the above, there was no reason to interfere with the order of the Tribunal.