Sec. 254 doesn't permit Tribunal to substitute a view which it believes should have been taken in first instance

Summary – The Bangalore ITAT in a recent case of Triad Resorts & Hotels (P.) Ltd., (the Assessee) held that Section 254(2) is not a carte blanche for Tribunal to change its own view by substituting a view which it believes should have been taken in first instance

Facts

- The assessee filed rectification application contending that a mistake apparent from record had crept into the order of the Tribunal. The assessee's case was that the Tribunal had omitted to adjudicate the additional ground of appeal to effect that there was no urban land belonging to the assessee on the valuation date, because it stood transferred to the developer as per Joint Development agreement under section 2(47)(v) and, consequently, there was no taxable wealth on the valuation date.
- According to assessee, though the decision of the jurisdictional High Court in the case of *CIT* v. *Dr.T.K. Dayalu* [2011] 202 Taxman 531/14 taxmann.com 120 (Kar.), was cited during the course of arguments in support of the proposition that it had already transferred said land in terms of Joint Development Agreement, said decision had not been considered. Thus, non-consideration of said decision would constitute a mistake apparent from record which was liable to be rectified under section 254(2).

Held

- It is clear from perusal of the impugned order that the Tribunal has dealt with the additional ground raised by the assessee. The Tribunal after referring to the judgment of the Supreme Court in the case of *Suraj Lamp & Industries (P.) Ltd.* v. *State of Haryana* [2012] 340 ITR 1/202 Taxman 607/14 taxmann.com 103 and also the jurisdictional High Court in the case of *Wipro Ltd.* v. *Dy. CIT* [2015] 62 taxmann.com 26/236 Taxman 209 (Kar.) had rendered a categorical finding that by virtue of entering into development agreement, the ownership of the property had not been transferred to the builder. Then, the Tribunal proceeded to interpret the term 'belonging to' which expression is used in section 4 of the Wealth Tax Act 1957. In that context, the Tribunal held that an asset which was not registered and title of the property had not been passed on to the developer, was liable to be included in the taxable wealth of the assessee. The Tribunal finally held that since in the present case, by virtue of Joint Development Agreement, no title had been passed on to the developer, assessee-company continued to be the owner of the land and was liable to pay wealth-tax.
- Even assuming that *Dr.T.K.Dayalu* (*supra*) case was cited and if considered also, the said decision has no bearing on the issue in the appeals. The decision was rendered in the context of the definition of

the term 'transfer' and under the provisions of section 2(47), whereas in the present appeal, one is concerned with interpretation of the term 'belonging to' as employed by the provisions of section 4 of the Wealth-tax Act, 1957. In any event, the decision in the case of *Dr.T.K.Dayalu* (*supra*) was not held to be good law by the subsequent decision by the very jurisdictional High Court in the case of *CIT* v. *N.Vemanna Reddy* [IT Appeal No.591/2008 dated 18-8-2014]. Thus, decision in the case of *Dr.T.K.Dayalu* (*supra*) lost its precedential value, if any. Therefore, it goes without saying that the decision in *Dr.T.K.Dayalu* (*supra*) case had no relevance and bearing on the issue in appeal.

- It goes to prove that the assessee has taken a chance of re-arguing the appeal already decided. The power under section 254(2) is confined to a rectification of a mistake apparent on record. The Tribunal must confine itself within those parameters. Section 254(2) is not a *carte blanche* for the Tribunal to change its own view by substituting a view which it believes should have been taken in the first instance. Section 254(2) is not a mandate to unsettle decisions taken after due reflection. The provision empowers the Tribunal to correct mistakes, errors and omissions apparent on the face. The section is not an avenue to revive a proceeding by recourse to a disingenuous argument nor does it contemplate a fresh look at a decision recorded on merits, howsoever, appealing an alternate view may seem. Unless a sense of restraint is observed, judicial discipline would be the casualty. That is not what the Parliament envisaged.
- As stated earlier, the assessee miserably failed to point out the mistakes committed by the Tribunal in passing the impugned order. Therefore, no prejudice has been caused to the assessee on account of any mistakes committed by the Tribunal. Therefore, the proposition canvassed by the assessee that the Tribunal should allow the instant petitions by invoking the inherent power to correct its own mistakes can not be accepted. The assessee has filed the miscellaneous petitions with the intention of re-arguing the matters which were concluded by the Tribunal. Disregarding the clear finding of the Tribunal on the issues in the appeal, the assessee had filed the present petition. It is obvious that this approach of the assessee is clearly against the principles of *res judicata*.
- In view of above, it cannot be said that there are any mistakes apparent from record, which are capable of being rectified, exercising the power vested under section 254(2).
- In the result, the Miscellaneous Petition is dismissed.