

## Income-tax Act doesn't have any provision to condone delay in filing rectification application: Bangalore ITAT

**Summary – The Bangalore ITAT in a recent case of Ms. Shamsunissa Begum, (the Assessee) held that where petition for recalling Tribunal's order was filed beyond period of six months from date of Tribunal's order, in absence of any provision to condone delay under Act, same would be barred by limitation under section 254(2)**

### Facts

- The assessee's appeals were dismissed *in limine* on 7-4-2016 by the Tribunal for non-prosecution.
- The assessee filed rectification application before the Tribunal after a period of six months on 13-1-2017 for recalling the said order.
- The assessee contended that there was mistake apparent on record and, therefore, the Tribunals order might be recalled for giving an opportunity to the assessee for hearing and deciding the issue on merits.

### Held

- The time period within which the mistake apparent from record can be rectified has been reduced from 4 years to 6 months by the amendment *vide* Finance Act, 2016 with effect from 1-6-2016. Thus, after the substitution of this provision with effect from 1-6-2016, the limitation period for rectification of mistake apparent from record is provided only for 6 months from the end of the month in which the order was passed. In the case in hand, the impugned order was passed by the Tribunal on 7-4-2016 and after the amendment in section 254(4) with effect from 1-6-2016, these miscellaneous petitions were required to be filed before 31-12-2016.
- In the Limitation Act the limitation for institution of suit is provided as 3 years onwards from the date of cause of action arised and there was no provision even in the Limitation Act for condonation of delay. Since the limitation for rectification of mistake is provided in the Income-tax Act itself, the provisions of Limitation Act are not applicable so far as the limitation provided in the Income-tax Act. This principle is, well settled that when there is a provision in special statute, then the general statute is not applicable to the extent of the provision provided in the special statute. Prior to the amendment the limitation for rectification of mistake was 4 years as provided under section 254(2) and, therefore, there was no question of providing any provision or power to the Appellate Tribunal to condone the delay after the expiry of such 4 years of limitation. However, in the amended provisions of the Act under section 254(2), the limitation for rectification of mistake apparent from the record has been drastically reduced from 4 years to 6 months and in case of a delay in applying for rectification of mistake apparent from record, the party who is aggrieved by the order of this Tribunal suffering from mistake will be subjected to a great hardship and deprivation of valuable

right of pursuing the appeal before the Tribunal. But in the absence of any provision giving power or jurisdiction to this Tribunal to condone the delay in filing the petition for rectification of the mistake apparent from the record, the Tribunal has no option but to proceed strictly as per the provisions as provided in the statute.

- There is no doubt that there is an apparent mistake in the order dated 7-4-2016 as the Tribunal has not decided the appeals of the assessee on merit but dismissed the same *in limine* for want of prosecution. However, the question of rectification of mistake cannot be entertained until and unless the miscellaneous petition filed by the assessee is found to be maintainable. The miscellaneous petitions filed by the assessee are beyond the period of 6 months from 1-6-2016 and, therefore, the same are barred by limitation. In the absence of any provision to condone the delay under the Act, it may be a case of omission in the provision of the Act which cannot be supplied when there is no ambiguity in the provisions of section 254(2).
- In view of the facts and circumstances of the case as well as the decision of the Bombay High Court in the case of *Bharat Petroleum Corpn. Ltd. v. ITAT* [\[2013\] 359 ITR 371/\[2014\] 42 taxmann.com 25](#) it is held that the miscellaneous petition filed by the assessee are beyond the period of limitation as provided under section 254(2) and are not maintainable.