

## Rectification order by ITAT didn't require interference if revenue went into details of case in course of hearing

**Summary – The High Court of Bombay in a recent case of Income Tax Appellate Tribunal, (the Assessee) held that where in course of hearing of miscellaneous application filed by assessee seeking rectification of Tribunal's order, revenue went into merits of case and in great details, in such circumstances, view taken by Tribunal that its initial order contained some mistakes which needed to be rectified did not require interference**

### Facts

- The Tribunal passed its order on appeal filed by assessee. The assessee filed miscellaneous application contending that order passed by the Tribunal contained errors apparent on record.
- The Tribunal arrived at a conclusion that the initial order was indeed suffering from mistakes apparent on the record and the ingredients of sub-section (2) of section 254 were satisfied. Thus, miscellaneous application filed by assessee was allowed.
- The revenue filed instant petition contending that the Tribunal's order was *ex-facie* erroneous, illegal and without jurisdiction. In the garb of entertaining an application to consider a limited grievance within the meaning of sub-section (2) of section 254, the Tribunal had re-heard the appeal to arrive at a different conclusion on merits which was impermissible in law.

### Held

- The revenue has not been able to point out that the impugned order is vitiated because it refuses to take care of or decide an objection to the maintainability of the miscellaneous application and which objection goes to the root of the case. When the application was placed before the Tribunal, what the revenue did was to not only allow the miscellaneous application to be accompanied by detailed written submissions on merits, but proceeded to meet them. Thus, revenue went into the merits of the case and in great details.
- It is apparent that during the course of hearing, the assessee filed affidavits to support its contentions. Those contentions were equally met by the revenue. The Tribunal was persuaded and it passed a detailed order once again
- In the circumstances, the view taken by the Tribunal that its initial order contained some mistakes and which need to be rectified does not require interference in writ jurisdiction.
- At no stage it was the contention of the revenue that the Tribunal has become *functus officio* after it delivered its original order. If it had to re-look or re-visit that order it must be for a limited purpose and permitted by section 254 (2) of the Act. It could not have then touched the files and the cases or the original records so as to allow the assessee to take up all pleas on merits. The merits may have

been decided erroneously, but the Tribunal has that jurisdiction and within its powers it may pass an erroneous order.

- The only remedy to question its order is to appeal to a higher court. This is not the nature of the objections raised before the Tribunal. Rather, a perusal of the submissions as summarized by the Tribunal in the impugned order would reveal that the revenue also entered into the merits of the case by justifying and supporting the findings and conclusions of the Tribunal in the initial order. Those are clearly on the merits of the controversy.
- In such circumstances when the parameters as they are and known to all, extremely limited, allegedly not adhered to is not the sole complaint. The complaint is that the Tribunal should not have re-visited and recalled its conclusions in the initial order also on merits. Thus, the view taken by the Tribunal is a mixed one. By perusing the order under challenge, it could be termed as a plausible view of the proceedings. In the larger interest of justice the Tribunal felt that it must allow the assessee to contest the appeals of the revenue which were decided by the initial order fully and properly on merits. A fair, just and complete opportunity ought to be granted and the assessee deserves the same. That is the conclusion of the Tribunal in the impugned order.
- Such a conclusion, is not vitiated by any error of law apparent on the face of the record or perversity warranting interference in writ jurisdiction.
- In the light of the above, instant petition is dismissed.