

Issue once sealed by ITAT after due analysis can't be raised again by assessee under guise of rectification: HC

Summary – The High Court of Gujarat in a recent case of Nirma Ltd., (the Assessee) held that where Tribunal had rejected assessee's claim of deduction under section 36(1)(iii) after talking into consideration facts on record and finding recorded by authorities below in detail, rectification order passed by it subsequently under sec. 254 deserved to be said aside

Facts

- For relevant assessment year, the assessee had filed the return of income which was taken into scrutiny by the Assessing Officer. One of the issues considered by the Assessing Officer was the interest expenditure claimed by the assessee under section 36(1) upon premature redemption of Secured Premium Notes issued by the Company. The Assessing officer rejected assessee's claim.
- The Tribunal after taking into consideration various aspects of the case, confirmed the order passed by the Assessing Officer.
- The assessee filed a rectification application contending that order passed by the Tribunal contained various errors apparent on face of record.
- The Tribunal allowed rectification application filed by assessee.
- On revenue's appeal:

Held

- The Tribunal committed a legal error in recalling its earlier detailed judgment. As noted, there was a raging controversy between the Revenue and the assessee regarding the assessee company's claim of deduction of interest expenditure at all stages before the Assessing Officer, Commissioner (Appeals) and the Tribunal. This issue received minute scrutiny. The Tribunal in particular had referred to the facts on record, findings and the observations of the Assessing Officer and the Commissioner (Appeals) and ultimately gave its own reasoning for coming to the conclusion that the transaction leading to the assessee's claim of interest expenditure was not genuine and it ultimately put its seal on the decisions of the revenue authorities. Whether such opinion of the Tribunal was legally sustainable or not is the subject matter before the High Court. The relevant question is, could the Tribunal have exercised the power of rectification to recall such judgment? The answer being obvious, is in the negative.
- The powers of rectification flowing from section 254(2) are for correcting apparent errors and not for re-examination of the issues already considered and concluded. It is well recognised that the powers of rectification cannot be equated to that of review. The Tribunal thus travelled far beyond its power of rectification in accepting the assessee's various contentions which were not confined to pure factual errors apparent on the record. Some of the contentions of the assessee were highly

contentious legal issues. Once the Tribunal had taken a particular view, it was always open for the aggrieved party to challenge such views before the higher court. The Tribunal could not have been persuaded to re-examine the issues on the premise that there was an error apparent on the record.

- In the result, the impugned order of the Tribunal is set aside.