

## Error apparent from record for section 154 purposes does not include failure to consider an argument in appeal

**Summary – The Kolkata ITAT in a recent case of Champalal Raj Kumar Textile (P.) Ltd., (the Assessee) held that error apparent from record for section 154 purposes does not include failure to consider an argument in appeal**

### Facts

- During relevant year, the Assessing Officer completed the assessment by way of best judgment.
- In appellate proceedings the Commissioner (Appeals) concluded its proceedings *ex parte* of the assessee confirming the order of the Assessing Officer.
- The assessee raised additional ground before the Tribunal questioning the jurisdiction of the TRO in completing the assessment.
- The Tribunal remanded the matter back to the Commissioner (Appeals) for fresh consideration.
- The assessee thus filed instant miscellaneous application under section 254(2) contending that the Tribunal erred in remanding the matter to the file of the Commissioner (Appeals) for his fresh consideration in the facts and circumstances of the case.

### Held

- The ITAT held that the Tribunal cannot exercise its power of rectification taking into consideration any other circumstances which would support or not support its conclusion so arrived at. The power of rectification under section 254(2) of the Act relates to an obvious mistake only which is apparent on record. The relief sought to be raised through instant application is not a mistake which is apparent from the record since the failure by the Tribunal to consider an argument advanced by either party for arriving at a conclusion is not an error apparent on record. Therefore, miscellaneous application filed by the assessee is dismissed.