* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ I.T.A No.735 of 2004

% Judgment reserved on: September 27, 2006
Date of Decision : October 11, 2006

# Commissioner of Income-tax,
Delhi-IV, CR Building, New Delhi .... Appellant

! Through Mr. R.D. Jolly, Advocate.

versus

$ M/s Honda Siel Power Products Ltd.
(formerly known as M/s Shree Ram Honda
Power Equipments Ltd.), Kirti Mahal,
19, Rajendra Place, New Delhi ..... Respondent

^ Through S/Shri M.S. Syali, Senior Advocate with
Saubhagya Agarwal &
Asit Kr. Dash, Advocates

CORAM:
HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? No

2. To be referred to the reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

: Dr. S. Muralidhar, J.

1. This appeal is directed against the impugned order dated 10.9.2003 passed by the Income Tax Appellate Tribunal ('Tribunal') in

By the said impugned order, the application filed by the Respo assessee under Section 254(2) of the Income-tax Act, 1961 ('Act') was allowed and the earlier order dated 2.4.2002 passed by the Tribunal in the said appeals was "rectified" and ground No. 2 of ITA.No.5544/Del/96 and ground No. 3 of ITA.No.5545/Del/96 was reconsidered and allowed.

2. In the first order dated 2.4.2002, grounds 2 and 3 were dealt with by the Tribunal as under:

> "34. The Ld. DR during the course of hearing submitted that as the actual payment as contained in section 43A has not been paid after fluctuation of rate (of exchange), no benefit u/s 43 ought to have been passed on to the assessee. On the other hand, Ld. AR relied upon the order of the authorities below.
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> 35. A perusal of section 43A leaves no room to doubt that the making of payment is a condition precedent for availing the benefit of the section and as the actual payment has not been made after fluctuation, the value of the asset could not be increased by adding the increase on account of fluctuation and thus, we feel that depreciation was not only wrongly claimed but also wrongly allowed by the CIT (A). The ground Nos.2 & 3of ITA.No.5544 & 5545/D/96 are respectively allowed."

3. Accepting the assessee's application for rectification, the Tribunal by the impugned order dated 10.9.2003 recalled its earlier decision on the above grounds 2 and 3 and held:

> "Admittedly, a decision of the co-ordinate Bench was cited and placed on record but the same has escaped the attention of this

judgement of the Apex Court, referred to above, would make it clear that an error in writing the order which is an error within the meaning of Section 254(2) has crept in and, therefore, needs rectification and that the ground No.2 of ITA No.5544 & Ground No.3 of ITA No. 5545/Del/96 needs reconsideration and after considering the submission made at the bar coupled with the judgments relied upon, we have no hesitation in accepting the application. As the issue raised in Ground No.3 of the application is covered by the order of the Tribunal in ITA No.2352/Del/96, the ground No.3 of the application in these circumstances is allowed."

4. The principal ground on which the impugned order dated 10.9.2003 is sought to be assailed by the Revenue is that in the garb of rectifying the earlier order dated 2.4.2002 the Tribunal has in fact reviewed it. Mr. R.D.Jolly, learned counsel for the Revenue (appellant) submitted that that is impermissible in law and beyond the scope of the powers of the Tribunal under Section 254(2) of the Act. The further submission is that the reason given by the Tribunal for accepting the assessee's application for rectification viz., "a decision of the co-ordinate Bench was cited and placed on record but the same has escaped the attention of this Bench", was not a justifiable reason for rectification and that if the assessee was aggrieved by the finding rendered in regard to this ground in the main order dated 2.4.2002, there was always a remedy available by way of an appeal. Mr.Jolly has placed reliance on the recent decision dated 2.6.2006 passed by

*Tax Appellate Tribunal* [2006] 155 Taxman 378 (Del). Reliance has been placed on the decision of this Court in ***Commissioner of Income Tax v. Vichtra Construction (P.) Ltd.*** [2004] 269 ITR 371 where it was held that the power to rectify a mistake under Section 254(2) of the Act cannot be used for recalling the entire order.

5. In reply Mr. M.S. Syali, the learned senior counsel appearing for the respondent assessee, submits that the impugned order is nothing but an order by way of rectification of the earlier order dated 2.4.2002 as is evident from the fact that the entire order dated 2.4.2002 has not been recalled or reviewed but only in respect of two grounds, the said decision has been varied. Referring to the proviso to Section 254(2) of the Act, Mr. Syali submits that pursuant to an application for rectification, the Tribunal could pass an order, amending the earlier order that has the effect of "enhancing an assessment" or "reducing a refund" or "increasing the liability of the assessee". The only requirement is that this should not be done without notice to the assessee. A reasonable opportunity of being heard should also be afforded to the assessee. As regards the meaning to be attributed to the expression "mistake apparent from the record", Mr. Syali seeks to distinguish this from the expression "mistake on the face of the record"

entire record. Reliance is placed on the judgments in *Commissioner Income Tax v. Income Tax Appellate Tribunal* 196 ITR 640 (Orissa) which was followed in *Smt. Baljeet Jolly v. CIT* [2001] 250 ITR 113 (Del), *Karan & Co. v. ITAT* [2002] 253 ITR 131 (Del), *Shaw Wallace & Co. Ltd. v. ITAT* [1999] 240 ITR 579 (Calcutta) and *Commissioner of Income-tax v. Mcdowell & Co. Ltd.* [2004] 269 ITR 451 and of the Hon'ble Supreme Court in *Income Tax Officer v. Asok Textiles Ltd.* [1961] 41 ITR 732. As regards the consequential orders that can be passed upon discovering the apparent mistake from the record, Mr. Syali relies upon the decision of the Gujarat High Court in *Assistant Commissioner of Income Tax v. Saurashtra Kutch Stock Exchange Ltd.*, [2003] 262 ITR 146. Referring to the judgment of this Court in *Commissioner of Income Tax v. K.L. Bhatia* [1990] 182 ITR 361, Mr. Syali submis that there is no bar to the Tribunal rehearing the matter on merits but only within the purview of the Section 254(2). He also refers to the decision in *J.N. Sahni v. Income Tax Appellate Tribunal* [2002] 257 ITR 16 (Del) in support of his submission that the Tribunal has the power to amend its orders.

6. In conclusion, Mr. Syali submits that there are at least three instances where exercise by way of rectification could result in an order completely

scope of Section 254(2). According to him, these are recognised in decisions in *K. Venkatachalam v. Bombay Dyeing Manufacturing Co. Ltd.*, [1958] 34 ITR 143, *S.A.L. Narayan Row v. Ishwarilal Bhagwandas* [1965] 57 ITR 149, and *Karamchand Premchand P. Ltd. v. CIT* [1993] 200 ITR 268.

7. In order to appreciate the above submissions, we may first refer to the provisions of Section 254 of the Act, the relevant portion of which reads as under:

> "*Orders of Appellate Tribunal*
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> "254(1) The Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.
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> (2) The Appellate Tribunal may, at any time within four years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1), and shall make such amendment if the mistake is brought to its notice by the assessee or the [Assessing Officer]:
>
> **Provided** that an amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this sub-section unless the Appellate Tribunal has given notice to the assessee of its intention to do so and has allowed the assessee a reasonable opportunity of being heard....."

ensure that the following factors are present:

(a) The application is made within 4 years from the date of the order sought to be rectified.

(b) There is a mistake apparent from the record which is brought to its notice by either the assessee or the assessing officer.

As regards the procedure to be followed, if the amendment sought has the effect of enhancing the assessment or reducing a refund or increasing the liability of the assessee, the Tribunal has to give prior notice to the assessee and also allow the assessee a reasonable opportunity of being heard.

8. It is plain that the power to rectify a mistake is not equivalent to a power to review or recall the order sought to be rectified. Rectification is a species of the larger concept of review. Although it is possible that the pre-requisite for exercise of either power may be similar (a mistake apparent from the record), by its very nature the power to rectify a mistake cannot result in the recall and review of the order sought to be rectified. Otherwise, what cannot be done directly by seeking a review of an order can be achieved indirectly, by seeking a rectification of that order. This is even more significant in light of the fact that under the Act there is no express

made to the observation of the Hon'ble Supreme Court in *Nagaraj (S State of Karnataka* [1993] Supp 4 SCC 595 that "rectification of an order stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality."

9. The first significant decision in this regard is ***Commissioner of Income Tax v. K.L. Bhatia*** (supra). The facts of that case were that the assessee filed an application before the Tribunal under Section 254(2) of the Act stating that certain material facts were not correctly noted by the Tribunal in its order dated 27.6.1985 in which it concluded that the property claimed by the assessee as belonging to his wife, in fact belonged to him and that the wife was only a benamidar. The Tribunal accepted this application and came to the conclusion that there was a mistake in the earlier order dated 27.6.1985 and as such the order was required to be recalled. One of the questions raised in the appeal before this Court was whether the Tribunal had any power to recall its earlier order. This Court categorically held that the Tribunal had no power to recall its order on merits in exercise of its powers under Section 254 of the Act. This Court held as under (ITR p. 367):

> "As we have already observed, the Tribunal is a creation of the statute. It is an admitted case, and it is now well-settled, that

rehear a case on merits. The Tribunal can, after disposing of the appeal under section 254(1), rehear the matter on merits only within the purview of section 254(2). The Supreme Court has held in *Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji*, AIR 1970 SC 1273, that the power to review is not an inherent power. It must be conferred by law either specially or by necessary implication. It does not stand to reason that, if the power of review is not present with the Tribunal, it, nevertheless, can exercise such power indirectly when it cannot do so directly. If the contention of learned counsel for the respondent is correct, then it could mean that, even on merits, the Tribunal can recall its earlier order and then hear the case afresh and pass a different order. If this is so, it would amount to the Tribunal exercising power of review when it does not have any such power. To give an example, under the provisions of the Code of Civil Procedure, Order 47 provides the circumstances in which a judgment may be reviewed. If the contention of learned counsel for the respondent is correct, then, applying the same analogy to a civil case, it would be open to a court to recall its judgment in a case where the provisions of Order 47 are not applicable, and then to rehear the case. With respect, we see no warrant for this in legal jurisprudence. The appellate court can hear a case and decide it on merits, once for all, and cannot keep on rehearing the same appeal over and over again. Full effect has to be given to the provisions of Section 254 (4) which specifically provides that a decision of the Tribunal passed in appeal is final. This decision is final not only for the assessee but also final as far as the Tribunal itself is concerned."

In the course of the judgment in ***K.L. Bhatia*** it was observed (ITR p. 364-65):

"The Income Tax Act is a self-contained code. The Income Tax Appellate Tribunal is a creation of the statute and its powers are circumscribed by the provisions of the Act. Appeals are filed

opportunity to both the parties of being heard. Sub-section (20 of Section 254 enables the Tribunal to rectify any mistake apparent from the record. Sub-section (4) of Section 254 specifies that save as provided in Section 256, the order passed by the Appellate Tribunal on appeal are final.

A reading of Section 254 shows that the orders which are passed under Section 254 are final except under two circumstances: (1) if a rectification is called for, then such an order can be passed under Section 254(2), and (2) a reference can be made on questions of law arising out of this order under the provisions of Section 256. As far as the Tribunal is concerned, Section 254 (4) provides that the orders passed by it on appeal are final."

Importantly this Court in ***K.L.Bhatia*** drew a distinction between the power under Section 35 of the Income Tax Act, 1922 ('1922 Act') (which was the corresponding provision relating to rectification of orders) and the present Section 254 of the 1961 Act. Referring to the judgment of the Hon'ble Supreme Court in ***CIT v. Arunachalam Chettiar*** [1953] 23 ITR 180 (SC), this Court in ***K.L. Bhatia*** observed as under (ITR p. 366):

"*Arunachalam Chettiar's case* [1953] 23 ITR 180, was one where the Supreme Court decided that, if an application had not been decided under the provisions of Section 39(4) of the Income-tax Act, then a reference under Section 66(1) of the Indian Income-tax Act, 1922, was not maintainable. The Supreme Court did not, in that case, hold whether the miscellaneous application had been filed and decided under the provisions of Section 35 of the Indian Income-tax Act, 1922, or not. The reason for that was that from an order passed under Section 35 of the 1922 Act, no reference application could be

from an order of rectification, a reference application under Section 256 can be filed."

10. The next important decision is ***Deeksha Suri v. ITAT*** [1998] 232 ITR 395. In the said case, the assessees had moved an application under Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963 (`Rules'), seeking admission by way of additional evidence before the Tribunal. The Tribunal, after hearing the appeal on merits, dismissed it by order dated 3.1.1997. On 5.2.1997 the assessees moved an application under Section 254 (2) stating that very serious errors or mistakes had crept into the final order of the Tribunal. They pointed out that the Tribunal had overlooked its earlier order dated 23.10.1996 directing the application under Rule 29 to be disposed of first. The Tribunal rejected the rectification application observing: "It was indeed the duty of the counsel to address this Bench first on the rule 29 application if at all the same was desired to be pressed or argued. Admittedly not having done so it cannot now be attributed as a mistake apparent from record to the Tribunal." The Tribunal concluded (ITR p. 406):

> "14.7 In the circumstances, the appellants having argued on merits, not having highlighted/argued petition under rule 29 and the Tribunal in its order having dealt with in extenso the letter dated February 21, 1995, there is no mistake apparent

sans additional evidence, was in order and not a mistake apparent from record. We, therefore, find no merit in these applications and dismiss the same."

Before this Court, the question that again arose was whether the Tribunal had erred in rejecting the applications for rectification. This Court formulated the question and answered it as under (ITR p. 415):

> "Could any relief have been allowed to the petitioners in exercise of jurisdiction conferred by Section 254 (2) of the Act amending the order passed by the Tribunal with a view to rectify any mistake apparent from the record? The language of the provisions is clear. The foundation for exercising the jurisdiction is "with a view to rectify any mistake apparent on the record" and the object is achieved by "amending any order passed by it." The power so conferred does not contemplate a rehearing which would have the effect of re-writing an order affecting the merits of the case. Even there would be no distinction between a power to review and a power to rectify a mistake. What is not permitted to be done by the statute having deliberately omitted to confer review jurisdiction on the Tribunal, cannot be indirectly achieved by recourse to Section 254 (2) of the Act."

Following the decision in *K.L. Bhatia*, this Court in *Deeksha Suri* dismissed the appeals of the assessee holding that the Tribunal was right in dismissing the rectification application.

11. The third important decision is *J.N. Sahni v. ITAT* (supra), again by a Division Bench of this Court. In that case, the Tribunal entertained the

ground that there were certain mistakes apparent from the record. Tribunal then proceeded to recall the entire order and fixed the appeals for re-hearing. The assessee then moved this Court by way of an appeal and placing reliance upon the decisions in ***Deeksha Suri*** and ***K.L. Bhatia,*** urged that the Tribunal had exceeded its jurisdiction under Section 254(2) of the Act and could not have possibly recalled the entire order. After referring to the case law, this Court reiterated that the power entrusted under Section 254(2) could not be used to recall the order itself. Reference was made to the decision in ***Smt. Baljeet Jolly v. CIT*** (supra) where it was categorically held that "amendment of an order does not mean obliteration of an order originally passed and its substitution by a new order." This Court expressly dissented from the decision of the Rajasthan High Court in ***CIT v. Ramesh Chand Modi*** [2001] 249 ITR 323 where it had been held that where the Tribunal fails to decide some of the questions raised before it inadvertently or by oversight, it could exercise the power under Section 254(2) to rectify such a mistake. This Court in ***J.N. Sahni*** observed (ITR, p. 21-22):

> "With utmost respect we are unable to subscribe to the aforementioned view. The Tribunal in the absence of any express power cannot be said to have a power of substantive review. The Tribunal has merely the power to amend its order. While exercising the said power it cannot recall its order. The expression "amendment" must be assigned its true meaning.

> The review of its own order by the Tribunal is forbidden in law, it cannot be permitted to achieve the same object by exercising its power under sub-Section (2) of Section 254. The Income-tax Appellate Tribunal does not have an inherent power of review."

12. In ***CIT v. Vichitra Construction (P.) Ltd.*** (supra), the Tribunal decided to recall the earlier order in its entirety while accepting the application for rectification. This Court held that such an order by the Tribunal was beyond the scope of the Section 254(2). It was held as under (ITR p. 374):

> "In view of the provisions and judicial pronouncement indicated hereinabove, we are of the view that the power to rectify a mistake under section 254(2) cannot be used for recalling the entire order. No power of review has been given to the Tribunal under the Income-tax Act. Thus, what it cannot do directly, cannot be allowed to be done indirectly. If the assessee was aggrieved, it was open for him to approach the appropriate forum but the Tribunal could not have reviewed the entire judgment delivered by it earlier in the garb of exercising its power under section 254(2). Accordingly, the answer is required to be given in favour of the Revenue and against the assessee."

13. Recently, in ***CIT v. ITAT*** (supra) a Division Bench of this Court was considering a case where the Tribunal had recalled the earlier order on the ground that it had failed to note of a decision rendered by a three member Bench of the Tribunal at Allahabad. The Revenue in appeal before this

entire order in terms of Section 254(2) of the Act. In para 6 and 7 this C

in *CIT v. ITAT* (supra) held as under (Taxman, p. 381-82):

> "6. It is evident from the above that the power available to the Tribunal is not in the nature of a review as is understood in legal parlance. The power is limited to correction of mistakes apparent from the record. What is significant is that the section envisages amendment of the original order of the Tribunal and not a total substitution thereof. That position is fairly well-settled by two decisions of this Court in *Ms. Deeksha Suri v. ITAT* [1998] 232 ITR 395 100 Taxman 573 and *Karan & Co. v. ITAT* [2002] 253 ITR 131 [2001] 118 Taxman 473. This Court has in both these decisions held that the foundation for the exercise of the jurisdiction lies in the rectification of a mistake apparent from the record which object is ensued by amending the order passed by the Tribunal. The said power does not, however, contemplate a re-hearing of the appeal for a fresh disposal. Doing so would obliterate the distinction between the power to rectify mistakes and the power to review the order made by the Tribunal. The following passage from the decision of this Court in *Karan & Co.'s* case (supra) elucidates the difference between review and rectification of an order made by the Tribunal :
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> > *"The scope and ambit of application of section 254(2) is very limited. The same is restricted to rectification of mistakes apparent from the record. We shall first deal with the question of the power of the Tribunal to recall an order in its entirety. Recalling the entire order obviously would mean passing of a fresh order. That does not appear to be the legislative intent. The order passed by the Tribunal under section 254(1) is the effective order so far as the appeal is concerned. Any order passed under section 254(2) either allowing the amendment or refusing to amend gets merged with the original order passed. The order as amended or remaining unamended is the effective order for all practical purposes. The same continues to be an order under section 254(1). That is*

*under section 254(2). Recalling of an order automatically necessitates re-hearing and readjudication of the entire subject-matter of appeal. The dispute no longer remains restricted to any mistake sought to be rectified. Power to recall an order is prescribed in terms or rule 24 of the Income-tax (Appellate Tribunal) Rules, 1963, and that too only in cases where the assessee shows that it had a reasonable cause for being absent at a time when the appeal was taken up and was decided ex parte. This position was highlighted by one of us (Justice Arijit Pasayat, Chief Justice) in CIT v. ITAT [1992] 196 ITR 640(Ori). Judged in the above background the order passed by the Tribunal is indefensible."(p.136)*

7. That being the legal position, the Tribunal was not in our opinion justified in recalling the order passed by it in *toto* and setting the matter down for a fresh hearing. Just because a pronouncement made on the subject either by the Tribunal or by any other Court was not noticed by the Tribunal while taking a particular view on the merits of the controversy may constitute an error that would call for correction in an appropriate appeal against the order. Any such error may however fall short of constituting a mistake apparent from the record within the meaning of section 254(2) of the Act. More importantly just because a point is debatable (which is one of the reasons given by the Tribunal in the instant case) would hardly provide a justification for recalling the order and fixing the appeal for a *de novo* hearing. While doing so, the Tribunal has no doubt made certain observations in regard to the levy of interest under section 158BFA being statutory in nature with no power vested in any authority or Tribunal to condone the same, but the very fact that the Tribunal has made those observations would not render valid the order of recall passed by it. **The net result of the order made by the Tribunal continues to remain the same viz, the appeal has to be heard again simply because one of the issues decided by the Tribunal is debatable or the Tribunal has not noticed an earlier decision rendered by another Bench. Both these reasons were insufficient to justify the order of recall made by the**

14. Turning to the facts of the present case, we are of the considered that it makes no difference whether the entire order is sought to be recalled or the order passed by the Tribunal on individual grounds is sought to be recalled in entirety. In other words, if the Tribunal has given its decision on say grounds 3 and 4 in a particular way in its first order while dealing with ten separate grounds and pursuant to a rectification application, it recalls its decision on grounds 3 and 4 and gives a completely different decision on the said grounds, then it would certainly amount to recall and review of its entire order in respect of those grounds. We are unable to persuade ourselves to accept the submission of Mr. Syali that what the decision in *K.L. Bhatia* and other decisions that have followed it, forbids is only a recall of the Tribunal's entire decision on all the ten grounds and not to the recall and review of only two out of the ten grounds. There is no basis for such a distinction either from the language of Section 254(2) of the Act or of the decisions of this Court in the numerous cases noticed hereinabove.

15. The decisions cited by Mr. Syali in *K. Venkatachalam's* case (supra), *S.A.L. Narayan Row v. Ishwarilal Bhagwandas* and *Karamchand Premchand P. Ltd's* case (supra) turned on their own facts. *K. Venkatachalam* pertained to the power under Section 35 of the 1922 Act.

the 1922 Act did not provide for a further reference to the High C against the decision thereunder whereas under the present Act a reference under Section 256 is permissible in respect of a decision under Section 254. In *S.A.L. Narayan Row* a subsequent legislative change related back to the assessment period covered by the assessment order in question necessitating its recall. This was not an instance of a mistake on record. ***Karamchand Premchand P. Ltd.*** involved Section 256(1) of the Companies (Profits) Surtax Act and not Section 254(2) of the Income Tax Act, 1961. Not surprisingly, therefore, the said decision in ***Karamchand Premchand P. Ltd.*** does not refer to any of the decisions discussed hereinabove and is therefore distinguishable on that ground itself.

16. Mr. Syali placed considerable reliance on the decision of the Gujarat High Court in ***Assistant CIT v. Saurashtra Kutch Stock Exchange Ltd*** (supra) where it was held (ITR p. 155):

> "The proposition that a contention raised but not dealt with by the Tribunal should be held to have been negatived is correct only up to a stage. Once a party brings to the notice of the Tribunal that an important point or contention raised by the party has not been dealt with it would be within the jurisdiction and powers of the Tribunal to decide whether the same constitutes a mistake apparent from the record and thereafter, if necessary, reopen the appeal. Such a power is inherent in the

party. An act of the Tribunal should not prejudice a party so as to force the party into unwarranted litigation."

It was further observed in the above decision that "after the mistake is corrected, consequential order must follow, and the Tribunal has power to pass all necessary consequential orders." Mr.Syali accordingly advocates for a similar wider interpretation of the scope of the power under s.254 (2) of the Act by this Court, in the peculiar facts of this case.

17. We are unable to agree with this submission of Mr. Syali. One instance of a mistake apparent from the record is indicated in Rule 24 of the Income Tax Appellate Tribunal Rules and that mistake is permissible to be corrected by recalling the order. However, in order to invoke the power under Section 254(2) the mistake would have to be shown to be a mistake apparent from the record. The Tribunal, in the present case records in para 5 of the impugned order dated 10.9.2003 that "admittedly, a decision of the co-ordinate Bench was cited and placed on record but the same has escaped the attention of this Bench." We have already held this can hardly be construed as a mistake apparent from the record. As pointed out by this Court in ***CIT v ITAT*** (supra), this might be a good ground for an appeal but not for a rectification. A distinction as rightly been drawn in several decisions of this

rectification. In the circumstances we are, with respect, unable to subs to the broad-brush approach of the Gujarat High Court.

18. We may add that under s. 254 (2) the limitation for filing an application for rectification is an unusually long period of four years. Contrasted with far lesser periods of limitation for filing appeals, it underscores the need for the Tribunal to be circumspect about the instances where it will entertain applications for rectification. It must be remembered that this is not a power of review but is restricted to rectifying mistakes "apparent from the record." A liberal approach might constitute an invitation to parties to allow the period for filing an appeal to expire, anticipate a change of coram of the bench that heard the appeal in the first instance, and then at their own sweet will "take a chance" by filing a rectification application on any fancy imagined 'mistake apparent from the record' at any time before the expiry of four years. The likelihood of ingenuous lawyering resulting in the abuse of the provision cannot be ruled out. In the circumstances, we would caution against the Tribunal interpreting the narrow power of rectification wider than what it is.

19. In conclusion, we are of the view that the impugned order of the Tribunal dated 10.9.2003 by which it recalled and reversed its earlier decision dated 2.4.2002 on grounds 2 and 3, is impermissible and

makes no difference whether the entire order is sought to be recalled c order passed by the Tribunal on individual grounds is sought to be recalled in its entirety. Neither is permissible under the garb of "rectification".

20. For all the aforementioned reasons, the impugned order dated 10.9.2003 of the Tribunal is set aside and appeal is allowed with no order as to costs.

(S. Muralidhar)
Judge

(Vikramajit Sen)
Judge

October 11, 2006
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