

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'ए', मुंबई ।
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "A", MUMBAI

सर्वश्री डी. मन्नमोहन, उपाध्यक्ष एवं आर.एस. स्याल, लेखा सदस्य, के समक्ष ।

Before Shri D.Manmohan, VP and Shri R.S.Syal, AM

विविध आवेदन सं./MA No.466/Mum/2011, MA No.360/Mum/2012
And MA No.361/Mum/2012

(से उद्भूत /Arising out of M.A. No. 10/Mum/2010)

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| The Supreme Industries Limited 612, Raheja Chambers 213, Nariman Point Mumbai – 400 021. PAN : AA ACT1344F. | बनाम/ Vs. | The Addl.Commissioner of Income-tax Large Tax Payers Unit (LTU) 29 th Floor, World Trade Centre-1 Cuffe Parade, Mumbai – 400 005. |
| (आवेदक /Applicant) | | (प्रत्यर्थी/Respondent) |

आवेदक की ओर से /Applicant by : **Shri Nitesh Joshi**

प्रत्यर्थी की ओर से /Respondent by : **Shri O.P.Singh**

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| सुनवाई की तारीख / Date of Hearing : 13.09.2013. | घोषणा की तारीख / Date of Pronouncement : 13.09.2013. |
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आदेश / O R D E R

Per R.S.Syal, AM :

These three Miscellaneous Applications u/s.254(2) of the Income-tax Act, 1961 have been moved by the assessee praying for the rectification of the order of the Tribunal dated 14th May, 2010 passed u/s 254(2) in M.A. No. 10/Mum/2010 arising out of ITA Nos.904, 867 and 868 /M/2005 for the captioned assessment years.

2. The learned Counsel for the assessee contended that the Tribunal committed mistake in mentioning wrong ITA Nos. while

disposing off MA No.10/Mum/2010. It was, therefore, submitted that the necessary correction should be done.

3. It was noticed during the course of hearing that the assessee earlier filed only one MA in respect of three assessment years, which has been impugned in the present proceedings, which itself is contrary to law. Attention of the Id. AR was invited towards an order dated 09.01.2013 passed by the Mumbai bench in Mrs. Nazneen Sagir Dond VS. DCIT in MA No.377/Mum/2010 & Ors (to which the Id. VP is party) in which it has been held that separate applications for each year are required to be filed against a combined order, failing which the order so erroneously passed is bad in law. The learned AR unsuccessfully tried to distinguish that order by contending that one order has already been passed by the tribunal and the same can not be now called into question.

4. In the opposition, the learned Departmental Representative submitted that there is no provision under the law which permits a party to file a miscellaneous application against the order passed u/s 254(2). For this proposition he relied on the judgment of the Hon'ble Orissa High Court in the case of *CIT v. President ITAT & Ors. [(1992) 196 ITR 838 (Orissa)]*.

5. Having heard the rival submissions and perused the relevant material on record, we find that the present miscellaneous

applications filed by the assessee are not sustainable due to following reasons:-

(i) There can be no miscellaneous application u/s 254(2) against the order passed u/s 254(2). The Hon'ble Orissa High Court in the above quoted case has categorically held that the rectification u/s 254(2) can be done only against an order passed u/s 254(1) and not 254(2). Similar view has been canvassed in several other cases as well. Since the present miscellaneous applications have been filed in relation to the order passed u/s 254(2), the same are not sustainable at the very threshold.

(ii) It can be observed that there is no mistake committed by the Tribunal in the impugned order. It was the assessee itself who mentioned these three ITA numbers in the application filed u/s 254(2). Those three ITA numbers were adopted as such in the impugned order. Thus it is evident that there was, in fact, a mistake committed by the assessee in this regard. The proceedings u/s 254(2) are meant for rectifying a mistake apparent from record committed by the tribunal and not by the parties. If the parties are allowed to file miscellaneous applications for their own mistakes, then in every case one party or the other would come up filing a miscellaneous application contending that he committed such and such mistake in the presentation of the case and as such the order be

recalled enabling him to reargue the case correctly. Adverting to the facts of the instant case, we find that what the assessee is now seeking to rectify is the mistake committed by it and not by the tribunal. This factual aspect about the wrong mentioning of the ITA nos. in the original M.A. was duly admitted by the ld. AR as well.

6. In view of the foregoing reasons, we are of the considered opinion that there is no merit in these miscellaneous applications, which are liable to be and are hereby dismissed.

7. परिणामतः आवेदक की विविध आवेदन खारिज की जाती है । In the result, the miscellaneous applications are dismissed.

Order pronounced in the open Court on this 13th September, 2013.
आदेश की घोषणा दिनांक: को की गई ।

Sd/-
(D.Manmohan)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
(R.S.Syal)
लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 13th September, 2013.
Devdas*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. आवेदक / The Applicant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A) - XXIV, Mumbai.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai