

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Writ Petition (Civil) No. 3744/2011**

% Date of Decision: 27th May, 2011

Geofin Investment (P) Ltd.Petitioner
Through Mr. Abhishek Maratha, Sr. Standing
Counsel with Mr. Anshul Sharma, Adv.

VERSUS

Commissioner of Income Tax & Ors.Respondent
Through Mr. S.K. Mukhi and
Mr. Satish K. Goel, Advocates.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J.

CM No. 7816/2011

Allowed, subject to all just exceptions.

WP(C) No. 3744/2011

Learned counsel for the petitioner Geofin Investment (P) Limited, submits that the tribunal had erred in dismissing the

application under Section 254(2) of the Income Tax Act, 1961 (Act, for short) as the tribunal in its order dated 13th October, 2010, had referred to and relied upon decision of another ITAT Bench which had not not been cited at the time of hearing. He submits that the order passed by the tribunal dated 13th October, 2010 under Section 254(1) of the Act, should have been recalled.

2. We do not find any merit in the said contention. Under Section 254(2), a mistake apparent from the record can be rectified. The power is circumscribed and limited. There should be mistake which is apparent before the power can be exercised. This is a mandatory pre-condition. The Tribunal in its order dated 13th October, 2011, referred to the controversy in question relating to disallowance made on account of short term capital loss and long term capital loss. The entire issue was examined on merits including the judgments relied upon the petitioner assessee. After examining the matter in detail, the tribunal allowed the appeal filed by the revenue. While allowing the appeal, the tribunal also referred to another decision of **ITAT, Mumbai, 'F' Bench**, in the case of ***Macintosh Finance Estates Ltd. Vs. ACIT***. Reliance and reference to reasons stated in Macintosh (supra) cannot be regarded as a mistake apparent from the record. It is not unusual or

abnormal for Judges or adjudicators to refer and rely upon judgments/decisions after making their own research.

3. In view of the aforesaid, we do not find any merit in the present writ petition and accordingly the same is dismissed.

4. We are informed that the petitioner has filed an appeal under Section 260A of the Act against the order dated 13th October, 2010. The said appeal will be decided on its own merits. It is clarified that we have not commented or expressed our opinion on the merits of the addition.

SANJIV KHANNA, J.

CHIEF JUSTICE

May 27, 2011
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