



M.A.No.103 to 108/Mum/2017  
Arising out of ITA Nos. 8247,8249,8177,8229,8242 &8228/Mum/2011  
Assessment Year 2009-10

**आयकर अपीलीय अधिकरण “जे” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“J” BENCH, MUMBAI**

श्री शक्तिजीत दे ,न्यायिक सदस्य एवं  
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।  
**BEFORE SHRI SAKTIJIT DEY, JM AND**  
**SHRI MANOJ KUMAR AGGARWAL, AM**

Miscellaneous Application No. 103/Mum/2017  
(Arising out of ITA No. 8247/Mum/2011)  
(निर्धारण वर्ष / Assessment Year: 2009-10)

<b>Deputy Commissioner of Income Tax Central Circle 6(4) Room No.1925,19<sup>th</sup> floor, Air India Building Nariman Point, Mumbai 400 021</b>	<b>बनाम/ Vs.</b>	<b>Hita Land Private Limited 101, Sagar Darshan CTS No.1023/4 Ramnath Road Alibaugh- 402201</b>
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. <b>AABCH 9067J</b>		
(□ पीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

Miscellaneous Application No. 104/Mum/2017  
(Arising out of ITA No. 8249/Mum/2011)  
(निर्धारण वर्ष / Assessment Year: 2009-10)

<b>Deputy Commissioner of Income Tax Central Circle 6(4) Room No.1925,19<sup>th</sup> floor, Air India Building Nariman Point, Mumbai 400 021</b>	<b>बनाम/ Vs.</b>	<b>Ganraya Land Private Ltd Raj Sparsh Plot No. 21 &amp;22 Sector-20 CBD Belapur, Navi Mumbai – 400 614</b>
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. <b>AACCG9821C</b>		
(□ पीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)



M.A.No.103 to 108/Mum/2017  
Arising out of ITA Nos. 8247,8249,8177,8229,8242 &8228/Mum/2011  
Assessment Year 2009-10

Miscellaneous Application No. 105/Mum/2017  
(Arising out of ITA No. 8177/Mum/2011)  
(निर्धारण वर्ष / Assessment Year: 2009-10)

<b>Deputy Commissioner of Income Tax Central Circle 6(4) Room No.1925,19<sup>th</sup> floor, Air India Building Nariman Point, Mumbai 400 021</b>	<b>बनाम/ Vs.</b>	<b>Arpit Land Private Limited 101,Sagar Darshan CTS No. 1023/4 Ramnath Road Alibaugh Mumbai – 402 201</b>
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. <b>AAGCA 5154 J</b>		
(□ पीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

Miscellaneous Application No. 106/Mum/2017  
(Arising out of ITA No. 8229/Mum/2011)  
(निर्धारण वर्ष / Assessment Year: 2009-10)

<b>Deputy Commissioner of Income Tax Central Circle 6(4) Room No.1925,19<sup>th</sup> floor, Air India Building Nariman Point, Mumbai 400 021</b>	<b>बनाम/ Vs.</b>	<b>Krutika Land Private Limited 102,Sagar Darshan CTS No. 1023/4 Ramnath Road Alibaugh Mumbai – 402 201</b>
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. <b>AADCK1508K</b>		
(□ पीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

Miscellaneous Application No. 107/Mum/2017  
(Arising out of ITA No. 8242/Mum/2011)  
(निर्धारण वर्ष / Assessment Year: 2009-10)

<b>Deputy Commissioner of Income Tax Central Circle 6(4) Room No.1925,19<sup>th</sup> floor, Air India Building Nariman Point, Mumbai 400 021</b>	<b>बनाम/ Vs.</b>	<b>Krishna Land Realty Pvt. Ltd. Raj Sparsh Plot No.21 &amp;22 Sector-20 CBD Belapur, Navi Mumbai – 400 614</b>
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. <b>AADCK0178R</b>		
(□ पीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)



M.A.No.103 to 108/Mum/2017  
Arising out of ITA Nos. 8247,8249,8177,8229,8242 &8228/Mum/2011  
Assessment Year 2009-10

&  
Miscellaneous Application No. 108/Mum/2017  
(Arising out of ITA No. 8228/Mum/2011)  
(निर्धारण वर्ष / Assessment Year: 2009-10)

<b>Deputy Commissioner of Income Tax</b> <b>Central Circle 6(4)</b> Room No.1925,19 <sup>th</sup> floor, Air India Building Nariman Point, Mumbai 400 021	<b>बनाम/ Vs.</b>	<b>Lavanya Land Private Limited</b> Dronagiri Housing Complex Building No. GH-10 Flat No.2, GF, Sector-30 Post Bokadvira Village Uran Taluka Raigad District, Navi Mumbai- 400 702
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. <b>AABCL3525H</b>		
(□ पीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Vijay Mehta, Ld. AR
Revenue by	:	Shri M.V. Raj Guru, Ld. DR

सुनवाई की तारीख / Date of Hearing	:	21/04/2017
घोषणा की तारीख / Date of Pronouncement	:	25 /04/2017

**आदेश / ORDER**

**Per Manoj Kumar Aggarwal (Accountant Member)**

1. The captioned miscellaneous applications filed by Revenue for Assessment Year [AY] 2009-10 u/s 254(2) of the Income Tax Act, 1961 in respect of separate assessee seeks rectification of mistake apparent from record in common Tribunal Order dated 22/03/2013. Since these applications arise out of common order, we proceed to dispose-off the same together by way of this common order for the sake of convenience and brevity.

2. The Revenue has contended that the Tribunal allowed the ground numbers 1 & 2 of assessee's appeal for AY 2007-08, 2008-09 & 2009-10 presuming that the assessment orders in all the years were passed u/s 143(3) read with section 153C. However, the



M.A.No.103 to 108/Mum/2017  
 Arising out of ITA Nos. 8247,8249,8177,8229,8242 &8228/Mum/2011  
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assessment order for 2009-10 was passed u/s 143(3) and not under Section 143(3) *read with section 153C* and therefore, a mistake apparent from record has crept into the order and the matter for 2009-10 requires fresh adjudication which has led to filing of these rectification petitions u/s 254(2).

3. At the outset, the Ld. Counsel for Assessee [AR], while drawing our attention to the statutory provisions as contained in Section 254(2) vis-à-vis date of rectification application filed by the Revenue, raised a preliminary legal objection that these applications, being time barring, could not be entertained particularly when the power of condonation was not provided under the statute. Reliance has been placed on the judgment of *Bharat Petroleum Corporation Ltd. Vs ACIT [158 TTJ (Mumbai) 165 order dated 10/04/2013]*. The revenue has contended that the application has been filed within a period of four years from the date of the order and hence, the applications were within time as per the earlier provisions.

4. We have heard the rival contentions and perused relevant material on record. Since, preliminary legal objections questions the very admissibility of these rectification applications, we take up the same first. For record, we note that the date of order passed by the Tribunal is 22/03/2013 and the revenue has filed these applications on 28/02/2017 which are clearly beyond a period of six months as provided in Section 254(2). At this juncture, it would be prudent to reproduce the relevant provisions as contained in Section 254(2) of the Income Tax Act, 1961:-

***Orders of Appellate Tribunal.***

***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.***

*(1A) [\*\*\*]*

***(2) The Appellate Tribunal may, at any time within six months from the end of the month in which the order was passed, 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:***

It is to be noted that the earlier period of 'four years' has been substituted with 'six months' by the Finance Act, 2016 with effect from 01/06/2016. However, we find that



M.A.No.103 to 108/Mum/2017  
Arising out of ITA Nos. 8247,8249,8177,8229,8242 &8228/Mum/2011  
Assessment Year 2009-10

no distinction has been made in this section between orders passed before 01/06/2016 and orders passed after 01/06/2016. Moreover, the Tribunal order was dated 22/03/2013 and therefore, the Revenue had ample time to go through the same and pin point the mistakes in the order but it has failed to do so. Therefore, we find no force in these miscellaneous petitions primarily because of the reason that the Statute does not authorize us to entertain any petition which has been filed u/s 254(2) at any time beyond a period of six months from the date of the order. The Tribunal has been given power to admit an appeal after the expiry of the relevant period, if it is satisfied that there was sufficient cause for not presenting it within that period as per Section 253(5). However, this Tribunal is not enshrined with such powers in respect of a miscellaneous petition filed u/s 254(2) of the Income Tax Act. If we are not given that power, then it is not expected from us to exercise such power which is not provided in the Act. The Tribunal, being creation of law, is bound by the statutory provisions and our jurisdiction is simply to interpret and follow the Statute. There is no scope for us to import any word into the Statute which is not there. Such importation would be nothing but to amend the Statute. We therefore hold that the condonation of delay of these petitions is beyond our jurisdiction, hence rejected. Similar view has been taken by the Mumbai Tribunal in the cited order. Hence, finding the petitions time barring, we dismiss the same.

5. In nutshell, all the miscellaneous applications filed by the Revenue stands dismissed.

*Order pronounced in the open court on 25<sup>th</sup> April, 2017.*

Sd/-

**(Shaktijit Dey)**

न्यायिक सदस्य / **Judicial Member**

मुंबई Mumbai; दिनांक Dated : 25 .04.2017

Sr.PS:- Thirumalesh

Sd/-

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**



M.A.No.103 to 108/Mum/2017  
Arising out of ITA Nos. 8247,8249,8177,8229,8242 &8228/Mum/2011  
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**आदेश की प्रतिलिपि □ ग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त (अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

**आदेशानुसार/ BY ORDER,**

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