IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, BANGALORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
and
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

1. M.P.Nos.25 to 28/Bang/2016
(In WTA Nos.39 to 42/Bang/2014
(Assessment years: 2004-05 to 2007-08)

2. MP Nos.29 to 31/Bang/2016
(In WTA Nos.43 to 45/Bang/2014
(Assessment years: 2004-05 to 2006-07)

3. MP Nos.32 to 35/Bang/2016
(In WTA Nos.48 to 50/Bang/2014
(Assessment years: 2004-05 to 2007-08))

1. M/s. Triad Resorts & Hotels P.Ltd.
'Aparanta', 2208, HAL III Stage,
80 Ft Road, Kodihalli,
Bangalore. … Petitioners

2. M/s.Noorani Properties P.Ltd.
'Aparanta', 2208, HAL III Stage,
80 Ft Road, Kodihalli,
Bangalore.

3. M/s.Verde Developers P.Ltd.
'Aparanta', 2208, HAL III Stage,
80 Ft Road, Kodihalli,
Bangalore.

Vs.

Wealth-tax Officer,
Ward 12(2), Bangalore. … Respondent

Petitioners by : Shri C.P.Ramaswamy, Advocate.
Revenue by : Shri Sanjay Kumar, CIT(DR).

Date of hearing : 22/07/2016
Date of pronouncement : 11/08/2016

O R D E R

Per BENCH :

The assessees-companies, viz., M/s. Triad Resorts & Hotels P. Ltd., M/s.Noorani Properties P. Ltd. and M/s.Verde Developers

P.Ltd. filed the present Miscellaneous Petitions (MPs) u/s 35(3) of the Wealth-tax Act, 1957 ['the Act' for short] stating that certain mistakes apparent from record had crept into the Tribunal order dated 12/02/2016 in WTA Nos.37 to 42/Bang/2014, 43 to 45/Bang/2014 and 46 to 51/Bang/2014.

2. According to the petitioners, a mistake apparent from record had crept into the said order of the Tribunal as this Tribunal had omitted to adjudicate the following additional ground of appeal raised:

> *"Additional ground*
> *Without prejudice to the original grounds raised:*
> *There is no urban land belonging to the appellant on the valuation date, since the said land stood transferred on 5/12/2000 to the developer as per Joint Development agreement u/s 2(47)(v) of the Income-tax Act, 1961, with the appellant retaining only a future right to receive 15.3% of the built up area against refundable deposit of Rs.11.30 crores. Consequently, there is no taxable wealth on each of the valuation dates."*

Further, it was urged that the decision of the Hon'ble jurisdictional High Court in the case of *CIT vs. Dr.T.K.Dayalu* (202 Taxman 531), though quoted during the course of arguments and relied upon by the learned counsel for the petitioners-companies, had not been referred to and thus according to the petitioner-, this constitutes a mistake apparent from record as the binding decision of the Hon'ble jurisdictional High Court had not been followed by this Tribunal while passing the impugned order. Therefore, it is prayed that the impugned order of the Tribunal may be recalled by exercising the power of recall in the light of

law laid down by the Hon'ble Supreme Court in the case of *Honda Siel Power Products Ltd. vs. CIT* (2007) 295 ITR 466 and the Hon'ble Delhi High Court in the case reported in *Lachman Dass Bhatia Hingwala (P.) Ltd. vs. ACIT* (330 ITR 243).

3. Learned counsel for the petitioner stated that though the decision of the Hon'ble jurisdictional High Court in the case of *CIT vs. Dr.T.K.Dayalu* (supra), was cited during the course of arguments in support of the proposition that the appellant had already transferred said land in terms of Joint Development Agreement within the meaning of section 2(47) of the Income-tax Act, 1961, said decision had not been considered. Thus, according to him, non-consideration of this decision would constitute a mistake apparent from record. Therefore, it was urged that exercising the power vested under the provisions of section 254(2) of the Act, the order may be recalled. He relied on the decision of the Hon'ble Supreme Court in the case of *Distributors (Baroda) P.Ltd. vs. Union of India & others* (155 ITR 120) in support of the proposition that to perpetuate an error is no heroism. To rectify it is the compulsion of the judicial conscience. Learned counsel for the petitioner also submitted that the judgments relied upon by the Tribunal are quoted out of context and not relevant.

4. On the other hand, ld.CIT(DR) vehemently opposed the submissions of the learned counsel for the petitioner and

submitted that there was no mistake apparent from record which is capable of being rectified within the purview of sec.254(2) of the IT Act. The additional ground raised by the petitioner- had been adjudicated by this Tribunal and a finding has been rendered vide para.9 of its order. He further submitted that the learned counsel for the petitioner had not quoted the judgment of the Hon'ble jurisdictional High Court in the case of *Dr.T.K.Dayalu* (supra) and therefore there was no mistake apparent from record as alleged by the petitioner-. He relied on the decision of the Hon'ble Bombay High Court in the case of *CIT vs. Ramesh Electric & Trading Co*. (203 ITR 497) in support of the proposition that the Tribunal has no power to correct error of judgment and review of its own decision.

5. We heard rival submissions and perused material on record. It is very clear from perusal of the impugned order that this Tribunal has dealt with the additional ground raised by the petitioner- vide para.9 of its order which is reproduced below:

> *"9. Now, we shall advert to second limb of his argument that whether the assessee-company ceased to be a owner of the land in question once the lands are subject matter of JDA and possession of the property was handed over to the developer. Even without going into veracity of the claim, whether possession of land was given to the developer in terms of JDA, it is settled principle of law that by virtue of General Power of Attorney [GPA] does not create any interest in/or charge on such property. By virtue of JDA, the developer is only given a permission to develop the property. JDA is only a creation of agency whereby the land owners authorize the developer to do certain acts specified therein on behalf of land owners. JDA is not*

an instrument of transfer in regard to any right, title or interest in the immovable property. In fact, the Hon'ble Supreme Court in the case of Suraj Lamp & Industries Pvt. Ltd. vs. State of Haryana (340 ITR 1) vide para.20 of the judgment had dealt with the scope of the Power of Attorney as follows:

> *"A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorizes the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see section 1A and section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee. In State of Rajasthan vs. Basant Nehata - 2005 (12) SCC 77, this Court held :*
>
> > *"A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favour of the agent. The agent derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience.*
> >
> > *Execution of a power of attorney in terms of the provisions of the Contract Act as also the Powers-of-Attorney Act is valid. A power of attorney, we have noticed hereinbefore, is executed by the donor so as to enable the donee to act on his behalf. Except in cases where power of attorney is coupled with interest, it is revocable. The donee in exercise of his power under such power of attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof. He cannot use the power of attorney for his own benefit. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the donee."*

> An attorney holder may however execute a deed of conveyance in exercise of the power granted under the power of attorney and convey title on behalf of the grantor."
>
> *and finally concluded that the GPA do not convey title and do not amount to transfer nor can they be recognized as a valid mode of transfer of immovable property observing as under:*
>
> > "We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance.
> >
> > Transactions of the nature of `GPA sales' or `SA/GPA/WILL transfers' do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immoveable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property.
> >
> > They cannot be recognized as deeds of title, except to the limited extent of section 53A of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of Lease. It is time that an end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales."

In the same context, this Tribunal after referring to the judgment of the Hon'ble Supreme Court in the case of *Suraj Lamp & Industries Pvt. Ltd. vs. State of Haryana* (340 ITR 1) and also the Hon'ble jurisdictional High Court in the case of *Wipro Ltd. vs. DCIT* (282 CTR 346), the Tribunal rendered a categorical finding that by virtue of entering into development agreement, the ownership of the property had not been transferred to the builder. Then, the Tribunal proceeded to interpret the term 'belonging to' which expression is used in sec.4 of the WT Act. In that context,

the Tribunal, after referring to the decisions of the Hon'ble Supreme Court in the case of *Bishwanath Chatterjee* (1976)(103 ITR 536) and *(Late) Naivab Sir Mir Osman Ali Khan* (1986)(162 ITR 888) and the decision of the Hon'ble jurisdictional High Court in the case of *Vysya Bank Ltd. vs. DCWT* (299 ITR 335) held that an asset, which was not registered and title of the property had not been passed on to the developer liable to be included in the taxable wealth of the assessee. The Tribunal finally held that since in the present case, by virtue of Joint Development Agreement, no title has been passed on to the developer, the assessee-company continued to be the owner of the land and was held to be liable to wealth-tax. The decision had been rendered by the Tribunal after considering the judgments of the Hon'ble Apex Court cited supra as well as the judgment of the Hon'ble jurisdictional High Court cited supra.

6. During the course of hearing of these Miscellaneous Petitions, learned counsel for the petitioner in a very deceitful manner, though referred only to para.7.1 of the order wherein the additional ground had been discussed, chose not to refer to para.9 of the order where the Tribunal had adjudicated this additional ground raised and rendered a finding. This conduct of the counsel is highly deplorable. On this ground alone Miscellaneous Petitions are liable to be dismissed. Learned counsel for the petitioner could not file any evidence in support of his argument that the decision of Hon'ble jurisdictional High Court

in the case of *Dr.T.K.Dayalu* (supra) was quoted before this Tribunal during the course of argument. It is only during the course of hearing of the present Miscellaneous Petitions, the learned counsel for the petitioner had chosen to file a copy of the decision in the case of *Dr.T.K.Dayalu* (supra). In the case of *CIT vs. Earnest Exports Ltd.*(323 ITR 577), the Hon'ble Bombay High Court had clearly held that application under the provisions of sec.254(2) is maintainable only in cases where it was established that specific attention of the bench was drawn to a particular decision and the decision was specifically relied upon but not considered by the Tribunal. Therefore, the argument of the learned counsel for the petitioner that the decision of the Hon'ble jurisdictional High Court in the case of *Dr.T.K.Dayalu* (supra) was not applied to the facts of the case, cannot be accepted.

6.1 Even assuming that *Dr.T.K.Dayalu* (supra) case was cited and if considered also, the said decision has no bearing on the issue in the appeals. The decision was rendered in the context of the definition of the term 'transfer' and under the provisions of sec.2(47) of the Income-tax Act,1961, whereas in the present appeal, we are concerned with interpretation of the term 'belonging to' as employed by the provisions of sec.4 of the Wealth-tax Act, 1957. In any event, the decision in the case of *Dr.T.K.Dayalu* (supra) was not held to be good law by the subsequent decision by the very Hon'ble jurisdictional High Court in the case of CIT vs. *N.Vemanna Reddy* in ITA No.591/2008

dated 18/8/2014. Thus, decision in the case of *Dr.T.K.Dayalu* (supra) lost its precedential value, if any. Therefore, it goes without saying that the decision in *Dr.T.K.Dayalu* (supra) case had no relevance and bearing on the issue in appeal.

6.2 It goes to prove that the learned counsel for the petitioners had taken a chance of re-arguing the appeal already decided. The power under section 254(2) is confined to a rectification of a mistake apparent on record. The Tribunal must confine itself within those parameters. Section 254(2) is not a *carte blanche* for the Tribunal to change its own view by substituting a view which it believes should have been taken in the first instance. Section 254(2) is not a mandate to unsettle decisions taken after due reflection. The provision empowers the Tribunal to correct mistakes, errors and omissions apparent on the face. The section is not an avenue to revive a proceeding by recourse to a disingenuous argument nor does it contemplate a fresh look at a decision recorded on merits, howsoever appealing an alternate view may seem. Unless a sense of restraint is observed, judicial discipline would be the casualty. That is not what the Parliament envisaged.

6.3 The submission of the learned counsel for the petitioners that the impugned order may be recalled, cannot be accepted. The Hon'ble jurisdictional High Court, in the case of *CIT vs. McDowell & Co. Ltd.,* (2004)(269 ITR 451)(Kar), held that the

power u/s 35 of the Wealth-tax Act, 1957 is only to amend the order to rectify any mistake apparent from record and the original should not be recalled for re-hearing the matter. The relevant paragraph of the judgment is reproduced below:

> *"9. We have given our anxious consideration to the issue. Section 35(1)(e) provides that with a view to rectifying any mistake apparent from the record, the Tribunal may amend any order passed by it under section 24. Sub-section (5) of section 35 provides that where an amendment is made under section 35, an order shall be passed in writing by the Tribunal. The power vested in the Tribunal, by section 35, is only to amend the order, to rectify any mistake apparent from the record and not to review its order. Section 35 also clearly states the mistake should be rectified by amending the original order. Therefore, rectification presupposes the continued existence of the original order. When an amendment is made to the original order, the amendment merges with the original order. The original order is read with the amendment thereto. If the power to rectify the original order by way of amendment to that order is to be interpreted as permitting recalling of the original order, then the original order ceases to exist and a fresh original order is made. Recalling the original order involves rehearing of the matter which is not the purpose and intention of the provision for rectification. When the wording of the statutory provision are clear and unambiguous and can be given effect without any difficulty, it is not permissible to give an extending meaning to the provision. The words "amended the original order to rectify any mistake apparent from the record" does not mean recall the original order, rehear the matter and replace the original order by a fresh order. The purpose can be achieved by continuing the original order and passing an amendment order stating whatever is necessary to rectify the mistake apparent from the record. Whether the issue involved is one or more makes no difference, as what is contemplated and provided for is an amendment to the original order and not an order in substitution of the original order."*

6.4 As stated by us in paragraphs supra, the petitioners miserably failed to point out the mistakes committed by this Tribunal in passing the impugned order. Therefore, no prejudice has been caused to the petitioners on account of any mistakes committed by this Tribunal. Therefore, we are not able to appreciate the proposition canvassed by the learned counsel for petitioners that this Tribunal should allow the present Miscellaneous Petitions by invoking the inherent power to correct its own mistakes. The petitioners had filed the present Miscellaneous Petitions with the intention of re-arguing the matters which were concluded by this Tribunal. We find that disregarding the clear finding of this Tribunal on the issues in the appeal, the petitioners had filed the present petitions. It is obvious that this approach of the petitioners is clearly against the principles of *res judicata*.

7. It is obvious that such a litigative adventure by the present appellant is clearly against the principles of *Res Judicata* as well as principles of Constructive *Res Judicata* and principles analogous thereto.

8. The principles of *Res Judicata* are of universal application as it is based on two age old principles, namely, `*interest reipublicae ut sit finis litium*' which means that it is in the interest of the State that there should be an end to litigation and the other principle is `*nemo debet his ve ari, si constet curiae quod sit pro un aet eademn cause*' meaning thereby that no one ought to be

vexed twice in a litigation if it appears to the Court that it is for one and the same cause. This doctrine of *Res Judicata* is common to all civilized system of jurisprudence to the extent that a judgment after a proper trial by a Court of competent jurisdiction should be regarded as final and conclusive determination of the questions litigated and should forever set the controversy at rest.

9. That principle of finality of litigation is based on high principle of public policy. In the absence of such a principle great oppression might result under the colour and pretence of law in as much as there will be no end of litigation and a rich and malicious litigant will succeed in infinitely vexing his opponent by repetitive suits and actions. This may compel the weaker party to relinquish his right. The doctrine of *Res Judicata* has been evolved to prevent such an anarchy. That is why it is perceived that the plea of *Res Judicata* is not a technical doctrine but a fundamental principle which sustains the Rule of Law in ensuring finality in litigation. This principle seeks to promote honesty and a fair administration of justice and to prevent abuse in the matter of accessing Court for agitating on issues which have become final between the parties.

10. Therefore, any proceeding which has been initiated in breach of the principle of *Res Judicata* is prima-facie a proceeding which has been initiated in abuse of the process of Court.

11. A Constitution Bench of the Hon'ble Supreme Court in *Devilal Modi Vs. Sales Tax Officer, Ratlam & Ors.* - AIR 1965 SC 1150, has explained this principle in very clear terms: "But the question as to whether a citizen should be allowed to challenge the validity of the same order by successive petitions under Art. 226, cannot be answered merely in the light of the significance and importance of the citizens' fundamental rights. The general principle underlying the doctrine of res judicata is ultimately based on considerations of public policy. One important consideration of public policy is that the decisions pronounced by courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authorities; and the other principle is that no one should be made to face the same kind of litigation twice over, because such a process would be contrary to considerations of fair play and justice, vide : *Daryao Vs. State of U.P.*, 1962-1 SCR 575; (AIR 1961 SC 1457)."

11. The Hon'ble Supreme Court in *All India Manufacturers Organisation* (2006) 4 SCC 683 explained in clear terms that principle behind the doctrine of *Res Judicata* is to prevent an abuse of the process of Court.

11.2 In explaining the said principle the Hon'ble Supreme Court in *All India Manufacturers Organisation* (supra) relied on the following formulation of Lord Justice Somervell in *Greenhalgh Vs. Mallard* - (1947) 2 All ER 255 (CA):

> "I think that on the authorities to which I will refer it would be accurate to say that res judicata for this purpose is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject-matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them."

12. The Hon'ble Supreme Court also noted that the judgment of the Court of Appeal in "Greenhalgh" was approved by Hon'ble Supreme Court in *State of U.P. Vs. Nawab Hussain* - (1977) 2 SCC 806 at page 809, para 4.

13. Following all these principles, a Constitution Bench of Hon'ble Supreme Court in *Direct Recruit Class II Engg. Officers' Assn. Vs. State of Maharashtra* - (1990) 2 SCC 715 laid down the following principle:

> *".....an adjudication is conclusive and final not only as to the actual matter determined but as to M.Nagabhushana vs State Of Karnataka & Ors on 2 February, 2011 Indian Kanoon - http://indiankanoon.org/doc/432335/ 7 every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive res judicata underlying Explanation IV of Section 11 of the Code of Civil Procedure was applied to writ case. We, accordingly hold that the writ case is fit to be dismissed on the ground of res judicata"*

14. In view of such authoritative pronouncement of the Constitution Bench of Hon'ble Supreme Court, there can be no doubt that the principles of Constructive *Res Judicata*, as

explained in explanation IV to Section 11 of the CPC, are also applicable to writ petitions.

15. Thus, the attempt to re-argue the case which has been finally decided by the Court of competent jurisdiction is a clear abuse of process of the Court, regardless of the principles of Res Judicata, as has been held by Hon'ble Supreme Court in K.K. Modi Vs. K.N. Modi and Ors. - (1998) 3 SCC 573. In paragraph 44 of the report, this principle has been very lucidly discussed by Hon'ble Supreme Court and the relevant portions whereof are extracted below:

> *"One of the examples cited as an abuse of the process of the court is relitigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The reagitation may or may not be barred as res judicata..."*

In coming to the aforementioned finding, Hon'ble Supreme Court relied on the Supreme Court Practice 1995 published by Sweet & Maxwell. The relevant principles laid down in the aforesaid practice and which have been accepted by Hon'ble Supreme Court are as follows:

> "This term connotes that the process of the court must be used bona fide and properly and must not be abused. The court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation. ... The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material."

16. In the premises aforesaid, it is clear that the attempt by the petitioners to re-agitate the same issues which were considered by this Tribunal and were rejected expressly in the impugned order is a clear instance of an abuse of process of this Court apart from the fact that such issues are barred by principles of *Res Judicata* or Constructive *Res Judicata* and principles analogous thereto.

17. Therefore, it cannot be said that there are any mistakes apparent from record, which are capable of being rectified, exercising the power vested under section 254(2) of the Act. The decisions relied upon by the petitioners in the cases of *Distributors (Baroda) P.Ltd.* (supra) and *Honda Siel Power Products Ltd.*(supra) are not applicable and quoted out of context.

18. Before we part with, we must place on record that the petitioner had not approached this Tribunal in the Miscellaneous Petitions with clean hand, as stated supra. A litigant who approaches the court of law with unclean hands does not deserve any relief. Even on this score, these Miscellaneous Petitions are liable to be dismissed.

19. We highly deplore the attempts of the petitioner to knock the doors of the Tribunal again in the guise of seeking rectification of order alleging that additional ground of appeal was not decided. As mentioned supra, the additional grounds have been specifically adjudicated and a specific finding had been rendered

vide para.9 of the impugned order. Attempts made by the petitioners is nothing but clear case of abuse of process of court and in breach of principles of *Res Judicata.* We condemn this conduct of petitioner in no uncertain terms as it resulted in colossal waste of valuable time of this Tribunal.

20. In the result, the Misc. Petitions are dismissed.

Order pronounced in the open court on 11th August, 2016

(VIJAY PAL RAO)
JUDICIAL MEMBER

(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Place : Bangalore
D a t e d : 11/08/2016
srinivasulu, sps

Copy to :

1 Appellant
2 Respondent
3 CIT(A)-II Bangalore
4 CIT
5 DR, ITAT, Bangalore.
6 Guard file

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore