

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ "एफ" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI

**BEFORE HON'BLE S/SHRI D. MANMOHAN , VICE-PRESIDENT
AND B.R.BASKARAN (AM)**

सर्वश्री , डी. मन्नमोहन, उपाध्यक्ष एवं बी.आर.बास्करन, लेखा सदस्य

Misc. Application No.72 and 73/Mum/2015
arising out of I.T.A. No.5418 and 5419/Mum/2011
(निर्धारण वर्ष / Assessment Year : 1994-95 and 1996-97)

Shri Vijay V Meghani, Flat No.1, 1 st floor, Atur Terraces, 19, Cuffe Parade, Mumbai-400005	बनाम/ Vs.	Asstt. Commissioner of Income Tax, Cir. 23(3), Aayakar Bhavan, M K Road, Mumbai.
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./जीआइआर सं./**PAN:AAFPM4172N**

अपीलार्थी ओर से / Applicant by :	Shri A V Sonde
प्रत्यर्थी की ओर से/Respondent by :	Shri J Premanand

सुनवाई की तारीख / Date of Hearing : 12.6.2015

घोषणा की तारीख /Date of Pronouncement : 4.9.2015

आदेश / ORDER

Per B.R.BASKARAN, Accountant Member:

The Institute of Chartered Accountants of India (ICAI) has filed this miscellaneous application with the submissions that some of the observations made by the Tribunal in its order dated 20th August, 2014 rendered in the case of Shri Vijay V Meghani in ITA No.5418/Mum/2011 has resulted in a mistake apparent from record and hence the same needs rectification u/s 254(2) of the Act.

2. The Ld Counsel appearing for ICAI has submitted that the Tribunal has made certain observations about the Chartered Accountancy (C.A.) profession, the conduct of some of the students pursuing the C.A courses and also about ICAI in the impugned order. The Ld Counsel submitted that the issues urged by the appellant Shri Vijay V Meghani in the impugned appeal were altogether different and the observations made by the Tribunal in paragraphs 9 to 9.6 were not warranted and were not necessary or required to dispose of the grounds urged by the above said appellant before the Tribunal. The Ld Counsel placed reliance on some of the decisions rendered by the Hon'ble Supreme Court to submit that the observations which are not relevant to the issues under consideration should be avoided by the Courts. Accordingly he submitted that the observations made by the Tribunal has given unintended results affecting the reputation of ICAI.

3. When it was pointed out that the Tribunal has not observed anything which may offend or affect the prestige or reputation of the Institute of Chartered Accountants of India, the Ld Counsel submitted that the observations made by the Tribunal has been interpreted or understood by the public at large that the Tribunal has found fault with the conduct of the ICAI. The Ld Counsel fairly admitted that the Tribunal has, in fact, applauded the role and activities of the ICAI and the also about C.A profession in paragraphs 9.0 to 9.5 of the order and the misinterpretation, if any, has occurred in the observations made in paragraph 9.6 of the order. He submitted that the said paragraph has given rise to unnecessary controversies and further, since the same is not required to dispose of the issues that were urged before the Tribunal, he prayed that the paragraph 9.6 of the impugned order may kindly be deleted. He submitted that the

removal of paragraph 9.6 of the order would not affect the coherence or continuity of the order.

4. When it was pointed out that the ICAI was not a party to the appeal and accordingly when it was questioned about the competency of the ICAI to file this miscellaneous application, the Ld Counsel submitted that the Tribunal has inherent powers to rectify its own orders and since these observations have been made without hearing the ICAI, the Tribunal may rectify the order by using its inherent power.

5. The Ld D.R submitted that the present miscellaneous application has been filed u/s 254(2) of the Act and the Tribunal, under the provisions of sec. 254(2) of the Act, does not have power to review its order and it can only rectify the mistakes apparent from record.

6. We have heard the parties and perused the record. The observations made by the Tribunal about the C.A profession and conduct of the students pursuing the C.A courses, as submitted by Ld A.R, were not necessary to adjudicate the issues that were urged before the Tribunal by the appellant Shri Vijay V Meghani. However, in our view, the Income tax Appellate Tribunal, being a part of Government of India, should not shut its eyes when it is noticed that certain developments occurring in the Country may affect the Country as a whole, more particularly when the reputation of particular profession, from whom the Tribunal is getting assistance in the dispensation of justice, is at stake. Accordingly, we sincerely believe that it is the bounden duty of not only the Tribunal, but also the duty of one and all to point out and discuss about such kind of developments, when it is noticed that the same may affect the public at large. There cannot be any controversy that the interest of our Country is Supreme and no citizen can or should compromise on the same. We may

clarify here that the observations were made by the Tribunal in the impugned order in that context only and it was not the intention of the Tribunal to target any particular person or the ICAI. Accordingly, none of the observations made in the order was intended to criticize should be construed as criticizing the functioning of the ICAI. In fact, the Tribunal has only applauded the strict standards followed by ICAI in imparting the education and training.

7. It may be noticed that the paragraph 9.6 of the order, which is considered by the ICAI to be offensive, starts with the expression **“However, if it is considered for a moment....”** Thus, it can be noticed that the Tribunal has considered a hypothetical situation and made further observations about the possible consequences, if the said hypothetical situation had been a reality. Hence, it would not be correct to interpret that the Tribunal has commented upon that the standards of C.A profession or the ICAI. The observations made by the Tribunal in the later part of paragraph 9.6 was intended to highlight or reiterate the importance of the articulated clerk training and the self study model conceived by the ICAI and the same was intended only to give a wake-up call to the students pursuing C.A profession.

8. However, it appears that the observations made in paragraph 9.6 have not conveyed the message as intended by the Tribunal. According to Ld Counsel, the said observations have given room for misinterpretation and resultant controversies. Accordingly, by exercising the inherent powers of the Tribunal, we modify the paragraph 9.6 of the order as under:-

“9.6 However, if it is considered for a moment that the above said C.A. firm has really given such advice to the assessee herein and

accordingly it has furnished the letter and affidavit, then it is a cause of concern to one and all. We have already noticed that the self study model coupled with 'on-site articled clerk training' embedded in the Chartered Accountancy course aims to achieve high quality education and training . The articled clerk training conceptualized in the C.A education inculcate the habit of thinking, self introspection, application of mind, analytical ability etc and they enable the C.A students to have strong grip over the subjects and help achieving expertise in the domain fields. The commendable feature of the C.A Course is that, as stated earlier, the C.A students are given training by practicing Chartered Accountants during their articled clerk training program. Thus the methodology adopted by the ICAI enables the C.A. students to become thorough professionals with versatile knowledge and innovative mind. The practical training given by the practicing Chartered Accountants during the articled clerk period, in our view, is the fulcrum centre of the study module of the C.A course and the students pursuing the C.A course should and must utilize the opportunities provided to them or encountered by them during the articled clerk training period to the maximum possible extent. In the recent past, a number of Coaching institutes have been established to give coaching to the students pursuing C.A course. While the self study model and articled clerk training may be supplemented with the coaching given by such institutes, any compromise on the practical training intended during articled clerk period or mere obtaining a C.A degree without practical training would not make the students full fledged chartered accountants and the same would go against the self study model conceptualized by ICAI and there should not be any doubt that it may have undesired results, which may affect the Country as a whole."

9. In the result, the miscellaneous application filed by the ICAI is dismissed.

The above order was pronounced in the open court on 4th Sept, 2015.

घोषणा खुले न्यायालय में दिनांक: 4th Sept,2015 को की गई ।

Sd

sd

(डी. मन्मोहन/**D. MANMOHAN**)

(बी.आर. बास्करन,/ **B.R. BASKARAN**)

उपाध्यक्ष /**VICE- PRESIDENT**

लेखा सदस्य/**ACCOUNTANT MEMBER**

मुंबई Mumbai: 4th Sept, 2015.

व.नि.स./ SRL , Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned
4. आयकर आयुक्त / CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai concerned
6. The Acting Secretary, The Institute of Chartered
Accounts of India, I.P.Marg, New Delhi-110002
7. गार्ड फाईल / Guard file.

True copy

आदेशानुसार/ BY ORDER,

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