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IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "E", MUMBAI

Before Justice (Retd.) C V Bhadang, Hon'ble President &
Shri B R Baskaran, Hon'ble Accountant Member

MA No.643/Mum/2023
(Arising out of ITA 1524/Mum/2023 for Assessment Year 2023-24
Order dated 27.07.2023)

Dy CIT CC-2(1), Pune	Vs.	Heart Foundation of India 5 th floor, Hemdil, Linking Road, Santacruz (W), Mumbai 400054
(Applicant)		PAN AAAAH0500R (Respondent)

For the assessee : Dr K Shivaram a/w Shri Shashi Bekal
For the Revenue : Shri Krishna Kumar (Sr.DR)

Date of Hearing : 07.02.2025	Date of Pronouncement : 21.03.2025
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ORDER

Per Justice (Retd.) C V Bhadang, President :

This is an application u/s. 254(2) of the Income Tax Act ('Act' for short) filed by the Revenue, seeking rectification of order dated 27.07.2023 in ITA No.1524/Mum/2023. The sole ground on which rectification is sought for is that the Mumbai Benches had no territorial jurisdiction for deciding the appeal and the territorial jurisdiction lay with the Pune Benches. This according to the Revenue is a 'mistake apparent from record', within the meaning of section 254(2) of the Act.

2. Brief facts are that the respondent assessee is a Charitable Trust set up under the Trust Deed dated 21.04.1988. The assessee was granted registration

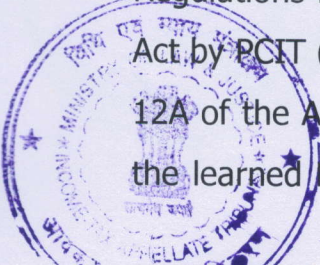


u/s. 12A, vide certificate dated 21.07.1989. The assessee has been carrying on activities in accordance with the objects enumerated in the Trust Deed.

3. There was a search carried out on the establishment of M/s. Emcure Pharmaceuticals Ltd and its group companies on 16.12.2020. It appears that there was simultaneous survey action carried out on the assessee in which statement of Dr. Lekha A Pathak, one of the trustees was recorded. The case of the assessee was centralized at Pune vide order dated 07.03.2022 passed by the competent authority u/s. 127 of the Act.

4. The assessee is filing Return of Income (RoI) as per its status of a Charitable Trust up to A.Y. 2020-21. For A.Y. 2021-22 the assessee filed its RoI on 11.10.2022 in the status of Association of Persons (AoP) declaring a total income of ₹3,75,070/- The return was filed as a AoP on account of the fact that the assessee had not applied for registration of the Trust under new provisions i.e. section 12AB of the Act. According to the assessee this was on account of setback in the industry on account of Covid and consequent lockdown.

5. Be that as it may, the case of the assessee for A.Y 2021-22 was selected for scrutiny. It was found that the assessee had made contravention of Explanation (e) and (f) to sub-section (4) of section 12AB by providing freebies to the Doctors, which is in violation of the Indian Medical Council (Professional Conduct & Ethics) Regulations 2002. Accordingly, the assessee was issued notice u/s. 12AB of the Act by PCIT (Central), Pune proposing cancellation of the registration granted u/s. 12A of the Act. The assessee filed its reply and contested the same. However, the learned PCIT by an order dated 06.03.2023 passed u/s. 12AB(4) of the Act



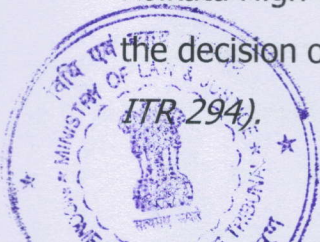
has cancelled the registration of the Trust w.e.f. A.Y. 2016-17, which order was subject matter of challenge before this Tribunal in ITA 1524/Mum/2023.

6. The co-ordinate Bench of this Tribunal by order dated 27.07.2023, has allowed the appeal, inter alia, holding that the learned PCIT Central Circle Pune was not the prescribed authority and had no jurisdiction to cancel the registration and secondly, the registration of the Trust, could not have been cancelled retrospectively.

7. The present application is filed by the Revenue, inter alia, on the ground that the order, which was subject matter of challenge in appeal IN ITA No. 1524/Mum/2023 was the one passed by PCIT, Pune. As such, the Mumbai Benches had no territorial jurisdiction to hear and decide the appeal.

8. We have heard the learned DR for the applicant and Dr. K Shivram, learned senior counsel for the respondent. With their assistance, we have gone through the record.

9. It is submitted by the learned DR that the order which was subject matter of challenge in the appeal was passed by learned PCIT Pune. As such, it was the Pune Benches of the Tribunal which had territorial jurisdiction to entertain the appeal and not the Mumbai Benches. It is submitted that the issue of territorial jurisdiction, goes to the root of the matter as it is vital in determining the jurisdiction of the Tribunal, to deal with the appeal. Reliance is placed on the decision of Kolkata High Court in *Ramshila Enterprises Private Ltd. vs. PCIT* (383 ITR 546) and the decision of Bombay High Court in *PCIT vs. Sungard Solutions (I) (P.) Ltd.* (415

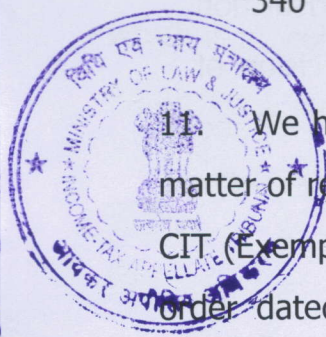


10. The learned senior counsel for the respondent has submitted that the application is not maintainable. It is submitted that the issue about lack of territorial jurisdiction was not raised before the Tribunal and, as such, the same cannot be raised in an application for rectification. It is submitted that there is no mistake apparent on record pointed out by the Revenue within the meaning of section 254(2) of the Act, so as to require rectification. It is submitted that even otherwise, in an application for rectification this Tribunal is not expected to revisit the order and go into questions much less when such ground was not originally raised in the appeal. On behalf of respondent assessee reliance is placed on the following decisions:

- a) Dholadhar Investment (P.) Ltd. v. CIT [2014] 362 ITR 111 (Delhi)
- b) CIT v. Reliance Telecom Ltd. [2022] 440 ITR 1 (SC)
- c) Thakur V. Hari Prasad v. CIT (1987) 167 ITR 603 (AP)
- d) Punjab National Bank v. Atin Arora & Anr. 2025 LiveLaw (SC) 27
- e) Harshad Chiman Lal Modi v. DLF Universal Ltd. and Anr (2005) 7 SCC 791
- f) Subhash Mahadevasa Habib v. Nemasa Ambasa Dharmmadras (D) by LRS. and Ors. (2007) 13 SCC 650.
- g) Kiran Singh and Ors v. Chaman Paswan and Ors AIR 1954 Supreme Court

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11. We have considered the circumstances and the submissions made. It is a matter of record that the assessee was granted registration u/s. 12A of the Act by CIT (Exemption), Mumbai, which has been cancelled by PCIT Central, Pune, vide order dated 06.03.2023. That order was subject matter of challenge in ITA 1524/Mum/2023, which appeal has been allowed on the ground of PCIT Pune not



being the competent authority and impermissibility of retrospective cancellation. In the present application, rectification is sought only on the ground of the alleged lack of territorial jurisdiction with the Mumbai Benches to entertain the challenge.

12. We find that the case of the assessee was centralized at Pune for the purpose of assessment. The nature and the scope of the powers u/s. 254(2) are confined to rectification of mistake apparent from the record. The Supreme Court in the case of *Reliance Telecom Ltd.* (supra) has, inter alia, held that such a power would not extend to revisit the order passed so as to recall the same. The Supreme Court in para 6 has held that in such a case the remedy available was to prefer an appeal before the High Court. We are therefore not inclined to entertain the application.

13. Reliance on the decision of Kolkata High Court in *Ramshila Enterprises Private Ltd. vs. PCIT* (supra), is misplaced. That was a case where after the order of transfer u/s. 127 of the Act, was published and communicated, the concerned Commissioner assumed jurisdiction u/s. 263 of the Act. The Kolkata High Court has held that after the order of transfer u/s. 127 is duly published and communicated the Commissioner would become functus officio. It can be seen that the case did not involve the issue about territorial jurisdiction of the Tribunal.

14. In *Sungard Solutions (I) (P.) Ltd.* (supra), the Bombay High Court held that the territorial jurisdiction of the High Court would be governed by the place where the Bench of the Tribunal is situated which passed the order. There is a subsequent decision by the Hon'ble Supreme Court in *PCIT vs. ABC Papers Ltd.* (447 ITR 1) in which the Supreme Court has held that the jurisdiction of the High Court is governed by the seat of the Assessing Officer. Be that as it may, the present application does not involve the issue of territorial jurisdiction of the High Court.



Thus, the decision in *Sungard Solutions (I) (P.) Ltd.* cannot come to the aid of the Revenue for more reasons than one.

15. In the circumstances, we find that the application as framed and filed cannot be entertained. Accordingly, the application stands rejected.

Order pronounced in the open court on 21st March, 2025.

Sd/-

[B R Baskaran]
ACCOUNTANT MEMBER

Mumbai, Dated : 21st March, 2025
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Sd/-

[Justice (Retd.) C V Bhadang]
PRESIDENT

Copy of the Order forwarded to :

1. The Appellant.
- ✓ 2. The Respondent.
3. The PCIT, Mumbai. *Thane-I*
4. The CIT
5. The DR, 'E' Bench, ITAT, Mumbai

BY ORDER

//True Copy//

Jurish
(Assistant Registrar)

Income Tax Appellate Tribunal, Mumbai

