



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.03.2015

Coram

The Honourable Mr. Justice R. SUDHAKAR
and
The Honourable Mr. Justice R. KARUPPIAH

Tax Case (Appeal) Nos. 23 to 26 of 2015

M/s. Vyline Glass Works Limited,
AIF, Industrial Complex
Maraimalai Nagar, Chennai - 603 209.

... Appellant in the above T.Cs

-vs-

The Assistant Commissioner of Wealth Tax
Company Circle III(4),
46, M.G. Road,
Chennai - 600 034.

... Respondent in the above T.Cs

APPEALS filed under Section 27 A of the Wealth Tax Act against the orders dated 18.1.2013, 13.3.2013, 18.1.2013 and 13.3.2013 in M.P.No.233/Mds/2012 in W.T.A.No.5/Mds/2012, W.T.A.No.5/Mds/ 2012, M.P.No.234/Mds/2012 in W.T.A.No.6/Mds/2012 and W.T.A.No.6/ Mds/2012 respectively on the file of the Income Tax Appellate Tribunal, Chennai "C" Bench.

- (i) against the order of the Income - Tax Appellate Tribunal 'C' Bench, Chennai dated 13.03.2012 and made in WTA.Nos. 5 & 6 (Mds)/2012 for the assessment year 1997 - 98 and 1998 - 99.
- (ii) against the order of the Commissioner of Income Tax (Appeals)- III, Chennai dated 21.11.2011 and made in WTA.Nos. 7 & 8/2005-26/A.III for the assessment year 1997 - 98 and 1998 - 99.
- (iii) against the order of the Income- Tax Appellate Tribunal, Chennai Bench- C Dated 16.02.2007 and made in WTA.Nos. 54 & 55/Mds/2006 for the Assessment years 1997 - 98 & 1998 - 99.
- (iv) against the order of the Commissioner of Income Tax Appeals- III, Chennai dated 25.05.2006 and made in WTA.Nos. 7 & 8/2005-06/A.III for the Assessment year 1997-98 & 1998-99.
- (v) against the order of the Assistant Commissioner of Income Tax, Company Circle III(4), Cl-34 dated 23.3.2005 and made in



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GIR.No./PAN:547-V/AAACV7127Q for the Assessment year 1997-98 & 1998-99 respectively.

For Appellant	:	Mr.N.Devanathan
For Respondent	:	Mr.M.Swaminathan Standing Counsel

C O M M O N J U D G M E N T

(Delivered by R.SUDHAKAR, J.)

The above Tax Case (Appeals) filed by the assessee as against the order of the Income Tax Appellate Tribunal are admitted on the following substantial question of law:

"Whether in a case of wealth tax, the Tribunal has power to recall its order in the guise of rectification of mistake contrary to the provision under Section 35 of the Wealth Tax Act?"

2. The brief facts of the case are as follows:

The assessee is a company engaged in the business of manufacturing and sale of glass products, especially laboratory items. The assessee had filed return of income for the assessment years 1997-98 and 1998-99. However, the assessee had not filed its returns of wealth within the due date. On a perusal of the statements enclosed with the return of income, the Assessing Officer found that the assessee had received rental income of Rs.9,75,000/- and 72,00,000/- for the land and building leased out to M/s.Borosil Glass Work Ltd., Mumbai. Hence, notice under Section 17 of the Wealth Tax Act was issued to the assessee, since as per Section 2(ea) of the Wealth Tax act, any building or land appurtenant thereto used for commercial purpose attracts levy of wealth-tax. Thereafter, the assessee filed return of wealth-tax under Section 14(1) of the Wealth Tax Act on 24.11.2003 admitting 'nil' income. After hearing the objections of the assessee, the Assessing Officer rejected the said objections and passed an order under Section 16(3) read with Section 17 of the Wealth Tax Act by determining total wealth of Rs.8,35,00,000/- each for both the assessment years.

3. Aggrieved by the same, the assessee preferred appeals before the Commissioner of Wealth Tax (Appeals), who dismissed the appeals both on jurisdiction as well as on merit.



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4. As against the said order, the assessee pursued the matter before the Income Tax Appellate Tribunal. The Tribunal, by a final order dated 16.2.2007 in W.T.A.Nos.54 and 55 of 2006 remanded the matter back to the Commissioner of Wealth Tax (Appeals) for passing speaking order on the issue of re-opening. The relevant portion of the said order of the Tribunal reads as follows:

"3. We have heard the rival submissions and perused the material on record. The CWT(Appeals) has not passed speaking order on re-opening. He just held that re-opening is justified. No where the CWT(A) has discussed the reason for re-opening and who it is justified. He is telling that it was based on the audit objection. The nature of audit objection was not discussed. The plea of the Assessee relating to the assessability of income from the factory building and plant and machinery as business income in the corresponding Income-tax assessments was accepted by the Department. If it was accepted in the regular assessment under sec.143(3), it is not proper for the Department to treat the assets as non-business assets. Hence, we set aside the entire issue to the file of the CIT(Appeals) to pass a speaking order on re-opening and on the merit of the case, taking into consideration the judgment of the Hon'ble Jurisdictional High Court in the case of K.N.Chari Rubber & Plastics P. Ltd. V. CIT (260 ITR 164) (Mad.)."

5. Thereafter, the Commissioner of Wealth Tax (Appeals) passed an order on 21.11.2011 dismissing the appeals.

6. Aggrieved by the same, the assessee preferred appeals before the Tribunal.

7. The Tribunal, by order dated 13.3.2012, in W.T.A.Nos.5 and 6 of 2012, decided the issue in favour of the assessee holding as follows:

"Therefore, what is to be seen is that even though the assessee is receiving lease rent from the lessee, the property remained a commercial asset exploited for the purpose of carrying on manufacturing business. Such assets do not attract levy of wealth-tax.

11. Therefore, we set aside the orders of the assessing authority levying wealth-tax on the assessee for the impugned assessment years 1997-98 and 1998-99. The appeals are partly allowed."

8. Thereafter, the Revenue filed Miscellaneous Petitions before the Tribunal in M.P.Nos.233 and 234 of 2012 on the following grounds:



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"7. Thus as per the amended provision, there is a clear error in the order of the Hon'ble ITAT, on improper application of the provisions of law as applicable to the relevant years. In short, the ITAT have wrongly applied the amended provisions in the present years i.e. 1997-98 and 1998-99.

8. It is noticed that the assessee has no case that it will get exemption to the applicability of section 2(ea) under any of the exclusion clauses of (1), (2) or (3) for the relevant assessment year. In the above context the issue whether the lease asset remanded a commercial asset or not has no implication for deciding the liability for wealth-tax.

9. For the above reasons and such other reason as may be adduced at the time of hearing it is prayed that the Hon'ble ITAT may rectify their order on the above appeal and render justice."

(emphasis supplied)

9. Consequent upon the filing of the above Miscellaneous Petitions, the Tribunal, by order dated 18.1.2013 passed an order recalling the earlier final order dated 13.3.2012, which was in favour of the assessee and posted the appeals for re-hearing. The relevant portion of the order dated 18.1.2013 reads as follows:

"These miscellaneous petitions are filed by the Revenue. These are in the nature of rectification petitions. They relate to the assessment years 1997-98 and 1998-99. These rectification petitions are filed in the context of the common order passed by the Tribunal on 13-3-2012 in WTA Nos.5 and 6(Mds)/2012. On going through the averments made by the Revenue, we find that prima facie there is a mistake in the order passed by the Tribunal. Therefore, the said common order of the Tribunal dated 13-3-2012 passed in WTA Nos.5 and 6(Mds)/2012 is recalled and again reinstated in the rolls of the Tribunal for fresh hearing and disposal."

10. Thereafter, the Tribunal took up the appeals for re-hearing and by order dated 13.3.2013 decided the issue against the assessee holding as follows:

" From the above it is very clear that any house which an assessee may occupy for the purpose of any business or profession carried on by him. As per clause (3) if the assessee occupies the house for the purpose of any business or profession it is excluded from " assets". Therefore, no wealth-tax is required to be paid. But in



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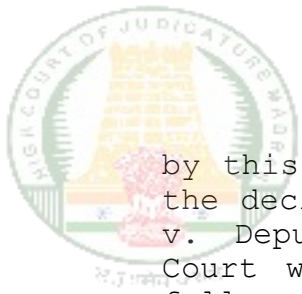
the present case the assessee had leased out the land, building and machinery to a third party. Therefore, it cannot be said that the assessee has occupied land and building for the purpose of its business. Whatever portion was occupied by the assessee the same was excluded by the Assessing Officer and therefore we are of the opinion that as per sec.2(ea) of the Act the assets leased out by the assessee are not excluded from the definition of "assets". So far as the case law relied on by the assessee is concerned, it is not applicable to the facts of the present case. In view of the above, this ground raised by the assessee is dismissed.

13. In the result, the appeals filed by the assessee are dismissed."

11. This turn of event forced the assessee to pursue the matter before this Court in the following manner.

12. Aggrieved by the order of the Tribunal dated 18.1.2013 recalling the earlier final order dated 13.3.2012, two appeals have been filed by the assessee before this Court in T.C.(A)Nos.23 and 25 of 2015 and as against the second final order dated 13.3.2013, two appeals have been filed by the assessee before this Court in T.C.(A) Nos.24 and 26 of 2015.

13. The primary issue raised by the learned counsel appearing for the appellant/assessee is that the Tribunal, which had become functus officio after passing the final order, had no jurisdiction to recall the order and pass a fresh order on the plea which was not raised by the Revenue before the Tribunal at the earliest point of time. It was pointed out by the learned counsel appearing for the assessee and conceded by the learned Standing Counsel appearing for the Revenue that in number of cases Miscellaneous Petitions for rectification is filed and allowed and consequently, earlier orders are recalled and fresh orders are passed. Here is a case, where there is no mistake apparent on the face of the record. On the contrary, the Department has raised a legal plea, which according to the Department, the Tribunal failed to address. Learned counsel appearing for the assessee pointed out that the Department, if aggrieved against the wrong interpretation or failure to consider the case in correct perspective, should have filed an appeal against the said first order of the Tribunal dated 13.3.2012, which is against the Revenue. Instead, they attempted and filed petitions to recall the order in the guise of rectification. He further submitted that the scope of rectification of mistake apparent on the face of record has been considered in a catena of decisions by the Supreme Court as well as



by this Court. In support of his contention, he placed reliance on the decision reported in 320 ITR 12 (Mad) (Express Newspapers Limited v. Deputy Commissioner of Income-Tax and another), wherein, this Court while dealing with issue of review by the Tribunal, held as follows:

"13. From the various judgments of the Supreme Court above referred to and other High Courts, it is clear that the Tribunal's power under section 254(2) is not to review its earlier order but only to amend it with a view to rectify any mistake apparent from the record. What can be termed as "mistake apparent?" "Mistake" in general means to take or understand wrongly or inaccurately; to make an error in interpreting; it is an error; a fault, a misunderstanding, a misconception. Mistake in taxation laws has a special significance. It is mostly subjective and the dividing line is thin and indiscernible. "Apparent" means visible, capable of being seen, easily seen, obvious plain, open to view, evident, appears, appearing as real and true, conspicuous, manifest, seeming. The plain meaning of the word "apparent" is that it must be something which appears to be ex facie and incapable of argument and debate. If such a "mistake apparent on the face of record" is brought to the notice, section 254(2) empowers the Tribunal to amend the order passed under section 254(1). Amendment of an order does not mean obliteration of the order originally passed and its substitution by a new order. What is mistake apparent on the face of the record or where does a mistake cease to be mere mistake, and become mistake apparent on the face of the record is rather difficult to define precisely, scientifically and with certainty. An element of indefiniteness inherent in its very nature and it must be discernible from the facts of each case by judiciously trained mind. Mere existence of a mistake or error would not per se render the order amenable for rectification, but such a mistake must be one which must be manifest on the face of the record."

(emphasis supplied)

14. On this premise, the appeals are canvassed on the legality of the proceedings before the Tribunal.

15. Heard learned counsel appearing for the appellant and the learned Standing Counsel appearing for the Revenue and perused the materials placed before this Court.



16. To appreciate the submissions raised at the Bar, we shall refer to the provision contained in Section 35(1)(e) of the Wealth Tax Act relating to rectification. It reads as follows :

"Rectification of mistakes.

35(1) With a view to rectifying any mistake apparent from the record -

(a)....

(b)....

(c)...

(d)...

(e) the Appellate Tribunal may amend any order passed by it under section 24. "

17. In the light of the above provision, in the case of CIT V. Bhatia (K.L.) reported in [1990] 182 ITR 361 (Delhi), while dealing with the power of the Tribunal under Section 254(2) of the Act, which is pari materia to Section 35(1)(e) of the Wealth Tax Act, the Delhi High Court has dealt with the provision and held thus:

"The Income-tax Act is a self-contained code. The Income-tax Appellate Tribunal is a creation of the statute and its powers are circumscribed by the provisions of the Act. Appeals are filed before it under section 253 of the Act. Section 254(1) contemplates disposal of the said appeal after giving an opportunity to both the parties of being heard. Sub-section (2) of section 254 enables the Tribunal to rectify any mistake apparent from the record. Sub-section (4) of section 254 specifies that save as provided in section 256, the order passed by the Appellate Tribunal on appeal are final."

18. In the case of Karan and Co. V. ITAT reported in [2002] 253 ITR 131 (Delhi), the Delhi High Court, while dealing with the scope of rectification, after referring to the various decisions, held as follows:

"The scope and ambit of application of section 254(2) is very limited. The same is restricted to rectification of mistakes apparent from the record. We shall first deal with the question of the power of the Tribunal to recall an order in its entirety. Recalling the entire order obviously would mean passing of a fresh order. That does not appear to be the legislative intent. The order passed by the Tribunal under section 254(1) is the effective order so far as the appeal is concerned. Any order passed under section 254(2) either allowing the amendment or refusing to amend gets merged with the original order passed. The order as amended or remaining unamended is the effective order for



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all practical purposes. The same continues to be an order under section 254(1). That is the final order in the appeal. An order under section 254(2) does not have existence de hors the order under section 254(1). Recalling of the order is not permissible under section 254(2). Recalling of an order automatically necessitates rehearing and readjudication of the entire subject-matter of appeal. The dispute no longer remains restricted to any mistake sought to be rectified. Power to recall an order is prescribed in terms of rule 24 of the Income-tax (Appellate Tribunal) Rules, 1963, and that too only in cases where the assessee shows that it had a reasonable cause for being absent at a time when the appeal was taken up and was decided ex parte. This position was highlighted by one of us (Justice Arijit Pasayat, Chief Justice) in CIT v. ITAT [1992] 196 ITR 640 (Orissa). Judged in the above background the order passed by the Tribunal is indefensible." [emphasis supplied]

19. In the case of Sahni (J.N.) V. ITAT reported in [2002] 257 ITR 16 (Delhi), relying on the decision in K. L. Bhatia [1990] 182 ITR 361, the Delhi High Court has ruled thus:

"The power of the Tribunal to amend an order passed by it under sub-section (1) of section 254 is limited. Such power of amendment is confined to rectification of mistake apparent from the record. The power of review, as is well known, must be conferred expressly or by necessary implication upon the statutory or quasi-judicial authorities. The Tribunal has no inherent power of review. It is thus axiomatic that while exercising its jurisdiction to amend its order on the ground of rectification of mistake it cannot recall its order passed on the merits."

20. A reading of the above-said decisions reveals that the power under Section 35(1)(e) of the Wealth Tax Act extends only to rectify the mistake apparent from the face of the record. An error cannot be said to be apparent on the face of the record if one has to travel beyond the record to see whether the judgment is correct or not. An error apparent on the record means an error which strikes one on mere looking and does not need a long drawn out process of reasoning. Under the garb of rectification of mistake, it is not possible for a party to take further chance of rearguing the appeal already decided. What can be rectified under Section 35(1)(e) is a mistake which is apparent and patent. A patent, manifest and self-evident error, which does not require elaborate discussion of evidence or argument to establish it can be said to be an error apparent on the face of the



record. A point which was not examined on facts or in law cannot be dealt with as a mistake apparent from the record.

21. It is worth to note that even if a Tribunal renders a judgment without dealing with a specific factual situation not raised in appeal, it may be an irregularity of procedure but that would not empower the Tribunal with the jurisdiction to recall the order. The aggrieved party must seek his remedy in appeal and not by rectification. The power conferred under the statute does not contemplate a rehearing which would have the effect of rewriting an order affecting the merits of the case and, therefore, there is a deliberate omission by the Legislature to confer the power of review on the appellate authority under Section 35 (1)(e) of the Wealth Tax Act.

22. In this context, we may refer to the decision in the case of Asst. CIT v. Saurashtra Kutch Stock Exchange Ltd. [2003] 262 ITR 146 wherein a Division Bench of the Gujarat High Court while dealing with a writ petition preferred under articles 226 and 227 of the Constitution of India came to hold as follows:

"(a) The Tribunal has power to rectify a mistake apparent from the record on its own motion or on an application by a party under section 254(2) of the Act ;

(b) An order on appeal would consist of an order made under section 254(1) of the Act or it could be an order made under sub-section (1) as amended by an order under sub-section (2) of section 254 of the Act ;

(c) The power of rectification is to be exercised to remove an error or correct a mistake and not for disturbing finality, the fundamental principle being, that power of rectification is for justice and fair play ;

(d) That power of rectification can be exercised even if a mistake is committed by the Tribunal or even if a mistake has occurred at the instance of party to the appeal ;

(e) A mistake apparent from record should be self-evident, should not be a debatable issue, but this test might break down, because judicial opinions differ, and what is a mistake apparent from the record cannot be defined precisely and must be left to be determined judicially on the facts of each case ;

(f) Non-consideration of a judgment of the jurisdictional High Court would always constitute a mistake apparent from the record, regardless of the judgment being rendered prior to or subsequent to the order proposed to



be rectified ;

(g) After the mistake is corrected, consequential order must follow, and the Tribunal has power to pass all necessary consequential orders."

(emphasis supplied)

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23. On the basis of the said conclusions, the writ court affirmed the order of recall passed by the Tribunal. The aforesaid decision was challenged by the Revenue before the Supreme Court, wherein the Supreme Court held as follows:

"The core issue, therefore, is whether non-consideration of a decision of jurisdictional court (in this case a decision of the High Court of Gujarat) or of the Supreme Court can be said to be a 'mistake apparent from the record'? In our opinion, both—the Tribunal and the High Court—were right in holding that such a mistake can be said to be a 'mistake apparent from the record' which could be rectified under section 254(2)."

24. In the case of Honda Siel Power Products Ltd. V. Commissioner of Income Tax reported in [2007] 295 ITR 466, the Supreme Court while dealing with the scope of rectification, held as follows:

"As stated above, in this case we are concerned with the application under section 254(2) of the 1961 Act. As stated above, the expression 'rectification of mistake from the record' occurs in section 154. It also finds place in section 254(2). The purpose behind the enactment of section 254(2) is based on the fundamental principle that no party appearing before the Tribunal, be it an assessee or the Department, should suffer on account of any mistake committed by the Tribunal. This fundamental principle has nothing to do with the inherent powers of the Tribunal. In the present case, the Tribunal in its order dated September 10, 2003 allowing the rectification application has given a finding that Samtel Color Ltd. (supra) was cited before it by the assessee but through oversight it had missed out the said judgment while dismissing the appeal filed by the assessee on the question of admissibility/allowability of the claim of the assessee for enhanced depreciation under section 43A. One of the important reasons for giving the power of rectification to the Tribunal is to see that no prejudice is caused to either of the parties appearing before it by its decision based on a mistake apparent from the record.



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'Rule of precedent' is an important aspect of legal certainty in rule of law. That principle is not obliterated by section 254(2) of the Income-tax Act, 1961. When prejudice results from an order attributable to the Tribunal's mistake, error or omission, then it is the duty of the Tribunal to set it right. Atonement to the wronged party by the court or Tribunal for the wrong committed by it has nothing to do with the concept of inherent power to review."

(emphasis supplied)

25. From a reading of the above-said decisions, it is clear that in a case of mistake apparent from the record, the Tribunal can recall its own order and rectify it.

26. In the case of L.D.Bhatia Hingwala (P) Ltd. v. Asst. CIT (Delhi) (FB) reported in [2011] 330 ITR 243 (Delhi) (FB), the Full Bench of the Delhi High Court, while answering the reference with regard to the power of the Tribunal to recall its order, after analysing the various decisions including the decision of the Supreme Court in the case of Honda Siel Power Products Ltd. (Supra), held as follows:

"We have carefully perused the decisions rendered by the High Courts of Madras, Bombay, Karnataka and Rajasthan which have been commended to us by Mr. Mehta and we notice that the decision was distinguished on the factual score and none of the decisions have proceeded to say that it is not a precedent for the proposition that the Tribunal under no circumstances can recall its own order.

33. In view of our aforesaid analysis, we proceed to state our conclusions in seriatim as follows :

(A) The decision rendered in Honda Siel Power Products Ltd. [2007] 295 ITR 466 by the apex court is an authority for the proposition that the Income-tax Appellate Tribunal under certain circumstances can recall its own order and there is no absolute prohibition.

(B) In view of the law laid down in Honda Siel Power Products Ltd. [2007] 295 ITR 466 by the apex court, the decisions rendered by this court in K. L. Bhatia [1990] 182 ITR 361 (Delhi), Deeksha Suri [1998] 232 ITR 395 (Delhi), Karan and Co. [2002] 253 ITR 131 (Delhi), J. N. Sahni [2002] 257 ITR 16 (Delhi) and Smt. Baljeet Jolly [2001] 250 ITR 113 (Delhi) which lay down the principle that the Tribunal under no circumstances can recall its order in entirety do not lay down the correct statement of law.



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(C) Any other decision or authority which has been rendered by pressing reliance on K. L. Bhatia [1990] 182 ITR 361 (Delhi) and the said line of decisions are also to be treated as not laying down the correct proposition of law that the Tribunal has no power to recall an order passed by it in exercise of power under section 254(2) of the Act.

(D) The Tribunal, while exercising the power of rectification under section 254(2) of the Act, can recall its order in entirety if it is satisfied that prejudice has resulted to the party which is attributable to the Tribunal's mistake, error or omission and which error is a manifest error and it has nothing to do with the doctrine or concept of inherent power of review.

(E) When the justification of an order passed by the Tribunal recalling its own order is assailed in a writ petition, it is required to be tested on the anvil of law laid down by the apex court in Honda Siel Power Products Ltd. [2007] 295 ITR 466 (SC) and Saurashtra Kutch Stock Exchange Ltd. [2008] 305 ITR 227 (SC)."

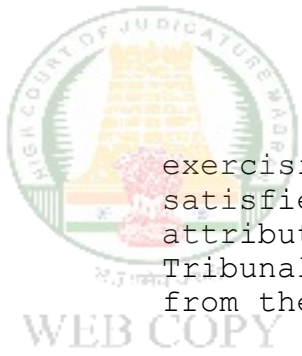
(Emphasis supplied)

27. A plea is made that power to recall has been recognised in paragraph 33(A) above and therefore the Tribunal is justified. We hold that it is not so. It stems from misreading of the above decision.

28. In the present case, we find that the Tribunal at the first instance had given benefit to the assessee and thereafter, the Department filed Miscellaneous Petitions to recall the order on the legal plea that the benefit of exclusion of asset would not apply in terms of Section 2(ea) of the Wealth Tax Act. This issue, according to us is a legal issue, which the Department, if aggrieved would have to canvass in appeal. The Department cannot be allowed to raise this issue in a petition filed for rectification that is not raised in appeal. The Tribunal in this case exceeded its jurisdiction in invoking the power under Section 35(1)(e) of the Wealth Tax Act to recall the final order dated 13.3.2012 in the guise of rectification.

29. We, therefore, have no hesitation in coming to the conclusion that the Tribunal can only exercise its jurisdiction under Section 35(1)(e) of the Wealth Tax Act in the manner indicated in the provision and, de hors the provisions in the Act, it has no jurisdiction to recall its final order passed on the merits of the case.

30. In the light of the above, we hold that the Tribunal, while



exercising the power of rectification, can recall its order, if it is satisfied that on account of mistake, manifest error or omission attributable to the Tribunal, prejudice is caused to the party. The Tribunal can recall its order for rectification of mistake apparent from the record. Else, the Tribunal has no power to recall its order.

31. The ruling of the Full Bench in paragraph 32(A) of the decision reported in L.D.Bhatia Hingwala (P) Ltd. v. Asst. CIT (Delhi) (FB) reported in [2011] 330 ITR 243 (Delhi) (FB), cannot be misinterpreted that an Appellate Tribunal has got absolute power to recall its order. That power can be exercised only in a case where there is a mistake apparent on the face of the record. The decision of the Supreme Court in the case of Honda Siel Power Products Ltd. V. CIT (supra) makes it clear that on a mere filing of application for rectification, the Tribunal cannot and should not recall its order. Even otherwise, we have to state that recalling the order without even giving reasons would make such order vulnerable to questioning as to its motive behind such an order of recall. As has been emphasised by the Supreme Court in the various decisions, reasons have to be recorded even if the Tribunal wants to recall the order invoking Section 254(2) of the Income Tax Act and Section 35(1)(e) of the Wealth Tax Act and it cannot blindly recall the order on a mere application for rectification.

32. In the case of S.N.Mukherjee - Vs - Union of India (1990 (4) SCC 594), the Apex Court, after considering various decisions on the subject, and the legal principle of passing the test of reasonableness, while once again stressed the necessity to record reasons, held as hereinbelow :-

35. The decisions of this Court referred to above indicate that with regard to the requirement to record reasons the approach of this Court is more in line with that of the American courts. An important consideration which has weighed with the court for holding that an administrative authority exercising quasi-judicial functions must record the reasons for its decision, is that such a decision is subject to the appellate jurisdiction of this Court under Article 136 of the Constitution as well as the supervisory jurisdiction of the High Courts under Article 227 of the Constitution and that the reasons, if recorded, would enable this Court or the High Courts to effectively exercise the appellate or supervisory power. But this is not the sole consideration. The other considerations which have also weighed with the Court in taking this view are that the requirement of



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recording reasons would (i) guarantee consideration by the authority; (ii) introduce clarity in the decisions; and (iii) minimise chances of arbitrariness in decision-making. In this regard a distinction has been drawn between ordinary courts of law and tribunals and authorities exercising judicial functions on the ground that a Judge is trained to look at things objectively uninfluenced by considerations of policy or expediency whereas an executive officer generally looks at things from the standpoint of policy and expediency.

36. Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decision, are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decision-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.



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37. Having considered the rationale for the requirement to record the reasons for the decision of an administrative authority exercising quasi-judicial functions we may now examine the legal basis for imposing this obligation. While considering this aspect the Donoughmore Committee observed that it may well be argued that there is a third principle of natural justice, namely, that a party is entitled to know the reason for the decision, be it judicial or quasi-judicial. The Committee expressed the opinion that "there are some cases where the refusal to give grounds for a decision may be plainly unfair; and this may be so, even when the decision is final and no further proceedings are open to the disappointed party by way of appeal or otherwise" and that "where further proceedings are open to a disappointed party, it is contrary to natural justice that the silence of the Minister or the Ministerial Tribunal should deprive them of the opportunity". (p. 80) Prof. H.W.R. Wade has also expressed the view that "natural justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man's sense of justice". (See Wade, Administrative Law, 6th edn. p. 548.) In Siemens Engineering Co. case this Court has taken the same view when it observed that "the rule requiring reasons to be given in support of an order is, like the principles of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process". This decision proceeds on the basis that the two well known principles of natural justice, namely (i) that no man should be a judge in his own cause, and (ii) that no person should be judged without a hearing, are not exhaustive and that in addition to these two principles there may be rules which seek to ensure fairness in the process of decision-making and can be regarded as part of the principles of natural justice. This view is in consonance with the law laid down by this Court in A.K. Kraipak v. Union of India wherein it has been held : (SCR pp. 468-69 : SCC p. 272, para 20)

"The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely : (i) no one shall be a judge in his own cause (*nemo debet esse iudex propria causa*), and (ii) no decision shall be given against a party



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without affording him a reasonable hearing .(audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice."

38. A similar trend is discernible in the decisions of English courts wherein it has been held that natural justice demands that the decision should be based on some evidence of probative value. (See : R. v. Deputy Industrial Injuries Commissioner ex p. Moore; Mahon v. Air New Zealand Ltd.)

39. The object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure "fair play in action". As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect as those contained in the Administrative Procedure Act, 1946 of U.S.A. and the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded



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from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case.

40. For the reasons aforesaid, it must be concluded that except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision."

33. The Tribunal should keep in mind that the parameters for recalling the order for the purpose of rectification of mistake should be based on the same yardstick both for the assessee as well as for the Department. Mere oral concession by one or other counsel is also no ground for recalling the order. At the risk of repetition, we emphasise that reasons are the hallmark of any order including the order of recall.

34. It has come to our notice that many orders are passed recalling the earlier orders without stating the reasons. Fresh order is passed sometimes upsetting the earlier order in its entirety. This procedure is unknown in legal jurisprudence.

35. The incessant filing of Miscellaneous Petition by one or other party before the Tribunal in the name of rectification application or otherwise gives rise to further appeal before this Court on Interlocutory Orders and Miscellaneous Petitions. This adds to unwanted and uncalled for litigation.

36. This direction is issued to the Tribunal only to ensure that final orders passed on merits should not be normally interfered with on mere ipse dixit of one or other party.

37. It is dis-heartening to note that despite the decision reported in 320 ITR 12 (Mad) (Express Newspapers Limited v. Deputy Commissioner of Income-Tax and another) , the Tribunal is still continuing to recall the order on issues which are otherwise not a case of mistake apparent on the face of record. We hope that henceforth the Tribunal will follow and apply the above principles strictly to both the assessee and Revenue.



38. For the foregoing reasons, we pass the following order:

(i) The order of the Tribunal dated 18.1.2013 passed in M.P.Nos.233& 234/Mds/2012 in W.T.A.Nos.5&6/Mds/2012, recalling the original order passed on merits dated 13.3.2012, is erroneous and not in accordance with law and hence, the same is set aside;

(ii) As a consequence, the order dated 13.3.2013 passed in W.T.A.Nos.5 & 6/Mds/2012 also stands vacated;

(iii) Consequently, the question of law is answered in favour of the assessee and against the Revenue;

(iv) The original order dated 13.3.2012 passed by the Tribunal stands restored;

(v) The Department is, however, entitled to pursue the matter, if they are so advised, in accordance with law and the period during which the matter is pending before this Court and before the Tribunal in the application filed for rectification, will be eschewed for the purpose of limitation.

In the result, the above Tax Case (Appeals) are allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sl/sasi

To

- 1.The Income Tax Appellate Tribunal, Chennai "C" Bench
- 2.The Commissioner of Income Tax (Appeals), III, Chennai.
- 3.The Assistant Commissioner of Income Tax, Company Circle III(4), Chennai.
- 4.The Assistant Commissioner of Wealth-Tax, Company Circle III(4), 46, MG Road, Chennai - 34.

+1cc to Mr.N.Devenathan, Advocate, S.R.No.14097
+2cc's to Mr.M.Swaminathan, Advocate, S.R.No.13770

T.C.(A) Nos.23 to 26 of 2015

SU(CO)
CA(16/04/2015)