**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO. 736 OF 2014

The Commissioner of Income Tax-21,
Mumbai .. Appellant

v/s.

Mrs. Asha K. Ringshia .. Respondent

Mr. N.C. Mohanty for the appellant
None for the respondent

**CORAM : M.S. SANKLECHA &**
**A.K. MENON, J.J.**

**DATED : 23rd JANUARY, 2017.**

**P.C.**

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 26th June, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2008-09.

2. The Revenue has urged the following substantial question of law for our consideration :-

*"Whether on the facts and in the circumstances of the case and in*

*law, the Tribunal was justified in allowing the Miscellaneous Application by changing the date of commencement as 17.10.2003 instead of 17.10.2004 when the revenue has contested the decision for A.Y. 2007—08 before the Hon'ble Court which is pending ?*

3. The Tribunal had by an order dated 23rd January, 2013 passed under Section 254(1) of the Act, dismissed the Revenue's appeal for the subject assessment year by following its order for Assessment Year 2007-08. The Revenue did not file any appeal under Section 260A of the Act from the order dated 23rd January, 2013.

4. In the meantime, the respondent assessee took out an application seeking to rectify certain errors apparent on record in the order dated 23rd January, 2013. The Tribunal by the impugned order dated 26th June, 2013 allowed the respondent assessee's application for rectification under Section 254(2) of the Act for the subject assessment year.

5. The grievance of the Revenue before us is that the Tribunal could not have disposed of the Miscellaneous Application filed by the Revenue, as the appellant was in appeal in respect of the order passed

by the Tribunal for the Assessment Year 2007-08.

6. We are unable to understand the grievance of the Revenue. An application under Section 254(2) of the Act is not barred merely because an appeal against the order passed under Section 254(1) has been filed. In this case, admittedly, no appeal has, even from the order dated 23rd January, 2013, been preferred by the Revenue. In any case, an application for rectification under Section 254(2) of the Act is only to correct the errors apparent on record so as to cut out disputes with regard to the factual aspects due to errors in the impugned order of the Tribunal.

7. In the above view, the question as proposed does not give rise to any substantial question of law. Therefore, we see no reason to entertain the present appeal.

8. Accordingly, the appeal is dismissed. No order as to costs.

**(A.K. MENON, J.)** **(M.S. SANKLECHA, J.)**