IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.57 OF 2019

Devchhaya Industries … Petitioner

V/s.

The Asst. Commissioner of Income-tax
Circle-8, Pune. … Respondent

Mr.Mihir Naniwadekar with Mr.Rohan Deshpande i/by Ms.Alisha Pinto for the Petitioner.
Mr.Sham Walve for the Respondent.

CORAM : AKIL KURESHI AND
M.S.SANKLECHA, JJ.
DATE : FEBRUARY 14, 2019.

P.C.:-

1. This petition under Article 226 challenges the order dated 10th August, 2017 passed by the Income Tax Appellate Tribunal ("the Tribunal" for short). The impugned order dated 10th August, 2017 dismissed the petitioner's application for rectification under section 254(2) of the Income Tax Act, 1961 ("the Act" for short) seeking rectification of the order dated 25th May, 2016 passed under Section 254(1) of the Act. The order dated 25th May, 2016

was in respect of Assessment Year 2009-10.

2. The grievance of the petitioner to the impugned order dated 10th August, 2017 is limited to the fact that the ground urged in its application for rectification that the order dated 25th May, 2016 did not deal with its grievance of additional evidences produced before the Commissioner of Income Tax (Appeals) being rejected without any justification, was not dealt with in the impugned order dated 10th August, 2017. This even after having recorded the above grievance of the petitioner in its impugned order dated 10th August, 2017 as the grievance urged in ground No.5 in the application. No other grievance is being urged by the petitioner before us. It is the case of the petitioner that the additional evidence which was sought to be produced before the Commissioner of Income Tax (Appeals) goes to the root of the matter and the consideration of the additional evidence would have vital impact on result of the appeal for the Assessment Year 2009-10.

3. The above grievance of the petitioner of non-consideration

of the ground of rectification is evident from reading of the impugned order dated 10th August, 2017. This is even not disputed by the Revenue. Thus, there is flaw in the decision making process leading to the impugned order dated 10th august, 2017.

4. In the above view, it is clear that the Tribunal ought to have dealt with the above issue (urged as ground No.5) in the Miscellaneous Application for rectification and taken a view on it. Therefore, we direct the Tribunal to decide above issue urged as ground No.5 by the petitioner in its rectification application dated 30th November, 2016 and pass an order on the same after following the principles of natural justice.

5. Petition allowed in above terms. No order as to costs.

(M.S.SANKLECHA,J.) **(AKIL KURESHI,J.)**

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