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

WRIT PETITION NO.755 OF 2019

Rolls-Royce Marine India Pvt. Ltd. .... Petitioner

versus

The Income-tax Appellate Tribunal & Anr. ... Respondents

…....

- Mr.Paras Savla a/w Mr.Harsh Shah a/w Mr.Pratik Poddar, Advocate for Petitioner.
- Mr.Suresh Kumar, Advocate for Respondent.

CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.
DATE : 18th APRIL, 2019.

P.C. :

1. Heard learned Counsel for the parties for final disposal of the Petition. Petitioner's grievance is limited and arises out of an order dated 22/10/2018 passed by the Income Tax Appellate Tribunal (for short 'Tribunal').

2. The brief facts are as under;

The Petitioner is a company registered under the

Companies Act, 1956. For the assessment year 2012-2013, the Petitioner had filed return of income, which was taken in scrutiny by the Assessing Officer. The Assessing Officer referred certain transactions of the assessee for Transfer Pricing Adjustment ('TPA' for short). The Transfer Pricing Officer passed an order dated 18/01/2018 in which he suggested following two Transfer Pricing Adjustments.

Issue	**Adjustment amt.**
Provision of application engineering services	Rs.78,71,426/-
Payment of 'Corporate fees'	Rs.4,88,96,708/-

3. In terms of order of Transfer Pricing Officer, the Assessing Officer passed a draft order on 01/03/2016 incorporating the above Transfer Pricing Adjustments. Against such draft order, the Petitioner approached the Dispute Resolution Panel (for shot 'DRP'). The DRP passed order dated 09/09/2016 upholding both the adjustments. The Assessing Officer thereupon passed the order of assessment on

30/11/2016 which obviously contained both the Transfer Pricing Adjustments. Against such order of assessment, the Petitioner filed an Appeal before the Tribunal disputing both the adjustments. The Petitioner's grounds Nos.8 to 12 were in relation to the amount of Rs.4,88,96,708/- on account of payment of Corporate fees. The Petitioner had also filed an Application for admitting additional evidence before the Tribunal. The Tribunal disposed of the Appeal on 18/10/2017. The Tribunal allowed the Petitioner's Application for production of additional evidence. However, with respect to the Petitioner's substantial challenge to the addition of Rs.4,88,96,708/-, there was no finding by the Tribunal. In relation to the addition of Rs.4,88,96,708/-, which was the other head of Transfer Pricing Adjustments, the Tribunal deleted the same.

4. The Petitioner thereupon filed an Application for rectification before the Tribunal. The Petitioner urged that the Tribunal had allowed the additional evidence to be brought on record, but had not given any directions to the Assessing Officer

to reconsider the question of addition of Rs.4,88,96,708/- on the basis of such additional evidence. Neither the Tribunal had on its own decided the issue with or without the aid of such additional evidence. In other words, according to Applicant, this ground of challenge remained unanswered by the Tribunal.

5. The Tribunal rejected such Application by the impugned order on the ground that the Petitioner's plea falls under the realm of reconsideration of the Tribunal's order, which, within the jurisdiction of rectification, cannot be done.

6. We have heard learned Counsel for the parties. Petition is strongly opposed by learned Counsel Mr.Suresh Kumar. He supported the order passed by the Tribunal contending that the powers of rectification are limited. In exercise of such powers, the Tribunal cannot review its own decision.

7. In our opinion, however, this was a fit case where the Tribunal ought to have exercised the rectification powers. We

may recall that, before the Tribunal the assessee had raised specific ground to challenge the addition of Rs.4,88,96,708/-. In fact, this was the substantial part of the Petitioner's challenge in the Appeal before the Tribunal. In support of such ground, the Petitioner had also sought permission to produce additional evidence. Such permission was granted. Additional evidence was allowed to be brought on record. Thereafter the choice before the Tribunal was either to ask the Assessing Officer to take such additional evidence into account and re-decide the issue or to do itself. Unfortunately, the Tribunal did neither. In other words, the Tribunal disposed of the Petitioner's Appeal without giving any answer to the Petitioner's challenge to the addition of Rs.4,88,96,708/- made by the Assessing Officer. The power of rectification of the Tribunal flowing from section 254(2) of the Income Tax Act, 1961, howsoever, restricted, would definitely be available in a situation like the present one. When the Appellant before the Tribunal raises a ground, presses the ground in service, it is the duty of the Tribunal to dispose of such ground and give its opinion thereon. A ground which is raised and not given up when remains undecided in the judgment of the Tribunal, gives rise to an error on the face of record, which is rectifiable.

8. Under such circumstances, the impugned order of the Tribunal is set aside. The Petitioner's request for rectification of the original judgment of the Tribunal dated 18/10/2017 is granted. The Appeal is revived for the limited purpose of deciding the assessee's ground of challenge to the addition of Rs.4,88,96,708/-. The Tribunal would hear both the sides on this limited issue and dispose of the Appeal in accordance with law.

9. Petition is disposed of accordingly.

(SARANG V. KOTWAL, J.) **(AKIL KURESHI, J.)**