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

WRIT PETITION NO. 852 OF 2020

Pr. Commissioner of Income Tax - 4 ...**Petitioner**

Versus

Qmax Synthetics Pvt. Ltd. ...**Respondents**

Mr. Suresh Kumar for the Petitioner.

Mr. Shashi Bekal i/b. Mint and Confreres for Respondents.

CORAM : K.R. SHRIRAM &
R.I. CHAGLA, JJ.

DATE : 13 SEPTEMBER, 2021.

ORDER :

1. The department is impugning the order passed by the Income Tax Appellate Tribunal pronounced on 31st July, 2019 rejecting its Miscellaneous Application to recall an order of withdrawal passed on 3rd August, 2018.

2. Based on circular No.3 of 2018 dated 11th July, 2018 department had withdrawn the Appeal that was pending before the Tribunal. That circular came to be amended on 20th August, 2018,

wherein two new exceptions were included. The department therefore, filed the Miscellaneous Application to state that the amended circular will prevail and therefore, the order of withdrawal of Appeal should be recalled and Appeal should be restored.

3. This was rejected on the ground that the newly added exceptions were not part of the circular when the Appeals were withdrawn and therefore, they could not be considered at that time. Accordingly, there can be no mistake apparent from record in the order within the meaning of Section 254 (2) of the Income Tax Act, 1961.

4. Aggrieved by this order, the department has filed this Writ Petition. We have perused the impugned order and find no reason to interfere. Section 254 (2) reads as under:-

> *"......*
>
> *(2) The Appellate Tribunal may, at any time within four years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub- section (1), and shall make such amendment if the mistake is brought to its notice by the assessee or the Assessing Officer: Provided that an amendment*

> *which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this sub- section unless the Appellate Tribunal has given notice to the assessee of its intention to do so and has allowed the assessee a reasonable opportunity of being heard.*

5. Admittedly, the newly added exceptions were not there when the Appeals were withdrawn on 3rd August, 2018. Therefore, it cannot be stated that there was any mistake apparent from the record in the Tribunal to rectify the same and amend the order passed by it under Sub Section (1) of Section 254.

6. In the circumstances, Petition dismissed with no order as to costs.

[R.I. CHAGLA J.] **[K.R. SHRIRAM, J.]**