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

WRIT PETITION NO. 100 OF 2020

Pr. Commissioner Of Income Tax-8, Mumbai … Petitioner.

Versus

Sonata Software Ltd. … Respondent.

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Mr. Suresh Kumar for the Petitioner.
Mr. A. K. Jasani for the Respondent.

. . . . . .

CORAM : K. R. SHRIRAM AND
N. J. JAMADAR, JJ.

DATE : 10th JANUARY, 2022

(THROUGH VIDEO CONFERENCING)

P. C. :

1. Petitioner is impugning an order dated 5th July 2019 passed by the Income Tax Appellate Tribunal "I" Bench, Mumbai (for short, 'ITAT') by which the ITAT refused to entertain the Miscellaneous Application No.46/Mum/2019 that was filed by Petitioner. As could be seen from the very first paragraph of the impugned order, Petitioner was praying to ITAT to recall the order passed by ITAT on 20th February 2015.

2. The Apex Court in a recent matter of *Commissioner of Income tax (IT-4), Mumbai Vs. Reliance Telecom Limited* [1] held that, the powers of ITAT under Section 254(2) of the Income Tax Act, 1961 are only to rectify and/or correct any mistake apparent from the record. If the order passed by the ITAT was erroneous on merits, the remedy available to

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the party was to prefer an appeal before the High Court. The Apex Court further held that, the order passed by the ITAT recalling its earlier order is beyond the scope and ambit of the powers of the Appellate Tribunal conferred under Section 254 (2) of the Act. Paragraph Nos. 3.2, 4 and 6 of *Reliance Telecom Limited (Supra)* reads as under :

> *"**3.2.** Having gone through both the orders passed by the ITAT, we are of the opinion that the order passed by the ITAT dated 18-11-2016 recalling its earlier order dated 6-9-2013 is beyond the scope and ambit of the powers under section 254(2) of the Act. While allowing the application under section 254(2) of the Act and recalling its earlier order dated 6-9-2013, it appears that the ITAT has re-heard the entire appeal on merits as if the ITAT was deciding the appeal against the order passed by the C.I.T. In exercise of powers under section 254(2) of the Act, the Appellate Tribunal may amend any order passed by it under sub-section (1) of Section 254 of the Act with a view to rectifying any mistake apparent from the record only. Therefore, the powers under section 254(2) of the Act are akin to Order XLVII Rule 1 CPC. While considering the application under section 254(2) of the Act, the Appellate Tribunal is not required to re-visit its earlier order and to go into detail on merits. The powers under section 254(2) of the Act are only to rectify/correct any mistake apparent from the record."*
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> ***4.** In the present case, a detailed order was passed by the ITAT when it passed an order on 6-9-2013, by which the ITAT held in favour of the Revenue. Therefore, the said order could not have been recalled by the Appellate Tribunal in exercise of powers under section 254(2) of the Act. If the Assessee was of the opinion that the order passed by the ITAT was erroneous, either on facts or in law, in that case, the only remedy available to the Assessee was to prefer the appeal before the High Court, which as such was already filed by the Assessee before the High Court, which the Assessee withdrew after the order passed by the ITAT dated 18-11-2016 recalling its earlier order dated 6-9-2013. Therefore, as such, the order passed by the ITAT recalling its earlier order dated 6-9-2013 which has been passed in exercise of powers under section 254(2) of the Act is beyond the scope and ambit of the powers of the Appellate Tribunal conferred under section 254 (2) of the Act. Therefore, the order passed by the ITAT dated 18-11-2016 recalling its earlier order dated 6-9-2013 is unsustainable, which ought to have been set aside by the High Court.*
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> ***6.** None of the aforesaid grounds are tenable in law. Merely because the Revenue might have in detail gone into the merits of the case before the ITAT and merely because the parties might have filed*

detailed submissions, it does not confer jurisdiction upon the ITAT to pass the order de hors Section 254(2) of the Act. As observed hereinabove, the powers under section 254(2) of the Act are only to correct and/or rectify the mistake apparent from the record and not beyond that."

3. Petition therefore dismissed.

(N. J. JAMADAR, J.) **(K. R. SHRIRAM, J.)**

MANOJ R TANDALE
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