IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10075 OF 2024

Prakash D. Koli .. Petitioner.

Versus

Income Tax Appellate Tribunal
Pune Bench & Others .. Respondents.

Adv. Sanket S. Bora with Ms. Vidhi Punmiya, Mr. Amiya R. Das and Ms. Unnatii Thakkar i/b. SPCM Legal, for the Petitioner.

Adv. Arjun Gupta, for the Respondents.

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE: JULY 08, 2025

P. C.

1 ***Rule.*** Rule is made returnable forthwith at the request of and with the consent of the learned Counsel for the parties and heard finally.

2 The above Writ Petition is filed challenging the impugned order dated 4th August, 2023 passed by the Income Tax Appellate Tribunal ("ITAT"), invoking powers under Section 254(2) of the Income Tax Act, 1961 (the "IT Act"), as well as the order dated 26th October, 2023 giving effect to the order passed under Section 254 (2).

3 The short ground on which the order dated 4th August, 2023 is assailed is that there was no error apparent on the face of record for the Tribunal to invoke the jurisdiction under Section 254(2) of the IT Act.

4 Before we examine this aspect, it would be appropriate to set out some brief facts of the matter. In the present case, initially, the Assessing Officer made a disallowance of Rs.24.74 lakhs in the intimation under Section 143 (1) of the Act on the ground that the Assessee had deposited the employee's share of EPF and ESI etc., belatedly, and hence, they were not allowed to claim a deduction of this amount under Section 36 (1)(va) of the IT Act. Being aggrieved by this disallowance, the Assessee filed an Appeal before the Commissioner of Income Tax (Appeals) ["CIT(A)] without any success. In these circumstances, the Assessee finally approached the ITAT. The ITAT, by its order dated 22nd June 2022 [passed under Section 254(1)], observed that the employee's share of EPF and ESI etc., was deposited prior to the due date of filing of returns under Section 139 (1), and hence, the Assessee is entitled to the deduction. It accordingly allowed the deduction under Section 36(1) (va) of the Act. In reaching this conclusion, the Tribunal relied on the judgment of the Hon'ble Himachal Pradesh High Court in the case of ***CIT v/s. Nipso polyfabriks Ltd., (2013) 350 ITR 327 (HP).***

5 It appears that after passing of the Tribunal's order dated 22nd June, 2022, the Hon'ble Supreme Court in the case of ***Checkmate Services P. Ltd., & Ors. v/s. CIT & Others [(2022) 448 ITR 518 (SC)],*** overruled the proposition laid down in **Nipso polyfabriks Ltd., (supra).** In other words, the Hon'ble Supreme Court held that the deposit of the employee's share of EPF and ESI etc., can be allowed as a deduction to the Assessee under Section 36 (1)(va) only if it is deposited before the time limits prescribed under the respective statutes, and not if it is deposited only prior to the due date of filing returns under Section 139 (1) of the IT Act [as laid down in the **Nipso polyfabriks Ltd., (supra)**].

6 In light of this decision of the Hon'ble Supreme Court, and which was rendered on 12th October, 2022, the Revenue moved a Rectification Application before the ITAT by invoking the provisions of Section 254 (2) of the IT Act. It is in this Rectification Application that the impugned order is passed, wherein the Tribunal has allowed the Miscellaneous Application filed by the Revenue, and holding that the disallowance made by the Assessing Officer is sustained.

7 The only ground on which the Rectification is allowed is on the basis of the judgment of the Hon'ble Court in **Checkmates Services (supra)**. As mentioned earlier, this judgment was rendered by the Hon'ble Supreme

Court on 12th October, 2022 which is after the date when the original order was passed by the ITAT on 22nd June, 2022 holding that the Assessee was entitled to this deduction under Section 36 (1)(va).

8 Having heard the learned Counsel for the parties, we agree with the learned Counsel appearing on behalf of the Petitioner that a subsequent ruling of the Hon'ble Supreme Court cannot be a ground for invoking the provisions of Section 254 (2). Section 254 (2) can be invoked with a view to rectify any mistake apparent from the record and not otherwise. Admittedly, on the date when the original order was passed by the ITAT on 22nd June, 2022, it followed the law as it stood then. That was overruled subsequently by the Hon'ble Supreme Court in **Checkmates Services (supra)**. Hence, we are of the view, that on the date when the Tribunal passed its original order (on 22nd June, 2022), it could not be said that there was any error or mistake apparent on the record, giving jurisdiction to the Tribunal to invoke Section 254(2) of the IT Act.

9 We find that the view that we take is squarely covered by a Division Bench decision of this Court in the case of ***Infantry Security and Facilities through, proprietor Tukaram M. Surayawanshi v/s. The Income Tax Officer, Ward 4 (5)*** **[Writ Petition No. 17175 and other connected matters decided on 3rd December, 2024].** The Division Bench in **Infantry**

Securities and Facilities (supra) was concerned with the exact same decision of the Hon'ble Supreme Court in **Checkmates Services (supra)**. The Division Bench, after examining the law on the subject, came to the conclusion that the Tribunal was in patent error in exercising jurisdiction under Section 254(2), and passing the impugned order. The relevant portion of this decision read thus:-

> *14. In our clear opinion, the question would be required to be answered against the Revenue and in favour of the assessee. The reasons for which we discuss hereunder. In such context, at the outset, we may observe that the petitioner had succeeded before the Tribu12 ptnal on the basis of the position in law as it prevailed on the day the decision was rendered on the petitioner's appeal on 26 July 2022. Subsequent to the said orders passed by the Tribunal, on 12 October 2022, the Supreme Court rendered its decision in "Checkmate Services Private Limited" (Supra), whereby the Supreme Court held that the deduction of the employees' share can be allowed under Section 36(1)(va) of the IT Act, only if such share was deposited before the time limit under the respective statutes and not before the due date under Section 139(1) of the IT Act. In the fact situation, certainly it cannot be said that the Tribunal has overlooked the existing position in law, as laid down by the Supreme Court or the High Court, so as to bring about a situation that the law declared by the Supreme Court was not followed by the Tribunal and/or the decision of the Tribunal is contrary to the law as laid down by the Supreme Court. Such decision of the Supreme Court which never existed when the Tribunal passed the original order could never have been applied by the Tribunal, and hence it cannot be said that there was any mistake on the face of the record, so as* to *confer jurisdiction on the Tribunal to exercise its jurisdiction under Section 254(2) of the IT Act.*
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> ***16. In so far as the petitioner's contention on the jurisdiction of the Tribunal to entertain the Miscellaneous Application is concerned, it appears that the position in law is well settled. The jurisdiction as conferred under sub-Section(2) of Section 254 is akin to the jurisdiction conferred on the Civil Court under the provisions of Order XLVII, Rule 1 of the CPC inter alia to correct mistakes apparent on the face of the record. However, on a comparative reading of sub-Section (2) of Section 254 of the***

IT Act, and Rule 1 of Order XLVII of CPC, it appears that such jurisdiction conferred on the Tribunal is more restricted.

17 In Beghar Foundation (Supra), the Supreme Court was considering a review petition, filed against the final judgment and order dated 26 September 2018, passed on the main proceedings. In rejecting the review petition, the Supreme Court observed that no case for review of such judgment was made out, and most importantly on the ground that change in law or subsequent decision/judgment of coordinate or larger bench by itself cannot be regarded as a ground for review. Such principles of law are squarely applicable in the facts of the present case.

18 In Sanjay Kumar Agrawal vs. State Tax Officer (1) and Another, the Supreme Court following the decision in the Constitution Bench in Beghar Foundation (Supra), made the following observations:

> *"15. It is very pertinent to note that recently the Constitution Bench in Beghar Foundation v. K. S. Puttaswamy (Aadhaar Review - 5 J.), held that even the change in law or subsequent decision/judgment of coordinate Bench or larger Bench by itself cannot be regard as a ground for review."*

19. We may observe that recently a bench of the Tribunal in the case of ANI Integrated Services Ltd (Supra), had the occasion to consider the very issue as raised by the Revenue in light of the decision rendered by the Supreme Court in Checkmate Services Private Limited (Supra). In such case similar applications were filed by the Revenue praying that the Tribunal set aside its orders in relation to Employees State Insurance Corporation ("ESIC" for short) (for the Assessment Year 2019-20) considering the changed position in law in "Checkmate Services Private Limited" (Supra). The Tribunal by its decision dated 29 May 2024 [ANI Integrated Services Limited (Supra)] did not accept the contentions as urged on behalf of the Revenue and rejected the Miscellaneous Applications filed by the Revenue, also considering the decision in Beghar Foundation (Supra) and the scope of its limited jurisdiction under Section 254(2) of the IT Act. We are in complete agreement with the view taken by the Tribunal in ANI Integrated Services Ltd (Supra) and which is on the very issue as urged by the petitioner."

Not only do we agree with this decision, but we are also bound by it.

10 In light of the aforesaid discussion, we are of the view that this Petition deserves to be allowed. Accordingly, the Writ Petition is allowed in terms of prayer clause (a) which reads thus:-

> *" (a) to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, Order or direction, calling for the records of the Petitioner's case and after going into the legality and propriety thereof, to quash and set aside the impugned Order dated 4th August 2023 and Order giving effect dated 26th October 2023 and thereby restoring back the Order dated 22nd June 2022 passed u/s. 254 (1) of the ITA."*

11 Rule is made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms thereof. However, there shall be no order as to costs.

12 We may clarify here that by virtue of this order, the Revenue is not precluded from challenging the original order passed by the ITAT dated 22nd June, 2022 under Section 260A of the IT Act, if they are otherwise entitled to in law.

13 This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.] **[B. P. COLABAWALLA, J.]**