IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13454 OF 2025

Goldy Precision Stampings Pvt Ltd .. Petitioner

Versus

Assistant Director of Income Tax,
Centralized Processing Centre, Bengaluru & Anr. .. Respondents

Mr.Devendra H. Jain a/w Shashank A. Mehta, Saukhya D. Lakade, Advocates for the Petitioner.

Mr.A. K. Saxena, Advocate for Respondent Nos.1 and 2.

CORAM : B. P. COLABAWALLA &
AMIT S. JAMSANDEKAR, JJ.
DATE : OCTOBER 13, 2025

P. C.

1. Rule. Respondents waive service. 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 07th March 2025 passed by the Income Tax Appellate Tribunal ("**ITAT**"), invoking powers under Section 254(2) of the Income Tax Act, 1961 (the "**IT Act**").

3. The short ground on which the order dated 07th March, 2025 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.9,14,357/- in the intimation under Section 143 (1) of the Act on the ground that the Assessee had deposited the employee's share of provident fund, 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 20th September 2022 [passed under Section 254(1)], observed that the employee's share of provident fund and ESI etc., was deposited prior to the due date of filing of the return 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 Bombay High Court in the case of ***Commissioner of Income-tax, (Central), Pune vs. Ghatge Patil Transports Ltd. [2015] 53 taxmann.com 141 (Bombay)[14-10-2014]*** following the Hon'ble Supreme Court's decision in the case of ***Commissioner of Income-tax vs. Alom Extrusions Ltd. [2009] 319 ITR 306 (SC)[25-11-2009]***.

5. It appears that after passing of the Tribunal's order dated 20th September 2022, the Hon'ble Supreme Court, on 12th October 2022, in the case of ***Checkmate Services (P). Ltd. v/s CIT (2022) 448 ITR 518 (SC)***, overruled the proposition laid down in *Ghatge Patil Transports 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 of the return under Section 139 (1) of the IT Act [as laid down in the *Ghatge Patil Transports 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 recalled its original order dated 20th September 2022 passed under section 254(1).

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 20th September 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 20th September 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 20th September 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 v Income Tax Officer [Writ Petition No. 17175 and other connected matters, dated 3-12-2024]***. 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 here under. In such context, at the outset, we may observe that the petitioner had succeeded before the Tribunal 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.

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 v. 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."

10. Further, the Division Bench of this Court in the case of ***Prakash D. Koli Vs. Income tax Appellate Tribunal [2025] 176 taxmann.com 481(Bombay)*** and ***Rajkumar Laxminarayan Kanojiya vs. Deputy Commissioner of Income Tax CPC, Bengaluru & Ors [WP (L) No. 24647 of 2025 decided on 16th September 2025]*** has followed the decision in the case of *Infantry Security and Facilities v/s Income Tax Officer (supra).*

11. Further, the Division Bench of this Court in the case of ***Vaibhav Maruti Dombale Vs. The Assistant Registrar, ITAT Mumbai and others [W.P. No. 1489 of 2025 decided on 12th September 2025]*** has also quashed the order passed under section 254(2) in the exactly identical factual background. The relevant portion of this decision reads thus:-

> *15.* ***In Commissioner of Income-tax (IT-4), Mumbai v. Reliance Telecom Ltd. [2021] 133 taxmann.com 41 (SC)****, the Hon'ble Supreme Court has held that the powers under Section 254(2) of the IT Act are akin to Order 47 Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the CPC"). In this context, paragraph 3.2 of the said judgement is relevant and is set out hereunder:*
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> > *"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 06.09.2013 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 06.09.2013, 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(2) 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."*
> >
> > *(emphasis supplied)*

16. *As can be seen from the aforesaid judgement, it holds that the powers under Section 254(2) of the IT Act are akin to Order 47 Rule 1 of the CPC. The Explanation to Order 47 Rule 1 of the CPC clearly provides that the fact that a decision on a question of law on which the judgement of the Court is based has been reversed or modified by a subsequent decision of a superior court in any other case was not a ground for review of such judgement. Hence, the said Explanation under Order 47 Rule 1 of the CPC expressly bars a review on the ground that there is a mistake apparent on the face of the record on the basis of a subsequent decision of a Court.*

17. *Further, this exposition of law in respect of the Explanation under Order 47 Rule 1 has been confirmed by a decision of the Hon'ble Supreme Court in* ***Commissioner of Income-tax vs. Gracemac Corporation (2023) 456 ITR 135.*** *Paragraph 5 of the said judgement is relevant and reads as under:*

> *"Apart from this, it has also been brought to our notice by the learned Additional Solicitor General that in Microsoft Corporation (MS Corp) bearing SLP (C) Diary No.7076 of 2023, (Since Reported as CIT(International Taxation) v. Microsoft Corporation (MS Corp)[2023]453 ITR 746 (SC)) a coordinate Bench of this Court by an order dated March 20.2023 dismissed the special leave petition and liberty has been reserved to reopen and/or revive the special leave petition in the event the review petition in Engineering Analysis Centre of Excellence Pvt. Ltd. (supra) is allowed. In our view, as on today, Engineering Analysis Centre of Excellence Private Limited (supra) is holding the field. In the event, the aforesaid decision is overruled, that cannot have a bearing on the present case, as it will have an impact only on the judgement passed in Engineering Analysis Centre of Excellence Pvt. Ltd. (supra) and the cases to be decided thereafter. <u>In other words, if once a judgement is passed by a Court following another judgement and subsequently the latter judgement is overruled on a question of law, it cannot have an effect of reopening or reviving the former judgement passed following the over ruled judgement nor can the same be reviewed. This is having regard to the</u>*

Explanation to Order XLVII rule 1 of the Code of Civil Procedure, 1908 (for short "CPC") which reads as under:

> *"Order XLVII Rule 1 CPC. Application for review of judgement.— (1) Any person considering himself aggrieved—*
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> *(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,*
>
> *(b) by a decree or order from which no appeal is allowed, or*
>
> *(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgement to the Court which passed the decree or made the order.*
>
> *Explanation - The fact that the decision on a question of law on which the judgement of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgement."*
>
> *(emphasis supplied)*

18. Further, in its decision in ***Beghar Foundation vs. Justice K.S.Puttaswamy [2021] 123 taxmann.com 344 (SC),*** *the Hon'ble Supreme Court has held that a change in law or a subsequent decision / judgement of a Co-ordinate Bench or a Larger Bench by itself cannot be regarded as a ground of review.*

19. In the case of ***Government of NCT of Delhi and Another vs. K.L.Rathi Steels Limited and Others (2023) 9 SCC 757****, there was a difference of opinion between two Judges of the Hon'ble Supreme*

Court. Justice Nagarathna, whilst disagreeing with Justice M.R.Shah, held that, in view of a specific bar created by the Explanation to Rule 1 of Order 47 of the Code of Civil Procedure, 1908, the Review Petition could not be entertained by taking into consideration a subsequent overruling of a determined judgement. Paragraphs 67 and 68 of the said disagreeing opinion of Justice Nagarathna referred to the decision of the Hon'ble Supreme Court in Saurashtra Kutch Stock Exchange Ltd. ***(supra)*** *whilst coming to the said view. Paragraphs 67 and 68 of the said disagreeing opinion of Justice Nagarathna reads as under:*

> *"67. Similarly, reliance was placed on Assistant CIT v. Saurashtra Kutch Stock Exchange Ltd. A judgement which was pronounced earlier by a superior Court and holding the field, was not noticed by the Income Tax Appellate Tribunal, subsequently, while deciding a matter. Hence, it was observed that there was a mistake apparent from the record as there was non-consideration of a binding decision of superior Court by the said Tribunal. Hence, the same could be rectified under Section 254(2) of the Income Tax Act, 1961.*
>
> *68. The above decision in Saurashtra Kutch Stock Exchange case is also not applicable in the instant case for the reason that when Pune Municipal Corpn. was decided there was no judgement of Indore Development Authority. The decision of the Larger Bench in Indore Development Authority is not prior to but subsequent to the judgement in Pune Municipal Corpn. The judgement and decision in Pune Municipal Corpn. dated 08.02.2018 held the field till the judgement in Indore Development Authority which was pronounced on 06.03.2020. Therefore, the judgement in Indore Development Authority being a subsequent decision cannot give rise to review and recall of the decision in Pune Municipal Corpn. as well as other judgements following the aforesaid case, on the basis that judgement in Pune Municipal Corpn. has been overruled in the subsequent case, namely, Indore Development Authority."*
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> *(emphasis supplied)*

20. The view taken by Justice Nagarathna was confirmed by a three Judge Bench of the Hon'ble Supreme Court in ***Government of NCT of Delhi and Another vs. K.L. Rathi Steels Limited and Others (2024) 7 SCC 315.*** *Paragraphs 110 and 125 of the said judgement read as under:*

> *"110. We, thus, hold that no review is available upon a change or reversal of a proposition of law by a superior court or by a larger Bench of this Court overruling its earlier exposition of law whereon the judgement/order under review was based. We also hold that notwithstanding the fact that Pune Municipal Corpn. has since been wiped out of existence, the said decision being the law of the land when the civil appeals/special leave petitions were finally decided, the subsequent overruling of such decision and even its recall, for that matter, would not afford a ground for review within the parameters of Order 47 CPC.*
>
> *125. We respectfully concur with the opinion expressed by the Hon'ble Companion Judge on the said Division Bench and record our inability to be ad idem with the Hon'ble Presiding Judge."*
>
> *(emphasis supplied)*

21. The ITAT, in its decision in ***Deputy Commissioner of IT vs. ANI Integrated Services Limited (2024) 162 taxmann.com 889,*** *has also held that in its judgement in* ***Saurashtra Kutch Stock Exchange Ltd. (supra)****, the Hon'ble Supreme Court has not laid down the principle that after the passing of the Order of the Tribunal which has attained finality between the parties, a subsequent judgement is rendered by a superior court, then the order of the Tribunal should be recalled within the scope of Section 254(2) of the IT Act. Paragraphs 20 to 22 of the said judgement are relevant and are set out hereunder:*

> *"20. We are aware that many of the Co-ordinate Benches have recalled the order of the Tribunal on this issue on the*

principle of the Hon'ble Supreme Court in the case of Asstt. CIT v. Saurashtra Kutch Stock Exchange Ltd. [2008]173 Taxman 322/305 ITR 227. In the aforesaid case the issue was that the Tribunal has passed an order on 27/10/2000 upholding the decision of CIT that assessee was not entitled for exemption u/s.11. Thereafter, the Miscellaneous Application was filed u/s. 254(2) to rectify the error committed by the Tribunal in the decision rendered by any appeal as it has not followed the judgement of the Hon'ble Jurisdictional High Court in the case of Hiralal Bhagwati vs. CIT reported in [2000] 246 ITR 188(Guj.) ; Suhrid Geigy Ltd vs. Commissioner of Surtax [1999] [1999] 107 Taxman 347/237 ITR 834(Guj.) which was already available on the date of the order. Thus, non- consideration of binding decision of the Jurisdictional High Court which was not followed by the Tribunal, rather it was not brought to the notice of the Tribunal therefore, Miscellaneous Application was filed and Tribunal had then recalled the order. Against this recalling of the order, Revenue had filed the writ petition which was dismissed by the Hon'ble High Court. Thus, before the Hon'ble Supreme Court one of the question was, whether the ITAT was right in exercising the powers under sub- section (2) of Section 254 on the ground that there was a mistake apparent from record committed by the Tribunal while deciding the appeal and whether it could have recalled the earlier order of the Tribunal on that ground. Thus, the core issue was, whether non-consideration of a decision of the Jurisdictional High Court or of the Hon'ble Supreme Court which was already existing at that time when the judgement was rendered by the Tribunal can be stated to be mistake apparent from the record. The Hon'ble Supreme Court upheld that the Tribunal was right in holding that it was a mistake which can be said to be mistake apparent from the record which could be rectified u/s.254(2). <u>There was no such principle which has been laid down that if after passing of the order of the Tribunal which has attained finality between the parties and in subsequent judgement is rendered by the superior Court, the same should also be recalled within the scope of Section 254(2).</u> Though the Hon'ble Supreme Court had referred to a decision of Gujarat High Court in the case of Suhrid Geigy Ltd (Supra) that if the point is covered by the decision of the Hon'ble Jurisdictional High Court rendered prior or even subsequent to the order of rectification, it could be a mistake apparent from the record *u/s. 254(2) and could be corrected by the Tribunal. However, the Hon'ble Supreme Court has referred this judgement and only held that if a judgement is being rendered by any High Court or Supreme Court that means the law was always being the same and if a subsequent decision alters the earlier one, the later decision does not make a new law. <u>This observation of the Court does not lead to any inference to draw that any rectification order u/s. 254(2) can be based on subsequent judgement which comes later on. On the contrary, all the aforesaid judgements of Hon'ble Supreme Court which we have quoted above extenso have clearly held that there would be no review or recall of the order based on the subsequent judgement.</u> Finally, the Hon'ble Supreme Court in the case of Saurashtra Kutch Stock Exchange Ltd. on the fact of the case has concluded as under:-*

> *"In the present case, according to the assessee, the Tribunal decided the matter on October 27, 2000. Hiralal Bhagwati was , decided a few months prior to that decision, but it was not brought to the attention of the Tribunal In our opinion, in the circumstances, the Tribunal has not committed any error of law or of jurisdiction in exercising power under sub-section (2) of section 254 of the Act and in rectifying the "mistake apparent from the record" Since no error was committed by the Tribunal in rectifying the mistake, the High Court was not wrong in confirming the said order Both the orders, therefore, in our opinion, are strictly in consonance with law and no interference is called for."*

21. <u>The sequitur of the aforesaid decision of the Hon'ble Supreme Court is that, if already existing judgement of Jurisdictional High Court is not brought to the notice or attention of the Tribunal, then the Tribunal can recall the order while exercising the powers u/s.254(2).</u>

22. Even otherwise <u>also once in the latest decision in the case of CIT vs. Reliance Telecom Ltd. (supra) the Hon'ble Supreme Court have clearly held that the powers u/s. 254(2) of the Income Tax are akin to Order XLVII Rule 1 CPC, then it cannot be held that scope of power u/s.254(2) is beyond and much larger than scope of review as given in the Order XLVII Rule 1 of CPC.</u> In fact, the scope of Section 254(2) is much limited and the scope of review is much wider. Accordingly, in view of the law laid down by the Hon'ble Constitutional Bench of the

Hon'ble Supreme Court and several other judgements of Hon'ble Supreme Court cited supra, we hold that order of the Tribunal cannot be recalled based on the subsequent judgement of the Hon'ble Supreme Court when the order of the Tribunal had attained finality between the parties. Consequently, the Miscellaneous Application filed by the department is dismissed."

(emphasis supplied)

22. ***In Infantry Security and Facilities vs. the Income Tax Officer, Ward 4(5) (in Writ Petition No.17175 of 2024 with Writ Petition Nos.17176 of 2024 and 17177 of 2024),*** *a Coordinate Bench of this Court has taken a similar view and has expressed complete agreement with the view taken by* ***ANI Integrated Services Ltd. (supra)****. Paragraphs 14 and 16 to 20 of the judgement of this Court in* ***Infantry Security (supra)*** *are relevant and are set out hereunder:*

"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 Tribunal 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.

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 judgement 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 judgement was made out, and most importantly on the ground that change in law or subsequent decision/judgement 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 5, 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/judgement 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.*
>
> *20. In view of the aforesaid discussion, we are of the clear opinion that the Tribunal was in a patent error in exercising jurisdiction under Section 254(2) in passing the impugned order. The petitions accordingly need to succeed. The petitions are allowed in terms of prayer clause (a) of each of these petitions."*
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> *(emphasis supplied)*

23. *As far as the judgement of the Gujarat High Court in* ***Suhrid Geygy Limited vs. Commissioner of Surta (99) 107 taxmann.com 347 Gujarat*** *is concerned, the same does hold that if a point is covered by the decision of a jurisdictional court rendered prior or even subsequent to the order of rectification, it could be said to be "mistake apparent from the record" under Section 254(2) of the I.T.Act and could be corrected by the Tribunal. However, in light of the aforesaid position in law, as laid down by various judgements of the Hon'ble Supreme Court and by the judgement of this Court, we are unable to agree with the said conclusion arrived at by the Gujarat High Court.*

24. *For all the aforesaid reasons, we hold that a subsequent ruling of a Court cannot be a ground for invoking the provisions of Section 254(2) of the IT Act. Section 254(2) of the IT Act can be invoked with a view to rectify any mistake apparent from the record. Admittedly, on the date when the original order was passed by the ITAT on 5th September 2022, it followed the law as it stood then. This was overruled*

subsequently by the Hon'ble Supreme Court in ***Checkmate Services (supra).*** *Hence, we are of the view, that, on the date when the ITAT passed its original order dated 5th September 2022, it could not be said that there was any error or mistake apparent on the record, giving jurisdiction to the ITAT to invoke Section 254(2) of the IT Act.*

(emphasis supplied)

12. 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) that this Hon'ble Court may be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, Order or direction under Article 226 and 227 of the Constitution of India, 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 07th March 2025 passed by the Hon'ble ITAT in M.A. No. 194/Pun/2023 and the consequential order (if any) passed by the Hon'ble Income Tax Appellate Tribunal and the order passed by Hon'ble ITAT in ITA No. 464/Pun/2021 dated 20th September 2022 be restored."

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

14. 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 20th September 2022 under Section 260A of the IT Act, if they are otherwise entitled to in law.

15. 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.

[AMIT S. JAMSANDEKAR, J.] **[B. P. COLABAWALLA, J.]**