

**IN THE HIGH COURT FOR THE STATE OF TELANGANA AT
HYDERABAD**

THE HON'BLE SRI JUSTICE P.SAM KOSHY

AND

THE HON'BLE SRI JUSTICE SUDDALA CHALAPATHI RAO

ITTA.No.421 of 2013

Dt. 06 .03.2026

Between:

The Commissioner of Income Tax(TDS), Hyderabad

.... Appellant

and

M/s Jaypeem Granites (P) Ltd.

...Respondents

JUDGMENT: *(Per the Hon'ble Sri Justice Suddala Chalapathi Rao)*

1. The instant appeal has been filed by the appellant/Revenue challenging the order passed by the Income Tax Appellate Tribunal, Bench 'A', Hyderabad (for short 'the ITAT') in MA.No.125/HYD/2012 in ITA.No.372/Hyd/2010, dt.03.08.2012.

2. The brief facts of the case are that, the assessee is engaged in the business of manufacturing and exporting granite products consisting of handicrafts, artistic stone products, tiles, slabs, monuments, etc. While so, a survey under Section 133A of the Income Tax Act, 1961 (for short 'the Act') was conducted by the

Assessing Officer at the assessee's premises on 19.08.2008 and during the said survey, the Assessing Officer found that the assessee had given advances to its sister concern, M/s Odlings (Memorial) Pvt. Ltd. (OMPL), in which shareholders of the assessee held more than 20% substantial interest. The Assessing Officer further noticed that the advances given by the assessee to OMPL were Rs.1,35,60,236/- for the assessment year 2005-06 and Rs.1,35,99,959/- for the assessment year 2006-07 and that Sri Harvesh Marwaha and Smt Asmita Gunti Marwaha were common shareholders in both companies and that Sri Harvesh Marwaha, who is the share holder of M/s Jaypeem Granites Pvt Ltd., held more than 20% shareholding on OMPL, while his shareholding in the assessee-company is more than 10%.

3. The Assessing Officer therefore concluded that the advances given by the assessee-company to OMPL constitute 'deemed dividend' within the meaning of Section 2(22)(e) requiring deduction of tax at source under Section 194. Accordingly, a show-cause notice, dt.10.08.2009, was issued to the assessee, to which assessee submitted its reply, dt.07.09.2009 objecting to the proposal to treat the assessee as assessee-in-default under Sections 201(1)/201(1A) of the Act.

4. After considering the objections placed by the assessee, the Assessing Officer observed that the ledger extracts showed only cheques issued to OMPL and did not clearly indicate that the payments were made towards processing charges and there was no correlation between the advances given and the invoices raised for purchases or processing charges, to treat the payments as trade advances, and held that such regular advances construed 'deemed dividend' within the meaning of Section 2(22)(e) of the Act.

5. As regards main issue of deduction of tax at source under Section 194 of the Act, since the assessee had not deducted tax at source @ 22.44% under Section 194, the Assessing Officer treated the assessee as an assessee-in-default and raised demand of tax under section 201(1) for Rs.30,42,920/- for the assessment year 2005-06 and Rs.28.20,079/- for the assessment year 2006-07, along with interest under Section 201(1A) for both the assessment years.

6. The said assessment orders were challenged by the assessee before the Commissioner of Income Tax (Appeals) (for short 'CIT(A)') and the CIT(A) partly allowed the appeals. Challenging the said orders, the Revenue filed appeals before the learned ITAT in

ITA.No.372/HYD/2010 (AY 2005-06) and ITA.No.373/HYD/2010(AY 2006-07), and the assessee also filed appeals in ITA.Nos.128 and 129/Hyd/2010.

7. The learned ITAT heard all four appeals together and after appreciation of the facts on record, by a common order has allowed the appeals filed by the assessee in ITA.Nos.128 and 129/Hyd/2010, and the appeals filed by the Revenue in ITA.Nos.372 and 373/ HYD/2010 were also allowed for statistical purposes and they were remanded to the CIT(A) for fresh consideration.

8. After the learned ITAT passed common order in all four appeals, as a mistake occurred inadvertently in the said common order, by allowing the appeals of the assessee as well as the appeals filed by the revenue on the very same issues raised by both the parties, the assessee has filed miscellaneous applications for rectification of the orders passed in Revenue appeals *vide* MA.No.125/Hyd/2012 in ITA.No.372/Hyd/2010 and MA.No.126/Hyd/2012 in ITA.No.373/Hyd/2010 under Section 254(2) of the Act seeking rectification of the order of the learned ITAT, as both sets of appeals, one set filed by the assessee and

other filed by the Revenue, cannot be allowed simultaneously against the very same principle raised by both sides.

9. In the said miscellaneous applications, it was contended by the assessee that in para 5 of the impugned order, which dealt with the grounds raised by the assessee in its appeals ITA.No.128 and 129/Hyd/2010 for the assessment years 2005-06 and 2006-07 and in para 14 of the common order, which contains the grounds raised by the revenue in its appeals ITA.Nos.372 and 373/Hyd/2010 for the same years, are common. Further, the Grounds 2 and 3 of revenue's appeals and grounds 3 to 6 of assessee's appeals, related to the same issue.

10. While the learned ITAT has granted relief to the assessee in respect of the grounds of the assessee in para 12 of its order, had simultaneously, in respect of the very same grounds raised by the revenue at grounds No.2 & 3, set aside the order of CIT(A) and remanded the matter to the file of CIT(A) for want of speaking order, and for statistical purposes allowed the said appeals of Revenue also.

11. It is contended by the assessee in the said miscellaneous applications that the learned ITAT's order contained conflicting findings on identical issues raised by both sides, which was a

mistake apparent on record and sought for correction of the said mistake in the Revenue appeals.

12. The learned ITAT after hearing both sides and perusing its earlier common order passed in all four appeals, dt.08.06.2012, found that para 12 of the order was not in harmony with para 16 of the very same order, as the findings are conflicting to each other, moreso, when the both the assessee and the Revenue had raised the same issues and concluded that there was indeed an error apparent on the face of the record and accordingly, the learned ITAT rectified the mistake and held that the appeals filed by the assessee *vide* ITA.Nos.128 and 129/Hyd/2010 were allowed and the appeals filed by the revenue *vide* ITA.Nos.372 and 373/Hyd/2010 were dismissed.

13. The said common order passed by the learned ITAT insofar as MA.No.125/H/2012, dt.08.06.2012 alone was challenged by the Revenue in the instant appeal.

14. The instant appeal has been admitted to consider the following substantial question of law:

“Whether on the facts and in the circumstances of the case, the Appellate Tribunal is correct in reversing its earlier order disallowing the Income Tax Department’s

appeal in an application filed by the assessee under Section 254(2) of the Income Tax Act and dismissing the Department's Appeal?"

15. Heard Sri Raja Shekar Rao Salvaji, learned Senior Standing Counsel for Income Tax for appellant/revenue and Sri Srinivasa Iyengar, learned counsel for respondent/assessee.

16. Learned Senior Standing Counsel for the appellant, Sri Raja Shekar Rao Salvaji, contends that the impugned order passed by the learned ITAT, dt.08.06.2012, amounts to review of its earlier orders, which in fact, is against to the settled principle of law that the learned ITAT has no jurisdiction to review or substantially modify its earlier orders and that the entire factual gamut of the impugned order speaks that the learned ITAT set aside its earlier order passed in the appeals filed by the appellant/Revenue in ITA.No.372 and 373 of 2010, whereby the said appeals were allowed by the learned ITAT, but however, by the impugned order passed in the miscellaneous applications, it is contended that the learned ITAT has re-appreciated the evidence and reversed its earlier view, by dismissing the revenue's appeals. The learned Senior Standing Counsel therefore emphasizes that this exercise amounts to a review of the earlier order, which is beyond the powers of the learned ITAT under Section 254(2) of the Act.

17. The learned counsel for the appellant/Revenue placed reliance on the judgment of the Hon'ble Bombay High Court in ***Sony Pictures Networks India Pvt Ltd v. Income Tax Appellate Tribunal Mumbai & Ors.***¹, wherein it was categorically held that under Section 254 of the Act, though the Tribunal has got ample power to rectify its mistakes, it cannot re-appreciate the evidence and give a finding.

18. Further reliance was placed on the decision of the Hon'ble Allahabad High Court in the case of ***Commissioner of Income Tax Vs Ved Prakash Agarwal***², wherein it was held as under:

“It is settled that errors apparent on the record can be rectified under Section 254. The case law on this is used has been discussed by the Division Bench of this Court in the case of ***Biswanath Prasad & Sons v. Commissioner of Income Tax***³”.

19. By placing reliance on the aforesaid judgments, the learned Senior Standing Counsel for the appellant/Revenue contends that the order passed in the underlying application amounts to reviewing its earlier order, which is impermissible in law and therefore, the impugned order is liable to be set aside.

¹ (2019) 411 ITR 447

² (2009) 317 ITR 330

³ (2005) 277 ITR 265 (All)

20. *Per contra*, the learned counsel for the respondent/assessee contended that there was a clear error apparent in the original common order passed by the learned ITAT, when the four appeals were heard together and decided, since the core issue involved in all the appeals filed by both the Revenue and the assessee was same, and the learned ITAT, after examining the facts, had allowed the appeals filed by the assessee. However, at the same time, it has allowed the appeals filed by the Revenue and remanded the Revenue's appeals for statistical purposes, thereby it amounts to contradictory views on the same issues and the same is an error apparent on record, which was rectified by the learned ITAT under Section 254 of the Act.

21. It is further submitted by the learned counsel that because of the inconsistent findings on identical issues in the common order, the assessee filed the miscellaneous applications against the orders passed in the appeals filed by the revenue. The learned ITAT, after examining the record, noticed that contradictory conclusions had been recorded in different paragraphs of the same order. Therefore, the mistake apparent on the face of the record was corrected and the learned ITAT rectified the order by

allowing the assessee's appeals and dismissing the Revenue's appeals.

22. In support of the said submissions, learned counsel for the respondent/assessee placed reliance on the judgment of the Hon'ble Supreme Court in ***T.S. Balaram v. Volkart Brothers, Bombay***⁴ and also the judgment of the Hon'ble Bombay High Court in ***Commissioner of Income Tax v. Ramesh Electric and Trading Co.***⁵ wherein the Hon'ble Supreme Court as well as the Division Bench of the Bombay High Court have categorically held that if there are errors apparent on the face of the record, can be rectified by the learned ITAT under Section 254 of the Act.

23. Learned counsel further submitted that in the light of the aforesaid precedents and as seen from the impugned order passed by the learned ITAT it is apparent that the learned ITAT had taken conflicting views in the operative portion of the original order on the very same issue and so as to rectify this apparent mistake, the learned ITAT exercised its power under Section 254(2) of the Act and while doing so, it did not undertake a fresh appreciation of evidence but merely removed the inconsistency in its own order, and thus, the learned ITAT has rightly corrected the order and has

⁴ (1971) 2 SCC 526

⁵ (1993) 203 ITR 497 : 1992 SCC Online Bom 599

allowed the appeals of the respondent/assessee and dismissed the appeals filed by the appellant/Revenue, and thus, prayed to dismiss the present appeal.

24. We have given earnest consideration to the submissions made by the learned counsel appearing on both sides and perused the record.

25. Notably, the only question that arises for consideration before this Court is whether, by passing the impugned order in the miscellaneous applications, the learned ITAT has exercised its power of rectification within the scope of Section 254(2) of the Act or whether it has effectively reviewed its earlier common order, which is impermissible in law.

26. It is well settled that under Section 254(2) of the Act, the learned ITAT has got power to rectify any mistakes apparent on the face of the record. The scope of exercise of this power has been explained by the Hon'ble Supreme Court in **T.S.Balaram's** case(supra) wherein it was held that:

“A mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may conceivably be two opinions. As seen earlier, the High Court of Bombay opined that the original assessments were in accordance

with law, though in our opinion the High Court was not justified in going into that question.”

27. Similarly, in **Ramesh Electric and Trading Co.**'s case, the Hon'ble Bombay High Court observed as under:

“The power of rectification under Section 254(2) can be exercised only when the mistake which is sought to be rectified is an obvious and patent mistake which is apparent from the record, and not a mistake which requires to be established by arguments and a long drawn process of reasoning on points on which there may conceivably be two opinions.” the Tribunal cannot reappreciate evidence or reconsider its findings on merits under the guise of rectification.

28. Further, the judgments relied upon by the Revenue, including **Sony Pictures Networks India Pvt. Ltd.**'s case(*supra*) and **Ved Prakash Agarwal's case**(*supra*),(which followed the decision in **Biswanath Prasad & Sons'** case(*supra*)), reiterate the same principle that the Tribunal cannot undertake a review or reappraisal of evidence while exercising power under Section 254(2).

29. Thus, the legal position is clear and not in dispute that the learned ITAT has no power of review, but it can certainly correct a mistake which is apparent and self-evident from the record.

30. In the instant case, when the assessee and Revenue preferred two appeals (in all four) against the very same common order passed by the CIT(A), evidently, the learned ITAT allowed the assessee's appeals on merits after assigning reasons. At the same time, while dealing with the Revenue's appeals on the very same issues, the learned ITAT allowed the said appeals for statistical purposes and remanded the matters.

31. Once the issues have already been decided in favour of the assessee with clear reasoning, there was no justification for remitting the very same issues for reconsideration in the Revenue's appeals. This approach of the learned ITAT has resulted in an inherent contradiction in the order, which resulted in the assessee filing miscellaneous applications against the orders in the revenue appeals seeking rectification.

32. The learned ITAT by the impugned order held that its earlier common order passed in four appeals, contained contradictory findings on the same issues, as it had allowed the appeals filed by the assessee and simultaneously remanded the Revenue's appeals on the very same issues for further consideration, and thus, rectified the apparent error by holding that the appeals filed by the

assessee are allowed and the appeals of the revenue are dismissed.

33. A plain reading of the common order passed by the learned ITAT in four appeals, preferred by both the assessee and revenue, show that two different conclusions had been recorded on identical issues and it is thus, an apparent contradiction within the same order and it does not require a fresh examination of evidence or reevaluation of the merits.

34. Further, when both parties file appeals against the same order, the appellate authority must decide the issues, either by dismissing the appeals or allowing one of them or partly allowing them or remanding the matter. It is not possible to allow appeals preferred by both parties on the same issues arising out of the same order.

35. In view of the above factual matrix of the case, we are of the considered view that the learned ITAT by the impugned order has only rectified the error apparent on the face of its earlier order by only rectifying the final conclusion consistent with the reasoning, which does not amount to reconsidering the evidence or taking a fresh view on the merits.

36. Thus, the assertion of the learned Senior Standing Counsel for the appellants/Revenue that the learned ITAT has re-appreciated the matter is untenable and does not hold water, calling interference of this Court with the well-considered orders passed by the learned ITAT, and the same is rejected.

37. It is also relevant to note that the impugned order is a common order passed in two miscellaneous applications MA.Nos.125 and 126 of 2012 arising out of ITA Nos.372 and 373 of 2010. However, the Revenue has chosen to challenge the order relating to MA.No.125 of 2012 in ITA.No.372 of 2010 for the assessment year 2005-06, and the unchallenged order passed in the other miscellaneous application relating to the subsequent assessment year has attained finality. Such selective challenge is impermissible, which weakens its contention that the learned ITAT acted beyond its jurisdiction. On this ground also, the appeal filed by the Revenue is liable to be dismissed.

38. Therefore, in our considered view, the impugned order passed by the learned ITAT rectifying the mistakes apparent on face of the order, is just and proper, and well within the powers of the learned ITAT under Section 254(2) of the Act. Thus, the appeal lacks merit and is liable to be dismissed. Accordingly, the

substantial question of law is answered against the appellant/Revenue and in favour of the respondent/assessee.

39. In view of the above findings, the appeal is dismissed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

P.SAM KOSHY, J

SUDDALA CHALAPATHI RAO, J

Dt. 06 .03.2026

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