IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH"B", LUCKNOW

BEFORE SHRI. T.S. KAPOOR, ACCOUNTANT MEMBER
AND SHRI PARTHA SARATHI CHAUDHURY,JUDICIAL MEMBER

M.A. Nos. 58 & 59/LKW/2016
[Arising out of ITA No.824 & 825/LKW/2014]
Assessment Year:2001-02 & 2005-06

U.P. Forest Corporation Lucknow	v.	DCIT Range 1 Lucknow
TAN/PAN:AAATU3944K		
(Applicant)		(Respondent)

Applicant by:	Shri D.D. Chopra, Advocate		
Respondent by:	Smt. Jyoti Verma, D.R.		
Date of hearing:	27	04	2018
Date of pronouncement:	02	05	2018

O R D E R

PER PARTHA SARATHI CHAUDHURY, J.M:

These Miscellaneous Applications are preferred by assessee against the order of the Tribunal dated 23/9/2015 in ITA Nos.824 & 825/LKW/2014 for assessment years 2001-02 and 2005-06.

2. The assessee has filed these Miscellaneous Applications on the ground that the Tribunal has not adjudicated certain grounds which are specifically mentioned, as per Miscellaneous Application filed by the assessee before us.

3. We have perused the case records, analysed the facts and circumstances of the case and on perusal of the order of the Tribunal dated 23/9/2015, we find that all the grounds taken by the assessee are with regard to the revisionary jurisdiction undertaken by the ld. CIT

under section 263 of the Act. All the grounds taken by the assessee before the Tribunal were against the order passed by the ld. CIT under section 263 of the Act. The Tribunal in its order has specifically brought in all the grounds of appeal preferred by the assessee, which are on record and thereafter delivered the judgment, which is as follows:-

> *"27. Keeping in view the aforesaid legal position, we now examine the facts of the case. In the instant case, the Tribunal vide order dated 30.1.2009 directed the Assessing Officer to adjudicate the issue relating to the claim of exemption under section 11 of the Act and keeping in view registration under section 12A of the Act granted to the assessee without setting aside or cancelling the assessment order. It is also obvious from the record that when original assessmen was framed, registration under section 12A of the Act was not available to the assessee, therefore, there was no question of adjudication of claim of exemption under section 11 of the Act and the Assessing Officer has computed the income as per the relevant provisions of the Act. Since the Assessing Officer has acted in accordance with law, the assessment order cannot be called to be illegal or irregular and that is why the Tribunal has not set aside or cancelled the assessment order. But on account of change of circumstances, the Tribunal has directed the Assessing Officer to adjudicate the issue of claim of exemption under section 11 of the Act in the light of registration under section 12A of the Act granted to the assessee. Since the Tribunal has neither set aside nor cancelled the assessment order and issued directions for compliance to the Assessing Officer, the case of the assessee certainly falls under clause (ii) of sub-section (3) of section 153 of the Act and for this sub-section, no time limit is prescribed under the Act. Therefore, it cannot be said that the order passed by the Assessing Officer was barred by limitation. But from a careful perusal of the order passed by the Assessing Officer, we find that the Assessing Officer has simply computed the quantum of refund instead of*

adjudicating the claim of exemption raised under section 11 of the Act in the light of grant of registration under section 12A of the Act to the assessee as per the directions of the Tribunal. While allowing benefit of section 11 of the Act, the Assessing Officer is also required to examine whether the conditions prescribed under section 13 of the Act is fulfilled or not. But the Assessing Officer did not do this exercise and has computed the refund claimed by the assessee. Therefore, the order of the Assessing Officer is certainly erroneous and prejudicial to the interest of the Revenue which was rightly set aside by the ld. Commissioner of Income-tax.

28. Now we will deal with the alternative argument of the assessee that the order under section 254 of the Act pursuant to the directions of the Tribunal, is barred by time and it has no legal sanctity in the eyes of law and is merely a piece of paper. If that be the case, this order of the Assessing Officer computing quantum of refund cannot be executed and more so it cannot be enforced. If refund is not granted to the assessee, the same may be recovered from the assessee. We, however, have already held in the foregoing paragraphs that the assessment orders passed by the Assessing Officer vide his order dated 8.8.2013 are not barred by time, as no time limit is prescribed for passing an order under section 153(3)(ii) of the Act. We accordingly find no infirmity in the orders of the ld. Commissioner of Income-tax, who has rightly set aside the orders of the Assessing Officer, as it was not passed in compliance of the directions of the Tribunal. We accordingly confirm the orders of the ld. Commissioner of Income-tax in both the assessment years.

29. In the result, both the appeals of the assessee are dismissed."

2. We, therefore, find that the order of the Tribunal is elaborate, exhaustive, definitive and speaking order. It was the contention of the ld. A.R. of the assessee that certain grounds were not adjudicated upon

by the Tribunal. We find that all the grounds pertain to the order passed under section 263 of the Act by the ld. CIT and those grounds were not only taken into the body of the order but at the same time an elaborate judgment has been passed regarding the same. When one view has been taken by the Tribunal, it cannot be permitted to be reviewed under section 254(2) of the Act. We are to see whether there is any mistake apparent from record or not. Since the Tribunal has adjudicated the issue in the light of the facts available before it, no error as suggested by the ld. counsel for the assessee, is crept in the order of the Tribunal.

3. Moreover, the scope of provisions of section 254(2) is very limited and only those errors which are apparent or arithmetical can only be rectified. The scope of provisions of section 254(2) of the Act has been repeatedly examined by the Hon'ble Apex Court and various High Courts and it was held that the Tribunal can rectify only those mistakes which are arithmetical or clerical or apparent in its order. The Tribunal has no jurisdiction to review its own order in the garb of rectification. It was also held that if the Tribunal commits an error of judgement, that error cannot be rectified under the provisions of section 254(2) of the Act as the Tribunal is not empowered by the statute to review its own order. In the case of CIT Vs. Vardhman Spinning; 226 ITR 296 their Lordships of Hon'ble Punjab and Haryana High Court have held in specific terms that “the Appellate Tribunal is creation of statutes and it can exercise only those powers which have been conferred upon it. The only power conferred on the Tribunal u/s 254(2) of the I.T. Act, 1961 is to rectify any mistake apparent from record. The jurisdiction to review or modify orders passed by the authorities under the Act cannot be interfered with on the basis of supposed inherent rights. U/s 254(1) of the Act, the Appellate Tribunal, after hearing the contesting parties, can

pass such order as it deems fit. Sec. 254(2) of the Act specifically empowers the Appellate Tribunal at any time within four years of the date of an order to amend any order passed by it u/s 254(1) of the Act with a view to rectify any mistake apparent from record either suo moto or on an application made. What can be rectified under this section is a mistake which is apparent and patent. The mistake has to be such for which no elaborate reasons or inquiry is necessary. Where two opinions are possible, then it cannot be said to be an error apparent on the face of the record".

4. In the case of CIT Vs. Suman Tea and Plywood Industries (P) Ltd., 226 ITR 34 their Lordships of Hon'ble Calcutta High Court have expressed similar observations after holding that "under section 254(2) of the Income-tax Act, an order, which has been passed by the Tribunal reaches finality the moment the same is passed; cannot be touched thereafter. By section 254(2) of the Act, the Tribunal, however, has been authorized to rectify mistakes in its orders, which are apparent on the face of the records The expression mistake apparent on the record' means a mistake either clerical or grammatical or arithmetical or of like nature, which can be detected without there being any necessity to re-argue the matter or to re-appraise the fact as appearing from the records." In another case CIT Vs. Golal Chand Agarwal; 202 ITR 14 their Lordships of Hon'ble Calcutta High Court have also held that section 254(2) of the Income-tax Act, 1961 empowers the Tribunal to amend its order passed u/s 254(1) to rectify any mistake apparent from the record either suo moto or on an application. If in its order there is no mistake which is patent and obvious on the basis of the record, the exercise of the jurisdiction by the Tribunal u/s 254(2) will be illegal and improper. An oversight of the fact cannot constitute an apparent mistake rectifiable under section 254(2). This might, at the worst, lead

to perversity of the order for which the remedy available to the assessee is not under section 254(2) but a reference proceedings u/s 256. The normal rule is that the remedy by way of review is a creature of the statute and unless clothed with such power by the statute, no authority can exercise the power.

5. The Hon'ble High Court of Allahabad in the case of CIT Vs. ITAT; 143 CTR 446 has held that "sub-section (1) of section 254 confers ample powers on the Tribunal to pass such orders in any appeal filed before it as it thinks fit. Sub-section (2) of section 254 postulates that the Tribunal may amend any order passed by it under sub-sec. (1) of section 254 with a view to rectifying any mistake apparent from the record. The power of the Tribunal conferred by sub-section (2) of section 254 for rectifying any mistake apparent from the record cannot be exercised by the Tribunal to recall any order passed by it under section 254(2). Further, reviewing and recalling an order is one thing and rectifying a mistake in the order which is apparent from the record is quite another. In the absence of any statutory provision for review by Tribunal, the order passed by the Tribunal cannot be recalled or reviewed under section 254(2) of the Act." The provisions of section 254 were also examined by the Hon'ble High Court of M.P. in the case of Prakash Chand Mehta Vs. CIT; 220 ITR 277, in which their Lordships have held that scope of section 254(2) of the Income-tax Act is very limited and it is only the apparent error which can be rectified.

6. Their Lordships of the Apex court in the case of T.S. Balaram ITO Vs. Volkart Brothers; 82 ITR 50 (SC) have 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 be conceivably two opinions. A decision on a debatable point of law is not a mistake apparent from

record. Their Lordships have further held that if a statement of any person has been recorded without producing him in the witness box, the authorities should not act upon that statement without affording the assessee an opportunity to cross-examine the witness, but that is a matter not for rectification but it is a matter relating to the merits of the case as to whether the Tribunal has gone wrong in not considering the affidavit of a particular person and has acted upon the statement of the same person which was recorded by the ITO without being permitted to cross examine by the assessee. This is not a matter in which the apparent error is involved but it is a matter more of merit and cannot be rectified within the scope of rectification. The powers of the Tribunal while making a rectification were again examined by the Hon'ble Apex Court in the case of CIT Vs. Hero Cycles Pvt. Ltd.; 228 ITR 463 in which their Lordships have held that rectification can only be made when a glaring mistake of fact or law committed by the officer passing the order becomes apparent from record. Rectification is not possible if the question is debatable. Moreover, a point which was not examined on facts or in law cannot be dealt with as mistake apparent from record. In the case of ITO Vs ITAT; 229 ITR 651 their Lordships of Hon'ble Patna High Court have also expressed a similar observation after holding that section 254(2) of the Act empowers the Tribunal to amend any order passed by it under sub-section (1) with a view to rectifying a mistake from record. However, section 254(2) does not authorize the Tribunal to review its order or to sit in appeal over its earlier order. If it is done, it would amount to an amendment of an earlier order with a view to rectify a mistake apparent from record, but it would be an order passed on reappraisal of the material facts and circumstances and on a fresh application of the legal position which is not permissible within the scope of section 254(2) of the Act.

7. In the case of Ms. Deeksha Suri Vs. ITAT; 232 ITR 395 their Lordships of Hon'ble Delhi High Court have held in specific terms that "the Income-tax Appellate Tribunal is a creature of the statute. It has not been vested with the review jurisdiction by the statute creating it. The Tribunal does not have any power to review its own judgments or orders. The grounds on which the courts may open or vacate their judgments are generally matters which render the judgment void or which are specified in the statutes authorizing such sections. The language of section 254(2) of the Income-tax Act, 1961 is clear. The foundation for the exercising the jurisdiction is "with a view to rectify any mistake apparent on the record" and the object is achieved by "amending any order passed by it". 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 be conceivably two opinions. A decision on a debatable point of law is not a mistake apparent on the record".

8. Similar views have also been expressed by Hon'ble Guwahati High Court in the case of CIT Vs. Prahlad Rai Todi 251 ITR 833 by holding that "A bare look at section 254(2) will show that this section gives the power to rectify any mistake apparent from the record and not to amend any order passed by it and to make such amendment if the mistake is brought to its notice by the Assessing Officer or the assessee. So, when we speak of amendment or rectifying the mistake the earlier order can never be recalled by the Tribunal. The earlier order must hold the field and the mistake can be rectified or amended can be made to the order. The Tribunal cannot, in law and facts, recall and destroy its final order as a whole with a view to rectify the same order under section 254(2) of the Act. The action of the Tribunal actually amounts

to review of its earlier order and that power to review is not available to the Tribunal."

9. We, therefore, find no merit in these Miscellaneous Applications of the assessee, as no error apparent in the order of the Tribunal is pointed out. The ld. counsel for the assessee has tried to dispute the findings of the Tribunal and seeking a review of the order of the Tribunal which is not permissible under section 254(2) of the Act and we accordingly reject the Miscellaneous Applications.

10. In the result, both the Miscellaneous Applications of the assessee stand dismissed.

Order pronounced in the open Court on 02/05/2018.

Sd/-	Sd/-
[T.S. KAPOOR]	[PARTHA SARATHI CHAUDHURY]
ACCOUNTANT MEMBER	JUDICIAL MEMBER

DATED: 2nd May, 2018

JJ:2704

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR