

CASE NO.:
Appeal (civil) 5412 of 2007

PETITIONER:
Honda Siel Power Products Ltd

RESPONDENT:
Commissioner of Income Tax, Delhi

DATE OF JUDGMENT: 26/11/2007

BENCH:
S. H. Kapadia & B. Sudershan Reddy

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 5412 OF 2007
(arising out of S.L.P. (C) No. 5551 of 2007)

KAPADIA, J.

Leave granted in this special leave petition.

2. A short question which arises for determination in this civil appeal filed by the assessee concerns application of Section 154 of the Income Tax Act, 1961 ("1961 Act") which provides for rectification of any mistake apparent from the record by any income tax authority. It may be mentioned at this stage that the words "rectification of any mistake apparent from the record" find place in section 254(2) of the said 1961 Act.

Facts

3. Assessee company is engaged in the manufacture of portable generator sets in technical collaboration with Honda Motor Company, Japan. In this civil appeal, we are concerned with assessment year 1991-92. On 30.12.1991 return of income was filed by the assessee declaring nil income. During the relevant year, the assessee had taken a term loan in foreign exchange for the import of machinery. On account of fluctuation in foreign exchange rate, the liability of the assessee to repay the loan in terms of rupees went up by Rs. 7,10,910. By referring to the provisions of section 43A, the assessee enhanced the figure of W.D.V. (written down value) of the block of assets and claimed depreciation accordingly. The A.O. came to the conclusion that such revision in the actual cost was not admissible as section 43A refers to adjustment qua the actual cost of the machinery on account of increase or decrease in the liability of unpaid loans utilized for the purchase of machinery.

4. Aggrieved by the said decision, the matter was carried in appeal by the assessee before CIT(A) who took the view that the claim of the assessee was admissible in view of the fact that in the year preceding assessment year 1991-92 increased depreciation was given to the assessee.

5. On this aspect, therefore, the Department carried the matter in appeal to the I.T.A.T. ("the Tribunal") for both the assessment years 1990-91 and 1991-92. By judgment and order dated 2.4.2002 the Tribunal held that CIT(A) had erred in allowing the enhanced depreciation as under section 43A actual payment was a condition precedent for availing the benefit under that section. According to the Tribunal, if actual payment was not made after fluctuation then the value of the asset cannot be increased by adding the increase on account of fluctuation. On facts, the Tribunal found that, in the

present case, there was no actual payment after the fluctuation and, therefore, the assessee was not entitled to claim the benefit under section 43A.

6. On 9.12.2002, the assessee moved the Tribunal for rectification of mistake apparent from Order dated 2.4.2002. That application was made under section 254(2) which reads as under:

"BEFORE THE INCOME TAX APPELLATE TRIBUNAL:

DELHI BENCHES

HON'BLE "A" BENCH

(HON'BLE VICE PRESIDENT R.M. MEHTA & SH. HON'BLE

SH. Y.K.KAPOR)

IN THE MATTER OF : M/S SHRIRAM HONDA POWER

EQUIPMENTS LTD.

ITA NOS. : 5413 & 5414/D/96(A)

5544 & 5545/D/96(D)

ASSESSMENT YEARS: 1990-91 & 1991-92

SUB: APPLICATION U/S 254(2) FOR RECTIFICATION
OF MISTAKES IN THE ORDER DATED 2.4.2002

MAY IT PLEASE YOUR HONOURS

1. By the captioned order, cross appeals for assessment years 1990-91 and 1991-92 were disposed of. The aforesaid appeals were heard on 4.2.2002. After the hearing, the Hon'ble Bench on the request made, permitted the assessee to file written submissions in respect of cross appeals for assessment year 1991-92. The submissions were duly filed on 7.2.2002. The order was passed by the Hon'ble Tribunal on 2.4.2002.

2. That ground No. 2 of departmental appeal for assessment year 1990-91 (ITA No. 5544/D/96) and ground No. 3 of departmental appeal for assessment year 1991-92 (ITA No. 5545/D/96) were against allowance of depreciation on exchange rate fluctuation which had not been paid by the assessee. This issue was decided by the CIT(A) in favour of the assessee by relying upon his order in the case of Samtel Color Ltd. It was submitted during the course of hearing as also in the written propositions that departmental appeal in the case of Samtel Color Ltd. was decided by the 'E' Bench of the Tribunal vide order dated 10.12.2001 wherein, the view of the CIT(A) were upheld. A copy of the order was placed at pages 48 to 52 of the paper book.

2.1 That, in deciding the aforesaid ground against the assessee, the Hon'ble Bench inadvertently has not referred to the decision of Samtel Color Ltd. Since, the order of coordinate bench of Tribunal which was relied upon was not considered, and that in forming another view. The view taken by different benches of the Tribunal was not distinguished, therefore, a mistake apparent from record has crept in. The issue could not be decided without being referred to a Special Bench to reconcile the difference, if at all, between two views. Reference in this regard is invited to the decisions of Hon'ble Supreme Court in the case of Sundarjas Kanyalal Bhatija & Others vs. Collector Thane, Maharashtra & Others 183 ITR 130 (SC) and UOI vs. Paras Laminates Pvt. Ltd. 186 ITR 722 (SC). It is, therefore, submitted that the order may be rectified.

3. Disallowance under Rule 6D covered by ground Nos. 3 & 2 for assessment years 1990-91 & 1991-92 respectively were decided against for the reason that requisite details were not furnished before the authorities below. In respect of assessment year 1991-92 details of amount disallowable under Rule 6D were furnished before CIT(A) but the same were not admitted. These very papers were filed at pages 5 to 26 of paper book filed before this Hon'ble Tribunal. Papers at page 5 to 7 which included working details of disallowance under Rule 6D were filed before Assessing Officer. Similarly papers at pages 8 to 12 are details of professional fee and the same were also filed before Assessing Officer. Explanation with reference to each of expenditure was also furnished. The Hon'ble Bench in deciding the issue inadvertently did not consider the submission made and as such, a mistake has crept in.

4. Ground No. 4 of appeal for assessment year 1991-92 which was against disallowance of Rs. 16,011/- out of sales conference expenses has not been disposed of.

In view of the factual position explained above, it is submitted that order may be rectified accordingly.

Yours faithfully,
For SHRIRAM HONDA POWER EQUIPMENTS LIMITED

Sd/-
(AUTHORIZED SIGNATORY)

Dated: 9.12.2002"

7. In the rectification application, the assessee pointed out the earlier judgment of the coordinate bench of the Tribunal dated 10.12.2001 in the case of DCIT, Spl. Range 5, New Delhi v. Samtel Color Limited in which it was held that enhanced depreciation was allowable even on notional increase in the cost of the asset on account of exchange rate fluctuation and despite the fact that the additional liability resulting from the said fluctuation had not been paid by the assessee. It was held that the word "paid" in section 43(2) meant amount actually paid or incurred according to the method of accounting. In this connection, reliance was also placed by the Tribunal on circular no. 5-P of CBDT dated 9.10.1967.

8. Vide order dated 10.9.2003 the Tribunal, in the present case, allowed the rectification application filed by the assessee stating that the judgment of the coordinate bench in Samtel Color Limited (supra) had escaped its attention.

9. Against the order dated 10.9.2003, the Department carried the matter in appeal to the High Court vide ITA No. 735/04. By the impugned judgment dated 11.10.2006, the High Court came to the conclusion, relying on its earlier decisions, that the power to rectify any mistake was not equivalent to a power to review or recall the order sought to be rectified. By the impugned judgment, the High Court came to the conclusion that vide order dated 10.9.2003, in the guise of rectification, the Tribunal had, in fact, reviewed its earlier order which fell outside the scope of section 254(2) of the 1961 Act and, consequently, the High Court set aside the order of the Tribunal dated 10.9.2003. Hence, this appeal.

An Aside

10. To complete the chronology of events, we may state that vide

judgment dated 30.4.2007 in the case of CIT v. Woodward Governor India (P) Ltd. reported in (2007) 162 TAXMAN 60 delivered by Delhi High Court under section 43A, as it stood prior to 1.4.2003, came to be delivered. By the said judgment, it was held that section 43A was prospective and not clarificatory as contended by the Department. It was further held that in cases where the assessee followed the mercantile system of accounting in terms of section 145 of the 1961 Act, the assessee was bound to abide by the accounting standards laid down by the Institute of Chartered Accountants of India ("ICAI"). It was further held that, under the accounting standards, the liability stood revised in the year in which the fluctuation of foreign exchange took place in order to reflect the true state of affairs regarding the business of the assessee and accordingly, the word "paid" in section 43(2) should be read in the light of the accounting standards. It was further held that under section 209(3) of the Companies Act, it was mandatory for companies to keep accounts on accrual basis only.

11. Suffice it to state that, in view of the said judgment of Delhi High Court in the case of Woodward Governor India (P) Ltd. (supra), the view of the co-ordinate Bench of the Tribunal on section 43A in Samtel Color Ltd. (supra) stood confirmed. We do not wish to express any opinion on the judgment of the High Court in Woodward Governor (supra) except to say that judgment of the co-ordinated Bench of the Income Tax Appellate Tribunal has been confirmed which circumstance is relevant in deciding Rectification Application.

Scope of the Power of Rectification

12. As stated above, in this case we are concerned with the application under section 254(2) of the 1961 Act. As stated above, the expression "rectification of mistake from the record" occurs in section 154. It also finds place in section 254(2). The purpose behind enactment of section 254(2) is based on the fundamental principle that no party appearing before the Tribunal, be it an assessee or the Department, should suffer on account of any mistake committed by the Tribunal. This fundamental principle has nothing to do with the inherent powers of the Tribunal. In the present case, the Tribunal in its Order dated 10.9.2003 allowing the Rectification Application has given a finding that Samtel Color Ltd. (supra) was cited before it by the assessee but through oversight it had missed out the said judgment while dismissing the appeal filed by the assessee on the question of admissibility/allowability of the claim of the assessee for enhanced depreciation under section 43A. One of the important reasons for giving the power of rectification to the Tribunal is to see that no prejudice is caused to either of the parties appearing before it by its decision based on a mistake apparent from the record.

13. "Rule of precedent" is an important aspect of legal certainty in rule of law. That principle is not obliterated by section 254(2) of the Income-tax Act, 1961. When prejudice results from an order attributable to the Tribunal's mistake, error or omission, then it is the duty of the Tribunal to set it right. Atonement to the wronged party by the court or Tribunal for the wrong committed by it has nothing to do with the concept of inherent power to review. In the present case, the Tribunal was justified in exercising its powers under section 254(2) when it was pointed out to the Tribunal that the judgment of the coordinate bench was placed before the Tribunal when the original order came to be passed but it had committed a mistake in not considering the material which was already on record. The Tribunal has acknowledged its mistake, it has accordingly rectified its order. In our view, the High Court was not justified in interfering with the said order. We are not going by the doctrine or concept of inherent power. We are simply proceeding on the basis that if prejudice had resulted to the party, which prejudice is attributable to the Tribunal's mistake, error or omission and which error is a manifest error then the Tribunal would be justified in rectifying its mistake, which had been done in the present case.

Conclusion:

14. For the aforesaid reasons, the impugned judgment of the High Court

is set aside and the order passed by the Tribunal allowing the rectification application filed by the assessee is restored. Consequently, the appeal is allowed with no order as to costs.

JUDIS