

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A" , HYDERABAD**

BEFORE

**SHRI LALIET KUMAR, JUDICIAL MEMBER
AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

M.A. No.13/Hyd/2024 in ITA No.457/Hyd/2023		
Assessment Year: 2013-14		
Sushee Prasad J.V., Hyderabad. PAN : AAPAS3540R.	Vs.	The Assistant Commissioner of Income Tax, Circle – 6(1), Hyderabad.
(Applicant / Appellant)		(Respondent / Respondent)
Assessee by:	Shri S. Rama Rao, Advocate	
Revenue by:	Shri Madan Mohan Meena, Sr. AR	
Date of hearing:	23.08.2024	
Date of pronouncement:	02.09.2024	

आदेश / ORDER

PER LALIET KUMAR, J.M. :

The present Miscellaneous Application has been filed by the assessee with a request to modify the order passed by the coordinate Bench of the Tribunal dt.12.03.2024 in ITA No.457/Hyd/2023 for A.Y. 2019-20 as per section 254(2) of the Act.

2. The Applicant / Respondent has narrated the facts of its case and mistakes stated to be apparent on record from the order of the Tribunal dated 12.03.2024. The contents of the M.A. filed by the assessee read as under :

5. The applicant humbly submits that there are certain incompatible and inconsistent findings in the tribunal order as detailed hereunder that need rectification u/s 254(2) of the Income Tax Act, 1961.

6. Para No.5 of the Tribunal Order: The Ld. DR had submitted that the assessee has not deducted the TDS while making the payment to JV Constituents and the Id. CIT(A) has wrongly held that the payment made to the JV Constituent was not the payment made to sub-contractor. Joint Venture. But it was the payment made to the partner/associate of the Joint Venture. The Id. DR also submitted that as per the case of the assessee it had carried out the work and payments were made to Constituent of JV on back-to-back basis. Further, the said JV Constituent has disclosed the contract income in the return of income for A.Y.2019-20.

7. From the above finding recorded by the Hon'ble Tribunal, it is very much clear that the Department also accepted that the payments were made by the Joint Venture to its Constituents on back-to-back basis and the said fact is not disputed.

Para No.11 of the Tribunal Order:

"First of all, we examine whether there is an obligation on the part of the assessee to deduct the taxes while making the payment to the contractor or not. Bare reading of Section 194C r.w. Explanation makes it abundantly clear that if any sum is paid or credited for carrying out any work of the Central/State Government, then there is an application on the part of the contractor to deduct the TDS in accordance with Section 194C of the Act."

Para No.12 of the Tribunal Order:

"Undoubtedly, as per the written submissions reproduced by the Id. CIT(A) in the order and the certificate filed by the assessee at page 10 to 16 of the paper book, it is admittedly clear that the payments were made by the assessee to the sub-contractors for carrying out the development work assigned to it by the State Agency namely, Palamuru Ranga Reddy Lift Irrigation Scheme. Thus, in our view, the assessee has made the payment to sub-contract and therefore, as per the definition of section 194C of the Act, there is an obligation on the part of the assessee to deduct the taxes before making any payment or credit any amount in the account of such sub-contractor."

8. The applicant humbly submits that the conclusion in Para No.12 is incompatible and inconsistent with the findings recorded at Para 5 of the Tribunal

Order in as much as the Department also accepted the fact that the payments by the assessee-JV were to the JV-Constituents on back-to-back basis whereas the conclusion is otherwise i.e., the assessee made payments to sub-contractors. The ITAT should have observed that the constituent of JV carried on the work.

9. The applicant humbly submits that when the Department also accepted the undeniable fact that the payments in question were made by the Joint Venture to its constituents and therefore, the conclusion drawn by the Hon'ble Tribunal that such payments by the Joint Venture to its constituents on back-to-back basis attracts provisions of section 194C is incompatible and inconsistent with the submissions made by both the parties and therefore, need to be rectified.

10. Para No.13 of the Tribunal Order: Having held that the amount was required to be deducted by the assessee now the question is whether the assessee has deducted the amount or not. As per the case of the assessee, the assessee has not deducted the amount before making payment of Rs.216625506/-. However, it is the case of the Id. CIT(A) that the recipient namely, the payee had paid taxes while taking into account the amount received from the account in the profit and loss account while filing the return of income. The certificate to that effect was also filed by the assessee at the appellant stage, where at pages 10 to 16 it was so mentioned.

11. The applicant humbly submits that the conclusion at first sentence of the above paragraph is based on paragraph 12, which is already proved to be incompatible with and inconsistent with the factual findings recorded at paragraph 5 and therefore, this conclusion is also incompatible and inconsistent that need to be rectified.

12. The applicant humbly submits that once the Department, who is the appellant before the Hon'ble Tribunal, itself admitted the fact that the payments in question were made by the Joint Venture to its Constituents on back-to-back basis, the Hon'ble Tribunal should have come to the conclusion that such back-to-back payments by the JV to its constituents do not attract the provisions of section 194C thereby do not come under the purview of section 40(a)(ia) of the Act. In fact, the Ld. CIT(A) had also recorded such finding at para 4.4 of his order.

13. The applicant therefore submits that the conclusion drawn in Para No.13 is again incompatible and inconsistent with Para No.11 wherein the Hon'ble Tribunal

stated that "First of all, we examine whether there is an obligation on the part of the assessee to deduct the taxes while making the payment to the contractor not".

14. Further, the applicant has filed paperbook including written submissions filed before the Ld. CIT(A) running into 8 pages and explaining how provisions of section 194C of the Act are not applicable to the assessee's case along with various judicial precedents supporting such plea and submitting that the payments made by the Joint Venture to its constituents on back-to-back basis do not attract provisions of section 40(a)(ia) of the Act and supporting the decision of the Ld. CIT(A) granting relief based on such written submissions. However, the Hon'ble Tribunal considered only Para No.8 of such written submissions filed before the Ld. CIT(A) and had not considered other submissions and also the judicial precedents relied. There was no mention at all about these submissions and case laws and its applicability to the facts of the assessee's case. Therefore, there is a clear omission in the Tribunal Order, which requires rectification under the provisions of section 254(2) of the Act.

15. In this regard, the applicant relies on Hon'ble ITAT Hyderabad Bench-B order dt.18.04.2019 in MA.No.49 & 37/Hyd/2018 in the case of Ushodaya Enterprises v. AdCIT wherein the Hon'ble ITAT has allowed the Miscellaneous Application considering the plea that the Hon'ble Tribunal had not gone through the decision relied upon by the assessee and due to non-consideration or non-discussion about the case law submitted by the assessee, there is a mistake apparent from record.

16. In the present case also, the Hon'ble Tribunal omitted consideration and discussion about the various cases relied on by the assessee during the hearing of the appeal and in the written submissions filed before the Ld. CIT(A) forming part of the Paperbook filed before the Hon'ble Tribunal, which constitutes a mistake apparent from record that needs to be rectified and resolved under the provisions of section 254(2) of the Act.

3. The learned D.R on the other hand, supporting the order of the Tribunal dt.12.03.2024 submitted that the ld.AR failed to make out a case of prima facie mistake apparent from the order of the

Tribunal, but what is sought through the present M.A. is reviewing the decision rendered by the Tribunal in the given facts and circumstances of the case, and thus, there is no merit in the arguments of the Id.AR that there are incompatible and inconsistent findings in the order of the Tribunal which needs to be rectified. In support of its case, the Id.DR had relied upon the decision of the Hon'ble Supreme Court in the case of CIT Vs. Reliance Telecom Ltd., (2021) 133 taxmann.com 41 (SC).

4. We have heard the rival contentions of the parties, perused the material on record and considered the relevant contents of the miscellaneous application filed by the assessee. The tone and tenor of the submissions made by the assessee clearly shows that it wishes that the Tribunal may review its own order passed on 12.03.2024. However, the issue is squarely covered in favour of the Revenue in view of the authoritative pronouncement by the Hon'ble Supreme Court in the case of Reliance Telecom (supra), wherein it was held that the Tribunal has limited power to recall the order. We may also draw support from the recent decision of the co-ordinate Bench of the Tribunal in the case of Syed Sikander Ali, vide M.A. No.37/Hyd/2022 order dt.29.07.2022, wherein the Tribunal has held as under:-

"4. We have gone through the record in the light of the submissions made on either side. The question now that arises for our consideration is whether any error in judgment which alleged to have been the result of non-consideration of the submissions made on behalf of the assessee in the perspective in which they were projected, would constitute an error apparent on record, so as to be recalled by the Tribunal in exercise of powers under section 254(2) of the Act.

5. Under section 254(2) of the Act, the Tribunal may at any time within six months from the end of the month in which the order was passed, with a view to rectify any mistake apparent from record, amend any order passed by it under sub-section (1), and shall make such an amendment if the mistake is brought to its notice by the assessee or the Assessing Officer. It is, therefore, incumbent upon the miscellaneous applicant to point out that there is mistake in the order that is apparent from the record. This aspect has been considered by the Hon'ble Apex Court in the case of *Reliance Telecom Ltd. (supra)*.

6. In the case of *Reliance Telecom Ltd. (supra)*, Hon'ble Apex Court held that in a case where a detailed order was passed by the ITAT, the said order could not have been recalled by the Appellate Tribunal in exercise of powers under section 254(2) of the Act; that if the assessee was of the opinion that the order passed by the ITAT was erroneous, either on facts or in law, in that case, the only remedy available to the assessee was to prefer the appeal before the High Court; that, therefore, as such, the order passed by the ITAT recalling its earlier order which has been passed in exercise of powers under section 254(2) of the Act is beyond the scope and ambit of the powers of the Appellate Tribunal conferred under section 254(2) of the Act; and that, therefore, the order passed by the ITAT recalling its earlier order is unsustainable, which deserves to be set aside. It was further observed that merely because parties might have in detail gone into the merits of the case before the ITAT and merely because the parties might have filed detailed submissions, it does not confer jurisdiction upon the ITAT to pass the order de hors section 254(2) of the Act, and the powers under section 254(2) of the Act are only to correct and/or rectify the mistake apparent from the record and not beyond that. Hon'ble Apex Court held that even the observations that the merits might have been decided erroneously and the ITAT had jurisdiction and within its powers it may pass an order recalling its earlier order which is an erroneous order, cannot be accepted, and if the order passed by the ITAT was erroneous on merits, in that case, the remedy available to the assessee was to prefer an appeal before the High Court. Observing so, the Hon'ble Supreme Court, in the case of *Reliance Telecom Ltd. (supra)*, quashed the order passed by the ITAT, recalling the earlier order."

5. In the light of the above, we are of the opinion that the present Miscellaneous Application filed by the assessee is not maintainable. Hence, the same is dismissed.

6. In the result, Miscellaneous Application filed by the assessee is dismissed.

Pronounced in the open Court on this the 2nd day of September, 2024.

Sd/- (G. MANJUNATHA) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 2nd September, 2024.

TYNM / SPS

Copy to:

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2	The Assistant Commissioner of Income Tax, Circle – 6(1), Hyderabad.
3	Pr.CIT(Central), Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order