

आयकर अपीलीय अधिकरण, 'सी' / SMC न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' /SMC BENCH, CHENNAI
श्री महावीर सिंह, उपाध्यक्ष के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT

Miscellaneous Application No.41/Chny/2024

[Arising out of ITA No.1210/Chny/2023]

(निर्धारणवर्ष / Assessment Year: 2017-18)

Ms. Lakshmanan Meenakshi, 16, Pandian Street, Alagappan Nagar, Madurai-625 003.	Vs	The Income Tax Officer, Non-Corporate Circle-2, Madurai.
PAN: AGQPM-4430-J		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr.M.Lakshmanan, C.A.
प्रत्यर्थीकीओरसे/Respondent by	:	Ms.R.Anita, Addl.CIT

सुनवाईकीतारीख/Date of hearing	:	30.08.2024
घोषणाकीतारीख /Date of Pronouncement	:	30.08.2024

आदेश / ORDER

By way of this Miscellaneous application, the assessee wants rectification or recalling the order of the Tribunal in ITA No.1210/Chny/2023 for the assessment year 2017-18 dated 10.01.2024.

2. At the outset, it is noted that the assessee has challenged the order of the Tribunal in earlier Miscellaneous Application i.e., No.4/Chny/2024, wherein the Tribunal has dismissed the Misc.Application vide order dated 29.04.2024 by observing in para 2 as under:-

"2. At the outset, the Ld.counsel for the assessee stated that the amount of Rs.1,06,107/- was deposited on 08.11.2016, which

cannot be termed as Specified Bank Notes deposited during demonetization period. When pointed out to Id.counsel, where is this fact, he could not point out any evidence that was available in the file that this amount of Rs.1,06,107 /- was deposited on 08.11.2016. Once this fact is not in the record, I find no mistake apparent from record in the order of the Tribunal and hence, this miscellaneous application of the assessee is dismissed.”

3. The Ld.counsel for the assessee reiterated the same submissions as made in earlier Miscellaneous Application No.4/Chny/2024 and the Revenue stated that there cannot be Miscellaneous Application on Miscellaneous Application.

4. After hearing both sides and going through the records, I note that this is second Miscellaneous Application on the same set of facts and decision. I am of the view that there is no concept of rectification of order passed u/s.254(2) of the Act, as there is no mistake or error apparent from record pointed out by the assessee for rectification in both the orders of this Tribunal. The provisions of section 254(2) give power to the Tribunal to rectify mistake apparent on record in the order passed u/s.254(1) of the Act. Under section 254(2) of the Act, Appellate Tribunal has been empowered, with a view to rectify

any mistake apparent from record, to amend any order passed by it u/s.254(1) of the Act. It means that no order passed u/s.254(2) can be subject matter of rectification u/s.254(2) of the Act itself.

5. Further, the second Miscellaneous Application for rectification of the order of the Tribunal or restoration application of Miscellaneous Application is not maintainable before the Tribunal, in light of the judgement of the Hon'ble Orissa High Court in the case of CIT Vs. ITAT reported as 196 ITR 838, wherein it was held that an order rejecting the application for rectification under section 254(2) is not an order passed under section 254(1) and it cannot be rectified under section 254(2). The Hon'ble Madras High Court in the case of Dr. S.Paneerselvam Vs. CIT reported as 319 ITR 135 relying on the judgement of the Hon'ble Orissa High Court has held that second application for rectification is not maintainable under the provisions of section 254 of the Income Tax Act, 1961. Hence, the present Miscellaneous Application filed by the assessee is dismissed being not maintainable.

6. The Misc.Application filed by the assessee is dismissed accordingly.

Order pronounced in the open court on 30th August, 2024

Sd/-
(महावीर सिंह)
(Mahavir Singh)
उपाध्यक्ष/ Vice-President

चेन्नई/Chennai,
दिनांक/Dated 30.08.2024
DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

- 1.Appellant
2. Respondent
3. आयकर आयुक्त/CIT Madurai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.