IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH MUMBAI
BEFORE: SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI ARUN KHODIPIA, ACCOUNTANT MEMBER

MA No. 350/Mum/2025
(Arising out of ITA No. 4407/Mum/2024)
(Assessment Year:2018-19)

TATA Communications Transformation Services Limited, 6th Floor, Tower B, Vidyanagri PO, Plot C 21 and C 36, G BLC, Bandra Kurla Complex, Mumbai 400098	Vs.	Deputy Commissioner of Income Tax (OSD) (TDS), 2(3) R. No. 320, 3rd Floor, Income Tax Office, MTNL Building, Mumbai 400026
PAN: MUMV14350A		
(Appellant)	..	**(Respondent)**

Assessee by	Shri. J.D. Mistry Senior Advocate
Revenue by	Shri. Pravin Salunkhe (SR. DR)
Date of Hearing	23/01/2026
Date of Pronouncement	05/02/2026

Order under section 254(2) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This Miscellaneous Application (MA) is filed by the assessee for seeking rectification in order dated 07.10.2025 passed the ITA No. 4407/Mum/2024 for AY 2018-19. The assessee in its application inter alia contended that certain mistake erupted in the order which are apparent and to be rectified or the order may be recalled for adjudication afresh.

   (A) The decision of Gujarat High Court in PCIT vs Sanghi Infrastructure Ltd. (2018) 96 taxmann.com 370 (Gujarat) on the subject has not been followed without discussion in the order.

(B) Various other decision of Co-ordinate Bench including of Mumbai Tribunal relied by assessee in Pfizer Ltd. vs ITO in ITA No. 1667/M/2010 dated 31.10.2012 during the year have not been mentioned not followed without any discussion in the impugned order.

(C) A binding legal principle set out in the decisions of Hon'ble Supreme court of India and Jurisdictional High Court have been lost sight and ignored while passing the assessment order.

2. The Ld. Senior Counsel for assessee while giving brief back ground of his case submit that assessee is in the business a providing tally communication, net work management and support services. During the year under consideration, the assessee made year end provisions of expenses to the extent of Rs. 90.89 Crore in its books of account. Such provision was not based on any invoices receipt from vendor parties and were in fact, based on estimates from past experience. In simple word the assessee was contractually not liable to pay any person when the provisions were created. These provisions were being made merely on ad-hoc, no tax was deducted at source by the assessee. The said provisions were disallowed by assessee in its return of income to the extent of 30% of amount that is Rs. 27.26 Crore. As per provisions of Section 40(a)(ia) and resultant Income Tax there on was paid at applicable cooperate tax rate. Entire provision of Rs. 90.89 Crore created at the year end at the was accounted against the vendors in the subsequent year(s) on receipt of invoices or was reverse. As and when the liability to pay the parties crystalized that is as and when the invoices were received, tax was deducted at source and the same was paid to the account

of Government. The assessee has complied with the provision of Chapter XVII to the extent they were applicable. The ITO of (TDS) issued notice under section 201(1) and 201(1A) and on completion of proceeding held that assessee to be an "assessee in default" under section 201 for failure to deduct tax at source on such yearend provisions and also namely interest under section 201(1A) on alleged failure. The ITO (TDS) also noted that tax auditor at clause no. 21(b) of Form No. 3CB has clearly stated that TDS has not been deducted on expense claim at Rs. 90.89 Crores. Against the action of ITO (TDS) the assessee filed before Ld. CIT(A) wherein entire demand along with interest was deleted on the basis of decision of Mumbai Tribunal in Pfizer Ltd. in ITA No. 1667/Mum/2010. Against the said decision the revenue preferred appeal before Tribunal.

3. The Ld. Senior Counsel submits that appeal was heard on 25.08.2025. During the hearing it was argued that there was no obligation to deduct tax on the year-end provisions and accordingly the assessee should not have been held as "assessee in default". In support of its submission he relied on various case laws which includes decision of Gujarat High Court in Sanghi Infrastructure Limited (supra), Mahindra and Mahindra Vs. DCIT on Mumbai Tribunal in ITA No. 8597/Mum/2010 dated 06.06.2012 at other decision of Mahindra and Mahindra and two other decisions of Mahindra and Mahindra in AY 2009-10 and 2011-12 to 2013-14. He Ld. Sr. Counsel further explains that for obligation to deduct tax at source to arise there should be "income" chargeable to tax in the hand of payee. When accounting entry of year-end provision is passed in the books of assessee there cannot be said to have any income accruing to the payee unless invoices

are received. Accordingly, it was argued that in absence of any income, element in the end of payee, there cannot be any incidence of tax and cannot be any liable to deduct tax at source. The Ld. Senior Counsel while referring the order dated 07.10.2025 submit that while adjudicating the appeal the Tribunal considered as it was the appeal of the assessee rather the appeal was filed by revenue. The matter is restored back to the file of AO. The order is contrary to the settled position in law wherein bench failed to follow the "Rule of Precedent" as has been held by Hon'ble Supreme Court Honda Siel Power Products Limited vs. CIT 295 ITR 466 and third member decisions of Delhi Tribunal Mohan Meakin Limited vs. ITO (2004) 89 ITD 179 and various other decisions. Not considering the binding decisions is mistake apparent on record. The Ld. Senior counsel prayed for recalling the order of adjudication of reference.

4. On the other hand, the Ld. Sr. DR for the revenue submit that assessee is seeking review of the order which is not permissible under the garb of application under section. 254(2). The Tribunal has passed a detailed order and more over matter is restored back to the file of AO. The Ld. Sr. DR prayed for dismissal of application under section 254(2).

5. We have considered the rival submission of both the parties and gone through order dated 07.02.2025. We find that in para 1 of the order there is typing mistake wherein the word is inappropriately typed as 'appeal filed by assessee' instead of 'appeal by Revenue'. On consideration of other submissions of ld. Senior Counsel, we find that he is strongly relied on the decision of Gujarat High Court in PCIT vs Sanghi Infrastructure Ltd. (supra) wherein it was held that

where provision was made by assessee for expenses for which bills were not received during the year under consideration, no section 40(a)(ia) disallowance could be made for non-deduction of TDS. Such decision was relied by assessee during the original submission made at the time of hearing of the matter. We find that the said decision is escaped attention at the time of passing the order. Thus, there is mistake in the order, which is rectifiable under section 254(2) of the Act.

6. We find that Hon'ble Apex Court in Honda Siel Power products Ltd. vs CIT (supra) held that 'Rule of precedent' is an important aspect of legal certainty in rule of law.That principle is not obliterated by section 254(2), 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 instant 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 co-ordinate 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 had acknowledged its mistake; it had accordingly rectified its order. 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. Thus, keeping in view the above mentioned facts and legal position, the order dated 07.10.2025 passed in ITA No.4407/Mum/2024 for AY 2018-19 is recalled.

7. Considering the facts that we have recalled the order, hence registry is directed to fix the hearing of the appeal afresh as per Rules. Fresh notice of hearing be issued to the parties.

Order pronounced in open court on 05.02.2026.

Sd/-	**Sd/-**
(ARUN KHODIPIA)	**(PAWAN SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai; Dated 05/02/2026
Divya Ramesh Nandgaonkar
Stenographer

Copy of the Order forwarded to:
1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

(Asstt.Registrar)
ITAT, Mumbai