

IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER &
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER
MA No. 287/MUM/2025 (AY: 2020-21)
(Arising out of ITA No. 3711/Mum/2025)
(Physical hearing)

Diwantham Tollway Pvt. Ltd. Unit No. 603B, 6 th Floor, G Block, Bandra Kurla Complex, Bandra (East), Mumbai-400051. [PAN: AAGCD6193G]	Vs	PCIT -6, Mumbai Room No. 501, 5 th Floor, Aayakar Bhavan, Mumbai – 400020.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Vijay Mehta, AR
Revenue by	Shri Himanshu Joshi, Sr. DR
Date of hearing	14.11.2025
Date of pronouncement	13.02.2026

Order under section 254(2) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER;

1. This miscellaneous application (MA) is filed by assessee for seeking rectification in the order dated 13.10.2025 passed in ITA No. 3711/Mum/2025 for A.Y. 2020-21. The Applicant/assessee in its application contended that at the time of hearing of appeal the assessee basically raised four proposition challenging the order of Principle CIT; firstly, since two views are possible, the assessment order passed by assessing officer (AO) was not erroneous, secondly, the nature of asset cannot be changed in the subsequent year and since the year under consideration is the second year of claim of depreciation, the same cannot be disallowed, thirdly, in any case the AO has examined the issue and hence, it cannot be said that he has not made enquiry and fourthly, the assessment order cannot be revised based on subsequent decision. Decision of Hon'ble Madras High Court in L & T

Infrastructure relied by Principle CIT is dated 29th of December 2022, whereas the impugned assessment order is dated 29th September 2022. On each of the aforesaid proposition, the detailed submissions were advanced. On hearing submission, the bench was of the view that there is no need of further submission on merit/correctness of the view expressed by Madras High Court and hence, the hearing was concluding. Accordingly, the A.R. has no occasion to argue on correctness/applicability or otherwise on the decision of Madras High Court referred to therein and the subsequent order of Mumbai bench in case of Hazaribagh Ranchi Expressway Limited (2024) 167 taxmann 571(Mum-Trib), although it was not relied by principal CIT. The assessee intended to place submission in this regard. Such submissions were recorded in the order of Tribunal the said issue was not discussed at the time of hearing. The bench in its order, has primary relied upon the said decision of Madras High Court in and subsequent order of Mumbai bench in Hazaribagh Ranchi Expressway Limited (supra). On the basis of aforesaid contention, pleaded in the Miscellaneous Application, the learned AR of the assessee argued various issues raised his application, at length.

2. The learned AR of the assessee submit the Tribunal has followed the aforesaid decision of Madras High Court in L & T Infrastructure (supra) and order of Mumbai bench Hazaribagh Ranchi Expressway Limited (supra) and dismissed /rejected the jurisdictional argument of the assessee on three counts firstly on two views are possible, secondly nature of asset cannot be changed in the subsequent year and thirdly the AO has examined the issue before passing the assessment order. As no submission were placed on the

correctness/applicability or otherwise of the afore referred decision of Madras High Court and the subsequent order of Mumbai bench, the Tribunal ought not to have decided the above proposition against the assessee based on the said decisions. The assessee was deprived of the opportunity of being heard. Further, in para 15 of the order, the bank has given finding "*we are of the view that was the assessee does not fulfil the condition of ownership as prescribed under section 32 of the Act, which is an essential condition for claiming depreciation on the asset, the other alleged ancillary benefit of intangible assets are also not available to the assessee*".

3. The learned A.R. of the assessee submitted that regarding the ownership of toll rights, there was never a dispute. The only dispute was regarding whether toll rights in the intangible asset or not. There is no material on record nor has any such record been relied by the Tribunal to come to the aforesaid conclusion. Consequently; the conclusion of Tribunal in para 18 that "*we are of the view that all the decisions are based on specific issue, wherein either ownership of asset or other rights arising thereon are not in dispute*" it is also erroneous. The bench has not adjudicated upon the submission of the assessee that assessment order cannot be revised based on the subsequent decision. The landed A.R. of the assessee reiterated his contention that Madras High Court delivered its decision on 29 December 2022, whereas the impugned assessment order was passed on 29 September 2022. Further the assessee relied upon the decision of Gauhati High Court in case of Meghalaya Plywood (2007) 160 TAXMAN 89 (Gau) and the decision of Hon'ble Supreme Court of India in case of Max India Ltd (259 ITR 282 SC) , though the

submission of assessee is recorded by Tribunal in para 7 but the same remained to be adjudicated. The bench while following the decision of Mumbai bench in case of a Hazaribagh Ranchi Expressway Limited (supra), recorded in para 14 in the decision, the decision of Bombay High Court in case of Godavaridevi Saraf, has been followed. In the said decision it has been held that until a contrary decisions given by any other competent High Court, which is binding on the Tribunal in the State of Bombay, it has to be proceed on the footing that the law declared by High Court, though of another state, is final law of the land. The such observation of the bench is in sharp contrast with the subsequent decision of Bombay High Court in case of Thane Electricity Supply (206 ITR 727 Bombay), wherein decision of the Godavaridevi Saraf was considered. During the hearing of this MA, the Id AR of the assessee vehemently submitted that ratio of decision of Madras High Court in L & T Infrastructure (supra) is not applicable on the facts of the present case, rather the ratio of the decision of third member of Hyderabad Tribunal is still having a binding force. On the basis of aforesaid submissions, the Id A.R. of the assessee submits that order dated 13th October 2025 may be recalled for adjudicating it afresh as it suffered from various legal infirmities which is based on wrong proportion of law.

4. On the other hand, the Id SR DR for the order for the revenue vehemently opposed the plea of the Id A.R. of the assessee. The Id Sr DR for the revenue submits that assessee has argued the MA, in such a way as this bench is hearing appeal against its own decision. The jurisdiction of Tribunal is limited under section 254(2). The assessee seeking review of the order which is not

permissible under the garb of present application. The Tribunal has no power to review its order. The grievance raised by assessee may be a matter of appeal and absolutely not basis for rectification of the order. The power of Tribunal while exercising rectification power is limited to correct mistake apparent on record.

5. We have considered the rival submission of both the parties and have gone through the order dated 13 October 2025. We find that while deciding the present appeal, we have discussed all the issues and the submissions raised by both the parties and have passed detailed order with our reasoning. Now, the assessee seeking to revisit the entire issue again on the pretext that no opportunity was allowed. We find that the scope of application under section 254(2) is limited to the correction of mistake which is apparent in the order of Tribunal. If the assessee is not satisfied with the finding of this Tribunal, the recourse is to file further appeal before Superior judicial form. This bench has no jurisdiction to revive of its own order. The Hon'ble Supreme Court in CIT Vs Reliance Telecom Ltd (2021) 133 taxmann.com 41 (SC) held that in exercise of powers under section 254(2), the Tribunal may amend any order passed by it under sub-section (1) of section 254 with a view to rectifying any mistake apparent from the record only. Therefore, the powers under section 254(2) are akin to order XLVII rule 1 CPC. While considering the application under section 254(2), the Tribunal is not required to re-visit its earlier order and to go into detail on merits. The powers under section 254(2) are only to rectify/correct any mistake apparent from the record.

6. Thus, in view of the aforesaid factual and legal position, we do not find any reason to recall order dated 13.10.2025. Hence, the present MA is dismissed.

2. In the result, the MA filed by the assessee is dismissed

Order pronounced in the open Court on 13/02/2026.

Sd-
PRABHASH SHANKAR
ACCOUNTANT MEMBER

Sd-
PAWAN SINGH
JUDICIAL MEMBER

MUMBAI,
Dated: 13/02/2026

Biswajit

Copy of the order forwarded to:

- (1) The Assessee;*
- (2) The Revenue;*
- (3) The PCIT / CIT (Judicial);*
- (4) The DR, ITAT, Mumbai; and*
- (5) Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai