

IN THE INCOME TAX APPELLATE TRIBUNAL

"B" BENCH, MUMBAI

BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

MA No.373/MUM/2025

(Arising out of ITA No.3529/MUM/2015)

(Assessment Year : 2017-18)

Navkar Goa Corporation,

810, Raheja Centre,
Free Press Journal Marg,
Nariman Point,
Mumbai - 400021
PAN : AAGFN2313K

..... Applicant
(Original Appellant)

v/s

Deputy Commissioner of Income Tax,

Room No.1923, 19th Floor,
Air India Building, Nariman Point,
Mumbai - 400021

.....Respondent
(Original Respondent)

Assessee by : Shri Ankit Sharma
Revenue by : Shri Swapnil Choudhary, Sr. DR

Date of Hearing - 13/02/2026

Date of Order - 16/02/2026

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The assessee has filed the Miscellaneous Application under section 254(1) of the Income Tax Act, 1961 ("*the Act*"), seeking recall/rectification of the order dated 12.09.2025 passed by the Coordinate Bench of the Tribunal in the assessee's appeal, being ITA No.3529/Mum/2025, for the assessment year 2017-18.

2. The grounds raised by the assessee for seeking rejection/recall of the order passed by the Coordinate Bench are as follows: -

"4.1 That the Hon'ble Tribunal has committed a mistake apparent on record in holding that the liability towards damages had not crystallized. The Hon'ble District Judge-1, Mapusa, by judgment and order dated 30.07.2012, held that the suit filed by the plaintiff was maintainable. The said order was not challenged by the appellant and has attained finality.

In view of the above judicial determination, the existence of a present and enforceable obligation stood established and the liability was impliedly crystallized. The Hon'ble Tribunal, however, failed to consider the legal effect of the said order, which directly impacts the issue of crystallization of liability. Such non-consideration of a material fact already on record constitutes a mistake apparent from the record, warranting rectification under section 254(2) of the Income-tax Act, 1961.

4.2 Liability had already crystallized. Civil Court's decree clearly fastened liability on the Applicant. The only reason the matter is pending before the Higher Court is because of the Applicant's statutory right to appeal. A liability does not become "contingent" merely because an appeal is pending. This fact was on record but has not been considered in the Tribunal's order.

4.3 Deposit of compensation with Higher Court tantamount to actual discharge of liability. The Applicant had deposited the compensation amount before the Higher Court as directed. This constitutes actual payment, or in the alternative, constructive payment, allowable under section 37(1). The Hon'ble ITAT's order erroneously proceeds on the assumption that no payment was made, which is contrary to the record.

4.4 The Hon'ble Tribunal, while confirming the disallowance of the provision, proceeded on the reasoning that the said amount would be allowable only upon actual payment to the claiming party. It is respectfully submitted that this finding constitutes a mistake apparent on record. The hon'ble bench erred in not appreciating that the Lower Civil Court has adjudicated the dispute and upheld the claim of the claimant, thereby conclusively determining and crystallizing the assessee's liability. Further, in appeal, the Hon'ble High Court has directed the assessee to deposit the amount as decreed by the Lower Civil Court, in compliance with which the assessee has duly deposited the said amount. In view of these judicial determinations and the actual deposit made pursuant to the directions of the Hon'ble High Court, the liability has ceased to be contingent and stands crystallized as an ascertained and enforceable obligation. Therefore, the observation of the Hon'ble Tribunal that the provision would be allowable only on actual payment to the claimant requires rectification, and the disallowance so confirmed deserves to be recalled/modified to this extent.

4.5 It is respectfully submitted that the expenditure is deductible when liability is ascertained, not only when paid. The Hon'ble Supreme Court and various High Courts have held that: once liability arises due to a judicial order, it ceases to be contingent; provision for such crystallized liability is allowable as business expenditure; the pendency of an appeal does not convert it into a

contingent liability. These settled principles were cited before the Tribunal but not adjudicated.

4.6 The Hon'ble Tribunal failed to appreciate that the provision for legal claims represents a present obligation arising from past events, reliably estimated and directly relatable to the business operations of the relevant previous year. Disallowance of such provision results in taxation of notional profits, which is contrary to the real income theory and the matching principle consistently upheld by higher judicial forums.

4.7 The Hon'ble Tribunal has committed a mistake apparent on record by not considering binding judicial precedents including Bharat Earth Movers (SC) and Rotork Controls (SC), which clearly hold that accrued and ascertained liabilities, though payable in future, are allowable deductions. Non-consideration of settled law has resulted in confirmation of disallowance leading to taxation of notional income.

4.8 Non-consideration of judicial precedents placed on record and not discussed in the order constitutes a mistake apparent from record, warranting rectification u/s 254(2).

4.9 Since compensation was already deposited with the Higher Court, the Tribunal's conditional relief ("allowable only when paid") is factually incorrect. This error affects the core conclusion and therefore requires rectification.

5. The applicant places reliance on the following legal precedence

- Bharat Earth Movers v. CIT (2000) 245 ITR 428 (SC): If a liability has crystallized or is reasonably certain, deduction cannot be denied merely because its quantification or timing is pending. This supports that a court-directed obligation is not a contingent liability.*
- Rotork Controls India (P) Ltd. v. CIT (2009) 314 ITR 62 (SC): A provision is allowable if (i) there is a present obligation, (ii) arising from a past event, and (iii) reliable estimation is possible. Court decree satisfies these tests.*
- Central India Electric Supply Company v. CIT 247 ITR 55 (SC) held (page 62) :*

The fact that the judgment and the decree of the civil court passed on the award was pending consideration in appeal before the High Court is also not a good ground to contend that the price was not due till the litigation with regard to the award was over. We have no doubt that in law the money payable under a decree becomes due for payment on the date of passing of the decree and nonetheless it is so even if the decree is appealed against and there is likelihood of the decree being set aside, modified or confirmed in appeal."

3. Thus, as per the assessee, as regards the issue of allowability of provision for the cost of tenant dispute, the Tribunal failed to appreciate that

the liability towards the damages was crystallised after the order passed by the Hon'ble Civil Court. As per the assessee, pursuant to the decree passed by the Hon'ble Civil Court, the assessee had also paid an amount of Rs.60 lakh to the tenant, which tantamount to the actual discharge of the liability. Thus, as per the assessee, the Tribunal erred in not appreciating that the Hon'ble Civil Court had adjudicated the dispute and upheld the claim of the tenant, thereby conclusively determining and crystallising the assessee's liability. It is further the plea of the assessee that the Tribunal committed a mistake apparent on record by not considering binding judicial precedents on the issue of crystallisation of liability.

4. On the other hand, the Revenue vehemently objected to the present Miscellaneous Application and submitted that all the aspects of the matter were considered by the Tribunal while deciding this issue in the assessee's appeal, and the present application is seeking a review of the order, which is completely impermissible.

5. We have considered the submissions of both sides and perused the material available on record. The assessee is engaged in the business of construction of residential and commercial buildings. During the year under consideration, the assessee, *inter alia*, debited a provision for the cost of a tenant dispute in the court, amounting to Rs. 1 crore, in its profit and loss account. As per the assessee, the said provision was made on the basis of an estimate of the present situation and obligation towards the tenant in respect of settlement of a dispute relating to the property on which a housing project has been erected, and the assessee has deposited Rs. 60 lakh pursuant to the

direction of the Hon'ble Goa High Court. The Assessing Officer ("AO"), vide order passed under section 143(3) of the Act, disagreed with the submissions of the assessee and held that the provision for cost of tenant dispute may possibly arise from the occurrence or non-occurrence of a certain future event and the assessee has no control over the said event. It was further held that no reliable estimate of the legal obligation pending can be made, so the outflow of funds required to discharge these liabilities cannot be determined. Accordingly, the AO rejected the contention of the assessee that this provision is in no way contingent in nature. In appeal, the learned CIT(A) dismissed the ground raised by the assessee on this issue and held that the liability arising from the legal dispute has not yet crystallised and is dependent on the outcome of the judicial proceedings. Therefore, it was held that the same is contingent in nature during the year under consideration.

6. While deciding this issue in the appeal filed by the assessee, the Coordinate Bench of the Tribunal, *inter alia*, vide its order dated 12.09.2025, observed as follows: -

"9. As regards the provision for the cost of a tenant dispute, the assessee submitted that the said provision was made in respect of an ongoing civil dispute filed against the assessee by Mrs Dsouza, who claimed that her house was illegally demolished by the assessee during a residential project construction. Accordingly, in light of legal consultation and the seriousness of the claim involved, the assessee made a provision of INR 1 crore in respect of the ongoing civil dispute. As per the assessee, the Hon'ble Civil Court on 02/02/2019 directed the assessee to reconstruct the house, restore amenities and pay a compensation of INR 60 lakh with interest. It is evident from the record that the lower authorities disagreed with the submission of the assessee, as the provision was made prior to the court's final ruling, and at the time of making the provision, the liability was not yet crystallised and was dependent on the outcome of the judicial proceedings. Therefore, it was held that the liability was contingent in nature during the relevant assessment year, and the provision made does not qualify as an ascertained liability. During the hearing, the learned AR submitted that the aforesaid decision of the Hon'ble Civil Court has not been accepted by the assessee, and a further appeal has

been filed before the Hon'ble High Court, and the same is pending disposal. Therefore, from the facts available on record, it is amply evident that there is no finality on the civil dispute. Thus, the liability on the assessee is solely dependent on the outcome of the litigation. Accordingly, we agree with the findings of the lower authorities that the liability on this issue has not yet crystallised. Therefore, we are of the considered view that the assessee can claim the deduction of the expenditure in the year of payment to Mrs Dsouza. As a result, the disallowance of the provision for the cost of tenant dispute is upheld."

7. As per the assessee, on 30.07.2012, the Hon'ble District Judge-1, Mapusa, held that the civil suit filed by the tenant was maintainable and these findings were not challenged by the assessee, and consequently, the same have attained finality. Further, it is the plea of the assessee that the Hon'ble Civil Court, on 02.02.2019, directed the assessee to reconstruct the house, restore the amenities, and pay a compensation of Rs. 60 lakh with interest. As per the assessee's own submission, it has preferred an appeal before the Hon'ble Goa High Court, where the appeal is still pending consideration. However, it has deposited Rs. 60 lakh with the Hon'ble High Court as per the Hon'ble High Court's direction. Since none of the orders passed by the Hon'ble Courts in respect of the dispute of the assessee with the tenant is placed on record, it is difficult to make any observation regarding the directions of the Hon'ble Courts.

8. Be that as it may, it is pertinent to note that on one hand, the assessee claimed that the Hon'ble District Judge-1, Mapusa, vide its order dated 30.07.2012, held that the civil suit filed by the tenant was maintainable, which finding has attained finality, as the assessee has not challenged the same. However, on the other hand, as per the assessee's own claim, it has filed an appeal against the decision of the Hon'ble Civil Court before the Hon'ble Goa

High Court, directing the assessee to pay compensatory compensation of Rs. 60 lakh with interest, and construct a residential house and restore the amenities. Therefore, the very fact that the assessee is in appeal before the Hon'ble Goa High Court appears to be contrary to the claim of the assessee that the liability to pay the tenant was crystallised soon after the order passed by the Hon'ble District Judge on 30.07.2012.

9. Further, the assessee has laid emphasis on the aspect that it has paid Rs. 60 lakh during the pendency of its appeal before the Hon'ble High Court and that the same tantamount to actual discharge of liability. However, it is pertinent to note that the said amount was not *suo motu* paid by the Assessee and the payment was made pursuant to the directions of the Hon'ble High Court. Thus, the mere fact that the Hon'ble Civil Court has adjudicated the dispute and directed the assessee, *inter alia*, to make the payment does not in any manner conclusively prove the crystallisation of the assessee's liability, as the assessee is in further appeal before the Hon'ble High Court.

10. As regards the decisions referred to by the assessee in the present Miscellaneous Application, we find that the Coordinate Bench duly took into consideration the decision of the Hon'ble Supreme Court in *Bharat Earth Movers vs CIT*, reported in (2000) 245 ITR 428 (SC), in paragraph 7 of its order. Further, the decision of the Hon'ble Supreme Court in *Rotork Controls India Private Limited vs. CIT*, reported in (2009) 314 ITR 62 (SC), has also followed the aforesaid decision of the Hon'ble Supreme Court in *Bharat Earth Movers (supra)*. It is pertinent to note that in both the decisions, the Hon'ble Supreme Court emphasised the aspect that the business liability should have

definitely arisen in the accounting year for the purpose of claiming a deduction, although the liability may have to be quantified and discharged on a future date. However, as noted above, in the present case, there is no finality on the civil dispute between the assessee and the tenant, and the appeal is still pending consideration before the Hon'ble High Court.

11. As regards the reliance placed by the assessee upon the decision of the Hon'ble Supreme Court in *Central India Electric Supply Company vs. CIT*, reported in (2001) 247 ITR 54 (SC), we find that the issue under consideration before the Hon'ble Supreme Court was regarding the taxability of income in the hands of the taxpayer, in respect of which litigation was pending before the Courts. Accordingly, in such facts and circumstances, the Hon'ble Supreme Court held that the money payable under a decree becomes due for payment on the date of passing of the decree, notwithstanding that the decree is appealed against, and there is a likelihood of the decree being satisfied, modified, or confirmed in appeal. We are of the considered view that even if the ratio of the Hon'ble Supreme Court in the aforesaid decision is applied to the present case, the liability accrued on 02.02.2019 when the Hon'ble Civil Court directed the assessee to make the payment of Rs. 60 lakh with interest. However, in the present case, as noted by the learned CIT(A), the provision was made prior to the Court's ruling and at the time of making the provision, the liability was not yet crystallised and was dependent on the outcome of the judicial proceedings.

12. Therefore, from the perusal of the record and the findings of the Coordinate Bench in its order dated 12.09.2025, it is evident that after

considering the material placed on record, the Coordinate Bench arrived at the conclusion that the liability of the assessee is solely dependent on the outcome of the litigation, and the same has not yet crystallised. Therefore, the Coordinate Bench held that the provision for the cost of tenant dispute is not allowable as a deduction in the year under consideration, even though the assessee can claim a deduction of the expenditure in the year of payment to the tenant. Accordingly, we are of the considered view that all the submissions on behalf of the assessee before us are merely an attempt to seek a review of the order passed by the Coordinate Bench under section 254(1), which is completely impermissible under section 254(2) of the Act. Therefore, we do not find merit in the present Miscellaneous Application filed by the assessee, and the same is dismissed.

13. In the result, the Miscellaneous Application by the assessee is dismissed.

Order pronounced in the open Court on 16/02/2026

Sd/-
VIKRAM SINGH YADAV
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 16/02/2026

Prabhat

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