IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUDHAKAR**
and
THE HONOURABLE Ms.JUSTICE **K.B.K.VASUKI**

Tax Case (Appeal) No.187 of 2015

The Commissioner of Income Tax
Salem.
.. Appellant

versus

M/s.Sri.Ponkumar Magnesite Mines
Lorry Transport Operator
Periyagollapatti, Kannakurichi Post
Salem - 8.
.. Respondent

PRAYER: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 as against the order dated 25.05.2004 made in M.P.No.276/Mds/2003 in I.T.A.No.1646/Mds/1994 on the file of the Income Tax Appellate Tribunal, Madras 'D' Bench for the assessment year 1983-84.

For appellant : Mr.J.Narayanasamy
Standing Counsel for Income Tax

J U D G M E N T

(Judgment of the Court was delivered by **R.SUDHAKAR,J.)**

This Tax Case (Appeal) is filed by the Revenue as against the order of the Income Tax Appellate Tribunal raising the following substantial question of law:

> "Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in dismissing the Miscellaneous Petition filed by the Department without going into the merits and legal position of the case is valid?"

2. The brief facts of the case are as follows:

The assessee, which is a registered firm had filed return of income for the assessment year 1983-84 on 23.04.1998 and claimed refund of advance tax. The Assessing Officer rejected the claim of refund, as the return was filed belatedly, but advised the assessee to file a petition under Section 119(2)(b) for condonation of delay and to seek refund. Aggrieved by the same, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), who dismissed the appeal holding that the order passed by the Assessing Officer is not under Section 237 of the Income Tax Act and hence, no appeal could lie. As against the said order, the assessee once again filed an appeal before the Income Tax Appellate Tribunal. The Tribunal, after analysing the facts and circumstances of the case, allowed the appeal filed by the assessee holding that the communication from the Assessing Officer amounted to an order under Section 237 of the Income Tax Act. Against the said order of the Tribunal, the Revenue filed Miscellaneous Petition before the Tribunal and sought rectification of the order contending that no order was passed by the Assessing Officer under Section 237 of the Income Tax Act. However, the Tribunal, dismissed the Miscellaneous Petition filed by the Revenue, holding as follows:

> *"If the Revenue is aggrieved over this order, it is open to them to file the appeal before the higher forum. Under Section 254(2) of the Income Tax Act, this Tribunal can rectify only error which is apparent on the face of the record. In the guise of rectifying the mistake, this Tribunal cannot reverse this order. Therefore, in our view, there is no merit in the petition filed by the Revenue. The error as pointed out by the Revenue is not an error within the meaning of Sec.254(2) of the Income Tax Act. Therefore, we do not find any merit in the petition filed by the Revenue."*

3. Aggrieved by the above-said order of the Tribunal, the present appeal has been filed by the Revenue.

4. Heard learned Standing Counsel appearing for the Revenue and perused the materials placed before this Court.

5. A reading of the order of the Tribunal reveals that the Tribunal, while disposing of the miscellaneous petition filed by the Revenue, was of the view that the grievance of the Department could be resolved by way of appeal and therefore, there is no scope for passing an order under Section 254(2) of the Income Tax Act.

6. It is worth to note that the Tribunal has power under Section 254(2) of the Income Tax Act when there is an error apparent on the face of the record, however, in the guise of rectifying mistake, it cannot reverse its own order. One of the important reasons for giving the power of rectification to the Tribunal is to see that no prejudice is caused to either of the parties appearing before it by its decision based on a mistake apparent from the record. The Tribunal, while exercising the power of rectification, can recall its order, if it is satisfied that on account of mistake, manifest error or omission attributable to the Tribunal, prejudice is caused to the party.

7. In the present case, we find that the Tribunal, on merits, had come to the conclusion that the order passed by the Assessing Officer

is one within the provisions of Section 237 of the Income Tax Act. When the Tribunal had arrived at such a finding, it is not open to the Revenue to file a Miscellaneous Petition challenging the said finding in the guise of rectification of the order. The Revenue has a remedy of appeal as against the findings of the Tribunal. Without resorting to such a remedy, the Revenue has filed the Miscellaneous Petition.

8. In the light of the above, we see no reason to interfere with the order of the Tribunal. Accordingly, finding no question of law much less any substantial question of law arises for consideration in this appeal, this Tax Case (Appeal) stands dismissed giving liberty to the Revenue to pursue the appeal in accordance with law, if they so desire. No costs.

Index: Yes / No (R.S.,J.) (K.B.K.V.,J.)
Internet: Yes / No 27.04.2015

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R.SUDHAKAR,J.
AND
K.B.K.VASUKI,J.

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To

1. The Income Tax Appellate Tribunal, Madras 'D' Bench.
2. The Commissioner of Income Tax (Appeals) II, Coimbatore.
3. The Deputy Commissioner of Income Tax, Company Circle, Tirupur.

Tax Case (Appeal) No.187 of 2015

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