IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION **NO.2548 OF 2014**
WITH
WRIT PETITION NO.2722 OF 2014
WITH
WRIT PETITION (L)NO.2152 OF 2014

Supreme Industries Ltd. .. Petitioner.
V/s.
The Additional Commissioner of Income-Tax
& Others .. Respondents.

Mr. Percy Pardiwala, Sr. Advocate with Mr. B. D. Damodar i/b. Kanga & Co., for the Petitioner in all the matters.
Mr. A. R. Malhotra, for the Respondent in all the matters.

CORAM: M.S.SANKLECHA, &
M.S.SONAK, JJ.
DATE : 24th NOVEMBER, 2014.

P.C:-

At the request of the Counsel for both the sides, these three Petitions are being disposed of at the stage of admission itself.

2 The challenge in these three Petitions is to a common order dated 13th September 2013 passed Income Tax Appellate Tribunal (Tribunal). By the impugned order, the Petitioner's applications to rectify the order dated 14th May, 2010 passed by the Tribunal on a rectification application was dismissed. The order dated 14th May, 2010 partly recalled the common order dated 18th January 2008 passed in respect of Assessment Years 1999-2000 to 2001-02 on the Petitioner's application for

rectification.

3 The Petitioner had during three subject Assessment Years viz. Assessment Years 1999-2000, 2000-01 and 2001-02 claimed deduction under Section 80HHC and 80-IB of the Income Tax Act, 1961 (the Act) while computing its income under Section 115JA/115JB of the Act. The Revenue did not accept the Petitioner's contention. This resulted in the Petitioner's filing an appeal before the Tribunal.

4 In its appeal memo for the three Assessment Years, the Petitioner had specifically urged the aforesaid ground of being entitled to claim deduction under Section 80HHC and 80IB of the Act. This is also indicated in the final common order dated 18th January, 2008 passed under Section 254(1) of the Act of the Tribunal. However, after recording the Petitioner's ground as taken up in the appeal memo, the same is not been considered by the Tribunal while disposing of the Petitioner's appeal finally under Section 254(1) of the Act by order dated 18th January 2008.

5 The title of the order dated 18th January 2008 while disposing of the three appeals filed by the Petitioner as well as the Revenue for the three Assessment Years reads as under:-

" IT A No.904, 867 and 868/Mum/2005
(Assessment Year 1999-2000, 2000-01 and 2001-02)

Deputy Commissioner of Income Tax,
Central Circle 29, Mumbai .. Appellant
Vs.
The Supreme Industries Ltd., Mumbai
(PAN AAACT1344F) .. Respondent

IT A No.906,907 and 908/Mum/2005
(Assessment Year 1999-2000, 2000-01 and 2001-02)

The Supreme Industries Ltd., Mumbai .. Appellant
Vs.
Deputy Commissioner of Income Tax,
Central Circle 29, Mumbai .. Respondent."

6 As the order dated 18th January, 2008 of the Tribunal under Section 254(1) of the Act did not deal with the Petitioner's contention of being entitled to the benefit of Sections 80HHC and 80-IA of the Act, Petitioner filed a rectification application before the Tribunal. However, in the title of the rectification application, the Petitioner while seeking to rectify the order dated 18th January, 2008 by mistake had referred it as arising out of the Income Tax Appeal Nos.904, 867 and 868/Mum/2005. These three appeal numbers referred to the appeals filed by the Revenue as is evident from the title of the order dated 18th January, 2008.

7 By order dated 14th May, 2010, the Tribunal allowed the miscellaneous application for rectification filed by the Petitioner by recalling the order dated 18th January, 2008 to the extent of non-consideration of deduction under Section 80HHC and 80-IA of the Act. However, the title of order dated 14th May, 2010 by mistake referred to order dated 18th January, 2008 as arising out of the Income Tax Appeal Nos.904, 867 and 868/Mum/2005 i.e. Revenue's appeal. The title of the order dated 14th May, 2010 reads as under:-

M. A. No.10/Mum/2010

(Arising out of ITA Nos.904,867 & 868/M/2005: A. Years 1999-2000 to 2001-02)

M/s. The Supreme Industries Limited 612, Raheja Chambers, 213, Nariman Point, Mumbai 400 021. PA No.AAACTI344F.	Vs.	The Addl. Commissioner of Income-Tax, Large Tax Payers Unit (LTU), 29th Floor, World Trade Centre-1, Cuffe Parade, Mumbai 400 005.
(Applicant)		(Respondent)

8 Thereafter, the Petitioner realized that order dated 14th May, 2010 while rectifying the order dated 18th January 2008 which in fact had arisin out of Income Tax Appeal Nos.906, 907 and 908/Mum/2005 (Petitioner's appeal) and not as mentioned by mistake in the title of the order dated 14th May, 2010 as arising out of the Income Tax Appeal bearing Nos.904, 867 and 868/Mum/2005 (Appeal Numbers of the Revenue).

9 In the above view, Petitioner filed an application for rectification/correction of the order dated 14th May, 2010. This application was to correct the title of the order dated 14th May, 2010 so as to indicate the correct Income Tax Appeal Numbers in the title of the order dated 14th May, 2010 as Income Tax Appeal Nos.906, 907 and 908/Mum/2005 instead of Income Tax Appeal Nos.904,867 and 868/Mum/2005 (Revenue's appeal).

10 By impugned order dated 13th September, 2013, the Tribunal rejected the three miscellaneous application filed by the Petitioner, seeking to correct the order of the Tribunal dated 14th May, 2010. This dismissal of the rectification application was on the following grounds:

(a) A rectification application under Section 254(2) of the Act can be entertained only to rectify an order passed under Section 254(1) of the Act and not to correct an error passed under Section 254(2) of the Act. In support, reliance was placed upon the decision of the Orissa High Court in ***CIT v/s. President ITAT 196 ITR 838;*** and

(b) There is no mistake committed in the order dated 14th May, 2010 of the Tribunal. In any case, the proceeding under Section 254(2) of the Act are meant only for rectifying mistakes apparent from the record committed by the Tribunal and not the mistake of the parties concerned.

11 We find it is an undisputed position that a mistake has occurred in the order dated 14th May, 2010 in mentioning Income Tax Appeal Nos. 904, 867 and 868/Mum/2005 (being Appeal numbers allotted to the Revenue's appeal) in stead of Income Tax Appeal Nos.906, 907 and 908/Mum/2005. However, the impugned order rejected the application for rectification on the ground that such an application is not maintainable under Section 254(2) of the Act as held by the Orissa High Court in CIT v/s. President- ITAT (supra).

12 It is a settled position in law that every authority exercising quasi judicial powers has inherent/ incidental power in discharging of its functions to ensure that justice is done between parties i.e. no prejudice is caused to any of the parties. This power has not to be traced to any provision of the Act but inheres in every quasi judicial authority. This has been so held by the Supreme Court in ***Grindlays Bank Ltd. v/s. Central Government Industrial Tribunal 1980 SCC 420***. Therefore, the aforesaid principle of law should have been adopted by the Tribunal. It is expected from the Tribunal to adopt a justice oriented approach and not defeat the

legitimate rights on the altar of procedures and technicalities. This is particularly so when there is no specific bar in the Act to correct an order passed on rectification.

13 It is fundamental principle of law that no party should be prejudiced on account of any mistake in the order of the Tribunal. Though not necessary for the disposal of this Petition, we express our disapproval of the stand taken in the impugned order that Section 254(2) of the Act are meant only for rectifying the mistakes of the Tribunal and not of the parties. The Tribunal and the parties are not adversarial to each other. In fact, the Tribunal and the parties normally represented by Advocates/ Chartered Accountants are comrades in arms to achieve justice. Therefore, a mistake from any source be it-the parties or the Tribunal so long as it becomes a part of the record, would require examination by the Tribunal under Section 254(2) of the Act. It cannot be dismissed at the threshold on the above ground.

14 In view of the above, we set aside the impugned order dated 13th September, 2013 and direct the Tribunal to pass appropriate order correcting the mistake in its order dated 14th May, 2010 for all the three subject Assessment Years i.e. 1999-2000, 2000-01 and 2001-02.

15 With the above directions, all the three **Writ Petitions** are **disposed of.** No order as to costs.

(M.S.SONAK,J.) **(M.S.SANKLECHA,J.)**