

*Sequeira*

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

***WRIT PETITION NO. 2237 OF 2019***

Piramal Investment Opportunities Fund,  
through its trustees Vistra ITCL India Limited,  
Piramal Tower, Annex, Ganpatrao Kadam Marg,  
Lower Parel (West), Mumbai – 400 013

.. Petitioner

Versus

1. Assistant Commissioner of Income Tax-21 (2),  
Mumbai, Room no 115, Piramal Chambers,  
Parel, Mumbai – 400 012.
2. Principal Commissioner of Income-tax – 21,  
Piramal Chambers,  
Parel, Mumbai – 400 012.
3. Commissioner of Income-tax (Appeals)-33,  
Pratyakshakar Bhawan,  
Bandra Kurla Complex,  
Bandra (East), Mumbai – 400 051.
4. Union of India, through the Secretary,  
Department of Revenue, Ministry of Finance,  
Government of India, North Block,  
New Delhi – 110 001.

.. Respondents

Mr.Madhur Agarwal a/w Atul Jasani, for the Petitioner.

Mr.Sham Walve, for Respondents.

***CORAM : M.S.SANKLECHA &  
NITIN JAMDAR, JJ.***

***Date : 4 September 2019.***

***Judgment : (Per Nitin Jamdar, J.)***

Rule. Rule is made returnable forthwith. Taken up for final disposal.

2. The Petitioner had filed an application for rectification of the Income tax assessment order. Assistant Commissioner rejected it by the impugned order. The Commissioner held that since the Petitioner had filed an statutory appeal, it would not be proper to decide the rectification application.

3. The Petitioner is an investment fund. The Petitioner had filed its return of income for the Assessment Year 2015-16 on 8 October 2015. Petitioner had disclosed total income of Rs.65,65,84,797 being interest income earned on its investment. Petitioner paid Advance Tax of Rs.16,80,00,000/-. Petitioner's case was selected for scrutiny assessment vide notice dated 28 July 2016. Petitioner filed its reply to the notice. Petitioner filed a revised return of income disclosing Nil income for the Assessment Year 2015-16. The scrutiny assessment was completed by the Assistant Commissioner of Income Tax, Mumbai. The Assessment order was

passed on 30 December 2017. The Petitioner filed an appeal before the Commissioner of Income Tax (Appeals) on the ground that the Assessing Officer did not give credit of advance tax on Rs.16,80,00,000/-.

4. The Petitioner also made an application on 8 January 2018 under section 154 of the Income Tax Act to the Assistant Commissioner for rectification. The Petitioner stated that by a mistake apparent on record, the credit of payment of advance tax of Rs.16,80,00,000/- has not been given and Petitioner is entitled to a refund. The Assistant Commissioner accordingly rejected the rectification application by the impugned order dated 13 June 2019.

5. In the impugned order the Additional Commissioner commented that the Petitioner did not inform an appeal is filed on the same issue for which rectification was sought. The Commissioner stated that there could be a merit in the case, but the discussion is restricted to Section 154 of the Act. He opined that since the Petitioner is agitating on similar ground before the appellate authority it is not proper on the part of the Assistant Commissioner, following the doctrine of judicial discipline, to adjudicate on the same issue pending before the appellate authority. The Assistant Commissioner, observed that rectification application assumes character of a matter being *sub-judice*, it needs to be dismissed. Being aggrieved, the Petitioner has filed the present Petition.

6. We have heard Mr.Madhur Agarwal, learned counsel appearing for the Petitioner and Mr.Sham Walve, learned counsel appearing on behalf of Respondents.

7. The relevant provisions of the Section 154 read thus:

*'154.[(1) With a view to rectifying any mistake apparent from the record an income-tax authority referred to in section 116 may, -*

*(a) amend any order passed by it under the provisions of this Act;*

*[(b) amend any intimation or deemed intimation under sub-section (1) of section 143; ]]*

*[(c) amend any intimation under sub-section (1) of section 200A;]*

*[(d) amend any intimation under sub-section (1) of section 206CB.]*

*[(1A) Where any matter has been considered and decided in any proceeding by way of appeal or revision relating to an order referred to in sub-section(1), the authority passing such order may, notwithstanding anything contained in any law for the time being in force, amend the order under that sub-section in relation to any matter other the matter which has been so considered and decided .]*

*(2) Subject to the other provisions of this section, the authority concerned -*

*(a) may make an amendment under sub-section (1) of its own motion, and*

*(b) shall make such amendment for rectifying any such mistake which has been brought to its notice by the assessee [or by the deductor] [or by*

*the collector], and where the authority concerned is the [Commissioner (Appeals)], by the [Assessing]Officer also.*

- (3) .....
- (4) .....
- (5) .....
- (6) .....
- (7) .....
- (8) .....

Section 154(1) empowers the Authority to rectify and carry out amendments. The specified Authorities can amend any order passed by it under the provisions of the Act; intimation or deemed intimation specified in section 143(1); any intimation under sub-section (1) of section 200A; and any intimation under sub-section (1) of section 206CB. Section 154(2) empowers the Authority to make an amendment on its own motion and to make such amendment for rectifying any such mistake which has been brought to its notice by the assessee, or the other Authorities.

8. Section 154(1A) provides that where if any matter has been considered and decided in any proceeding by way of appeal or revision, contained in any law for the time being in force, such order shall not be amended. Section 154 (1A) thus places an embargo on the power of rectification in the cases where the matter has been considered and decided in appeal or revision. It is of importance that the legislature has used the phrase ‘considered and decided’ in the past tense. The phrase ‘considered and decided’ cannot be read as ‘pending consideration in appeal or revision’. To do so would be

adding and changing the plain language of the statute. By modifying and adding the words, in this manner, which is not permissible, the Assistant Commissioner has divested himself of the power of amendment. In view of the plain language of section 154, there is no embargo on the power of amendment if an appeal or revision is merely pending. The rejection of the rectification application on this ground was unwarranted. We are informed that the Appeal is still pending. The Assistant Commissioner has failed to exercise the jurisdiction vested in him and thus the impugned order will have to be set aside and the application will have to be decided.

9. The Writ Petition succeeds. The impugned order dated 13 June 2019 is quashed and set aside. The rectification application filed by the Petitioner under section 154 of the Income Tax Act, 1961 stands restored to the file of Assistant Commissioner of Income Tax 21(2), Mumbai to be disposed of on its own merits. Rule is made absolute in above terms. No order as to costs.

*(NITIN JAMDAR, J.)*

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