Delhi High Court Cit vs Itat And Ors. on 2 June, 2006 Equivalent citations: (2005) 204 CTR Del 349, 2006 155 TAXMAN 378 Delhi Author: T Thakur JUDGMENT T.S. Thakur, J.: Issue rule. With consent, this writ petition has been heard for final disposal. 2. The petitioner has in this petition assailed the validity of an order passed by the Tribunal under section 254 of the Income Tax Act, 1961, whereby the Tribunal has recalled its order dated 7-8-2003 passed in ITA No. 151/Del/2000 arid posted the said appeal for rehearing after notice to the parties. The controversy arises in the following circumstances . 2. The petitioner has in this petition assailed the validity of an order passed by the Tribunal under section 254 of the Income Tax Act, 1961, whereby the Tribunal has recalled its order dated 7-8-2003 passed in ITA No. 151/Del/2000 arid posted the said appeal for rehearing after notice to the parties. The controversy arises in the following circumstances . 3. Shri Ratti Ram Gotewala was along with his family members carrying on business in sarees at Delhi and Calcutta. He was a partner in M/s. Rati Ram Ram Vinod and M/s. Rati Ram Ram Vinod & Co., besides being a director in M/s. Rati Ram Sarees Store (P) Ltd. He was also the proprietor of M/s. R. Rakesh Behari & Co. 3. Shri Ratti Ram Gotewala was along with his family members carrying on business in sarees at Delhi and Calcutta. He was a partner in M/s. Rati Ram Ram Vinod and M/s. Rati Ram Ram Vinod & Co., besides being a director in M/s. Rati Ram Sarees Store (P) Ltd. He was also the proprietor of M/s. R. Rakesh Behari & Co. 4. A search was conducted at the residential and business premises of the group concerns mentioned above and various incriminating material including certain Hundies depicting various transactions seized. Since the IT department was of the view that the transactions evidenced by the said documents related to undisclosed income of the assessed, a notice under section 158BC was issued and served upon the assessed on 17-4-1998 and his group concerns. A return was, pursuant to the said notice, filed by the assessed culminating in a block assessment order passed by the Dy. CIT (Investigation Circle) in September, 1999. Aggrieved by the said assessment, the assessed appealed to the Commissioner (Appeals) who partly allowed the same. The correctness of the said order was then assailed by the assessed before the Tribunal, Delhi Bench, which was disposed by the Tribunal by order dated 7-8-2003. The Tribunal after a detailed examination of various aspects, agitated before it by the parties granted only partial relief to the assessed. The assessed thereafter made an application under section 254 of the IT Act before the Tribunal invoking the powers of the Tribunal to rectify the order by withdrawing the same in toto and for rehearing of the appeal de novo. This application has been allowed by the Tribunal in terms of the order impugned in this writ petition. 4. A search was conducted at the residential and business premises of the group concerns mentioned above and various incriminating material including certain Hundies depicting various transactions seized. Since the IT department was of the view that the transactions evidenced by the said documents related to undisclosed income of the assessed, a notice under section 158BC was issued and served upon the assessed on 17-4-1998 and his group concerns. A return was, pursuant to the said notice, filed by the assessed culminating in a block assessment order passed by the Dy. CIT (Investiga-

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such amendment if the mistake is brought to its notice by the assessed or the assessing officer." 6. It is evident from the above that the power available to the Tribunal is not in the nature of a review as is understood in legal parlance. The power is limited to correction of mistakes apparent from the record. What is significant is that the section envisages amendment of the original order of the Tribunal and not a total substitution thereof. That position is fairly well settled by two decisions of this court in Ms. Deeksha Suri v. ITAT (1998) 232 ITR 395 (Del) Karan & Co. v. ITAT (2002) 253 ITR 131 (Del). This court has in both these decisions hold that the foundation for the exercise of the jurisdiction lies in the rectification of a mistake apparent from the record which object is ensued by amending the order passed by the Tribunal the said power does not, however, contemplate a rehearing of the appeal for a fresh disposal. Doing so would obliterate the distinction between the power to rectify mistakes and the power to review the order made by the Tribunal. The following passage from the decision of this court in Karan & Co. (supra) elucidates the difference between review and rectification of an order made by the Tribunal : 6. It is evident from the above that the power available to the Tribunal is not in the nature of a review as is understood in legal parlance. The power is limited to correction of mistakes apparent from the record. What is significant is that the section envisages amendment of the original order of the Tribunal and not a total substitution thereof. That position is fairly well settled by two decisions of this court in Ms. Deeksha Suri v. ITAT (1998) 232 ITR 395 (Del) Karan & Co. v. ITAT (2002) 253 ITR 131 (Del). This court has in both these decisions hold that the foundation for the exercise of the jurisdiction lies in the rectification of a mistake apparent from the record which object is ensued by amending the order passed by the Tribunal the said power does not, however, contemplate a rehearing of the appeal for a fresh disposal. Doing so would obliterate the distinction between the power to rectify mistakes and the power to review the order made by the Tribunal. The following passage from the decision of this court in Karan & Co. (supra) elucidates the difference between review and rectification of an order made by the Tribunal : “The scope and ambit of application of section 254(2) is very limited. The same is restricted to rectification of mistakes apparent from the record. We shall first deal with the question of the power of the Tribunal to recall an order in its entirety. Recalling the entire order obviously would mean passing of a fresh order. That does not appear to be the legislative intent. The order passed by the Tribunal under section 254(1) is the effective order so far as the appeal is concerned. Any order passed under section 254(2) either allowing the amendment or refusing to amend gets merged with the original order passed. The order as amended or remaining unamended is the effective order for all practical purposes. The same continues to be an order under section 254(1). That is the final order in the appeal. An order under section 254(2) does not have existence de hors the order under section 254(1). Recalling of the order is not permissible under section 254(2). Recalling of an order automatically necessitates rehearing and readjudication of the entire subjectmatter of appeal. The dispute no longer remains restricted to any inistake sought to be rectified. Power to recall an order is prescribed in terms

of r. 24 of the IT (Appellate Tribunal) Rules, 1963, and that too only in cases where the assessed shows that it had a reasonable cause for being absent at a time when the appeal was taken up and was decided ex parte. This position was highlighted by one of us (Justice Arijit Pasayat, Chief Justice) in CIT v. ITAT (1992) 196 ITR 640 (Ori). Judged in the above background the order passed by the Tribunal is indefensible," 7. That being the legal position, the Tribunal was not in our opinion justified in recalling the order passed by it in toto and setting the matter down for a fresh hearing. Just because a pronouncement made on the subject either by the Tribunal or by any other court was not noticed by the Tribunal while taking a particular view on the merits of the controversy may constitute an error that would call for correction in an appropriate appeal against the order. Any such error may however fall short of constituting a mistake apparent from the record within the meaning of section 254(2) of the Act. More importantly just because a point is debatable (which is one of the reasons given by the Tribunal in the instant case) could hardly provide a justification for recalling the order and fixing the appeal for a de novo hearing. While doing so, the Tribunal has no doubt made certain observations in regard to the levy of interest under section 158BFA being statutory in nature with no power vested in any authority or Tribunal to condone the same, but the very fact that the Tribunal has made those observations would not render valid the order of recall passed by it. The net result of the order made by the Tribunal continues to remain the same viz., the appeal has to be heard again simply because one of the issues decided by the Tribunal is debatable or the Tribunal has not noticed an earlier decision rendered by another Bench. Both these reasons were insufficient to justify the order of recall made by the Tribunal. 8. In the result, this petition succeeds and is hereby allowed. The order of recall passed by the Tribunal is hereby quashed, leaving it open to the parties to seek such redress against the original order as is legally permissible. No costs. 8. In the result, this petition succeeds and is hereby allowed. The order of recall passed by the Tribunal is hereby quashed, leaving it open to the parties to seek such redress against the original order as is legally permissible. No costs.