IN THE HIGH COURT OF KARNATAKA AT BENGALURU

ON THE 25TH DAY OF MARCH, 2019

BEFORE

THE HON'BLE MR. JUSTICE RAVI MALIMATH

AND

THE HON'BLE MR. JUSTICE S. G. PANDIT

I.T.A. NO.847 OF 2018

BETWEEN:

1. THE PR. COMMISSIONER OF
INCOME TAX
CENTRAL CIRCLE
C R BUILDING
QUEEN'S ROAD
BENGALURU-560 001.

2. THE DEPUTY COMMISSIONER
OF INCOME-TAX
CENTRAL CIRCLE-2 (1)
C R BUILDING
QUEENS ROAD
BENGALURU-560 001.

... APPELLANTS

(BY SRI. ARAVIND K V, ADVOCATE)

AND:

SMT. ALPANA BHARTIA
NO.209, RAMANASHREE

CHAMBERS NO.37
LADY CURZON ROAD
BENGALURU-560 001
PAN: ADUPB 5981G.

... RESPONDENT

(BY SRI. A.SHANKAR, SR.COUNSEL FOR
SRI. O P AGARWAL, ADVOCATE)

THIS APPEAL IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED: 27.04.2018 PASSED IN M.P.NO. 35/BANG/2018 (IN M.P.NO. 178/BANG/2017 IN ITA NO. 856/BANG/2016), FOR THE ASSESSMENT YEAR: 2007-08, PRAYING TO (i) FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE AND ETC.

THIS APPEAL COMING ON FOR ORDERS THIS DAY, S.G.PANDIT J., DELIVERED THE FOLLOWING:

## JUDGMENT

Aggrieved by the order dated 27.04.2018 in M.P.No.35 of 2018 passed by the Income Tax Appellate Tribunal, 'C' Bench,Bengaluru, by which the petition filed under Section 254(2) of the Income Tax Act (hereinafter referred to as 'the Act' for short) was rejected, the Revenue is in appeal.

2. The respondent filed appeal in ITA No.856 of 2016 against the order of the Commissioner of Income Tax (Appeals) dated 30.03.2016 for the assessment year 2007-08. The assessee was subjected to search proceedings under Section 132 of the Act. The assessee had made a statement that her husband knows about the bank accounts and immovable properties. The appellant was issued with a show cause notice asking her to furnish confirmation from HSBC, Geneva to indicate that the bank account does not belong to the assessee. Since the said account was in the joint name of the assessee and her husband, the notice stated that on failure to substantiate the deposits, the deposits would be brought to tax. The assessee failed to furnish any explanation. The Assessing Authority taking the deposits in the said bank account as additional income for the assessment year 2007-08 the same was brought to tax. The husband of the assessee had also filed an appeal against the assessment order before the CIT (A). The CIT (A) dismissed the appeals of

both the assessee and her husband. Both the assessee and her husband filed appeals in ITA Nos.855 and 856 of 2016 before the Income Tax Appellate Tribunal, Bengaluru Bench. The Appellate Tribunal, by its detailed order dated 16.06.2017 rejected both the appeals of the assessee as well as the husband of the assessee. While dismissing the appeals, the Appellate Tribunal has noted that the assessee was not agreeing to give consent for obtaining bank statement from HSBC, Geneva. Hence, adverse inference was drawn against the assessee.

3. Thereafter, the assessee filed Misc. Petition No.178 of 2017 under Section 254(2) of the Act to rectify the mistake apparent on record. In that petition it was stated that addition of deposit in HSBC, Geneva amounting to Rs.5,98,40,617/- has been made to the assessee as well as the husband of the assessee which amounts to double addition. It was stated that once the said deposit is added as additional income to the income of the husband of the assessee, the same could not have been considered as

income of the assessee. That, both the assessee as well as the husband of the assessee were in appeal and taking note of the above double addition, the assessee's appeal ought to have been allowed. The Tribunal noting that the substantive addition made to the assessee's husband being upheld was of the opinion that protective addition to the assessee has to go. Further, as the substantive addition made to the husband of the assessee, the protective addition made to the assessee is an apparent mistake and rectified the same under Section 254(2) of the Act and deleted the addition of Rs.5,98,40,607/- made to the assessee. Against this order, the Revenue filed Misc.Petition No.35 of 2018 under Section 254(2) of the Act to rectify the mistake apparent on record of the order dated 24.08.2017 passed in M.P.No.178 of 2017. The Tribunal dismissed the said petition holding that the same is not maintainable under Section 254(2) relying upon the order of the Special Bench of the Tribunal in SHRI.PADAM PRAKASH (HUF) v/s ITO. Against the said dismissal of

Misc. Petition by order dated 24.08.2017, the Revenue is in appeal before this Court.

4. Learned counsel for the appellants would submit that there is a mistake apparent on the record. That Misc. Petition No.178 of 2017 filed by the assessee was disposed off without going into the facts and merits of the case. The finding that substantive addition made to the husband of the assessee is not borne on the records. It is his further contention that the petition under Section 254(2) of the Act would be maintainable against an order passed in Misc. Petition which was filed under Section 254(2) itself and prays for allowing the appeal.

5. On hearing the learned counsel for the appellants-Revenue and on perusal of the appeal papers including the detailed order passed by the Tribunal, we are of the view that no substantial question of law would arise to entertain the appeal. The assessee as well as her husband had filed ITA Nos.855 and 856 of 2016 before the Tribunal against

the addition of Rs.5,98,40,617/- to their individual assessment. Addition of the said amount could not have been made to both assessee and assessee's husband for the purpose of taxation. But, the Tribunal had dismissed the appeals of both assessee and her husband confirming the order passed by the CIT (A). The assessee filed Misc. petition 178 of 2016 under Section 254(2) of the Act to rectify the mistake apparent on record in respect of the assessee on the ground that addition of income has been made to both assessee as well as her husband, which would amount to double addition. The Tribunal, in exercise of its power under Section 254(2) of the Act rectified the mistake and deleted the addition of income of Rs.5,98,40,617/- made to the assessee. The Revenue filed Misc.Petition 35 of 2018 under Section 254(2) against the order passed under Section 254(2) in Misc. Petition No.178 of 2017, contending that there is a mistake apparent on record and sought to rectify the same. The Tribunal rightly dismissed the Misc. petition holding that

the Misc. petition to rectify the mistake in Misc. Petition would not be maintainable. While rejecting, the Tribunal relied on the decision of the Special Bench of the Tribunal in SHRI.PADMA PRAKASH v/s ITO.

6. Section 254 (1) and (2) of the Act reads as follows:

> *254(1) The Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.*
>
> *254(2) The Appellate Tribunal may, at any time within six months from the end of the month in which the order was passed, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section(1), and shall make such amendment if the mistake is brought to its notice by the assessee.*
>
> *Provided that an amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this sub-section unless the Appellate*

*Tribunal has given notice to the assessee of its intention to do so and has allowed the assessee a reasonable opportunity of being heard.*

*Provided further that any application filed by the assessee in this sub-section on or after the 1st day of October 1998, shall be accompanied by a fee of fifty rupees."*

7. Section 253 of the Act provides an appeal to the Appellate Tribunal, which would be considered under Section 254 of the Act. Section 254(1) contemplates hearing of the appeal by the Appellate Tribunal and passing of the order thereon. Sub-section (2) of Section 254 of the Act would empower the Tribunal to rectify any mistake apparent from the record, amend any order passed under sub-section (1), if the mistake is brought to its notice by the parties to the proceedings, within six months from the end of the month in which the order was passed. From a reading of sub-section (2) of Section 254, it would be clear that the Tribunal possesses the power to

rectify any mistake apparent on the record in the order passed by it under sub-Section (1). If the order under sub-section (2) of Section 254 is passed, the said order would not be available for rectification of mistake again under Section 254 (2) of the Act. The order passed under Section 254(2) cannot be rectified nor amended by invoking sub-section (2) of Section 254 once again. Repetitive applications under Section 254 (2) of the Act are not permissible. In the case on hand also, the Tribunal in exercise of its power under sub-section (2) of Section 254 has rectified the mistake apparent on the record and deleted the double addition of income in respect of the assessee. Thereafter, the Revenue again files an application under sub-section (2) of Section 254 seeking rectification of the order passed under sub-section (2) of Section 254 which is not maintainable. The Tribunal has rightly dismissed the Misc. petition filed by the Revenue. There is no error or omission in the order passed by the Tribunal.

8. No substantial question would arise in this appeal. Hence, the appeal is dismissed.

In view of dismissal of the appeal, the application I.A.No.1 of 2019 for condonation of delay is rejected.

Sd/-
JUDGE

Sd/-
JUDGE

mpk/-*
CT:bms