

**Commissioner of Income-tax and anr. Vs. Income-tax Appellate Tribunal and anr.**

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**SooperKanoon Citation :** [sooperkanoon.com/528783](http://sooperkanoon.com/528783)

**Court :** Orissa

**Decided On :** Jul-29-1994

**Reported in :** [1994]210ITR397(Orissa)

**Judge :** G.B. Patnaik and ;R.K. Patra, JJ.

**Acts :** [Income Tax Act, 1961](#) - Sections 254(2)

**Appeal No. :** O.J.C. No. 2010 of 1992

**Appellant :** Commissioner of Income-tax and anr.

**Respondent :** income-tax Appellate Tribunal and anr.

**Advocate for Pet/Ap. :** Ray, Adv.

**Judgement :**

1. The order of the Income-tax Appellate Tribunal dated October 7, 1991, in exercise of power under Sub-section (2) of Section 254 of the Income-tax Act, 1961, passed in a miscellaneous case, annexed as annexure-1, is the subject-matter of challenge in this writ application.

2. The main ground on which the impugned order is attacked is that in exercise of power under Sub-section (2) of Section 254, the Tribunal may be entitled to rectify

any apparent mistake in the order and is not entitled to rewrite the judgment or review the earlier decision. According to the Department, by directing substitution of paragraphs 9 and 10 by a fresh paragraph 9 in the impugned order dated October 7, 1991, it tantamounts to rewriting of the judgment. There cannot be any dispute with the proposition that the power under Sub-section (2) of Section 254 is to rectify a mistake apparent from the record once such mistake is brought to the notice of the Tribunal either by the assessee or by the Income-tax Officer. But that power does not clothe the Tribunal with the jurisdiction to review its earlier decision or to rewrite a fresh judgment. In paragraph 9 of the original order, the Tribunal had recorded that the Assessing Officer allowed 20 per cent. of administrative and miscellaneous expenses enumerated in the assessment order which was upheld by the Commissioner of Income-tax (Appeals). Later on, it was brought to their notice that the said deduction of 20 per cent. of administrative and miscellaneous expenses was not in respect of the assessment years 1985-86 to 1988-89 alone, but also in respect of the other assessment years which was the subject-matter of appeal. Instead of saying so, by the impugned order, the Tribunal substituted paragraphs 9 and 10 of the original order by a fresh paragraph which may be construed to be allowing the assessee's appeals in respect of the assessment years 1985-86 to 1988-89. Such rewriting of the judgment as has been done by the Tribunal under the impugned order cannot be sustained, as the power under Section 254(2) of the Income-tax Act does not enable the Tribunal either to review its own decision or to rewrite a fresh judgment. In that view of the matter, we would clarify that the assessee's appeals in respect of the assessment years 1985-86 to 1988-89 stood dismissed and there was no interference with the orders of the Commissioner of Income-tax (Appeals) in respect of those years notwithstanding the so-called substitution of the said paragraph by the impugned order under annexure-1. In view of this conclusion of ours, the Revenue cannot have any further grievance or prejudice.

3. Mr. Ray, learned standing counsel, in the course of his arguments contended that such entertainment of applications for rectification has become rampant and, therefore, the law in this regard must be settled. As we find, this court has considered the scope and power of an Appellate Tribunal under Section 254(2) of the Income-tax Act in the case of CIT v. ITAT : [1992]196ITR590(Oriassa) . It is not

necessary to reiterate the law laid down earlier. Needless to mention what the Tribunal is entitled to do, in exercise of power under Sub-section (2) of Section 254, is to rectify an apparent mistake available from the record and not review its own decision or rewrite a fresh judgment.

4. This writ application is disposed of with these observations and directions. There will be no order as to costs.

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