* **THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on: 26th November, 2010

% Judgment Pronounced on:24th December, 2010

\+ **WP (C) Nos. 6460/2010, 6461/2010, 6462/2010, 6463/2010, 6464/2010 and 6465/2010**

M/S LACHMAN DASS BHATIA HINGWALA (P.) LTD. ..... Petitioner
Through: Mr. R.M. Mehta, Adv.

versus

ASSISTANT COMMISSIONER OF INCOME TAX ..... Respondent
Through: Mr.Deepak Chopra, Adv.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE MANMOHAN

1. Whether reporters of the local papers be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

DIPAK MISRA, CJ

Expressing doubt with regard to the precedential value of the decisions rendered in ***Commissioner of Income Tax v. K.L. Bhatia,*** [1990] 182 ITR 361 (Delhi), ***Deeksha Suri v. Income-tax Appellate Tribunal and others,*** [1998] 232 ITR 395 (Delhi), ***Karan and Co. v. Income-tax Appellate Tribunal,*** [2002] 253 ITR 131 (Delhi), ***J.N. Sahni v. Income-tax Appellate Tribunal and others,*** (2002) 257 ITR 16 (Delhi), ***Commissioner***

of Income-Tax v. Vichtra Construction P. Ltd., [2004] 269 ITR 371 (Delhi), ***Om Prakash Bhola v. Commissioner of Income-Tax,*** [2005] 273 ITR 291 (Delhi), ***Commissioner of Income-Tax v. Honda Siel Power Products Ltd.,*** [2007] 293 ITR 132 (Delhi), ***Ras Bihari Bansal v. Commissioner of Income-Tax and another,*** [2007] 293 ITR 365 (Delhi) and ***Perfetti Van Melle India P. Ltd. v. Commissioner of Income-Tax,*** [2008] 296 ITR 595 (Delhi) wherein the view has been expressed that the Income Tax Appellate Tribunal (for short 'the tribunal') has no power to recall an order in exercise of power under Section 254(2) of the Income Tax Act, 1961 (for brevity 'the Act'), in view of the enunciation of law in ***Honda Siel Power Products Ltd. v. Commissioner of Income-Tax***, [2007] 295 ITR 466 (SC), a Division Bench felt that the said decisions required reconsideration by a larger Bench. Thus, these writ petitions have been placed before us only for the purpose of consideration of the issue whether the tribunal has the power to recall the order in entirety under Section 254(2) of the Act. Be it noted, apart from the said issue, nothing need be adverted to by this Bench inasmuch as all other ancillary issues relating to restriction or constriction of exercise of that power are to be adverted to by the Division Bench in case circumstances so warrant. Thus, we shall dwell upon and delve into the aforesaid singular issue.

2. The factual score which is required to be depicted for the purpose of answering the question that has arisen in this batch of writ petitions, in brief, is that the petitioner invoked the inherent jurisdiction under Articles

226 and 227 of the Constitution of India assailing the order dated 22nd January, 2010 passed by the Income Tax Appellate Tribunal, Delhi Bench 'F' whereby the tribunal in respect of the assessment years 2000-2001 to 2005-2006 has allowed the applications filed by the revenue being MA Nos. 573 to 578/Del/2009 in ITA Nos. 1366 to 1371/Del/2009 and recalled the composite order passed by it on 17th June, 2009.

3. Mr. R.M. Mehta, learned counsel appearing for the petitioners, has raised two-fold contentions. Firstly, the tribunal has no power to recall an order in exercise of power under Section 254(2) of the Act and, secondly, assuming the tribunal has the power to recall, the facts and circumstances of the case at hand do not warrant a recall. We have already indicated that only the first issue is required to be delved into by this Bench and hence, we shall confine ourselves to the said aspect. Mr.Mehta, learned counsel for the petitioner, has pressed into service the decisions rendered in ***K.L. Bhatia*** (supra), ***Deeksha Suri*** (supra), ***Karan and Co.*** (supra), ***J.N. Sahni*** (supra), ***Vichtra Construction P. Ltd.,*** (supra), ***Om Prakash Bhola*** (supra), ***Honda Siel Power Products Ltd.,*** (supra), ***Ras Bihari Bansal*** (supra) and ***Perfetti Van Melle India P. Ltd.*** (supra) in support of his submission. It is also contended by Mr. Mehta that the decision rendered in ***Honda Siel Power Products Ltd.*** (supra) by the Apex Court is not an authority for the proposition that the tribunal has the power of total recall inasmuch as the said issue was neither raised nor argued at the Bar. To bolster the said facet of submission, he has commended us to the decision rendered in

Y.S.C. Babu and A.V.S. Raghavan v. Chairman and Managing Director, Syndicate Bank and others, [2002] 253 ITR 1 (AP). The learned counsel has also submitted that the said decision has been distinguished in ***Express Newspapers Ltd. v. Commissioner of Income-Tax and ITAT***, 322 ITR 12 (Madras), ***Commissioner of Income-Tax v. Earnest Exports Ltd.***, 323 ITR 577 (Bombay), ***Commissioner of Income-Tax v. McDowell & Co. Ltd.***, 310 ITR 215 (Karnataka), ***Apex Metachem (P) Ltd. v. ITAT and others***, 318 ITR 48 (Rajasthan), ***Visvas Promoters (P) Ltd. v. ITAT and another,*** 323 ITR 114 (Madras) and ***Hindustan Coca-Cola Beverages (P) Ltd. v. Commissioner of Income*-Tax,** [2007] 293 ITR 226 (SC) and, hence, is not a precedent for the proposition that the tribunal has the power of recall.

4. Mr.Deepak Chopra, learned standing counsel for the revenue, submitted that ***Honda Siel Power Products Ltd.*** (supra) is the authority for the proposition that the tribunal has the power to recall and what should be the conditions precedent or circumstances would be a matter of adjudication. The learned counsel submitted that one is the question of jurisdiction and the other is the exercise of jurisdiction and both should be put into two separate compartments and should never be intertwined. It is his further submission that some of the High Courts have taken the view that the tribunal has the power to recall. In this regard, he has invited our attention to the decisions in ***Champa Lal Chopra v. State of Rajasthan***, [2002] 257 ITR 74 (Rajasthan), ***Commissioner of Income-Tax v. U.P. Shoe Industries***, [1999] 235 ITR 663 (Allahabad) and ***Commissioner of***

Income-Tax v. Mithalal Ashok Kumar, [1986] 158 ITR 755 (MP). It is further proponed by Mr. Chopra that the decisions wherein ***Honda Siel Power Products Ltd.*** (supra) has been distinguished are not on the base or foundation of law of precedents but on facts.

5. To appreciate the submissions raised at the Bar, it is seemly to refer to the provision contained in Section 254(2) of the Act. It reads as follows:

> "254 (2) The Appellate Tribunal may, at any time within four years from the date of the order, 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 or the Assessing Officer:
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> 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:
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> [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.]
>
> (2A) In every appeal, the Appellate Tribunal, where it is possible, may hear and decide such appeal within a period of four years from the end of the financial year in which such appeal is filed under sub-section (1) or sub-section (2) of section 253:
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> Provided that the Appellate Tribunal may, after considering the merits of the application made by the assessee, pass an order of stay in any proceedings relating to an appeal filed under sub-section (1) of section 253, for a period not exceeding one hundred and eighty days from the date of such order and the Appellate Tribunal shall dispose of the appeal within the said period of stay specified in that order:

> Provided further that where such appeal is not so disposed of within the said period of stay as specified in the order of stay, the Appellate Tribunal may, on delay in disposing of the appeal is not attributable to the assessee, extend the period of stay, or pass an order of stay for a further period or periods as it thinks fit; so, however, that the aggregate of the period originally allowed and the period or periods so extended or allowed shall not, in any case, exceed three hundred and sixty-five days and the Appellate Tribunal shall dispose of the appeal within the period or periods of stay so extended or allowed:
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> Provided also that if such appeal is not so disposed of within the period allowed under the first proviso or the period or periods extended or allowed under the second proviso, which shall not, in any case, exceed three hundred and sixty-five days, the order of stay shall stand vacated after the expiry of such period or periods, even if the delay in disposing of the appeal is not attributable to the assessee.
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> (2B) The cost of any appeal to the Appellate Tribunal shall be at the discretion of that Tribunal."

6. The Division Bench in ***K.L. Bhatia*** (supra), while dealing with the power of the tribunal under Section 254(2) of the Act, has scanned the anatomy of the provision and held thus:

> "The Income-tax Act is a self-contained code. The Income-tax Appellate Tribunal is a creation of the statute and its powers are circumscribed by the provisions of the Act. Appeals are filed before it under section 253 of the Act. Section 254(1) contemplates disposal of the said appeal after giving an opportunity to both the parties of being heard. Sub-section (2) of section 254 enables the Tribunal to rectify any mistake apparent from the record. Sub-section (4) of section 254 specifies that save as provided in section 256, the order passed by the Appellate Tribunal on appear are final.
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> A reading of section 254 shows that the orders which are passed under section 254 are final except under two circumstances : (1) if a rectification is called for, then such an order can be passed under section 254(2), and (2) a reference

can be made on questions of law arising out of this order under the provisions of section 256."

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"As we have already observed, the Tribunal is a creation of the statute. It is an admitted case, and it is now well-settled, that though the Tribunal has no inherent power of reviewing its order on merits, the Tribunal has incidental or ancillary powers which can be exercised by it. But such power cannot be invoked to rehear a case on merits. The Tribunal can, after disposing of the appeal under section 254(1), rehear the matter on merits only within the purview of section 254(2). The Supreme Court has held in Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji, AIR 1970 SC 1273, that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. It does not stand to reason that, if the power of review is not present with the Tribunal, it, nevertheless, can exercise such power indirectly when it cannot do so directly. If the contention of learned counsel for the respondent is correct, then it could mean that, even on merits, the Tribunal can recall its earlier order and then hear the case afresh and pass a different order. If this is so, it would amount to the Tribunal exercising power of review when it does not have any such power. To give an example, under the provisions of the Code of Civil Procedure, Order 47 provides the circumstances in which a judgment may be reviewed. If the contention of learned counsel for the respondent is correct, then, applying the same analogy to a civil case, it would be open to a court to recall its judgment in a case where the provisions of Order 47 are not applicable, and then to rehear the case. With respect, we see no warrant for this in legal jurisprudence. The appellate court can hear a case and decide it on merits, once for all, and cannot keep on rehearing the same appeal over and over again. Full effect has to be given to the provisions of section 254(4) which specifically provides that a decision of the Tribunal passed in appeal is final. This decision is final not only for the assessee but also final as far as the Tribunal itself is concerned.

We have, therefore, no hesitation in coming to the conclusion that the Tribunal can only exercise its jurisdiction under section 254 of the Act in the manner indicated above and, de

hors the provisions in the Act, it has no jurisdiction to recall its order on merits."

[Emphasis added]

7. In ***Deeksha Suri*** (supra), another Division Bench has held as follows:

> "At the very outset, let us make it clear that the legality or propriety or otherwise of the order dated January 3, 1997, could not have been considered by the Tribunal by way of review. The Income-tax Appellate Tribunal is a creature of the statute. It has not been vested with the review jurisdiction by the statute creating it. The Tribunal does not have any power to review its own judgment or orders. [See *Dr. Kashnath G. Jalmi v. The Speaker*, AIR 1993 SC 1873; [1993] 3 JT 594 (SC); *Dr. Smt. Kuntesh Gupta v. Management of Hindu Kanya Mahavidyalaya*, AIR 1987 SC 2186; *Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji*, AIR 1970 SC 1273; *Manoharlal Verma v. State of MP*, AIR 1970 MP 131; *CIT v. ITAT*, [1994] 206 ITR 126 (AP). In the purported exercise of inherent power the Tribunal cannot rehear a case on its merits : *CIT v. K.L. Bhatia* [1990] 182 ITR 361 (Delhi)."
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> [Emphasis supplied]

8. After so holding, the Bench took note of the submission of the learned counsel for the petitioner therein, who put forth two propositions relating to jurisdiction. They are as follows:

> "(i) Section 254 of the Act obliges an Appellate Tribunal to dispose of an appeal; an order purportedly disposing of an appeal oblivious of its own earlier order and without disposing of a pending application for admission of additional evidence cannot be said to be disposal of an appeal which should be treated as still pending in the eyes of law. The Tribunal should have held so on the petitioner's applications dated February 5, 1997, and April 4, 1997, and then should have posted the appeals for hearing and disposal afresh. No specific provision of law is required for conferring such

jurisdiction on the Tribunal. Every court and every Tribunal vested with the judicial functions has an inherent power to recall its order so as to relieve an aggrieved party from the consequences flowing from its own mistake or failure. Such a power to recall is distinct from the power to review;

(ii) Disposal of an appeal without dealing with a pending application for admission of additional evidence and overlooking an earlier order of the Tribunal forming an opinion that the application for admission of additional evidence shall be dealt with first, amounts to a "mistake apparent from the record" which should have been rectified by the Tribunal in exercise of the jurisdiction conferred by sub-section (2) of section 254 of the Act."

Thereafter, the Bench referred to the decisions in ***A.R. Antulay v. R.S. Nayak***, AIR 1988 SC 1531 and ***Mangat Ram Kuthiala v. CIT***, [1960] 38 ITR 1 (Punjab) and came to hold as follows:

"In the case at hand, the order of the Tribunal dated January 3, 1997, is not even suggested to be an outcome of fraud or collusion. None of the grounds which according to the well-settled legal principles vitiate a judgment rendering it void or a nullity, have been alleged much less shown to exist. Merely because the Tribunal overlooked an interim order of its own while deciding the appeal finally (assuming it to be so) it will not render the judgment void or a nullity. At worst it may be an order vitiated by an irregularity of procedure or an illegality. Such an order cannot be "recalled". The aggrieved party must have remedy provided by law to get rid of the order."

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"Could any relief have been allowed to the petitioners in exercise of jurisdiction conferred by section 254(2) of the Act amending the order passed by the Tribunal with a view to rectify any mistake apparent from the record? The language of the provisions is clear. The foundation for exercising the jurisdiction is "with a view to rectify any mistake apparent on the record" and the object is achieved by "amending any order passed by it". The power so conferred does not contemplate a

> rehearing which would have the effect of re-writing an order affecting the merits of the case. Else there would be no distinction between a power to review and a power to rectify a mistake. What is not permitted to be done by the statute having deliberately omitted to confer review jurisdiction on the Tribunal, cannot be indirectly achieved by recourse to section 254(2) of the Act."
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> [Emphasis added]

9. In ***Karan and Co.*** (supra), a Division Bench of this Court, after referring to the decisions in ***Master Construction Co. (P) Ltd. v. State of Orissa and another***, [1966] 17 STC 360 (SC), ***Satyanarayan Laxminarayan Hegde and Ors. v. Millikarjun Bhavanappa Tirumale***, AIR 1960 SC 137, ***T.S. Balaram, Income-Tax Officer, Company Circle IV, Bombay v. M/s. Volkart Brothers***, [1971] 82 ITR 50 (SC) and ***Smt. Baljeet Jolly v. Commissioner of Income-Tax***, [2001] 250 ITR 113 (Delhi), has expressed the view as follows: -

> "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 subject-matter of appeal. The dispute no longer remains restricted to any mistake sought to

> be rectified. Power to recall an order is prescribed in terms of rule 24 of the Income Tax Appellate Tribunal Rules, 1963, and that too only in cases where the assessee 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 & Income-tax Appellate Tribunal, [1992] 196 ITR 640 (Orissa)* . Judged in the above background the order passed by the Tribunal is indefensible."
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> [Emphasis supplied]

10. In ***J.N. Sahni*** (supra), another Division Bench, relying on the decisions in ***K.L. Bhatia*** (supra), ***Deeksha Suri*** (supra), ***Commissioner of Income-Tax v. Ideal Engineers***, [2001] 251 ITR 743 (AP) and ***Smt. Baljeet Jolly*** (supra), has ruled thus:

> "The power of the Tribunal to amend an order passed by it under sub-section (1) of Section 254 is limited. Such power of amendment is confined to rectification of mistake apparent from the record. The power of review, as is well known, must be conferred expressly or by necessary implication upon the statutory or quasi-judicial authorities. The Tribunal has no inherent power of review. It is thus axiomatic that while exercising its jurisdiction to amend its order on the ground of rectification of mistake it cannot recall its order passed on the merits."

11. Similar view has been taken in the decisions which we have referred to hereinbefore and the consistent view of this Court is that the tribunal has no power to recall its own order.

12. On a careful reading of the aforesaid authorities, it is discernible that the principles which constitute the edifice and bedrock of the conclusion arrived at therein can broadly be put into the following compartments:

(i) The tribunal has no inherent power of review and, hence, while exercising its jurisdiction to amend its order on the ground of rectification of mistake, it cannot recall its order passed on merits.

(ii) Recalling the entire order would mean passing of a fresh order which is not permissible as Section 254(2) has no existence de hors the order under Section 254(1) inasmuch as when an order is passed under Section 254(2) either allowing amendment or refusing to amend, the same gets merged with the original order passed and becomes an order under Section 254(1) which is not the legislative intent.

(iii) The power to recall an order is prescribed in terms of Rule 24 of the Income Tax Appellate Tribunal Rules, 1963 and it operates in the limited field and nothing more can be added to the same.

(iv) When the power of review is not conferred on the tribunal, it cannot exercise such power indirectly when it cannot do so directly.

(v) Even if a tribunal renders a judgment without dealing with a specific fact situation, it may be an irregularity of procedure but that would not clothe the tribunal with the jurisdiction to recall the order as the aggrieved party must seek his remedy in appeal.

(vi) The power conferred under the statute does not contemplate a rehearing which would have the effect of rewriting an order affecting

the merits of the case and, therefore, there is a deliberate omission by the legislature to confer the power of review on the appellate authority under Section 254(2) of the Act.

13. In ***Honda Siel Power Products Ltd.*** (supra), a Division Bench of this Court, after referring to the earlier decisions in the field, held thus: -

> "Turning to the facts of the present case, we are of the considered view that it makes no difference whether the entire order is sought to be recalled or the order passed by the Tribunal on individual grounds is sought to be recalled in entirety. In other words, if the Tribunal has given its decision on say grounds Nos. 3 and 4 in a particular way in its first order while dealing with ten separate grounds and pursuant to a rectification application, it recalls its decision on grounds No. 3 and 4 and gives a completely different decision on the said grounds, then it would certainly amount to recall and review of its entire order in respect of those grounds. We are unable to persuade ourselves to accept the submission of Mr. Syali that what the decision in K.L. Bhatia, [1990] 182 ITR 361 (Delhi) and other decisions that have followed it, forbids is only a recall of the Tribunal's entire decision on all the ten grounds and not to the recall and review of only two out of the ten grounds. There is no basis for such a distinction either from the language of Section 254(2) of the Act or of the decisions of this Court in the numerous cases noticed hereinabove."

Thereafter, the Division Bench proceeded to state as follows: -

> "In conclusion, we are of the view that the impugned order of the Tribunal dated September 10, 2003, by which it recalled and reversed its earlier decision dated April 2, 2002, on grounds No. 2 and 3, is impermissible and unsustainable in law. We reiterate that in the facts of the present case it makes no difference whether the entire order is sought to be recalled or the order passed by the Tribunal on individual grounds is sought to be recalled in its entirety. Neither is permissible under the garb of rectification."

14. The aforesaid decision was assailed before the Apex Court by the assessee and their Lordships, while dealing with the power of the tribunal under Section 254(2) of the Act, have expressed thus: -

> "As stated above, in this case we are concerned with the application under section 254(2) of the 1961 Act. As stated above, the expression "rectification of mistake from the record" occurs in section 154. It also finds place in section 254(2). The purpose behind the enactment of section 254(2) is based on the fundamental principle that no party appearing before the Tribunal, be it an assessee or the Department, should suffer on account of any mistake committed by the Tribunal. This fundamental principle has nothing to do with the inherent powers of the Tribunal. In the present case, the Tribunal in its Order dated September 10, 2003 allowing the rectification application has given a finding that *Samtel Color Ltd.* (supra) was cited before it by the assessee but through oversight it had missed out the said judgment while dismissing the appeal filed by the assessee on the question of admissibility/allowability of the claim of the assessee for enhanced depreciation under section 43A. One of the important reasons for giving the power of rectification to the Tribunal is to see that no prejudice is caused to either of the parties appearing before it by its decision based on a mistake apparent from the record.
>
> "Rule of precedent" is an important aspect of legal certainty in rule of law. That principle is not obliterated by section 254(2) of the Income-tax Act, 1961. When prejudice results from an order attributable to the Tribunal's mistake, error or omission, then it is the duty of the Tribunal to set it right. Atonement to the wronged party by the court or Tribunal for the wrong committed by it has nothing to do with the concept of inherent power to review. In the present case, the Tribunal was justified in exercising its powers under section 254(2) when it was pointed out to the Tribunal that the judgment of the coordinate bench was placed before the Tribunal when the original order came to be passed but it had committed a mistake in not considering the material which was already on record. The Tribunal has acknowledged its mistake, it has accordingly rectified its order. In our view, the High Court was not

> justified in interfering with the said order. We are not going by the doctrine or concept of inherent power. We are simply proceeding on the basis that if prejudice had resulted to the party, which prejudice is attributable to the Tribunal's mistake, error or omission and which error is a manifest error then the Tribunal would be justified in rectifying its mistake, which had been done in the present case."
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> [Emphasis supplied]

15. After so holding, the Apex Court set aside the aforesaid decision passed by the Division Bench of this Court and restored the order of the tribunal allowing the rectification application filed by the assessee.

16. It is worth noting, Mr. Mehta, learned counsel appearing for the petitioner, has submitted that the decision in ***Honda Siel Power Products Ltd.,*** (supra) is not a precedent for the proposition that the tribunal has the power to recall its own order after it has finally disposed of the appeal. Before addressing to the aspect whether the said decision is a precedent for the proposition that the tribunal can recall its order or not or the view taken by this Court on earlier occasions can still hold the field, we think it appropriate to refer to certain citations relating to precedents.

17. In ***Prakash Amichand Shah v. State of Gujarat and others***, AIR 1986 SC 468, the Constitution Bench has held thus:

> "26. …A decision ordinarily is a decision on the case before the Court while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. Hence while applying the decision to a later case, the Court which is dealing with it should carefully try to ascertain the true principle laid down by the previous decision. A decision often takes its colour from the questions involved

in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation…"

18. In ***Union of India and others v. Dhanwanti Devi and others***, (1996) 6 SCC 44, it has been held as follows:

"9. … According to the well settled theory of precedents, every decision contains three basic postulates - (i) findings of material facts direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence is decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts provided, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent…"

19. In ***Director of Settlements, A.P. and others v. M.R. Apparao and another***, AIR 2002 SC 1598, it has been held thus:

"7. …A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An 'obiter dictum' as distinguished from a ratio decidendi is an observation by Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an

> obiter may not have a bind effect as a precedent, but it cannot be denied that it is of considerable weight. The law which will be binding under Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given case. So far as constitutional matters are concerned, it is a practice of the Court not to make any pronouncement on points not directly raised for its decision. The decision in a judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court (See AIR 1970 SC 1002 and AIR 1973 SC 794)…"

20. In ***The Divisional Controller, K.S.R.T.C. v. Mahadeva Shetty and another***, AIR 2003 SC 4172, it has been held that a mere casual expression carries no weight at all and every passing expression of a Judge cannot be treated as an ex cathedra statement having the weight of authority.

21. In ***Bharat Petroleum Corpn. Ltd. and another v. N.R. Vairamani and another***, (2004) 8 SCC 579, a two-Judge Bench of the Apex Court has held thus:

> "9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton*, 1951 AC 737 (AC at p.761) Lord Mac Dermott observed:

> "The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge,.."

10. In *Home Office v. Dorset Yacht Co.* (1970) 2 All ER 294 Lord Reid said, "Lord Atkin's speech ... is not to be treated as if it were a statutory definition. It will require qualification in new circumstances". Megarry, J. in *Shepherd Homes Ltd. v. Sandham (No.2)* (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in *Herrington v. British Railways Board* (1972) 2 WLR 537 Lord Morris said:

> "There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

11. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

12. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

> "Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

* * *

> Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

22. In ***State of Orissa and others v. Md. Illiyas***, AIR 2006 SC 258, it has been held thus:

> "13. …Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. <u>According to the well-settled theory of precedents, every decision contains three basic postulates - (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above</u>. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhanshu Sekhar Misra and ors., (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors., (1996) 6 SCC 44)…"
>
> [Emphasis added]

23. In ***Deepak Bajaj v. State of Maharashtra & Anr.***, AIR 2009 SC 628, the Apex Court has held thus:

> "7. It is well settled that a judgment of a Court is not to be read mechanically as a Euclid's Theorem nor as if it was a statute.
>
> 8. On the subject of precedents Lord Halsbury, L.C., said in Quinn v. Leathem 1901 AC 495 :
>
> > "Now before discussing the case of Allen v. Flood (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all."
>
> We entirely agree with the above observations."

24. In ***Visnu Dutt Sharma v. Manju Sharma***, AIR 2009 SC 2254, the Apex Court held that a mere direction of the Court without considering the legal position is not a precedent.

25. From the aforesaid authorities, it is luculent that a judgment has to be read in the context, and discerning of factual background is necessary to understand the statement of principles laid down therein. It is obligatory to ascertain the true principle laid down in the decision and it is inappropriate to expand the principle to include what has not been stated therein.

26. It has also been pronounced that the decision is only an authority for what it actually decides and it is the duty to ascertain the real concrete or ratio decidendi which has the binding effect. While dealing with the principle of precedent, it is to be borne in mind that a judgment is neither to be read as Euclid's Theorem nor is to be read out of context. Mechanical application of a decision treating as a precedent without appreciating the underlying principle is not allowable. In ***Honda Siel Power Products Ltd.,*** (supra), the Division Bench of this Court considered the stance of the counsel that the decision in ***K.L. Bhatia*** (supra) and the other decisions that have followed it, forbids recall of the tribunal's entire decision on the basis that in the garb of rectification, the order cannot be recalled. When the matter travelled to the Apex Court, their Lordships, as is evident from the paragraphs quoted hereinbefore, took note of the fact that the application for rectification was filed as the tribunal had not taken note of a binding precedent though the same was cited before the tribunal. In that factual background, their Lordships have held that the power of rectification has been conferred on the tribunal to see that no prejudice is caused to either of the parties appearing before it by its decision based on a mistake apparent from the record. Their Lordships further opined that atonement to the wronged party by the court or the tribunal for the wrong committed by it has nothing to do with the concept of inherent power to review. Their Lordships further took note of the fact that the tribunal committed a mistake in not considering the material which was already on record and

the tribunal acknowledged its mistake and accordingly rectified its order. It is worth noting that their Lordships have clearly stated that they are not going by the doctrine or concept of inherent power but on the basis that if prejudice has resulted to the party, which is attributable to the tribunal's mistake, error or omission and which error is a manifest error, then the tribunal would be justified in rectifying its mistake, which had been done in the said case by recalling the original order. Applying the principles which we have enumerated hereinabove to understand the concept of precedent, it can safely be stated that the Apex Court was dealing with a case which travelled from this Court wherein it had been held that the tribunal had no power of recall of its own order in entirety; that the court was not going by the doctrine or concept of inherent power; that the "rule of precedent" which is an important part of legal certainty in rule of law is not obliterated by Section 254(2) of the Act; that if prejudice has resulted to the party due to the mistake, error or omission which is attributable to the tribunal and it is manifest from the record, the mistake can be rectified. Thus understood, it is clear as crystal that their Lordships have held that the fundamental principle is that no party appearing before the tribunal should suffer on account of any mistake committed by the tribunal and no prejudice is caused to either of the parties before the tribunal which is attributable to the tribunal's mistake, omission or commission and if the same error is a manifest error, then the tribunal would be justified to recall. The line of decisions which have been rendered by this Court have proceeded on the

basis of review, the limited power of recall as provided under Rule 24 of the Income-tax Appellate Tribunal Rules, 1963 as regards the exercise of power which cannot be exercised directly or exercised indirectly and that even if there is any irregularity caused, that would not clothe the tribunal with the power of review as it may ultimately result in rehearing of the appeal. Thus, the entire stream of decisions has gone by the concepts which are fundamentally founded on the power of review, rehearing and the limited concept of recall. But what has been stated by the Apex Court in ***Honda Siel Power Products Ltd.,*** (supra) is based on the doctrine of prejudice. Their Lordships have clarified that they were not proceeding on the doctrine or concept of inherent power. Analyzed from this perspective, there can be no trace or shadow of doubt that the said decision is an authority for the proposition that the tribunal in certain circumstances can recall its own order and Section 254(2) of the Act does not totally prohibit so.

27. In this context, we may refer with profit to the decision in ***Assistant Commissioner of Income-Tax v. Saurashtra Kutch Stock Exchange Ltd***., [2003] 262 ITR 146 wherein a Division Bench of the Gujarat High Court was dealing with a writ petition preferred under Articles 226 and 227 of the Constitution of India. In the said case, the assail was to the order dated 5.9.2001 passed by the tribunal whereby the tribunal had recalled the earlier order dated 27.10.2000. The Division Bench dealt with the contention canvassed by the revenue that the tribunal cannot obliterate its

earlier findings / reasonings / order and the original order cannot be wiped out and came to hold as follows:

> "(a) The Tribunal has power to rectify a mistake apparent from the record on its own motion or on an application by a party under section 254(2) of the Act;
>
> (b) An order on appeal would consist of an order made under section 254(1) of the Act or it could be an order made under sub-section (1) as amended by an order under sub-section (2) of section 254 of the Act;
>
> (c) The power of rectification is to be exercised to remove an error or correct a mistake and not for disturbing finality, the fundamental principle being, that power of rectification is for justice and fair play;
>
> (d) That power of rectification can be exercised even if a mistake is committed by the Tribunal or even if a mistake has occurred at the instance of party to the appeal;
>
> (e) A mistake apparent from record should be self-evident, should not be a debatable issue, but this test might break down, because judicial opinions differ, and what is a mistake apparent from the record cannot be defined precisely and must be left to be determined judicially on the facts of each case;
>
> (f) Non-consideration of a judgment of the jurisdictional High Court would always constitute a mistake apparent from the record, regardless of the judgment being rendered prior to or subsequent to the order proposed to be rectified;
>
> (g) After the mistake is corrected, consequential order must follow, and the Tribunal has power to pass all necessary consequential orders."

On the basis of the said conclusions, the writ court affirmed the order of recall passed by the tribunal. The aforesaid decision was challenged by the revenue before the Apex Court and their Lordships in ***ACIT v.***

Saurashtra Kutch Stock Exchange Ltd., [2008] 305 ITR 227 (SC) came to hold as follows:

> "The core issue, therefore, is whether non-consideration of a decision of jurisdictional court (in this case a decision of the High Court of Gujarat) or of the Supreme Court can be said to be a "mistake apparent from the record"? In our opinion, both – the Tribunal and the High Court – were right in holding that such a mistake can be said to be a "mistake apparent from the record" which could be rectified under section 254(2)."
>
> [Emphasis supplied]

Thereafter, their Lordships proceeded to state as follows:

> "Rectification of an order stems from the fundamental principle that justice is above all. It is exercised to remove the error and to disturb the finality.
>
> In *S. Nagaraj v. State of Karnataka* [1993] Supp 4 SCC 595, 618, Sahai J. stated:
>
> > "Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the court. In Administrative Law, the scope is still wider. Technicalities apart if the court is

> satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order."
>
> In the present case, according to the assessee, the Tribunal decided the matter on October 27, 2000. Hiralal Bhagwati, [2000] 246 ITR 188 (Guj) was decided a few months prior to that decision, but it was not brought to the attention of the Tribunal. In our opinion, in the circumstances, the Tribunal has not committed any error of law or of jurisdiction in exercising power under sub-section (2) of section 254 of the Act and in rectifying the "mistake apparent from the record". Since no error was committed by the Tribunal in rectifying the mistake, the High Court was not wrong in confirming the said order. Both the orders, therefore, in our opinion, are strictly in consonance with law and no interference is called for."
>
> [Underlining is ours]

28. We will be failing in our duty if we do not address to the submission canvassed by Mr. Mehta that the said decision in ***Honda Siel Power Products Ltd.,*** (supra) has been distinguished by many High Courts as well as by the Apex Court in ***Saurashtra Kutch Stock Exchange Ltd***. (supra) and ***Hindustan Coca-Cola Beverages (P) Ltd.*** (supra). We have carefully perused the decisions rendered by the High Courts of Madras, Bombay, Karnataka and Rajasthan which have been commended to us by Mr. Mehta and we notice that the decision was distinguished on the factual score and none of the decisions have proceeded to say that it is not a precedent for the proposition that the tribunal under no circumstances can recall its own order.

29. In view of our aforesaid analysis, we proceed to state our conclusions in seriatim as follows:

(A) The decision rendered in ***Honda Siel Power Products Ltd.,*** (supra) by the Apex Court is an authority for the proposition that the Income-tax Appellate Tribunal under certain circumstances can recall its own order and there is no absolute prohibition.

(B) In view of the law laid down in ***Honda Siel Power Products Ltd.,*** (supra) by the Apex Court, the decisions rendered by this Court in ***K.L. Bhatia*** (supra), ***Deeksha Suri*** (supra), ***Karan and Co.*** (supra), ***J.N. Sahni*** (supra) and ***Smt. Baljeet Jolly*** (supra) which lay down the principle that the tribunal under no circumstances can recall its order in entirety do not lay down the correct statement of law.

(C) Any other decision or authority which has been rendered by pressing reliance on ***K.L. Bhatia*** (supra) and the said line of decisions are also to be treated as not laying down the correct proposition of law that the tribunal has no power to recall an order passed by it in exercise of power under Section 254(2) of the Act.

(D) The tribunal, while exercising the power of rectification under Section 254(2) of the Act, can recall its order in entirety if it is satisfied that prejudice has resulted to the party which is attributable to the tribunal's mistake, error or omission and which error is a manifest error and it has nothing to do with the doctrine or concept of inherent power of review.

(E) When the justification of an order passed by the tribunal recalling its own order is assailed in a writ petition, it is required to be tested on the anvil of law laid down by the Apex Court in ***Honda Siel Power Products Ltd.,*** (supra) and ***Saurashtra Kutch Stock Exchange Ltd***. (supra).

30. The reference is answered accordingly. The writ petitions be listed before the appropriate Division Bench.

CHIEF JUSTICE

A.K. SIKRI, J

DECEMBER 24, 2010 **MANMOHAN, J**
Kapil/dk