

P&HHC in Girnar Impex: In this case, P&HHC while affirming Punjab VAT Tribunal order has interalia concluded that

New "limitation" plea based on statutory provision cannot be taken before Tribunal in rectification proceedings as *rectification presupposes "mistake apparent from record"* which can arise interalia where a ground/plea taken in original proceedings has not been adjudicated. This with great respect, goes against SC ruling in Surashtra Exchange 305 ITR 227 where on principle it is held that subsequent Jurisdictional High Court/SC order can be a cause for rectification u/s 254(2) of Income Tax Act (using phrase "mistake apparent from record") and Ker HC order in 235 ITR 467 (*held plea based on statutory provision can be taken for 1st time in Rectification Proceedings*) and Cal HC in 233 ITR 354 (*plea based on Board Circular/Statutory rule can be taken for 1st time in rectification proceedings*) and Ker HC in 157 ITR 448; SC in 34 ITR 143. Further, interestingly, P&HHC in subject case has also held that *limitation plea being mixed question of fact and law cannot be taken for first time before High Court. (may be applied in Income Tax Act also)*