

Rajasthan High Court on SECTION 254(2)after considering SC in Honda Siel and Saurashtra Exchange: Apex Metchem Held:

"Contention advance by Counsel for petitioner that such powers u/s 254(2) could not be exercised suo moto is not of any substance. On bare reading of provisions of S. 254 of the Act it depicts that the Tribunal has powers to rectify mistake apparent from record in two situations:

(1) on its own motion

(2) on an application being moved by either party before it. It cannot be contended that power can be exercise only on the application. If the Tribunal is vested with power to rectify a mistake apparent from the record, it can certainly do so on its own motion or on application being filed by either party."

"But there was no order available on record being passed for consolidating appeals (ITSS A No. 105 / JP 2004 & cross appeal No. IT(SS) 35 / JP 2005) for being heard at Mumbai Bench in the absence whereof, there cannot be said to be any mistake apparent from the record being committed by the tribunal Jaipur Bench in hearing such appeals and decided finally u/s 254(1) of the Act vide order dated 26/03/2006 (Ann.1). Hence very plea of mistake apparent from the record having been taken to be the basis by Tribunal while re-calling its final order passed U/s 254 (1) of the Act on the facts of instant case is otherwise not legally sustainable."