SUPREME COURT OF INDIA

Assistant Commissioner,Income Tax, Rajkot

Vs.

Saurashtra Kutch Stock Exchange Ltd.

Civil Appeal No. 1171 OF 2004

(C.K. Thakker and Lokeshwar Singh Panta)

15/09/2008

JUDGMENT

C.K. THAKKER, J.

1. The present appeal is directed against the judgment and order passed by the High Court of Gujarat, Ahmedabad on March 31, 2003 in Special Civil Application No. 1247 of 2000 [Assistant Commissioner of Income-Tax v. Saurashtra Kutch Stock Exchange Ltd., (2003) 262 ITR 146]. By the said judgment, the High Court confirmed the order passed by the Income Tax Appellate Tribunal, Ahmedabad on September 5, 2001 in Misc. Application NO. 31/Rjt/2000. By the said order, the Tribunal held that there was a `mistake apparent from the record' within the meaning of sub-section (2) of Section 254 of the Income Tax Act, 1961 and accordingly, it recalled its earlier order passed on October 27, 2000 in ITA No. 69/Rjt/2000.

2. Shortly stated the facts of the case are that Saurashtra Kutch Stock Exchange Ltd.- respondent herein is an assessee under the Income Tax Act, 1961 (hereinafter referred to as `the Act'). It is a Company registered under Section 25 of the Companies Act, 1956. The

assessee is a `Stock Exchange' duly recognized under the Securities Contracts (Regulation) Act, 1956. As a `Stock Exchange', it is a `charitable institution' entitled to exemption under Sections 11 and 12 of the Act from payment of income-tax. The assessee, therefore, made an application on February 10, 1992 for registration under Section 12A of the Act. The Commissioner of Income Tax, Rajkot registered it on July 8, 1996. The assessee filed its return of income on October 29, 1996 for the assessment year1996-97 declaring its total taxable income as `Nil', claiming exemption under Section 11 of the Act although the assessee had not been registered under Section 12A of the Act. The return was processed under sub-section (1)(a) of Section 143 of the Act. On November 7, 1997, a notice was issued to the assessee by the Commissioner of Income Tax under Section 154 of the Act to show cause why exemption granted under Section 11 of the Act should not be withdrawn. The assessee replied to the said notice and asserted that in accordance with Section 12A of the Act, the trust had made an application for registration and, hence, it was entitled to exemption under Section 11 of the Act. Meanwhile, the Commissioner of Income Tax on February 20, 1998 granted registration to the assessee on condition that the eligibility regarding exemption under Section 11 of the Act would be examined by the Assessing Officer for each assessment year.

3. By an order dated December 3, 1999, the Assessing Officer assessed the income of the assessee under sub-section (3) of Section 143 of the Act and rejected the claim of exemption under Section 11 of the Act.

4. Being aggrieved by the said order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), Rajkot. The Commissioner, vide his order dated February 28, 2000, rejected all the contentions of the assessee and held that the assessee was not entitled to exemption.

5. The assessee challenged the decision of the Commissioner of Income Tax by filing further appeal before the Income Tax Appellate Tribunal, Rajkot. The Tribunal, however, held that the authorities were right in not granting exemption and in holding the assessee liable to pay tax. Accordingly, it dismissed the appeal on October 27, 2000.

6. On November 13, 2000, the assessee filed Miscellaneous Application under sub- section (2) of Section 254 of the Act in the Tribunal to rectify the error committed by the Tribunal in the decision rendered by it in appeal. The Tribunal, by an order dated September 5, 2001, allowed the application and held that there was a `mistake apparent from the record' which required rectification. Accordingly, it recalled its earlier order passed in appeal on October 27, 2000. For allowing the application, the Tribunal relied upon a decision rendered by the High Court of Gujarat in Hiralal Bhagwati v. Commissioner of Income Tax, (2000) 246 ITR 188 as also in Suhrid Geigy Limited v. Commissioner of Surtax, Gujarat, (1999) 237 ITR 834.

7. Dissatisfied with the order passed by the Tribunal in Miscellaneous Application, rectifying a

`mistake apparent from record' and recalling its earlier order, the Revenue filed a writ petition which, as stated above, was dismissed by the High Court. Hence, the present appeal.

8. On December 19, 2003, notice was issued by this Court and in the meantime, further proceedings before the Tribunal were stayed. Leave was granted on February 16, 2004 and stay was ordered to continue. On February 25, 2008, a Bench presided over by Hon'ble the Chief Justice of India ordered the Registry to list the appeal for final hearing during summer vacation. Accordingly, the matter has been placed before us.

9. We have heard learned counsel for the parties.

10. The learned counsel for the Revenue submitted that the Tribunal committed an error of law and of jurisdiction in exercising power under sub-section (2) of Section 254 of the Act and in recalling its earlier order passed in appeal. It was submitted that the Tribunal is a statutory authority (though not an `income tax authority' under Section 116) and is exercising power conferred by the Act. It has no `plenary' powers. It has no power to review its own decisions. Power under Section 254(2) can be exercised in case of any `mistake apparent from the record'. According to the counsel, even if the order passed by the Tribunal was incorrect or wrong in law, it would not fall within the connotation `mistake apparent on record'. If the assessee was aggrieved by the said order, it could have challenged the order by taking appropriate proceedings known to law. Miscellaneous Application under Section 254(2) of the Act was not maintainable. Again, the order passed under Section 254 by the Tribunal is final under sub-section (4) of the said section. By invoking the jurisdiction under sub-section (2) of the said section, the statutory `finality' cannot be destroyed or the provision cannot be made nugatory. The Tribunal, therefore, could not have allowed the application and recalled its earlier order as there was no error apparent on the record. The Revenue, therefore, challenged the said order. Unfortunately, however, the High Court committed the same error and dismissed the writ petition. The order passed by the High Court also suffers from similar infirmity. Both the orders, therefore, are required to be quashed and set aside.

11. Even on merits, neither the Tribunal nor the High Court was right, submitted the learned counsel for the Revenue. The counsel urged that the Tribunal exercised the power under Section 254(2) of the Act relying on a decision of the High Court of Gujarat in Hiralal Bhagwati, but a contrary view has been taken by this Court in Delhi Stock Exchange Assn. Ltd. v. Commissioner of Income Tax, (1997) 225 ITR 234 (SC). In view of the declaration of law by this Court, the assessee is not entitled to exemption from payment of tax.

12. The learned counsel submitted that this Court may consider the appeal of the Revenue on merits and decide whether the order passed by the Tribunal in the appeal was in consonance with law and settled legal position.

13. The learned counsel for the assessee, on the other hand, supported the order passed by the Tribunal in Miscellaneous Application and in recalling its earlier order passed in appeal as also the order passed by the High Court. According to the counsel, the Tribunal was functioning by exercising its powers in Gujarat. As such, it is an inferior Tribunal subject to the supervisory jurisdiction of the High Court of Gujarat under Article 227 of the Constitution. The High Court of Gujarat is thus `Jurisdictional Court' over the Tribunal. The Tribunal is, therefore, bound by a decision of the High Court of Gujarat.

14. The question which fell for consideration before the Income Tax Authorities related to exemption in favour of `trust'. The issue came up for consideration before the High Court of Gujarat in Hiralal Bhagwati whether a `trust' was entitled to exemption from payment of tax under the Act. The High Court held that the `trust' could claim such exemption. All authorities under the Act, including the Tribunal, were bound by the said decision. Unfortunately, however, the attention of the Court was not invited to the said decision at the time when the case of the assessee was considered and orders were passed under the Act. Subsequently, however, the assessee came to know about the said judgment and hence an application under Section 254 (2) was filed bringing it to the notice of the Tribunal. There was thus a `mistake apparent from the record' and the Tribunal was bound to recall its earlier order which has been done. No illegality can be said to have been committed by the Tribunal in allowing the application and in recalling the order and no grievance can be made against such action of the Tribunal. Moreover, no prejudice had been caused to the Revenue inasmuch as the Tribunal has not allowed the appeal filed by the assessee nor quashed an order of assessment. It merely recalled the earlier order in the light of a decision of the High Court of Gujarat. The order of the Tribunal, therefore, was strictly in accordance with law.

15. When the Revenue approached the High Court, the High Court again considered the legal position and held that in allowing the application and in exercising power under Section 254(2) of the Act, the Tribunal had not acted illegally and dismissed the writ petition. The orders passed by the Tribunal, as also by the High Court, are in accordance with law and no interference is called for.

16. The counsel also submitted that even on merits, the Tribunal was right in recalling its earlier order. The assessee is entitled to exemption from payment of tax as `trust' inasmuch as such exemption is legal, lawful and was validly granted in favour of the assessee. The view taken by the High Court of Gujarat in Hiralal Bhagwati has been approved by this Court recently in Assistant Commissioner of Income Tax, Surat v. Surat City Gymjkhana, Civil Appeal Nos. 4305-06 of 2002; decided on March 04, 2008. It was, therefore, submitted that there is no substance in the appeal and the appeal deserves to be dismissed.

17. Having heard learned counsel for the parties, two questions have been raised by the parties before us. Firstly, whether the Income Tax Appellate Tribunal, Gujarat was right in exercising power under sub-section (2) of Section 254 of the Act on the ground that there was a `mistake apparent from the record' committed by the Tribunal while deciding the appeal and whether it could have recalled the earlier order on that ground. Secondly, whether on merits, the assessee is entitled to exemption as claimed.

18. By the impugned order passed by the Tribunal and confirmed by the High Court, the Income Tax Appellate Tribunal has merely recalled its earlier order passed in appeal and directed the Registry to fix the case for re- hearing. The matter will now be heard again on merits. The said order is challenged by the Revenue in this Court. The assessee has no grievance against the impugned order. In our opinion, therefore, it would not be appropriate for this Court to decide the second question which has been raised by the parties; viz. whether on merits, the assessee is or is not entitled to exemption from payment of tax under Section 11 of the Act. We, therefore, refrain from expressing any opinion on the second question.

19. The learned counsel for the parties drew our attention to the relevant provisions of the Act. Section 252 of the Act provides for constitution of Income Tax Appellate Tribunal by the Central Government consisting of as many judicial and accountant members as it thinks fit to exercise the powers and discharge the functions conferred on such Tribunal under the Act. It also provides for qualification of Members. It enacts that the Central Government shall ordinarily appoint a judicial member of the Tribunal to be the President thereof. Section 253 enables an assessee aggrieved by any of the orders mentioned in the said section to appeal to Tribunal. Section 254 deals with orders passed by the Tribunal and is material for the purpose of controversy raised in the present appeal. The section as stood then read thus; 254. Orders of Appellate Tribunal

(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.

(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:

... ...

(4) Save as provided in Section 256, orders passed by the Appellate Tribunal on appeal shall be final. (emphasis supplied)

20. Section 255 of the Act lays down procedure to be followed by the Tribunal. Section 256 provides for reference to High Court at the instance of the assessee or Revenue. Section 154 of the Act, likewise, empowers Income Tax Authorities to rectify mistakes.

21. Plain reading of sub-section (1) of Section 254 quoted hereinabove makes it more than clear that the Tribunal will pass an order after affording opportunity of hearing to both the parties to appeal. Sub-section (4) expressly declares that save as otherwise provided in Section 256 (Reference), "orders passed by the Appellate Tribunal on appeal shall be final". Sub-section (2) enacts that the Tribunal may at any time within four years from the date of the order rectify any mistake apparent from the record suo motu. The Tribunal shall rectify such mistake if it is brought to notice of the Tribunal by the assessee or the Assessing Officer.

22. Sub-section (2) thus covers two distinct situations;

(i) It enables the Tribunal at any time within four years from the date of the order to amend any order passed under sub-section (1) with a view to rectify any mistake apparent from the record; and

(ii) It requires the Tribunal to make such amendment if the mistake is brought to its notice by the assessee or the Assessing Officer.

23. It was submitted that so far as the first part is concerned, it is in the discretion of the Tribunal to rectify the mistake which is clear from the use of the expression `may' by the Legislature. The second part, however, enjoins the Tribunal to exercise the power if such mistake is brought to the notice of the Tribunal either by the assessee or by the Assessing Officer. The use of the word `shall' directs the Tribunal to exercise such power.

24. There is, however, no dispute by and between the parties that if there is a `mistake apparent from the record' and the assessee brings it to the notice of the Tribunal, it must exercise power under sub-section (2) of Section 254 of the Act. Whereas the learned counsel for the Revenue submitted that in the guise of exercise of power under sub-section (2) of Section 254 of the Act, really the Tribunal has exercised power of `review' not conferred on it by the Act, the counsel for the assessee urged that the power exercised by the Tribunal was of rectification of `mistake apparent from the record' which was strictly within the four corners of the said provision and no exception can be taken against such action.

25. The learned counsel for the Revenue contended that the normal principle of law is that once a judgment is pronounced or order is made, a Court, Tribunal or Adjudicating Authority becomes functus officio [ceases to have control over the matter]. Such judgment or order is `final' and cannot be altered, changed, varied or modified. It was also submitted that Income Tax Tribunal is a Tribunal constituted under the Act. It is not a `Court' having plenary powers, but a statutory Tribunal functioning under the Act of 1961. It, therefore, cannot act outside or de hors the Act nor can exercise powers not expressly and specifically conferred by law. It is well-settled that the power of review is not an inherent power. Right to seek review of an order is neither natural nor fundamental right of an aggrieved party. Such power must be conferred by law. If there is no power of review, the order cannot be reviewed.

26. Our attention, in this connection, was invited by the learned counsel to a leading decision of this Court in Patel Narshi Thakershi & Ors. V. Pradyumansinghji Arjunsinghji, (1971) 3 SCC 844. Dealing with the provisions of the Saurashtra Land Reforms Act, 1951 and referring to Order 47, Rule 1 of the Code of Civil Procedure, 1908, this Court held that there is no inherent power of review with the adjudicating authority if it is not conferred by law.

27. The Court stated;

"It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to our notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order".

(emphasis supplied)

28. The view in Patel Narshi Thakershi has been reiterated by this Court in several cases. It is not necessary for us to refer to all those cases. The legal proposition has not been disputed even by the learned counsel for the assessee.

29. In view of settled legal position, if the submission of the learned counsel for the Revenue is correct that the Tribunal has exercised power of review, the order passed by the Tribunal must be set aside. But, if the Tribunal has merely rectified a mistake apparent from the record as submitted by the learned counsel for the assessee, it was within the power of the Tribunal and no grievance can be made against exercise of such power.

30. The main question, therefore, is: What is a `mistake apparent from the record'? Now, a

similar expression `error apparent on the face of the record' came up for consideration before courts while exercising certiorari jurisdiction under Articles 32 and 226 of the Constitution. In T.S. Balaram v. Volkart Brothers, Bombay, (1971) 2 SCC 526, this Court held that "any mistake apparent from the record" is undoubtedly not more than that of the High Court to entertain a writ petition on the basis of an "error apparent on the face of the record". It was, however, conceded in all leading cases that it is very difficult to define an "error apparent on the face of the record" precisely, scientifically and with certainty.

31. In the leading case of Hari Vishnu Kamath v. Syed Ahmad Ishaque, (1955) 1 SCR 1104, the Constitution Bench of this Court quoted the observations of Chagla, C.J. in Batuk K. Vyas v. Surat Municipality, ILR 1953 Bom 191 : AIR 1953 Bom 133 that no error can be said to be apparent on the face of the record if it is not manifest or self-evident and requires an examination or argument to establish it. The Court admitted that though the said test might apply in majority of cases satisfactorily, it proceeded to comment that there might be cases in which it might not work inasmuch as an error of law might be considered by one Judge as apparent, patent and self- evident, but might not be so considered by another Judge. The Court, therefore, concluded that an error apparent on the face of the record cannot be defined exhaustively there being an element of indefiniteness inherent in its very nature and must be left to be determined judicially on the facts of each case.

32. The Court stated;

"It may therefore be taken as settled that a writ of certiorari could be issued to correct an error of law. But it is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be mere error, and become an error apparent on the face of the record? Learned Counsel on either side were unable to suggest any clear-cut rule by which the boundary between the two classes of errors could be demarcated". (emphasis supplied)

33. In Satyanarayan Laxminarayan Hegde & Ors. v. Mallikarjun Bhavanappa Tirumale, (1960) 1 SCR 890, this Court referring to Batuk K. Vyas and Hari Vishnu Kamath stated as to what cannot be said to be an error apparent on the face of the record.

34. The Court observed;

"An error which has to be established by a long drawn process of reasoning on points where there

may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. As the above discussion of the rival contentions show the alleged error in the present case is far from self evident and if it can be established, it has to be established by lengthy and complicated arguments. We do not think such an error can be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ".

35. Again, in Syed Yakoob v. K.S. Radhakrishnan & Ors., (1964) 5 SCR 64, speaking for the Constitution Bench, Gajendragadkar, J. (as his Lordship then was) stated;

"A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or Tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding is within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised".

(emphasis supplied)

36. The Court concluded;

"It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on

an obvious mis-inter-pretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened".

(emphasis supplied)

37. In our judgment, therefore, a patent, manifest and self-evident error which does not require elaborate discussion of evidence or argument to establish it, can be said to be an error apparent on the face of the record and can be corrected while exercising certiorari jurisdiction. An error cannot be said to be apparent on the face of the record if one has to travel beyond the record to see whether the judgment is correct or not. An error apparent on the face of the record means an error which strikes on mere looking and does not need long- drawn-out process of reasoning on points where there may conceivably be two opinions. Such error should not require any extraneous matter to show its incorrectness. To put it differently, it should be so manifest and clear that no Court would permit it to remain on record. If the view accepted by the Court in the original judgment is one of the possible views, the case cannot be said to be covered by an error apparent on the face of the record.

38. Though the learned counsel for the assessee submitted that the phrase "to rectify any mistake apparent from the record" used in Section 254(2) (as also in Section 154) is wider in its content than the expression "mistake or error apparent on the face of the record" occurring in Rule 1 of Order 47 of the Code of Civil Procedure, 1908 [vide Kil Kotagiri Tea & Coffee Estates Co. Ltd. v. Income-Tax Appellate Tribunal & Ors., (1988) 174 ITR 579 (Ker)], it is not necessary for us to enter into the said question in the present case.

39. As stated earlier, the decision was rendered in appeal by the Income Tax Appellate Tribunal,

Rajkot. Miscellaneous Application came to be filed by the assessee under sub- section (2) of Section 254 of the Act stating therein that a decision of the `Jurisdictional Court', i.e. the High Court of Gujarat in Hiralal Bhagwati was not brought to the notice of the Tribunal and thus there was a "mistake apparent from record" which required rectification.

40. 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).

41. A similar question came up for consideration before the High Court of Gujarat in Suhrid Geigy Limited v. Commissioner of Surtax, Gujarat, (1999) 237 ITR 834 (Guj). It was held by the Division Bench of the High Court that if the point is covered by a decision of the Jurisdictional Court rendered prior or even subsequent to the order of rectification, it could be said to be "mistake apparent from the record" under Section 254 (2) of the Act and could be corrected by the Tribunal.

42. In our judgment, it is also well- settled that a judicial decision acts retrospectively. According to Blackstonian theory, it is not the function of the Court to pronounce a `new rule' but to maintain and expound the `old one'. In other words, Judges do not make law, they only discover or find the correct law. The law has always been the same. If a subsequent decision alters the earlier one, it (the later decision) does not make new law. It only discovers the correct principle of law which has to be applied retrospectively. To put it differently, even where an earlier decision of the Court operated for quite some time, the decision rendered later on would have retrospective effect clarifying the legal position which was earlier not correctly understood.

43. Salmond in his well-known work states;

"(T)he theory of case law is that a judge does not make law; he merely declares it; and the overruling of a previous decision is a declaration that the supposed rule never was law. Hence any intermediate transactions made on the strength of the supposed rule are governed by the law established in the overruling decision. The overruling is retrospective, except as regards matters that are res judicatae or accounts that have been settled in the meantime". (emphasis supplied)

44. It is no doubt true that after a historic decision in Golak Nath v. Union of India, (1967) 2 SCR

762, this Court has accepted the doctrine of `prospective overruling'. It is based on the philosophy: "The past cannot always be erased by a new judicial declaration". It may, however, be stated that this is an exception to the general rule of the doctrine of precedent.

45. 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.

46. In S. Nagaraj & Ors. v. State of Karnataka, 1993 Supp (4) SCC, 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".

47. In the present case, according to the assessee, the Tribunal decided the matter on October 27, 2000. Hiralal Bhagwati was decided 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 "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.

48. For the foregoing reasons, in our view, no case has been made out to interfere with the order passed by the Income Tax Appellate Tribunal, Ahmedabad and confirmed by the High Court of Gujarat. The appeal deserves to be dismissed and is accordingly dismissed. On the facts and in the circumstances of the case, however, the parties are ordered to bear their own costs.

49. Before parting, we may state that we have not stated anything on the merits of the matter. As

indicated earlier, the assessee has not approached this Court. Only the Revenue has challenged the order passed under Section 254 (2) of the Act. The Tribunal, in view of the order of rectification, has directed the Registry to fix the matter for re-hearing and as such the appeal will be heard on merits. We, therefore, clarify that we may not be understood to have expressed any opinion one way or the other so far as exemption from payment of tax claimed by the assessee is concerned. As and when the Tribunal will hear the matter, it will decide on its own merit without being influenced by any observations made by it in the impugned order or in the order of the High Court or in this judgment.

50. Ordered accordingly.