



## Tax alert: Subsequent SC ruling not a ground for rectifying ITAT order

**10 September 2025**

The Bombay High Court has rendered its decision that ITAT cannot rectify its original order [under section 254(2) of the Income-tax Act, 1961] based on a subsequent ruling by the Supreme Court.

### In a nutshell



Section 254(2) of the ITA can only be invoked with a view to rectify any mistake apparent from the record and not otherwise.

Change in law or subsequent decision/judgment of coordinate or larger bench by itself cannot be regarded as a ground for review.



When the original order was passed by the ITAT on 22 June 2022, it followed the then law. That was overruled subsequently by the SC vide its order dated 12 October 2022.

Hence, on the date when the ITAT passed its original order (on 22nd June 2022), it could not be said that there was any error or mistake apparent on the record, giving jurisdiction to the ITAT to invoke Section 254(2) of the ITA.



Revenue authorities are not precluded from challenging the original order passed by the ITAT dated 22 June 2022, if otherwise entitled to in law.



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## Background:

- The taxpayer<sup>1</sup> had deposited the employee's share of EPF and ESI etc. (statutory dues related to employee contribution) belatedly. During the course of audit proceedings, the Assessing Officer (AO) disallowed the deduction on the basis that they were deposited belatedly under section 36(1)(va) of the Income-tax Act, 1961 (ITA) [related to disallowance on late payment of employee's statutory dues].
- Aggrieved, the taxpayer filed an appeal and in the course of appellate proceedings, the matter reached before the Income-tax Appellate Tribunal (ITAT).

The ITAT allowed the taxpayer's appeal vide its order<sup>2</sup> dated 22 June 2022 and held that since the employee's share of statutory dues was deposited prior to the due date of filing of return under section 139(1) of the ITA, the deduction under section 36(1)(va) of the ITA would be allowed. The ITAT relied on an earlier Himachal Pradesh High Court (HC) ruling<sup>3</sup> in this regard.

- Subsequently, after the ITAT's order, the Supreme Court (SC) in another ruling<sup>4</sup>, held that the deposit of the employee's share of statutory dues can be allowed as a deduction to the taxpayer under section 36(1)(va) of the ITA **only if it is deposited before the time limit** prescribed under the respective statutes, and not if it is deposited only prior to the due date of filing returns under section 139 (1) of the ITA.
- Pursuant to the aforesaid SC ruling dated 12 October 2022, Revenue authorities filed a rectification application before the ITAT [under section 254(2) of the ITA which allows ITAT to rectify any mistake apparent from record in the ITAT's order].

Thereafter, the ITAT overruled its own earlier ruling dated 22 June 2022 and allowed the Revenue's rectification application and held that the disallowance made by the AO was correct.

- Aggrieved, the taxpayer filed a writ petition before the Bombay High Court (HC) against the ITAT's rectification order of allowing Revenue's rectification/miscellaneous application.

## Relevant provisions in brief:

- **Relevant extract of section 254 of the ITA:**

***“Orders of Appellate Tribunal.***

254. ...

***...(2) The Appellate Tribunal may, at any time within six months from the end of the month in which the order was passed, 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.....”***

## Decision of the HC:

The HC held as follows:

- A subsequent ruling of the SC cannot be a ground for invoking rectification provisions of ITAT's order. The provisions under section 254(2) of the ITA can be invoked with a view to rectify any mistake apparent from the record and not otherwise.

<sup>1</sup> Prakash D. Koli vs ITAT [2025] 176 taxmann.com 481 (Bom-HC)

<sup>2</sup> Order dated 22 June 2022 passed under section 254(1) of the ITA (relating to appeal order passed by ITAT)

<sup>3</sup> CIT v Nipso polyfabriks Ltd. [2013] 30 taxmann.com 90 (Himachal Pradesh - HC)

<sup>4</sup> Checkmate Services (P). Ltd. v CIT (2022) 448 ITR 518 (SC)

- On the date when the original order was passed by the ITAT on 22 June 2022, it followed the law as it stood then. That was overruled subsequently by the SC vide its order dated 12 October 2022.
- Hence, on the date when the ITAT passed its original order (on 22nd June 2022), it could not be said that there was any error or mistake apparent on the record, giving jurisdiction to the ITAT to invoke Section 254(2) of the ITA.
- In another HC ruling<sup>5</sup>, where the concerned matter was with respect to the aforesaid SC ruling, the HC concluded that the ITAT erred in exercising jurisdiction under section 254(2) of the ITA and held as follows:
  - The jurisdiction as conferred under section 254(2) was akin to the jurisdiction conferred on the Civil Court under the provisions of Order XLVII, Rule 1 of the CPC<sup>6</sup>, *inter alia*, to correct mistakes apparent on the face of the record. Such jurisdiction conferred on the ITAT is more restricted.
  - In rejecting the review petition, the SC in another ruling<sup>7</sup> observed that no case for review of such judgment was made out and change in law or subsequent decision/judgment of coordinate or larger bench by itself could not be regarded as a ground for review.

In view of the above the HC allowed the writ petition filed by the taxpayer and held that the ITAT's rectification order was to be quashed and set aside and the original ITAT order dated 22 June 2022 was to be restored back.

The HC also clarified that the Revenue authorities were not precluded from challenging the original order passed by the ITAT dated 22 June 2022, if otherwise entitled to in law.

#### **Comments:**

There may be differing views of the ITAT and the SC. Accordingly, a judgement given by the ITAT may be different from the judgement given by the SC. In such cases, a question may arise that since the ruling of SC is considered to be the law of land, whether the earlier judgement of the ITAT can be rectified (based on the subsequent SC ruling).

The HC in this ruling, while holding that a subsequent ruling of the SC cannot be the grounds for invoking rectification provisions of ITAT's order, has upheld the following principles:

- Section 254(2) of the ITA can only be invoked with a view to rectify any mistake apparent from the record and not otherwise.
- Change in law or subsequent decision/judgment of coordinate or larger bench by itself cannot be regarded as a ground for review.

It may be pertinent to note that the HC has also held that Revenue authorities were not precluded from challenging the original order passed by the ITAT, if otherwise entitled to in law. Hence, while the ITAT cannot rectify its own order, the Revenue may be able to pursue the appellate route.

Taxpayers with similar facts may evaluate the impact of this ruling to the specific facts of their cases.

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<sup>5</sup> Infantry Security and Facilities v Income Tax Officer [Writ Petition No. 17175 and other connected matters, dated 3-12-2024]

<sup>6</sup> Code of Civil Procedure

<sup>7</sup> Beghar Foundation v. K. S. Puttaswamy (Aadhaar Review - 5 J.)

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