(2003) 05 AHC CK 0109

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No''s. 1004 to 1009 of 2000

U.P. Forest Corporation		APPELLANT
	Vs	
Income Tax Appellate Tribunal		RESPONDENT

Date of Decision: May 23, 2003

Acts Referred:

- Income Tax Act, 1961 - Section 10(20), 11, 148, 254(2)

Citation: (2004) 188 CTR 205

Hon'ble Judges: R.B. Misra, J

Bench: Single Bench

Advocate: S.P. Gupta and Taru Agarwala, for the Appellant; Prakash Krishna, Bharat Ji Agarwal, Ashok Kumar, G. Krishna, S.Chopra and A.N. Maheshwari, for the Respondent

Final Decision: Dismissed

Judgement

R. B. Misra, J.
Heard Sri S P Gupta, learned senior advocate with Sri Tarun Agarwala, learned counsel for the petitioner, and Sri Prakash Krishna, learned counsel for the respondent

2. In all these writ petitions the order dt 21st June, 2000, passed by Income Tax Appellate Tribunal (in short called Tribunal hereinafter), Allahabad, in Misc Application No 19 of 2000 (Annex 1), has been challenged along with prayer of seeking direction to the CIT(A) to consider the other grounds of the petitioner raised in the memo of appeal with further prayer for quashing the order dt 28th April, 1999 (Annex 5), of Tribunal, Allahabad, insofar as it confirmed the assessment order dt 3rd Aug, 1989, for the years 1979-80, 1980-81, 1981-82, 1982-83, 1983-84 and 1988-89 in respect of grounds/issues which had not been adjudicated upon by the CJT(A) and to keep the assessment proceedings pending till the adjudication of those grounds by the CIT(A), Lucknow, is completed The petitioner has also challenged the order dt 28th April, 1999, insofar as it remands the matter back to the assessing

authority

3. The assessment order passed u/s 143(3) for the assessment years in respect of 1979-80, 1981-82 to 1983-84, 1987-88 and 1988-89 holding that the petitioner is not a local authority u/s 10(20) of the IT Act (in short called ''Act'') and was, therefore, not liable to any exemption and determining the taxable income of the petitioner by disallowing some of the deductions claimed by the petitioner and by making some additions The appeal of the petitioner was allowed and the CIT(A) held that the petitioner was a local authority and its income was exempt u/s 10(20) of the Act Since the IT Department was trying to bring the corporation under the tax net and assessing the petitioner in every assessment year, the petitioner filed writ petition No 4424 of 1987 and other writ petitions for the asst yrs 1977-78, 1980-81 and 1984-85 which were allowed by the High Court upholding the plea of the petitioner for exemption u/s 10(20) and Section 11(1) of the IT Act

4. The IT Department filed appeal before the Supreme Court against the judgment of the High Court and the Supreme Court passed an interim order on 17th Jan , 1989, while entertaining the appeal of the Department, keeping the judgment of the High Court in abeyance Prior to passing of the aforesaid order, fresh assessment order was passed u/s 143(3)/148 of the Act Against the aforesaid assessment order, the appeal of the petitioner was allowed by the CIT(A) on the ground that the petitioner is entitled for exemption u/s 11(1)(a) and Section 10(20) of the Act The appellate authority while allowing the appeal on the aforesaid ground did not consider nor adjudicated upon the other grounds relating to additions and deletions made by the assessing authority, as contended on behalf of the petitioner The IT Department filed an appeal before the Tribunal against the order of the CIT(A), Lucknow

5. On 2nd March, 1998, the Supreme Court allowed the appeal of the Department for the asst yrs 1977-78, 1980-81 and 1984-85 while observing that the petitioner was not a local authority and was not entitled to exemption u/s 10(20) of the Act As for exemption u/s 11(1)(a), the Supreme Court has been pleased to observe that the High Court should not have decided the appeal u/s 11(1)(a) of the Act and, therefore, referred the matter back to the assessing authority to consider the claim of the petitioner u/s 11(1)(a) of the Act On 28th April, 1999, the Tribunal finally allowed the appeal of the IT Department against the order of the CIT(A) dt 31st Oct, 1989, on the question of exemption u/s 10(20) of the Act in view of the judgment of the Supreme Court dt 2nd March, 1998 As far the exemption u/s 11(1)(a) of the Act, the Tribunal remanded the matter back to the assessing authority to consider the question u/s 11(1)(a) of the Act

6. According to the petitioner, the Tribunal committed an error in remanding the entire matter to the assessing authority and thus depriving the petitioner to urge the ground which the petitioner had raised before the CIT(A) on the question of addition and deletion made by the assessing authority and which had not been

considered by the CIT(A)

According to the petitioner in a similar matter and in a similar situation, the Tribunal on 30th July, 1999, had passed the order for the asst yr 1990-91 remanding the matter to the assessing authority instead of remanding it to the CIT(A) for consideration of earlier grounds which had not been decided by the CIT(A)

7. The petitioner filed an appeal before the High Court in which the High Court vide its judgment dt 13th Dec , 1999, held that since the Tribunal had set aside the orders of the CIT(A), in that event as a necessary legal consequence the CIT(A) has to decide the appeal of the petitioner insofar as the other pleas raised by the petitioner are concerned and that the High Court further held that the learned Tribunal had acted miserly in not passing the order in remanding the matter back to the CIT(A) According to the petitioner in view of the aforesaid order of High Court an apparent mistake had been committed by the Tribunal in its order dt 28th April, 1999, therefore, the petitioner moved a Misc Application on 16th Feb, 2000, praying that the order of the Tribunal be rectified and instead of remanding the matter back to the assessing authority, the Tribunal should remand the matter back to the CIT(A) so that the undecided grounds raised in the memo of appeal could be decided and this direction may be in conformity with the order and judgment of the High Court dt 13th Dec , 1999

8. It appears that the petitioner has also filed an application before the CIT(A) on 11th April, 2000, praying that the grounds which had been urged but have not been decided by him may be decided According to the petitioner the CIT(A) has not heard nor has decide the undecided grounds On 21st June, 2000, the aforesaid misc application was rejected

9. All these writ petitions may be categorised in two categories In the first category the writ petition Nos 1004/2000, 1005/2000, 1008/2000 and 1009/2000 falls These writ petitions arising out of reassessment orders for the asst yrs 1979-80, 1981-82, 1982-83 and 1983-84, respectively, and the remaining two writ petitions, namely, writ petition Nos 1006/2000 and 1007/2000 arising out of regular assessment proceedings for the asst yrs 1987-88 and 1988-89

10. The brief facts necessary for adjudication of these petitions are that in all these cases, the Tribunal by the common impugned order allowed the appeal of the Department and restored back the case to the AO for considering the issue regarding exemption u/s 11 of the IT Act, in view of the judgment of the Supreme Court in CIT v. UP Forest Corporation JT 1993 11 SC 205 Thereafter, an application u/s 254 of the Act was filed by the assessee for rectifying the mistake in the order of the Tribunal dt 28th April, 1999 (Annex No 3 to the writ petitions), which was rejected by the Tribunal by the impugned order The Tribunal by the impugned order dt 21st June, 2000 (Annex No 1 to all the writ petitions), has rejected the rectification application filed by the petitioners Therefore, the writ petitions have been filed

11. At the outset the preliminary objections are being raised on behalf of the respondents that the impugned order of the Tribunal is appealable u/s 260A of the Act before the High Court (Division Bench) Hence, the writ petitions are not maintainable before the High Court (Single Judge) as the legislator has provided an appeal u/s 260A of the Act from every order passed in appeal by the Tribunal if the High Court is satisfied that the case involved substantial question of law The respondents have also submitted that the orders of learned Tribunal impugned in the petitions do not suffer from any mistake as such need no rectification or review

12. It has been contended on behalf of the petitioner in leading writ petition No 1005 of 2000 that in the assessment orders of all the six assessment years (regular or u/s 148 of the IT Act), the AO had made additions and disallowances on merits in the computation of taxable income of the assessee The assessee challenged them in appeals before the CIT(A) The assessee had also challenged the assessment order on the grounds of exemption u/s 10(20) and/or Section 11(1)(a) of the Act Following the judgment of the High Court, the CIT(A) allowed the appeals on the grounds of exemption under Sections 10(20) and 11(1)(a) of the Act From the grounds on merits of computation of income the CIT(A) observed

" It is not found fit to adjudicate on the rest of the grounds" (Annex 2)

In appeal arising from assessment orders u/s 148 of the Act the CIT(A) followed its earlier order and exempted the assessee under Sections 10(20) and 11(1)(a) of the IT Act He, however, cancelled the assessment order u/s 148 maintaining the earlier assessment order (Annex. 4). Against these orders of the CIT(A), the Department filed appeals before the Tribunal. While these appeals were pending, the Supreme Court, in an appeal arising from the judgment of the High Court, reversed the judgment of the High Court on the issue of exemption u/s 10(20). The assessee was held not to be a local authority and, therefore, not exempt. But on the issue of exemption u/s 11 of the Act, the Supreme Court restored the matter to the AO (in the three assessment years, which were before the Supreme Court) for fresh orders on the grounds that the writ petition, which had been entertained and allowed by the High Court under Article 226 of the Constitution should not have been directly entertained. On the basis of authority of this judgment of the Supreme Court, the Tribunal allowed the appeals of the Department in the cases of all the assessment years which came before it. Apart from the six years, which are involved in the present writ petition, there was a case of the asst. yr. 1990-91,

From the order of the Tribunal, allowing the appeal of the Department against the assessee on the ground of exemption u/s 10(20) of the IT Act, the assessee had no grievance. The assessee had also no grievance insofar as the matter had been restored back for fresh decisions u/s 11 of the Act. The assessee had grievance against (i) omission on the part of Tribunal to give a direction to the CIT(A) to adjudicate on the issues relating to additions and disallowances made by the AO in the computation of the income and/or (ii) the observation of the Tribunal to the

effect that "therefore action of the AO u/s 143(3)/148 for the... It is also upheld and the order of CIT(A) is reversed on this issue also". (Annex. No. 5).

According to the petitioners in the appeal relating to the asst. yr. 1990-91, a similar situation had arisen. In that case Tribunal allowed the appeal of the Department by its order dt. 30th July, 1999, but not given any direction for adjudication of the unadjudicated grounds relating to the merits of computation of income due to additions and disallowances (Annex. No. 6). Against this order of the Tribunal the assessee filed appeal before the High Court. The assessee expressed its apprehension that in absence of any direction by the Tribunal, the CIT(A) would not consider the leftover unadjudicated grounds relating to the merits of computation of income. The High Court in its order dt. 13th Dec., 1999, observed "we find no reason for such apprehension. It would have been better if the Tribunal had not acted miserly in using proper words in its order and had specifically stated that the CIT''s order is set aside and the CIT will now dispose of the appeal according to law".

The High Court further observed :

"The result of the Tribunal''s order is that the CIT''s order stands set aside and as a necessary legal consequence, the CIT has to decide the appeal insofar as the other pleas raised by the appellant are concerned. In our view, therefore, a mere deficiency of a few words in the Tribunal''s order, does not raise a substantial question of law for which this appeal may be entertained. With the aforesaid observations, the appeal is dismissed as not maintainable" (Annex No 6 and Annex No 7)

13. As contended by the petitioners the Tribunal had not given any direction to the CIT(A) for deciding the left over unadjudicated grounds, the assessee filed misc applications for rectification of the order of the Tribunal (Annex No 8) In the application, inter aha, it was specifically mentioned that "the quantum issues raised by the corporation against the order of the AO are to be decided at some stage" It was further mentioned "that the during the course of hearing of the Departmental appeal, learned counsel for the appellant had not only pointed out but emphatically urged that the issues relating to the quantum additions made by the learned AO had not been adverted upon by the learned CIT(A) " It was further mentioned "the learned CIT(A) be directed to dispose of the grounds on quantum additions taken by the appellant (in accordance with law) There is no discussion or direction on this issue raised in the present order" Referring to the aforesaid judgment of the High Court (in the case of asst yr 1990-91), it was submitted that "the order dt 28th April, 1999, for the present year be rectified to incorporate the ratio/direction of the High Court" It may be submitted that no objection was filed to the aforesaid application It is this application which had been rejected by the Tribunal by its order dt 21st June, 2000 (Annex No 1)

14. As submitted on behalf of the petitioners it was specifically pleaded in paragraph Nos 24, 25, 26 and 27 of the writ petition that before the Tribunal, "it was urged that the Tribunal may consider the submission independent of it in the light of the direction of the Hon''ble Court giving in its judgment dt 13th Dec , 1999" In the impugned order it has been observed that the argument regarding the consideration of other grounds mentioned in the petitioner''s memo of appeal before the CIT(A) was not urged before the Tribunal when it had passed the impugned order and that before advancing further arguments the counsel should file an affidavit indicating therein that such argument was raised before the Tribunal when it passed the order dt 28th April, 1999 In the event such affidavit is filed then the counsel should be prepared to be cross-examined by the Tribunal It was also submitted in paragraph Nos 26 and 27 of the writ petition that the senior counsel of the assessee submitted "that he did not want to go into this controversy and urged that, assuming without admitting that the argument relating to the consideration of grounds mentioned in the memo of appeal before the CIT(A) were not argued before the Tribunal, nonetheless the Tribunal may independently consider the point in view of the direction of the High Court vide judgment dt 13th Dec. 1999 The senior counsel asked the Tribunal to consider the alternate argument by following the directions of the High Court ignoring the averment whether the argument for direction to CIT(A) was made or not Again, in para 27 an specific pleading has been made that the observation made by the Tribunal is wholly incorrect and not only false but is also perverse The counsel made no such statement" There is no denial in the counter affidavit to paragraph No 24 of the writ petition, they are not disputed

15. According to the petitioners it is to be appreciated that the appeal of the Department, which was being considered by the Tribunal, was confined only to the questions relating to exemption u/s 10(20) and Section 11 of the Act There was no issue or question relating to left over unadjudicated grounds regarding merits of computation of income No question or issue arose, or could arise, during the course of argument to the effect that the assessment order on the left over unadjudicated questions and issues had become final without being adjudicated upon by the CIT(A) As submitted above, a request was specifically made that the direction be given to the CIT to decide those questions Apart from this, it was necessary as indicated by the High Court, to give a direction that the left over unadjudicated question be decided, but apart from that, the Tribunal in its order dt 28th April, 1999 (Annex No 5), made an observation to the effect that "the action of the AO u/s 143(3)/148 for the assessment years it is also upheld and order of the CIT(A) is reversed on this issue also" It has been submitted that the assessment order of the AO was never in issue before Tribunal Neither there was any occasion for the Department to raise any ground for such observation or it was raised nor it could be raised Therefore, there was no occasion to uphold the assessment order of the AO This observation which has created trouble for the assessee was unwarranted, uncalled for, without any basis and totally without jurisdiction The jurisdiction of the Tribunal was

confirmed to the issues relating to the exemption which had been granted by CIT(A) Having reversed the order of CIT(A), the Tribunal could only give a direction to the CIT to decide the unadjudicated grounds as held by the High Court In any case it could not uphold the assessment orders as has been done in the instant case

16. On the ground of maintainability of the writ petition it has been replied on behalf of the petitioners that in the case of Laxmi Electronic Corporation Ltd. Vs. Commissioner of Income Tax, , the Allahabad High Court has held that "the omission on the part of Tribunal to consider a ground raised by a party not only amounts to mistake apparent on the face of the record, but there is an inherent power in the Tribunal to rectify such mistake as no prejudice is suffered by that party" In the words of the High Court "where the Tribunal fails or omits to deal with an important contention effecting maintainability/merits of the appeal, it must be deemed to be a mistake apparent from the record" Judged and appreciated from any angle, the observation of the Tribunal upholding the assessment orders was totally uncalled for, unwarranted and without jurisdiction The judgment of the High Court referred to above (Annex No 7) clearly establishes that on reversing the order of the CIT, it was a necessary legal consequence that the CIT had to decide the appeal insofar as other pleas raised by the appellant were concerned In view of the above, the rectification application filed by the assessee ought to have been allowed and suitable direction should have been given to the CIT(A) to decide other grounds as directed in the aforesaid judgment of the High Court It has also been argued on behalf of the petitioners that in view of the judgment of the Calcutta High Court in Shaw Wallace and Co. Ltd. Vs. Income Tax Appellate Tribunal and Others, , an appeal u/s 260A is not maintainable against every order u/s 254(2) of the Act The Calcutta High Court has also held to be appealable, the order of the Tribunal to be passed in appeal Here, the impugned order of the Tribunal was not passed in appeal but in a miscellaneous application towards rectifying the mistake apparent from the record If the order u/s 254(2) had taken the shape of modifying by way of amendment on rectification the original order to some extent, then both of the orders, jointly might have been appealable u/s 260A, but an order of recall is clearly not appealable The impugned order is not an order "in appeal" The appeal had already been decided As such, no appeal lay against the order rejecting the misc application The respondent had relied on the judgment of the Delhi High Court in Karan and Co v. ITAT (2002) 253 ITR 131 The entire factual context of that judgment is different It is not possible to draw any analogy from that case to the facts of the present case But, apart from that, the Division Bench of Delhi High Court did not reject the writ petition on the ground of alternate remedy in that case The Delhi High Court observed as follows "We may take note of the preliminary objection raised by Mr Pandey, learned counsel for the Revenue, about the maintainability of the writ petition in the presence of statutory remedy Rule relating to exhaustion of statutory remedy is essentially a rule of prudence and not one of law There are several exceptions to the salutary requirement of the exhaustion of statutory remedy One of them is lack of

jurisdiction of the authority who has passed the order impugned As indicated above, the Tribunal had no jurisdiction to pass impugned order in the absence of any statutory prescription We find no substance in the plea of Mr Pandey that the assessee should have availed of the statutory remedy" Observation to the same effect was made in the earlier part also The alternative remedy is not an absolute bar to the maintainability of writ petition under Article 226 of the Constitution In the present case, the maintainability of appeals is a very doubtful proposition In the earlier case of the petitioner, relating to asst yr 1990-91, the Allahabad High Court has held that the appeal is not maintainable In this view of this matter, the objection of the respondent deserved to be rejected and the writ petition should be treated to be maintainable

17. Section 254(2) of the IT Act provides that Tribunal may with a view to rectify any mistake, apparent from the record, amend any order passed by it under Sub-section (1) It was argued by the learned senior counsel that an order refusing to rectify the mistake is not an order refusing to rectify that mistake is not an order passed in appeal by the Tribunal This argument is not correct inasmuch as rectification order has no separate existence It has been held by the Chief Justice Anjit Pasayat (as he then was, now a Judge of the Hon''ble Supreme Court) in Kaian & Co''s case (supra) as follows

"... The order passed by the Tribunal u/s 254(1) is effective order so far as the appeal is concerned. Any order passed u/s 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 u/s 254(1). That is the final order in the appeal. An order u/s 254(2) does not have existence de hors the order u/s 254(1)....".

There was a controversy among various High Courts as to about the maintainability of a reference u/s 256 of the IT Act against the order relating to rectification application. It may be stated here that order passed prior to 1st Oct., 1998, by the Tribunal could be challenged by way of reference u/s 256 before the High Court. Finance Act No. 2 of 1998, w.e.f, 1st Oct., 1998, inserted Section 260A in the IT Act providing appeal to High Court and making the reference provision obliterate in respect of the orders passed after 1st Oct., 1998. The Hon''ble Supreme Court in Commissioner of Income Tax. Jabalpur Vs. M/s. Durga Engg. and Foundry Works, has held that reference u/s 256 will lie irrespective of the fact as to whether the rectification application was rejected or allowed and the contrary view of the Madhya Pradesh High Court in the case of Popular Engineering Co. Vs. Commissioner of Income Tax, has been overruled. This case also supports the view that there is an alternative remedy by way of reference u/s 256 for the order passed prior to 1st Oct., 1998, and appeal u/s 260A for the orders passed after 1st Oct., 1998. Moreover, the Hon''ble Supreme Court in the case of assessee itself in U.P. Forest Corpn.''s case (supra) in para 14 has observed that the writ petition filed by

the Forest Corporation ought not to have been entertained by the High Court when adequate alternative remedy was available to the respondents. The relevant portion reads as follows :

"Before concluding we would like to observe that High Court ought not to have entertained the writ petitions when adequate alternative remedy was available to the respondents....".

According to the respondents the petitioners should not normally short circuit the procedure provided by the taxing statute and seek the redress by filing an objection under Article 226 of the Constitution of India. The Hon''ble Supreme Court way back 1998 had warned the petitioner not to invoke the writ jurisdiction by short circuiting the statutory provisions. Hence, it is submitted that writ petition is liable to be dismissed on this short ground alone.

18. According to the respondent the petitioners filed rectification application on similar allegations in all 6 writ petitions. The copies of the said rectification applications are Annex. No. 8, p. 63 in the writ petition No. 1005 of 2000. The relevant realm in the rectification application is quoted below :

"In light of facts stated above and Hon''ble Allahabad High Court judgment, it is respectfully prayed that the order dt. 18th April, 1999, for the present year be rectified to incorporate the ratio/direction of Hon''ble Allahabad High Court Judge referred above"

The ground of rectification is that there is judgment of Allahabad High Court exactly on the same facts a copy of which has been annexed as Annex No 7 to the writ petition No 1005 of 2000

The said judgment of the Hon''ble High Court is not at all relevant for the present controversy The appeal filed by the petitioner was dismissed by the High Court No principle of law or ratio was laid down The said judgment is dt 13th Dec. 1999, i e , subsequent to the original order of the Tribunal The order of the Tribunal is dt 28th April, 1999 u/s 254(2) of the IT Act the word "record" is very important The judgment of Allahabad High Court is not part of the record of the Tribunal

Secondly, the said judgment cannot be used as precedent as it has decided nothing There is no ratio which may be contrary to the ratio of the order of the Tribunal The petitioner''s counsel has placed reliance upon Karam Chand Thapar & Bros v. State of UP 1976 UPTC 761 The said ruling is quite distinguishable It was held that rectification of the assessment order on the basis of the decision of High Court, declaring correct law on the point is permissible The interpretation of law by these Courts has retrospective effect as the Courts do interpret the law but they do not legislate the law

In the present case in hand the judgment of the High Court, Annex No 7 to the writ petition, has not given declaration of any law, therefore, the said judgment has no

application to the facts of the present case

Secondly (Thirdly), the error of law must be apparent A bare perusal of the order passed by the CIT(A) in the aforesaid four writ petitions of the category A shows that subject-matter of the appeal was the exemption of income under Sections 10(20) and 11 of Act and action of the ITO u/s 148 regarding reassessment There is no mention that any other point or ground was raised before him The petitioner did not file any cross-appeal before the Tribunal Order of the CIT(A) is Annex No 4 to the writ petition No 1005 of 2000 The identical orders of CIT(A) are in the other writ petitions, namely, writ petition Nos 1004 of 2000, 1006 of 2000 and 1009 of 2000 The Tribunal has categorically recorded a finding that petitioner did not place any material to show that there were other grounds for justifying the remand to the CIT(A) The relevant portion of the Tribunal''s order rejecting the rectification application is quoted below

"As regards the plea that the matter may be remanded to the CIT(A) where the opinion that the fresh assessment and grounds are not before us and, therefore, we are unable to take cognizance of the same"

Mistake apparent on record has been interpreted by the Hon''ble Supreme Court in T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, as follows:

A mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may conceivably be two opinions "

A decision on debatable point of law is not mistake apparent on the points of law

19. The Supreme Court in Commissioner of Income Tax (CNTL), Ludhiana Vs. Hero Cycles Pvt. Ltd., Ludhiana, held "a point which was not examined on facts or in law cannot be dealt with as mistake apparent from record"

20. The respondents have referred that the Delhi High Court in Karn & Co''s case (supra) on p 135 has discussed meaning of word ''apparent'' is that it must be a something which appears to be ex facie and it is incapable of argument or debate It, therefore, follows that a decision on a debatable point of law or fact or failure to apply the law to a set of facts which remains to be investigated cannot be corrected by way of rectification

21. It has been argued on behalf of the petitioners that the respondents have relied upon the judgment of the Supreme Court in Durga Engg & Foundry Works'' case (supra) First, this judgment has no application to the facts of the present case inasmuch as in this case the Tribunal had allowed the rectification application and had amended the final order in appeal by deleting certain additions Obviously, this order became a final order in appeal and there is no such situation in the present case Secondly, the language of Section 256 of the Act which was interpreted by the

Supreme Court to hold that the reference was maintainable is wholly different from the language of the Section 260A of the IT Act As such, the interpretation given by the Supreme Court on the language of Section 256 of the IT Act cannot be applied in the present case Similarly, the observation of the Supreme Court in the case of the assessee, holding that the question of charitable character ought not to have been directly entertained in the writ petition, is also wholly enact (sic) and not applicable The present writ petition has arisen after raising the case before the Tribunal

As contended by the petitioners the respondents have submitted on merits that the judgment of the Allahabad High Court dt 13th Dec. 1999 (referred to above) is not applicable It has been very wrongly observed in the written submissions of the respondent that judgment does not lay down any principle of law or ratio It is well-established principle that a judgment declares the law as it has always been Therefore, what the Allahabad High Court said was always the law and merely because the order of the Tribunal was dt 28th April, 1999 (i e, prior to the judgment of the Allahabad High Court), it would not mean that the law was different from that on the date when the Tribunal gave the judgment

According to the petitioners in reference to the contentions of the respondents that the Tribunal has categorically recorded the finding that petitioners did not place any material to show that there were other grounds for justifying the remand to the CIT(A), this is total misconception of the situation as it was before the Tribunal As already submitted earlier, the appeal was of the Department It was allowed As held by the Allahabad High Court in the judgment referred to above, the Tribunal should have given the direction to the CIT(A) that the left over unadjudicated questions and issues be decided Such a clear mistakes apparent on the facet of the record The observations upholding the assessment orders were totally uncalled for, unwarranted, without any basis and without any jurisdiction This mistake was apparent on the face of record The cases referred to in the written submissions in the gases of Volkart Bros (supra) and Hero Cycles (P) Ltd (supra) are wholly distinguishable

On behalf of the petitioner it was submitted that gross injustice is being done to the petitioner inasmuch as opportunity is being denied to it to contest the additions and disallowances made by the AO in the computation of income In the year in which, this has been done under the orders of the High Court, the liability of the petitioner to Income Tax has been reduced by several lacs of rupees It may be noted that the petitioner was not at fault at any stage The CIT(A) did not decide the questions and issues on merits and granted total exemption Therefore, those issues, as decided by the AO can never be said to be the final without making the remedy of appeal available to the petitioner

22. On the question of alternatively remedy the Supreme Court in the case of Chanan Singh and Sons Vs. Collector Central Excise and Others, , has held that instead of challenging the order of the Tribunal by filing the statutory alternative

remedy of reference the writ petition was filed and the apex Court has held as follows

"The High Court simply said that the appellant had a statutory remedy instead of filing writ petition Accordingly, the High Court dismissed the writ petition The appellant instead of challenging the order of the Tribunal by availing the statutory alternative remedy has filed this appeal by special leave challenging the order of the High Court We are of the view that the High Court was right in dismissing the writ petition directing the appellant to avail the statutory alternative remedy"

23. In the case of Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, , the Supreme Court has held in para 11 as follows

" If the petitioners are dissatisfied with decision in the appeal, they can prefer a further appeal to the Tribunal under Sub-section (3) of Section 23 of the Act, and then ask for a case to be stated upon a question of law for the opinion of the High Court u/s 24 of the Act Act provides for a complete machinery to challenge an order of assessment by mode prescribed by the Act and not by a petition under Article 226 of the Constitution "

24. The said decision has been followed in Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, , as follows:

"3 In Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, , A P Sen, E S Venkateramiah and R B Misra, JJ held that where the statute itself provided the petitioners with an efficacious alternative remedy by way of an appeal to the Prescribed Authority, a second appeal to the Tribunal and thereafter to have the case stated to the High Court, it was not for the High Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution ignoring as it were become necessary, even now, for us to repeat this admonition is indeed a matter of tragic concern to us Article 226 is not meant to short circuit or circumvent statutory procedures We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other The practice certainly needs to be strongly discouraged "

As mentioned earlier, reference u/s 256 of the IT Act is maintainable against the order of the Tribunal like a reference against the order of the CEGAT u/s 35H of the Act

25. The Supreme Court has deprecated the practice of filing a writ petition under Article 226 of the Constitution instead of filing reference u/s 256 of the IT Act in the case of The Commissioner of Income Tax, Lucknow Vs. U.P. Forest Corporation, , which is reproduced below

"5 Instead of following the procedure prescribed by the Act by way of a reference u/s 256 of the IT Act, the respondent chose to file the writ petitions in the Allahabad

High Court challenging the orders of the Tribunal in respect to the asst yrs 1977-78 and 1980-81 and order of the assessing authority for asst yr 1984-85 which had been made by it These writ petitions were entertained by the High Court which allowed the same by coming to the conclusion that the respondent was a local authority and, therefore, its income was exempt from tax "

Taking note of the aforesaid fact in para 5 quoted above, the Supreme Court has observed as follows in para 14

"Before concluding we would like to observe that the High Court ought not to have entertained the writ petitions when adequate alternative remedy was available to the respondent We, however, emphasise that the petitioners should not normally short circuit the procedure provided by the taxing statute and seek redress by filing a petition under Article 226 of the Constitution of India "

26. Admittedly, the petitioners have filed recently Excise Reference Application No 13 of 2002 on 16th May, 2002, u/s 35H of the Act, hence they are pursuing a parallel proceeding in respect of the same subject-matter arising out of the same order of the Tribunal in view of the judgment of the Supreme Court in the case of Jai Singh Vs. Union of India and Others, , in which the Supreme Court has held as follows

"the appellant has filed a suit, in which he has agitated the same question which is the subject-matter of the writ petition In our opinion the appellant cannot pursue two parallel remedies in respect of the same matter at the same time"

27. In the case of Union of India v. CL Jam Woollen Mills 1996 (84) ELT 17, the Supreme Court has observed as follows

"While we agree with Mr A Subba Rao, the learned counsel for the petitioner, that when the appeal before the Tribunal, preferred by the assessee himself, was pending, the High Court ought not to have interfered in the matter by way of a writ petition In the facts and circumstances of the case, we are not inclined to interfere in the matter "

28. A Division Bench of the Andhra Pradesh High Court in the case of P. Vasu Babu Vs. CEGAT, Chennai, , has dismissed the writ petition under Article 226 of the Constitution only on the question that the petitioner has remedy of reference under Sections 35G and 35H of the Act

29. A Constitution Bench of the Supreme Court, in Veerappa Pillai Vs. Raman and Raman Ltd. and Others, , held that as the Motor Vehicles Act is a self-contained code and itself provides for appealable/revisable forum, the writ jurisdiction should not be invoked in matters relating to its provision

30. Similar view has been reiterated in Dunlop India Ltd ''s case (supra), Shri Ramendra Kishore Biswas Vs. The State of Tripura and Others, and Shivgonda Anna Patil and Others Vs. State of Maharashtra and Others,

31. In C.A. Abraham, Uppoottil, Kottayam Vs. The Income Tax Officer, Kottayam and Another, and HB Gandhi v. Gopi Nath & Sons 1992 Suppl (2) SCC 312, the Supreme Court held that where hierarchy of appeals is provided by the statute, party must exhaust the statutory remedies before resorting to writ jurisdiction

32. The Constitution Bench of the Supreme Court in K.S. Venkataraman and Co. Vs. State of Madras, , considered the ruling of Privy Council in Raleigh Investment Co Ltd v. Governor General in Council AIR 1947 PC 78, and held that the writ Court can entertain the petition provided the order is alleged to be without jurisdiction or has been passed in flagrant violation of the principles of natural justice or the provisions of the Act/Rules are under challenge

33. In Titaghur Paper Mills Co Ltd ''s case (supra), the Supreme Court refused to extend the ratio of its earlier judgment in State of UP v. Mohammad Noor AIR 1958 SC 86, wherein the Court had held that prerogative writ can be issued to correct the error of the Court or Tribunal below even if an appeal is provided under the statute under certain circumstances, i e, the order is without jurisdiction, or principles of natural justice have not been followed, and held that in case of assessment under the taxing statute, the principle laid down by the Privy Council in Raleigh Investment Co Ltd ''s case (supra) would be applicable for the reason that "the use of the machinery is provided by the Act, not the result of that use is the test"

34. While deciding the said case, the Supreme Court placed reliance on large number of judgments particularly New Water Works Co v. Hawkes Ford (1959) 6 CBNS 336, Neville v. London Express Newspapers Ltd (1919) AC 368, Attorney General of Trinidad & Tobago v. Gordon Grant & Co (1935) AC 532 and Secretary of State v. Mask & Co AIR 1949 PC 105, wherein it had consistently been emphasised that the remedy provided by the statute must be followed and writ should not generally be entertained unless the statutory remedies are exhausted

35. In Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, and Tin Plate Co. of India Ltd. Vs. State of Bihar and Others, , the Supreme Court came to the conclusion that writ should not generally be entertained if statute provides for remedy of appeal and even if it has been admitted, parties should be relegated to the appellate forum

36. In Sheela Devi Vs. Jaspal Singh, , the Hon''ble Supreme Court has held that if the statute itself provides for a remedy of revision, writ jurisdiction cannot be invoked

37. In Punjab National Bank v. OC Krishnan AIR 2001 SCW 2993, the Supreme Court while considering the issue of alternative remedy observed as under

"The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions There is hierarchy of appeals provided in the Act, namely, filing of an appeal u/s 20 and this fast tract procedure cannot be allowed to be derailed either by taking recourse to proceedings under

Arts 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred Even though a provision under an Act cannot expressly oust the jurisdiction of the Court under Arts 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act"

38. A Constitution Bench of the Supreme Court in K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc., , held that Article 226 of the Constitution confers on all the High Courts a very wide power in the matter of issuing writs The said power is limited However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere Similar view has been reiterated by the Supreme Court in Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, , holding that the powers of issuing writ are purely discretionary and no limit can be placed upon that discretion However, the power can be exercised along with recognised line and not arbitrarily, and the Court must keep in mind that the power shall not be exercised unless substantial injustice has ensued or is likely to ensue and in other cases the parties must be relegated to the Courts of appeal or revision to set right mere errors, if law does not occasion injustice in a broad and general sense

39. Again, a Constitution Bench of the Supreme Court in Union of India (UOI) Vs. T.R. Varma, , held that it is well-settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ The Supreme Court held that existence of an another remedy does not affect the jurisdiction of the Court to issue a writ, but the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writ and where such remedy is not exhausted, it will be a sound exercise of discretion to refuse to interfere in a petition under Article 226 of the Constitution unless there are good grounds therefor

40. Yet another Constitution Bench of the Supreme Court, in Mohammad Noor''s case (supra), considered the scope of exercise of writ jurisdiction when remedy of appeal was there and held that writ would be provided there is no other equally effective remedy The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of fundamental principles of justice Therefore, in a proper case, powers of writ can be exercised but should not be exercised generally where other adequate legal remedy is available though it may not be, per se, a bar to issue a writ of prerogative The Supreme Court held that the remedy, being discretionary, cannot be asked as a matter of right, even if the

order is a nullity, on the ground that it was passed by disregarding the rules of natural justice The Court held as under

" Save in exceptional cases, the Courts will not interfere under Article 226 until all normal remedies available to a petitioner have been exhausted The normal remedies in a case of this kind are appeal and revision It is true that on a matter of jurisdiction, or on a question that goes to the root of the case, the High Courts can entertain a petition at an earlier stage but they are not bound to do so and a petition would not be thrown out because the petitioner had done that which the Courts usually like him to do, namely, to exhaust his normal remedies before invoking an extraordinary jurisdiction The petitioner would have been expected to pursue his remedies of appeal and revision first and could not have come to the High Court in the ordinary way until he had exhausted them, "

41. In NT Veluswami Thevar v. G Rajan Nainar AIR 1959 SC 442, the Supreme Court held that the jurisdiction of the High Court to issue writ against the orders of the Tribunal is undoubted, but then, it is well-settled that where there is another remedy provided, the Court must properly exercise its discretion in dealing to interfere under Article 226 of the Constitution

42. Another Constitution Bench of the Supreme Court, in State of Madhya Pradesh Vs. Bhailal Bhai and Others, , held that the remedy provided in a writ jurisdiction is not intended to supersede completely the modes of obtaining relief by an action in a civil Court or to deny defence legitimately open in such actions The power to give relief under Article 226 of the Constitution is a discretionary power Similar view has been reiterated in Municipal Council, Khurai and Another Vs. Kamal Kumar and Another,

43. In Siliguri Municipality and Others Vs. Amalendu Das and Others, the Supreme Court held that the High Court must exercise its power under Article 226 with circumspection and while considering the matter of recovery of tax, etc , it should not interfere save under very exceptional circumstances

44. In S.T. Muthusami Vs. K. Natarajan and Others, , the Supreme Court held that the High Court cannot be justified to exercise the power in writ jurisdiction if an effective alternative remedy is available to the party

45. In Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others, , while dealing with a similar issue, the Supreme Court held that the writ petition should not be entertained unless the party exhausted the alternative statutory efficacious remedy

46. In A. Venkatasubbiah Naidu Vs. S. Challappan and Others, , the Supreme Court deprecated the practice of exercising the writ jurisdiction when efficacious alternative remedy is available The Court observed as under

"Though no hurdle can be put against the exercise of constitutional powers of the High Court it is a well recognised principle which gained judicial recognition that the High Court should direct the party to avail himself of such remedy, one or the other, before he resorts to a constitutional remedy

47. Similar view has been reiterated in Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, , L.L. Sudhakar Reddy and Others Vs. State of A.P. and Others, , Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and Another Vs. State of Maharashtra and Others, , GKN Dnveshafts (India) Ltd v. FTO (2003) 1 SCC 72 and Pratap Singh Vs. State of Haryana and Others and Shri Bhajan Lal and Others,

48. In State of Himachal Pradesh Vs. Raja Mahendra Pal and Others, , while dealing with a similar issue the Supreme Court has held as under

" It is true that the powers conferred upon the High Court under Article 226 of the Constitution are discretionary in nature which can be invoked for the enforcement of any fundamental right or legal right The Constitutional Court should insist upon the party to avail of the same (efficacious alternative remedy) instead of invoking the extraordinary writ jurisdiction of the Court This does not however debar the Court from granting the appropriate relief to a citizen under peculiar and special facts notwithstanding the existence of alternative efficacious remedy The existence of special circumstances are required to be noticed before issuance of the direction by the High Court while invoking the jurisdiction under the said article "

49. In Govt. of A.P. and Others Vs. J. Sridevi and Others, the Supreme Court held that where an authority is competent to determine the issue, the High Court in a writ jurisdiction should have directed the authority only to take an appropriate decision When the statutory authority is vested with the power to determine the question as to the applicability of the provisions of the Act, it is ordinarily desirable to leave the question to be decided by such authority The aggrieved party can file appeal against the decision within the framework provided under the statute and the ultimate decision also could not be challenged under judicial review, if permitted in law

50. In State of Bihar and Others Vs. Jain Plastics and Chemicals Ltd., , the Supreme Court held that existence of alternative remedy does not affect the jurisdiction of the writ Court but it could be a good ground for not entertaining the petition

51. In Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others, , the Supreme Court held that the rule of exclusion of writ jurisdiction by availability of alternative remedy is a rule of discretion and not one of compulsion, and the Court must consider the pros and cons of the case and then may interfere if it comes to the conclusion that the writ seeks enforcement of any of the fundamental rights, where there is failure of principle of natural justice/where the orders or proceedings are wholly without jurisdiction or the virus of an Act is challenged While deciding the said case, the Supreme Court placed reliance upon its earlier judgment in Whirlpool

Corpn ''s case (supra)

52. This Court in Pradeep Kumar Singh v. UP State Sugar Corporation (2002) 1 UPLBEC 705 (Hon''ble S K Sen, C J and Hon''ble RK Agarwal, J), has referred in its judgment, the following cases--Chandrama Singh v. Managing Director, UP Co-operative Union (1991) 2 UPLBEC 898 , L. Hirday Narain Vs. Income Tax Officer, Bareilly, , Dr Bed Krishna Agarwal v. State of UP (1995) All LJ 454, Ambika Singh v. State Sugar Corpn Ltd (1990) 1 UPLBEC 699, Whirlpool Corpn ''s case (supra), Satya Ram Yadav v. Dy Managing Director, UP State Warehousing Corpn (2000) 1 ESC 504, State of UP v. Ah Abbas Abdi (2001) 2 ESC 619 , Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others, , Sunil Kumar Pathak v. Chairman, Indian Oil Corpn (2000) 89 FLR 1112, JK Cotton Spg & Wvg Mills Co Ltd v. State of UP (1997) 76 FLR 372 , Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh, , The Cooper Engineering Limited Vs. Shri P.P. Mundhe, , Aligarh Muslim University and Others Vs. Mansoor Ali Khan, , Krishna Kant''s case (supra), and has arrived at the conclusion as below

"Thus, from the various decisions referred to above the following principles emerge regarding maintainability of a petition under Article 226 of the Constitution of India

(I) While exercising its writ jurisdiction under Article 226 of the Constitution of India, the High Court, may decline to grant relief until such statutory remedy is exhausted However, this rule is a rule of policy, convenience and discretion and not a rule of law nor it bars the jurisdiction of the High Court under Article 226 of the Constitution in granting relief in appropriate case and exceptional circumstances,

(II) Alternative remedy is not a bar where a writ petition has been filed for enforcement of any fundamental rights, or where there is violation of principles of natural justice; or where the orders of the proceedings are wholly without jurisdiction or the virus of an Act is challenged."

53. In respect of review it is relevant to mention that in Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi, , it was held by the Supreme Court that the review is not for the purpose of rehearing or for making a fresh decision. The normal principle is that the judgment pronounced by the Court is final. The Supreme Court has observed in para 8 which reads as below:

"8. It is well-settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so- Sajjan Singh Vs. State of Rajasthan, . For instance, if the attention of the Court is not drawn to a material statutory provision during the original hearing, the Court will revise its judgment-- Girdhari Lal Gupta Vs. D.H. Mehta and Another, . The Court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass

an order to do full and effective justice-- O.N. Mohindroo Vs. The District Judge, Delhi and Another, . Power to review its judgments has been conferred on the Supreme Court by Article 137 of the Constitution and that power is subject to the provisions of any law made by Parliament or the rules made under Article 145. In a civil proceeding, an application for review is entertained only on a ground mentioned in Order 47, Rule 1 of the CPC and in a criminal proceeding on the ground of an error apparent on the face of the record (Order 40, Rule 1, Supreme Court Rules, 1966). But whatever the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case and the finality of the judgment delivered by the Court will not be reconsidered except "where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility"-- Sow Chandra Kante and Another Vs. Sheikh Habib, "

In Sow Chandra Kante and Another Vs. Sheikh Habib, , the Supreme Court has held that the review cannot be equated with the original hearing of the case and it could be exercised only where a glaring omission or patent mistake has occurred in the order.

In Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury, , it was held that the review is to be made when there is an error apparent on the face of the record.

In this case, the Supreme Court has observed in para 8 which reads as below:

"8. It is well-settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order. 47, Rule 1, CPC. In connection with the limitation of the powers of the Court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of Aribam Tuleshwar Sharma Vs. Aribam Pishak Sharma and Others, , speaking through Chinnappa Reddy, J , has made the following pertinent observations (p 390, para 3)

"It is true as observed by this Court in Shivdeo Singh v. State of Punjab AIR 1963 SC 1909, there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it But, there are definitive limits to the exercise of the power of review The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made, it may be exercised where some mistake or error apparent on the face of the record is found, it may also be exercised on any analogous ground But, it may not be exercised on the ground that the decision was erroneous on merits That would be the province of a Court of appeal A power of review is not to be confused with appellate power which may enable an appellate

Court to correct all manners of errors committed by the subordinate Court" "

The Supreme Court has observed in the case of Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale, , wherein K C Gupta, J , speaking for the Supreme Court, has made the following observation in connection with an error apparent on the face of the record

"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 Where an alleged error is far from self-evident and if it can be established, it has to be established by lengthy and complicated arguments, such an error cannot be cured by a writ of ceitioran according to the rule governing the powers of the superior Court to issue such a writ"

Relying on the above judgments the Supreme Court in Smt Meera Bhanja''s case (supra), has held as below

"The review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC The review petition has to be entertained only on the ground of error apparent on the face of the record and not on any other ground An error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions The limitation of powers of Court under Order 47, Rule 1, CPC is similar to the jurisdiction available to the High Court while seeking review of the orders under Article 226 "

In Parsion Devi and Others Vs. Sumitri Devi and Others, , the Supreme Court has indicated that the error which is self-evident and not to be detected by process of reasoning can hardly be a matter of review

In this case, the Supreme Court has observed in para 7 which reads as below

"Review proceedings have to be strictly confined to the ambit and scope of Order 47, Rule 1, CPC In Thungabhadra Industries Ltd v. Govt of Andhra Pradesh (1964) 5 3CR 174, the Supreme Court opined

''What, however, we are now concerned with is whether the statement in the order of September, 1959, that the case did not involve any substantial question of law is an ''error apparent on the face of the record.'' The fact is that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous Similarly, even if the statement was wrong it would not follow that it was an error apparent on the face of the record'' for there is a distinction which is real, though it might not always be capable of exposition between a mere erroneous decision and a decision which could be characterised as vitiated by ''error apparent'' A review is

by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only on patent error'""

The Supreme Court in Parsion Devi''s case (supra), has held

"Under Order 47, Rule 1, CPC a judgment may be open to review, inter aha, if there is a mistake or an error apparent on the face of the record An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order 47, Rule 1, CPC In exercise of the jurisdiction under Order 47, Rule 1, CPC it is not permissible for an erroneous decision to be ''reheard and corrected'' "

There is a clear distinction between an erroneous decision and an error apparent on the face of the record While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise"

In Lily Thomas v. Union of India AIR 2000 SC 1650, the Supreme Court has held that mistake apparent on the face of the record cannot mean error which has to be fished out and searched The words "any other sufficient reason" has been elaborated and it means that "a reason sufficient on grounds atleast analogous to those specified in the rule" and it was observed in para 52, para 55 and para 57 which read as below

"52 The dictionary meaning of the word ''review'' is the act of looking, offer something again with a view to correction or improvement It cannot be denied that the review is the creation of a statute This Court in Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, , held that the power of review is not an inherent power It must be conferred by law either specifically or by necessary implication The review is also not an appeal in disguise It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice Law has to bend before justice If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exit and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error This Court in S. Nagaraj and Others Vs. State of Karnataka and Another, , held

''Review literally and even judicially means re-examination or reconsideration Basic philosophy inherent in it is the universal acceptance of human fallibility Yet in the realm of law the Courts and even the statutes lean strongly in favour of finality of decision legally and properly made Exceptions, both statutonly and judicially, have been carved out to correct accidental mistakes or miscarriage of justice Even when there was no statutory provision and no rules were framed by the highest Court indicating the circumstances in which it could rectify its order the Courts culled out

such power to avoid abuse of process or miscarriage of justice In AIR 1941 1 (Federal Court) the Court observed that even though no rules had been framed permitting the highest Court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords The Court approved the principle laid down by the Privy Council in Rajunder Narain Rae v. Bijai Govind Singh (1836) I MOO PC 117 that an order made by the Court is final and could not be altered''

nevertheless, if by misprision in embodying the judgments, by error have been introduced, these Courts possess, by Common Law, the same power which the Courts of record and statute have of rectifying the mistakes which have crept in The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority The Lords have however gone a step further and have corrected mistakes introduced through inadvertence in the details of judgments, or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies''

Basis for exercise of the power was stated in the same decision as under

''It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident, without any blame, the party has been heard and an order has been inadvertently made as if the party had been heard''

Rectification of an order thus stems from the fundamental principle that justice is above all It is exercised to remove the error and not for disturbing finality When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution Our Constitution makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution and Clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed In exercise of this power, Order 40 had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order 47, Rule 1 of the CPC The expression "for any other sufficient reason" in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be a sufficient ground to exercise the power Apart from Order 40, Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of Court The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so far sake of justice''

The mere fact that two views on the same subject are possible is no ground to review the earlier judgment passed by a Bench of the same strength

55 It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view Such powers can be exercised within the limits of the statute dealing with the exercise of power The review cannot be treated as an appeal in disguise The mere possibility of two views on the subject is not a ground for review Once a review petition is dismissed no further petition of review can be entertained

The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of co-ordinated jurisdiction of equal strength has to be followed and practised However, this Court in exercise of its power under Article 136 or Article 32 of the Constitution and upon satisfaction that the earlier judgments have resulted in deprivation of fundamental rights of a citizen or rights created under any other statute, can take a different view notwithstanding the earlier judgment

57 Otherwise also no ground as envisaged under Order 40 of the Supreme Court Rules r/w Order 47 of the CPC has been pleaded in the review petition or canvassed before us during the arguments for the purposes of reviewing the judgment in Smt. Sarla Mudgal, President, Kalyani and others Vs. Union of India and others, It is not the case of the petitioners that they have discovered any new and important matter which after the exercise of the due diligence was not within their knowledge or could not be brought to the notice of the Court at the time of passing of the judgment All pleas raised before us were in fact addressed for and on behalf of the petitioners before the Bench which, after considering those pleas, passed by the judgment in Sarla Mudgal''s case (supra) We have also not found any mistake or error apparent on the face of the record requiring a review Error contemplated under the rule must be such which is apparent on the face of the record and not an error which is to be fished out and searched It must be an error of inadvertence No such error has been pointed out by the learned counsel appearing for the parties seeking review of the judgment The only arguments advanced were that the judgment interpreting Section 494 amounted to violation of some of the fundamental rights No other sufficient cause has been shown for reviewing the judgment The words any other sufficient reason appearing in Order 47, Rule 1, CPC'' must be ''a reason sufficient on grounds atleast analogous to those specified in the rule,'' as was held in Chhajju Ram v. Neki Ram AIR 1922 PC 112 and approved by this Court in Moran Mar Bassellos Catholics v. Most Rev Mar Poulose Athanasius AIR 1954 SC 526 Error apparent on the face of the proceedings is an error which is based on clear ignorance or disregard of the provisions of law In T.C. Basappa Vs. T. Nagappa and Another, , this Court held that such error is an error which is a patent error and not a mere wrong decision In Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, , it was held

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 clearcut rule by which the boundary between the two classes of errors could be demarcated Mr Pathak, for the first respondent, contended on the strength of certain observations of Chagla, C J in Batuk K. Vyas Vs. Surat Borough Municipality and Others, that no error could be said to be apparent on the face of the record, if it was not self-evident and if it required an examination or argument to establish it This test might afford a satisfactory basis for decision in the majority of cases But there must be cases in which even this test might break down, because judicial opinions also differ, and an error that might be considered by one Judge as self-evident might not be so considered by another The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case ''
Therefore, it can safely be held that the petitioners have not made out any case within the meaning of Article 137 r/w Order 40 of the Supreme Court Rules and Order 47 Rule 1 of the CPC for reviewing the judgment in Sarla Mudgal''s case (supra) The petition is misconceived and bereft of any substance ''

54. In view of the detailed analysis made above and in the light of different judgments as analysed above, the writ petitions are devoid of merits and are dismissed, and the impugned order dt 21st June, 2000, passed by Tribunal, is affirmed