

Commissioner of Income Tax (IT-4), Mumbai v. M/s Reliance Telecom Limited, with M/s Reliance Communications Limited

Civil Appeal No. 7110 of 2021 (Reliance Telecom Limited) / Civil Appeal No. 7111 of 2021 (Reliance Communications Limited)

[2021] 9 S.C.R. 616 | 2021-12-03

Whether ITAT could use section 254(2) to recall detailed merits orders after rehearing the appeals, and whether the parties' participation could sustain that exercise.

254(2)

Two-judge bench | M. R. Shah, J. | B. V. Nagarathna, J.

Assessment years: See the source-scope notes; no year inferred.

01 FACTS OF THE CASE

The common decision concerns Reliance Telecom and Reliance Communications; the Court narrated Telecom's facts as the lead. Telecom had entered a software supply contract with Ericsson A.B. and sought a section 195(2) order permitting payment without TDS. The Assessing Officer rejected that request; CIT(A) granted relief. On 6 September 2013, ITAT allowed the Revenue's appeal, treating the software payments as royalty. The assessee both appealed to the High Court and sought rectification under section 254(2). On 18 November 2016, ITAT recalled its original order; the assessee then withdrew the High Court appeal. The Bombay High Court dismissed the Revenue's writ challenge to the recall. Both Revenue appeals before the Supreme Court concerned that rectification jurisdiction. The companies were in corporate insolvency resolution at the time of the hearing and were represented through counsel for the resolution professional.

Source: [official signed judgment / paragraphs 1-3 / PDF pages 1, 2, 3, 4 / judgment](#); [reported rendition / paragraphs 1-3 / PDF pages 2, 3, 4 / judgment](#)

02 DISCUSSION BY THE HON'BLE COURT

The Court found that ITAT had effectively reheard the whole appeal on merits when recalling the original detailed orders. Section 254(2) authorises correction of a mistake apparent from the record; it does not authorise a fresh merits hearing as though the Tribunal were hearing the original appeal again. The Court likened the limited corrective power to Order XLVII Rule 1 CPC. In the circumstances presented, a claimed error in the original merits decision had to be pursued through the High Court appeal rather than through this expanded use of rectification (paragraphs 3.2-4).

The High Court's reasons did not cure the defect. The Revenue's participation in detailed submissions, or its failure to raise a particular jurisdictional objection before ITAT, could not confer power beyond section 254(2). Nor could an asserted error in the original decision justify reopening it beyond the statutory power. The distinction is between an apparent record mistake and a merits re-adjudication; the judgment does not eliminate the rectification power itself (paragraphs 5-6). The Supreme Court did not independently determine the underlying software-royalty or treaty questions in these appeals.

Source: [official signed judgment / paragraphs 3.2-6 / PDF pages 5, 6, 7 / judgment](#); [reported rendition / paragraphs 3.2-6 / PDF pages 4, 5, 6 / judgment](#)

03 JUDICIAL DECISION

Both Revenue appeals were allowed. The common High Court judgment and ITAT's recall order dated 18 November 2016 were set aside, and ITAT's original orders dated 6 September 2013 were restored. Because the assessee had withdrawn their earlier High Court appeals in reliance on the recall, the Court provided that appeals filed within six weeks of this judgment should be decided according to law on their own merits without a limitation objection. No costs were awarded.

Source: [official signed judgment / paragraphs 7-9 / PDF pages 7, 8 / judgment](#); [reported rendition / paragraphs 7-9 / PDF pages 6 / judgment](#)

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Revenue on the scope of ITAT rectification; assessee given conditional protection for merits appeals

Both appeals allowed; recall quashed; original ITAT orders restored; six-week conditional High Court appeal protection

Rectification-jurisdiction issue decided; underlying tax merits not freshly decided by the Supreme Court

The six-week direction ran from 3 December 2021. It is not an ongoing extension or proof that subsequent High Court appeals were filed or decided. Restoration of the original Tribunal orders is not a new Supreme Court software-royalty holding.

Source: [official signed judgment / paragraphs 7-9 / PDF pages 7, 8 / judgment](#); [reported rendition / paragraphs 7-9 / PDF pages 6 / judgment](#)

05 AKHB REVIEW POINT

Identify the precise apparent error sought to be corrected and distinguish it from a request to reargue the appeal. Detailed participation by both sides cannot enlarge ITAT's statutory rectification jurisdiction. Where an appeal is available, protect that remedy and its limitation rather than assuming a recall will remain effective. This case's six-week protection was a specific historical response to withdrawn appeals; it should not be treated as a general right to refile now. Review the substantive software-payment authorities separately before expressing a royalty or withholding conclusion.

Source: [official signed judgment / paragraphs 3.2-6; 8 / PDF pages 5, 6, 7, 8 / judgment](#); [reported rendition / paragraphs 3.2-6; 8 / PDF pages 4, 5, 6 / judgment](#)

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

254(1); 195(2); 9(1)(vi)

OTHER PROVISIONS CONSIDERED

Code of Civil Procedure: Order XLVII Rule 1, analogy used for limited rectification/review power

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

M. R. Shah, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SOURCE & VERIFICATION

[Hon'ble Supreme Court source PDF \(official signed judgment\)](#)

Identified source rendition: 8 PDF pages; SHA-256

080ab6b659603bc02b695bc44f73753952d81f2b473af86d57d96c906a8ac4d5. Original bytes preserved.

[Open cited source rendition](#)

Official cover identifies Reliance Communications as the connected respondent; the reported text identifies it only as another group assessee. One common judgment covers two appeals.

Software royalty, treaty clauses and the AO's 10% rate are case history, not independently adjudicated Supreme Court holdings here.

The statement about the High Court appeal remedy addresses the impermissible merits rehearing on these facts; it does not remove the statutory power to correct an actual apparent mistake.

The assessee's High Court appeals were not automatically restored by paragraph 8; protection was conditional on filing within six weeks.

The historical CIRP statement is not a certification of either company's current insolvency status.

No numbered AY or neutral citation is invented.

No numbered assessment year is stated in the judgment; none is inferred from the supply contract or procedural dates.

STATUTORY SCOPE

Section 254(2) scope as decided in the 2021 judgment; the source does not reproduce or determine every applicable time-limit provision

No present-day limitation computation or automatic Income-tax Act 2025 mapping; later substantive royalty treatment and subsequent merits appeals not verified.

LATER TREATMENT

Source checked 2026-10-04. Subsequent appeals, review proceedings, stays, reversals and later judicial treatment have not been comprehensively checked. This note is not a citator status certificate.

IDENTIFIED SOURCE LINKS

[official signed judgment - PDF pages: 8](#)

SHA-256: 080ab6b659603bc02b695bc44f73753952d81f2b473af86d57d96c906a8ac4d5

[reported rendition - PDF pages: 6](#)

SHA-256: 62af697677b962e1f4fea69adccc5b47fa53e436e824add0011441b1fa0869ca

AI DISCLOSURE

AI-assisted research checked against the identified source. Extraction, interpretation or omission errors remain possible. Source review does not mean independent approval by a practising professional. Verify every material statement against the complete original judgment.

PROFESSIONAL DISCLAIMER

General research information only; not legal or tax advice, a certified judgment or a substitute for the full order. Applicability depends on facts, assessment year, statutory version and jurisdiction. Subsequent treatment is unverified unless identified sources are expressly stated. Downloading does not create a professional engagement. Obtain case-specific advice before reliance.