**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 12TH DAY OF AUGUST, 2024**

**PRESENT**

**THE HON'BLE MR JUSTICE S.G.PANDIT**

**AND**

**THE HON'BLE MR JUSTICE C.M. POONACHA**

**INCOME TAX APPEAL NO. 526 OF 2016**

**BETWEEN:**

1. PR. COMMISSIONER OF INCOME TAX-VI
   BMTC COMPLEX, KORMANGALA
   BANGALORE

2. DEPUTY COMMISSIONER OF
   INCOME TAX
   CIRCLE-6(1)(2), BENGALURU

...APPELLANTS

(BY SRI.E.I.SANMATHI., ADVOCATE)

**AND:**

M/S STANLEY BLACK AND DECKER INDIA LTD.,
NO.28, 'AKEPMS', 3RD MAIN
1ST CROSS, ASHWINI LAYOUT
KORAMANGALA,
INTERMEDIATE RING ROAD
BENGALURU-560047
PAN: AAACB4681R

...RESPONDENT

(BY SRI.T.SURYANARAYANA, SENIOR COUNSEL FOR
SMT.T.TANMAYEE RAJKUMAR, ADVOCATE)

Digitally signed by MARIGANGAIAH PREMAKUMARI
Location: HIGH COURT OF KARNATAKA

THIS APPEAL IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, PRAYING TO DECIDE THE FOREGOING QUESTION OF LAW AND / OR SUCH OTHER QUESTIONS OF LAW AS MAY BE FORMULATED BY THE HON'BLE COURT AS DEEMED FIT AND SET ASIDE THE APPELLATE ORDERS DATED 07/03/2016 THE ITAT, 'A' BENCH, BENGALURU IN ITA NO. 967/BANG/2015 FOR ASSESSMENT YEAR 2010-2011 AND TO GRANT SUCH OTHER RELIEF AS DEEMED FIT, IN THE INTEREST OF JUSTICE.

THIS APPEAL, COMING ON FOR HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE S.G.PANDIT
and
HON'BLE MR JUSTICE C.M. POONACHA

**ORAL JUDGMENT**

(PER: HON'BLE MR JUSTICE S.G.PANDIT)

Revenue is in appeal under Section 260-A of the Income-Tax Act, 1961 (for short, "***the Act***") questioning the correctness and validity of the order dated 07.03.2016 in ITA.No.967/Bang/2015 passed by the Income Tax Appellate Tribunal, "A" Bench, Bengaluru (for short, "***the Appellate Tribunal***") for the assessment year 2010-11 in respect of the respondent-assessee.

2. Brief facts of the case are that, respondent-company incorporated under the provisions of the Companies Act claims to be engaged in the business of trading of power tool products. For the assessment year 2010-11, after scrutiny, assessment was completed. During the course of assessment, it was found that

assessee-company had entered into international transaction. Therefore, matter was referred to Transfer Pricing Officer (for short, "***TPO"***) for determination of Arms' Length Price (for short, "***ALP***") in respect of the international transaction and the TPO passed order on 17.01.2014. Pursuant to TPO's order, draft assessment order was passed on 15.04.2014, against which, assessee approached the Dispute Resolution Panel-1, Bengaluru (for short, "***DRP***"). The DRP passed order on 31.12.2014 upholding the action of the TPO in respect of the advertisement, sales promotion expenses. Thereafter on 12.01.2015, respondent-assessee filed application under Section 154 of the Act requesting to rectify the mistake apparent from the record on the ground that respondent-assessee has placed on record specific details and facts pertaining to the nature of alleged AMP expenses before the TPO as well as during personal hearing before the DRP, which was not taken into consideration while passing the order. The said application filed under Section 154 of the Act for rectification was allowed directing the TPO to

exclude trade discounts, sales discounts, warranty expenses, packing expenses from the ambit of advertisement and marketing and promotion expenses for the purpose of transfer pricing comparison and adjustment, if any. Questioning the said rectification order, Revenue filed appeal before the Appellate Tribunal in ITA.No.967/Bang/2015. Appellate Tribunal dismissed the appeal of the Revenue confirming the rectification order. Against which, Revenue is before this Court in this appeal under Section 260-A of the Act.

3. The above appeal was admitted to consider the following substantial questions of law:

> *1. Whether on the facts and in the circumstances of the case, the Tribunal is right in law in confirming the directions of DRP to rectify its earlier direction by taking recourse to section 154 of the IT Act, when the section cannot be invoked for changing opinion on any issue already decided?*
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> *2. Whether on the facts and in the circumstances of the case, the Tribunal is right*

*in confirming the directions of DRP to reexamine an issue based on certain material on record, which tantamount to error of judgment and cannot be considered to be a mistake apparent from record and the Tribunal erred in considering the case on merits.?*

4. Heard the learned counsel Sri.E.I.Sanmathi for appellant/Revenue and learned senior counsel Sri.T.Suryanarayana for Smt.Tanmayee Rajkumar, learned counsel for respondent-assessee. Perused the entire appeal papers.

5. Learned counsel Sri.E.I.Sanmathi for Revenue would submit that there was no mistake apparent from the record to rectify the order and as such DRP could not have exercised its power under Section 154 of the Act. Further, learned counsel would submit that only mistakes apparent on the record could be rectified and when the original order was passed by considering every contentions, DRP could not have interfered with the original order. Learned counsel would also submit that DRP in exercise of its

power under Section 154 of the Act could not have re-visited the original order, which is impermissible. Thus, learned counsel would pray for allowing the appeal by answering the substantial questions of law raised in favour of the Revenue.

6. Per contra, learned senior counsel Sri.T.Suryanarayana for respondent-assessee would support the order passed by the Appellate Tribunal as well as DRP. Learned senior counsel would submit that original order by DRP was passed without taking note of the material placed on record by the respondent-assessee. Learned senior counsel would submit that DRP rejected the assessee's objection with regard to determination of ALP only on the ground that no specific details with relevant information was furnished on the issue of AMP expenses, without noticing that respondent-assessee had placed on record specific details and facts pertaining to the nature of alleged AMP expenses before the TPO as well as during the personal hearing before the DRP. Learned senior counsel

referring to Section 154 of the Act would contend that Section 154 of the Act permits rectification of any mistake apparent from the record. Non-consideration of material on record would amount to mistake apparent and hence it is submitted that exercise of power under Section 154 of the Act by DRP is proper and correct. Thus, he prays for dismissing the appeal by answering the substantial questions of law in favour of the respondent-assessee.

7. The respondent-assessee claims to be engaged in the business of trading of power tool products and for the assessment year 2010-11, after completion of assessment, since the assessee had international transaction, the matter was referred to TPO for determination of Arms' Length Price in respect of international transaction. The assessee had incurred expenditure on advertisement and sales promotion amounting to Rs.8,47,34,153/- and the TPO, after analyzing the AMP expenditure incurred by the comparables, suggested transfer pricing adjustment of

Rs.6,36,08,748/-. Thereafter, a draft order under Section 144 (c) of the Act was passed on 15.04.2014. The assessee raised objections regarding draft order and the DRP by its order dated 31.12.2014 rejected the same on the ground that the specific details with relevant information have not been furnished in order to enable them to examine the matter. On 12.01.2015, the respondent-assessee filed an application under Rule 13 of Income Tax (Dispute Resolution Panel) Rules 2009 invoking Section 154 of the Act, with a prayer to rectify the mistake apparent from the record on the ground that DRP had failed to take note of the material placed on record by the assessee. It is specifically stated that the assessee had placed on record specific details and facts pertaining to the nature of alleged AMP expenses before the TPO as well as during personal hearing before the DRP. The DRP in its order dated 27.03.2015 passed under Section 154 of the Act, accepted the contention of the assessee and rectified its order dated 31.12.2014 directing the Assessing Officer/TPO to exclude sales discounts

warranty expenses and packing expenses from the ambit of advertisement, marketing and promotion expenses for the purpose of transfer pricing comparison and adjustment, if any.

8. Section 154 of the Act empowers the Income Tax Authority referred to in Section 116 to rectify any mistake apparent from the record. It is not disputed that the assessee though had not filed any objection or explanation before the TPO while raising objections to the draft order under Section 144(c) of the Act had placed before the DRP, the necessary and specific details pertaining to the nature of alleged AMP expenses, selling expenses such as trade and other discount on sales, sales discounts, warranty expenses and packing expenses, which should be excluded in the determination of AMP expenses. If an order is passed without taking note of the materials on record and subsequently, if it is brought to the notice of the Income Tax Authority under Section 154 of the Act, it would be open for the Income-Tax Authority

to rectify such mistake apparent from the record. While considering the application under Section 154 of the Act, if the material which was not considered while passing original order are considered, the Authority would be at liberty to arrive at just conclusion on consideration of such material. In the instant case also, the authority i.e., DRP on consideration of material which were not considered earlier has come to the conclusion that it is a case to exclude trade discounts as well as discount warranty expenses and packing expenses from the ambit of advertisement and marketing and promotion expenses for the purpose of transfer pricing comparison. The Appellate Tribunal, on examination of entire material has come to the conclusion that it is a case of non-consideration of material on record, which would constitute a mistake apparent from the record and has held that the DRP was justified in assuming jurisdiction under Section 154 of the Act.

9. For the reasons recorded above, the appeal filed by the Revenue fails and substantial questions of law are answered against the Revenue and in favour of the respondent-assessee.

**Sd/-**
**(S.G.PANDIT)**
**JUDGE**

**Sd/-**
**(C.M. POONACHA)**
**JUDGE**

NC/MPK
List No.: 1 Sl No.: 43