IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2727 OF 2023

Crest Paper Mills Ltd.	..	Petitioner
V/s.		
Dy. Commissioner of Income Tax 9(2)(2), Mumbai & Ors.	..	Respondents

Mr. Ajay R Singh a/w Mr. Akshay A Pawar for the Petitioner.
Mr. Suresh Kumar for the Respondents.

CORAM : B. P. COLABAWALLA AND
FARHAN P. DUBASH, JJ.

RESERVED ON : 3rd SEPTEMBER 2026
PRONOUNCED ON : 10th SEPTEMBER 2026

<u>JUDGMENT (Per Farhan P. Dubash, J.):</u>

1. The present Writ Petition challenges a common order dated 20th February 2023 (**"impugned order"**) passed by the Income Tax Appellate Tribunal (**"ITAT"**), whereby two Miscellaneous Applications preferred by the Petitioner under Section 254(2) of the Income Tax Act, 1961 (**"the Act"**) came to be disposed of. The said Miscellaneous Applications sought recall of a common order dated 19th December 2018 passed by the ITAT in two

appeals, one preferred by the Revenue and the other by the Petitioner/Assessee.

2. The facts giving rise to the present Writ Petition, in brief, are as follows:

A] For Assessment Year (**"AY"**) 2010-11, an Assessment Order dated 25th March 2013 came to be passed by the Deputy Commissioner of Income Tax-8(1), Mumbai, in the case of the Petitioner.

B] Being aggrieved by the same, the Petitioner preferred an appeal before the Commissioner of Income Tax (Appeals)-16, Mumbai (**"CIT[A]"**), which appeal came to be partly allowed by an order dated 4th January 2016.

C] Both the Revenue as well as the Petitioner challenged the order of the CIT[A] before the ITAT. Accordingly, two appeals came to be filed, being ITA No. 2579/Mum/2016 preferred by the Revenue and ITA No. 3044/Mum/2016 preferred by the Petitioner.

D] On or about 13th June 2018, the Petitioner filed two paper books in the aforesaid appeals, namely, Paper Book Nos. I-A and I-B. It is not disputed that these paper books were filed before the ITAT. Thereafter, during the course of oral arguments stated to have taken place on or about 5th October 2018, the Petitioner contends that it filed two further paper books, namely, Paper Book Nos. II and II-A, the latter of which was filed together with an affidavit of Mr. R. R. Singh, its Director, dated 4th October 2018 (**"said affidavit"**).

E] Both appeals were disposed of by the ITAT by a common order dated 19th December 2018.

F] According to the Petitioner, the common order dated 19th December 2018 inadvertently failed to take into consideration the aforesaid Paper Book Nos. II and II-A, even though the documents contained therein were relied upon during the course of oral arguments.

G] Consequently, on 15th April 2019, the Petitioner preferred two Miscellaneous Applications under Section 254(2) of the Act, namely, Miscellaneous Application No. 275/Mum/2019 arising out of the Revenue's Appeal, being ITA No. 2579/Mum/2016, and Miscellaneous Application No. 276/Mum/2019 arising out of the Petitioner's Appeal, being ITA No. 3044/Mum/2016. Both

Miscellaneous Applications sought recall of the common order dated 19th December 2018 on several grounds, including, inter alia, that Paper Book Nos. II and II-A had inadvertently not been considered by the ITAT while passing the said common order.

H] By the impugned order dated 20th February 2023, both Miscellaneous Applications came to be disposed of. Miscellaneous Application No. 275/Mum/2019 was dismissed as being devoid of merit. Miscellaneous Application No. 276/Mum/2019, on the other hand, was partly allowed and the earlier order dated 19th December 2018 was recalled to the limited extent of adjudicating upon an additional ground taken/filed by the Petitioner on 10th October 2018, which had remained to be considered in the said order. The other issues raised in the said Miscellaneous Application were expressly rejected.

3. The principal contention advanced on behalf of the Petitioner is that the impugned order proceeds on an erroneous premise, namely, that Paper Book Nos. II and II-A had not been filed by the Petitioner since they were not accompanied by a separate petition under Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963 (**"said Rules"**). The Petitioner has also

drawn our attention to paragraph 2 of the impugned order, wherein the ITAT has observed that, even at the time of hearing of the Miscellaneous Applications, neither of the said paper books was placed before it. The ITAT consequently expressed doubt as to whether the said paper books had in fact ever been filed. The ITAT further observed that, had the said paper books been filed, it could certainly have adjudicated upon the additional evidence and the said affidavit while passing its earlier common order dated 19th December 2018.

4. The Petitioner has placed before us the aforesaid Paper Book Nos. II and II-A and has also drawn our attention to the said affidavit dated 4th October 2018 filed by Mr. R. R. Singh, its Director. Our attention has further been invited to the two Miscellaneous Applications, wherein there are express references to the said paper books and the said affidavit. We find that the covering letter/page of each of the said paper books bears the rubber stamp of the ITAT as well as a signature. Though the said affidavit does not bear any such rubber stamp, the index to Paper Book No. II-A categorically records that the documents contained therein were submitted as an enclosure to the said affidavit. The said affidavit, inter alia, seeks permission under Rule 29 of the said Rules. The Petitioner therefore contends that the said affidavit formed part of Paper Book No. II-A and that

the documents contained therein were submitted along with the said affidavit.

5. The Petitioner has also drawn our attention to the affidavit dated 14th September 2023 of Mr. Yogesh Joijode, an Associate of SMMP and Associates, Chartered Accountants, filed on behalf of the Petitioner. In the said affidavit, Mr. Joijode has deposed that he had, on 29th August 2023, inspected the original record and proceedings of the two Income Tax Appeals and the two Miscellaneous Applications before the ITAT, and during such inspection, found all four paper books, including Paper Book Nos. II and II-A, in the records of the ITAT.

6. The Petitioner fairly accepts that no separate petition as contemplated under Rule 29 of the said Rules was filed along with Paper Book No. II-A. It is, however, contended that the said affidavit itself contains the necessary averments and expressly seeks permission under Rule 29 of the said Rules. According to the Petitioner, therefore, there is an error apparent on the face of the record, inasmuch as, the ITAT failed to consider Paper Book No. II-A while passing the impugned order. Insofar as Paper Book No. II is concerned, the Petitioner fairly concedes that it was neither accompanied by any similar affidavit nor by the requisite petition under Rule 29 of the said

Rules seeking leave or permission of the ITAT to rely upon additional documents/evidence at the appellate stage.

7. In these circumstances, Mr. Ajay Singh, learned Advocate appearing on behalf of the Petitioner, on instructions, makes an express statement that, notwithstanding the averments and grounds raised in the present Writ Petition, if this Court were inclined to accept the Petitioner's submissions and remit the matter to the ITAT with a direction to consider the Petitioner's grievance that the common order dated 19th December 2018 failed to take into consideration Paper Book No. II-A filed together with the said affidavit, the Petitioner would not press and accordingly gives up its similar grievance insofar as Paper Book No. II is concerned. Mr. Singh, with his usual fairness, has further agreed that the question as to whether Paper Book No. II-A was duly and properly filed in compliance with Rule 29 of the said Rules, particularly in view of the fact that it was accompanied by the said affidavit rather than by a separate petition under Rule 29, may also be considered by the ITAT upon remand.

8. On the other hand, Mr. Suresh Kumar, learned Advocate appearing on behalf of the Revenue, has opposed the present Writ Petition. He submitted that if the said paper books had in fact been filed by the Petitioner before

the ITAT, there was no reason why they would not have been dealt with or considered while passing the common order dated 19th December 2018. He therefore submitted that there is no infirmity in the impugned order warranting interference by this Court in exercise of its extraordinary writ jurisdiction.

9. We have heard Mr. Ajay Singh, learned Advocate appearing on behalf of the Petitioner, and Mr. Suresh Kumar, learned Advocate appearing on behalf of the Revenue. We have also perused the documents placed on record, including the said affidavit.

10. Having considered the facts narrated earlier, we are *prima facie* satisfied that the said affidavit and the accompanying Paper Book No. II-A were filed by the Petitioner before the ITAT, and were on the file of the Tribunal. However, insofar as Paper Book No. II is concerned, we are not inclined to record any such finding, particularly in view of the Petitioner's own admission that the same was filed without the requisite petition under Rule 29 of the said Rules. To that extent, the ITAT was justified in proceeding on the basis that Paper Book No. II had not been duly filed in accordance with the said Rules.

11. A perusal of the impugned order, and in particular paragraph 2 thereof, also indicates that the said affidavit and Paper Book No. II-A were available in the records before the ITAT at the time when the Miscellaneous Applications were considered. In such circumstances, the observations of the ITAT expressing doubt as to whether the said documents had ever been filed before it cannot, prima facie, be sustained.

12. In these peculiar circumstances, and particularly in view of the express statement made by Mr. Ajay Singh, learned Advocate appearing on behalf of the Petitioner, as recorded hereinabove, we are of the view that, in the interest of justice, the impugned order requires to be partly set aside, albeit only insofar as Miscellaneous Application No. 275/Mum/2019 is concerned.

13. Accordingly, the impugned order is partly set aside. Miscellaneous Application No. 275/Mum/2019 is remitted to the ITAT for a fresh consideration. While doing so, the ITAT shall only consider, in the first instance, whether Paper Book No. II-A was duly filed by the Petitioner in compliance with Rule 29 of the said Rules, having regard, inter alia, to the fact that the same was accompanied by the said affidavit. If the answer to the first issue is in the affirmative, then the ITAT shall consider whether the

documents in Paper Book No. II-A were relevant for deciding the controversy in the Appeal filed by the Petitioner. If the ITAT finds that the documents in Paper Book No. II-A were relevant, then naturally it would have to allow Miscellaneous Application No. 275/Mum/2019 to the extent that Paper Book No. II-A was not considered by the Tribunal whilst disposing of the appeal filed by the Petitioner (Appeal No. ITA No. 3044/Mum/2016) and pass consequential orders. We make it clear that we have not expressed any opinion on the other grounds considered and rejected by the ITAT and recorded in paragraph 3 of the impugned order, which remain undisturbed.

14. We reiterate and clarify that the impugned order is being partly set aside only insofar as Miscellaneous Application No. 275/Mum/2019 is concerned. We have not interfered with paragraphs 4 to 8 of the impugned order, which deal with Miscellaneous Application No. 276/Mum/2019. The findings and conclusions contained therein shall remain undisturbed.

15. The present Writ Petition is accordingly disposed of in the aforesaid terms. There shall be no order as to costs.

16. This judgment will be digitally signed by the Private Secretary/Personal

Assistant of this Court. All concerned will act on production of a digitally signed copy of this judgment.

(FARHAN P. DUBASH, J.) **(B. P. COLABAWALLA, J.)**

Shubham Gadhavepatil

SHUBHAM SHESHRAO GADHAVEPATIL

Digitally signed by SHUBHAM SHESHRAO GADHAVEPATIL
Date: 2026.09.10 17:58:54 +0530