

(2002) 03 CAL CK 0005

In the Calcutta High Court

Case No : G.A. No. 389 of 2002 and I.T.P. No. 162 of 1998

Commissioner of Income Tax

APPELLANT

Vs

A.B.C. India Ltd.

RESPONDENT

Date of Decision : 08-03-2002

Acts Referred:

Income Tax Act, 1961 — Section 127, 256, 256(2)

Citation : (2002) 174 CTR 555 : (2002) 255 ITR 108 : (2003) 126 TAXMAN 18

Hon'ble Judges : Maharaj Sinha, J;Ajoy Nath Ray, J

Bench : Division Bench

Advocate : Ghosh, for the Appellant; Khaitan, for the Respondent

Final Decision : Dismissed

Judgement

1. This is an application for recall of an ex parte order passed on February 13, 2001, when a reference Bench of our High Court passed an order u/s 256(2) causing three questions to be referred to itself. On that day, the assessee did not appear before the reference Bench. The assessee has since filed an application for recall of the ex parte order. As a point of jurisdiction of two High Courts is involved we requested learned counsel to get ready on the jurisdictional aspect itself and to argue out the matter before us, not leaving it merely at the stage of setting aside of an ex parte order.

2. We have received due assistance from both sides in that regard today.

3. By an order passed on the July 28, 1997, the assessee's assessments were transferred from Gauhati to Calcutta. Copies of the transfer order handed up from the assessee's side duly countersigned be kept on record.

4. The reference application was however made in regard to a decision given by the Gauhati Bench of the Income Tax Appellate Tribunal. Even an application made under Sub-section (1) of Section 256 by the Revenue was rejected by that Tribunal at Gauhati. The assessee has thus argued that Section 256(2) application in these circumstances, notwithstanding the transfer of the

assessment in July, 1997, cannot be made here, as the appropriate Bench of the High Court at Assam would have jurisdiction in that regard. The application u/s 256(1) was rejected by the Gauhati Income Tax Appellate Tribunal on September 17, 1997, which date is wrongly given in the petition before us at para. 3 (j) as November 29, 1996.

5. Mr. Khaitan, appearing for the assessee, has relied on two High Court decisions, in the cases of Suresh Desai and Associates Vs. Commissioner of Income Tax, and Commissioner of Income Tax Vs. Parke Davis (India) Ltd., Hyd., whereby the assessee's contentions are borne out.

6. Mr. Ghosh, appearing for the Revenue, placed before us the Explanation of Section 127 of the Income Tax Act, 1961, which controls the assessment transfer powers. The Explanation is as follows :

"Explanation.--In Section 120 and this section, the word "case", in relation to any person whose name is specified in any order or direction issued thereunder means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year."

7. Mr. Ghosh's argument runs thus : if proceedings pending and future proceedings must be continued and commenced in accordance with the direction or order of transfer, then and in that event the Section 256(2) application being a subsequent proceeding, that should also, in accordance with the order of transfer of assessment, be made rather before the High Court at Calcutta than before any Bench of the Assam High Court.

8. Apart from two High Court decisions being against Mr. Ghosh's submissions, we put to him the question that if Section 256(2) application is pending before one High Court, would a transfer of assessment from one State to another, with agreement of the Commissioners involved, cause a transfer of such Section 256(2) application to be made from the High Court of one State to another ? To this question the answer could be but one, and such answer must be in the negative. It would put the Constitutional cart before the horse, if one were to opine that the Commissioners of Income Tax can pass orders causing transfers of pending High Court proceedings, which Mr. Ghosh rightly pointed out to us, is within the jurisdiction of the Supreme Court and the Supreme Court only.

9. Mr. Ghosh sought to draw a distinction between a pending 256(2) application and an application u/s 256(2) which is still to be made. According to him if the Section 256(2) application is still to be made that might be made in accordance with the order of departmental transfer and there is nothing wrong in doing that. With due respect we are unable to agree with Mr. Ghosh. We would also opine in the same manner as the High Courts at Delhi and Andhra Pradesh. In our opinion it is neither proper nor justified that the High Court of one state should take

control in any matter for the Income Tax Appellate Tribunal of quite a different State. It is well known that the Income Tax Appellate Tribunals of different States are bound to follow, first the Supreme Court, then their jurisdictional High Court and only thereafter the other High Courts. Were High Courts of different States to interfere, the matter might become difficult for the Income Tax Appellate Tribunals, even in pure matters of law.

10. Also, we are of the opinion that where the assessment has reached a stage where only the Tribunal and the High Court are in question, then and in that event the matter has to be concluded in the very State where it commenced and reached up to that advanced stage. In such view of the matter the application of the assessee for setting aside of the ex parte order dated February 13, 2001, is allowed. The said order is set aside by us (since one of their Lordships who passed that order has since left the Calcutta Bench and we are now taking up the reference court); the reference application is treated as on the day's list and is heard out. The reference application is rejected but on the sole and single ground of lack of territorial jurisdiction of the Calcutta High Court. Needless to mention the Revenue will be at liberty to prosecute its proceedings further hereafter in accordance with law.

11. All parties are to act on a xeroxed signed copy of this dictated order upon the usual undertakings.