

(2013) 07 DEL CK 0068

In the Delhi High Court

Case No : ITA No's. 148 and 149 of 2012 and ITA 2 of 2013

Commissioner of Income Tax

APPELLANT

Vs

M/s. Aar Bee Industries

RESPONDENT

Date of Decision : 02-07-2013

Acts Referred:

Income Tax Act, 1961 — Section 120, 127, 127(2), 127(4), 142(1)

Citation : (2013) 262 CTR 1 : (2013) 202 DLT 1 : (2013) 357 ITR 542

Hon'ble Judges : Badar Durrez Ahmed, Acting C.J.; R.V. Easwar, J

Bench : Division Bench

Advocate : N.P. Sahni, for the Appellant; C.S. Aggarwal, Mr. Prakash Kumar and Ms. Pushpa Sharma, for the Respondent

Judgement

Badar Durrez Ahmed, Actg.C.J.

1. These appeals (ITA No. 149/2012, 148/2012 and 2/2013) relate to the assessment years 2005-06, 2006-07 and 2008-09, respectively. The first two appeals arise out of the common order dated 24.06.2011 passed by the income tax Appellate Tribunal, Amritsar Bench, in ITA Nos. 179-180/Asr/2011, respectively. The third appeal (ITA 2/2013) arises out of the order dated 27.07.2012 passed by the said Tribunal in ITA No. 343/Asr/2011. All the three appeals have been preferred by the revenue. In the first two appeals pertaining to the assessment years 2005-06 and 2006-07, condonation of delay applications have been filed. When these matters came up for hearing before this Bench, the issue of jurisdiction was raised by the learned counsel for the respondent/ assessee. It was contended on behalf of the respondent that this court did not have jurisdiction to entertain these appeals inasmuch as the assessment order was passed by the Assessing Officer in Jammu, the appellate order was passed by the Commissioner of income tax (Appeals) at Jammu and the Tribunal's order is also of the Amritsar Bench of income tax Appellate Tribunal which had jurisdiction in respect of the appeals from, inter alia, the State of Jammu and Kashmir. It was, therefore, contended that the High Court having jurisdiction

over the Assessing Officer at Jammu, who passed the assessment order would have jurisdiction and not this court.

2. On the other hand, the learned counsel for the appellant/revenue submitted that it is this court alone which would have jurisdiction to hear these appeals inasmuch as the "case" of the respondent has been transferred from the income tax Officer, Ward-I(1), Jammu to the income tax Officer, Ward-29(1), New Delhi. It was contended that since the "case" stands transferred to the Assessing Officer in New Delhi, it is this court which would have jurisdiction to entertain these appeals u/s 260-A of the income tax Act, 1961 (hereinafter referred to as "the said Act").

3. We shall refer to the facts in ITA 149/2012, which pertains to the assessment year 2005-06. The learned counsel for the respondent/assessee filed its return of income on 31.10.2005 in Jammu. The Assessing Officer was the income tax Officer, Ward-I(1), Jammu. In that return, the respondent/assessee, inter alia, claimed deduction u/s 80-IB(4) of the said Act. The said Assessing Officer at Jammu issued notices u/s 143(2)/142(1) on 04.07.2006 and took up the matter for regular assessment. The assessment proceedings culminated in the assessment order dated 23.03.2007 which was passed by the said Assessing Officer at Jammu. The said Assessing Officer had disallowed the deduction claimed by the respondent/assessee u/s 80-IB(4) of the said Act.

4. Being aggrieved by the disallowance, the respondent filed an appeal before the Commissioner of income tax (Appeals), Jammu. That appeal, was decided in favour of the respondent/assessee by the said Commissioner of income tax (Appeals), Jammu on 23.02.2011 by following the decision of the Jammu & Kashmir High Court in the case of Shree Balaji Alloys Vs. Commissioner of Income Tax and Another, . In effect, the Commissioner of income tax (Appeals) allowed the respondent's claim for deduction u/s 80-IB(4) of the said Act.

5. Thereafter, the revenue filed an appeal before the income tax Appellate Tribunal, Amritsar Bench, Amritsar being ITA No. 179/Asr/2011. It may be pointed out that as per the relevant Standing Order under the income tax (Appellate Tribunal) Rules, 1963 and, in particular, rule 4(1) thereof, the jurisdiction of the Amritsar Bench of the income tax Appellate Tribunal extended to, inter alia, the State of Jammu and Kashmir. The said Tribunal heard the appeal alongwith ITA No. 180/Asr/2011 pertaining to the assessment year 2006-07 and dismissed both the appeals of the revenue by a common order dated 24.06.2011. The said Amritsar Bench of the Tribunal followed the jurisdictional High Court decision in the case of Shree Balaji Alloys (supra) of the Jammu and Kashmir High Court.

6. Aggrieved by the order dated 24.06.2011, appeals (ITA Nos. 149/2012 and 148/2012) have been preferred before this court. Under similar circumstances, the Amritsar Bench of the Tribunal dismissed the revenue's appeal in respect of the assessment year 2008-09 by an order dated 27.07.2012 in ITA No. 343/

Asr/2011. Against that decision, ITA No. 2/2013 has been preferred.

7. On 23.03.2011, while the appeals were pending before the Tribunal, the respondent/assessee sent a letter to the Commissioner of income tax, Jammu & Kashmir (Jammu) seeking transfer of its case to Delhi. Pursuant thereto, by an order dated 20.09.2011 issued u/s 127 of the said Act, the case of the respondent/assessee was transferred with effect from 26.09.2011 from the income tax Officer, Ward-I(1), Jammu to the income tax Officer, Ward-29(1), New Delhi. In the meanwhile, the impugned order dated 24.06.2011 passed by the Amritsar Bench of the Tribunal had been received in the office of the Commissioner of income tax, Jammu on 05.07.2011. That order was forwarded to the Commissioner of income tax (X), Delhi and it was received in his office on 10.10.2011. It is, thereafter that the appeals being ITA No. 148/2012 and ITA No. 149/2012 were filed some time in February, 2012. Under similar circumstances, the third appeal being ITA No. 2/2013 was also filed in November, 2012.

8. The learned counsel for the respondent/assessee had placed reliance on the following decisions:-

1. Ambica Industries Vs. Commissioner of Central Excise, ;
2. Commissioner of Income Tax Vs. Digvijay Chemicals Ltd., ;
3. Suresh Desai and Associates Vs. Commissioner of Income Tax, ;
4. SETH BANARSI DASS GUPTA Vs. COMMISSIONER OF Income Tax, DELHI (CENTRAL)., ;
5. Commissioner of Income Tax, Faridabad Vs. Motorola India Ltd.,

On the other hand, the learned counsel for the revenue had placed reliance on a judgment of a Division. Bench of this court in the case of The Commissioner of Income Tax Vs. Sahara India Financial Corporation Limited, .

9. The decisions of Seth Banarsi Dass (supra), Suresh Desai (supra) and Digvijay Chemicals (supra) are in the same line. Infact, Digvijay Chemicals (supra) being the latest of these three decisions has referred to and relied upon both the decisions in Seth Banarasi Dass (supra) and Suresh Desai (supra). In Digvijay Chemicals (supra), this court observed as under:-

We have given our anxious consideration to the submissions made before us at the Bar. The material facts are not in dispute. The assessee was being assessed at Bulandshahar for the earlier years including the assessment years 1993-94 and 1994-95. The assessment orders passed for the above two assessment years were assailed before the Commissioner of income tax (Appeals), Meerut, who had dismissed the same on April 23, 1998. Appeals against the said order were filed before the income tax Appellate Tribunal at Delhi as the Tribunal located at Delhi was exercising jurisdiction even over territories falling in the adjoining State of Uttar Pradesh. The Tribunal eventually decided the appeal on October

28, 2004. In the meantime the assessment records for the assessment years 1988-89, 2000-01 and 2001-02 were transferred to Delhi in terms of an order passed u/s 127 of the income tax Act. The question is, whether the said order of transfer would alter the course of events in so far as the filing of an appeal before the High Court competent to hear the same is concerned. In our view it does not. We say so because the forum of appeal is determined by reference to the situs of the Assessing Officer and not the Tribunal. The Division Bench decisions of this court in SETH BANARSI DASS GUPTA Vs. COMMISSIONER OF Income Tax, DELHI (CENTRAL)., and in Suresh Desai and Associates Vs. Commissioner of Income Tax, re lied upon by Mr. Aggarwal sufficiently settle the legal position in that regard. This court has in SETH BANARSI DASS GUPTA Vs. COMMISSIONER OF Income Tax, DELHI (CENTRAL)., held that when an Appellate Tribunal hears and determines an appeal from any particular State, it would be appropriate for the Bench to state the case to the High Court of the State from which the appeal arose. That principle stated in relation to the position that existed before the introduction of section 260A of the Act would, in our opinion, hold good even after the remedy by way of a reference is substituted by a regular appeal. The test for determining the jurisdiction of the High Court would be whether the assessment proceedings were completed within its territorial limits. Viewed thus, not only were the assessment proceedings in the instant case completed in Bulandshahar, but even the appeals arising out of the said proceedings were heard and disposed of by the Commissioner of income tax (Appeals), Meerut. We have in that view no difficulty in holding that an appeal against the order passed by the Tribunal even though located in Delhi ought to be filed in the High Court at Allahabad.

10. These three decisions would, therefore, apparently tend to support the case of the respondent/assessee. However, these very decisions have been considered by a Division Bench of this court in a subsequent decision in the case of Sahara India (supra). The said decisions in Banarasi Dass Gupta (supra), Suresh Desai (supra) and Digvijay Chemicals (supra) have been distinguished in Sahara India (supra). The Division Bench in Sahara India (supra) observed as under:-

Learned counsel for the assessee contended that since the assessment orders had already been passed in respect of the assessee and a decision had also been taken by the Tribunal, there was no question of transferring the jurisdiction in respect of the assessee from one place to another. We are of the view that this argument is completely misplaced. The Explanation to section 127(4) of the Act tells us what the word "case" means in relation to any person whose name is specified in any order or direction issued u/s 127 of the Act. The Explanation says that "case" means all proceedings under the Act in respect of any year:(i) which may be pending on the date of the order or direction; (ii) which may have been completed on or before the date of the order or direction; (iii) including all proceedings which may be commenced after the date of the order or direction in respect of any year. In other words, the Explanation to section 127(4) of the Act talks of proceedings, past, present and future in respect of a person whose name

is specified in the order or direction passed u/s 127 of the Act and this would apply to any previous year. The order passed u/s 127(2) of the Act clearly relates to the "case" of the assessee mentioned in the Schedule, and by virtue of the Explanation, all future proceedings that may be taken under the Act (obviously including an appeal u/s 260A thereof) would now have to be in harmony with the order passed u/s 127(2) of the Act. Consequently, the jurisdiction in respect of the "case" and the assessee having been shifted from Lucknow to Delhi, the Revenue could file the appeal u/s 260A of the Act only in Delhi and it could not have filed an appeal in the Lucknow Bench of the Allahabad High Court. Learned counsel for the assessee relied upon two decisions of this court to contend that the situs of the Assessing Officer is what determines the jurisdiction of the High Court in respect of entertaining an appeal u/s 260A of the Act. In support of his argument, learned counsel relied upon *Suresh Desai and Associates Vs. Commissioner of Income Tax*, and *Commissioner of Income Tax Vs. Digvijay Chemicals Ltd.*, .We have gone through both these decisions with the assistance of learned counsel for the parties and while the accepted general principle is that the situs of the Assessing Officer is what determines the High Court having jurisdiction over the case, none of these decisions deals with one important aspect of the case (because it did not arise), namely, what would happen when the situs of the Assessing Officer is changed by an order passed u/s 127 of the Act, as has happened in the present case. One important fact in both the above decisions was that even though there was a transfer of jurisdiction from one place to another, the proceedings in respect of the relevant previous year had not been transferred from one jurisdiction to another. In *Suresh Desai and Associates Vs. Commissioner of Income Tax*, , the relevant assessment year was 1980-81 and as mentioned in the decision, the assessment records of the petitioner were ordered to be transferred from Bombay to Delhi but the transfer did not pertain to the assessment year 1980-81. Similarly, in *Commissioner of Income Tax Vs. Digvijay Chemicals Ltd.*, the relevant assessment year was 1993-94 but the assessment records that were transferred to Delhi were those pertaining to the assessment years 1988-89, 2000-01 and 2001-02. It is for this reason that the effect of the transfer of jurisdiction u/s 127 of the Act was not discussed either in *Suresh Desai and Associates Vs. Commissioner of Income Tax*, or in *Commissioner of Income Tax Vs. Digvijay Chemicals Ltd.*, because that question, on the facts of the case, did not arise for consideration. Learned counsel for the assessee, therefore, cannot draw any assistance from any of the two decisions cited by him. On the other hand, the effect of the transfer of jurisdiction from Lucknow to Delhi specifically arises in the present case and we are of the view that the jurisdiction in respect of the assessee having been transferred to Delhi lock, stock and barrel and all the records of the assessee also having been transferred from Lucknow to Delhi, it is only the High Court in Delhi that can entertain an appeal u/s 260A of the Act directed against the order passed by the Tribunal on July 22, 2005. Our conclusion follows from a plain reading of the Explanation to section 127(4) of the Act as well as from the effect of the order dated July 29, 2005, passed by the Commissioner of income tax (Central),

Kanpur, u/s 127(2) of the Act. Consequently, with effect from September 29, 2005, (the date from which the order passed u/s 127(2) of the Act is enforced) the jurisdiction in respect of the assessee for future proceedings u/s 260A of the Act is with the Delhi High Court. Admittedly, the present appeals have been filed after September 29, 2005, and so they would be maintainable in this court and no other High Court. Under the circumstances, we reject the contention of learned counsel for the assessee.

11. The important fact pointed out in *Sahara India* (supra) was that the decisions in *Suresh Desai* (supra) and *Digvijay Chemicals* (supra), even though they involved a transfer of jurisdiction from one place to another, the proceedings in respect of the relevant previous years had not been transferred from one jurisdiction to another. For example, in *Suresh Desai* (supra), the relevant assessment year was 1980-81. But, the transfer did not pertain to the assessment year 1980-81. In *Digvijay Chemicals* (supra), the relevant assessment year was 1993-94, but the assessment records, which were transferred to Delhi pertained to the assessment years 1988-89, 2000-01 and 2001-02. In other words, the assessment records for the relevant assessment years had not been transferred in those cases and, obviously, the question of considering the provisions of the Explanation to Section 127(4) of the said Act, which explained the meaning of the word "case", had not been considered in those decisions.

12. The point in issue in the present case is entirely covered by the decision in the case of *Sahara India* (supra). The learned counsel for the respondent had placed reliance on the decision of the Punjab & Haryana High Court in the case of *Motorola India* (supra) to contend that the Explanation to Section 127 of the said Act with regard to the meaning of the expression "case", was wholly misplaced because Section 120 of the said Act did not deal with the jurisdiction of the Tribunal or the High Court and it only had a reference to the income tax authorities under the said Act which obviously did not include the ITAT or the High Court. The Punjab & Haryana High Court in the case of *Motorola India* (supra) observed as under:-

The decision of the High Court is binding on the subordinate courts and authorities or Tribunals under its superintendence throughout the territory in relation to which it exercises jurisdiction but it does not extend beyond its territorial jurisdiction. In other words, the decision of one High Court is not a binding precedent for another High Court or for courts or tribunals outside its territorial jurisdiction. The doctrine of precedents and the rule of binding efficacy of the law laid down by the High Court within its territorial jurisdiction, the questions of law arising out of decision in a reference, has to be determined by the High Court which exercises territorial jurisdiction over the situs of the Assessing Officer and if it was otherwise then it would result in serious anomalies as an assessee affected by an assessment order at Bombay may invoke the jurisdiction of the Delhi High Court to take advantage of a suitable decision taken

by it. Thus, such an assessee may avoid application of inconvenient law laid down by the jurisdictional High Court of Bombay. On the basis of the aforementioned reasoning, the Division Bench sustained the objection that the jurisdiction to entertain the application under sub-sections (1) and (2) of section 256 of the Act vested in the High Court of Bombay and not of Delhi. We are in respectful agreement with the aforementioned reasoning of the Delhi High Court. Accordingly, we hold that the preliminary objection raised by learned counsel for the assessee-respondent is sustainable. It is true that transfer order u/s 127 of the Act has been passed on May 20, 2005, but it would not affect the assessment framed by the Assessing Officer in respect of the assessment year 1996-97. The reliance of the Revenue on the Explanation to section 127 of the Act with regard to the meaning of the expression "case" is wholly misplaced and is liable to be rejected because section 120 of the Act does not deal with jurisdiction of the Tribunal or the High Court.

After setting out the provisions of Section 120 and Section 127 of the said Act, the Punjab & Haryana High Court in the case of Motorola India (supra) observed as under:-

A conjoint reading of the aforementioned provisions makes it evident that the Director General or Chief Commissioner or Commissioner is empowered to transfer any case from one or more Assessing Officers sub-ordinate to him to any other Assessing Officer. It also deals with the procedure when the case is transferred from one Assessing Officer subordinate to a Director General or Chief Commissioner or Commissioner to an Assessing Officer who is not subordinate to the same Director General, Commissioner or Commissioner. The aforementioned situation and the definition of the expression "case" in relation to jurisdiction of an Assessing Officer is quite understandable but it has got nothing to do with the territorial jurisdiction of the Tribunal or High Courts merely because section 127 of the Act dealing with transfer has been incorporated in the same Chapter. Therefore, the argument raised is completely devoid of substance and we have no hesitation to reject the same.

13. We are afraid and with respect we say so that we are unable to agree with the views expressed by the Punjab & Haryana High Court and are bound to follow the decision of this court in Sahara India (supra). We are not inclined to accept the view taken by the Punjab & Haryana High Court, because while it is true that the reference to the case is with regard to the jurisdiction of an income tax authority, it is also true that the jurisdiction of the High Court is determined by the situs of the Assessing Officer. When the Assessing Officer itself has been changed from one place to another, the High Court exercising jurisdiction in respect of the territory covered by the transferee Assessing Officer would be the one which would have jurisdiction to hear the appeal u/s 260-A. Even in Ambica Industries (supra), a decision relied upon by the learned counsel for the respondent/assessee, it has been held that it would be the situs of the Assessing Officer and not the situs of the Tribunal which would have the determinative

factor with regard to the jurisdiction of the High Court hearing an appeal. Of course, the decision in *Ambica Industries* (supra) was not one rendered under the income tax Act, but was one which pertained to an appeal to the High Court under the Central Excise Act, 1944. We may also point out that the Central Excise Act does not deal with a transfer of a "case" as is the position under the income tax Act. In any event, there is nothing in *Ambica Industries* (supra), which would enable us to take a view different from that taken by this court in *Sahara India* (supra). It is a well accepted principle that there can be only one Assessing Officer in respect of a case. At the point of time when the present appeals were filed, the Assessing Officer insofar as all the cases of the respondent were concerned, was the Assessing Officer at Delhi. The fact that the Amritsar Bench of the Tribunal had passed the impugned orders or the fact that the initial assessment orders were passed by the Assessing Officer at Jammu would not be relevant for the purposes of determining the jurisdiction of the court at the point of time at which an appeal u/s 260-A of the said Act is filed. It is the date on which the appeal is filed which would be the material point of time for considering as to in which court the appeal is to be filed. On the dates on which the present appeals were filed, the Assessing Officer of the respondent was the Assessing Officer at New Delhi and, therefore, this court would have jurisdiction to entertain these appeals. In view of the foregoing, we hold that the present appeals are maintainable before this court. Consequently, we direct that the appeals be listed before the roster bench hearing such matters on 22.07.2013 when the appeals would be taken up for admission as well as for consideration of the pending condonation of delay applications in two of the appeals.