IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.730 of 2010

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The Income Tax Officer, Ward 4(2) Jaipur, through the Income Tax Officer, Ward-5(4), Patna

.... Respondent/ Appellant

Versus

M/s. Premier Cargoes, 7/233, Vidhyadhar Nagar, Jaipur

.... Appellant/Respondent

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Appearance :

For the Appellant/s : Mr. Rishi Raj Sinha, Sr. S.C. with
Ms. Archana Prasad, Jr. S.C.

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

7 01-09-2015 The present appeal is directed against the order dated 31.3.2010 passed by the Income Tax Appellate Tribunal, Jaipur Bench 'A', Jaipur in ITA No. 182/JP/2009 for the Assessment Year 2005-06.

At the outset, we asked learned Sr. Standing Counsel for the Revenue to satisfy us as to the maintainability of the appeal when the impugned order in question has been passed by the Income Tax Appellate Tribunal, Jaipur Bench.

All that learned counsel has to submit is that by the order dated 6.3.2009 passed by the Commissioner of Income Tax-II, Jaipur, the cases pertaining to the present petitioner have been transferred from the ITO, Ward 4(2), Jaipur to ITO, Ward-5(4), Patna after obtaining no objection of the CIT-II, Patna by his office letter dated 22.1.2009.

So far as the order of transfer is concerned, the same has been passed under Section 127 of the Income Tax Act after complying with the relevant provisions but the same does not affect the jurisdictional issue involved here as to whether an order of an Income Tax Appellate Tribunal situated in another State can be assailed before this Court.

The authorities on this point are, firstly, a decision of the Andhra Pradesh High Court in the case of Commissioner of Income Tax vs. Parke Davis (India) Limited : (1999) 239 ITR 820 in which it has been observed as follows :

> "We are unable to appreciate how section 127 together with its Explanation could be resorted to to transfer the proceedings from one Appellate Tribunal to another and to vest the jurisdiction in the High Court which it does not otherwise possess. The whole purport and purpose of section 127 is to transfer the proceedings from one Assessing Officer to another. The Explanation should be understood in relation the main provision which stipulates the transfer of case from one or more Assessing Officers to any other Assessing Officer or officers. The words "all proceedings under the Act in respect of any year" occurring in the Explanation cannot be understood in vacuum and cannot be stretched to cover reference applications already filed or decided by the date of transfer under section 127. The reference application having been rejected by the Mumbai Bench of the Income-tax Appellate Tribunal, the application under section 256(2) ought to have been filed before the High Court of Bombay only. The interpretation sought to be placed on the Explanation to section 127 leads to incongruous results quite contrary to the scheme of the Act and has the effect of investing the

> prescribed authorities with the power to virtually interfere with the territorial jurisdiction of the concerned High Court. Hence, we are of the view that this I.T.C. under section 256(2) is not maintainable, as this court has no jurisdiction. Hence, the I.T.C. is dismissed."

To the same effect is the decision of the Calcutta High Court in the case of Commissioner of Income Tax vs. A.B.C. India Ltd. : (2002) 255 ITR 108, at pages 110-111 of which, it has been laid down as follows :

> "Mr. Ghosh sought to draw a distinction between a pending 256(2) application and an application under section 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.
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> 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."

Although the aforesaid decisions were in relation to applications for reference under Section 256(2) of the Act, we are of the view that the principles laid down therein are applicable to appeals to the High Court under Section 260A of the Act. We are of the view that the High Court of one State should not take control in any matter dealt with by the Income-tax Appellate Tribunal of a different State. 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 and thus interference by a High Court of a different State on the point of pure matter of law would create difficulties for the Income-tax Appellate Tribunals. We are in agreement with the opinion expressed by the Calcutta High Court that once the assessment has reached a stage where only the Tribunal and the High Court are in question, then and in such event the matter has to be concluded in the very State where it commenced and reached up to that advanced stage.

For the aforesaid reasons, we are of the view that the present appeal is not maintainable before this Court. It is, accordingly, dismissed only on the ground of lack of territorial jurisdiction of this Court with liberty to the Revenue to proceed in accordance with law before the appropriate forum.

(Ramesh Kumar Datta, J)

(Anjana Mishra, J)

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