IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.19055 of 2015
Date of decision: 5.10.2015

M/s Asian Consolidated Industries Limited
……Petitioner

Assistant Commissioner of Income Tax, Central Circle 12, New Delhi.

…..Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Anand Chhibbar, Sr. Advocate with Ms. Riya Bansal, Advocate for the petitioner.

Ajay Kumar Mittal, J.

1. This order shall dispose of CWP Nos.19007 and 19055 of 2015 as according to the learned counsel for the petitioner, the issue involved in both the petitions is identical. However, the facts are being extracted from CWP No.19055 of 2015.

2. In CWP No.19055 of 2015, the petitioner prays for quashing the order dated 9.2.2015, Annexure P. 1 passed by the Income Tax Appellate

Tribunal, Delhi Bench 'Friday', New Delhi whereby application for restoration of the appeal i.e. ITA No.428/Del/1997 filed by it against the order dated 26.9.2002 passed by the respondent has been dismissed.

3. A few facts relevant for the decision of the controversy involved as narrated in CWP No.19055 of 2015 may be noticed. The petitioner company was ordered to be wound up by this court vide order dated 7.1.1999, Annexure P.2 in CP No.8 of 1998. The control of the petitioner company came in the hands of the Official Liquidator. The ex-management of the petitioner company filed revival petition of the company i.e. CP No.6 of 2013 before this court under Sections 391/394 of the Companies Act, 1956 (in short, “the Companies Act”) stating that the petitioner company may again carry out its business operations if certain concessions were allowed/granted by the Court. The ex-management of the petitioner company entered into a One Time Settlement (OTS) with its various secured and unsecured creditors. The said revival petition was considered by the court and notices were issued to the various parties. Vide order dated 12.5.2014, Annexure P.4, the said revival petition was allowed. Prior to the filing of the revival petition on 21.1.2013, the respondent had filed CA No.222 of 2012 before this court on 18.4.2012, Annexure P.5 in the liquidation process of the petitioner company for claiming its alleged outstanding of ₹ 135 crores from the petitioner company on the basis of various ex parte orders/judgments being passed prior and after the liquidation of the petitioner company. The ex management of the petitioner company claimed that proper opportunity should be given to the petitioner company to assail the various orders/judgments passed by the respondent

against it prior or after the liquidation of the company. Vide order dated 8.5.2013, Annexure P.6, this Court in CA No.222 of 2012 by referring the said revival petition i.e. CP No.6 of 2013 had passed the necessary directions with respect to the outstanding demand of the respondent. The Court gave liberty to the petitioner to approach the income tax department i.e. Chairman CBDT for settlement of the claim. Since the details in CA No.222 of 2012 filed by the respondent were vague, the ex-management of the petitioner company moved an application i.e. CA No.393 of 2013 before this Court in August 2013, Annexure P.7 in the said liquidation petition for seeking the details of the orders/judgments and documents relating to the alleged claim of the respondent against the company. Vide order dated 28.1.2014, Annexure P.8, the court passed directions to the respondent to provide necessary documents to the ex-management of the petitioner company with respect to the claim of the respondent. The court also gave liberty to the ex-management of the petitioner company to challenge the orders being passed by the respondent prior to liquidation. It was also observed that since the petitioner company was in winding up and the official liquidator was involved in large number of cases, the respondent will take sympathetic view in condoning the delay in filing the appeal. On 29.4.2014, Annexure P.9, when the matter again came up before the court, it was recorded that the income tax issues between the department and the petitioner will remain subject to appeals which had been filed by the petitioner to challenge various orders passed by the respondent with respect to their demand. On 12.5.2014, Annexure P.10, the court finally issued orders for revival of the petitioner company and allowed the said petition filed by the petitioner and took it out of the liquidation process. It was also reiterated that any tax dues of the company in liquidation on revival will remain the liability of the company subject to appeals and the interim orders regarding tax passed on 29.4.2014 would continue to operate. Thereafter, the petitioner has already instituted various proceedings before the Income tax department to set aside the demand of the respondent for ₹ 135 crores. The outstanding demand has now come down to around ₹ 10 crores. The petitioner has also filed status report of the outstanding amount in CA No.365 of 2014 in CP No.6 of 2013. According to the petitioner, the present impugned order dated 9.2.2015 was concerned with the ex parte order dated 26.9.2002, Annexure P.12 passed by the Tribunal in ITA No.438/Del/1997 filed by the petitioner. The said appeal had been dismissed in default as nobody had appeared on behalf of the petitioner company on the dates of its hearing on 26.9.2002. Hence the instant writ petitions.

4. We have heard learned counsel for the petitioner.

5. In the present case, Assistant Commissioner of Income Tax Central Circle 12, New Delhi is the Assessing Officer. During the course of hearing on 9.9.2015, in CWP No.19007 of 2015, learned counsel for the petitioner was directed to show as to how this court has jurisdiction to entertain the present writ petition. Learned counsel for the petitioner submitted that earlier also, the writ petitions (CWP Nos.6383, 6382, 6398 and 6397 of 2015, ***M/s Asian consolidated Industries Limited vs. Assistant Commissioner of Income Tax, New Delhi and another)*** were filed by the petitioner for another assessment year and this Court had entertained the same and passed order dated 30.7.2015, Annexure P.14 disposing of the

petitions as infructuous. Referring to Article 226(2) of the Constitution of India, it was urged that the cause of action had arisen within the territorial jurisdiction of this court and therefore, in view of judgment of the Apex Court in ***M/s Kusum Ingots and Alloys Limited vs. Union of India (UOI) and another,*** AIR 2004 SC 2321, the present writ petition was maintainable in this court. To establish that cause of action had arisen, reference was made to various orders passed by the Company Court in the case of the petitioner by the Company Judge of this Court under the Companies Act.

6. Examining the judgment relied upon by the learned counsel for the assessee-petitioner in ***M/s Kusum Ingots's*** case (supra), the question therein was whether the seat of the Parliament or the Legislature of a State would be a relevant factor for determining the territorial jurisdiction of a High Court to entertain a writ petition under Article 226 of the Constitution of India. It was observed therein that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum convenience. The proposition of law enunciated in ***M/s Kusum Ingots's*** case (supra) is unexceptionable but has no applicability to the facts in hand.

7. Support was also drawn from the order of this Court passed in ***M/s Asian Consolidated Industries Limited's*** case (supra). However, that was a case qua dismissal of the appeal against the penalty proceedings on the ground of delay. In that case, the grievance of the petitioner stood

redressed in view of the fact that the quantum proceedings had been decided in favour of the petitioner. As a result, the penalty proceedings did not survive. The order passed therein reads thus:-

> "The petitioner has challenged the order(s) of the Income Tax Appellate Tribunal dismissing its appeal(s) against the penalty proceedings on the ground of delay.
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> 2. In effect, therefore, the petitioner's grievance is with respect to the penalty proceedings. The grievance stands redressed in any event in view of the fact that the quantum proceedings have been decided in favour of the petitioner/assessee. There is no question, therefore, of the penalty proceedings under Section 271 of the Income Tax Act, 1961 surviving.
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> 3. The writ petitions are accordingly disposed of with the clarification that the petitioner's grievance stands redressed and the penalty proceedings do not survive. In view thereof, no further orders are necessary in these writ petitions.
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> 4. The objection to these petitions on the ground of delay is therefore, not sustainable."

In the above mentioned writ petitions, the question of jurisdiction was not in issue and moreover, the writ petitions were disposed of with the clarification that since the petitioner's grievance stood redressed and the penalty proceedings did not survive, no further orders were necessary in the said writ petitions. In such circumstances, the assessee cannot derive advantage from the order dated 30.7.2015, Annexure P.14 or from the judgment of the Apex Court in ***Kusum Ingots and Alloys Limited's*** case (supra) being on different situation.

8. In **ITA No.44 of 2005** titled as **The Commissioner of Income Tax, Faridabad Vs. M/s Motorola India Ltd.** decided on 03.10.2007,

where the assessment was framed by the Assessing Officer at Bangalore, the Revenue in that case, had sought to justify the filing of the appeal in this Court on the ground that the assessee respondent had requested for transfer of the case from Bangalore to Gurgaon on 02.01.2002 and the case was transferred from Bangalore to Gurgaon on 20.05.2005 under Section 127 of the Act. The Division Bench of this Court, while repelling the aforesaid contention had noticed as under:

> “The decision of the High Courts are 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 rule of binding efficacy of 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 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-section (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.

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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 subordinate 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, Chief Commissioner or Commissioner. The aforementioned situation and the definition of 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.

In view of the above, the appeal is dismissed by sustaining the preliminary objection that this Court has no territorial jurisdiction over an order passed by the Assessing Officer at Bangalore. Accordingly, these appeals are returned to the revenue appellant for their filing before the competent court of jurisdiction in accordance with law."

Similar order was passed by this Court in ITA No.49 of 2012 [***Commissioner of Income Tax (Central) Gurgaon vs. M/s Parabolic Drugs Limited],*** decided on 11.10.2012.

9. In view of the above, the writ petitions are dismissed by holding that this court has no territorial jurisdiction to adjudicate upon the lis over an order passed by the Assessing Officer at New Delhi. The petitions are returned to the petitioner for filing before the competent court

of jurisdiction in accordance with law.

(Ajay Kumar Mittal)
Judge

October 05, 2015 **(Ramendra Jain)**
'gs' **Judge**