IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA No.222 of 2014
Date of decision:09.03.2015

Commissioner of Income Tax, Faridabad

....Appellant

Versus

M/s Motorola Solutions India Pvt. Ltd.

......Respondent

CORAM: HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.Tajender K.Joshi, Advocate, for the appellant.

Mr.Himanshu Sinha, Advocate
and Mr.Ashim Aggarwal, Advocate, for the respondent.

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G.S.Sandhawalia J.

The present appeal, preferred by the Revenue, has been filed under Section 260A of the Income Tax Act, 1961 (for short, the 'Act'), against the order dated 21.06.2013, passed by the Income Tax Appellate Tribunal, Bangalore Bench 'A' Bangalore in IT(TP)A No.1274/BANG/2008 dated 21.06.2013, for the assessment year 2003-04.

The Revenue has claimed the following question of law for determination by this Court:

> "Whether, in view of the first proviso to section 92C(2) of the Income Tax Act, 1961, the Tribunal was correct in holding that if some profit level indicators of a comparable, out of a set of comparables, is higher than the profit level indicators of the taxpayer, then the transactions reported by the taxpayer is at an arm's length price as contemplated in section 92, 92C and other related provisions of the said Act?"

Counsel for the respondent-assessee, however, has raised a preliminary objection as to the jurisdiction of this Court on the ground that the order has been passed by the Tribunal at Bangalore and that the original company which was assessed on 27.03.2006 was Motorola India Electronics Pvt. Ltd. The company, thereafter, had been known as Motorola Solutions India Pvt. Ltd., which had filed an appeal before the Commissioner, Income Tax (Appeals)-IV, Bangalore, which had been partly allowed. Thereafter, an appeal had been filed before the Tribunal at Bangalore. The company, in the meantime, merged with Motorola India Pvt. Ltd. and the name had been changed to Motorola Solutions India Pvt. Ltd., the respondent herein. The Tribunal had passed the order on 21.06.2013, which is a subject matter of challenge. Accordingly, it was contended that this Court would have no jurisdiction. Reliance was placed upon a Division Bench judgment of this Court in ***Commissioner of Income Tax Vs. Motorola India Ltd. (2010) 326 ITR 156*** to contend that the situs of the Assessing Officer (for short, the 'AO') has to be seen and the High Court which exercises territorial jurisdiction of such an Officer would be the jurisdictional High Court.

On the contrary, counsel for the Revenue has placed reliance upon a Division Bench judgment of the Delhi High Court in ***Commissioner of Income Tax Vs. Aar Bee Industries (2013) 357 ITR 542***, in which case, the judgment in **Motorola India Ltd.** (supra) was also taken into consideration and discussed. It is, accordingly, submitted this Court would have jurisdiction since the initial company had merged with Motorola Solutions India Pvt. Ltd. which had been assessed at Gurgaon. It is contended that merely because of the fact that the assessment had been made at Bangalore would not be a relevant factor since the AO has, now, been changed and therefore, the situs of the Tribunal would not be a determining factor.

After hearing counsel for the parties, we are of the view that the argument raised by the Revenue is not sustainable and the objections raised by the respondent-assessee is liable to be upheld. As noticed above, in the case of **<u>Motorola India Ltd.</u>** (supra), there was a transfer order passed under Section 127 of the Act, whereby the records were transferred from Bangalore to Gurgaon and the jurisdiction of the respondent-assessee was transferred to this Court. It was held that the assessee could not take advantage of the transfer and the situs of the AO would give the High Court the territorial jurisdiction. Otherwise, it would lead to an assessee avoiding inconvenient law, laid down by the High Court concerned. The relevant observations read 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.
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> 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."

The said view was followed in **ITA No.49 of 2012** titled *Commissioner of Income Tax (Central) Gurgaon Vs. M/s Parabolic Drugs Ltd.,* decided on 11.10.2012, wherein also, the assessee's case had been transferred from New Delhi to Central Circle, Chandigarh under Section 127 of the Act. The Tribunal's order was sought to be challenged in the said appeal and this Court returned the appeal for filing before the competent Court of jurisdiction, keeping in view the settled principles of this Court and the binding precedent of the Division Bench of this Court, as noticed above.

Another ground which militates against the Revenue is that the merger with the respondent-company is stated to have taken place on 01.04.2005 and the AO's order was made on 27.03.2006. As per Section 170 of the Act, the predecessor is to be assessed in respect of the income of the previous year only in which the succession took place upto the date of succession and the successor is to be assessed in respect of the income of the previous year, after the date of succession. Relevant portion reads as under:

> “Succession to business otherwise than on death.
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> 170. (1) Where a person carrying on any business or profession (such person hereinafter in this section being referred to as the predecessor) has been succeeded therein by any other person (hereinafter in this section referred to as the successor) who continues to carry on that business or profession,—
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> (*a*) the predecessor shall be assessed in respect of the income of the previous year in which the succession took place up to the date of succession;
>
> (*b*) the successor shall be assessed in respect of the income of the previous year after the date of succession.”

Once the assessment at Bangalore was of Motorola India Electronics Ltd. on 27.03.2006 for the assessment year 2003-04, the subsequent merger would not give right to the assessing authorities who had jurisdiction over the successor company and only the AO of the predecessor company would have jurisdiction, which was, admittedly, at Bangalore. The submission that the appeal is the continuation of the proceedings and the subsequent appeals filed by the Revenue, would give the AO of the successor company jurisdiction, cannot, thus, be accepted, in view of the provisions of Section 170 of the Act, also.

Accordingly, the present appeal, being not maintainable, is dismissed by holding that this Court has no territorial jurisdiction to adjudicate upon the lis over an order passed by the AO at Bangalore. Consequently, the appeal is returned to the Revenue for filing before the competent Court of jurisdiction, in accordance with law.

(S.J.Vazifdar)
Acting Chief Justice

(G.S.Sandhawalia)
Judge

09.03.2015
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I attest to the accuracy and
integrity of this document