$~R-12.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **Date of Decision: 08.01.2015**

% **CRL.A. 300/2009**

M/S XEROX MODI CORP LTD. ..... Appellant

Through: Mr. Vijay Nair & Ms. Neeharika Aggarwal, Advocates.

versus

THE SPECIAL DIRECTOR,
ENFORCEMENT DIRECTORATE ..... Respondent

Through: Mr. Vineet Malhotra, Mr. Vishal Gohri & Mr. Jitender, Advocates for respondent/ ED.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. At the commencement of the hearing today, learned counsel for the respondent has sought to urge the preliminary objection taken by it in its reply, namely to the territorial jurisdiction of this Court to deal with the present appeal.

2. In this regard, reference is made to Section 35 of the Foreign Exchange Management Act, 1999, which provides that "*Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court ... ...*". In the explanation, the term 'High Court' has been defined to mean "*(a) the High Court within the jurisdiction*

of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and... ... ...".

3. The submission of Mr. Malhotra is that the appellant company has its Registered Office in Noida, Uttar Pradesh and Corporate Office at DLF Square, Jacaranda Marg, M. Block, DLF City, Phase-II, Gurgaon – 122002, Haryana. He has referred to the memo of parties filed before this Court; the averments made in paragraph 3.(A) of the present petition; the order in original dated 13.02.2004; and Part II (1) of the Memorandum of Appeal preferred before the Appellate Tribunal, which shows that the Registered Office of the appellant is situated in Noida and its Corporate Office is situated at Gurgaon. He, therefore, submits that this Court would not have jurisdiction to deal with the present appeal.

4. He placed reliance on decisions of this Court in ***Bhawarlal S. Kothari Vs. Registrar, Appellate Tribunal Foreign Exchange & Anr.***, 2013 (10) AD (Delhi) 370; and ***M/s Saketh India Limited Vs. The Director, Enforcement Directorate & Others***, Crl.Appeal No.688/2008 decided on 17.09.2008.

5. On the other hand, the submission of learned counsel for the appellant is that the predecessor-in-interest of the appellant, namely Modi Xerox Limited (MXL) was carrying on its business in Delhi at the relevant time and even after its merger with the appellant, it continues to carry on its business in Delhi. In this regard, he submits that all the transactions in respect whereof the proceedings were initiated were carried out in Delhi. He further submits that the notice dated 18.01.2013 was addressed to the MXL

at its office at Hemkunt Towers, Nehru Place, New Delhi. Merely because the registered or corporate office of the erstwhile company, or the appellant company may be situated at Noida & Gurgaon respectively, it does not follow that the appellant does not carry on business at Delhi. The aforesaid facts establish that the appellant/ its predecessor-in-interest were carrying on business in Delhi.

6. In his rejoinder, Mr. Malhotra has submitted that there is no averment made by the appellant that it carries on business in Delhi and, therefore, the aforesaid submission cannot be accepted.

7. Having heard learned counsel for the parties, considered the decisions relied upon as well as perused the record, I am not inclined to accept the preliminary objection of the respondent. This is for the reason that Section 34, in terms, vests jurisdiction to hear the appeal in the High Court at one of several places, which are:

(i) where the aggrieved party ordinarily resides;

(ii) or carries on business or personally works for gain.

8. Even though, in the context of a corporate entity, it may be said that a corporate entity ordinary resides at the place where it has its registered office, it cannot be said that it carries on business only at the place where it has either its registered, or corporate office. Therefore, in respect of a corporate entity, an appeal could be preferred before the High Court within whose jurisdiction the corporate entity carries on its business. This proposition cannot be taken to another extreme. It does not mean that if a

corporate entity carries on business at place 'A', it can prefer the appeal (relating to transaction carried out at place 'A') in a High Court which does not have jurisdiction over place 'A', merely because the corporate entity may be carrying out its business within the jurisdiction of such other High Court. In my view, the appeal can be preferred either before the High Court within whose jurisdiction the corporate entity resides, i.e. has its Registered Office, or within the jurisdiction of the Court where the concerned business activity/ transaction was carried out which has resulted in initiation of proceedings under FEMA.

9. The submission of Mr. Malhotra that there is no averment to the effect that the appellant carries on business within the jurisdiction of this Court, made in the appeal, cannot be accepted for the reason that this objection has been raised by the respondent and there is no averment made by the respondent in its reply, wherein the preliminary objection has been raised, to the effect that the appellant does not carry on any business within the jurisdiction of this Court. In contra-distinction, the records show that the predecessor-in-interest of the appellant, namely MXL as well as the appellant have been carrying on business within the jurisdiction of this Court. This is evident from the fact that the remittances were made through banks within the jurisdiction of this Court, and notices were issued by the respondent to the predecessor-in-interest of the appellant at its office situated at Nehru Place, New Delhi.

10. The decision in ***Bhawarlal S. Kothari*** (supra) has no application in the facts of this case, since that case turn on its own facts. In the facts of that case, the appellant could not show that it was carrying on business

within the jurisdiction of this Court.

11. The decision in ***M/s Saketh India Limited*** (supra), in fact, in a way supports the submission of the appellant inasmuch as this Court observed:

> *"From the above discussion it is manifest that S.54 of FERA which is pari material to S. 35 of FEMA contemplates a party dwelling within the territorial limits of this court or a party carrying on business within the jurisdiction of this court even if the said party does not dwell within the said territorial limits or personally works for gain for this court to exercise its powers over the matter."*

12. In view of the aforesaid discussion, the preliminary objection of the respondent is rejected.

13. At this stage, it is pointed out that by learned counsel for the respondent that his paper book is not complete. Let the complete paper book be provided to learned counsel for the respondent within two days.

14. List for further hearing on 14.01.2015 in the category of 'Regular Matters'.

VIPIN SANGHI, J

JANUARY 08, 2015
B.S. Rohella