

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 19-07-2016

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

WRIT APPEAL No.250 of 2016
and
C.M.P. No.4260 of 2016

Tecpro Systems Limited
Rep. by its Authorised Signatory/
Principal Officer Mr.Venugopalan
Tecpro Towers, 11-A17, 5th Cross Street
SIPCOT IT Park
Siruseri, Chennai - 603 103 ...Appellant/Petitioner

-vs-

The Union of India
Rep. by the Office of
the Asst. Commn. Of Income Tax
R.No.307, 3rd Street, Aayakar Bhawan
Laxmi Nagar
New Delhi - 110 092 ...Respondent/Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, against the order of this Court dated 22.02.2016 in W.P.No.3611 of 2016. Writ Petition filed under Article 226 of the constitution of India praying to issue a writ of Mandamus directing the respondent not to take any coercive or any other steps against the petitioner company herein which is under the Board for Industrial & Financial Reconstruction (BIFR) as per the provisions of Sick Industrial Companies Act 1985 (SICA) invoking the provisions of Income Tax (IT) Act 1961 pursuant to F.No.ACIT/ Circle-76(1)/ U/s.201(1)/ (1A)/ 2015-16/ TAN: DELTO3519F dated 20.1.2016 issued by the respondent to the petitioner herein pending disposal of the BIFR proceedings.

For appellant : Mr.Nithyaesh Natraj
M/s.Nithyaesh & Vaibhav

For respondent : Mr.J.Narayanasamy
Sr.Standing Counsel

JUDGMENT

S.Manikumar, J.

Challenge in this appeal is to an order of the writ court, made in W.P.No.3611/2016 dated 22.02.2016, by which, the writ court, declined to entertain the writ petition, on the grounds of territorial jurisdiction.

2. The facts in nutshell are that the petitioner Tecpro System Limited is a public limited company and represented by its Authorised Signatory/Principal Officer at Chennai. Prayer sought for in the writ petition was for a mandamus directing the Assistant Commissioner of Income Tax, New Delhi/respondent, not to take any coercive or any other steps against the petitioner, which is under the Board for Industrial and Financial Reconstruction (BIFR), as per the provisions of the Sick Industrial Companies Act, 1985 (SICA), by invoking the provisions of the Income Tax Act, 1961, pursuant to a proceeding dated 20.01.2016 issued by the respondent.

3. Proceedings dated 20.01.2016 of the Assistant Commissioner of Income Tax, New Delhi reads as follows:

" To

The Principal Officer,
M/s.Tecpro System Ltd.,
202-204, Pacific Square Mall
JMD Campus
Sector-15, Gurgaon

Sub:- Assessee deemed to be an assessee in default u/s 201 of the Income Tax Act, 1961- reg.

Please refer the above

In this regard, it has been observed that during the course of survey operation u/s 133A of the Income Tax Act, 1961 on 20.01.2016 in your case at the above mentioned premises, you have deducted TDS amount of Rs.17,43,74,191/- for the F.Y.2013-14, F.Y.2014-15 and F.Y.2015-16, which has not been deposited into the Govt A/c till date.

In view of the same, you are hereby held as an assessee deemed to be in default u/s 201 of the Income Tax Act, 1961. Therefore, you are required to discharge this TDS liability of Rs.17,13,74,191/- and interest of Rs.5,31,87,872/- (approx.) u/s 201(1A) of Income

Tax Act, totalling to Rs.22,45,62,063/- immediately.

In case of non-compliance recovery proceedings as per the Income Tax Act, 1961 shall be initiated accordingly."

4. Contention of the writ petitioner is that TDS is deducted at Chennai and their office is located at Chennai. Therefore, when part of the cause of action has arisen within the territorial jurisdiction of this court, writ petition is maintainable. Reliance has been placed on the decisions of the Hon'ble Supreme Court in *Om Prakash Srivastava vs. Union of India* and *Anr.* reported in (2006) 6 SCC 207, *Union of India vs. Adani Exports* reported in (2002) 1 SCC 567, *Oil and Natural Gas Commission vs. Utpal Kumar Basu & Ors.* reported in (1994) 4 SCC 711 and whereas the respondent, while opposing the maintainability of the writ petition, submitted that the order dated 20.01.2016 passed by the respondent is at New Delhi, the Delhi High Court alone has jurisdiction to entertain the writ petition. Reliance has been made to a decision in *Rajkumar Mangla v. Chairman, Central Board of Direct Taxes and others* reported in (1998) 234 ITR 0113.

5. Writ court also considered a decision in *Kusum Ingots & Alloys Ltd. v. Union of India* and another reported in 2004 (6) SCC 254, wherein the Hon'ble Supreme Court held as follows:

"30. We must, however, remind ourselves 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."

6. Going through the material on record, writ court in W.P.No.3611/2016 dated 22.02.2016 at paragraphs 5 to 7 ordered as follows:

"5. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that the writ petition has been filed pursuant to the order dated 20.01.2016 passed by the respondent at New Delhi. Though the prayer sought for is for the issuance of a writ of mandamus, the learned counsel appearing for the respondent submitted that no record is available in Chennai office and all the records are only in New Delhi office. The learned senior counsel appearing for the petitioner submitted that the petitioner is an assessee only in the New Delhi office and not at

Chennai. The petitioner also submitted their Income Tax Returns only at New Delhi office and not at Chennai office. Merely because the petitioner is having an office at Chennai the same will not confer territorial jurisdiction to this Court to entertain the writ petition. That apart, deducting TDS by the petitioner at Chennai will not confer territorial jurisdiction at Chennai. When the petitioner is an assessee in the office of the Income Tax Department at New Delhi, only the Courts at New Delhi shall have jurisdiction. The ratio laid down in the judgment of the Honourable Supreme Court reported in 2002 (1) SCC 567 [Union of India and others v. Adani Exports Ltd. and another] is against the contentions raised by the petitioner in respect of territorial jurisdiction.

6. As per Article 226(2) of the Constitution of India the power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. Similarly under Section 20 of the Civil Procedure Code, a suit can be instituted where the defendants reside or cause of action arises. Under Section 20(b) every suit shall be instituted in a Court within the local limits of whose jurisdiction any of the defendants, where there are more than one, at the time of the commencement of the suit, actually or voluntarily resides, or carries on business or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business or personally work for gain, as aforesaid, acquiesce in such institution. Under Section 20(c), a suit shall be instituted in a Court where the cause of action, wholly or in part, arises. In the case on hand, the respondent at Chennai has not participated in any of the action of the petitioner. Though the petitioner had deducted TDS, the same has been remitted only to the Income Tax Office at New Delhi. When the respondent has no role to play in the acts of the respondent at Chennai, there is no cause of action arise for filing the writ petition at Chennai. Mr.P.S.Raman, learned senior counsel appearing for the petitioner, fairly submitted that it cannot be said that Delhi High Court shall not have jurisdiction to entertain the writ petition. Since there is no

cause of action, either wholly or in part, occurred at Chennai, this Court has no jurisdiction to entertain the writ petition filed by the petitioner.

7. The petitioner having an office at Chennai shall not confer territorial jurisdiction at Chennai. That apart, the learned counsel appearing for the respondent also submitted that since no records are available in Chennai office, they have to get all instructions only from New Delhi office in respect of the relief sought for in the writ petition. Since no part of cause of action has arisen at Chennai, I am of the view that this Court has no territorial jurisdiction to entertain the writ petition. In these circumstances, the judgments relied upon by the learned senior counsel appearing for the petitioner are not applicable to the petitioner's case. Since the writ petition is being decided on the question of territorial jurisdiction, I am not going into the merits of the case. In these circumstances, the writ petition filed by the petitioner is rejected on the ground of territorial jurisdiction. No costs. Consequently, connected miscellaneous petition is closed."

7. Assailing the correctness of the order and inviting the attention of this court to the proceedings of the Registrar, Board for Industrial and Financial Reconstruction dated 14.07.2014, learned counsel for the petitioner/appellant submitted that a case has been registered under Section 15(1) of the Sick Industrial Companies (Provisions) Act, 1985, the petitioner/appellant has a legal right to claim protection under the provisions of the said Act. Placing reliance on the decision of the Hon'ble Supreme Court in Raheja Universal Limited v. NRC Limited and others reported in (2012) 4 SCC 148, learned counsel for the petitioner/appellant submitted that when BIFR proceedings are pending, coercive action taken by the respondent vide order dated 20.01.2016 would amount to infringement of the right, by the respondent and that therefore there is a direct nexus to the limited relief of mandamus sought for in the writ petition and in such circumstances, writ petition ought to have been entertained.

8. Inviting the attention of this court to the certificate dated 03.02.2016 of the Chartered Accountant, Madras, learned counsel for the petitioner/appellant submitted that the books of accounts of M/s.Tecpro Systems Limited are maintained at their Chennai office for Material Handling division and at their Pune office for Ash handling division and TDS is deducted from the respective locations. According to him, from the Financial Year 2014-2015 onwards, most TDS payments are made out of bank accounts maintained at Chennai. A statutory audit of the company is carried out at Chennai

from the Financial Year 2013-2014 and in the light of the above, he contended that part of cause of action has arisen within the territorial jurisdiction of this court.

9. Learned counsel for the petitioner/appellant further submitted that the coercive enforcement measures would be directly taken only against Chennai premises, where the bank accounts are maintained, assets and properties are situated within the jurisdiction of this court and not against their Delhi office CES and before when a legal right is infringed, by a coercive action, writ petition is maintainable. Placing reliance on *Om Prakash Srivastava vs. Union of India* and *Anr.* reported in (2006) 6 SCC 207, *Union of India vs. Adani Exports* reported in (2002) 1 SCC 567, *Oil and Natural Gas Commission vs. Utpal Kumar Basu & Ors.* reported in (1994) 4 SCC 711, learned counsel for the petitioner/appellant further submitted that even if a part of or fraction of cause of action arises within the territorial jurisdiction of this court, writ is maintainable. He also submitted that the seat of the respondent is irrelevant to entertain a writ petition.

10. Placing reliance on *Union of India and others vs. Adhani Export* and another reported in (2002) 1 SCC 567, it is the submission of the learned counsel for the appellant that when specific averments have been made in the affidavit supporting the prayer for mandamus, writ court ought to have decided the issue of territorial jurisdiction de hors the truth or otherwise of the averments made in the affidavit. In this context, he also invited attention of this court to the additional affidavit filed by writ petitioner wherein, the petitioner has stated that the company has been functioning in Chennai since 2002 onwards and established a full-fledged Corporate office at Siruseri IT Park, where 70% of the permanent employees are working. He has also stated that 90% of the payments are processed only at Chennai, as a result of which, books of accounts are maintained at Chennai. TDS deduction is also made at Chennai. Therefore, a strong nexus has been established between Chennai office and the lis relating to the subject matter in the notice dated 20.01.2016 of alleged non-deposit of TDS amount of Rs.17,30,74,191/- for the assessment years 2013-14, 2014-15 and 2015-16 respectively.

11. It is also his contention that though the High Court of Delhi has jurisdiction to maintain a writ petition, it cannot be contended that the court at Madras has no jurisdiction for the reason that the infringement of right may take place or threat thereof. Considering the fact that entire records and assets are within the jurisdiction of this court, a writ is maintainable and according to him, while dealing with the maintainability of writ petitions, courts have to consider principle of jurisdictional equilibrium and if done, the instant writ petition is maintainable. It is also his submission that the petitioner/appellant has not sought for

any writ of certiorari, which may give rise to a plea for opposing the maintainability, whereas, the prayer sought for is for a mandamus directing the respondent, not to take any coercive measures, as majority of the operations are carried out only at Chennai and if enforcement proceedings are allowed to continue, it would have a direct impact on the Chennai premises, which is within the jurisdiction of this court and hence the writ petition is maintainable.

12. Per contra, Mr.J.Narayanasamy, learned counsel for the respondent submitted that the petitioner/appellant is an assessee and allotted a TAN number at Delhi. The writ petitioner had admitted that the principal place of business is at Delhi and accordingly, TAN No.DELT03519F has been allotted. Survey has been conducted at the principal office at Delhi and it was found that the petitioner/appellant had deducted at source with respect to certain payments and not paid over to the company. He also submitted that consequent to the survey, a demand notice dated 20.01.2016 was sent to the petitioner/appellant.

13. Learned counsel for the respondent further submitted that in response to the demand notice, the petitioner/appellant, has sent a reply. According to him, mere existence of an office and operations at Chennai would not give rise to a cause of action for filing a writ petition within the jurisdiction of this court, as the assessee itself had admitted the place of principal office and place of business at Delhi and accordingly TAN number has been allotted at Delhi. In such circumstances, de hors the above, petitioner/appellant cannot be permitted to contend that this court has jurisdiction to entertain a writ petition. Survey and issue of demand notice has been done from Delhi. According to him, Kusum Ingots & Alloys Ltd. v. Union of India and another reported in 2004 (6) SCC 254 would lend support to the case of the respondent. He stated that, if at all the petitioner/appellant is aggrieved over the order, writ petition, challenging the same can be filed only within whose jurisdiction, the cause of action arose.

14. For the above said reasons, he submitted that there is no error in the order impugned before this court and prayed for dismissal of the writ appeal.

15. Heard the learned counsel for the parties and perused the materials on record.

16. Fact that the writ petitioner M/s.Tecpro System Limited, 202-204, Pacific Square Mall, JMD Campus, Sector-15, Gurgaon, has been issued with Tan number at Delhi viz.TANDEL03519F has not been disputed. Survey operation under Section 133-A of the Income Tax Act, 1961 has been conducted on 20.01.2016 at No.202-204, Pacific Square Mall, JMD Campus, Sector-15, Gurgaon, and the same has also not been

disputed. Proceedings of the Assistant Commissioner, Income Tax, New Delhi dated 20.01.2016 reads as follows:

" To

The Principal Officer,
M/s.Tecpro System Ltd.,
202-204, Pacific Square Mall
JMD Campus
Sector-15, Gurgaon

Sub:- Assessee deemed to be an assessee in default u/s 201 of the Income Tax Act, 1961- reg.

Please refer the above

In this regard, it has been observed that during the course of survey operation u/s 133A of the Income Tax Act, 1961 on 20.01.2016 in your case at the above mentioned premises, you have deducted TDS amount of Rs.17,43,74,191/- for the F.Y.2013-14, F.Y.2014-15 and F.Y.2015-16, which has not been deposited into the Govt A/c till date.

In view of the same, you are hereby held as an assessee deemed to be in default u/s 201 of the Income Tax Act, 1961. Therefore, you are required to discharge this TDS liability of Rs.17,13,74,191/- and interest of Rs.5,31,87,872/- (approx.) u/s 201(1A) of Income Tax Act, totalling to Rs.22,45,62,063/- immediately.

In case of non-compliance recovery proceedings as per the Income Tax Act, 1961 shall be initiated accordingly."

"Summon to Assessee/witness u/s 131 of
Income Tax Act, 1961

To,

The Principal Officer,
M/s.Tecpro System Ltd.,
202-204, Pacific Square Mall
JMD Campus
Sector-15, Gurgaon

Sir/Madam,

Whereas, your attendance is required in connection with the assessment proceedings under the Income Tax Act, 1961 in the case of M/s.Tecpro System Limited, 202-204, Pacific Square Mall, JMD Campus, Sector-15, Gurgaon. You are hereby required personally to attend my

office at Room No.307, 3rd Floor, Aayakar Bhawan, Laxmi Nagar, Delhi - 110092 on 28.01.2016 at 11.30 a.m, thereto give evidence and/or to produce either personally or through an authorised representative the books of accounts or other documents specified below and not to depart until you receive my permission to do so.

Without prejudice to the provision so of any other law for the time being in force, if you intentionally omit to so attend and give evidence or to produce the books of accounts/or documents, a penalty for a sum, which shall not be less than Rs.10,000/- (Rupees Ten Thousand only) but which may be extended to Rs.10,000/- (Rupees Ten Thousand only) for each such default or failure, shall be imposed upon you under Section 272A(1) (c) of the Income Tax Act, 1961."

17. In response to the above, the petitioner/appellant has sent an e-mail dated 20.01.2016, which is extracted here under:

"Dear sirs/Madam,
Kind Attn: Ms.Sudha Yadav
Asst. Commr. IT

With reference to your visit to our Gurgaon office today on 20.01.2016 and subsequent discussions had with you, as desired by you the documents were submitted to you and the left out documents if any shall be sent to you shortly.

As regards the payment plan against TDS liability, we would like to bring your kind notice that considering the present financial situation being faced by the company, we are not in a position to remit the money immediately, as we are not getting any payment from the customers. However, we will be giving the cheque of Rs.25.00 lacs which may please be withheld for 3/4 days and by tis time we shall be sending the amount by RTGS and shall take back the cheque of Rs.25.00 lacs.

As regards the balance payment plan, it may kindly be noted that considering the present cash flow problem faced by the company, the proposal for balance payment needs to be discussed with all respective departments/customers and shall revert back to you in 10/15 days.

Alternatively, we shall also propose certain customers from where we have to get major payment and the liability against TDS amount may please be

collected from our customers directly on our behalf. As this issue needs to be discussed with our Project/Tech. Deptt., we request you to kindly bear with us and we shall resolve the pending liability as early as possible.

It may kindly be noted that our company has been registered under Sick, Industrial Companies (Special Provisions) Act, 1985 and the same was communicated to you vide our letter TSL/BIFR/15-16/ dated 21.09.2015.

With due respect, we would also like to highlight over here that during the course of operation of the business, our various customers have deducted TDS to the extent of Rs.13.83 Cr. during the period 13-14 & 14-15 and the break up of the amount is as under:

Financial Year 13-14	Rs.8,05,92,722/-
Financial Year 14-15	Rs.5,78,00,334/-
Total	Rs.13,83,93,056/-

For the Financial year 15-16, for the period up to December, sizable amount has been deducted by the customers and the details is being obtained. It is also evident from the records that the company has incurred huge loss during the last two financial year and amount so deducted and deposited by our various customers shall be applied for refund as per the provisions of the IT Act. In view of the above facts, we would request you not to initiate any action or proceedings.

Thanking you,
For Tecpro Systems Limited

S.Venugopalan"

18. Reading of the reply by mail dated 20.01.2016 shows that the petitioner/appellant has admitted that they would give a cheque for Rs.25.00 lacs, which may be withheld for 3/4 days and by that time, they would send the amount by RTGS and take back the cheque. They have also expressed cash flow problem. Registration of the company under the Sick Industrial Companies (Special Provisions) Act, 1955 and the communication of BIFR has been brought to the notice of the Assistant Commissioner of Income Tax, New Delhi. On the above facts, let us consider the decisions relied on by the learned counsel for the rival parties.

19. In Union of India and others vs. Adhani Export and another reported in (2002) 1 SCC 567, the principal contenteion involved was to the entitlement of the respondents therein, to the benefit of the Passport scheme found in paragraph 54 of the Import Export Policy introduced by the

Government of India, in relation to certain credits to be given on export of shrimps. High Court of Gujarat at Ahmedabad, granted reliefs. On appeal to the Hon'ble Supreme Court, it was contended by Union of India/appellants that High Court at Ahmedabad had no jurisdiction to entertain special civil applications, as no part of cause of action arose within the territorial jurisdiction of High Court at Ahmedabad. On the facts and circumstances, the High Court observed that the respondents therein carried on business of export and import from Ahmedabad. Orders for export and import placed from an executor from Ahmedabad. The documents and payments for export and import were sent/made at Ahmedabad. The credit of duty claimed in respect of exports were received at Ahmedabad and payments were also received at Ahmedabad. Non-granting and denial of utilisation of the credit in the passbook would affect the business of the petitioners at Ahmedabad, respondents 1 to 3 in the civil applications have Regional offices at Ahmedabad, substantial cause of action has arisen within the jurisdiction of the said court. The objection of Union of India/appellant before the Apex court was that passport licence was issued at Chennai, the designated authority was at Chennai, the transaction concerned was made from Chennai port and therefore the cause of action arose at Chennai. On the above facts and circumstances, the Hon'ble Apex court in Adhani Export Limited's case at paragraph Nos.16 and 17 held as follows:

"16. It is clear from the above constitutional provision that a High Court can exercise the jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises. This provision in the Constitution has come up for consideration in a number of cases before this Court. In this regard, it would suffice for us to refer to the observations of this court in the case of Oil and Natural Gas Commission v. Utpal Kumar Basu (SCC at p.713) wherein it was held:

"Under Article 226 a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action, wholly or in part, had arisen within the territories in relation to which it exercises jurisdiction, notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories. The expression 'cause of action' means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the court. Therefore, in determining the objection of lack of

territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. Thus the question of territorial jurisdiction must be decided on the facts pleaded in the petition, the truth or otherwise of the averments made in the petition being immaterial."

17. It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the court to decide a dispute which has, at least in part, arisen within its jurisdiction. It is clear from the above judgment that each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. If we apply this principle then we see that none of the facts pleaded in para 16 of the petition, in our opinion, falls into the category of bundle facts which would constitute a cause of action giving rise to a dispute which could confer territorial jurisdiction on the courts at Ahmedabad."

20. In *Kusum Ingots & Alloys Ltd. vs. Union of India and Another* reported in (2004) 6 SCC 254, the appellant company was registered under the Companies Act with the Registered office at Mumbai. It obtained a loan from Bhopal branch of State Bank of India. The bank issued notice for repayment. Questioning the vires of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, a writ petition was filed, which was dismissed on the ground of lack of jurisdiction. At paragraph 18, the Apex Court held as follows:

"18. The facts pleaded in the writ petition must have a nexus on the basis whereof a prayer can be granted. Those facts which have nothing to do with the prayer made therein cannot be said to give rise to a cause of action which would confer jurisdiction on the court."

However, at paragraph 30, the Apex Court observed as follows:

"30. We must, however, remind ourselves 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."

21. The above judgment has been decided on the principle that parliamentary legislation, which receives the assent of the President and is published in the official gazette unless specifically included, will apply to the entire territory of India. If passing of legislation gives rise to an actual action, a writ petition, questioning the constitutionality thereof can be filed in any High court of the country. It is not so done because the cause of action will arise only when the provisions of the Act or some of them, which were implemented, shall give rise to civil or evil consequences. In such view of the matter, writ petition filed in the High Court of Delhi was held to be maintainable. At the same time, at paragraph No.30 of the Judgment, the Hon'ble Apex Court has also cautioned forum convenience as here under:

"30. We must, however, remind ourselves 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."

22. In Nawal Kishore Sharma vs. Union of India and others reported in (2014) 9 SCC 329, the appellant therein was suffering from serious heart muscle disease and breathing problem, which forced him to go back to his native place in Bihar, wherefrom, he had been making all correspondence with regard to his disability, compensation etc. Earlier he was declared as permanently unfit by authority of the respondent Corporation at Mumbai. Appellant therein has approached Patna High Court under Article 226 of the Constitution of India and claimed various benefits including 100% disability compensation. Maintainability of the writ petition was one of the objections raised by the respondent, on the ground that no cause of action or even a fraction of cause of action arose within the jurisdiction of the Patna High Court. The appellant before the Hon'ble Apex Court contended that he discharged his duty outside the territory of State of Bihar. One of the facts pleaded by the appellant before the Apex Court was that he was a permanent resident of Bihar, asserted his rights in the State of Bihar and all the communications

with respect to rejection of his claims were made at his residential address in the State of Bihar. Thus on the above facts and circumstances and taking note of the insertion in clause 1A to Article 226 of the Constitution of India (XV Amendment Act 1963) and subsequently renumbered as Clause 2 by the Constitution (XLII Amendment Act, 1976), the Hon'ble Apex court has observed as hereunder:

"On a plain reading of the amended provisions in Clause (2), it is clear that now High Court can issue a writ when the person or the authority against whom the writ is issued is located outside its territorial jurisdiction, if the cause of action wholly or partially arises within the court's territorial jurisdiction. Cause of action for the purpose of Article 226 (2) of the Constitution, for all intent and purpose must be assigned the same meaning as envisaged under Section 20(c) of the Code of Civil Procedure. The expression cause of action has not been defined either in the Code of Civil Procedure or the Constitution. Cause of action is bundle of facts which is necessary for the plaintiff to prove in the suit before he can succeed.

In Nawal Kishore Sharma's case the Apex Court has taken note of the judgment in Kusum Ingots & Alloys Ltd. vs. Union of India and Another, reported in (2004) 6 SCC 254, wherein at paragraph 10 the Apex Court held as follows:

"keeping in view the expressions used in clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter."

23. In Raheja Universal Ltd. vs. NRC Limited and others reported in (2012) 4 SCC 148, at paragraph 56, the Hon'ble Apex Court held as follows:

"BIFR has been vested with wide powers and, being an expert body, is required to perform duties and functions of wide-ranged nature. If one looks into the legislative intent in relation to a sick industrial company, it is obvious that BIFR has to first make an effort to provide an opportunity to the sick industrial company to make its net worth exceed the accumulated losses within a reasonable time, failing which BIFR has to formulate a scheme for revival of the company, even by providing financial assistance in cases wherein BIFR in its wisdom deems it necessary and finally only when both these options fail and the public interest so requires, BIFR may recommend winding up of the sick industrial company. So long

as the scheme is under consideration before BIFR or it is being implemented after being sanctioned and is made operational from a given date, it is the legislative intent that such scheme should not be interjected by any other judicial process or frustrated by the impediments created by third parties and even by the management of the sick industrial company, in relation to the assets of the company."

In the above case, the Apex court held that the claim for recovery of money, could lie or be proceeded with only after express consent of the BIFR. There cannot be quarrel over the said position of law. But the question to be decided is whether a writ would lie, within the jurisdiction of this court.

24. According to the learned counsel for the petitioner, recourse that the learned Single Judge ought to have considered is whether the petitioner has a right to adjudicate his case before BIFR and in the light of the dictum in Raheja Universal Ltd's case, the revenue demand could be allowed pending BIFR and in such circumstances, if coercive steps are taken the assessee's right is likely to be infringed and therefore, when attention of BIFR proceedings was brought to the notice, the writ court ought to have entertained the writ petition, as the properties/assets are in Chennai and thus a part of cause of action has arisen within the jurisdiction of this court. It is the submission of the learned counsel that when there is a threat of infringement of a right, and to that extent facts are pleaded in the petition, as to how cause of action has arisen for filing the writ petition within the jurisdiction of this court, the writ court has failed to advert to the same.

25. In Mansarover Commercial Pvt. Ltd. & Anr. vs. Assistant Commissioner of Income Tax & Ors. reported in 1994 (209) ITR 0715 the registered Office of the company was in Gangtok, Sikkim they are carrying on business as Commission Agents of Cardamon and other agricultural produce, in Sikkim. It had no office or agent outside Sikkim. Income Tax authorities at Delhi issued notices alleging non-compliance of Section 282 of Income Tax Act, 1961. Notices were served at Delhi. Assessment proceedings were completed. When the same were questioned, one of the contentions of the Revenue was that the role of cause of action has arisen within the jurisdiction of the Delhi High Court and no part of cause of action arose at Sikkim High Court. The above reported judgment, relied on by the learned counsel for the department squarely applies to the facts on hand.

26. On the facts and circumstances stated supra, a Hon'ble Division Bench of the Sikkim High Court, held that the notices issued by the authorities stationed at New Delhi and

were served in New Delhi. By whatever, the petitioners felt aggrieved, took place in New Delhi. So, no part of cause of action arose in Sikkim. The mere fact that the companies have Registered office in Sikkim does not confer jurisdiction on this court.

27. In *Rajendran Chingaravelu vs. R.K. Mishra*, Additional Commissioner of Income Tax and Others, reported in (2010) 1 SCC 457, the appellant therein, who wanted to buy a property at Chennai, was carrying cash at Hyderabad Airport, he disclosed to the security personnel who checked baggage that he was carrying cash along with Bank Certificate certifying the source and withdrawals. At Chennai, the Income Tax Investigation Wing seized the cash under mahazar. After investigation, money was returned to him, but without interest. He filed a writ petition in the court of Andhra Pradesh seeking action against the Income Tax officials and the newspapers, claiming compensation and for other reliefs. Objection raised before Andhra Pradesh High Court was that seizure took place at Chennai, and therefore writ cannot be maintained at Hyderabad. On maintainability, writ petition was dismissed. The matter went upto the Hon'ble Supreme Court and on the facts and circumstances, at paragraphs 9 and 10, the Hon'ble Apex Court held as follows:

"9. The first question that arises for consideration is whether the Andhra Pradesh High Court was justified in holding that as the seizure took place at Chennai (Tamil Nadu), the appellant could not maintain the writ petition before it. The High Court did not examine whether any part of cause of action arose in Andhra Pradesh. Clause (2) of Article 226 makes it clear that the High Court exercising jurisdiction in relation to the territories within which the cause of action arises wholly or in part, will have jurisdiction. This would mean that even if a small fraction of the cause of action (that bundle of facts which gives a petitioner, a right to sue) accrued within the territories of Andhra Pradesh, the High Court of that State will have jurisdiction.

10. In this case, the genesis for the entire episode of search, seizure and detention was the action of the security/intelligence officials at Hyderabad Airport (in Andhra Pradesh) who having inspected the cash carried by him, altered their counterparts at Chennai Airport that the appellant was carrying a huge sum of money, and required to be intercepted and questioned. A part of the cause of action therefore clearly arose in Hyderabad. It is also to be noticed that the consequential income tax

proceedings against him, which he challenged in the writ petition, were also initiated at Hyderabad. Therefore, his writ petition ought not to have been rejected on the ground of want of jurisdiction."

From the above judgment, it could be deduced that though seizure was effected in Chennai, when the proceedings under the Income Tax Act were initiated at Hyderabad, the Hon'ble Apex Court held that writ petition is maintainable within the jurisdiction of the Andhra Pradesh High Court. It could be seen from the above judgment of the Apex Court that though the actual seizure was done at Chennai, the proceedings under the Income Tax Act, were taken only within the jurisdiction of the court, at Hyderabad, and thus the Hon'ble Apex Court held that the High Court of Andhra Pradesh, alone has jurisdiction.

28. In *Rajkumar Mangala vs. Chairman, Central Board of Direct Taxes and others* reported in 1998 234 ITR 0113, the petitioner therein was aggrieved over three orders of assessment and rejection of an application under Section 154 of the Income Tax Act, 1961. All orders having been passed by the Assistant CIT, Investigation Circle, Gurgaon and three appellate orders passed by the Commissioner of Income Tax (Appeals), Haryana. The facts of the case are that on 20th November 1998, there was a search at the petitioner's premises situated at Gurgaon. Notices were issued under Section 142(1) of the Income Tax Act. Assessment proceedings were concluded. He filed writ petitions in the High Court of Delhi, which posed a question as to how the jurisdiction of the High Court was invoked for setting aside the orders passed by the authorities of the Income Tax department situated within the State of Haryana. The contention of the petitioner therein was that he was canvassing his fundamental right and by virtue of Article 226(2) of the Constitution of India, High Court of Delhi had jurisdiction, as the cause of action had arisen within the territorial jurisdiction of the High Court, though the authorities were situated outside the jurisdiction of the High Court. The question posed before the court was as to whether any cause of action has arisen within the territorial jurisdiction of the Delhi High Court. After considering the decision of the Hon'ble Supreme Court in *State of Rajasthan vs. Swaika Properties* reported in AIR 1985 SC 1289, *U.P. Rashtriya Chini Mill Adhikari Parishad vs. State of U.P.* reported in (1995) 4 SCC 738, the Hon'ble Division Bench of the Delhi High Court held that so far as the impugned order of the IT Authority situate within the State of Haryana is concerned, no cause of action has arisen to the petitioner, within the territorial jurisdiction of the High Court of Delhi. Thus the writ petition filed was dismissed.

29. In the case on hand, though the petitioner has contended that the right under BIFR is likely to be infringed and that there is a threat if the respondent is not restrained

by a writ of mandamus sought for, this court is not inclined to accept the said contentions for the reason that what is sought to be achieved indirectly is to nullify the effect of the order dated 20.01.2016 of the Assistant Commissioner of Income Tax, TDS, New Delhi, without there being any challenge to the same. It is well settled that what cannot be done directly, cannot be done indirectly, or permitted to be done. Averments made, are nothing but challenge to the proceedings of the Assistant Commissioner of Income Tax, New Delhi on the grounds of infringement of right or threat thereof. Thus in the normal course, if the appellant had to challenge the orders, the same would have been done, at New Delhi, which the appellant, in a way has also admitted that, if there was any challenge to the orders and prayer made for certiorari, an objection as to maintainability of the writ petition on territorial jurisdiction, can be made. No materials have been placed before this court as to whether order dated 20.01.2016 has been challenged before the competent authority under the Income Tax Act or the court.

30. Admittedly, the office of M/s.Tecpro Systems Ltd is located at Door No.202-204, Pacific Square Mall, JMD Campus, Sector-15, Gurgaon and the petitioner has also opted to register only as an assessee with the Assistant Commissioner of Income Tax Circle, New Delhi and obtained TAN Number DELT05319F. Admittedly survey operations have been conducted in the above mentioned premises on 20.01.2016 under Section 133-A of the Income Tax Act, 1961 and that the Assistant Commissioner of Income Tax, Circle 76(1), TDS-2, New Delhi, has found that the petitioner/appellant has deducted TDS amount of Rs.17,13,74,191/- for the financial years 2013-14, 2014-15 and 2015-16 respectively, and deposited to Government Account. There is also categorical admission by the assessee that on account of financial situation faced by the company, they were not in a position to remit the money immediately, as they were not getting any payment from their customers vide e-mail dated 20.01.2016. Petitioner/appellant has stated that they would be giving a cheque of Rs.25.00 Lakhs, which may be withheld for 3 or 4 days and at that time, they would send the amount by RTGS and take back the cheque of Rs.25.00 Lakhs. Though at this juncture, when the maintainability of the writ petition has to be decided on the aspect of territorial jurisdiction, there is no need to record any finding on the aspect as to whether the petitioner/appellant, has committed any violation of the provisions of the Income Tax Act and thus recovery proceeding should be initiated or not, but there is an admission on the part of the petitioner/appellant.

31. Article 226 of the Constitution of India, deals with the powers of the High Court, to issue certain writs and the said Article is extracted hereunder:

"(1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises

jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including (writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Governments, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories"

32. Reading of Sub-Article (1) of Article 226 indicates that every High Court has the power throughout the territories in relation to which it exercise jurisdiction namely, to issue any person or authority, including in appropriate cases any Government within those territories directions, orders or writ for the enforcement of any rights conferred by Part III and for any other purpose. Under sub-Article (2) of Article 226, High Court can exercise its power conferred by clause (1) if it is shown that cause of action wholly or in part has arisen within the territory within which it exercises jurisdiction notwithstanding the seat such Government or authority or residence of such person is not within those territories. Plain reading of Article 226 of the Constitution, it is manifestly clear that High Court can exercise power to issue directions, order or writs for the enforcement of any fundamental rights conferred by Part III of the Constitution or for any other purposes, if the cause of action wholly or partly has arisen within the territories in relation to which it exercises jurisdiction, notwithstanding that the seat of the Government or authority or residence of such person against whom direction or writ is issued.

33. In *Om Prakash Srivastava v. Union of India* and another reported in (2006) 6 SCC 207, the expression "cause of action" explained by the Hon'ble Apex Court, is extracted hereunder:

"14. The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more basis of suing; a factual situation that entitles one person to obtain a remedy in court from another person (see Black's Law Dictionary). In Stroud's judicial Dictionary a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which if traversed, the

plaintiff must prove in order to obtain judgment. In Words and Phrases (4th Edn.) the meaning attributed to the phrase "cause of action" in common legal parlance is existent of those facts, which give a party a right to judicial interference on his behalf. (See Navinchandra N. Majithia vs. State of Maharashtra)."

34. While considering the issue, relating to the maintainability of the writ petition, on territorial jurisdiction, Courts have to examine, as to whether, the petitioner has established that a legal right claimed by him, has been infringed or threatened to be infringed by the respondent. An infringement may take place by causing him the actual injury or threat thereof, but on the facts and circumstances of the case, the issue to be considered, is whether, the petitioner/appellant has established a legal right or there is any cause or any material, to substantiate that such right has been infringed or a threat thereof, within the territorial jurisdiction of this Court.

35. Cause of action for filing the present writ petition, for a Mandamus, directing the Assistant Commissioner of Income Tax, New Delhi, respondent herein, not to take any coercive or any other steps against the appellant, which is under the Board for Industrial and Financial Reconstruction (BIFR), as per the provisions of the Sick Industrial Companies Act, 1985 (SICA), by invoking the provisions of the Income Tax Act, 1961, pursuant to a proceeding, dated 20.01.2016, issued by the respondent, arises out of a survey operation, under Section 133A of the Income Tax Act, 1961, on 20.01.2016, conducted at the principal office, at Delhi and consequentially, the appellant has been informed to pay TDS deducted, failing which, recovery proceedings would be initiated by the competent authority at New Delhi. The petitioner/appellant may have a right to pursue his remedy before BIFR, at New Delhi. But on the facts and circumstances of this case, no part of cause of action has arisen, either wholly or in part, within the territorial jurisdiction of this Court, so as to enable this Court to examine, as to whether, the petitioner's legal right has been infringed.

36. Insofar as the action taken by the Assistant Commissioner of Income Tax, New Delhi, respondent herein, the same can be tested only by the Court, within the territorial jurisdiction, where cause of action has arisen. The actual lis or dispute involved, in the instant case, is with reference to the finding recorded during the survey operation, under Section 133A of the Income Tax Act, 1961, on 20.01.2016, the cause of action at Delhi, where, it has been found that the petitioner/appellant has deducted TDS amount of Rs.17,13,74,191/- for the financial years 2013-14, 2014-15 and 2015-16 respectively and not deposited to the Government Account. The petitioner/appellant has been held as an assessee in default under Section 201 of the Income Tax Act, 1961, at

Delhi and called upon to discharge the TDS liability. The petitioner/appellant has been only informed that in case of non-compliance, recovery proceedings would be initiated, as per the provisions of the Income-Tax Act.

37. The petitioner/appellant has been directed to attend the Office at New Delhi, in person and to give evidence or to produce books of accounts/documents. The appellant, in their E-Mail, dated 20.01.2016 has also stated that discussions were held and all the documents upto that stage were submitted. The appellant, in their reply, has also stated that they would resolve the pending liability, as early as possible.

38. No material has been placed before this Court, as to whether, the appellant has given a cheque for Rs.25,00,000/-, as stated in E-Mail, dated 20.01.2016 and thereafter, sent the amount, by RTGS. There are no materials, to indicate, as to whether, the respondent has taken any further proceedings, after 20.01.2016, notwithstanding the pendency of the proceedings, under the SICA Act, which is stated to have been communicated on 21.09.2015, which according to the appellant, is an infringement of right, available under the provisions of the SICA Act and that no tax could be coercively collected. For the abovesaid reasons, the actual injury or alleged threat to the infringement of right also, is not substantiated.

39. Each and every fact pleaded in the writ petition may not be relevant, but only such material facts, which have a nexus or relevance to the lis, that is involved in a case, give rise to cause of action, to decide, as to why, the said facts confer territorial jurisdiction on the Court. In *Alchemist Limited v. State Bank Of Sikkim* reported in JT 2007 (4) 474, the Hon'ble Supreme Court held as follows:

"From the aforesaid discussion and keeping in view the ratio laid down in catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the petitionerappellant, would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a material, essential, or integral part of the cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the Court, the Court would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a 'part of cause of action', nothing less than than."

40. Order of the learned single Judge does not call for any interference. This Court also taken note of the observation of the Hon'ble Supreme Court, at Paragraph 30 of the judgment in *Kusum Ingot's* case. On the facts and circumstances of this case, we are not inclined to accept the contention of the appellant that the Courts should on the doctrine of jurisdictional equilibrium.

41. In the light of the above discussion and decisions, this Court is of the considered view that the appellant has not made out a well considered case, for entertaining a writ petition, within the jurisdiction of this Court.

42. In the result, writ appeal is dismissed. However, there shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The Assistant Commissioner of Income Tax,
Union of India, R.No.307, 3rd Floor,
Floor Aayakar Bhavan, Laxmi Nagar,
New Delhi, 110 092.

+ 2 ccs to M/s. Nithyaesh & Vaibhav, Advocate Sr.40922
+ 1 cc to Mr.J. Narayanaswamy, Advocate Sr.41022

W.A.No.250 of 2016

GR(CO)
Eu 08.08.16

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