IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAISWAMY

W.P.No.3611 of 2016
and
WMP No.2975 of 2016

Tecpro Systems Limited,
represented by its
Authorized Signatory/Principal Officer
Mr.Venugopalan,
Tecpro Towers, 11-A17,
5th Cross Road,
SIPCOT IT PARK,
Siruseri, Chennai 603 103. ... Petitioner

Vs.

The Union of India,
represented by the
Office of the Assistant Commissioner
of Income Tax,
R.No.307, 3rd Floor,
Aayakar Bhawan,
Laxmi Nagar,
New Delhi – 110 092. ... Respondent

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 20.01.2016 issued by the respondent to the petitioner herein, pending disposal of the BIFR proceedings.

For Petitioner : Mr.P.S.Raman Senior Counsel for M/s. Nithyaesh and Vaibhav

For Respondent : Mr.J.Narayanaswamy, Standing counsel for IT

O R D E R

The petitioner has filed the above writ petition to issue a writ of mandamus directing the respondent not to take any coercive or any other steps against the petitioner company 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 Act, 1961, pursuant to the order dated 20.01.2016 issued by the respondent to the petitioner pending disposal of the BIFR proceedings.

2. Mr.J.Narayanaswamy, the learned counsel appearing for the respondent, submitted that the writ petition filed as against the respondent, namely, "The Union of India" represented by the office of the Assistant Commissioner of Income Tax, R.No.307, 3rd Floor, Aayakar Bhawan, Laxmi Nagar, New Delhi - 110 092, is not maintainable before this Court for the reason that this Court lacks territorial jurisdiction to entertain the writ petition filed as against the respondent.

3. Mr.P.S.Raman, the learned senior counsel appearing for the petitioner, submitted that the petitioner is having its office at Chennai and that it is deducting TDS at Chennai, therefore, a part of the cause of action also arise at Chennai and hence, this Court has got territorial jurisdiction to entertain the writ petition. In support of his contention, the learned senior counsel relied upon the following judgments:

(i) 2006 (6) SCC 207 [Om Prakash Srivastava v. Union of India and another] wherein the Honourable Supreme Court held that “the High Court will have jurisdiction if cause of action wholly or in part arises within the territorial limits of its jurisdiction even though the seat of Government or authority or residence of person against whom the direction, order or writ is sought to be issued is not within the said territory. Further, the Honourable Supreme Court held that the writ petitioner has to establish that a legal right claimed by him has prima facie been infringed or is threatened to be infringed by the respondent within the territorial limits of the High Court's jurisdiction”.

(ii) 2002 (1) SCC 567 [Union of India and others v. Adani Exports Ltd. and another], wherein the Honourable Supreme Court held as follows:

> “15. Article 226(2) of the Constitution of India which speaks of the territorial jurisdiction of the High Court reads:
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> > "226. (2) 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."

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 [1994 (4) SCC 711] (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."

18. As we have noticed earlier, the fact that the respondents are carrying on the business of export and import or that they are receiving the export and import orders at Ahmedabad or that their documents and payments for exports and imports are sent/made at Ahmedabad, has no connection whatsoever with the dispute that is involved in the applications. Similarly, the fact that the credit of duty claimed in respect of exports that were made from Chennai were handled by the respondents from Ahmedabad have also no connection whatsoever with the actions of the appellants impugned in the application. The non-granting and denial of credit in the passbook having an ultimate effect, if any, on the business of the respondents at Ahmedabad would not also, in our opinion, give rise to any such cause of action to

a court at Ahmedabad to adjudicate on the actions complained against the appellants."

(iii) 2004 (6) SCC 254 [Kusum Ingots & Alloys Ltd. v. Union of India and another], wherein the Honourable 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 conveniens."

4. Countering the submissions made by the learned senior counsel for the petitioner, Mr.J.Narayanaswamy, the learned counsel appearing for the respondent submitted that the relief sought for in the writ petition itself is pursuant to the order dated 20.01.2016 passed by the respondent at New Delhi. Further, the learned counsel submitted that the relief sought for in the writ petition for the issuance of a writ of mandamus forbearing the respondent not to take any coercive action or any other steps against the petitioner company, which according to the petitioner is located at Chennai, will not confer jurisdiction on this Court to entertain the present writ petition. Further, the learned counsel submitted that the entire assessment records are available only at New Delhi and no document is available at Chennai. That apart, the learned counsel also submitted that since the relief sought for in the writ petition is pursuant to the order dated 20.01.2016 passed by the respondent at New Delhi, only the Delhi High Court shall have the jurisdiction to entertain the writ petition. In support of his contention, the learned counsel relied upon the judgment reported in (1998) 234 ITR 0113 [Raj KUmar Mangla v. Chairman, Central Board of Direct Taxes and others], wherein the Delhi High Court held as follows:

"5. In State of Rajasthan vs. Swaika Properties AIR 1985 SC 1289, their Lordships have held that the cause of action is a bundle of facts which would give the plaintiff a right to relief. Reference may also be had to U.P.Rashtriya Chini Mill Adhikari Parishad vs. State of U.P.(1995) 4 SCC 738. Any and every fact, though relevant, would not necessarily be included in the bundle of essential facts constituting cause of action. We are clearly of the opinion that so far as the impugned orders of the IT authorities situated within the State of Haryana are concerned, no cause of action has arisen to the petitioner within the territorial jurisdiction of the High Court of Delhi."

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.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

gm

To

The Assistant Commissioner of Income Tax,
R.No.307, 3rd Floor,
Aayakar Bhawan,
Laxmi Nagar,
New Delhi - 110 092.

1 cc to M/s. Nithhyaesh and Vaibhav, Advocate, Sr. 10966
1 cc to Mr.T. Narayanaswamy, Advocate, Sr. 10915

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BVR (CO)
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