

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ITA No.194 of 2014 (O&M)
and XOBJC-212-CII of 2014
Date of decision:10.2.2016**

The Commissioner of Income Tax I, Aayakar Bhawan, Surat (Gujarat)

.....Appellant

M/s Balak Capital Private Limited

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

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

Present: Mr. Denesh Goyal, Advocate for the appellant.

Mr. Pankaj Jain, Sr. Advocate with Mr. Divya Suri, Advocate
and Mr. Gaurav Mittal, Advocate for the respondent.

Ajay Kumar Mittal, J.

1. This appeal has been preferred by the appellant-revenue under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 29.5.2009, Annexure A.3 passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (in short, "the Tribunal") in ITA

No.1486(AHD)/2005 for the assessment year 2001-02 claiming following substantial questions of law:-

- “i) Whether on the facts and circumstances of the case, the Appellate Tribunal is right in law in deleting the addition of ₹ 1,67,62,538/- made by the Assessing Officer and confirmed by the Appellate Commissioner on account of unexplained peak credit in the books of account?
- ii) Whether on the facts and circumstances of the case, the Appellate Tribunal is right in law in remitting the issue of addition of ₹ 21,36,131/- on account of suppression of commission income made by the Assessing Officer and confirmed by the Appellate Commissioner to the Assessing Officer for fresh consideration and to decide the issue de novo?
- iii) Whether on the facts and circumstances of the case, the order of the Appellate Tribunal is contrary to the evidence and material on the record of the case and therefore perverse?
- iv) Whether on the facts and circumstances of the case, the order of the Appellate Tribunal is suffering from non application of mind and is unreasonable and arbitrary?”

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The assessee is a private limited company constituted and registered under the provisions of the Companies Act, 1956. It is engaged in financial transactions by issuing cheques against receipt of cash and charging commission. On 31.10.2001, the assessee filed its income tax return for the assessment year 2001-02 declaring total income of ₹ 1,68,226/- which was initially processed under section 143(1) of the Act. The case of the assessee was selected for scrutiny. Notice under section 143(2) of the Act was issued to the assessee. Thereafter notice under section 142(1) of the Act was issued to the assessee

by the Assessing Officer. The assessee through its representative appeared before the Assessing Officer and made submissions. After scrutinizing the material and the details filed by the assessee, the Assessing Officer-Income Tax Officer, Ward 1(1), Surat determined total income of the assessee at ₹ 1,90,66,900/- vide assessment order dated 10.11.2004, Annexure A.1. The Assessing Officer also directed initiation of penalty proceedings under Section 271(1)(c) of the Act. The following additions were made by the Assessing Officer :-

- a) Addition on account of Peak Credit : ₹ 1,67,62,538/-
- b) Addition on account of suppression of commission income ₹ 21,36,131/-

Aggrieved by the order, the assessee filed appeal before the Commissioner of Income tax (Appeals;)-I [CIT(A)] Surat. Vide order dated 30.3.2005, Annexure A.2, the appeal was dismissed. The assessee filed appeal before the Tribunal at Ahmedabad. Later on, since the assessee transferred its head office at Amritsar, the said appeal was transferred to the Income Tax Appellate Tribunal, Amritsar. Vide order dated 29.5.2009, Annexure A.3, the Tribunal at Amritsar partly allowed the appeal deleting addition of ₹ 1,67,62,538/- made by the Assessing Officer on account of unexplained peak credit. However, the Tribunal remanded back the issue of addition on account of suppression of commission income to the Assessing Officer for fresh consideration and to decide the same de novo. Hence the instant appeal before this Court.

3. We have heard learned counsel for the parties.
4. After perusing the averments made in the appeal and hearing learned counsel for the parties, we find that at the time of filing the income

tax return for the assessment year 2001-02, the registered office of the assessee was at Surat. The return was filed on 31.10.2001 at Surat. The assessment order dated 10.11.2004 was passed by the Income Tax Officer, Ward 1(1), Surat. Even the appeal was filed before the CIT(A) at Surat. Further appeal was filed by the assessee before the Tribunal at Ahmedabad. Thereafter when the registered office of the appellant was transferred to Amritsar, only then the appeal was transferred to the Tribunal at Amritsar. Since the initial process of assessment was started at Surat and the final assessment was framed by the Assessing Officer at Surat, this court lacks territorial jurisdiction to adjudicate the matter. In **The Commissioner of Income Tax, Faridabad Vs. M/s Motorola India Ltd. (2010) 326 ITR 156**, 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.

5. In view of the above, this court has no territorial jurisdiction to adjudicate upon the lis over an order passed by the Assessing Officer, i.e. Income Tax Officer, Ward 1(1), at Surat. Accordingly, the complete paper book of appeal including application for condonation of delay is returned to the appellant-revenue for filing before the competent court of jurisdiction in accordance with law. With regard to the cross objections, learned counsel for the respondent submits that in view of the return of the appeal, the cross objections have been rendered infructuous and be disposed of as such. Ordered accordingly.

(Ajay Kumar Mittal)
Judge

February 10, 2016
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(Raj Rahul Garg)
Judge