

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

**ITA No.327 of 2015 (O&M)
Date of decision:3.3.2016**

The Commissioner of Income Tax (Exemption), Chandigarh

.....Appellant

The Tibetan Children's Village, Dal Lake, Dharamshala Cantt. (HP).

.....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.

Ajay Kumar Mittal, J.

1. This order shall dispose of ITA Nos.327, 333, 334 and 395 of 2015 as according to the learned counsel for the appellant, the issue involved in all these appeals is identical. However, the facts are being extracted from ITA No.327 of 2015.

2. ITA No.327 of 2015 has been preferred by the appellant-

revenue under Section 260A of the Income Tax Act, 1961 (in short, “the Act”) against the order dated 6.2.2015, Annexure A.3 passed by the Income Tax Appellate Tribunal, Chandigarh Bench, 'B', Chandigarh (in short, “the Tribunal”) in ITA No.601/Chd/2012 for the assessment year 2008-09 claiming following substantial questions of law:-

“1. Whether in the facts and circumstances of the case, Hon'ble ITAT has erred in both law and fact in allowing exemption under section 12 of the Act to the assessee by following the order of learned CIT(A), Shimla?

2. Whether in the facts and circumstances of the case, Hon'ble ITAT has erred in holding that specific purpose donations are voluntary contributions in the hands of the assessee for charitable purposes under section 12 of the Act?

3. Whether in the instant case, the Hon'ble ITAT is right in ignoring the judicial pronouncement in the case *M/s R.B.Shree Ram Religious and Charitable Trust vs. CIT, Nagpur* (1998) 99 Taxman 318 (SC) which hits to specific purpose of donations and following other jurisdictional pronouncement (supra) which is irrelevant to the instant case?”

3. A few facts relevant for the decision of the controversy involved as available on the record of ITA No.327 of 2015 may be noticed. The respondent-assessee M/s Tibetan Children Village is a charitable institution established for the purpose of carrying out various activities such as providing education, vocational training etc. at different places. Return for the year ending 31.3.2008 declaring income at ₹ Nil was filed on 30.9.2008 after claiming exemption under section 11 of the Act. The return of income was accompanied with audited income and expenditure account and balance sheet etc. The case was processed under Section 143(1) vide order dated 15.1.2010 at the income returned by the assessee. However, the

assessee revised its return again declaring income at nil on 13.4.2009 after claiming exemption under section 11 of the Act. The case was selected for scrutiny. Statutory notice under section 143(2) of the Act was issued to the assessee. Subsequently, notice under section 142(1) of the Act was also issued to the assessee on 29.10.2010. The assessee through its counsel appeared and filed reply. After considering the reply, while the Assessing Officer acknowledged utilization amounting to ₹ 38,29,20,160/- out of the earmarked funds during the year under consideration, he allowed expenditure of ₹ 21,36,235/- only to the appellant adopting the FIFO method clubbing the opening accumulated balance with the funds received during the year. The utilization out of the earmarked funds was 196.90% during the year under consideration and 87.07% out of the other corpus funds. According to the Assessing Officer, there was deficiency in application of fund for charitable purposes during the year under assessment amounting to ₹ 15,47,22,732/- and the same was added back to the taxable income of the assessee vide order dated 27.12.2010, Annexure A.1. Aggrieved by the order, the assessee filed appeal before the Commissioner of Income Tax (Appeals) Shimla [CIT(A)] which was allowed vide order dated 21.3.2012, Annexure A.2. Both the assessee as well as the department filed cross appeals before the Tribunal. Vide order dated 6.2.2015, Annexure A.3, the Tribunal dismissed the appeals of the revenue and disposed of the appeal of the assessee as infructuous. Hence the instant appeals by the revenue.

4. We have heard learned counsel for the appellant-revenue.
5. After perusing the averments made in the appeal and hearing

learned counsel for the appellant-revenue, we find that at the time of filing the income tax return for the assessment year 2008-09, the registered office of the assessee was at Dharamshala. The return was filed on 31.3.2008 at Dharamshala. The assessment order dated 27.12.2010, Annexure A.1 was passed by the Income Tax Officer, Dharamshala, HP. Even the appeal was filed by the assessee before the CIT(A) at Shimla. Since the initial process of assessment was started at Dharmashala and the final assessment was framed by the Assessing Officer at Dharamshala, 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.

6. 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, Dharmashala (HP). Accordingly, the complete paper books of all the appeals are returned to the appellant-revenue for filing before the competent court of jurisdiction in accordance with law.

(Ajay Kumar Mittal)
Judge

March 03, 2016
'gs'

(Raj Rahul Garg)
Judge