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

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DECIDED ON: 21.03.2017

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ITA 171/2016, CM APPL.7435/2016

ITA 172/2016, CM APPL.7436/2016

**PRINCIPAL COMMISSIONER OF INCOME-TAX
(CENTRAL)**

..... Appellant

Through: Mr. Dileep Shivpuri, Sr. Standing
Counsel with Mr. Sanjay Kumar, Jr. Standing
Counsel and Mr. Vikrant A. Maheshwari,
Advocate.

versus

M/S MARIGOLD MERCHANDISE (P) LTD. Respondent

Through: Mr. Ajay Vohra, Sr. Advocate with Ms.
Kavita Jha and Ms. Roopali Gupta, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

S.RAVINDRA BHAT, J.(ORAL)

1. The question of law which the Revenue urges in these two appeals is the true interpretation of Section 260A in the facts and circumstances of the case.
2. Learned senior counsel for the assessee objects to the maintainability of the present appeals in the light of the judgment in *CIT, Delhi (Central)-I v. Sahara India Financial Corporation Ltd.*, (2007) 294 ITR 363 (Delhi).

3. The brief facts are that the assessee was subjected to block assessment after a search by the jurisdictional Assessing Officer, located at Alwar, Rajasthan, who made the order on 28.12.2010. The assessee appealed to the CIT (A), Jaipur, Rajasthan, who rejected it on 27.02.2013. In the meanwhile, on 10.07.2012, the Revenue made an order under Section 127 transferring jurisdiction to the concerned ITO/AO at Faridabad. The assessee's appeal which was preferred in the meanwhile to the ITAT (F) Bench, New Delhi, was allowed on 27.12.2013. The Revenue approached the Punjab & Haryana High Court urging that it had jurisdiction since the ITAT which exercised jurisdiction had assumed it in the light of the order under Section 127.

4. The Punjab & Haryana High Court after noticing these essential facts rejected the Revenue's appeal at the threshold. It was held by that High Court that: -

“6. The issue that arises for consideration is that when the Assessing Officer who passed the assessment order was based at Alwar and the first appeals were adjudicated by the CIT (A), Central Jaipur and the second appeals were adjudicated by the Tribunal at Delhi, whether the appeals under Section 260A of the Act before this Court would be maintainable.

7. The matter is no longer res integra. This Court in Commissioner of Income Tax (Central) Gurgaon v. M/s Parabolic Drugs Ltd. ITA No.49 of 2012 decided on 11.10.2012 following the Division Bench judgment of this Court in The Commissioner of Income Tax, Faridabad v. M/s Motorola India Ltd. ITA No.44 of 2005 decided on 3.10.2007 had held as under: -

“8. Accordingly, the present appeal is dismissed by holding that this Court has no territorial jurisdiction to adjudicate upon the lis over an order passed by the Assessing Officer at New Delhi. Consequently, the appeal is returned to the Revenue for filing before the competent Court of jurisdiction in accordance with law.”

8. In view of the above, the present appeals are dismissed as this Court has no territorial jurisdiction to adjudicate upon the lis over an order passed by the Assessing Officer at Alwar. Consequently, both the appeals are returned to the revenue for filing before the competent court of jurisdiction in accordance with law. ”

5. Learned counsel for the Revenue urges that the decisions of this Court in *Seth Banarsi Dass Gupta v. CIT*, (1978) 113 ITR 817 and *Suresh Desai and Associates v. CIT*, (1998) 230 ITR 912 (Delhi) are authorities for the proposition that the location of the AO/ITO determines the jurisdiction and not the situs of the ITAT. Counsel for the respondent/assessee who urges preliminary objections as to the maintainability of the present appeals emphasizes that the subsequent Division Bench’s decisions in *Sahara India (supra)* and *Commissioner of Income Tax v. AAR Bee Industries*, (2013) 357 ITR 542 are authorities for the proposition that though the situs of the AO determines the jurisdiction of the High Court, yet if the situs is changed in the intervening proceedings on account of an order made under Section 127, fresh jurisdiction so conferred would have to be respected and the concerned High Court must be approached.

6. In *Sahara (supra)*, the basic rule that the High Court’s jurisdiction is determined by the situs of the ITO office was

emphasized and yet the Court appears to have taken note of the subsequent event where the situs is challenged by an order under Section 127. The Court pertinently stated - in the facts of that case as follows: -

“15. We have gone through both these decisions with the assistance of learned counsel for the parties and while the accepted general principle is that the situs of the Assessing Officer is what determines the High Court having jurisdiction over the case, none of these decisions deal with one important aspect of the case (because it did not arise), namely, what would happen when the situs of the Assessing Officer is changed by an order passed under section 127 of the Act, as has happened in the present case. One important fact in both the above decisions was that even though there was a transfer of jurisdiction from one place to another, the proceedings in respect of the relevant previous year had not been transferred from one jurisdiction to another.

16. In Suresh Desai & Associates’ case (supra), the relevant assessment year was 1980-81 and as mentioned in the decision, the assessment records of the petitioner were ordered to be transferred from Bombay to Delhi but the transfer did not pertain to the assessment year 1980-81. Similarly, in Digvijay Chemicals Ltd.’s case (supra), relevant assessment year was 1993-94 but the assessment records that were transferred to Delhi were those pertaining to the assessment years 1988-89, 2000-01 and 2001-02. It is for this reason that the effect of the transfer of jurisdiction under section 127 of the Act was not discussed either in Suresh Desai & Associates’ case (supra) or in Digvijay Chemicals Ltd.’s case (supra) because that question, on the facts of the case, did not arise for consideration. Learned counsel for the assessee, therefore, cannot draw any assistance from any of the two decisions cited by him.

17. On the other hand, the effect of the transfer of jurisdiction from Lucknow to Delhi specifically arises in the present case and we are of the view that the jurisdiction in respect of the assessee having been transferred to Delhi lock, stock and barrel and all the records of the assessee also having been transferred from Lucknow to Delhi, it is only the High Court in Delhi that can entertain an appeal under section 260A of the Act directed against the order passed by the Tribunal on 22.7.2005. Our conclusion follows from a plain reading of the Explanation to section 127 (4) of the Act as well as from the effect of the order dated 29.7.2005 passed by the Commissioner of Income-tax (Central), Kanpur under section 127 (2) of the Act. Consequently, with effect from 29.9.2005 (the date from which the order passed under section 127 (2) of the Act is enforced) the jurisdiction in respect of the assessee for future proceedings under section 260A of the Act is with the Delhi High Court. Admittedly, the present appeals have been filed after 29.9.2005 and so they would be maintainable in this Court and no other High Court.”

7. This Court notices that the view taken by the Punjab & Haryana High Court in the Revenue's appeal - rejecting it at the threshold, followed its view expressed in *CIT, Faridabad v. M/s Motorola India Ltd.* (ITA 44/2005, decided on 03.10.2007). That view was departed from and not agreed to by this Court in *AAR BEE Industries (supra)* in the following terms: -

“14. We are afraid and with respect we say so that we are unable to agree with the views expressed by the Punjab & Haryana High Court and are bound to follow the decision of this court in *Sahara India (supra)*. We are not inclined to accept the view taken by the Punjab & Haryana High Court, because while it is true that the

reference to the case is with regard to the jurisdiction of an income-tax authority, it is also true that the jurisdiction of the High Court is determined by the situs of the Assessing Officer. When the Assessing Officer itself has been changed from one place to another, the High Court exercising jurisdiction in respect of the territory covered by the transferee Assessing Officer would be the one which would have jurisdiction to hear the appeal under Section 260-A. Even in *Ambica Industries (supra)*, a decision relied upon by the learned counsel for the respondent / assessee, it has been held that it would be the situs of the Assessing Officer and not the situs of the Tribunal which would have the determinative factor with regard to the jurisdiction of the High Court hearing an appeal. Of course, the decision in *Ambica Industries (supra)* was not one rendered under the Income-tax Act, but was one which pertained to an appeal to the High Court under the Central Excise Act, 1944. We may also point out that the Central Excise Act does not deal with a transfer of a 'case' as is the position under the Income-tax Act. In any event, there is nothing in *Ambica Industries (supra)*, which would enable us to take a view different from that taken by this court in *Sahara India (supra)*. It is a well accepted principle that there can be only one Assessing Officer in respect of a case. At the point of time when the present appeals were filed, the Assessing Officer insofar as all the cases of the respondent were concerned, was the Assessing Officer at Delhi. The fact that the Amritsar Bench of the Tribunal had passed the impugned orders or the fact that the initial assessment orders were passed by the Assessing Officer at Jammu would not be relevant for the purposes of determining the jurisdiction of the court at the point of time at which an appeal under Section 260-A of the said Act is filed. It is the date on which the appeal is filed which would be the material point of time for considering as to in which court the appeal is to be filed. On the dates on which the present appeals were filed, the Assessing

Officer of the respondent was the Assessing Officer at New Delhi and, therefore, this court would have jurisdiction to entertain these appeals.

15. In view of the foregoing, we hold that the present appeals are maintainable before this court. Consequently, we direct that the appeals be listed before the roster bench hearing such matters on 22.07.2013 when the appeals would be taken up for admission as well as for consideration of the pending condonation of delay applications in two of the appeals.”

8. In view of the above discussion, it is held that the appeals are not maintainable; they are accordingly dismissed. The Revenue is granted liberty to approach the concerned High Court in accordance with law.

**S. RAVINDRA BHAT
(JUDGE)**

**NAJMI WAZIRI
(JUDGE)**

MARCH 21, 2017
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