IN THE HIGH COURT OF JUDICATURE AT BOMBAY
EXTRA ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3624 OF 2018

HSBC Holdings PLC … Petitioner
V/s.
Deputy Commissioner of
Income-Tax-1 and ors … Respondents

Mr.J.D.Mistri, Senior Advocate with Mr.Nishant Thakkar i/by M/s Mint & Confreres for the Petitioner.
Mr.Suresh Kumar for the Respondents.

CORAM : AKIL KURESHI AND
S.J.KATHAWALLA, JJ.
DATE : JULY 01, 2019.

P.C.:-

1. The petitioner has challenged a notice dated 27th March, 2018 issued by the respondent No.1-Deputy Commissioner of Income Tax, Hyderabad under section 148 of the Income Tax Act, 1961 (“the Act” for short). Under such notice, he wishes to re-open the assessment of the petitioner for the assessment year 2011-12. At the outset, this petition is opposed by the respondents on the ground that this Court has no territorial jurisdiction. On 24th June, 2019, we heard learned counsel for the

parties on this limited issue and reserved our opinion thereon.

2. On behalf of the petitioner learned counsel would contend that the petitioner is a company under the laws of United Kingdom. Its registered office in India is situated at Mumbai. Petitioner's bank accounts are in Mumbai. The petitioner had filed the return of income for the concerned assessment year at Mumbai and most significantly the impugned notice has been served by the Assessing Officer to the petitioner at Mumbai. A part of cause of action has therefore arisen within the limits of this Court. Learned counsel therefore contended that this Court would have jurisdiction to entertain this petition.

3. On the other hand, learned counsel for the Department submitted that no part of cause of action has arisen within the local limits of this Court. The location of the petitioner would not give jurisdiction to the Court to entertain the petition. With the facility of electronic filing of returns any one can file the returns

from anywhere in the country. Mere place of filing of the return would also therefore not be decisive. The impugned notice has been issued by the Assessing Officer situated at Hyderabad. Year after year the petitioner was assessed by the same authority. The petitioner has not raised any objection to be assessed by the said authority. Mere service of impugned notice to the petitioner at Mumbai would not mean that any part of cause of action has arisen within the limits of this Court. He pointed out that when such a notice is issued by the Department, the same is electronically generated on Income Tax Business Application (ITBA) which in turn gets delivered via e-mail to the e-mail address given by the assessee in the return of income. Additionally, such notices are ordinarily served to the assessee through speed-post. The respondents have also in reply pointed out that such notice was duly served to the petitioner on the e-mail address as well as through speed-post. Averments of the respondents in the affidavit-in-reply dated 24th April, 2019 filed by the Joint Commissioner of Income Tax, Hyderabad may be noted:-

"3.9 With reference to Para No. 17 of the Writ Petition, I say that the Petitioner submitted that a second notice u/s 148 was served via email on the authorized representatives of the Petitioner at Mumbai seeking to reopen the reassessment for A.Y. 2011-12. This is a very colourable way of presenting facts. Since it is now mandatory to complete assessment proceedings electronically, the notice u/s 148 of the Act dated 27/3/2018 was generated on Income Tax Business Application (ITBA). When a notice is generated on ITBA, a copy of the notice automatically gets delivered via email to the email Id given by the assessee in its return of income. To avoid any unforeseen circumstances like failure of the notice being served on the assessee through email on the email Id given by it, the Assessing Officers usually serves a copy of the notice through speed post and also through email to any other email Ids given by the assessee. This is considered a good practice and also ensures no time barring date is missed. In the instant case, a notice u/s 148 of the Act was generated on ITBA on 27/03/2018 for A.Y. 2011-12, which got automatically served to the email Id given in the return of income of the Petitioner. Further, the same notice was also sent through email on the email Ids given by the Petitioner viz hsbcholdingplc@in.ey.com.Ravi.bharadwaj@in.ey.com.,maitreya.gbs@in.ey.com and anish.thacker@in.ey.com.) A copy of the same notice was also sent to the assessee through Speed Post vide Tracking No. EN420147765IN on 27/3/2018. Therefore, the Petitioner's averment that a second notice u/s 148 was served on the authorized representatives of the Petitioner is wrong and misleading. It is not a second notice, but the same notice sent to as many email IDs as possible to ensure definite service. The Notice No.ITBA/AST/S/148/2017-18/1009439072(2) mentioned at the top of the notice is evidence enough. If it was a second notice, it would bear different Notice number. Further, the Petitioner claimed that the notice was served on the authorized representatives of the Petitioner at Mumbai. This is again a misrepresentation of facts by the Petitioner. An email ID is a virtual address. It doesn't have any fixed or physical place. An email message can be read/checked anywhere in the World. The Petitioner's attempt to deceive the Hon'ble Court is apparent in its attempt to attribute Mumbai as address to these four email IDs. Even otherwise, it can be seen that out of the four email IDs to which the notice was sent, one (hsbcholdingplc@in.ey.com) belongs to the assessee-company, two (ravi.bharadwaj@in.ey.com) and maitreya.gbs@in.ey.com) to authorized representatives based out of Hyderabad and only one (anish.thacker@in.ey.com) to authorized representative based out of Mumbai. It is also the Hyderabad based authorized representatives viz. Shri Ravi Bharadwaj and Shri GBS Maitreya who mostly appeared before the First Respondent in relation to all assessment proceedings and other proceedings in relation to the Petitioner. Annexed hereto and marked "Exhibit-E" is a copy of the notice issued u/s 148 of the Act dated 27/3/2018 and marked "Exhibit-F" is evidence of the email through which a copy of the same notice is sent to four email IDs."

"3.21 With reference to Para No.30 of the Writ Petition, I say that the Petitioner claims that the Hon'ble High Court of Judicature at Bombay has jurisdiction by presenting misleading facts in its Writ Petition. The assessment jurisdiction of the Petitioner company lies with the First Respondent i.e. Deputy Commissioner of Income Tax (International Taxation) -1, Hyderabad. The PAN of the Petitioner (AACCH4292A) lies in the jurisdiction of the First Respondent since many years. Assessment proceedings in the case of the Petitioner were conducted and completed in the office of the First Respondent for A.Y.s 2011-12, 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17. The Petitioner willfully submitted itself to the jurisdiction of the First Respondent in all these proceedings. Never did the Petitioner raise any objection with respect to its jurisdiction. The Petitioner also never submitted any request for transfer of PAN from Hyderabad to Mumbai. The authorized representatives of the Petitioner Shri Ravi Bharadwaj and Shri GBS Maitreya who are employees of M/s SRBC and Associates LLP are operating out of its Hyderabad office and have personally represented the Petitioner before the office of the First Respondent regularly. Even in the present assessment proceedings for A.Y. 2011-12, the Petitioner has not objected to the jurisdiction of the First Respondent. The first assessment proceedings for A.Y. 2011-12 were also completed in the office of the First Respondent. However, instead of filing the Writ Petition in the Hon'ble High Court of Judicature at Hyderabad, the Petitioner filed one in the Hon'ble High Court of Judicature at Bombay. Place of operating a bank account, correspondence address given, address of head office of the authorized representative firm, etc. cannot decide the jurisdiction of an assessee. The normal jurisdiction of the PAN, the jurisdiction where scrutiny assessments and other income tax proceedings are being undertaken, the assessee's willful and continuous submission

> to a jurisdiction over the years, etc. will decide the jurisdiction of an assessee. The assessee can always request for transfer of jurisdiction and PAN from one region to another, which was never done in the present case. Considering all these facts, the jurisdiction of the Petitioner lies with the office of the First Respondent, which is in Hyderabad, but not Mumbai as claimed by the Petitioner. Therefore, in terms of 269 of the Act, the appropriate High Court in the present case would be the Hon'ble High Court at Hyderabad."

4. The relevant facts thus are that the petitioner is being assessed by the Assessing Officer at Hyderabad from time to time. By the impugned notice the Deputy Commissioner of Income Tax, Hyderabad decided to re-assess the return of income for the assessment year 2011-12. Mere fact that the petitioner has registered office at Mumbai, obviously would not give jurisdiction to Mumbai High Court to entertain such a challenge. The location of the petitioner obviously cannot be a determinative factor in the context of territorial jurisdiction. Clause (2) of Article 226 of the Constitution provides that powers conferred in the clause (1) to issue directions, orders or writs 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 exercise of such power, notwithstanding that the seat of such Government authority is not within those territories.

5. According to the petitioner, since the impugned notice of re-assessment was served to the petitioner at Mumbai, a part of cause of action can be stated to have arisen within the jurisdiction of this Court. In this context, learned counsel had relied on a decision of Division Bench of Allahabad High Court in case of **Modi Charitable Fund Society Vs. Income Tax Officer**[1]. It was a case in which the Petitioner-assessee had challenged a notice of reopening of assessment before the High Court. The Department had raised the objection of territorial jurisdiction contending that no part of the cause of action had arisen within the jurisdiction of Allahabad High Court. The Court overruled the objection and entertained the petition on merits.

1 (1983) 142 ITR 818 (Allahabad)

6. On the other hand, we notice that Calcutta High court in case of **Ispat Industries Ltd. Vs. Deputy Commissioner of Income Tax and ors.**[1] examined the question of territorial jurisdiction of the High Court where the assessee had been served a notice of reopening of assessment under Section 148 of the Act. The learned Judge held that this would not be sufficient to give the High Court territorial jurisdiction to entertain the writ petition. Following observations were made:-

> "Now so far the challenge to the order under section 148 of the Act it appears that the notice has been served on the petitioner to file return under section 148 of the said Act by respondent No.1 who is having his office at Mumbai. The order if any passed by the said authority, appeal will also have to be filed at Mumbai and further the return also to be filed by the petitioner as an agent under section 148 of the said Act is also at Mumbai. Notice has been served upon the petitioner only treating the petitioner as a representative assessee and not in its own identity but as an agent of the said foreign firm, who has been assessed at Mumbai, and the return to be filed on behalf of the said firm before respondent No.2 at Mumbai who has the jurisdiction in the matter. There cannot be any reason to accept the contention that the

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> Assessing Officer of the petitioners shall have the jurisdiction. Therefore, it cannot be said that any integral part of the cause of action has arisen within the jurisdiction of this High Court.
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> In my opinion, the judgments cited before me by Mr.Bajoria will not extend any help to him on this aspect. Furthermore, as the Supreme Court has held in State of Rajasthan v. Swaika Properties, AIR 1985 SC 1289, mere service of a notice at Calcutta does not constitute an integral part of the cause of action sufficient to acquire jurisdiction by this High Court and to entertain a petition under article 226 of the Constitution. Therefore, I do not have any hesitation to hold in this matter that the service of the notice under section 148 of the said Act or under section 163 of the said Act or the order communicated at Calcutta cannot give any jurisdiction to the petitioner to file this writ application in this High Court and I hold that service of the notice in the instant application cannot constitute any part of the cause of action to entertain this application. Accordingly, on that ground this application must be dismissed."

7. This was reiterated in a decision in case of **CESC Ltd. and another Vs. Deputy Commissioner of Income-Tax and others**[1].

8. Learned Single Judge of Madras High Court in case

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of **C.G.Shanmugham Vs. Union of India and others.**[1] considered a case where the notice for recovery of tax was issued by the Recovery Officer at Mumbai to the legal representatives of the owner of property residing in Madras. The Court held that the Madras High Court had no jurisdiction to entertain the petition.

9. It can thus be seen that the issue of the High Court where the assessee was served with a notice of reopening of assessment getting territorial jurisdiction to entertain a petition challenging such notice, is not free from doubt. In the present case, we are not inclined to thrash out this legal issue for our final opinion. This is so because even if we accept the contention of the counsel for the petitioner that the facts of the case would suggest arising of a part of cause of action within the jurisdiction of this Court, we are of the opinion that the Court should not exercise such jurisdiction and instead allow the petitioner to file appropriate petition before the High Court which has jurisdiction over the Assessing

1 (1995) 215 ITR 207(Mad)

Officer at Hyderabad . The assessee is being assessed to tax consistently at Hyderabad. The assessee has a PAN card at such place. The assessee has never applied for transfer of PAN card. Admittedly, therefore against the assessments that may be made by the Deputy Commissioner of Income Tax, Hyderabad, appeals would lie before the Appellate Commissioner stationed there. Further appeal at the hands of the aggrieved party would lie before the Income Tax Appellate Tribunal, Telangana. Section 269 of the Act defines the High Court as to mean in relation to any State the High court for that State. Any challenge to the orders of Assessing Officer, Appellate Commissioner or the Tribunal in the present case would lie before the High Court of Telangana (previously High Court of Andhra Pradesh). The Assessing Officer and the Appellate Authorities therefore would be bound by the law propounded by the said High Court.

10. In central legislations such as the Income Tax Act, High courts give due respect to the pronouncements of another High Court, in order to avoid difference of

opinion in central legislations. On rare occasions diversion of views between the High Courts is inavitable. If we entertain this petition merely because a small part of the cause of action may have arisen within the jurisdiction of this Court, we would be giving rise to possibility of different legal principles being applied in case of the same assessee on the same issue and possibly in relation to the same assessment year. Any appeal against the original assessment (if at all done) for the assessment year 2011-12 would be governed by the law laid down by Telangana High Court. In the context of challenge to the notice of reassessment, this Court would apply the decisions of Bombay High Court. This would be wholly undesirable.

11. It is not unknown to law that in the context of territorial jurisdiction of the High Court, even if it is found that a small portion of the jurisdiction may have arisen within the High Court, the Court would on the principle of convenience may refuse to entertain the jurisdiction. In case of **Serious Fraud Investigation**

Office Vs. Rahul Modi and another[1], the Supreme Court observed that in case of an offence which is triable by the Special Court established or designated for an area in which registered office of the company in relation to which the offence is committed, proper jurisdiction High Court would be the Court which has territorial jurisdiction over such Special Court. Though jurisdiction of the High Court where arrest and and detention may have taken place, would not be completely ousted, the Court should not entertain the challenge even if the arrests were made within the jurisdiction of such Court.

12. In case of **Madhya Pradesh State Mining Corporation Limited Vs. Sanjeev Bhaskar and others**[2] the Supreme Court observed as under:-

> "23. Admittedly, the third-party rights were created in the meantime in favour of the Mining Corporation pursuant to the order of Madhya Pradesh High Court dated 16-7-1986. The order passed by the Madhya Pradesh High Court was not challenged in any appeal. The Delhi High Court also failed to notice the aforesaid fact and failed to decide the jurisdiction of the High Court to entertain the

1 (2019) 5 Supreme Court Cases 266
2 (2013)12 supreme Court Cases 326

> appeal against the order passed in favour of the Mining Corporation which was passed pursuant to the direction of the Madhya Pradesh High Court. In this background, it was not desirable for the Delhi High Court to entertain the writ petition. Even though the revisional order was passed by the Central Government, the Delhi High Court ought to have asked the first respondent to move before the Madhya Pradesh High Court for appropriate relief.”

13. Under the circumstances, this petition is not entertained. It would be open for the petitioner to move the appropriate High Court for the same reliefs. Since this petition is pending before this Court for a considerable period of time with interim relief against proceeding further with the assessment, we extend this interim order for a period of two weeks from today.

(S.J.KATHAWALLA, J.) **(AKIL KURESHI, J.)**

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