

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

ITA No. 130 of 2018

Date of decision: 07.02.2019

Pr. Commissioner of Income Tax-1, Chandigarh

.....Appellant

Vs.

M/s ABC Papers Limited

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present: Ms. Urvashi Dhugga, Senior Standing Counsel for the
appellant.

Mr. Vishal Gupta, Advocate for the respondent.

Ajay Kumar Mittal,J.

1. This order shall dispose of ITA Nos.130, 133, 134 of 2018 and 517 of 2017 as learned counsel for the parties are agreed that the issue involved in all these appeals is identical. However, the facts are being extracted from ITA No.130 of 2018.

2. The appellant-revenue has filed ITA No. 130 of 2018 under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 01.09.2017, Annexure A.6, passed by the Income Tax Appellate Tribunal, Delhi Bench, 'D', New Delhi (in short, "the

Tribunal”) in I.T.A. No.1341/Del/2017 for the assessment year 2008-09, claiming following substantial questions of law:-

- “i) Whether on the fact and circumstances of the case, the Hon’ble ITAT, Delhi Bench ‘D’, New Delhi has erred in deleting the addition of ₹ 99,01,500/- made by Assessing Officer on account of disallowance of depreciation on “paper brand” when brands are not covered under the provision of 32(1) and are not a depreciable assets.
- ii) Whether on the fact and circumstances of the case, the Hon’ble ITAT, New Delhi has erred in deleting the addition of ₹ 99,01,500/- made by Assessing Officer on account of disallowance of depreciation on “paper brand” by relying on its decision of Hon’ble ITAT, Benches ‘A’ Bench, Delhi in ITA No. 2263/Del/2012 dated 11.05.2017 for the assessee’s case for A.Y. 2008-09, without adverting to the fact that each assessment year is separate as per the Income Tax Act, 1961.?
- iii) Whether on the fact and circumstances of the case, the Hon’ble ITAT, Bench ‘D’, New Delhi has erred in deleting the addition of ₹ 7,44,36,019/- made by Assessing Officer on account of disallowance of depreciation on “chemical recovery plant” when the complete plant was not put to use by the assessee during the year.?
- iv) Whether on the fact and circumstances of the case, the Hon’ble ITAT, Bench ‘D’, New Delhi has erred in deleting the addition of ₹ 7,44,36,019/- made by Assessing Officer when during the appellate proceedings before the Hon’ble ITAT Delhi Benches ‘A’ Bench Delhi, the Assessing Officer in his remand report had strongly objected to admission of additional evidences and thus the order of the Hon’ble ITAT Bench ‘D’, New Delhi is against the decision of the Hon’ble ITAT, New Delhi in the case of *ITO, Ward-24(3) vs Kuldeep* and against the decision of the Hon’ble Delhi High

Court in the case of *Manish Buildwell Private Limited*, (2012) wherein it has been held that Ld. CIT (A) was not justified in deleting the addition without further giving an opportunity to the AO and thus the requirement of giving opportunity to the AO as per Rule 46A(3), was not met.?

- v) Whether on the fact and circumstances of the case, the Hon'ble ITAT, Bench 'D', New Delhi has erred in deleting the addition of ₹ 7,44,36,019/- made by Assessing Officer on account of disallowance of depreciation on "chemical recovery plant" by relying on the decision of Hon'ble ITAT Delhi Benches 'A' Bench Delhi, in ITA No. 2263/Del/2012 dated 11.05.2017 for the assessee's case for A.Y. 2008-09, without adverting to the fact that each assessment year is separate as per the Income Tax Act, 1961.?"

3. A few facts relevant for the decision of the controversy involved as narrated in ITA No.130 of 2018 may be noticed. Return of income was filed on 30.9.2008 declaring an income of ₹ 9,10,17,387/-. The assessment was completed under Section 143(3) of the Act on 30.12.2010 by the office of Deputy Commissioner of Income Tax, Circle 1(1), New Delhi (DCIT) at an assessed income of ₹17,53,54,906/- after making addition of ₹99,01,500/- on account of disallowance of depreciation on paper brands and ₹7,44,36,019/- on account of disallowance of depreciation on chemical recovery plant. Aggrieved by the order dated 30.12.2010, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 16.2.2012, Annexure A.2, the appeal was allowed and the additions were deleted. Not satisfied with the order, the revenue filed appeal before the Tribunal. Vide order dated 11.5.2017, Annexure A.3, the Tribunal dismissed the appeal and upheld the deletion of the additions made by the DCIT. A search and seizure operation under Section 132 of the Act was

conducted on 4.5.2011 on the premises of the assessee. Thereafter, the group cases were centralized to Central Circle, Ghaziabad. Accordingly, the DCIT, Ghaziabad passed assessment order under Section 153A/143(3) of the Act on 31.3.2015, Annexure A.4 and assessed the income at ₹17,53,54,906 after making similar additions. Aggrieved by the order, the assessee filed appeal before the CIT(A) which was allowed and the additions were deleted vide order dated 20.12.2016, Annexure A.5. Not satisfied with the order, the revenue filed appeal before the Tribunal which was dismissed vide order dated 01.09.2017, Annexure A.6. Hence the instant appeals by the revenue.

4. We have heard learned counsel for the parties.

5. After perusing the paper book and hearing learned counsel for the parties, we find that admittedly in the present case, assessment order under Section 143(3) of the Act was passed on 30.9.2008 by the DCIT, New Delhi at an assessed income of ₹17,53,54,906/- after making certain additions. The appeal against the said order filed by the assessee was allowed by the CIT(A), New Delhi and the additions were deleted. The revenue went in appeal before the Tribunal at New Delhi. The same was dismissed vide order dated 11.5.2017, Annexure A.3. Thereafter, group of cases were centralized to Central Circle, Ghaziabad. The DCIT, Ghaziabad passed assessment order under Section 153A/143(3) of the Act on 31.3.2015, Annexure A.4, making similar additions. The appeal filed by the assessee was allowed by CIT(A), Kanpur vide order dated 20.12.2016, Annexure A.5. The appeal filed by the revenue was dismissed by the Tribunal at New Delhi vide order dated 01.9.2017, Annexure A.6. Since the initial process of assessment was started at New

Delhi and the final assessment was framed by the Assessing Officer at Ghaziabad, this court lacks territorial jurisdiction to adjudicate the matter.

6. 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 suits 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.”

7. 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. Deputy Commissioner of Income Tax, Ghaziabad. 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. The appeals stand disposed of accordingly.

(Ajay Kumar Mittal)
Judge

February 07, 2019
‘gs’

(Manjari Nehru Kaul)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes