OD-1 to 8

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

IA No.GA/2/2019
In
ITAT/196/2019
PRINCIPAL COMMISIONER OF INCOME TAX-1, KOLKATA
Vs
M/S. PAVITRA TREXIM PVT. LTD.

AND

IA No.GA/1/2019
In
ITAT/196/2019
PRINCIPAL COMMISIONER OF INCOME TAX-1, KOLKATA
Vs
M/S. PAVITRA TREXIM PVT. LTD.

AND

IA No.GA/1/2021
In
ITAT/125/2021
PRINCIPAL COMMISIONER OF INCOME TAX-1, KOLKATA
Vs
M/S. CANTON VINIMAY PVT. LTD. (NOW KNOWN AS M/S. LUCKY HOLDINGS PVT. LTD.)

AND

IA No.GA/2/2021
In
ITAT/125/2021
PRINCIPAL COMMISIONER OF INCOME TAX-1, KOLKATA
Vs
M/S. CANTON VINIMAY PVT. LTD. (NOW KNOWN AS M/S. LUCKY HOLDINGS PVT. LTD.)

AND

IA No.GA/1/2021
In
ITAT/126/2021
PRINCIPAL COMMISIONER OF INCOME TAX-1, KOLKATA
Vs
M/S. SAGAR FINTRADE PVT. LTD. (NOW MERGED WITH M/S. LUCKY HOLDINGS PVT. LTD.)

AND

IA No.GA/2/2021
In
ITAT/126/2021
PRINCIPAL COMMISIONER OF INCOME TAX-1, KOLKATA
Vs
M/S. SAGAR FINTRADE PVT. LTD. (NOW MERGED WITH M/S. LUCKY HOLDINGS PVT. LTD.)

AND

IA No.GA/1/2021
In
ITAT/131/2021
PRINCIPAL COMMISIONER OF INCOME TAX-1, KOLKATA
Vs
M/S. CANTON VINIMAY PVT. LTD. (NOW KNOWN AS M/S. LUCKY HOLDINGS PVT. LTD.)

AND

IA No.GA/2/2021
In
ITAT/131/2021
PRINCIPAL COMMISIONER OF INCOME TAX-1, KOLKATA
Vs
M/S. CANTON VINIMAY PVT. LTD. (NOW KNOWN AS M/S. LUCKY HOLDINGS PVT. LTD.)

BEFORE:
The Hon'ble JUSTICE T. S. SIVAGNANAM
AND
The Hon’ble JUSTICE HIRANMAY BHATTACHARYYA

Date : December 13, 2021.
(Via Video Conference)

Appearance:
Mr. Tilak Mitra, Adv.
Mr. Manabendra Nath Bandyopadhyay, Adv.
... for the appellant in ITAT 196 of 2019 & ITAT 125 of 2021

Mr. S. N. Dutta, Adv.
... for the appellant in ITAT 196 of 2019 & ITAT 126 of 2021

Mr. P.K. Bhowmick, Adv.
Mr. Asok Bhowmick, Adv.
… for the appellant in ITAT 131 of 2021

Mr. Ganesh N. Jajodia, Adv.
Mr. Aniket Deepak Agarwal, Adv.
Ms. Nitu Singh, Adv. R
Mr. Anirudhya Dutta, Adv.
… for the respondent/ assessee

The Court : These appeals have been filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) challenging the orders passed by the Income Tax Appellate Tribunal "B" Bench, New Delhi.

Mr. Aniket Deepak Agarwal, learned Counsel appearing for the respondent/assessee in all these cases raised a preliminary objection as regards the maintainability of these appeals at the instance of the revenue, before this Court. Such objection is raised on the ground that the order impugned in all these appeals have been passed by the Delhi Tribunal over which this Court would not have any jurisdiction. It is further pointed out that in the case of the assessee's group company, namely M/s. Canton Traders Private Limited, the revenue had filed an appeal before this Court in ITAT 123 of 2019 challenging the order passed by the Delhi Tribunal. The Division Bench by order dated 28th January, 2020 held that this Court had no jurisdiction to entertain this appeal. Further, learned Counsel appearing for the respondent placed reliance on the decision of the Division Bench of this Court in the case of *Commissioner of Income Tax Vs. A.B.C. India Ltd.* reported in [2003] 126 Taxman 18 (CAL) and the decision in the case of *Commissioner of Income Tax Vs. J.L. Morrison (India) Ltd* reported in [2005] 272 ITR 321 (Cal) and the decision in the case of *Commissioner of Income Tax,* Kolkata-IV Vs. Akzo Nobel India Ltd. reported in [2014] 47 Taxman.com 372 (Cal).

Mr. S. N. Dutta, learned Counsel appearing for the appellant submitted that the Principal Commissioner while exercising his power under Section 127 of the Act has transferred all the assessment files of the respondent/assessee to Calcutta and there is nothing available with the income tax officials at Delhi. Therefore, it is submitted that his Court can very well entertain these appeals.

We have heard learned Counsel appearing for the parties and perused the materials placed on record.

Firstly, we need to point out that all these appeals are barred by limitation and the revenue has filed application for condonation of delay. However, the moot point is whether this Court can exercise jurisdiction under Section 260A of the Act for testing the correctness of the orders impugned before us which were admittedly passed by the Tribunal located at Delhi. This issue is no longer *res integra* and has been answered by the Division Bench of this Court in *A.B.C. India Limited*. In the said case the revenue's reference application under Section 256(1) of the Act was rejected by the Tribunal at Guwahati. Subsequently, the assessments were transferred to the Commissioner under the jurisdiction of the High Court at Calcutta. The High Court at Calcutta passed order under Section 256(2) and the assessee prayed to recall of the said order contending that the said order was passed without jurisdiction. The said submission made by the assessee was sustained by the Division Bench holding that the question of cause of action would be irrelevant since the Court would be determining the question since determined by the Tribunal of another State which, according to law, is bound by the decision of the Supreme Court at the first place and then by the decision by the jurisdictional High Court. The decision in *ABC India Ltd.* was followed in *J.L. Morrison India* and it was pointed out that if the High Court of Calcutta was to exercise jurisdiction over the order passed by the Tribunal located outside the jurisdiction of this Court, which would create a judicial anomaly with regard to the precedence that the order passed by the Court, would be binding upon the Tribunal of another State and this would create an anomalous situation with regard to pure question of law. Therefore, it was held assumption of jurisdiction of such a case would amount to judicial impropriety and irregularity. To the same effect is the decision of *Akzo Nobel India,* which followed the decision in *ABC India Ltd.* and *J.L. Morrison India Ltd.* In the said decision, it was pointed out that Section 260A provides that appeal shall lie to the High Court from an order passed by the Appellate Tribunal. The Appellate Tribunals are located in every State except these cases where an Appellate Tribunal may have been entrusted with the jurisdiction of more than one state. It was further pointed out that the word "High Court" used in Section 260A has to be understood in the light of Section 269 which provides that the "High Court" means in relation to any State, the "High Court" for that State.

Thus, in the light of the above stated legal principle, we hold these appeals are not maintainable before this Court as submitted by the learned Counsel appearing for the respondent/assessee in respect of an appeal filed in the assessee's group company's case in ITAT 123 of 2019. Similar objection was raised by the assessee and the same was sustained by order dated 28th January 2020 and the appeal was dismissed as not entertainable on the ground of lack of jurisdiction. In the light of the above, we hold that all these appeals are not maintainable and consequently, the applications for condonation of delay as well as the appeals are rejected as not maintainable. However, we grant liberty to the appellant/revenue to file the appeals before the appropriate High Court.

The Registry shall return all the original certified copy of the order passed by the Tribunal to the learned standing counsel appearing for the appellant after retaining a photostat copy of the same.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

GH/RS.