IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.07.2023

CORAM

THE HON'BLE Mr. JUSTICE R. MAHADEVAN
AND
THE HON'BLE Mr. JUSTICE MOHAMMED SHAFFIQ

T.C.A.No.209 of 2023

M/s.Cognizant Technology Solutions India Pvt. Ltd.
(Amalgamated company of
M/s.Excellence Data Research Private Limited)
No.5/535, Old Mahabalipuram Road
Okkiam Thoraipakkam
Chenani 600 097
(PAN : AABCE4933C) .. Appellant

[Cause title was accepted vide order of this court
dated 11.04.2023 in CMP.No.8058 of 2023]

Vs.

The Assistant Commissioner of Income Tax
Central Circle 1(2)
3rd Floor, Investigation Building
No.46 (Old No.108) Mahatma Gandhi Road
Chennai 600 034 .. Respondent

Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order dated 06.12.2022 passed by the Income Tax Appellate Tribunal 'D' Bench, Chennai, in I.T.A.No.461/Hyd/2017.

For Appellant : Mr.N.V.Balaji

For Respondent : Mr.Karthik Ranganathan
Senior Standing Counsel

JUDGMENT

(Judgment of the court was delivered by R. MAHADEVAN, J.)

We have heard both sides and perused the documents enclosed in the typed set of papers.

2. This Tax Case Appeal arises from the order dated 06.12.2022 passed by the Income Tax Appellate Tribunal 'D' Bench, Chennai, in I.T.A.No. 461/Hyd/2017, relating to the assessment year 2012-13, by raising the following substantial questions of law:

> *"1.Whether in the facts and circumstances of the case, the Tribunal was correct in holding that adjustment to the Arm's Length Price is required to be made in respect of receivables of the appellant from its associated enterprises in respect of services provided by it?*
>
> *2.Whether in the facts and circumstances of the case, the Tribunal was correct in holding that the delay in realisation of outstanding receivables from AE is an international transaction covered under capital financing in view of the amendment to Section 92B of the Act by Finance Act, 2012 ?*
>
> *3.Whether in facts and circumstances of the case, is the finding of the Tribunal that adjustment to the ALP is required in respect of outstanding receivables not perverse, particularly when pricing for the provision of services, which is decided by the assessee taking into account various factors including the credit period, was found to be at arms length at an entity level under Transaction Net Margin Method ?*
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> *4.Whether under the facts and circumstances of the case and in law, the Tribunal was justified in holding that interest should be charged at LIBOR rate plus adhoc 3% on account of delayed realisation of receivables from Associated Enterprises ?"*

3. It appears from the records that the appellant viz,, M/s. Excellence Data Research Private Limited, having office at Hyderabad, is engaged in the business of providing back-office IT support services and it was amalgamated into M/s. Cognizant Technology Solutions India Private Limited, Chennai, with effect from 01.04.2016, vide order of the Central Government represented by the Regional Director, Ministry of Corporate Affairs, Southern Region, dated 25.07.2017.

4. Before we proceed further, it may be relevant to set out the briefly stated facts, which necessitated the appellant to file the present appeal, as follows:

4.1. For the assessment year 2012-13, the appellant filed its return of income on 28.11.2012 declaring a total income of Rs.7,68,52,140/- and also furnished the transfer pricing report in Form 3CEB under section 92E of the Income Tax Act, 1961 (in short, "the Act"). During the course of assessment proceedings, a reference was made to the Transfer Pricing Officer under section 92CA of the Act for determination of the arm's length, with respect to the international transactions entered into by the appellant for the assessment year in question. Pursuant to the same, the TPO after making adjustments in respect of the international transactions of the appellant with its AE, determined the arms length price in respect of receivables at Rs.4,33,85,272/- considering the interest rate at 14.75% by order dated 29.01.2016 under section 92CA of the Act. Thereafter, the jurisdictional Assessing Officer viz., Deputy Commissioner of Income-tax, Circle 17(1), Hyderabad, passed a draft assessment order dated 16.03.2016 under section 143(3) r/w section 144C of the Act in conformity with the order of the TPO under section 92CA of the Act. Aggrieved by the same, the appellant filed its objections on 27.04.2016 to the Dispute Resolution Panel, Bengaluru, which by directions dated 31.10.2016, disposed of the same, thereby allowing certain objections, while rejecting many of the other objections. Consequently, the Assessing Officer, passed the final assessment order on 23.12.2016 recomputing the transfer pricing adjustment towards interest chargeable by the appellant on delayed realisation of receivables from AEs at Rs.1,01,05,554/- by adopting short term fixed deposit rates as against the prime lending rate of 14.75% adopted earlier, pursuant to the directions of the DRP. Challenging the same, the appellant preferred an appeal before the ITAT at Hyderabad. Considering the change in jurisdiction, pursuant to the amalgamation of the appellant company, the appeal was transferred to the ITAT at Chennai, which, by order dated 06.12.2022, allowed the appeal in part. Feeling aggrieved, the appellant is before this court with the present appeal.

5. We find that originally, the appellant was having office at Hyderabad and they had filed all the necessary statements / Forms pertaining to the assessment year in question, before the jurisdictional Assessing Officer viz., DCIT, Hyderabad, on 28.11.2012. Since the appellant made certain international transactions, reference was made to TPO at Hyderabad and based on the order of the TPO, the draft assessment order came to be passed by the assessing officer. Subsequently, the appellant filed objections before the Dispute Resolution Panel at Hyderabad, which passed directions, resulting in passing of the final assessment order dated 23.12.2016 by the jurisdictional assessing officer. Thus, it is evident that all the assessment proceedings from initiation to completion in respect of the appellant company for the assessment year in question, were done by the authorities at Hyderabad. Even the appellant challenged the final assessment order dated 23.12.2016 by filing appeal only before the ITAT at Hyderabad. However, the ITAT, Hyderabad, citing the change in jurisdiction pursuant to the amalgamation of the appellant company, which admittedly, was approved by the Central Government only on 25.07.2017, transferred the said appeal to the ITAT, Chennai, which *lacks* jurisdiction, has considered the appeal and passed the order impugned herein, on 06.12.2022.

6. In this connection, it may be useful to refer to the decision of the Hon'ble Supreme Court in ***Principal Commissioner of Income Tax -I, Chandigarh v. ABC Papers Limited [2022 SCC Online SC 1036]***, wherein, it was held as follows:

> *"34. The binding nature of decisions of an appellate court established under a statute on subordinate courts and tribunals within the territorial jurisdiction of the State, is a larger principle involving consistency, certainty and judicial discipline, and it has a direct bearing on the rule of law. This 'need for order' and consistency in decision making must inform our interpretation of judicial remedies. An important reason adopted in the case of Seth Banarasi Dass Gupta, further highlighted by Justice Lahoti in Suresh Desai, is that a decision of a High Court is binding on subordinate courts as well as tribunals operating within its territorial jurisdiction. It is for this very reason that the Assessing Officer, Commissioner of Appeals and the ITAT operate under the concerned High Court as one unit, for consistency and systematic development of the law. It is also important to note that the decisions of the High Court in whose jurisdiction the transferee Assessing Officer is situated do not bind the Authorities or the ITAT which had passed orders before the transfer of the case has taken place. This creates an anomalous situation, as the erroneous principle adopted by the authority or the ITAT, even if corrected by the High Court outside its jurisdiction, would not be binding on them.*
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> *35. The legal structure under the Income Tax Act commencing with Assessing Officer, the Commissioner of Appeals, ITAT and finally the High Court under Section 260A must be seen as a lineal progression of judicial remedies. Culmination of all these proceedings in question of law jurisdiction of the High Court under Section 260A of the Act is of special significance as it depicts the overarching judicial superintendence of the High Court over Tribunals and other Authorities operating within its territorial jurisdiction.*
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> *36. The power of transfer exercisable under Section 127 is relatable only to the jurisdiction of the Income Tax Authorities. It has no bearing on the ITAT, much less on a High Court. If we accept the submission, it will have the effect of the executive having the power to determine the jurisdiction of a High Court. This can never be the intention of the Parliament. The jurisdiction of a High Court stands on its own footing by virtue of Section 260A read with Section 269 of the Act. While interpreting a judicial remedy, a Constitutional Court should not adopt an approach where the identity of the appellate forum would be contingent upon or vacillates subject to the exercise of some other*

power. Such an interpretation will clearly be against the interest of justice. Under Section 127, the authorities have the power to transfer a case either upon the request of an assessee or for their own reasons. Though the decision under Section 127 is subject to judicial review or even an appellate scrutiny, this Court for larger reasons would avoid an interpretation that would render the appellate jurisdiction of a High Court dependent upon the executive power. As a matter of principle, transfer of a case from one judicial forum to another judicial forum, without the intervention of a Court of law is against the independence of judiciary. This is true, particularly, when such a transfer can occur in exercise of pure executive power. This is a yet another reason for rejecting the interpretation adopted in the case of Sahara.

37. For the reasons stated above, we hold that the decision of the High Court of Delhi in Sahara and Aar Bee do not lay down the correct law and therefore, we overrule these judgments.

38. In conclusion, we hold that appeals against every decision of the ITAT shall lie only before the High Court within whose jurisdiction the Assessing Officer who passed the assessment order is situated. Even if the case or cases of an assessee are transferred in exercise of power under Section 127 of the Act, the High Court within whose jurisdiction the Assessing Officer has passed the order, shall continue to exercise the jurisdiction of appeal. This principle is applicable even if the transfer is under Section 127 for the same assessment year(s).

39. We will now deal with the decisions of certain High Court which have taken a view that the jurisdiction of the High Court must be based on the location of the ITAT. These judgments are CIT v. Parke Davis (India) Ltd. ((1999) 238 ITR 820 (AP), CIT v. A.B.C India Lted ((2003) 126 Taxman 18 (Cal)), CIT v. J.L. Marrison (India) Ltd ((2005) 272 ITR 321 (Cal)), CIT v. Akzo Nobel India Ltd ((2014) 47 Taxmann.com 372 (Cal)), Pr.CIT v. Sungard solutions (I) Pvt. Ltd ((2019) 415 ITR 294 (Bom) and CIT v. Shree Ganapati Rolling Mills (P) Ltd ((2013) 356 ITR 586 (Gau)). We have examined these cases in detail and found that the Assessing Officers in each of these cases were in fact not located within the territorial jurisdiction of these High Courts. For this reason, the aforesaid decisions are correct to the extent of these High Courts not exercising jurisdiction. However, while returning the files to be represented in the appropriate court, certain observations were made stating that the appeals could be filed in the High Court which exercises territorial jurisdiction over the concerned ITAT. These observations are only obiter. In any event they did not preclude the party from filing the appeal before the appropriate High Court where the Assessing Officers exercised jurisdiction. However, we are reiterating for clarity and certainty that the jurisdiction of a High Court is not dependent on the location of the ITAT, as sometimes a Bench of the ITAT exercises jurisdiction over plurality of states."

Thus, it is clear from the above that as per section 127 of the Act read with section 260A of the Act and also from the order of the Hon'ble Apex Court *cited* supra, more particularly, para no.38, the High Court, under whose jurisdiction the assessing officer has passed the order, will have the jurisdiction to entertain the appeal.

7. In the light of the above legal position and also taking note of the factual matrix, we are of the opinion that this tax case appeal cannot be maintainable within the High Court of judicature at Madras, as the entire assessment proceedings including the final assessment order dated 23.12.2016 under section 143(3) r/w section 92CA(3) r/w section 144C(5) of the Act, were done / completed by the authorities at Hyderabad and the amalgamation of the appellant company got approval from the Central Government only on 25.07.2017.

8. At this juncture, the learned counsel for the appellant sought liberty to the appellant to go before the jurisdictional High Court of Telangana to work out their remedy.

9. Granting such liberty to the appellant, this tax case appeal stands disposed of. Registry is directed to return the original impugned order, after substituting the photo copy of the same. No costs.

[R.M.D,J.] [M.S.Q, J.]
25.07.2023

Internet : Yes
Neutral Citation : Yes/No
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To

1.The Income Tax Appellate Tribunal, D Bench, Chennai.

2.The Assistant Commissioner of Income Tax
Central Circle 1(2)
3rd Floor, Investigation Building
No.46 (Old No.108) Mahatma Gandhi Road
Chennai 600 034

3.The Deputy Commissioner of Income-tax
Circle 17(1), Hyderabad.

R. MAHADEVAN, J.
AND
MOHAMMED SHAFFIQ, J.

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