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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.08.2023

CORAM

THE HONOURABLE Mr.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE Mr.JUSTICE MOHAMMED SHAFFIQ

C.M.P.No.18514 of 2023
and
T.C.A.SR.No.60999 of 2023

The Pr. Commissioner of Income Tax-1
Chennai .. Petitioner

Vs.

Shri Gajendra Sanghvi
Gajmangal Beads, 2nd Floor
Building No.13/39, J M Compound
Chandi Galli, 3rd Floor, Bhoiwada
Bhuleshwar, Mumbai 400 020
PAN : CKTPS7031Q .. Respondent

Civil Miscellaneous Petition filed under Section 260A(2A) of the Income Tax Act, 1961, to condone the delay of 64 days in filing the Tax Case (Appeal) in TCA.SR.No.60999 of 2023.

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Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the order dated 12.07.2022 passed by the Income Tax Appellate Tribunal, Mumbai Bench "G", Mumbai, in I.T.A.No.813/M/2018 relating to the assessment year 2012-13.

For Petitioner / Appellant : Mr.T. Ravi Kumar Standing Counsel

ORDER

[Order of the court was made by R.MAHADEVAN, J.]

Assailing the order dated 12.07.2022 passed by the Income Tax Appellate Tribunal, Mumbai "G" Bench, in I.T.A.No.813/M/2018 relating to the assessment year 2012-2013, the appellant / Revenue has preferred the Tax Case Appeal along with the miscellaneous petition seeking to condone the delay of 64 days in filing the same.

2. Heard the learned standing counsel appearing for the petitioner / appellant and perused the materials available on record.

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3. It is seen that the respondent is an assessee on the file of the assessing officer at Mumbai. He preferred an appeal against the assessment order passed by the assessing officer, recomputing the income at Rs.30,25,70,244/- relating to the assessment year 2012-13, before the CIT(A), Mumbai, who partly allowed the same, by order dated 30.11.2017. Aggrieved against the same, both the Revenue and the assessee went on appeal before the ITAT, Mumbai, which decided the same in favour of the assessee. Therefore, the Revenue is before this court with the present appeal, questioning the order passed by the ITAT, Mumbai.

4. This court is of the view that as per section 127 of the Income Tax Act read with section 260A, the High court under whose jurisdiction the assessing officer has passed the order, will have the jurisdiction to entertain the appeal. In this regard, it may be relevant 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*

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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.

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.

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

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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."

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5. In the light of the above legal proposition, more particularly, at paragraph no.38, the present tax case appeal cannot be maintainable within the jurisdiction of this court, as the business premises of the assessee is situated at Mumbai and the entire assessment proceedings have been completed only by the assessing officer at Mumbai. Even the order under challenge has also been passed by the ITAT, Mumbai. Therefore, it is for the petitioner/ department to go before the appropriate forum to work out their remedy.

6. In such view of the matter, the condone delay petition is closed, granting liberty to the petitioner / department to file appropriate appeal / petition before the jurisdictional court within a period of three weeks from the date of receipt of a copy of this order. Consequently, the tax case appeal is rejected at the SR stage itself. No costs. Registry is directed to return the original impugned order, after substituting the photo copy of the same in the case bundle.

[R.M.D., J.] [M.S.Q., J.]
17.08.2023

Neutral Citation: Yes / No
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To

1.The Pr. Commissioner of Income Tax-1
Chennai

2.The Income Tax Appellate Tribunal, G Bench,
Mumbai.

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