114 (2 cases)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA-143-2023 (O&M)
Date of Decision: 08.02.2024

THE PRINCIPAL COMMISSIONER OF INCOME TAX, FARIDABAD

……..Appellant

V/s.

M/s. RBS BUSINESS SERVICES PVT. LTD. (FORMERLY KNOWN AS RBS BUSINESS SERVICES PVT. LTD.) BUILDING NO.7B, DLF CYBER CITY, DLF PHASE-III, GURGAON.

……..Respondent

ITA-168-2023 (O&M)

THE PRINCIPAL COMMISSIONER OF INCOME TAX, FARIDABAD

……..Appellant

V/s.

M/s. RBS BUSINESS SERVICES PVT. LTD., UNIT NO.414, EMPIRE COMPLEX, SENAPATI, BAPAT MARG, LOWER PAREL, MUMBAI

CORAM: ***HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA***
HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Saurabh Kapoor, Senior Standing Counsel for the appellant(s).

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SANJEEV PRAKASH SHARMA, J. (Oral)

1. This order shall dispose of two connected Income Tax Appeal as the issue involved in both the Appeals is common.

2. Learned counsel for the appellant(s) has invited the attention of this Court to the judgment passed by the Hon'ble Supreme Court in the case of ***Principal Commissioner of Income Tax-I, Chandigarh*** Vs. ***ABC Papers Ltd.***; *(2022) 9 SCC 1*, to submit that the jurisdiction of the High Court would lie at High Court of Bombay as the assessment order has been passed by the Assessment Officer at Bombay.

3. The apex Court in the case (Supra) has held as under:-

> *"43. 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.

44. 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.

45. 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)."

4. In view of the above, we allow the appellant(s) to withdraw these Appeals with liberty to file the same before the High Court having appropriate jurisdiction.

5. All pending applications filed in these Appeals shall stand disposed of accordingly.

[SANJEEV PRAKASH SHARMA]
JUDGE

February 8, 2024
Ess Kay

[HARSH BUNGER]
JUDGE

Whether speaking / reasoned : Yes / No
Whether Reportable : Yes / No