

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "B", LUCKNOW**

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI. A. K. GARODIA, ACCOUNTANT MEMBER**

ITA No.699/LKW/2013
Assessment Year:2012-13

Raibareilly District Co-operative Bank Ltd. Co-op. Bank Building, 1 st Floor H.P.O. Kaiperganj, Ghantaghar, Kutchery Road, Raebareilly	v.	Director of Income Tax (I&CI) Lucknow
PAN/PAN:LKNZ05100F (Appellant)		(Respondent)

Appellant by:	Shri. J. J. Mehrotra, FCA		
Respondent by:	Shri. Y. P. Srivastava, D.R.		
Date of hearing:	12	11	2014
Date of pronouncement:	16	01	2015

ORDER

PER SUNIL KUMAR YADAV:

This appeal is preferred by the assessee against the order of the Id. Director of Income Tax (I&CI), Lucknow passed under section 271FA of the Income-tax Act, 1961 (hereinafter called in short "the Act").

2. This appeal was initially disposed of vide order dated 7.1.2014, but later on an M.A. was filed by the Revenue with the submission that this appeal could not have been disposed of by the Tribunal, as the Tribunal has no jurisdiction to entertain an appeal filed against the order passed by the Director of Income-tax under section 271FA of the Act. The Revenue has also placed reliance upon the order of the Tribunal in the case of Hardoi District Co-operative Bank vs. Director of Income-tax in I.T.A. No. 719/LKW/2013 whereby it has been held that the appeal against an order passed under section 271FA of the Act can only be filed before the Id.

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CIT(A) and the Tribunal has no jurisdiction to entertain the same. Finding force in the contention of the Revenue, the order of the Tribunal dated 7.1.2014 was recalled and the appeal was re-fixed for fresh hearing.

3. During the course of hearing, the Id. D.R. has raised a serious objection with regard to the maintainability of the appeal, with the submission that the appeal filed against the order passed under Chapter XXI are to be filed before the Id. CIT(A) as per section 246A(1)(q) of the Act. The Id. D.R. has also invited our attention to the provisions of section 253 of the Act with the submission that the penalty levied under section 271FA of the Act did not find place in section 253(1) of the Act. Therefore, the Tribunal has no jurisdiction to entertain the appeal against an order passed under section 271FA of the Act and the appeal against the order of the Director of Income-tax is to be heard by the Id. CIT(A).

4. The Id. counsel for the assessee has also invited our attention to the literature on "appellate jurisdiction" obtained from the internet with the submission that in appellate jurisdiction the superior court has to hear appeals of causes which have been tried in inferior courts. He has further contended that the appellate jurisdiction refers the power of a higher court to review and revise a lower court's decision. The appellate jurisdiction is the power of a court to review decisions and change outcomes of decisions of lower courts. He has further invited our attention to the definition given in the Black's Law Dictionary, according to which the appellate jurisdiction was defined as the power of a court to review and revise a lower court's decision.

5. The Id. counsel for the assessee has further contended that the Director of Income-tax is equal in rank of the Commissioner of Income-tax (Appeals), therefore, the appeal against the order of the Director of Income-tax cannot be filed before the Commissioner of Income-tax (Appeals). It can only be filed before a forum which is senior in rank to the

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Director of Income-tax and that forum is only Income Tax Appellate Tribunal (ITAT). The Id. counsel for the assessee has further invited our attention to clause (2) of the provisions of section 253(1) of the Act with the submission that where an order is passed by the Assessing Officer with the approval of the Principal Commissioner or Commissioner (Appeals). An appeal against the said order can only be filed before the Tribunal and not before the Id. CIT(A). Here is the case where the order was even passed by the Director of Income-tax, who is equal in rank of the Commissioner of Income-tax (Appeals). Therefore, the appellate jurisdiction against the said order lies with the ITAT and not with the Commissioner of Income-tax (Appeals).

6. Having given a thoughtful consideration to the rival submissions and from a perusal of record, we find that undisputedly the Director of Income-tax, who has passed an order under section 271FA of the Act is equal in rank with the Commissioner of Income-tax (Appeals). Therefore, question arises whether appeal against an order of the Director of Income-tax passed under section 271FA of the Act is to be filed before the Id. CIT(A), who is equal in rank of the Director of Income-tax or ITAT, a forum which is higher in rank to the Director of Income-tax?

7. We have carefully examined the relevant provisions of section 253(1) of the Act, in which different orders were classified under different clauses, against which an appeal can be filed before the Tribunal. As per clause (a) of section 253(1) of the Act, the order passed by a Deputy Commissioner (Appeals) or a Commissioner (Appeals) can be challenged before the ITAT by filing an appeal. As per clause (b) of section 253(1) of the Act, the order passed by an Assessing Officer after the 30th day of June, 1995, but before the 1st day of January, 1997 are to be filed before the Tribunal and as per clause (c) of section 253(1) of the Act, an order passed by a Principal Commissioner, Commissioner and Principal Chief Commissioner or

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Principal Director-General or Director-General or Principal Director or Director, under section 272A of the Act can be challenged before the Tribunal by filing an appeal. Rather, as per clauses (d) and (e) of section 253(1) of the Act, if the Assessing Officer passed an order with the approval of the Principal commissioner or Commissioner or pursuant to the directions of the Dispute Resolution Panel, which comprises of the Officers in the rank of Commissioner can only be challenged before the Tribunal. Though there is no specific reference of the order passed under section 271FA of the Act by the Director of Income-tax in section 253(1) of the Act for the purpose of filing an appeal against the said order, but an analogy drawn from the reading of section 253(1) of the Act is that the order passed by the Commissioners of Income-tax or an Officer who is equal in rank can only be challenged before the Tribunal, which is higher in rank. For the sake of reference, we extract section 253(1) as under:-

"253. (1) Any assessee aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order-

(a) An order passed by a [Deputy Commissioner (Appeals) [before the 1st day of October, 1998] [or, as the case may be, a Commissioner (Appeals)] under section 154], section 250, section 271, section 271A or section 272A]; or

(b) an order passed by an Assessing Officer under clause (c) of s. 158BC, in respect of search initiated under section 132 of books of account, other documents or any assets requisitioned under section 132A, after the 30th day of June, 1995, but before the 1st day of January, 1997; or]

[(ba) an order passed by an Assessing Officer under sub-section (1) of section 115VZC; or]

(c) an order passed by a "[^][Principal Commissioner or] Commissioner [under section 12AA [or under clause (vz) of sub-section (5) of section 80G] or] under section 263 [or under section 271] [or under section 272A] or an order passed by him under section 154 amending his order under section 263] [or an order

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passed by a [Principal Chief Commissioner or] Chief Commissioner or a [Principal Director General or] Director General or a [Director or] Director under section 272A; [or]]

[(d) an order passed by an Assessing Officer under sub-section (3) of section 143 or section 147 [or section 153A or section 153C] in pursuance of the directions of the Dispute Resolution Panel or an order passed under section 154 in respect of such order;]

(e) an order passed by an Assessing Officer under sub-section (3) of section 143 or section 147 or section 153A or section 153C with the approval of the [Principal Commissioner or] Commissioner as referred to in sub-section (12) of section 144BA or an order passed under section 154 or section 155 respect of such order."

8. We have also carefully examined the provisions of section 246A of the Act, which deals with the orders against which appeal is to be filed before the Commissioner (Appeals) and as per clause (q) of sub-section (1) of section 246A, the appeal against an order imposing penalty under Chapter XXI is to be filed before the Id. CIT(A) and under Chapter XXI most of the penalties are levied by the Assessing Officer or Officers who is junior in rank to the Id. CIT(A). But penalty levied under section 271FA of the Act is to be levied by the Director of Income-tax. Though this section falls under chapter XXI and as per section 246A(1)(q) of the Act, the order passed under Chapter XXI can only be challenged before the Id. CIT(A), but while introducing the provisions for imposing penalty under section 271FA of the Act by the Director of Income-tax, the Legislature might not have taken into account the fact that the order of the Director of Income-tax who is equivalent in rank with the Id. CIT(A), cannot be challenged before the Id. CIT(A). As per definition of appellate jurisdiction, the appeals are to be filed before a forum which is higher in rank than the forum which passed the order.

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9. We have been carried through the literature on appellate jurisdiction available on internet and the definition given in the law dictionary, The Law Lexicon; Stroud's Judicial Dictionary of Words and Phrases and Black's Law Dictionary and everywhere it has been defined that the appellate jurisdiction is a power of the court to review the decision and change the outcome of decision of the lower courts. The judicial hierarchy is also explained and it has been stated that the appellate jurisdiction is a power of a court to review decisions and change outcomes of decisions of lower courts. It was further defined that the appellate jurisdiction is the jurisdiction which a superior court has to hear appeals of causes which have been tried in inferior courts. The definition of Appellate Jurisdiction Law & Legal Definition as per definitions.uslegal.com, the appellate jurisdiction refers to the power of a higher court to review and change the decisions of the lower courts. The Appellate Jurisdiction was also defined as the power of the court to hear appeals from lower court which includes the power to reverse or modify the lower court's decision.

10. In the Dictionary of The Law Lexicon, the appellate jurisdictional was defined as the cognizance which a superior court takes of a case removed to it, by appeal or otherwise from the decision of an inferior court. It was further defined that the appellate jurisdiction Exvt termini implies a resort from an inferior Tribunal of justice to a superior, for the purpose of revising the judgments of the inferior Tribunal. It further says that the appellate jurisdiction, strictly speaking, is exercised by revising the action of the inferior court, or remanding the cause for the rendition of the proper judgment.

11. In Black's Law Dictionary, the appellate jurisdiction is defined as the power of a court to review and revise a lower court's decision.

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12. As per Stroud's Judicial Dictionary, Appellate Court refers to the function that the court is performing rather than to its status in the hierarchy of courts.

13. Having carefully examined the definition of appellate jurisdiction explained by various Dictionaries and the authorities, we find that the appellate jurisdiction always lies with the forum who is higher in rank than the forum whose order is under challenge; meaning thereby the appellate court or jurisdiction can examine the order of the inferior court and not of the court or authority who is equivalent in rank.

14. In the instant case, undeniably the order under section 271FA of the Act was passed by the Director of Income-tax who is equivalent in rank with the Id. CIT(A). Therefore, the order of the Director of Income-tax cannot be challenged or assailed by filing an appeal before an Officer i.e. the Id. CIT(A), who is equivalent in rank with the Director of Income-tax. The appeal can only be filed before a higher forum than the forum whose order is to be challenged and the higher forum is only ITAT and before it the order of the Director of Income-tax can only be challenged by filing an appeal.

15. We have also carefully examined the provisions of section 253(1) of the Act, in which the order of the Assessing Officer, which has been passed with the approval of the Commissioner of Income-tax pursuant to the Dispute Resolution Panel comprising of the Commissioner of Income-tax, can only be challenged before the ITAT by filing an appeal. In the light of these facts, when the order of the Assessing Officer passed with the approval of the Commissioner of Income-tax can only be challenged before the Tribunal, then how the order of the Director of Income-tax who is equivalent in rank with the Id. CIT(A) can be challenged before the Id. CIT(A). The only forum where this order of the Director of Income-tax can

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be challenged is the ITAT which is higher in rank to the Director of Income-tax.

16. So far as the view taken in other appeal, styled as Hardoi District Co-operative Bank vs. Director of Income-tax in I.T.A. No. 719/LKW/2013 is concerned, we find that while adjudicating the impugned issue in that appeal, the argument with regard to the appellate jurisdiction was not advanced and relying upon the provisions of section 246A(1) of the Act, the issue was adjudicated. Now, during the course of hearing of this appeal, the arguments were advanced with respect to the definition of appellate jurisdiction and provisions of section 253(1) of the Act. Therefore, we have decided to re-appreciate the arguments advanced by the parties in the light of the aforesaid provisions.

17. With these observations, we are of the view that the appeal by the assessee has been rightly filed before the Tribunal and the Tribunal is competent to adjudicate the appeal on merit. Accordingly we reject the preliminary objection of the Revenue with regard to the maintainability of the appeal before the Tribunal. Accordingly we direct the Registry to fix this appeal for hearing on merit on 10.2.2015.

Order was pronounced in the open court on the date mentioned on the caption page.

Sd/-
[A. K. GARODIA]
ACCOUNTANT MEMBER

Sd/-
[SUNIL KUMAR YADAV]
JUDICIAL MEMBER

DATED: 16th January, 2015

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

Assistant Registrar