

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 18887/2021
(Arising out of impugned final judgment and order dated 21-05-2021
in WPL No. 3865/2020 passed by the High Court of Judicature at
Bombay)

PRINCIPAL COMMISSIONER OF INCOME TAX 1 MUMBAI & ANR. Petitioner(s)

VERSUS

MSPL LIMITED THROUGH ITS MANAGING DIRECTOR

Respondent(s)

(FOR ADMISSION and I.R. and IA No.147888/2021-EXEMPTION FROM FILING
C/C OF THE IMPUGNED JUDGMENT

IA No. 77319/2022 - APPLICATION FOR PERMISSION

IA No. 147888/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT)

Date : 25-04-2023 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE M.R. SHAH
HON'BLE MR. JUSTICE C.T. RAVIKUMAR

For Petitioner(s) Mr. N Venkatraman, A.S.G.
Mr. Raj Bahadur Yadav AOR
Mr. V Chandarshekhara Bharathi, Adv.
Mr. Shashank Bajpai, Adv.
Ms. Nisha Bagchi, Adv.
Mr. Anil Hooda, Adv.
Mr. Udai Khanna, Adv.
Ms. Preeti Rani, Adv.
Mr. Manish, Adv.
Mr. Shafik Ahmed, Adv.
Mr. Ajay Sharma, Adv.
Ms. Anju, Adv.
Mr. Sunny Chauhan, Adv.

For Respondent(s) Mr. Jahangir D. Mistri, Sr. Adv.
Mr. Rohit K. Singh, AOR
Mr. Nitesh Joshi, Adv.
Mr. Uday N. Tiwari, Adv.
Mr. Pritam Biswas, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Feeling aggrieved and dissatisfied with the impugned
judgment and order dated 21-05-2021 passed by the High
Court of Judicature at Bombay in Writ Petition (L) No.

contd..

3865/2020, by which the High Court has allowed the said writ petition preferred by the Assessee and has quashed and set aside the order passed by the President of the ITAT transferring four appeals from Bangalore Bench to Mumbai Bench, which was passed in exercise of powers under Rule 4 of the Income Tax Appellate Rules, the Revenue and Anr. have preferred the present Special Leave Petition.

We have heard Shri N Venkataraman, learned ASG appearing on behalf of the Revenue/Appellant(s) and Shri Jahangir D. Mistri, learned Senior Advocate appearing on behalf of the Assessee.

Learned Senior Advocate appearing on behalf of the Assessee has drawn out attention to the recent decision of this Court in *Principal Commissioner of Income Tax-I, Chandigarh Vs. ABC Papers Limited* (2022) 9 SCC 1, more particularly paragraphs 24, 25, 42 and 45. It is submitted that in the said decision, it is observed and held by this Court that the seat of ITAT and/or jurisdiction of the concerned High Court would depend upon where the seat of Assessing Officer was and the Assessing Officer, who passed the order. It is submitted that in the present case, the Assessing Officer passed order in Bangalore. Even the CITA also passed order in Bangalore. It is submitted that, therefore, as observed and held by this Court, the appeal against the Assessment

contd..

order/the order passed by the CITA would only lie before the ITAT, Bangalore.

The aforesaid factual aspects have not been disputed by Shri N Venkataraman, learned ASG appearing on behalf of the Revenue.

In paras 24, 25, 42 and 45 of the judgment and order in the case of *ABC Papers Limited (supra)*, this Court has observed and held as under -

"24. Keeping the above principle in mind, we will now return to the inquiry into the appropriate High Court for filing an appeal against an order of a bench of the ITAT exercising jurisdiction over more than one state. We notice that the issue has already fallen for consideration before a Division Bench of the High Court of Delhi way back in 1978 in the case of Seth Banarsi Dass Gupta. Having considered the matter in detail, the High Court of Delhi held that the "most appropriate" High Court for filing an appeal would be the one where the Assessing Officer is located. The decision was followed in Suresh Desai (*supra*) by Justice Lahoti (as he then was) and provided additional reasons in support of the same view. The interpretative choices are based on the following reasons, which we have reformulated as under:

24.1. As benches of the ITAT exercise jurisdiction over more than one state, Explanation to Standing Order No. 1 of 1954 and Standing Order No. 1 of 1967 issued under the Rules prescribe that, the jurisdiction of the ITAT should be based on the location of the Assessing Officer. The same principle should apply for determining the jurisdiction of the High Court for an appeal against the decision of the ITAT.

24.2. It would be appropriate for the ITAT to refer a question of law to the High Court within whose jurisdiction the Assessing Officer or the CIT which has decided the case is located, as these authorities would be bound to follow the decision of the concerned High Court.

Contd..

24.3. This interpretation will also be in consonance with the expression "in relation with any State, the High Court of that State" provided in the definition of the "High Court" in Section 66(8) (under the present 1961 Act, it is Section 269).

24.4. The appeals and references cannot be made to a High Court only on the basis that a bench of the ITAT is located within the jurisdiction of the said High Court, as it will create an anomalous situation for that as well as other High Courts.

24.5. In view of the doctrine of precedents and the rule of binding efficacy of law laid down by a High Court within its territorial jurisdiction, a question of law arising for decision in a reference should be determined by the High Court which exercises territorial jurisdiction over the situs of the Assessing Officer (Suresh Desai).

25. The principle laid in Seth Banarasi Dass is followed in Suresh Desai & Associates v. Commissioner of Income Tax, Birla Cotton Spinning and Weaving Mills Ltd. v. Commissioner of Income Tax, Commissioner of Income Tax v. Digvijay Chemicals Ltd. and Commissioner of Income Tax v. Motorola India Ltd. It is interesting to note that this basic principle is accepted and abided as a precedent even in the two subsequent judgments of the High Court of Delhi in Sahara and Aar Bee. Thus, it is well-settled that the appellate jurisdiction of a High Court under Section 260A is exercisable by a High Court within whose territorial jurisdiction the assessing officer is located.

42. 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

contd..

power. Such an interpretation will clearly be against the interest of justice.

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)."

In view of the above and for the reasons stated hereinabove, it cannot be said that the High Court has committed any error in setting aside the order passed by the President of the ITAT transferring the appeals from the Bangalore Bench to the Mumbai Bench. We are in complete agreement with the view taken by the High court. Therefore, now the appeals will be heard by the ITAT, Bangalore Bench.

In view of the above, the present Special Leave Petition deserves to be dismissed and is accordingly dismissed.

However, it is observed that the other issues including the powers of the President under Section 255 read with Income Tax Appellate Rules are kept open to be considered in an appropriate proceedings.

Pending application(s) shall stand disposed of.

(NEETU SACHDEVA)
ASTT. REGISTRAR-cum-PS

(NISHA TRIPATHI)
ASSISTANT REGISTRAR