

Supreme Court on Appellate Jurisdiction of High Court

*By Aditya Mahajan**

In a recent judgement (Principal Commissioner of Income-tax-I, Chandigarh v. ABC Paper Ltd., 2022 SCC OnLine SC 1036), a three member bench of Hon'ble Supreme Court of India (SC) has held that the appropriate High Court (HC) having appellate jurisdiction under section 260A of the Income-tax Act (Act) would be the one where the Assessing authority is situated. It was further held that appellate jurisdiction of the HC stands on its own foundation and cannot be subject to the exercise of executive power to transfer a 'case' from one Assessing Officer (AO) to another.

1. Facts

- 1.1 M/s ABC Papers Ltd. (company or the assessee) is a company engaged in the manufacture of writing and printing paper and had filed its income tax return before the AO, New Delhi for AY 2008-09. A notice was issued to the company under section 143(2) of the Act by the Deputy Commissioner of Income Tax, Circle-1(1), New Delhi, which was followed by an assessment order. The Company appealed to the Commissioner of Income-tax (Appeals) [CIT(A)] and was allowed appeal. Aggrieved by the order of the CIT(A), the Revenue appealed to the Income Tax Appellate Tribunal (ITAT), New Delhi, which was dismissed.
- 1.2 Certain events were taking place in the background during the aforementioned proceedings, owing to which, an order was passed by CIT (Central) Ludhiana under Section 127 of the Act, centralizing the cases of the assessee for AY 2006-07 to AY 2013-14 and transferring them to Central Circle, Ghaziabad. Thereafter, the Deputy Commissioner of Income-tax, Central Circle, Ghaziabad, passed an assessment order, which was appealed and allowed before the CIT (A) – IV, Kanpur. The Revenue then appealed the order of the CIT(A), Kanpur to ITAT, New Delhi, which dismissed the appeal of the Revenue.
- 1.3 Before the orders of the ITAT in the aforementioned original and transferred proceedings could be appealed, the cases were re-transferred under section 127 of the Act to the Deputy Commissioner of Income-tax, Circle-1(1), Chandigarh. Thus, the Revenue appealed both the dismissals by the ITAT before the HC of Punjab & Haryana.

- 1.4 The HC of Punjab & Haryana disposed of the appeals against both the orders of the ITAT by adopting the view that it had no jurisdiction over the cases as the initial assessment orders were passed by AO's who are situated outside its jurisdiction. Simultaneously, the Revenue had filed an appeal against the order of ITAT, New Delhi before the High Court of Delhi, but the same was dismissed by the Delhi High Court on the ground that it did not have jurisdiction because when a case is transferred under Section 127 of the Act, jurisdiction gets transferred to the High Court within whose jurisdiction the situs of the transferee officer is located.

A peculiar situation arose for the Revenue as both the High Courts decided that they did not have jurisdiction, therefore, the Revenue appealed before the Supreme Court.

2. Questions of Law

- 2.1 Which is the appropriate High Court for an appeal under section 260A when a case has been transferred by an order passed under Section 127 of the Act?
- 2.2 Where a Bench of the ITAT exercises jurisdiction over multiple States, before which High Court would an appeal lie?

3. Relevant Law

- Section 260A of the Act.
- Section 127 of the Act.
- *Seth Banarsi Dass Gupta v. CIT*¹.
- *Suresh Desai & Associates v. Commissioner of Income Tax*².
- *Commissioner of Income-tax v. Motorola India Ltd*³.
- *CIT v. Sahara India Financial Corporation Ltd*⁴.
- *CIT v. Aar Bee Industries Ltd*⁵.

¹ (1978) 113 ITR 817 (Del).

² (1998) 230 ITR 912 (Del).

³ (2010) 326 ITR 156 (P&H).

⁴ (2007) 294 ITR 363 (Del).

⁵ (2013) 357 ITR 542 (Del).

4. Judgement

- 4.1 In *Sahara*⁶, the High Court of Delhi decided the case by interpreting the expression “cases” used under *Explanation* to section 127(4) of the Act as encompassing the jurisdiction of the Tribunals and High Courts as well as the Commissioner and subordinate authorities. The Court took the view that when a case would be transferred under section 127 of the Act, it would get transferred “lock, stock and barrel”, i.e., including the transfer of jurisdiction of the High Court with the situs of the old AO to the High Court with the situs of the transferee AO. The decision of *Sahara*⁷ was followed by *Aar Bee*⁸ and decided in the same vein.
- 4.2 In *Motorola*⁹, the High Court of Punjab & Haryana decided that the expression “cases” used under Section 127 would not encompass the jurisdiction of the Tribunals and High Court. The term is used in relation to the power of the Commissioner and other authorities to transfer a “case” from one AO to another AO and the procedure involved in doing so, and has no bearing on the jurisdiction of the Tribunals and High Courts.
- 4.3 In the present case, the Supreme Court held that the High Court of Delhi misread the scope and ambit of Section 127 in *Sahara*¹⁰ by holding that the expression “cases” used in the *Explanation* to Section 127(4) related only to executive powers of Income-tax Authorities, and the High Court committed a mistake in assuming that the expression would include proceedings before Tribunals and High Courts as well. Quoting the judgement of *CIT v. Parke Davis (India) Ltd.*¹¹, the court observed that such a reading is not tenable as it would effectively allow executive authorities to interfere with the territorial jurisdiction of the concerned High Court.
- 4.4 While scrutinizing the judgement of *Sahara*¹², the Court further contended with certain arguments that could be made in favour of the position taken by the Revenue. It could be said that such an interpretation would hold water because the files relating to the case

⁶ supra (note 4)

⁷ supra (note 4)

⁸ supra (note 5)

⁹ supra (note 3)

¹⁰ supra (note 4)

¹¹ (1999) 239 ITR 820 (AP).

¹² supra (note 4)

would now be in the possession of the new AO, the old AO would not be able to assist the High Court, neither would the old AO be able to implement any decisions made by the High Court on account of not being the AO anymore. The Court addressed these arguments by relying upon *Seth Banarasi Dass Gupta*¹³ and *Suresh Desai*¹⁴, in which the principle that a decision of the High Court is binding on subordinate courts and tribunals within its territorial jurisdiction was highlighted. Foundational Principles of consistency and certainty envisage that the AO, Commissioner of Appeals, ITAT would operate under the concerned High Court as one unit, because deviation from these principles directly effects the binding nature of decisions of appellate courts and the rule of law. The Act follows lineal progression of judicial remedies starting from the AO and placing the High Court at the top of the hierarchy with judicial superintendence over all subordinate authorities. To accept the arguments of the Revenue, one would even be required to accept that the decisions of the High Court would not bind subordinate authorities such as the ITAT and the Commissioner of Appeals, as they would be outside the Court's territorial jurisdiction and there would be no forum for correcting their decisions. Further, intervention of a Court would be required for the transfer of a case from one judicial forum to another to ensure the independence of the judiciary, and exercise of pure executive power cannot effectuate such a transfer.

- 4.5 On the issue of under which High Court an appeal would lie in case a Bench of the ITAT exercises jurisdiction over multiple states, the court decided that the jurisdiction of a High Court is not dependent on the location of the ITAT using the same reasoning.

**Aditya Mahajan is a lawyer and an intern with TeamLogic LLP.*

¹³ supra (note 1)

¹⁴ supra (note 2)