



PROTEUS CONSULTANTS PVT. LTD.

Which High Court will have jurisdiction

An interesting question arises when dealing with the High Court having jurisdiction to deal with an appeal arising from an order of an Income Tax Appellate Tribunal (“ITAT”) whose jurisdiction extends to more than one State. To take a concrete example, consider the Delhi Benches of the ITAT. The jurisdiction of the Delhi Benches extends to Delhi and some districts of Haryana and Uttar Pradesh. Now take the case of an assessee whose principal place of business is in one of the districts of Haryana over which the Delhi Benches of the ITAT have jurisdiction. If the assessee wishes to file an appeal before the High Court against an order of the ITAT, should the appeal be filed before the Delhi High Court or the Punjab & Haryana High Court?

The Delhi High Court came to consider this aspect in regard to the 1922 Act in the case of *Seth Banarsi Dass Gupta*¹. In this case, the assessment order came to be passed by the Income-Tax Officer, Meerut and the matter travelled to the Hon’ble ITAT, Delhi Benches. On the question of which High Court could deal with the appeal arising from the order of the ITAT, the Hon’ble Court concluded that since the Income-Tax appeals, relating to 1963-64, had arisen out of assessment orders of the Income-Tax Officer, Meerut in Uttar Pradesh, it was the High Court at Allahabad had jurisdiction to deal with an appeal against the ITAT order. In other words, the High Court having jurisdiction would be the one exercising jurisdiction over the location of the jurisdictional Assessing Officer.

Another interesting aspect, however, is which Court will exercise jurisdiction in the event that a case is transferred under section 127 of the Income Tax Act, 1961 (“Act”) from the jurisdiction of an Assessing Officer in one State to the jurisdiction of an Assessing Officer in another State based upon an administrative order. Whereas the Punjab & Haryana High Court has held that the principle laid down in the case of *Seth Banarsi Dass Gupta* would not change, the Delhi High Court differed with this view and held that upon administrative transfer of the file, the case was transferred lock, stock and barrel to the jurisdiction of the Court in which the transferee Assessing Officer was located.

In view of the conflicting judgments of the two High Courts, the matter came to be considered by the Hon’ble Supreme Court of India (“SC”). The appellant in the case was *ABC Papers Ltd.* (“ABC”) and the matter related to assessment year 2008-09. ABC had filed its tax returns before the Assessing Officer (“AO”), New Delhi and an order of assessment was passed on 30.12.2010 by the DCIT, Circle 1(1), New Delhi. ABC filed an appeal before the CIT (Appeals)-IV, New Delhi and the appellate order allowing the appeal was passed on 16.02.2012. Against this, Revenue preferred an appeal before the Hon’ble ITAT, New Delhi who dismissed Revenue’s appeal. The ITAT order was passed on 11.05.2017. Revenue then carried the matter before the Hon’ble Punjab & Haryana High Court which appeal came to be numbered ITA 517 of 2017. During pendency of the appeal before the CIT(Appeals), a search operation was carried out on 04.05.2011. By an order dt. 26.06.2013, the

¹ (1978) 113 ITR 817 (Del)



PROTEUS CONSULTANTS PVT. LTD.

Commissioner of Income Tax (Central), Ludhiana centralised the case of the assessee for assessment years 2006-07 to 2013-14 and transferred the same to the Central Circle, Ghaziabad. The DCIT, Central Circle, Ghaziabad passed an order that finally travelled to the Hon'ble ITAT, New Delhi. The Hon'ble ITAT, New Delhi, passed its order on 01.09.2017 against which Revenue once again went on appeal in ITA No. 130/2018.

Therefore, there were 2 orders of the Hon'ble ITAT, New Delhi. The first was the order passed on 11.05.2017 arising from the appellate order that, in turn, arose from the assessment order passed by the DCIT, New Delhi. The second was the order dt. 01.09.2017 arising from the appellate order relating to an order passed by the DCIT, Ghaziabad. Between the dates of these two orders, the files of ABC were transferred once again to DCIT, Circle 1(1), Chandigarh by an order u/s 127. It was, perhaps, for this reason that both the appeals before the Hon'ble Punjab & Haryana High Court.

After reviewing the judicial precedents in the matter, the SC held that the judgment of the Punjab & Haryana High Court was to be upheld and that the Delhi High Court had erred in holding that the case of the assessee stood transferred lock, stock and barrel to the jurisdiction of the High Court that exercised jurisdiction over the location of the transferee Assessing Officer.

The SC reasoned that were the judgments of the Delhi High Court to be accepted, it would follow that the judgment of the High Court exercising jurisdiction over the transferred Assessing Officer would not bind the lower authorities because the lower authorities were in a State outside the jurisdiction of the Hon'ble High Court. The appeal process is a lineal progression of judicial remedies and cannot be linked to executive orders relating to transfer of jurisdiction for the purpose of the Act.

Accordingly, the appeal before the High Court that originated from the assessment order passed by the DCIT, Delhi would lie before the Hon'ble Delhi High Court. Similarly, the appeal before the High Court against the order of the DCIT, Ghaziabad would lie before the Allahabad High Court.

This judgment of the SC was delivered in 18.08,2022 and is an important judgment in respect of the jurisdiction of the High Court in the case of transfer of file pursuant to executive order.

August 27th, 2022