

SURESH DESAI & ASSOCIATES vs. COMMISSIONER OF INCOME TAX

HIGH COURT OF DELHI

R.C. Lahoti & J.K. Mehra, JJ.

IT Case No. 153 of 1993

5th September, 1997

(1997) 65 CCH 0746 DelHC

(1998) 148 CTR 0345 : (1998) **230 ITR 0912** : (1998) 99 TAXMAN 0114

Legislation Referred to

S 256(2)

Case pertains to

Asst. Year 1980-81

Decision in favour of:

Revenue

Reference—Territorial jurisdiction—Assessment made at Bombay—Appeal thereagainst decided by CIT(A), Bombay—Both parties preferred appeals to Tribunal, Delhi, which were disposed of by Tribunal, Delhi Bench—Jurisdiction under s. 256 vests in High Court of Bombay and not in the High Court of Delhi—Transfer of assessment cases of assessee under s. 127(1) for some years other than the year in question has no relevance or bearing on territorial jurisdictional competence of High Court of Delhi to hear the application under s. 256(2)—Questions of law arising for decision in a reference should be determined by the High Court which exercises territorial jurisdiction over the situs of the AO

Held :

The territorial jurisdiction of the Tribunal extends over several States though each of such States has its own High Court. There is unanimity of opinion amongst different High Courts that decisions of the High Courts are binding on the subordinate Courts and authorities or Tribunal under its superintendence throughout the territory in relation to which it exercises jurisdiction. The binding authority does not extend beyond its territorial jurisdiction. The decision of one High Court is not a binding precedent for another High Court or for Courts or Tribunals outside its territorial jurisdiction. On account of the abovesaid doctrine of precedents and the rule of binding efficacy of the law laid down by the High Court within its territorial jurisdiction, the questions of law arising for decision in a reference should be determined by the High Court which exercises territorial jurisdiction over the situs of the AO. Else it would result in serious anomalies. An assessee affected by an assessment order at Bombay may invoke the jurisdiction of the Delhi High Court to take advantage of the law laid down by it and suited to him and thus get rid of the law laid down to the contrary by the High Court of Bombay not suited to the assessee. This cannot be allowed. Therefore, in so far as the

present case is concerned, the jurisdiction under sub-ss. (1) and (2) of s. 256 vests in the High Court of Bombay and certainly not in the High Court of Delhi. There is no merit in the submission of counsel for the petitioner-assessee that by subsequent event the High Court of Delhi acquires jurisdictional competence to hear the petition. It appears that for some assessment years (other than the asst. yr. 1980-81), the assessment records of the petitioner have been ordered to be transferred from Bombay to Delhi some time in the year 1988 which were pending at Bombay at that time. So far as the assessment for the year 1980-81 is concerned, it had stood concluded. The said transfer has taken place under s. 127(1). It is not that the jurisdiction to make assessment in respect of matters arising at Bombay has been conferred or transferred to Delhi by reference to territory or persons or classes of persons or incomes or classes of income or cases or classes of cases as contemplated by s. 120. Such transfer of assessment cases for a few years other than the year in question has no relevance and no bearing on the territorial jurisdictional competence of the High Court of Delhi to hear the present application under s. 256(2).—[Seth Banarsi Dass Gupta vs. CIT](#) 1978 CTR (Del) 183 : (1978) 113 **ITR** 817 (Del) : TC 55R.771 and [Birla Cotton, Spg. & Wvg. Mills Ltd. vs. CIT](#) (1980) 17 CTR (Del) 177 : (1980) 123 **ITR** 354 (Del) : TC 56R.492 **followed**.

(Paras 9 to 12)

Conclusion :

The Court to which the reference should be made would be the Court having jurisdiction over the territory in which the office of the AO was situate.

Cases referred:

CIT vs. Mohan Lal Kansal (1978) 114 **ITR** 583 (P&H) : TC 54R.666

CIT vs. Thana Electricity Supply Ltd. (1993) 112 CTR (Bom) 356 : (1994) 206 **ITR** 727 (Bom) : TC 28R.455

CIT vs. Ved Parkash (1989) 77 CTR (P&H) 116 : (1989) 178 **ITR** 332 (P&H) : TC 54R.684

Raja Benoy Kumar Sahas Roy vs. CIT (1954) 24 **ITR** 70 (Cal) : AIR 1954 Cal 225 : TC 55R.737

State of Andhra Pradesh vs. CTO (1988) 169 **ITR** 564 (AP)

Counsel appeared:

D.N. Sawhney, for the Appellant : Sanjay Khanna & Ajay Jha, for the Respondent

R. C. LAHOTI, J.

Judgment

This is a petition under s. 256(2) of the IT Act, 1961, filed on 30th Nov., 1993, seeking mandamus to the Tribunal, New Delhi, to draw up a statement of case and refer the questions stated in the petition for the opinion of the High Court.

2. It is not necessary to state the questions of law on which the reference is being sought for looking at the nature of the preliminary objection raised by the respondent to the maintainability of the petition, which is being disposed of by this order. The relevant

facts only need be noticed in brief.

3. The petitioner-assessee was a firm engaged in the business of production of motion pictures at Bombay. During the asst. yr. 1980-81, the firm had produced a film by the name of "Suhaag". The muharat was performed on 12th Jan., 1979. The production of the film was completed in or about October, 1979. The film was released on 16th Nov., 1979. A search and seizure action conducted by the Directorate of Enforcement, was carried out at the business premises of the assessee-firm and its partners, etc., under s. 132 of the IT Act somewhere at the end of 1979. The original assessment order was passed on 25th March, 1983, by the AO at Bombay. The assessee filed an appeal before the CIT(A), Bombay, who by order dt. 3rd Oct., 1983, directed the AO to afford the assessee an opportunity of hearing and recomplete the assessment in accordance with law. The Dy. CIT (Asst.), Bombay, then passed the order of assessment. An appeal was preferred which was heard and decided by the CIT (A), Bombay, on 19th Dec., 1988. The assessee and the Revenue, both preferred appeals to the Tribunal, Delhi, which were disposed of by order dt. 29th Oct., 1992, by the Tribunal, Delhi Bench, New Delhi.

4. The assessee filed an application under s. 256(1) of the Act setting out a few questions and seeking reference to the High Court, which application was also dismissed by the Tribunal, Delhi, forming an opinion that no referable question of law arose out of the order of the Tribunal.

In the abovesaid background of facts, the present application has been filed before the High Court of Delhi at New Delhi.

5. A preliminary objection to the maintainability of the application has been raised on behalf of the Revenue submitting that the application does not lie before the Delhi High Court. If at all, the application should have been filed before the High Court of Bombay, i.e., the High Court exercising jurisdiction over the assessing authority having jurisdiction to assess the assessee at the relevant time.

6. On behalf of the petitioner, it is submitted that the appellate order of the Tribunal wherefrom the questions of law are being said to arise having been passed by the Tribunal at Delhi, the reference application filed at New Delhi is competent. It was also submitted that in addition, the jurisdiction of the High Court of Delhi is spelled out additionally by the fact that on 8th Dec., 1992, the CIT-VIII has, in exercise of the powers conferred by sub-s. (1) of s. 127 of the Act, passed an order whereby the powers of the AO qua the assessee have been conferred on an AO at Delhi.

7. In our opinion, the question of territorial jurisdiction of the High Court who would be competent to hear a reference under s. 256(1) of the Act or an application under s. 256(2) of the Act is no more res integra in view of the law settled by a Division Bench decision of this Court in the case of Seth Banarsi Dass Gupta vs. CIT 1978 CTR (Del) 183 : (1978) 113 **ITR** 817 (Del) : TC 55R.771. In that case, the assessee, an HUF, resided and carried on business in Meerut. The assessment orders were passed by the ITO at Meerut and appeals therefrom were heard by the AAC at Meerut. Further appeals were heard by the Delhi Bench of the Tribunal. Later, a reference under s. 256 was made to the High Court of Delhi. A preliminary objection to the competence of the High Court of Delhi by reference to its territorial jurisdiction was raised on behalf of the Revenue which was upheld by the Division Bench. It was pointed out that there were no statutory provisions determining the proper High Court to which the reference should be made by the Tribunal. The Division Bench having analysed several provisions of the IT Act held that the reference was maintainable only before the Allahabad High Court and not before the High Court of Delhi. A perusal of the judgment, extensively dealing with all the relevant aspects, reveals the following reasonings given and observations made by the

Division Bench :

(i) Sec. 64 which has relevance for determining the jurisdiction of the AO by reference to the place where the assessee carries on business, profession or vocation, has no relevance for determining the jurisdiction of the appellate authority/Tribunal;

(ii) In considering the question as to the High Court to which a Bench having jurisdiction over more than one State has to make a reference, the basis adopted for determining the jurisdiction of the Bench of the Tribunal would be more appropriate than the basis adopted for determining the jurisdiction of the ITO;

(iii) It would be quite appropriate for the Bench to refer the question of law arising out of its own order in appeal to the High Court of the State from which the appeal had come.

(iv) The suggestion that the place of the location of the Bench which heard and determined an appeal may be adopted as the basis for the determination of the jurisdiction of the High Court to which the question of law arising out of the order should be referred cannot be accepted. Reference cannot be made to the High Court of Delhi merely because the Delhi Bench of the Tribunal situated within the territorial jurisdiction of the High Court heard the appeal.

8. The abovesaid view has been followed and reiterated again by a Division Bench of the High Court of Delhi in *Birla Cotton, Spg. & Wvg. Mills Ltd. vs. CIT* (1980) 17 CTR (Del) 177 : (1980) 123 **ITR** 354 (Del) : TC 56R.492. It has been held that the Court to which the reference should be made would be the Court having jurisdiction over the territory in which the office of the AO was situate.

Not only are we bound to follow the view taken by two Division Benches of the High Court of Delhi referred to hereinabove, which have held the field for about two decades, we too find ourselves in entire agreement with the view so taken.

9. There is yet another reason why the abovesaid view should prevail. The territorial jurisdiction of the Tribunal extends over several States though each of such States has its own High Court. There is unanimity of opinion amongst different High Courts that decisions of the High Courts are binding on the subordinate Courts and authorities or Tribunal under its superintendence throughout the territory in relation to which it exercises jurisdiction. The binding authority does not extend beyond its territorial jurisdiction. The decision of one High Court is not a binding precedent for another High Court or for Courts or Tribunals outside its territorial jurisdiction [See *CIT vs. Thana Electricity Supply Ltd.* (1993) 112 CTR (Bom) 356 : (1994) 206 **ITR** 727 (Bom) : TC 28R.455, *CIT vs. Ved Parkash* (1989) 178 **ITR** 332 (P&H) : TC 54R.684, *State of Andhra Pradesh vs. CTO* (1988) 169 **ITR** 564 (AP), *CIT vs. Mohan Lal Kansal* (1978) 114 **ITR** 583 (P&H) : TC 54R.666 and *Raja Benoy Kumar Sahas Roy vs. CIT* (1953) 24 **ITR** 70 (Cal) : AIR 1954 Cal 225 : TC 55R.737].

In the case of *CIT vs. Thana Electricity Supply Ltd.* (supra), the Division Bench of the Bombay High Court has held:

"A conjoint reading of ss. 257 and 260 of the IT Act, 1961, shows that the Act itself contemplates independent decisions of various High Courts on the question of law referred to them. It has visualised the possibility of conflict of opinion between different High Courts on the same question of law and has also made specific provision to take care of such a situation in suitable cases. In fact, in the light of the clear language of s. 260 of the Act, every High Court is required to give its own opinion on a particular question of law. It should not follow, as a matter of course, only with a view to achieve uniformity in the matter of interpretation, the decision of another High Court, if such

decision is contrary to its own opinion. Such action will be contrary to the clear mandate of s. 260 of the Act. It will amount to abdication of its duty by the High Court to give its decision on the point of law referred to it."

In CIT vs. Ved Parkash (supra) the Division Bench of the Punjab and Haryana High Court has held:

". . . as the decision of a High Court is binding only upon the authorities, Tribunals and Courts functioning within its territorial jurisdiction, no Tribunal beyond such jurisdiction can treat or hold as constitutionally invalid any provision of the IT Act solely for the reason that the High Court of another State may have declared the said provision to be ultra vires. To grant such a power to the Tribunal or even to a High Court, in a reference under s. 256 of the IT Act, would again amount to conferring jurisdiction upon them to pronounce upon the constitutional validity of the provisions of the statute creating them, which would clearly be contrary to the well-settled position in law.

Unless and until the Supreme Court or the High Court of the State in question, under Art. 226 of the Constitution, declares a provision of the Act to be ultra vires, it must be taken to be constitutionally valid and treated as such."

10. On account of the abovesaid doctrine of precedents and the rule of binding efficacy of the law laid down by the High Court within its territorial jurisdiction, the questions of law arising for decision in a reference should be determined by the High Court which exercises territorial jurisdiction over the situs of the AO. Else it would result in serious anomalies. An assessee affected by an assessment order at Bombay may invoke the jurisdiction of the Delhi High Court to take advantage of the law laid down by it and suited to him and thus get rid of the law laid down to the contrary by the High Court of Bombay not suited to the assessee. This cannot be allowed.

11. We are, therefore, clearly of the opinion that in so far as the present case is concerned, the jurisdiction under sub-ss. (1) and (2) of s. 256 vests in the High Court of Bombay and certainly not in the High Court of Delhi.

We find no merit in the submission of learned counsel for the petitioner-assessee that by subsequent event the High Court of Delhi acquires jurisdictional competence to hear the petition.

12. As already stated, the case in hand arises out of the asst. yr. 1980-81. It appears that for some assessment years (other than the asst. yr. 1980-81), the assessment records of the petitioner have been ordered to be transferred from Bombay to Delhi some time in the year 1988 which were pending at Bombay at that time. So far as the assessment for the year 1980-81 is concerned, it had stood concluded. The said transfer has taken place under s. 127(1) of the Act. It is not that the jurisdiction to make assessment in respect of matters arising at Bombay has been conferred or transferred to Delhi by reference to territory or persons or classes of persons or incomes or classes of income or cases or classes of cases as contemplated by s. 120 of the Act. Such transfer of assessment cases for a few years other than the year in question has no relevance and no bearing on the territorial jurisdictional competence of the High Court of Delhi to hear the present application under s. 256(2) of the Act.

13. For the foregoing reasons, the petition is dismissed though without any order as to the costs. Needless to say the petitioner's right to invoke the jurisdiction of the competent High Court by filing an appropriate application under s. 256(2) is not taken away by this dismissal.

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