



* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 452/2006

% Date of Decision: 04.04.2006

COMMISSIONER OF INCOME TAX Appellant
Through Ms. P.L. Bansal, Adv.

versus

M/S DIGVIJAY CHEMICALS LTD. Respondent
Through Mr. Dhruv Aggarwa, Adv.

CORAM: .

HON'BLE MR. JUSTICE T.S.THAKUR

HON'BLE MR. JUSTICE J.M. MALIK

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

T.S. Thakur, J. (Oral)

1. A preliminary objection has been raised on behalf of the respondent-assessee to the maintainability of the present appeal in this Court. It was argued by Mr. Aggarwal, learned counsel appearing for the respondent, that since the assessment order for the assessment years in question namely 1993-94, 1994-95 and 1994-95 was passed by the Assessing Officer, Bulandshahar and since an appeal against the said order was heard by the Commissioner of Income Tax (Appeals), Meerut,



any appeal arising out of the order passed by the Income Tax Appellate Tribunal even though located in Delhi can be maintained only before the High Court at Allahabad. Relying upon the Division Bench decisions of this Court in Seth Banarsi Dass Gupta Vs. C.I.T. Delhi (Central), 113 ITR 817 and Suresh Desai and Associates Vs. C.I.T., 230 ITR 912, it was argued by Mr. Aggarwal that the jurisdiction of the High Court to hear references under the unammended provisions and appeals under Section 260A of the Act has to be determined by reference to the citus of the Assessing Officer and not the Income Tax Appellate Tribunal which may be exercising jurisdiction simultaneously over territories falling within the territorial jurisdiction of two or more High Courts. He contended that the Income Tax Appellate Tribunal, Delhi was at the relevant time exercising jurisdiction even over a part of State of Uttar Pradesh but the very fact that such jurisdiction was exercised by the Tribunal sitting in Delhi did not necessarily mean that orders passed by the Tribunal in relation to such territories would become appealable before the Delhi High Court. He submitted that the present appeal was not maintainable and could be returned to the appellant for presentation before the High Court at Allahabad.

2. On behalf of the Revenue, it was, on the other hand, argued by Ms. Bansal that even when assessment for the assessment years 1993-94 with which we are concerned in this appeal was completed in



Bulandshahar and the appeal against the said assessment order was heard by CIT, Meerut, the fact that the assessment records in relation to the assessee stood transferred to Delhi in terms of order dated 7.04.2003 was in itself sufficient to entitle the Revenue to maintain the present appeal in this Court. She submitted that the transfer of the records in relation to the completed assessments for the years mentioned above must be so construed as to make any order passed by the Tribunal in relation to the above assessment years appealable before this Court.

3. We have given our anxious consideration to the submissions made before us at the bar. The material facts are not in dispute. The assessee was being assessed at Bulandshahar for the earlier years including assessment years 1993-94 and 1994-95. Assessment orders passed for the above two assessment years was assailed before the CIT (Appeals) Meerut who had dismissed the same on 23.04.1998. Appeals against the said order were filed before the Income Tax Appellate Tribunal at Delhi as the Tribunal located at Delhi was exercising jurisdiction even over territories falling in the adjoining State of Uttar Pradesh. The Tribunal eventually decided the appeal on 28.10.2004. In the meantime the assessment records for the assessment years 1988-89, 2000-01 and 2001-02 were transferred to Delhi in terms of an order passed under Section 127 of the Income Tax Act. The question is, whether the said order of transfer would alter the course of events in so far as the filing of



an appeal before the High Court competent to hear the same is concerned. In our view it does not. We say so because the forum of appeal is determined by reference to the citus of the Assessing Officer and not the Tribunal. The Division Bench decisions of this Court in Seth Banarasi Dass Gupta's case and in Suresh Desai's case relied upon by Mr. Aggarwal sufficiently settle the legal position in that regard. This Court has in Seth Banarasi Dass Gupta's case held that when an Appellate Tribunal hears and determines an appeal from any particular State, it would be appropriate for the Bench to state the case to the High Court of the State from which the appeal arose. That principle stated in relation to the position that existed before the introduction of Section 260A of the Act would, in our opinion, hold good even after the remedy by way of a reference is substituted by a regular appeal. The test for determining the jurisdiction of the High Court would be whether the assessment proceedings were completed within its territorial limits. Viewed thus, not only were the assessment proceedings in the instance case completed in Bulandshahar, but even the appeals arising out of the said proceedings were heard and disposed of by the CIT (Appeals), Meerut. We have in that view no difficulty in holding that an appeal against the order passed by the Tribunal even though located in Delhi ought to be filed in the High Court at Allahabad.

4. Whether or not the transfer of the record for some of the



assessment years in relation to which the assessment proceedings had not been completed, would make any material difference, also in our opinion, stands answered by this Court in Suresh Desai's case (supra). In that case also the question was as to which the High Court would be competent to hear the appeal in relation to the assessment year 1980-81 having regard to the fact that an order of transfer of other assessments for some subsequent years had been passed by the competent Authority. The submission urged on behalf of the Revenue was that such a transfer should result in a shift in the forum of appeal from Bombay to Delhi. Repelling the contention this Court observed,

"As already stated the case in hand arises out of the assessment year 1980-81. It appears that for some assessment years (other than the assessment year 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 section 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 section 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 section 256(2) of the Act."


5. The fact situation in the instant case is similar to Suresh Desai's



case. The assessment proceedings had been completed by the Assessing Officer concerned and even the appeal stood disposed of before the order of transfer for the pending assessment was made on 7.04.2003. The fact that the matter was pending before the Income Tax Appellate Tribunal Delhi on the date the assessments for other years were transferred did not in our opinion, make any material difference.

6. The preliminary objection accordingly succeeds and is upheld. The appeal filed by the Revenue shall stand returned to the Revenue for presentation before the competent Court. Needless to say that the appellant shall be free to file an application for condonation of delay in the presentation of the appeal before the competent Court and claim such benefit in the same regarding the time taken in this Court as may be legally permissible.


T.S. THAKUR, J



J.M. MALIK, J

APRIL 04, 2006

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