

R.M. AMBERKAR
(Private Secretary)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

INCOME TAX APPEAL NO. 1142 OF 2016

Pr. Commissioner of Income Tax -3, Pune .. Appellant

Versus

M/s. Sungard Solutions (I) Pvt Ltd .. Respondent

-
- Mr. Tejveer Singh for the Appellant
 - Mr. R. Murlidhar i/by P.C. Tripathi for the Respondent
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**CORAM : AKIL KURESHI &
M.S. SANKLECHA, JJ.**

DATE : FEBRUARY 26, 2019.

ORAL JUDGMENT (Per M.S. Sanklecha, J.)

1. This appeal under Section 260 A of the Income Tax Act, 1961 ("the Act" for short), challenges the order dated 30.7.2015 passed by the Income Tax Appellate Tribunal, Bangalore Bench, Bangalore ("**the Tribunal**" for short). This appeal relates to Assessment Year 2008-09.

2. At the very outset before we could consider the questions of law raised by the Revenue in this appeal, learned counsel appearing for the respondent raised a preliminary objection. The objection being about the

maintainability of this appeal before this Court.

3. In support of its objections, Mr. Murlidhar on behalf of the respondent submits that the impugned order dated 30.7.2015 has been passed by the Bangalore Bench of the Tribunal. Thus, the appeal from the order of Bangalore Bench of the Tribunal would lie before the Karnataka High Court and not before this Court. In support of his submission, he placed reliance upon Chapter XX of the Act and, in particular Section 260A and 269 of the Act.

4. In response, Mr. Tejveer Singh, the learned counsel appearing in support of the appeal states that this Court would alone have jurisdiction, in view of the facts giving rise to the present appeal. Our attention was drawn to the following facts:-

- (a). The order of the Tribunal at Bangalore was passed on 30.7.2015;
- (b). On 8.9.2015, an order was passed under Section 127 of the Act transferring the respondent assessee's case from an Assessing Officer at

Banglore to an Assessing Officer at Pune;

(c). This appeal was filed in this Court on 4.1.2006.

On the aforesaid facts, it is submitted that this Court will alone have jurisdiction to deal with the respondent assessee's case. This at the Assessment proceedings of the respondent are now in Mumbai consequent to the order dated 8th September, 2015 passed under Section 127 of the Act.

5. On the aforesaid facts, Mr. Tejveer Singh, for the Revenue in support contented that this Court will have jurisdiction, made the following submissions:-

(a). It is the situs of the Assessing Officer which will alone determine the High Court which would have jurisdiction over the orders of the Tribunal under Section 260-A of the Act. In this case, the seat of the Assessing Officer at the time of filing this appeal is Pune. Therefore, this Court would alone be the appropriate High Court to deal with this appeal.

- (b). In terms of Section 127 of the Act, the assessment proceedings were transferred from the Assessing Officer at Bangalore to the Assessing Officer in Pune. The entire assessment proceedings (whether completed or pending) both before and after the transfer, also stands transferred to the Assessing Officer at Pune by virtue of the explanation thereto. Therefore, in terms thereof, all proceeding under the Act stand transferred to the transferee Assessing Officer at Pune, even in respect of cases where assessments are already completed; and
- (c). In any case, the issue now stands settled in favour of the Revenue by the decisions of the Delhi High Court in **CIT Vs. Sahara India Financial Corp. Ltd.**¹ and **CIT Vs. AAR Bee Industries**². In both the above cases, on identical fact situation, the Court held that consequent to transfer of the assessment proceedings under Section 127 of the Act, the orders of the Tribunal under Section 260A

1 294 ITR 363 (Delhi)

2 357 ITR 542 (Delhi)

of the Act are to be challenged at the place where the transferee Assessing Officer exercises jurisdiction. In the case of Sahara India Financial Corp Ltd (supra) a transfer under Section 127 of the Act, the Assessment Proceedings were transferred from Lucknow to Delhi. The Court held that in such case, appeal from Lucknow bench of the Tribunal would be before the Delhi High Court. Similarly, in case of transfer of assessment proceeding under Section 127 of the Act, from Jammu to Delhi in case of AAR Bee Industries (supra) led the Court to hold Delhi High court would have jurisdiction to entertain appeals from the order of the Amritsar bench of the Tribunal under Section 260A of the Act. Therefore, the seat of the Assessing Officer on the date of filing the appeal would decide the jurisdiction and on that test, the appeal from order dated 30.07.2015 of the Bangalore bench of the Tribunal would lie before this Court.

6 In response, Mr. Murlidhar, the learned counsel appearing for the respondent contests the submission of the appellant while submitting that this Court would not have jurisdiction to entertain the appeal for the following reasons:-

- (a). The appeal to the High Courts are governed by Chapter XX of the Act. In particular, Section 260A of the Act which provides for appeal to the High Court from every order passed in appeal by the Tribunal. Section 269 of the Act, for the purpose of Chapter XX of the Act defines the High Court of the State. Therefore, the above Section 269 of the Act would decide the High Court to which appeal would lie under Section 260A of the Act;
- (b) Section 127 of the Act only deals with the jurisdiction of the authorities under the Act. It cannot control/ decide and/or determine which High Court will be the appellate forum to challenge the orders of the Tribunal. This, particularly, when there are specific provisions in the Act dealing with appeals to the High Court; and
- (c). In any event, this very issue was the subject matter of consideration before Punjab & Haryana High

Court in the case of **CIT Vs. Motorola India Ltd³**,
and Calcutta High Court in the case of **CIT V.s J.L. Morrison (India) Ltd⁴** In **both** the above cases, the Court held that the seat of the Tribunal which passed the order would determine the High Court to which appeal under section 260A of the Act would be maintainable/ lie. In this case, as the order being challenged is of the Bangalore bench of the Tribunal, the Karnataka High Court is the proper forum.

7. Before dealing with the submissions of the parties, it will be convenient to reproduce the relevant provisions of the Act which have bearing on the issue before us viz. jurisdiction of this Court to entertain this appeal from the order of the Tribunal passed at Bangalore. This in the context of the Assessment Proceedings having been transferred under Section 127 of the Act from Bangalore to Pune.

8 Chapter XIII of the Act deals with the Income Tax Authorities. Sections 116, 120, 124 and 127 of the Act are part of Chapter XIII of the Act. Section 116 of the Act lists out

3 (2010) 326 ITR 156

4 (2005) 272 ITR 321

the Income Tax Authorities under the Act and is as under:-

" Income-tax Authorities.

116. There shall be the following classes of income-tax authorities for the purposes of this Act, namely :—

- (a) the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 (54 of 1963),
- (aa) Principal Directors General of Income-tax or Principal Chief Commissioners of Income-tax,
- (b) Directors-General of Income-tax or Chief Commissioners of Income-tax,
- (ba) Principal Directors of Income-tax or Principal Commissioners of Income-tax,
- (c) Directors of Income-tax or Commissioners of Income-tax or Commissioners of Income-tax (Appeals),
- (cc) Additional Directors of Income-tax or Additional Commissioners of Income-tax or Additional Commissioners of Income-tax (Appeals),
- (cca) Joint Directors of Income-tax or Joint Commissioners of Income-tax,
- (d) Deputy Directors of Income-tax or Deputy Commissioners of Income-tax or Deputy Commissioners of Income-tax (Appeals),
- (e) Assistant Directors of Income-tax or Assistant Commissioners of Income-tax,
- (f) Income-tax Officers,
- (g) Tax Recovery Officers,
- (h) Inspectors of Income-tax."

Section 120 of the Act deals with the jurisdiction of the Income Tax Authorities, and is as under:-

"Jurisdiction of income-tax authorities.

(1) Income-tax authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, as the case may be, assigned to such authorities by or under this Act in accordance with such directions as the Board may issue for the exercise of the powers and performance of the functions by all or any of those authorities.

Explanation.—For the removal of doubts, it is hereby declared that any income-tax authority, being an authority higher in rank, may, if so directed by the Board, exercise the powers and perform the functions of the income-tax authority lower in rank and any such direction issued by the Board shall be deemed to be a direction issued under sub-section (1).

(2) The directions of the Board under sub-section (1) may authorise any other income-tax authority to issue orders in writing for the exercise of the powers and performance of the functions by all or any of the other income-tax authorities who are subordinate to it.

(3) In issuing the directions or orders referred to in sub-sections (1) and (2), the Board or other income-tax authority authorised by it may have regard to any one or more of the following criteria, namely :—

- (a) territorial area;
- (b) persons or classes of persons;
- (c) incomes or classes of income; and
- (d) cases or classes of cases.

(4) Without prejudice to the provisions of sub-sections (1) and (2), the Board may, by general or special order, and subject to such conditions, restrictions or limitations as may be specified therein,—

- (a) authorise any [Principal Director General or] Director General or [Principal Director or] Director to perform such functions of any other income-tax authority as may be assigned to him by the Board;
- (b) empower the [Principal Director General or] Director General or [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner to issue orders in writing that the powers and functions conferred on, or as the case may be, assigned to, the Assessing Officer by or under this Act in respect of any specified area or persons or classes of persons or incomes or classes of income or cases or classes of cases, shall be exercised or performed by [an Additional Commissioner or] [an Additional Director or] a [Joint] Commissioner [or a [Joint] Director], and, where any order is made under this clause, references in any other provision of this Act, or in any rule made thereunder to the Assessing Officer shall be deemed to be references to such [Additional Commissioner or] [Additional Director or] [Joint] Commissioner [or [Joint] Director] by whom the powers and functions are to be exercised or performed under such order,

and any provision of this Act requiring approval or sanction of the [Joint] Commissioner shall not apply.

(5) The directions and orders referred to in sub-sections (1) and (2) may, wherever considered necessary or appropriate for the proper management of the work, require two or more Assessing Officers (whether or not of the same class) to exercise and perform, concurrently, the powers and functions in respect of any area or persons or classes of persons or incomes or classes of income or cases or classes of cases; and, where such powers and functions are exercised and performed concurrently by the Assessing Officers of different classes, any authority lower in rank amongst them shall exercise the powers and perform the functions as any higher authority amongst them may direct, and, further, references in any other provision of this Act or in any rule made thereunder to the Assessing Officer shall be deemed to be references to such higher authority and any provision of this Act requiring approval or sanction of any such authority shall not apply.

(6) Notwithstanding anything contained in any direction or order issued under this section, or in Section 124, the Board may, by notification in the Official Gazette, direct that for the purpose of furnishing of the return of income or the doing of any other act or thing under this Act or any rule made thereunder by any person or class of persons, the income-tax authority exercising and performing the powers and functions in relation to the said person or class of persons shall be such authority as may be specified in the notification."

Section 124 of the Act deals with jurisdiction of the Assessing Officers and is as under:-

"Jurisdiction of Assessing Officers.

124. (1) Where by virtue of any direction or order issued under sub-Section (1) or sub-Section (2) of Section 120, the Assessing Officer has been vested with jurisdiction over any area, within the limits of such area, he shall have jurisdiction—

- (a) in respect of any person carrying on a business or profession, if the place at which he carries on his business or profession is situate within the area, or where his business or profession is carried on in more places than one, if the principal place of his business or profession is situate within the area, and

(b) in respect of any other person residing within the area.

(2) Where a question arises under this Section as to whether an Assessing Officer has jurisdiction to assess any person, the question shall be determined by the [Principal Director General or] Director General or the [Principal Chief Commissioner or] Chief Commissioner or the [Principal Commissioner or] Commissioner; or where the question is one relating to areas within the jurisdiction of different [Principal Directors General or] Directors General or [Principal Chief Commissioners or] Chief Commissioners or [Principal Commissioners or] Commissioners, by the [Principal Directors General or] Directors General or [Principal Chief Commissioners or] Chief Commissioners or [Principal Commissioners or] Commissioners concerned or, if they are not in agreement, by the Board or by such [Principal Director General or] Director General or [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner as the Board may, by notification in the Official Gazette, specify.

(3) No person shall be entitled to call in question the jurisdiction of an Assessing Officer—

(a) where he has made a return [under sub-Section (1) of Section 115WD or] under sub-Section (1) of Section 139, after the expiry of one month from the date on which he was served with a notice under sub-Section (1) of Section 142 or [sub-Section (2) of Section 115WE or] sub-Section (2) of Section 143 or after the completion of the assessment, whichever is earlier;

(b) where he has made no such return, after the expiry of the time allowed by the notice under [sub-Section (2) of Section 115WD or sub-Section (1) of Section 142 or under sub-Section (1) of Section 115WH or under Section 148 for the making of the return or by the notice under the first proviso to Section 115WF or under the first proviso to [Section 144](#)] to show cause why the assessment should not be completed to the best of the judgment of the Assessing Officer, whichever is earlier;

(c) where an action has been taken under Section 132 or Section 132A, after the expiry of one month from the date on which he was served with a notice under sub-Section (1) of Section 153A or sub-Section (2) of Section 153C or

after the completion of the assessment, whichever is earlier.]

(4) Subject to the provisions of sub-Section (3), where an assessee calls in question the jurisdiction of an Assessing Officer, then the Assessing Officer shall, if not satisfied with the correctness of the claim, refer the matter for determination under sub-Section (2) before the assessment is made.

(5) Notwithstanding anything contained in this Section or in any direction or order issued under Section 120, every Assessing Officer shall have all the powers conferred by or under this Act on an Assessing Officer in respect of the income accruing or arising or received within the area, if any, over which he has been vested with jurisdiction by virtue of the directions or orders issued under sub-Section (1) or sub-Section (2) of Section 120.]"

Section 127 of the Act deals with power to transfer cases and is as under:-

"Power to transfer cases.

(1) The [Principal Director General or] Director General or [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner] or Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him.

(2) Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to whom the case is to be transferred are not subordinate to the same [Principal Director General or Director General or]

[Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner] or Commissioner,—

(a) where the [Principal Directors General or] Directors General or [Principal Chief Commissioners or] Chief Commissioners or [Principal Commissioners or] Commissioners to whom such Assessing Officers are subordinate are in agreement, then the [Principal Director General or] Director General or [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner from whose jurisdiction the case is to be transferred may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, pass the order;

(b) where the [Principal Directors General or] Directors General or [Principal Chief Commissioners] or Chief Commissioners or [Principal Commissioners or] Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such [Principal Director General or] Director General or [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner as the Board may, by notification in the Official Gazette, authorise in this behalf.

(3) Nothing in sub-section (1) or sub-section (2) shall be deemed to require any such opportunity to be given where the transfer is from any Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place.

(4) The transfer of a case under sub-section (1) or sub-section (2) may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Assessing Officer or Assessing Officers from whom the case is transferred.

Explanation.—In section 120 and this section, the word "case", in relation to any person whose name is specified in any order or direction issued thereunder, means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year."

9. Chapter XX of the Act deals with Appeals and Revisions. Part 'CC' thereof, deals with Appeals to High Court and Section 260A and Section 269 of the Act are a thereof. Section 260A of the Act is as under:

"Appeal to High Court.

260A.(1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal [before the date of establishment of the National Tax Tribunal], if the High Court is satisfied that the case involves a substantial question of law.

(2) [The [Principal Chief Commissioner or] Chief Commissioner or the [Principal Commissioner or Commissioner or] an assessee aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be—

(a) filed within one hundred and twenty days from the date on which the order appealed against is [received by the assessee or the [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner];

(b) [***]

(c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

(2A) The High Court may admit an appeal after the expiry of the period of one hundred and twenty days referred to in clause (a) of sub-section (2), if it is satisfied that there was sufficient cause for not filing the same within that period.

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(4) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question :

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(5) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(6) The High Court may determine any issue which—

(a) has not been determined by the Appellate Tribunal; or

(b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1).

[(7) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.]

Section 269 of the Act defines the High Court and is as under:-

269.In this Chapter,—

"High Court" means—

- (i) in relation to any State, the High Court for that State ;
- (ii) in relation to the Union territory of Delhi, the High Court of Delhi ;
- (iia) [***]
- (iii) [***]
- (iv) in relation to the Union territory of the Andaman and Nicobar Islands, the High Court at Calcutta ;
- (v) in relation to the Union territory of Lakshadweep, the High Court of Kerala ;
- (va) in relation to the Union territory of Chandigarh, the High Court of Punjab and Haryana ;
- (vi) in relation to the Union territories of Dadra and Nagar Haveli and Daman and Diu, the High Court at Bombay ; and
- (vii) in relation to the Union territory of Pondicherry, the High Court at Madras."

10. An examination of the above provisions, would reveal that Chapter XIII of the Act deals with the Income Tax Authorities. Part-A of Chapter XIII of the Act deals with their appointment and control, Part B of Chapter XIII of the Act deals with the jurisdiction of the Authorities under the Act and Part C deals with the powers of the Authorities under the Act as specified in Part A of Chapter XIII. Section 116 of the Act exhaustively lists out the classes of Income Tax Authorities under the Act. The Tribunal and the High Court do not find mention as Income Tax Authorities, there under i.e. under Section 116 of the Act. Section 120,124 and 127 of the

Act are a part of Part B of Chapter XIII of the Act and provides for the jurisdiction of the authorities. Section 120 provides for jurisdiction of the Income Tax Authorities listed out in Section 116 of the Act. The scope and ambit of jurisdiction is decided by the highest Income Tax Authority viz. Central Board of Direct Taxes (CBDT). The Authorities under the Act shall perform/ exercise all powers under the Act as are assigned to it by the CBDT, and in assigning such powers, it shall have regard to various criteria such as territorial area, persons or classes of persons, income or classes of income and cases or classes of cases. Section 124 of the Act deals with jurisdiction of the Assessing Officers, inter alia, with regard to the assessment of the parties. Section 127 of the Act deals with transfer of jurisdiction of assessment from one assessing officer to another. This power to transfer jurisdiction of assessment proceedings (cases) is with regard to transferring the assessment proceedings from one Assessing Officer to another subject to the satisfaction of the conditions mentioned therein.

11 The bare reading of the above provisions will

establish that Chapter XIII of the Act would be applicable only to the Income Tax Authorities under the Act as listed out in Section 116 thereof. Thus, it follows that the provisions of Section 120, 124 and 127 of the Act will also apply only to the Authorities listed in Section 119 of the Act. The Tribunal and the High Court are not listed in Section 116 of the Act as Income Tax Authorities under the Act. Therefore, Sections 124 and 127 of the Act being relied upon by the Revenue can have no bearing while dealing with the issue of which High Court will have jurisdiction over the orders of the Tribunal.

12 The jurisdiction of the Court which will hear appeals from the orders passed by the Tribunal, would be governed by the provisions of Chapter XX of the Act which is a specific provision dealing with appeals, amongst others to the High Court. In particular Section 260A and 269 of the Act, when read together would mean that the High Court referred to in Section 260A of the Act will be the High Court as provided/ defined in Section 269 of the Act i.e. in relation to any State, the High Court of that State. Therefore, the seat of the Tribunal (in which State) would decide the jurisdiction of

the Court to which the appeal would lie under the Act. Thus, in the present facts, the High Court which would have jurisdiction over the place where the Tribunal (when not exercising jurisdiction over more than one State) is situated and passed the order. Therefore, in the facts of this case, on the bare examination of the provisions, it would be clear that in case of orders passed by the Bangalore Bench of the Tribunal, appeal from such orders would lie only to the Karnataka High Court at Bangalore.

13 The submission on behalf of the Revenue that the seat of the Assessing Officer alone would decide the jurisdiction of the High Court on the basis of Section 127 of the Act, is misplaced. This for the reasons that the bare reading of the provisions show that the Court to which appeal would lie is not governed by the seat of the Assessing Officer. It for this reason that, the Income Tax Appellate Tribunal (ITAT) Rules specifically provides in Rule 4(i) thereof, the Bench which shall hear the appeals, filed before it in terms of Section 253 of the Act, shall be decided by the President of the Tribunal. Therefore, which bench / seat of the

Tribunal will hear the appeals is not decided by the seat of the Assessing Officer as provided in Section 127 of the Act, as it does not apply in case of the Tribunal as it is not an Income Tax Authority under the Act. It is the President of the Tribunal in exercise of his powers under Rule 4(1) of the ITAT Rules, issued a standing order No.63/97 dated 2.7.2013 as amended, inter alia, providing the jurisdiction of the bench dependent upon the areas from where the impugned orders have originated. In the above standing order, Note 4 specifically states that the jurisdiction of a bench will not be determined by the place of business or residence of the assessee but by the location of the office of the Assessing Officer. If the seat of the Assessing Officer were in terms of Section 127 of the Act, to govern/ control the jurisdiction of the Authorities other than those listed in Section 116 of the Act, then a specific provision in terms of Note 4 in the standing order issued by the President of the Tribunal was not called for / required. Thus in terms, the above standing order where an assessment proceedings have been transferred from one place to another under Section 127 of the Act, then the bench of the Tribunal before which appeals

would lie, may shift with the seat of the Assessing Officer before the filing/ hearing of the appeal. Moreover, it is important to note that, the Bombay High Court Rules while providing for appeals from the Tribunal does not specifically exclude its jurisdiction in case of orders passed by the Tribunal at Mumbai or provide for the court entertaining appeals dependent upon the seat of the Assessing Officer at the time of filing the appeal. In fact, the inter se, distribution of Appeals between the different benches of this court is on the basis from where an appeal originated. Therefore, the Appellate Court from which an appeal would lie from the order of the Tribunal would necessarily be the High Court exercising jurisdiction over the places where the Tribunal which passed the order, is situated.

14 The above plain reading of the provisions is also supported by jurisdictional / constitutional principles. The Tribunal which passes orders is bound by the orders passed by the jurisdictional High Court where the Tribunal is situated. In the above view, in the present facts, the Tribunal which passed the impugned order is situated in Bangalore.

Therefore, the Tribunal would be bound by the orders passed by the Karnataka High Court at Bangalore. However, it is likely that there could be divergence of opinion between two High Courts on a particular issue, one view by the Court where the Tribunal is situated i.e. Bangalore and the other view by the Court where the Assessing Officer is now situated i.e. Pune, leading to an incongruous situation. On what parameters would the High Court to which an appeal is filed on the basis of where the seat of the transferee Assessing Officer is situated by virtue of Section 127 of the Act would apply to the order of the Tribunal passed at seat of the transferor Assessing Officer in this case by the Bangalore Bench of the Tribunal. Thus, the Parliament keeping in view the fact that, all Authorities/ Tribunals functioning within a particular State are bound by the view of the High Court of that State. This has been so provided in terms of Section 260A read with 269 of the Act. It is, therefore, for the above reason that the orders passed by the Tribunal are subject to an appeal before the High Court under which it exercises jurisdiction. If the submission of the Revenue is to be accepted, then we would have a peculiar situation where the

powers under Articles 226 and 227 of the Constitution, would be exercised by the Court which exercises jurisdiction over the seat of the Tribunal which is passing the order while for the purposes of appeal under the Act, the Court which would entertain the appeal would be a Court different from the Court which would exercise jurisdiction under Articles 226 and 227 of the Constitution. It is to be noted that, for relief under Article 226 of the Constitution, no part of the case of action would have arisen in Mumbai giving rise to the jurisdiction of this Court. Thus, harmonious reading of the various provisions of law would require that the appeal from the order of the Tribunal is to be filed to the Court which exercises jurisdiction over the seat of the Tribunal.

15 In this case, the Karnataka High Court exercises jurisdiction over the Bangalore bench of the Tribunal which has passed the impugned order dated 30th July, 2015. However, it may be pointed that Explanation to Section 127 of the Act states that once a direction has been issued therein in respect of the case i.e. Section 127 of the Act, then all Assessment proceedings under the Act in respect of any

year which may be pending on the date of such order or which have been completed on or before such date would stand transferred to the transferee assessing officer. The words "all proceedings under this Act" would not cover appeals under the Act before the High Court as it would run counter to Section 260A and 269 of the Act which provides specifically for the High Court which would have jurisdiction over the orders of the Tribunal. Thus, the words "all proceedings under this Act" have to be harmoniously read with the other provisions of the Act and have to be restricted only to the proceedings under the Act before the authorities listed in Section 116 of the Act. Any other interpretation would render Section 269 of the Act otiose. In fact, the Andhra Pradesh High Court in case of **CIT v/s. Parke Davis (I) Ltd** reported in 239 ITR 820 (AP) has dealt with this very submission in the context of a Reference application and inter alia after examining the explanation to Section 127 held as under:-

"The words 'All proceedings under the Act in respect of any year' occurring in the Explanation cannot be understood in vacuum and cannot be stretched to cover reference applications already filed or decided by the date of transfer under Section 127. "

The situation would not be different while dealing with the appeal under Section 260A of the Act. We are in respectful agreement with the decision of the Andhra Pradesh in the case of Parke Davis (I) Ltd (supra). Therefore, in our view, Section 127 of the Act and explanation thereto only apply to the authorities listed under Section 116 of the Act and exercising jurisdiction under the Act. It can have no application to the High Court constituted under the Constitution.

16 We shall now examine the various decisions cited at the bar and its applicability to the present facts. The decision in the case of Sahara India Financial Corp Ltd (supra) relied by the Revenue proceeded on the explanation to Section 127(4) of the Act to hold that where the assessment proceedings were transferred from Lucknow to Delhi, it would only be the Delhi High Court which could entertain an appeal from the order of the Tribunal after the date of transfer of assessment proceedings under Section 127 of the Act. We respectfully note that the aforesaid decision of the Delhi High Court has not considered the

provisions of Section 260A and 269 of the Act. In our view, the applicability of the provisions of Section 127 of the Act is only restricted to the authorities listed under Section 116 of the Act and will not govern the jurisdiction of the High Court. The jurisdiction of the High Court would be decided on application of Sections 260A and 269 of the Act. Similarly, the decision of the Delhi High Court in the case of AAR Bee Industries (supra) relied upon by the Revenue noticed the different view taken by Punjab & Haryana High Court in Motorola India Ltd (supra). However, it held itself bound by the decision of its co-ordinate bench in the case of Sahara India Financial Services (supra) to hold that Section 127 of the Act will govern/ decide the Court which will exercise jurisdiction in respect of appeals from the order of the Tribunal. We respectfully disagree with the above view of the Delhi High Court. In our view, Section 127 of the Act can only govern / control the jurisdiction of the Income Tax Authorities as defined in Section 116 of the Act. Therefore, the appeals from the order of the Tribunal to the High Court would be governed by section 260-A and 269 of the Act.

17 We note that Punjab & Haryana High Court in Motorola India Ltd (supra) has examined the identical issue and on examination of Section 127 of the Act, it held as under:-

"14. A conjoint reading of the aforementioned provisions makes it evident that the Director General or Chief CIT or CIT is empowered to transfer any case from one or more AOs subordinate to him to any other AO. It also deals with the procedure when the case is transferred from one AO subordinate to a Director General or Chief CIT or CIT to an AO who is not subordinate to the same Director General, Chief CIT or CIT. The aforementioned situation and the definition of expression 'case' in relation to jurisdiction of an AO is quite understandable but it has got nothing to do with the territorial jurisdiction of the Tribunal or High Courts merely because Section 127 of the Act dealing with transfer has been incorporated in the same chapter. Therefore, the argument raised is completely devoid of substance and we have no hesitation to reject the same."

18 On interpretation of Section 127 of the Act, it held that it has nothing to do with the territorial jurisdiction of the High Court as it only deals with the transfer of assessee's case from one Assessing Officer to another Assessing Officer. Similarly, the Calcutta High Court J.L. Morrioso (I) Ltd (supra) has on application of section 260-A and 269 of the Act held that the High Court where the Tribunal is seated will be the appropriate High Court for purpose of appeal under

Section 260A of the Act Both these orders deal with the issue which arise in this appeal i.e which Court would have jurisdiction to entertain the appeal from the order of the Tribunal passed in Bangalore whether the Bombay High Court or Karnataka High Court. In similar situation, both the Courts have held that it would be the Court which exercises jurisdiction over the seat of the Tribunal which passed the order which would have jurisdiction.

19 Therefore, for the reasons set out in this order, we respectfully do not agree with the view of Hon'ble the Delhi High Court in Sahara India Financial Corporation (supra) and AAR Bee (supra). Our view is in consonance with the views of the Hon'ble Punjab & Haryana High Court in Motorola (supra) and the Hon'ble Calcutta High Court in Motorola (supra).

20 Therefore, in the present facts, we uphold the preliminary objections of the respondent. We hold that this Court does not have jurisdiction to entertain appeals under Section 260A of the Act in respect of order dated 30th July, 2015 passed by the Bangalore bench of the Tribunal. Thus,

this appeal is not maintainable before this Court.

21 In the above view, the appeal is returned to the appellant to take appropriate steps in accordance with the order of this Court, as it may be advised. Appeal disposed of in above terms.

[M.S. SANKLECHA, J.]

[AKIL KURESHI, J]