

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

ITA No.232 of 2016
Decided on : 25.10.2018

The Commissioner of Income Tax (Exemptions), Chandigarh

..... Appellant

Versus

M/s Baba Amarnath Educational Society, Moga

..... Respondent

**CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL, JUDGE
HON'BLE MR. JUSTICE AVNEESH JHINGAN, JUDGE**

Present : Mr. Denesh Goyal, Senior Standing Counsel
for the appellant.

Mr. Pankaj Jain, Sr. Advocate with
Mr. Sachin Bhardwaj, Advocate
for the respondent.

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AVNEESH JHINGAN, J.

The revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 (for brevity, 'the Act') against the order dated 28.10.2015 passed by Income Tax Appellate Tribunal, Chandigarh (hereinafter referred to as 'Tribunal') passed in M.A. No. 9/CHD/2014 in ITA No. 825/Chd/2011.

2. As per the appellant, following substantial questions of law arise for consideration in the present appeal:-

- i) Whether the ITAT has erred in passing the impugned order after going beyond the jurisdiction and is to that extent bad in law.

- ii) Whether the learned ITAT while deciding the miscellaneous application has erred in not considering an order dated 04.09.2013 passed by the President, ITAT directing the cases of assessee for A.Y. 2009-10 to be transferred from Chandigarh Bench to Amritsar Bench, which clearly substantiate the contention of the department and also goes to the root of the matter on the ground that the same was only an administrative order.
- iii) Whether the Hon'ble ITAT has erred in passing the order without considering the decision of Hon'ble Supreme Court in judgment reported as 1987(1) RCR (Criminal) 371 (SC) that even a right decision by a wrong forum is no decision and non-existent in the eyes of law even when the jurisdictional H.C. had followed the ratio in a judgment reported as 2009(1) RCR (Criminal) 414 (P&H).

3. The brief facts necessary for adjudication of the present appeal are that the assessee-society applied for grant of registration under Section 12AA of the Act. The Commissioner of Income Tax-III, Ludhiana (CIT) vide order dated 28.06.2011 rejected the application. The said order was assailed by the assessee in appeal before the Tribunal at Chandigarh. The Tribunal allowed the appeal of the assessee-society vide order dated 29.12.2011 and the CIT was directed to grant registration. In pursuance to the order of the Tribunal, registration was granted under Section 12AA of the Act on 09.02.2012. At that stage, it was realised that the assessee-society was situated at Moga and the territorial jurisdiction would be that of

Amritsar Bench of the Tribunal instead of Chandigarh Bench.

4. The revenue moved a miscellaneous application stating that the order passed by the Chandigarh Bench Tribunal is without jurisdiction as the case falls within the territorial jurisdiction of Amritsar Bench. The application was dismissed vide order dated 28.10.2015. Hence, the present appeal.

5. Heard learned counsel for the parties.

6. Learned counsel for the appellant argued that Chandigarh Bench of the Tribunal did not have the territorial jurisdiction with regard to the case of the assessee-society as it was based at Moga and the same falls within the jurisdiction of Amritsar Bench of the Tribunal. It was urged that the order passed was without jurisdiction and the Tribunal erred in dismissing the miscellaneous application filed by the appellant. He further relied upon the decision of the Supreme Court in the case of **Pandurang vs. State of Maharashtra, 1987 AIR (SC) 535.**

7. Learned counsel for the assessee-society supported the order of the Tribunal by urging that there was no error apparent on record and the case did not fell within the ambit of Section 254 of the Act. Further, the Tribunal rightly dismissed the miscellaneous application as the issue of jurisdiction was not raised by the revenue at the time of hearing of the appeal. He contended that the decision of the Tribunal has not been challenged on merits and the same is sustainable in law. Support was gathered from the decision of the Rajasthan High Court in the case titled as **Apex Metchem (P) Ltd. vs. Income Tax Appellate Tribunal & ors., CWP No.5081 of 2008, decided on 08.05.2009,**

8. The contention raised by learned counsel for the appellant

deserves acceptance.

9. It could be disputed by learned counsel for the respondent/assessee that Chandigarh Bench of the Tribunal did not possess jurisdiction to hear the appeal as the assessee-society was situated at Moga. At this stage, the territorial jurisdiction of Chandigarh Bench and Amritsar Bench of Tribunal are reproduced below:-

Chandigarh Benches:- Punjab (excluding the Districts of Amritsar, Bhatinda, Faridkot, Firozpur, Gurdaspur, Hoshiarpur, Jalandhar and Kapurthala). Haryana (excluding the Districts of Bhiwani, Faridabad, Gurgaon, Hissar, Jhajjar, Karnal, Mohindergarh, Panipat, Rewari, Rohtak and Sonapat). Himachal Pradesh. Union Territory of Chandigarh.

Amritsar Bench :- Districts of Amritsar, Bhatinda, Faridkot, Mansa, Muktsar, Moga, Firozpur, Gurdaspur, Hoshiarpur, Jalandhar, Nawasahar and Kapurthala of Punjab. State of Jammu & Kashmir.

10. From the above, it is evident that the appeal ought to have been heard by the Amritsar Bench of the Tribunal.

11. The contention raised by learned counsel for the assessee lacks merit. Section 254(2) as on statute book at relevant time is reproduced below :-

“The Appellate Tribunal may, at any time within four years from the end of the month in which the order was passed, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1), and shall make such amendment if the mistake is brought to its notice by the assessee or the Assessing Officer:

Provided that an amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this sub-section unless the Appellate Tribunal has given notice to the assessee of its intention to do so and has allowed the assessee a reasonable opportunity of being heard:”

12. From the perusal of the provision, it is evident that in case, there is an error apparent from the record, the Tribunal is empowered to amend the order passed under Sub-Section (1) of Section 254 of the Act.

13. In the present case, the undisputed fact is that Chandigarh Bench of the Tribunal did not possess the territorial jurisdiction to hear and decide the appeal. This itself is an error apparent from record. The same cannot be ignored merely on the ground that the issue of jurisdiction was not raised at the time of hearing of the appeal.

14. The contention of learned counsel for the assessee that the order of the Tribunal has not been challenged on merits and the same is sustainable in law does not enhance the case of the assessee. If the Tribunal lacks territorial jurisdiction, the order passed is nullity being without jurisdiction. The decision being right or wrong would not affect the jurisdiction of the Tribunal. The Supreme Court in the case of **Pandurang's case (supra)** held as under :-

“When a matter required to be decided by a Division Bench of the High Court is decided by a learned Single Judge, the judgment would be a nullity, the matter having been heard by a Court which had no competence to hear the matter, it being a matter of total lack of jurisdiction . The accused was entitled to be heard

by at least two learned Judges constituting a Division Bench and had a right to claim a verdict as regards his guilt or innocence at the hands of the two learned Judges. This right cannot be taken away except by amending the rules. So long as the rules are in operation it would be arbitrary and discriminatory to deny him this right regardless of whether it is done by reason of negligence or otherwise. Deliberately, it cannot be done. Negligence can neither be invoked as an alibi, nor can cure the infirmity or illegality, so as to rob the accused of his right under the rules. What can be done only by at least two learned Judges cannot be done by one learned Judge. Even if the decision is right on merits, it is by a forum which is lacking in competence with regard to the subject matter. Even a 'right' decision by a 'wrong' forum is no decision. It is non-existent in the eye of law. And hence a nullity. The Judgment under appeal is therefore no judgment in the eye of law."

15. It was held by the Apex Court that unless the rules are amended, the decision given by the single Bench on the matter, which was required to be heard by the Division Bench, would be nullity and a right decision by wrong forum is no decision.

16. Reliance placed by learned counsel for the assessee on Apex Metchem's case (supra) is misplaced. The Rajasthan High Court therein was dealing with a case where the order of the Tribunal under Section 254(1) of the Act was recalled on the basis of the order passed by the President of the Mumbai Tribunal in exercise of power under Rule 4 of ITAT Rules 1963 transferring appeals filed by the appellant from Jaipur to

Mumbai Bench. It was noticed that the said order was not available on record, consolidating the appeal being heard at Mumbai Bench. In the absence thereof, it was held that there was no mistake apparent on the record.

17. The said case is not applicable in the facts of the present case. Here, there is no dispute that Amritsar Bench of the Tribunal had the territorial jurisdiction to hear the appeal. The orders dated 29.12.2011 and 28.10.2015 (Annexures A-1 and A-2) passed by the Chandigarh Bench of the Tribunal are, thus, set aside and the matter is sent to the Amritsar Bench of the Tribunal to decide the appeal afresh. The questions claimed are answered accordingly.

18. The appeal is allowed.

(AJAY KUMAR MITTAL)
JUDGE

सत्यमेव जयते (AVNEESH JHINGAN)
JUDGE

October 25, 2018
anju

Whether speaking/reasoned: Yes
Whether reportable : Yes