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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 5546/2021 & CM APPL. 17180/2021

GPL-RKTCPL JV Petitioner

Through: Mr Ajay Vohra, Senior Advocate
with Mr Aditya Vohra, Advocate.

versus

NATIONAL FACELESS ASSESSMENT CENTRE DELHI
(EARLIER NATIONAL E-ASSESSMENT CENTRE DELHI)

..... Respondent

Through: Mr. Abhishek Maratha, Senior
Standing Counsel for Income Tax
Department.

Mr. Zoheb Hossain, Senior Standing
Counsel with Mr Vipul Agrawal &
Mr. Parth Semwal, Jr. Standing
Counsels.

58

+ W.P.(C) 11337/2021 & CM APPL. 34908/2021

PHARMACHOL CHEMICALS PVT LTD Petitioner

Through: Mr. T.M. Shivakumar & Ms.
Priyanka Singh, Advocates.

versus

NATITONAL E-ASSESSMENT CENTRE
DELHI & ANR.

..... Respondents

Through: Mr. Sunil Agarwal, Senior Standing
Counsel with Mr. Tushar Gupta,
Junior Standing Counsel with Mr.
Utkarsh Tiwari, Advocate.

59

+ W.P.(C) 9307/2022 & CM APPL. 27888/2022

RKKR FOUNDATION Petitioner

Through: Mr. Rohit Jain, Mr. Aniket D.
Agrawal, Advocates.

versus

NATIONAL FACELESS ASSESSMENT CENTRE
DELHI & ANR. Respondents

Through: Mr. Puneet Rai, Senior Standing
Counsel for Revenue with Ms.
Adeeba Mujahid, Standing Counsels
for Income Tax.

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Date of Decision: 17th November, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (Oral):

1. The present batch of petitions are being taken up together as they give rise to a common issue relating to their maintainability on account of the preliminary objection raised by the revenue that these writ petitions cannot be entertained by this Court as the situs of the jurisdictional assessing officers [“**JAO**”] are outside the National Capital Territory of Delhi and hence beyond the territorial limits of this Court.

2. For the sake of convenience, WP(C) 5546/2021 is being treated as the lead petition and the facts of that petition alone are being adumbrated

hereinafter, which would cover the similar preliminary objections raised by the revenue counsel in the remaining writ petitions as well.

WP(C) No.5546/2021 - GPL-RKTCPL JV vs. NATIONAL FACELESS ASSESSMENT CENTRE

3. The petitioner has challenged the impugned assessment order dated 24.04.2021 passed by the Respondent under Section 143(3) read with Section 144B for assessment year 2018-19 and notice of demand of even date issued under section 156 as well as notice for initiation of penalty proceedings under Section 271AAC (1) of the Income tax, Act, 1961.

4. By way of an order dated 27.05.2021, this Court had recorded the factual background on which the present petition is premised. The order dated 27.05.2021 reads as follows:

“3. Mr. Ajay Vohra, learned senior counsel, who appears on behalf of the petitioner, says that there has been a breach of the principles of natural justice, while passing the impugned assessment order, concerning the assessment year 2018-2019.

3.1 According to Mr. Vohra, the impugned assessment order was passed immediately after the issuance of the show cause notice-cum-draft assessment order.

3.2. The record, as placed before us, shows that the show cause notice-cum-draft assessment order, according to the petitioner, was served via email at 14:27 hours on 22.04.2021. It is the petitioner’s case that, it was required to file its reply/objections to the said show cause notice-cum-draft assessment order by 23:59 hours on 23.04.2021.

3.3. The petitioner avers that, it learnt about the aforesaid show cause notice-cum-draft assessment order, via its counsel, only after the impugned assessment order, had been already passed, i.e., on 25.04.2021, as the father of the petitioner’s counsel was admitted in hospital due to coronavirus and therefore, he could not access his e-mail. It is also the petitioner’s case that, due to lockdown imposed in the State of Chhattisgarh on account of coronavirus, it was not possible to collate documents, and file the reply/objections to the show cause notice cum draft assessment order. It is in these circumstances, according to the petitioner, a request for



adjournment was filed with the respondent.

3.4. To be noted, the impugned assessment order as well as consequential notice of demand and notice for initiating penalty proceedings, are dated 24.04.2021.

4. Issue notice. Mr. Ruchir Bhatia accepts service on behalf of Mr. Abhishek Maratha, learned senior standing counsel for the respondent/revenue; who, we are told, could not join the proceedings, today, as he is bereaved.

5. List the matter on 03.06.2021.”

5. Thereafter, on 03.06.2021, this Court had granted a stay on the operation of the assessment order dated 24.04.2021 and the accompanying notice for demand as well as the notice for initiating penalty proceedings.

6. On 04.03.2022, this Court listed the present petition along with another writ petition bearing number **W.P. (C) 9951/2021**, titled **Ashish Kumar Jhunjunwala vs. National Faceless assessment Centre, Delhi** wherein a preliminary objection was taken by the counsel for the revenue as to the maintainability of the that writ petition on the ground of territorial jurisdiction since the PAN AO, was located outside Delhi. The Petitioner in Ashish Kumar Jhunjunwala (supra) after few hearings sought leave to withdraw the Petition which was allowed and the Petition came to be dismissed as withdrawn vide order dated 28.03.2022. Accordingly, on 28.03.2022, this Court noted that WP(C)9951/2021 had stood dismissed as withdrawn and directed as follows:

“The present matter was tagged with W.P.(C) No.9951/2021. However, the said writ petition has been dismissed as withdrawn.

Accordingly, list the present writ petition before the Roster Bench on 18th April, 2022. Mr.Zoheb Hossain, learned standing counsel for the Revenue shall continue to assist this Court on behalf of the respondent.

Interim order to continue.”

7. The preliminary objection raised by Mr. Zoheb Hossain, Senior Standing Counsel, on the admissibility of the present writ petition are to the following effect:-

- (i) The *situs* of the jurisdictional assessing officer/PAN AO would be determinative of the jurisdiction of the High Court for the purpose of entertaining writ petitions under Article 226 of the Constitution;
- (ii) Applying the doctrine of *forum non conveniens*, this Court should reject the present writ petition for the reason that the assessee having chosen not to change his PAN jurisdiction, which he is otherwise entitled under the Act, it can be presumed that his PAN jurisdiction is convenient to him as it is convenient for the revenue.
- (iii) The Faceless Assessment regime does not dilute in any manner the principle that the situs of the PAN AO determines the jurisdiction of the High Court. On the contrary, an analysis of Section 144B(i), (iv), (vi), (vii), (xiv) & (xvi) would demonstrate that the National Faceless Assessment Centre is only a central authority, which issues notices to facilitate the assessment proceeding which is done and prepared in a coordinated manner by faceless assessment officer [“FAO”] in the regional assessment unit, with the assistance of the technical unit and verification unit. Finally, the Assessment Order is

finalised, and communicated through the National Faceless Assessment Centre in Delhi.

- (iv) The scheme of the Act is such that the FAO who has been assigned the function of assessment can be located randomly anywhere in the country which is neither disclosed to the JAO nor to the Assessee. The single most important provision for determining which High Court should exercise jurisdiction by applying the doctrine of *forum non conveniens* in Section 144B(1)(xxxii) which reads as follows:

“the National Faceless Assessment Centre shall, after completion of assessment, transfer all the electronic records of the case to the Assessing Officer having jurisdiction over the said case for such action as may be required under the Act.”

- (v) Therefore, if after completion of assessment, all the electronic records of the case are sent back by the NFAC to the JAO then it would be in the fitness of things for the High Court to consider that the records being present in the location where the JAO is based, i.e. Bilaspur in this case, the most convenient forum would be the Chhattisgarh High Court. Even otherwise depending on the stage of the proceedings when the assessee approaches the High Court, the JAO would be the concerned authority to coordinate with the NaFAC to instruct Counsel to assist the Court.
- (vi) The doctrine of *forum non conveniens* was considered in the case of *Sterling Agro Industries Ltd. vs Union of India & Ors-*

2011 (124) DRJ 633 (FB) [Paras 29 – 32] by a 5 judge full bench of this Court in a writ proceeding, and Article 226(2) was directly under consideration as to whether the order of the Appellate Authority would constitute a part of the cause of action rendering the writ petition maintainable and whether the petitioner being dominus litis could choose his forum and approach the High Court where the appellate authority is located. After examining the entire jurisprudence on this aspect, this Court arrived at the conclusion that even if a small fraction of the “cause of action” accrues within the jurisdiction of the Court, the Court will have jurisdiction. However, the Court may refuse to exercise such jurisdiction and must, in fact, remind themselves of the doctrine of *forum non conveniens*.

- (vii) In tax matters, the consistent view has been that the most convenient forum for an Assessee would be where his PAN is located. This is for the reason that he has a choice to even relocate his PAN by making a suitable application under Section 139A(5)(d) r/w applicable rules and failing to do so leads to a presumption that the location of the PAN/situs of the JAO is convenient to the Assessee and he is estopped from arguing otherwise at this stage.
- (viii) Even under the Faceless Regime, an appellate order passed by the National Faceless Appeals Centre, which is located in Delhi, shall lie before the ITAT having jurisdiction over the

JAO i.e. jurisdictional assessing officer. (See Clause 8 of the Notification dated 25.09.2020 notifying the Faceless Appeals Scheme, 2020 under Section 260(6B) of the Act of 1961)

- (ix) A piquant situation may arise for ITAT, Raipur, in this case, which would be bound by its jurisdictional High Court being the Chhattisgarh High Court, by virtue of Article 227 r/w Article 226 if this Hon'ble Court entertains any writ petition and passes any direction, which could potentially be contrary to any view held by the Chhattisgarh High Court. The principle of comity of courts will therefore require that this Hon'ble Court should refuse to exercise its jurisdiction in favour of the Chhattisgarh High Court which would be the jurisdictional High Court over the ITAT Raipur, [which would be the final fact-finding authority in the Assessee's case till the time his PAN lies with the AO in Chhattisgarh].
- (x) The Hon'ble Supreme Court in *Ambica Industries v. CCE (2007) 6 SCC 769 Para 38* envisaged an anomaly that may arise leading to a problem of forum shopping if the determination of the appellate forum was based on the situs of the tribunal. This would be no different if the situs of the NFAC which is in Delhi, is treated as determinative of the High Court to which appeals and writs would lie.
- (xi) This aspect has also weighed with this Court in the case of *Chinteshwar Steel Pvt. Ltd. v. Union of India and Ors. 2013*

SCC Online Del 4744 at Para 13. Additionally, this Court took the view that the Court within whose jurisdiction issues with “local flavour” arise should exercise jurisdiction and not otherwise. It is the submission of the Revenue counsel that the "local flavour" must be determined basis the location of the PAN and Section 120 of the Act.

- (xii) Merely because the NFAC is in Delhi and on that basis alone if an assessee’s writ is entertained, when in fact, admittedly his PAN lies with an AO in Chhattisgarh, this would lead to yet another problem of burdening this Court’s already over-burdened docket and therefore the principles of administration of justice would also be a relevant factor for determining the doctrine of *forum non conveniens*.
- (xiii) Yet another factor is that the assessee is admittedly not a resident of Delhi as evident from the memo of parties and therefore, cannot claim any convenience on account of residence.
- (xiv) The NFAC finalises an assessment, converts it into an order and conveys it to the Assessee. However, as explained earlier, the order is prepared by the FAO with assistance from technical and verification units. Therefore, the NFAC merely communicates the order and it is well settled that mere service of notices or sending messages from a particular place would not constitute an integral part of the cause of action. (See Paras.

13 and 14 of *Kusum Ingots and Alloys Ltd. v. Union of India* 2004 6 SCC 254.)

- (xv) Any reliance by the Petitioner on the coordinate bench decision in [*RKKR Foundation vs. National Faceless Assessment Centre Delhi & Ors. [2021] 436 ITR 49 (Delhi)*] would be wholly inapplicable since the issue relating to *forum non conveniens* was neither raised as an objection nor decided by this Court and therefore, the said judgement does not apply. Even if it is pressed into service by the Petitioner, the doctrine of *sub-silentio* being an exception to the rule of stare decisis would render it incapable of binding a subsequent coordinate bench [(*Municipal Corporation of Delhi vs Gurnam Kaur, 1989) 1 SCC 101* Para 10-11].
- (xvi) This Court has already passed five orders under identical circumstances and refused to exercise its jurisdiction. [See Sr. No. 18 - 22 of the Revenue's Compilation] Therefore, this Court has accepted the revenue's objection and directed the Assessee to approach the High Court where the jurisdictional assessing officer/PAN AO is located. The principle of consistency, predictability and certainty of judicial approach requires the need for uniformity in the exercise of judicial discretion respecting similar causes, except where factual differences require a different approach. (See: Para. 3 of

[(*Vishnu Traders v. State of Haryana and Ors.*) 1995 Supp (1) SCC 461].

(xvii) For all the aforesaid reasons, the Ld Senior Standing Counsel contends that the present writ petition deserves to be dismissed on the ground of *forum non conveniens*.

8. *Au-contraire*, Mr. Ajay Vohra Ld. Senior Counsel contends that this Court has the necessary territorial jurisdiction to entertain the present writ petition, on the basis of the following submissions:-

- (i) The National Faceless Assessment Centre (NaFAC) was set up by the Central Board of Direct Taxes ('CBTD') having its headquarters at New Delhi for the purpose of completion of faceless assessment under section 144B of the Act and it is NaFAC which performs all functions like (a) serving notice under section 143(2) on the assessee [section 144B (i) (i)]; (b) Response against the aforesaid notice to be sent to NaFAC [section 144B(1)(ii)]; (c) NaFAC is entrusted with jurisdiction & power, *inter alia*, to examine the draft assessment order in accordance with the risk management strategy specified by the Board, including by way of an automated examination tool and jurisdiction to finalize the assessment and serve a copy of such order and notice for initiating penalty proceedings along with demand notice on the assessee [section 144B(1)(xvi), (xxi), (xxiii), (xxv), (xxviii), (xxxi)].

- (ii) Under the faceless regime, the role of the JAO is limited to receiving the income-tax return of the assessee located within the territorial jurisdiction of the JAO ; thereafter the JAO becomes functus officio.
- (iii) Presently, even the jurisdiction to levy penalty does not lie with the JAO but with the Respondent- NaFAC itself. Refer CBDT Order F. No.187/4/2021-ITA-I dated 20.01.2021;
- (iv) Sub-section (3) of section 144B further provides that NaFAC shall be set up by the CBDT to facilitate the conduct of faceless assessment proceedings in a centralized manner, which shall be vested with the jurisdiction to make faceless assessment. Sub-section (3) further provides for setting up of Regional Faceless Assessment Centres, assessment units, verification units, technical units and review units for undertaking various tasks as provided for in section 144B of the Act, which are all set up under the umbrella of the NaFAC.
- (v) Thus, in the faceless regime, the JAO has no locus standi with respect to exercising jurisdiction over an assessee to make assessment. It is, therefore, submitted that the suggestion that NaFAC is only a medium for correspondence with assessees is devoid of merit.
- (vi) Applying the law laid down by the Five-Judge Bench of this Court in the case of *Sterling Agro Industries Ltd vs UOI* (supra) it is submitted that this Court is the appropriate forum

for adjudicating the pending writ petitions considering the following:

- (a) There is no dispute in the present case regarding cause of action or part thereof, arising within the territorial limits of this Court inasmuch as the impugned assessment order has been passed by the NaFAC, notice of demand and notice for initiation of penalty proceedings have also been issued by the NaFAC. It is submitted that substantial part of the cause of action arose in New Delhi, within the territorial jurisdiction of this Hon'ble High Court inasmuch as the NaFAC is headquartered at New Delhi.
- (b) Undisputedly, the Petitioner is a resident under section 6 of the Act and is required to pay tax on its global income (wherever earned) at applicable rates. The taxability of the Petitioner is not dependent upon the place from where the business is carried on and/ or where the registered office is situated and/ or the place where income is earned. Even otherwise, it is submitted that place of residence of the Petitioner or place from where business is carried on is not relevant for determining jurisdiction of the High Court under Article 226 of the Constitution. [*Refer: Khajoor Singh vs Union of India: AIR 1961 SC 532 & Rajendra Kumar Mishra vs Union*

of India: Civil Misc WP No.36612/1999 (Allahabad HC) (FB)]

- (c) The issue raised in the present writ petition is purely legal, viz., whether the impugned assessment order has been passed in violation of principles of natural justice and therefore, deserves to be quashed and/ or set aside. Additionally, the place where the registered office of the Petitioner is located or where business is carried on does not have any effect in the present case. There is, thus, no local flavour to the issue involved in the writ petition. ***[Refer: Jan Chetna vs Ministry of Environment & Forests: WP(C) 8399/2009 dated 11.05.2021]***
- (d) In the present case, the records of the assessment are maintained in electronic/ digital form, which are duly authenticated by the NaFAC by affixing its digital signature. Such electronic records can be accessed from anywhere. The communication/ correspondence between the Petitioner and the NaFAC has been done on the income-tax portal and the same is also accessible from any location.
- (e) When a part of the cause of action arises within one or the other High Court, it will be for the petitioner to choose his forum and once the Petitioner herein, being *dominus litis*, has invoked the jurisdiction of this Court,

the primacy to the freedom given to the Petitioner needs to be respected. [*Refer: Kusum Ingots & Alloys Ltd vs UOI (supra), para 25 & Vishnu Security Services vs Regional Provident Fund Commissioner: LPA No.960 of 2011 (Del HC) dated 17.02.2012, para 10*]

- (f) Further, for ousting jurisdiction of a High Court, case of another High Court being better equipped and convenient Court for all parties concerned has to be made out [*Refer: Jan Chetna (supra)*]. In the facts of the present case, it will be noticed that:
- the headquarters of the sole Respondent are in Delhi;
 - the issue raised is purely legal;
 - the issue involved has no local flavour;
 - there have already been 7 appearances by the Petitioner before this High Court in the present case and substantial time and costs have been incurred;
 - the issue regarding non-maintainability on the ground of territorial jurisdiction having not been raised at the stage of issuance of notice or granting of interim relief by the High Court or in the counter affidavit filed by the Respondent, the objection raised ought not to be entertained at this belated stage. [*Refer: Nawal Kishore Sharma vs UOI: (2014) 9 SCC 329*].

- (g) In a similar case, Division Bench of this Court deemed it fit to exercise its discretionary jurisdiction and entertain the writ petition. [Refer: ***RKKR Foundation vs NFAC: WP(C) 5277/2021*** order dated 12.05.2021 (Supra)].
- (h) It is, therefore submitted that relegating the Petitioner to a different High Court at this stage, would result in delayed justice, involve additional time, effort and cost and cause hardship to the Petitioner. Conversely, the disposal of the writ petition by this Court would not result in any prejudice the Revenue.
- (i) In case where writ petition was filed by the assessee before the Gujrat High Court exercising jurisdiction over the JAO, the said High Court directed the petitioner assessee to include the NaFAC as necessary and proper party in the array of Respondents and serve the said NaFAC. [Refer: ***Idex India (Pvt) Ltd vs Addl./Jt./Dy./Asstt. Commissioner of Income-tax/Income-tax Officer: [2022] 441 ITR 616 (Gujarat)***]
- (vii) It is further submitted that the recent judgment of the Supreme Court in the case of ***Principal Commissioner of Income Tax-I, Chandigarh vs ABC Papers Ltd 2022 SCC Online SC 1036***, rendered in the context of appellate jurisdiction of the High Courts under section 260A of the Act, has no application in the context of determining the writ jurisdiction of the High Courts.

Even otherwise, in terms of the law laid down in the said decision, the jurisdiction of the High Court (for purposes of section 260A) would be determined basis the situs of the assessing officer passing the original assessment order, this Court has jurisdiction to entertain the writ petition where the original assessment order is passed by the NaFAC, Delhi.

(viii) Further, it is submitted that the present petition came to be filed during the Covid-19 pandemic when everyone was struggling with logistic issues and the Petitioner had found this forum more convenient to approach considering the robust functioning of this Court in virtual mode; thus, for bona fide reasons.

(ix) In that view of the matter the present writ petition is maintainable and deserves to be entertained by the Delhi High Court.

WP(C) 9307/2022 – RKKR FOUNDATION vs. NATIONAL FACELESS ASSESSMENT CENTRE & ANR.

9. The present petition arises out of the proceedings emanating from the earlier order passed by this Court in the case of *RKKR Foundation vs. National Faceless Assessment Centre Delhi & Ors. [2021] 436 ITR 49 (Delhi)* passed in WP(C) No.5277/2021.

10. In this case, the Petitioner has, inter alia, challenged the assessment order dated 30.05.2022 for assessment year 2018-19 passed by the JAO located at Chandigarh.

11. Mr. Puneet Rai, Sr. Standing Counsel for the Revenue, raised a preliminary legal objection on the following grounds:-

- (i) This Court lacks territorial jurisdiction for the reason that the impugned assessment order dated 30.05.2022 has been passed by the JAO located at Chandigarh, which is outside the jurisdiction of this Court; consequently, the more appropriate forum for invoking the writ jurisdiction under Article 226 of the Constitution, is the High Court of Punjab & Haryana.
- (ii) That the present petition has been filed challenging the assessment order dated 30.05.2022 for AY 2018-19, passed by the JAO located at Chandigarh as the PAN of the Petitioner is under the Jurisdiction of ACIT Exemptions Circle 1, Chandigarh.
- (iii) That although this Court entertained the earlier Writ Petition filed by the Petitioner in WPC 5277/2021 in which challenge was made against the Assessment Order dated 30.04.2021 passed by the Faceless Assessing Officer intimated to the assessee through NaFAC.
- (iv) That this Court in W.P. (C) 5277/2021, vide order dated 17.05.2021, had set-aside the assessment framed by the NaFAC and granted liberty *“to pass a fresh assessment order after giving an opportunity of personal hearing to the authorized representative of the Petitioner”*. As per Section 144B(8) of the

Act, the case was transferred from NaFAC to the JAO, Chandigarh.

- (v) The assessee was duly informed about the transfer of the case from NaFAC to JAO vide notice dated 27.4.2022, thus the JAO, Chandigarh passed the impugned order on 30.05.2022.
- (vi) It is also relevant that the assessee, attended the video conference (VC) on 13.5.2022 at 11.30 AM through webex as per the link and password supplied by the JAO.
- (vii) Thus, the present challenge to the validity of the assessment order dated 30.05.2022 is a fresh cause of action.
- (viii) As the impugned assessment order has been passed by the JAO after considering the submissions of the Petitioner and after giving them the personal hearing through VC which was duly attended by the assessee, thus the Writ Petition is not maintainable and the assessee has an alternate remedy of appeal before the CIT Appeals. Reliance is placed upon the decision of Supreme Court in *CIT vs Chhabil Dass Agarwal (2013) 357 ITR 357 (SC)*
- (ix) In tax matters, the consistent view has been that the most convenient forum for an Assessee would be where his PAN is located. Recently, Gujarat High Court in the case of *Bhavendra Hasmukhlal Patadia v. Union of India* through Secretary in

W.P.C 4820 of 2022 vide order dated 27.04.2022 refused to entertain the Writ Petition filed by the Assessee as the PAN of the assessee was lying in Cuttack, Orissa and the order was also passed by the Officer in Cuttack.

- (x) Further it is also submitted that the assessee once relegated to the CIT Appeals and the order passed by CIT Appeals can only be challenged by Revenue or the Assessee before the ITAT having jurisdiction over the jurisdictional assessing officer. The same has been clarified in Clause 8 of the Notification dated 25.09.2020 notifying the Faceless Appeals Scheme, 2020 under Section 260(6B) of the Act of 1961) as noted above.

12. Disputing the aforesaid, Mr. Rohit Jain, learned counsel appearing for the Petitioner states that the present writ petition is maintainable before this Court and deserves to be entertained on the following grounds:

- (i) It is not open to either the Revenue or the Court to raise the plea of maintainability of the writ inasmuch as the same is barred by the principle of *res judicata* since the said issue of maintainability stood finally concluded in the case of the Petitioner vide order dated passed by the Division Bench of this Court in writ petition bearing WP(C) No.5277/2021. In support thereof, Petitioner contends as under:

- (a) In the case of the Petitioner assessee, assessment under section 143(3) read with section 144B of the Income Tax Act, 1961, for assessment year 2018-19 was originally

framed on 30.04.2021 by the NaFAC, located at Delhi, i.e., within the jurisdiction of this Court and aggrieved by the said assessment order, the Petitioner filed writ petition bearing WP(C) No.5277/2021 before this Court.

- (b) During the course of hearing of the said writ petition, on 12.05.2021, the issue of maintainability of the said writ petition was specifically raised by the Counsel for the Respondents stating that “*since the Petitioner is an assessee in Chandigarh, the petition filed before this Court is not maintainable and is liable to be rejected*”. Taking note of the said objection, this Court specifically enquired from the Counsel for the Revenue that once the Respondents have introduced the scheme of faceless assessment through the NaFAC, which is located at Delhi, how can the Respondents object to the jurisdiction of this Court being invoked, “*irrespective of the locate/situate of the assessee*”. Moreover, the Court elaborately discussed the legal position on the issue of territorial jurisdiction as laid down in ***Kusum Ingots & Alloys Ltd vs. Union of India*** (Supra), ***Cement Workers Mandal vs. Global Cements Limited (HMP Cements Limited)*** (2019) 20 SCC 517 and ***Maharashtra Chess Association vs. Union of India*** (2020) 13 SCC 285. The Division Bench of this Court, however, ultimately opined that it would be in the fitness of things that the said issue



be considered by the appropriate Bench of this Court then having the roster of taxation matters.

- (c) The writ petition was thereafter listed before the appropriate roster Bench on 17.05.2021, wherein, taking note of the objection to territorial jurisdiction raised by the Revenue, as recorded in the earlier order dated 12.05.2021, the Division Bench of this Court specifically held that the writ is maintainable.
- (d) In view of the aforesaid, the Division Bench of this Court in the case of the Petitioner itself, not only held that the writ is maintainable but also agreed to exercise writ jurisdiction in the matter. It is the submission of the Petitioner that considering the fact that this Court in the earlier round of proceedings arising out of the very same assessment proceedings had specifically chosen to exercise its discretion in favour of the Petitioner by entertaining the writ petition, despite a specific objection to that effect being raised by the Respondents, the issue relating to challenge to territorial jurisdiction of this Court stands concluded in favour of the Petitioner, and no objection to that effect can be raised by the Revenue and even by the Court, on the ground of being barred by the principle of *res judicata*.



(ii) It is further submitted that vide the present challenge to the validity of the assessment order dated 30.05.2022, the Petitioner is, in fact, seeking enforcement of the earlier order dated 17.05.2021 passed by this Court, and thus, the primary [and, in any case, part of] ‘*cause of action*’ giving rise to the present petition arises within the territorial jurisdiction of this Court in terms of Article 226(2) of the Constitution of India. In support of the said ground, it is contended as under:

- (a) Vide order dated 17.05.2021, this Court set-aside the assessment framed by the NaFAC and granted liberty to the said authority “*to pass a fresh assessment order after giving an opportunity of personal hearing to the authorized representative of the Petitioner*”; however, in complete violation of the direction of this Court, instead of the National Faceless Assessment Centre, New Delhi passing the fresh order (impugned herein), the same has been passed by the JAO located at Chandigarh.
- (b) The writ seeks to challenge the inaction on part of NaFAC, Delhi. It is further contended that the illegal order passed by the JAO is on account of inaction of the authority in Delhi and therefore, the more appropriate Court to entertain the writ is this Court, more so, when the writ seeks to challenge the validity order passed in

pursuance of the order dated 17.05.2021 passed by this Court in the first round of litigation.

- (iii) It is further submitted by the Petitioner that the principles enunciated by the Full Bench of this Court in the case of *Sterling Agro Industries (supra)*, do not, in any manner, constitute a bar to entertaining the present petition, since, the Petitioner, being the *dominus litis*, is at liberty to determine the more convenient forum, which, in the submission of the Petitioner, is this Court, inter alia, considering that: (a) the authority required and directed to exercise jurisdiction in the case of the Petitioner, being the NaFAC, is located at Delhi and thus, within the territorial jurisdiction of this Court, (b) in the faceless assessment regime, it is the NaFAC, Delhi which exercises exclusive jurisdiction to make assessment (refer: section 144B of the Income Tax Act, 1961) and concurrent jurisdiction as an assessing officer and therefore, the locus/situs of the JAO exercising jurisdiction in non-faceless regime cannot be the ground to hold the writ as non-maintainable; and (c) the cause of action in the present case has arisen, primarily/ partly, on account of non-compliance of the specific direction of this Court in the order dated 17.05.2021 passed in the earlier round of proceedings bearing WP(C) No.5277/2021 by NaFAC, Delhi.

13. We are of the considered view that at this stage, it would be apposite to refer to the judgment of this Court in the case of ***RKKR Foundation vs NFAC, [2021] 127 taxmann.com 643 (Delhi)*** wherein this Court while entertaining a writ petition in a similar situation observed as follows:-

“4.2 Given the fact that the respondent no. 1 is located in the National Capital Territory of Delhi [in short "Delhi"], Mr. Rai cannot, but accept, that this Court would have the jurisdiction in the matter, though, the discretion to entertain the same, would vest with the Court.

4.3 In our view, we are inclined to exercise jurisdiction in the matter, as this would, one way or the other, conclude the matter. It would save time and expense both, for the revenue, as well as the assessee and lend certainty as to how parties are to proceed further in the matter.”

14. We find force in the submission of the Revenue to the extent that the view expressed by a co-ordinate bench of this Court in *RKKR foundation* has not taken into account the entire conspectus of the legal position in assessment proceedings with reference to the hierarchy of appellate authorities under the Act, 1961 and that the matter requires a deeper consideration. We are also of the view that applying the doctrine of *forum non-conveniens* as laid down by a Full bench of this Court in *Sterling Agro (supra)*, this Court can refuse to entertain the writ petitions where the jurisdictional assessing officer i.e. JAO is based outside the NCT of Delhi. However, it would be appropriate to refer this matter to a larger bench for a conclusive view as this issue will arise repeatedly in many cases.

15. Having heard the rival submissions and given our thoughtful consideration. We are inclined to frame the following questions of law:

- (i) Whether this Court has the necessary territorial jurisdiction under Article 226 to entertain the writ petitions when the PAN

Assessing Officer/Jurisdictional Assessing officer is located outside the NCT of Delhi?

- (ii) Whether this Court, assuming it has jurisdiction, should refuse to exercise jurisdiction under Article 226 applying the doctrine of *forum non conveniens* if the PAN Assessing Officer/Jurisdictional Assessing officer is located outside the NCT of Delhi?
- (iii) Whether the presence of National Faceless Assessment Centre in Delhi would be a sufficient '*cause of action*' to confer jurisdiction on this Court to entertain a writ petition under Article 226 ignoring the location of the PAN/Assessing Officer Jurisdictional Assessing officer and any other relevant factors?
- (iv) Whether when a part of cause of action arises within one or more High Courts, the petitioner being *dominus litus* would have the right to choose his forum?
- (v) Whether applying the principles of the Full Bench decision in the case of ***Sterling Agro Industries Limited v. Union of India and Ors. 2011 (124) DRJ 633 (FB)***, this Court should entertain the writ petitions or refuse to exercise discretion to entertain the same on the ground that the PAN Assessing Officer/Jurisdictional Assessing Officer is located outside the jurisdiction of this Court?

(vi) Whether in WP(C) No.9307/2022 the principle of res judicata is attracted?

16. Keeping in view the complexity of the legal issues involved and since we have doubted the correctness of the view expressed by a coordinate bench of this Court in **RKKR Foundation** (*supra*) wherein this Court had decided to exercise its jurisdiction in a similar matter where the jurisdictional assessing officer was located outside the NCT of Delhi, we are of the considered view that the aforesaid questions of law requires to be settled and decided by way of an authoritative pronouncement by a larger bench of this Court.

17. Let the matter be placed before Hon'ble Chief the Justice for constitution of a larger bench to decide the aforesaid questions of law. Nothing contained in this order would be read as adjudicating or deciding the said questions.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 17, 2022

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