

## **Delhi ITAT can decide fate of an appeal filed against order of CIT(A) Lucknow**

**Summary – The High Court of Allahabad in a recent case of Sahara India Financial Corporation Ltd., (the Assessee) held that where the Delhi Tribunal decided an appeal against order of Commissioner (Appeals) Lucknow, in view of Evidence Act, same was to be presumed to be regularly preformed.**

These appeals have been filed under Section 260-A of the Income Tax Act, 1961. Each of these appeals was admitted on 08.04.2010 on the following substantial question of law:-

"Whether the Income Tax Appellate Tribunal, New Delhi had decided appeal without jurisdiction since the original appellate order was passed by CIT (A), Lucknow?"

This is the only point which has been argued by the learned counsel for the appellant. No other point has been sought to be raised. Learned counsel for respondent has pointed out that the appeal was transferred to Delhi at the own request of the department. Learned counsel for the appellant wanted some time to ascertain this fact. However, we are not placing sole reliance upon this statement.

Under Section 255(1) of Income Tax Act, it is provided that the powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the President of the Appellate Tribunal from among members thereof. Under sub-Section (5), it is provided that Appellate Tribunal shall have power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its power or of the discharge of its functions including the places at which the Benches shall hold their sittings.

Through notification dated 17.04.1963, Income Tax (Appellate Tribunal) Rules, 1963 have been framed Under Rule 4 (2), it is provided as follows:

"Where there are two or more benches of the Tribunal working at any headquarters, the President or in his absence, the Senior Vice President may transfer an appeal or an application from any one of such Benches to any others."

Under Standing Order framed under Rule 4(1) of the aforesaid Rules it is provided that subject to any special order all appeals and applications from the Districts, States and Union Territories specified in Column-3 shall w.e.f. 01.10.1997 be heard and determined by the benches specified in Column-2 of the table given thereunder. The said Standing Order refers to special order which means order of transfer of appeal from one bench to another. Even though in the impugned order it is not mentioned that appeals had been transferred, however, under section 114 illustration (e) Evidence Act there is always a presumption that judicial and official acts have been regularly performed. Moreover, in the

memorandum of appeal, no where it is stated that there was no order passed by the President of the Tribunal to transfer the appeal(s) to Delhi Bench.

Accordingly, the substantial question of law framed at the time of admission is decided against the appellants and in favour of the respondent. Appeals are, accordingly, dismissed.