

Jurisdiction of HC over order of ITAT is not dependent on situs of AO: Bombay HC

Summary – The High Court of Bombay in a recent case of Sungard Solutions (I) (P.) Ltd., (the Assessee) held that Jurisdiction of HC over order of ITAT is not dependent on situs of AO

Facts

- The ITAT, Bangalore had passed an order in favour of the assessee on 30-7-2015.
- Thereafter, on 8-9-2015, an order under section 127 was passed transferring the case from Bangalore to Pune.
- The instant appeal was filed by the Revenue against the order dated 30-7-2015 before the HC of Bombay. The assessee contended that since the order dated 30-7-2015 was passed by the Bangalore ITAT the appeal from such order would lie before the Karnataka High Court and not before Bombay HC.
- However, the revenue contended that it is the *situs* of the Assessing Officer which would alone determine the Jurisdictional High Court and since at the time of filing the present appeal the Assessing Officer was Pune, therefore, the Bombay HC would alone be the Jurisdictional High Court to deal with the matter.

Held

- The bare reading of the relevant provisions establish that Chapter XIII would be applicable only to the Income Tax Authorities under the Act as listed out in section 116 thereof. Thus, the provisions of sections 120, 124 and 127 will also apply only to the Authorities listed in section 119. Since the Tribunal and the High Court are not listed in section 116 as Income Tax Authorities, sections 124 and 127 being relied upon by the revenue will have no bearing while dealing with the issue of Jurisdictional High Court over the orders of the Tribunal.
- The jurisdiction issue is governed by the provisions of chapter XX which is a specific provision dealing with appeals, amongst others to the High Court. A combined reading of Sections 260A and 269 would mean that the High Court referred to in section 260A will be the High Court as provided in section 269 *i.e.* in relation to any State, the High Court of that State. Therefore, the seat of the Tribunal will decide the jurisdiction of the Court to which the appeal would lie.
- Thus, in the present facts, the High Court which would have jurisdiction would be over the place where the Tribunal is situated and passed the order. Therefore, 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.
- In the present case, the Karnataka High Court exercises jurisdiction over the Bangalore bench of the Tribunal which has passed the impugned order. However, *Explanation* to section 127 states that

once a direction to transfer the case has been issued therein in respect of the case, all assessment proceedings under the Act in respect of any year which may be pending on the date of such order would stand transferred to the transferee Assessing Officer.

- 'All proceedings under this Act' would not cover appeals under the Act before the High Court as it would not be in accordance with sections 260A and 269 which specifically provide for the High Court which would have jurisdiction over the orders of the Tribunal. Therefore, section 127 and explanation only apply to the authorities listed under section 116 and exercising jurisdiction under the Act and have no application to the High Court constituted under the Constitution.
- Therefore, the appeals from the order of the Tribunal to the High Court would be governed by sections 260A and 269 and such Court would be the one which exercises jurisdiction over the seat of the Tribunal which passed the order.
- The Bombay HC thus decided that it does not have jurisdiction to entertain appeals under section 260A in respect of order passed by the Bangalore bench of the Tribunal and hence the appeal is not maintainable.