REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4252 OF 2022
ARISING OUT OF SLP (C) NO. 23352 OF 2019

PR. COMMISSIONER OF INCOME TAX – I, CHANDIGARH ...APPELLANT

VERSUS

M/S. ABC PAPERS LIMITED ...RESPONDENT

WITH
CIVIL APPEAL NO. 4253 OF 2022
ARISING OUT OF SLP (C) NO. 25541/2019

WITH
CIVIL APPEAL NO. 3480 OF 2022
ARISING OUT OF SLP (C) NO. 8146/2022

J U D G M E N T

PAMIDIGHANTAM SRI NARASIMHA, J.

1. These appeals give rise to an important question concerning appellate jurisdiction of the High Courts under Section 260A of the Income Tax Act, 1961[1] against judgments of Income Tax Appellate Tribunals[2]. As Benches of the ITAT are constituted to exercise jurisdiction over more than one state, each state having a separate High Court, question arose as to which of the High Court is the appropriate Court for filing appeals under Section 260A. The question arose

[1] hereinafter referred to as 'the Act'.
[2] hereinafter referred to as 'ITAT' / 'Tribunals'.

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because Section 260A is open-textual and does not specify the High Court before which an appeal would lie in cases where Tribunals operated for plurality of States. This question came to be conclusively answered by the High Court of Delhi in the case of *Seth Banarsi Dass Gupta v. Commissioner of Income Tax*[3], wherein it was held that the appropriate High Court would be the one where the Assessing Authority is situated. This judgment continuous to hold the field.

2. In these appeals, a further question that arise for consideration is the jurisdiction of the High Court consequent upon administrative order of transfer of a 'case' under Section 127 of the Act from one Assessing Authority to another Assessing Officer located in a different State. The Punjab & Haryana High Court took the view that such a transfer would not change the principle laid down in *Seth Banarasi Dass Gupta*. However, the Delhi High Court in *CIT v. Sahara India Financial Corporation Ltd.*[4] and *CIT v. Aar Bee Industries Ltd.*[5] has taken a different view. The Delhi High Court held that an administrative order of transfer of cases will also have the consequence of transferring even the jurisdiction of the High Court. As there is a difference of opinion between the High Court of Punjab & Haryana on the one hand and the High Court of Delhi on the other, we are called upon to determine and declare the appropriate High Court for filing an appeal in such cases.

[3] (1978) 113 ITR 817 (Del).
[4] (2007) 294 ITR 363 (Del).
[5] (2013) 357 ITR 542 (Del).

3. Having considered the matter in detail, and while reversing the judgments of the Delhi High Court in *Sahara* and *Aar Bee*, we have also held that the appellate jurisdiction of the High Court stands on its own foundation and cannot be subject to the exercise of executive power to transfer a 'case' from one Assessing Officer to another Assessing Officer.

Facts of the case:

4. The Appellant herein, M/s. ABC Papers Ltd.[6] is a company engaged in the manufacture of writing and printing paper. For the assessment year 2008-09, the Assessee filed its income tax returns before the Assessing Officer, New Delhi, on 30.09.2008. The Deputy Commissioner of Income Tax, Circle-1(1), New Delhi, issued a notice under Section 143 (2) of the Act and followed it up by an order of assessment dated 30.12.2010. Aggrieved by that order, the Assessee preferred an appeal to the Commissioner of Income Tax (Appeals) - IV, New Delhi, and by his order dated 16.02.2012, the Commissioner allowed the appeal. Against this appellate order, the Revenue carried the matter to ITAT, New Delhi. The ITAT, New Delhi, by its order dated 11.05.2017, upheld the order of the CIT (Appeals) - IV, New Delhi, and dismissed the appeal filed by the Revenue. Against this order of the ITAT, the Revenue filed ITA No. 517 of 2017 before the High Court of Punjab & Haryana.

[6] hereinafter referred to as 'the Assessee'.

5. It is important to note certain events that overtook the above-referred proceedings. While the matter was pending appeal before the CIT (Appeals) - IV, New Delhi, as indicated above, a search operation under Section 132(1) of the Act was carried out on 04.05.2011 at the office and factory of the Assessee in Chandigarh and certain places in the State of Punjab, by the Directorate of Income Tax (Investigation), Ludhiana. Yet another development that took place after the search operation was that, by an order dated 26.06.2013 passed under Section 127 of the Act, the Commissioner of Income Tax (Central), Ludhiana, centralized the cases of the Assessee for the assessment years 2006-07 to 2013-14 and transferred the same to Central Circle, Ghaziabad.

6. In view of the above transfer under Section 127, the Deputy Commissioner of Income Tax, Central Circle, Ghaziabad, proceeded further and passed an assessment order on 31.03.2015. Aggrieved by that order, the Assessee filed an appeal which came to be allowed by the Commissioner of Income Tax (Appeals) – IV, Kanpur, on 20.12.2016. Against this appellate order, the Revenue preferred an appeal to ITAT, New Delhi. As the decision of the ITAT dated 11.05.2017 in the case of the Assessee with respect to an earlier assessment year was already available, the ITAT, New Delhi, followed the said judgment and dismissed the appeal filed by the Revenue by its order dated 01.09.2017. It is against this order that the Revenue filed ITA No. 130 of 2018 before the High Court of Punjab & Haryana.

7. In fact, before the Revenue could file an appeal against the orders of the ITAT dated 11.05.2017 (arising out of the original proceedings) and 01.09.2017 (arising out of proceedings after transfer under Section 127), the cases of the Assessee were re-transferred under Section 127 of the Act to the Deputy Commissioner of Income Tax, Circle-1(1), Chandigarh, w.e.f. 13.07.2017. Though this order is not on record and has also not been referred to in any of the proceedings, a reference to the said order has been made in the written submissions filed before us. Perhaps it is on the basis of the said transfer that the Revenue took a decision to file appeals, being ITA No. 517 of 2017 (against the order of the ITAT dated 11.05.2017) and ITA No. 130 of 2018 (against the order of the ITAT dated 01.09.2017) before the High Court of Punjab & Haryana.

8. The High Court of Punjab & Haryana by its judgment dated 07.02.2019, disposed of ITA No. 130 of 2018 by holding that, notwithstanding the order under Section 127 of the Act which transferred the cases of the Assessee to Chandigarh, the High Court of Punjab & Haryana would not have jurisdiction as the Assessing Officer who passed the initial assessment order is situated outside the jurisdiction of the High Court. For arriving at this conclusion, the High Court followed the decision in the case of *Commissioner of Income Tax v. Motorola India Ltd.*[7] and *Commissioner of Income Tax (Central), Gurgaon v. M/s Parabolic Drugs Limited*[8]. With this view of the matter, the High Court dismissed the appeal as not

[7] (2010) 326 ITR 156 (P&H).
[8] ITA No. 49 of 2012 (P&H).

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maintainable. By the same judgment, the High Court also disposed of ITA No. 517 of 2017 filed by the Revenue against the decision of the ITAT, New Delhi, dated 11.05.2017, by adopting the same logic. Aggrieved by the decision of the High Court of Punjab & Haryana refusing to entertain the appeals against the orders of the ITAT dated 11.05.2017 and 01.09.2017, the Revenue filed the present appeals, being Civil Appeal No. 4252 of 2022 (against the order of the High Court of Punjab & Haryana in ITA No. 517 of 2017) and Civil Appeal No. 4253 of 2022 (against the order of the High Court of Punjab & Haryana in ITA No. 130 of 2018) before this Court.

9. It is also important to mention here that against the very same order of the ITAT, New Delhi, dated 11.05.2017, the Revenue also filed an appeal, being ITA No. 515 of 2019 before the High Court of Delhi. The High Court of Delhi having noted the decision of the High Court of Punjab & Haryana dated 07.02.2019 holding that it does not have jurisdiction, nevertheless, dismissed the appeal by its order dated 21.05.2019 on the ground of lack of territorial jurisdiction of the High Court of Delhi. For arriving at the conclusion that the High Court of Delhi would not have territorial jurisdiction, the decision of its own Court in the case of *Sahara*[9] and *Aar Bee*[10] were relied upon. In those two decisions, the High Court of Delhi had taken a view that when an order of transfer under Section 127 of the Act is passed, the jurisdiction gets transferred to the High Court within whose

[9] supra (note 4)
[10] supra (note 5)

jurisdiction the situs of the transferee officer is located. Aggrieved by the decision of the High Court of Delhi, the Revenue preferred appeal to this Court being, Civil Appeal No. 3480 of 2022.

10. The above referred facts clearly evidence that in the case of the very same Assessee, the High Court of Punjab & Haryana as well as the High Court of Delhi have refused to entertain the appeals on the ground that they lack territorial jurisdiction. Both the High Court relied on decisions of their own Courts which have taken diametrically opposite perspectives. We are thus tasked to resolve the issue as to which High Court would have the jurisdiction to entertain an appeal against a decision of a Bench of the ITAT exercising jurisdiction over more than one state, particularly when case(s) of same assessment year are transferred under Section 127 of the Act.

Contention of the Parties and the issue arising for consideration:

11.1 Though the Revenue is the Appellant in these batch of matters, Shri N. Venkatraman, learned Additional Solicitor General representing the Union of India, graciously consented to the learned counsel for the Assessee Sh. Rohit Jain to open the case. Sh. N. Venkatraman also observed that Mr. Jain had copiously prepared a compilation of all the judgments on the subject and a note for assisting the Court. Further, and more importantly, Sh. N. Venkatraman has also supported the legal submission advanced by Sh. Rohit Jain in so far as the issue of jurisdiction is concerned. We appreciate the approach adopted by the learned Law Officer, as precious time of the Court could be saved by avoiding repetition of

arguments. We were greatly benefited by the compilation of the precedents on the subject and the written note of Shri Rohit Jain and his team. We place on record the valuable assistance rendered by them.

11.2 There is another aspect. As the High Courts have not pronounced upon the merits of the matter, we will not be entering into the merits of the dispute and our enquiry will be confined to the question as to which is the appropriate High Court for filing an appeal under Section 260A of the Act against a decision of the ITAT. Our enquiry will also extend to determining the appropriate High Court for appeals against order of ITAT where an order of transfer of case(s) from one Assessing Officer to another Assessing Officer even with respect to the same assessment year, has been passed under Section 127 of the Act.

11.3 Section 260A of the Act provides for a statutory appeal to the High Court against every order of the ITAT. As certain Benches of the ITAT exercise jurisdiction over more than one state, the primary question is before which High Court would an appeal lie? Should it be the High Court of the State in which the ITAT is physically located or the High Court of the State in which the Assessee is residing and/or doing its business or the High Court where the Assessing Officer who assessed the assessee is located.

11.4 For making the correct interpretative choice, it is necessary to refer to certain provisions of the Act.

Legal Framework:

12. Chapter XIII of the Act deals with *Income Tax Authorities*. Section 116, occurring in this Chapter enlists the classes of Income Tax Authorities who would be administering the provisions of the Act. Section 120, which deals with the *Jurisdiction of the Income Tax Authorities* provides that the Authorities shall exercise the powers and functions conferred or assigned to them under the Act. Section 124 is important. It relates to the jurisdiction of Assessing Officers in particular. It is a departure from the previous regime under the 1922 Act in Section 64, as per which the place of assessment was the place where the assessee carries on business, profession or vocation. Section 124 inverts the position, and instead empowers an Assessing Officer to exercise jurisdiction over any *area* that has been entrusted to him/her under Section 120 of the Act. The Assessing Officer will, therefore, have the power and jurisdiction with respect to any person carrying on a business or profession in that area. Another provision that we need to take note of is Section 127, which empowers senior income tax authorities *to transfer any 'case' from one or more Assessing Officer to any other Assessing Officer*. Sub-section (4) of Section 127 provides that the transfer can be made at any stage. Explanation to Sub-section (4), which is reproduced hereunder, for ready reference explains the expression 'case' used in the Section: -

> *"**Section 127(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."*

13.1 Another set of provisions relating to the judicial remedies provided under the Act are equally important for us to note. Chapter XX deals with Appeals and Revision. Part A of this Chapter provides for appeals against assessment orders to Deputy Commissioner (Appeals) and Commissioner (Appeals). Part B comprises of provision relating to appeals to the ITAT. ITAT is constituted by the Central Government under Section 252[11] of the Act. Section 255[12] of the Act provides that the President of the ITAT may constitute Benches for exercising and discharging the powers and functions of the ITAT. Under Sub-Section (5) of Section 255, the ITAT, through its President, is empowered to regulate the procedure of the Benches, including the places at which the Benches shall hold their sittings.

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[11] *Section 252.* ***Appellate Tribunal***

(i) The Central Government shall constitute an Appellate Tribunal consisting of as many judicial and accountant members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.

[12] *Section 255.* ***Procedure of Appellate Tribunal***

(i) 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 the members thereof.

13.2 In exercise of power under sub-Section (5) of Section 255, the ITAT notified the *Income Tax (Appellate Tribunal), Rules 1963.* As per Rule 3[13], a Bench shall hold its sittings at its headquarters or at such other place as authorized by the President. Under Rule 4[14], a Bench shall hear and determine such appeals as the President may by order direct.

13.3 ITAT is a unified forum functioning in the form of Benches at the administrative discretion of the President. Jurisdiction exercised by the Benches of the ITAT do not follow the structure contemplated in Article 1 of the Constitution, which divides the Union into States and Union Territories. Instead, Benches are sometimes constituted in a way that their jurisdiction encompasses territories of more than one state. For example, the Allahabad Bench include parts of Uttarakhand. The Amritsar Bench has within its jurisdiction the entire State of Jammu & Kashmir. Delhi Bench includes parts of Haryana and U.P. The Guwahati Bench comprises of Arunachal Pradesh, Meghalaya, Mizoram, Assam, Manipur, Nagaland and Tripura. Further, the Bangalore Bench excludes large parts of Karnataka such as Belgaum, Mangalore, Karwar and North Kanara, and these excluded districts form part of the Panaji Bench which includes Goa. Therefore, Benches are not State or U.T. centric, but are based on the administrative discretion of the President of the ITAT. This Court in *Ajay Gandhi*

[13] *Rule-3.* ***Sittings of Bench***
A bench shall hold its sittings at its headquarters or at such other place or places as may be authorized by the President.

[14] *Rule-4.* ***Powers of Bench***
(1) A Bench shall hear and determine such appeals and applications made under the Act as the President may be general or special order direct.

v. B Singh[15] and the Madras High Court in *The President, Income Tax Appellate Tribunal v. A Kalyanasundaram*[16] have upheld the powers of the President with respect to posting and transfer of members and also the power to decide the constitution of Benches and the places of sitting of the members.

14. In so far as appeal to a High Court is concerned, it is Section 260A which provides that an appeal shall lie from every order of the ITAT. Section 260A, to the extent relevant is as under:

> *"**260A. Appeal to High Court.** (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."*

15. As is evident from the above, Section 260A is open textual and does not specify the High Court before which an appeal under Section 260A of the Act would lie. Even Section 269[17] which defines 'High Court' merely relates the High Court in any State with the High Court for that State and further prescribes specific High Courts for each of the U.T. It is this uncertainty about identification

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[15] (2004) 2 SCC 120.
[16] (2005) 279 ITR 305 (Mad).
[17] 269. Definition of "High Court". — 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;
2 [* * * * *]
3 [* * * * *]
(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.]

of the appropriate High Court for filing an appeal against an order of the ITAT exercising jurisdiction over more than one state that, we are called upon to decipher and declare.

16. A judicial remedy must be effective, independent and at the same time certain. Certainty of forum would involve unequivocal vesting of jurisdiction to adjudicate and determine the dispute in a named forum.

17. Keeping the above principle in mind, we will now return to the inquiry into the appropriate High Court for filing an appeal against an order of a bench of the ITAT exercising jurisdiction over more than one state. We notice that the issue has already fallen for consideration before a Division Bench of the High Court of Delhi way back in 1978 in the case of *Seth Banarsi Dass Gupta*. Having considered the matter in detail, the High Court of Delhi held that the "most appropriate" High Court for filing an appeal would be the one where the Assessing Officer is located. The decision was followed in *Suresh Desai* (supra) by Justice Lahoti (as he then was) and provided additional reasons in support of the same view. The interpretative choices are based on the following reasons, which we have reformulated as under:

(I) As benches of the ITAT exercise jurisdiction over more than one state, Explanation to Standing Order No. 1 of 1954 and Standing Order No. 1 of 1967 issued under the Rules prescribe that, the jurisdiction of the ITAT should be based on the location of the Assessing Officer. The same principle should apply for determining the jurisdiction of the High Court for an appeal against the decision of the ITAT.

(II) It would be appropriate for the ITAT to refer a question of law to the High Court within whose jurisdiction the Assessing Officer or the CIT which has decided the case is located, as these authorities would be bound to follow the decision of the concerned High Court.

(III) This interpretation will also be in consonance with the expression "in relation with any State, the High Court of that State" provided in the definition of the "High Court" in Section 66(8) (under the present 1961 Act, it is Section 269).

(IV) The appeals and references cannot be made to a High Court only on the basis that a bench of the ITAT is located within the jurisdiction of the said High Court, as it will create an anomalous situation for that as well as other High Courts.

(V) In view of the doctrine of precedents and the rule of binding efficacy of law laid down by a High Court within its territorial jurisdiction, a question of law arsing for decision in a reference should be determined by the High Court which exercises territorial jurisdiction over the situs of the Assessing Officer (*Suresh Desai)*.

18. The principle laid in *Seth Banarasi Dass* is followed in *Suresh Desai & Associates v. Commissioner of Income Tax*[18], *Birla Cotton Spinning and Weaving Mills Ltd. v. Commissioner of Income Tax*[19], *Commissioner of Income Tax v. Digvijay Chemicals Ltd.*[20] and *Commissioner of Income Tax v. Motorola India Ltd.*[21] It is interesting to note that this basic principle is accepted and abided as a precedent even in the two subsequent judgments of the High Court of Delhi in

[18] (1998) 230 ITR 912 (Del).
[19] (1980) 123 ITR 354 (Del).
[20] (2007) 294 ITR 359 (Del).
[21] supra (note 7)

Sahara and *Aar Bee.* Thus, it is well-settled that the appellate jurisdiction of a High Court under Section 260A is exercisable by a High Court within whose territorial jurisdiction the assessing officer is located.

19. However, our enquiry does not stop here. A further question that arises in these batch of appeals is in the context of an order of transfer under Section 127 of the Act, whereby the case of an assessee gets transferred from an Assessing Officer in one State to another Assessing Officer, situated in another state under the jurisdiction of a different High Court. The real question is whether the jurisdiction of a High Court would also change following an order of transfer under Section 127. For example, in this very case, where the assessment order was passed by the Assessing Officer in Ghaziabad, the appeal therefrom was decided by the CIT (Appeals) IV, Kanpur and the appeal to the Tribunal was decided by ITAT, New Delhi, should the Lucknow Bench of the Allahabad High Court have jurisdiction or should the jurisdiction vest with the Punjab & Haryana High Court in whose territorial limits the transferee Assessing Officer is located.

20. In *Suresh Desai*, the question relating to the consequences upon an order of transfer under Section 127 did arise for consideration. Apart from holding that the transfer order did not involve the assessment year with respect to which the appeals are concerned, the High Court of Delhi made an important observation that "*it is not that the jurisdiction to make assessment in respect of matters arising at Bombay have been conferred or transferred to Delhi by a reference to territory*

or persons or class of persons or incomes or class of income or cases or class of cases as contemplated by Section 120 of the Act". This view is also in consonance with the four principles laid down in *Seth Banarasi Dass* and it is further strengthened by the additional reasoning given by Justice Lahoti in *Suresh Desai* case. The same approach was adopted by the High Court of Delhi in *Digvijay Chemicals* where despite an order of transfer from Assessing Officer, Bulandshahar, to Assessing Officer, New Delhi, the High Court of Delhi held that it does not have the jurisdiction as the Assessing Officer was situated in Bulandshahar. Pertinently, even in *Digvijay Chemicals,* the transfer order related to a different assessment year.

21. In *Motorola India Ltd.*, a case decided by the High Court of Punjab & Haryana, the assessment year which was the subject of appeal was also the subject of a transfer order passed under Section 127 of the Act. In that case, the assessment took place in Bangalore, the appeal therefrom came to be decided in Bangalore and a further appeal was also decided by the ITAT in Bangalore. At this stage, the case was transferred under Section 127 of the Act from Assessing Officer, Bangalore, to Assessing Officer, Gurgaon. It is in this context that the assessee objected to the appeal filed by the Revenue before the High Court of Punjab & Haryana and the High Court accepted the contention and dismissed the appeal on the ground that Punjab & Haryana High Court has no jurisdiction. It was held that even if it is the same assessment year, the appropriate High Court would be the High Court of Karnataka. Unlike *Suresh Desai* and *Digvijay*

Chemicals, in this case, the records of the same assessment years were transferred. The revenue relied on the *Explanation* to Section 127 of the Act to argue that the expression "cases" in the explanation shall cover proceedings filed/to be filed before a High Court as well. The High Court of Punjab & Haryana negatived this contention by holding that:

> *"**12.** ... The reliance of the Revenue on the **Explanation** to section 127 of the Act with regard to the meaning of the expression "case" is wholly misplaced and is liable to be rejected because section 120 of the Act does not deal with jurisdiction of the Tribunal or the High Court....*
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> ***13.** A conjoint reading of the aforementioned provisions makes it evident that the Director General or Chief Commissioner or Commissioner is empowered to transfer any case from one or more accessing officers subordinate to him to any other Assessing Officer. It also deals with the procedure when the case is transferred from one Accessing Officer subordinate to a Director General or Chief Commissioner or Commissioner to an Assessing Officer who is not subordinate to the same Director General, Chief Commissioner or Commissioner. The aforementioned situation and the definition of the expression "case" in relation to jurisdiction of an Assessing Officer 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.*"

22. We will now refer to the decision of the High Court of Delhi in the case of *Sahara*, where the Court has taken a view that upon an order of transfer under Section 127 of the Act, the case of the assessee would get transferred "lock, stock and barrel" including the High Court. As per this decision, the High Court having

jurisdiction over the situs of the transferee Assessing Officer alone would have jurisdiction.

23. The facts involved the case of *Sahara* are that the assessment order was passed by Assessing Officer, Lucknow. Appeal against that order was decided by CIT (Appeals), Lucknow, and a further appeal was decided by ITAT, Lucknow. Pursuant to the ITAT order, an appeal was filed before the Lucknow Bench of the Allahabad High Court. During the pendency of this appeal, the records of the assessee came to be transferred from Lucknow to New Delhi. Hence, an appeal came to be filed before the High Court of Delhi as well. A preliminary objection was raised that the High Court of Delhi lacks jurisdiction as the Assessing Officer was situated in Lucknow. Departing from the long-standing decisions from *Seth Banarasi Dass* onwards, the Court rejected the contention and held that the High Court of Delhi had the jurisdiction to entertain the appeal. The relevant portion of the judgment is as under:-

> *"**13.** The order passed under Section 127(2) of the Act clearly relates to the "case" of the assessee mentioned in the schedule, and by virtue of the **Explanation**, all future proceedings that may be taken under the Act (obviously including an appeal under section 260A thereof) would now have to be in harmony with the order passed under section 127(2) of the Act. Consequently, the jurisdiction in respect of the "case" and the assessee having been shifted from Lucknow to Delhi, the Revenue could file the appeal under section 260A of the Act only in Delhi and it could not have filed an appeal in the Lucknow Bench of the Allahabad High Court.*
>
> **…..**

> ***17.*** *.... the effect of the transfer of jurisdiction from Lucknow to Delhi specifically arises in the present case and we are of the view that the jurisdiction in respect of the assessee having been transferred to Delhi lock, stock and barrel and all the records of the assessee also having been transferred from Lucknow to Delhi, it is only the High Court in Delhi that can entertain an appeal under section 260A of the Act directed against the order passed by the Tribunal on July 22, 2005. Our conclusion follows from a plain reading of the Explanation to section 127(4) of the Act as well as from the effect of the order dated July 29, 2005, passed by the Commissioner of Income-tax (Central), Kanpur, under section 127(2) of the Act. Consequently, with effect from September 29, 2005, (the date from which the order passed under section 127(2) of the Act is enforced) the jurisdiction in respect of the assessee for future proceedings under section 260A of the Act is with the Delhi High Court. Admittedly, the present appeals have been filed after September 29, 2005, and so they would be maintainable in this court and no other High Court."*

24. The decision in the case of *Sahara* is followed by a subsequent Bench of the High Court of Delhi in *Aar Bee*. In this case, the assessment order was passed in Jammu, an appeal against that order was decided by CIT (Appeals), Jammu, and thereafter, an appeal came to be decided by ITAT, Amritsar. Immediately after the ITAT order, the records of the assessee came to be transferred from Jammu to New Delhi by an order under Section 127 of the Act. Hence, an appeal against the ITAT order was filed before the High Court of Delhi. When the matter came up before the High Court of Delhi, it was contended that the High Court of Delhi did not have jurisdiction to entertain the appeal in as much as the situs of the Assessing Officer was in Jammu. In support, the decision of the High Court

of Punjab & Haryana in *Motorola*, was relied upon. Rejecting the contention, differing with *Motorola* and following the judgment of its own Court in *Sahara*, it was held as under: -

> *"**15.** We are afraid and with respect we say so that we are unable to agree with the views expressed by the Punjab & Haryana High Court and are bound to follow the decision of this court in Sahara India (supra). We are not inclined to accept the view taken by the High Punjab & Haryana High Court, because while it is true that the reference to the case is with regard to the jurisdiction of an income-tax authority, it is also true that the jurisdiction of the High Court is determined by the situs of the Assessing Officer. When the Assessing Officer itself has been changed from one place to another, the High Court exercising jurisdiction in respect of the territory covered by the transferee Assessing Officer would be the one which would have jurisdiction to hear the appeal under Section 260-A. ..."*

Analysis:

25. The reasoning adopted by the High Court of Delhi in *Sahara* is based only on the meaning that it attributed to the expression 'cases' in the *Explanation* to Section 127(4) of the Act. The High Court of Delhi was of the view that 'cases' must include within its sweep, not only the cases pending before the Authorities enlisted under Section 116 of the Act, but also the proceedings before the ITAT as well as a High Court. We are of the opinion that the High Court of Delhi has misread the scope and ambit of Section 127.

26. We will explain this in detail. Section 127 occurs in Chapter XIII of the Act which relates to Income Tax Authorities. In the same chapter, Section 116 enlists the Income Tax Authorities and Section 120 specifies the jurisdiction of

such Authorities. While Section 124 specifically speaks of the jurisdiction of Assessing Officers, Section 127 enables a higher authority to transfer a 'case' from one Assessing Officer to another Assessing Officer. All these provisions in Chapter XIII only relate to the executive or administrative powers of Income Tax Authorities. We have no hesitation in our mind that the vesting of appellate jurisdiction has no bearing on judicial remedies provided in Chapter XX of the Act before the ITAT and the High Court. The mistake committed by the High Court was in assuming that the expression "case" in the *Explanation* to Sub-Section 4 of Section 127 has an overarching effect and would include the proceedings pending before the ITAT as well as a High Court. This fundamental error has led the Division Bench of the High Court of Delhi to come to a conclusion that an order of transfer made under Section 127 would have the effect of transferring the case "lock, stock and barrel" not only from the jurisdiction of the ITAT, but also from that of the High Court in which the Assessing Officer was located, and vest it in the High Court having jurisdiction over the transferee Assessing Officer. This erroneous interpretation was in fact advanced before other High Courts as well, but they were rejected straightaway. One instant example is the case of *CIT v. Parke Davis (India) Ltd.*[22], where the Andhra Pradesh High Court held: -

> *"…The interpretation sought to be placed on the* ***Explanation*** *to section 127 leads to incongruous results quite contrary to the scheme of the Act and has the effect of investing the prescribed authorities with*

[22] (1999) 239 ITR 820 (AP).

the power to virtually interfere with the territorial jurisdiction of the concerned High Court. ...”

27. With a slight digression from the main issue, we may note that the Assessee as well as the Revenue are on the same page in these appeals, taking the view that the decision of the High Court of Delhi in *Sahara* is not correctly decided. They may be right. However, as there was no serious contest at the bar, the principle suggested by the Assessee as accepted by the Revenue did not suffer strict scrutiny as is always the case in any contested case, and therefore, the Court is left to imagine the contrary proposition in support of the view taken in *Sahara*. We had no difficulty in conceptualising that, since every judge had once been a lawyer. We have raised and dealt with them in the following paragraphs.

28. Returning to the analyses in the decision in *Sahara*, we have noticed that the Division Bench of the High Court of Delhi sought to distinguish the two decisions of the very same High Court in *Suresh Desai* and *Digvijay Chemicals* on the ground that those cases did not involve the transfer of cases of the very same assessment year. We will reformulate this as a proposition of law. If it is the accepted principle to determine the jurisdiction of a High Court under Section 260A of the Act on the basis of the location of the Assessing Officer who assessed the case, then, by the strength of the very same logic, upon transfer of a case to another Assessing Officer under Section 127, the jurisdiction under Section 260A must be with the High Court in whose jurisdiction the new Assessing Officer is located. A logical extension of this argument is that, once the case is transferred

to an Assessing Officer situated outside the jurisdiction of the existing High Court, the entire files relating to the case should now be in the possession and custody of the new Assessing Officer. It could be argued that the Assessing Officer who exercised the jurisdiction before its transfer will not be in a position to assist the High Court, further, he cannot implement the decision of that High Court, after it decides the question of law as he is no more the Assessing Officer. We will now proceed to deal with these arguments.

29. The binding nature of decisions of an appellate court established under a statute on subordinate courts and tribunals within the territorial jurisdiction of the State, is a larger principle involving consistency, certainty and judicial discipline, and it has a direct bearing on the rule of law. This 'need for order' and consistency in decision making must inform our interpretation of judicial remedies. An important reason adopted in the case of *Seth Banarasi Dass Gupta*, further highlighted by Justice Lahoti in *Suresh Desai*, is that a decision of a High Court is binding on subordinate courts as well as tribunals operating within its territorial jurisdiction. It is for this very reason that the Assessing Officer, Commissioner of Appeals and the ITAT operate under the concerned High Court as one unit, for consistency and systematic development of the law. It is also important to note that the decisions of the High Court in whose jurisdiction the transferee Assessing Officer is situated do not bind the Authorities or the ITAT which had passed orders before the transfer of the case has taken place. This creates an anomalous situation, as the erroneous principle adopted by the authority or the ITAT, even

if corrected by the High Court outside its jurisdiction, would not be binding on them.

30. The legal structure under the Income Tax Act commencing with Assessing Officer, the Commissioner of Appeals, ITAT and finally the High Court under Section 260A must be seen as a lineal progression of judicial remedies. Culmination of all these proceedings in *question of law jurisdiction* of the High Court under Section 260A of the Act is of special significance as it depicts the overarching judicial superintendence of the High Court over Tribunals and other Authorities operating within its territorial jurisdiction.

31. The power of transfer exercisable under Section 127 is relatable only to the jurisdiction of the Income Tax Authorities. It has no bearing on the ITAT, much less on a High Court. If we accept the submission, it will have the effect of the executive having the power to determine the jurisdiction of a High Court. This can never be the intention of the Parliament. The jurisdiction of a High Court stands on its own footing by virtue of Section 260A read with Section 269 of the Act. While interpreting a judicial remedy, a Constitutional Court should not adopt an approach where the identity of the appellate forum would be contingent upon or vacillates subject to the exercise of some other power. Such an interpretation will clearly be against the interest of justice. Under Section 127, the authorities have the power to transfer a case either upon the request of an assessee or for their own reasons. Though the decision under Section 127 is subject to judicial review

or even an appellate scrutiny, this Court for larger reasons would avoid an interpretation that would render the appellate jurisdiction of a High Court dependent upon the executive power. As a matter of principle, transfer of a case from one judicial forum to another judicial forum, without the intervention of a Court of law is against the independence of judiciary. This is true, particularly, when such a transfer can occur in exercise of pure executive power. This is a yet another reason for rejecting the interpretation adopted in the case of *Sahara*.

32. For the reasons stated above, we hold that the decision of the High Court of Delhi in *Sahara* and *Aar Bee* do not lay down the correct law and therefore, we overrule these judgments.

33. In conclusion, we hold that appeals against every decision of the ITAT shall lie only before the High Court within whose jurisdiction the Assessing Officer who passed the assessment order is situated. Even if the case or cases of an assessee are transferred in exercise of power under Section 127 of the Act, the High Court within whose jurisdiction the Assessing Officer has passed the order, shall continue to exercise the jurisdiction of appeal. This principle is applicable even if the transfer is under Section 127 for the same assessment year(s).

34. We will now deal with the decisions of certain High Court which have taken a view that the jurisdiction of the High Court must be based on the location of the ITAT. These judgments are *CIT v. Parke Davis (India) Ltd.*[23], *CIT v. A.B.C.*

[23] ibid.

India Ltd.[24], *CIT v. J.L. Marrison (India) Ltd.*[25], *CIT v. Akzo Nobel India Ltd.*[26], *Pr. CIT v. Sungard Solutions (I) Pvt. Ltd.*[27] and *CIT v. Shree Ganapati Rolling Mills (P) Ltd.*[28] We have examined these cases in detail and found that the Assessing Officers in each of these cases were in fact not located within the territorial jurisdiction of these High Courts. For this reason, the aforesaid decisions are correct to the extent of these High Courts not exercising jurisdiction. However, while returning the files to be represented in the appropriate court, certain observations were made stating that the appeals could be filed in the High Court which exercises territorial jurisdiction over the concerned ITAT. These observations are only obiter. In any event they did not preclude the party from filing the appeal before the appropriate High Court where the Assessing Officers exercised jurisdiction. However, we are reiterating for clarity and certainty that the jurisdiction of a High Court is not dependent on the location of the ITAT, as sometimes a Bench of the ITAT exercises jurisdiction over plurality of states.

35.1 For the reasons and principles that we have laid down, we dispose of these Civil Appeals with the following directions.

35.2 We will first deal with the order passed by the Assessing Officer, Delhi dated 30.12.2010, against which an appeal was decided by CIT (Appeals) – IV, New Delhi on 16.02.2012, against which the ITAT, New Delhi disposed of an

[24] (2003) 126 Taxman 18 (Cal).
[25] (2005) 272 ITR 321 (Cal).
[26] (2014) 47 Taxmann.com 372 (Cal).
[27] (2019) 415 ITR 294 (Bom).
[28] (2013) 356 ITR 586 (Gau).

appeal on 11.05.2017, against which an appeal was filed in the High Court of Punjab & Haryana which it disposed of by order dated 07.02.2019, against which Civil Appeal No. 4252 of 2022 was filed before this Court. The said Civil Appeal is dismissed by upholding the order dated 07.02.2019 passed by the High Court of Punjab & Haryana, with a direction that the appropriate High Court for disposal of the appeal would be the High Court of Delhi as the case was assessed by the Assessing Officer, Delhi.

35.3 The other Civil Appeal arises out of an order passed by the Assessing Officer, Ghaziabad dated 31.03.2015, against which an appeal was decided by CIT (Appeals) – IV, Kanpur on 20.12.2016, against which the ITAT, New Delhi disposed of an appeal on 01.09.2017, against which an appeal was filed in the High Court of Punjab & Haryana which it disposed of by order dated 07.02.2019, against which Civil Appeal No. 4253 of 2022 was filed before this Court. The said Civil Appeal is dismissed by upholding the order dated 07.02.2019 passed by the High Court of Punjab and Haryana with a direction that the correct High Court to dispose of the appeal would be the Lucknow Bench of the Allahabad High Court.

35.4 Against the decision of the ITAT, New Delhi dated 11.05.2017, the Revenue had filed an appeal before the High Court of Delhi which was disposed of by the High Court of Delhi on 21.05.2019, against which Civil Appeal No. 3480 of 2022 has been filed before this Court. We allow the said Civil Appeal by

setting aside the order dated 21.05.2019 passed by the High Court of Delhi refusing to exercise jurisdiction and direct the High Court of Delhi to entertain the appeal and dispose of the appeal as per law.

36. Parties shall bear their own costs.

…….J.
[UDAY UMESH LALIT]

…….J.
[S. RAVINDRA BHAT]

…….J.
[PAMIDIGHANTAM SRI NARASIMHA]

NEW DELHI;
AUGUST 18, 2022