

**IN THE INCOME TAX APPELLATE TRIBUNAL
“I” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JM &
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 6115/Mum/2019
(निर्धारणवर्ष / Assessment Year: 2014-15)

ABB Switzerland Limited (in the case of erstwhile ABB Technology Limited, since merged) C/o- ABB India Ltd. World Trade Centre, Brigade Gateway No. 26/1, Dr. Rajkumar Road, Malleshwarm West Bangalore-560055	बनाम/ Vs.	DCIT(Intl. Tax.) Cirle-1(1), R. No. 441, 4 th floor, BMTC Building 80 Feet Road, Koramangala, Bangalore, Karnataka-560095
स्थायीलेखासं ./जीआइआरसं ./PAN No. AACCA9979R		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Nikhil Tiwari, Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Soumendu Kumar Dash, Ld. DR
सुनवाईकीतारीख/ Date of Hearing	:	01.02.2023
घोषणाकीतारीख / Date of Pronouncement	:	01.02.2023

आदेश / O R D E R

Per Amit Shukla, Judicial Member:

The aforesaid appeal has been filed by the assessee against the impugned order dated 29.03.2019, passed by Ld. CIT(A)-12,

Bangalore for the quantum of assessment passed u/s 143(3) for AY 2014-15.

2. At the outset, it is brought to our notice that assessee has filed an application dated 01.02.2023 for withdrawal of appeal, which are as under:-

The Appellant is before your Honours with regards to the appeal filed on 12 September 2019. The Appellant briefly lays down the chronology of events before the Members:

- *M/s ABB Technology Limited (Now known as ABB Switzerland Ltd - the Appellant) was being assessed at Bangalore by the Deputy Commissioner of Income-tax (International Taxation), Bangalore. Assessment Order dated 22 December 2017 ("the Order") was passed by the DCIT (International Taxation), Bangalore under section 143(3) r.w.s 92CA of the Income-tax Act, 1961 ('the Act'). Aggrieved with the Order, ABB Technology Ltd filed appeal before the Commissioner of Income-tax (Appeals), Bangalore against the adjustment made in the assessment order.*
- *The Appellant was merged into ABB Switzerland Limited during appellate proceedings. Therefore, the new jurisdiction of the merged entity M/s ABB Switzerland Limited lies at Mumbai.*
- *The Commissioner of Income-tax (Appeals), Bangalore affirmed the assessment order vide order dated 29 March 2019.*
- *Aggrieved with the order of the Commissioner of Income Tax (Appeals), the Appellant filed appeal with the Hon'ble Income Tax Appellate Tribunal, Mumbai on 12 September 2019 since ABB Technology Ltd (Bangalore entity) got merged with ABB Switzerland Ltd (Mumbai entity) as on the above date.*

- *The Appellant filed the appeal before the Hon'ble Mumbai Tribunal under the bonafide belief that the appellate jurisdiction is dependent on the jurisdiction of ABB Switzerland Ltd, post-merger. The matter was pending to be heard since then.*
- *Subsequently, the Hon'ble Supreme Court pronounced a ruling in the case of PC/7 v. ABC Papers Ltd[2022] 141 taxmann.com 332 (SC) (enclosed as Annexure 1) wherein it was held that the High Court within whose jurisdiction the Assessing Officer (AO) passed the assessment order would continue to exercise jurisdiction of appeal. The relevant extract is given below:*

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).

Though the judgement deals with the jurisdiction of the High Court that can exercise jurisdiction of appeal, the principles would equally apply for jurisdiction of the Tribunal as well.

In view of the above ruling of Hon'ble Apex Court, the Appellant believes that the jurisdiction of the present appeal would lie with Hon'ble Income-tax Appellate Tribunal, Bangalore. Further the Hon'ble Bombay High Court in the case of MSPL Limited Vs. Principal Commissioner of Income tax 1, Mumbai [2021] 127 taxmann.com 379 (Bombay) had held that President, Income tax Appellate Tribunal does not have the power to transfer cases between various benches of the tribunal.

Prayer:-

In light of the above, we request your Honour to kindly allow the Appellant to withdraw the appeal filed before the Hon'ble Mumbai

Tribunal with liberty to file fresh appeal with the Hon'ble Income Tax Appellate Tribunal, Bangalore with a condonation of delay.

3. Ld. DR did not have any objection to the said request of withdrawal.

4. Considering the contents of the letter as mentioned above, we allow the request of the assessee for withdrawing the present appeal.

5. In the net result, the appeal filed by the assessee stands **dismissed as withdrawn.**

Orders pronounced in the open court on 1st February, 2023.

Sd/-

(S. Rifaur Rahman)

Accountant Member

मुंबई Mumbai; दिनांक Dated : 01/02/2023

Sr.PS. Dhananjay

Sd/-

(Amit Shukla)

Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai