

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**आ.अ.सं./I.T.A No.3208/Del/2023
निर्धारणवर्ष/Assessment Year: 2013-14**

DCIT Room No.316A, C.R. Bldg., I.P. Estate New Delhi.	बनाम Vs.	LOOP TELECOM &TRADING LIMITED 127, Manmala Tank Road, Taikalwadi Mahim, West Mumbai, MUMBAI, Maharashtra. PAN No.AAGCS0351R
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Revenue by	Shri Mahesh Kumar, CIT DR
Assessee by	Shri Ganesh Rajgopalan, CA

सुनवाईकीतारीख/ Date of hearing:	12.03.2024
उद्घोषणाकीतारीख/ Pronouncement on	27.05.2024

आदेश /O R D E R

PER C.N. PRASAD, J.M.

This appeal is filed by the Revenue against the order passed by the Ld.CIT(Appeals)-NFAC, Delhi dated 11.09.2023 for the AY 2013-14 and arising out of the 154 order dated 16.10.2018 passed by the DCIT, Circle 7(1)(2), Mumbai.

2. The Ld. Counsel for the assessee, at the outset, submits that the Revenue has wrongly filed appeal before the Delhi Bench of the Tribunal instead of the Mumbai Bench of the Tribunal as the Assessing Officer who passed the order u/s 154 of the Act is the DCIT, Circle 7(1)(2), Mumbai and the appeal lies only before the Mumbai Bench of the Tribunal and not before Delhi Bench of the Tribunal.

3. The Ld. Counsel for the assessee further submits that the Hon'ble Supreme Court in the case of PCIT Vs. MSPL Limited reported in 150 taxmann.com 44, following its own ruling in Pr. CIT Vs. ABC Papers Ltd. (141 taxmann.com 332) held that the Tribunal and the jurisdiction of the concerned High Court would depend on the AO who pass the order. Ld. Counsel, therefore, submits that since in the assessee's case the AO who completed the assessment and passed rectification order u/s 154 dated 16.10.2018 is DCIT, Circle 7(1)(2), Mumbai the appeal to Tribunal lies only before the Mumbai Bench of the Tribunal and not before the Delhi Bench of the Tribunal, even though the case was transferred subsequently to Delhi.

4. Ld. DR submits that though the rectification order u/s 154 dated 16.10.2018 was passed by the DCIT, Circle 7(1)(2), Mumbai

the case was transferred by the Pr. CIT-8, Mumbai through order u/s 127(2) of the I.T. Act dated 14.02.2023 transferring the case of the assessee to the jurisdiction of the Assessing Officer who is holding charge in DCIT, Circle 15(1), Delhi. Therefore, the Ld. DR submits that the appeal was filed on 10.11.2023 by the present Jurisdictional Assessing Officer of the assessee.

5. Heard rival submissions and perused the orders of the authorities below.

6. In the present appeal, the Revenue challenged the order of the Ld.CIT(Appeals)-NFAC, Delhi which order was passed pursuant to 154 order dated 16.10.2018 passed by the DCIT, Circle 7(1)(2), Mumbai. The present appeal was filed by the DCIT, Circle 13(1), New Delhi before the Tribunal on 10.11.2023 pursuant to the transfer of jurisdiction of the assessee to Circle 15(1), Delhi by the Pr. CIT-8, Mumbai by order dated 14.02.2023 u/s 127(2) of the I.T. Act.

7. In the case of Pr. CIT Vs. ABC Papers Ltd. (447 ITR 1), the Hon'ble Supreme Court held as under: -

“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).”

8. As could be seen from the above, the Hon'ble Supreme Court held that appeals against every decision of the ITAT shall lie only before the High Court within whose jurisdiction the AO who passed the assessment order is situated. If we apply this principle an appeal to High Court challenging the order of the Assessing Officer i.e. DCIT, Circle 7(1)(2), Mumbai would lie only to the Hon'ble High Court of Bombay. In the circumstances, the second Appellate Authority i.e. ITAT would be Mumbai Bench of the Tribunal and not the Delhi Bench of the Tribunal. Therefore, the appeal filed by the Revenue against the order of the DCIT, Circle 7(1)(2), Mumbai is not maintainable before the ITAT, Delhi Bench. Thus, we hold that this appeal of the Revenue cannot lie before the ITAT Delhi Bench and accordingly this appeal is dismissed as not maintainable. However, the Revenue is at liberty to file appeal in the Mumbai Bench of the Tribunal, if so advised.

9. In the result, appeal of the Revenue is dismissed as not maintainable.

Order pronounced in the open court on 27/05/2024

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 27/05/2024

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi