



Parveen Kumar Bansal, Advocate
Ex. Vice President ITAT
parveen_bansal34@yahoo.com
+91 79820 24343



CA Gaurav Bansal
Practicing Chartered Accountant
gaurav.bansal@sgvb.co.in
+91 98702 01645

POWER OF PRESIDENT ITAT TO TRANSFER AN APPEAL FROM ONE BENCH TO ANOTHER OUTSIDE THE HEADQUARTERS IN A DIFFERENT STATE!

Recently on 21.05.2021, 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)** decided an issue relating to the power of the Hon'ble ITAT President to transfer an appeal before a particular bench to another bench outside the headquarters in a different state and quashed the order passed by President of income tax Appellate Tribunal transferring the appeals filed by the petitioner from Bangalore Benches to Mumbai Benches on the application made by the revenue for the transfer of the appeals pending for hearing before Bangalore Bench after discussing the provisions of section 255(5) of the Income tax Act alongwith the Rule 4 of Income tax Appellate Tribunal Rules, 1963.

ISSUE BEFORE THE HON'BLE BOMBAY HIGH COURT

The issue before Bombay High Court in the aforesaid case was whether the President, Income tax Appellate Tribunal, in view of the provision of section 255(5) of the income tax Act read with rule 4 of the Income tax Appellate tribunal Rules, 1963, has the power to transfer the pending appeals from one bench to the other bench situated under the different headquarters. The Petitioner filed Writ petition before Hon'ble High Court challenging the validity of the order of President ITAT dt. 20.8.2020 transferring appeals filed by it at Bangalore benches to Mumbai Benches on the application made for transfer on behalf of the Present assessing authority at Mumbai to whom the jurisdiction of the assessee has been transferred under section 127 of the Income Tax Act, 1961.

Brief facts of the case:-

The brief facts of the case are that the Petitioner is having its registered office at Mumbai and also has two mining divisions at Karnataka. A search and seizure action u/s 132 of the Income tax Act took place on the petitioner on 26.10.2007 and the assessment was made by the AO at Bangalore for the assessment years 2005-06 to 2007-08 u/s 143(3) read with section 153A and for the Assessment year 2008-09 under section 143(3) vider assessment orders dt. 31.12.2009.

Being aggrieved appeals were filed before CIT (A), Bangalore. Further, against the common order of the CIT (A), Bangalore dt.3.2.2011, the appeals were filed before the Income tax Appellate Tribunal at Bangalore. One of the grounds taken by the petitioner before the Hon'ble Tribunal was that the search and seizure action was invalid as no satisfaction was recorded to the search and seizure as is required u/s 132 of the Income tax Act in view of the decision of Jurisdictional Karnataka High Court in the case of C Ramaiah Reddy Vs. ACIT 339 ITR 210. During the course of the hearing on 21.11.12 when the petitioner's counsel took the plea about the validity of the search and seizure action in absence of satisfaction Note. The Departmental Representative was asked by the Bangalore Bench to produce the satisfaction note for which a time of three week was provided. On 29.7.2013, during the course of hearing, Departmental Representative brought to the knowledge of the bench about the transfer application being made for the transfer of all these appeals from Bangalore to Mumbai. In the meantime, the CIT – 1, Mumbai wrote a letter to the Hon'ble Vice President of the Bangalore Bench, ITAT for the transfer of pending appeals before Bangalore Bench to Mumbai Bench vide its letter dt. 14.8.2013, due to the following reasons: -

1. Due to decentralization of the case, the jurisdiction on the case of the petitioner is now with the DCIT 1(2), Mumbai.
2. Issue of multiplicity of jurisdiction of Mumbai and Bangalore may arise in the appellate proceedings before the Bangalore Bench of Tribunal.
3. Difficulties in compliance before Bangalore Bench of the Tribunal and before the High Court of Mumbai might be caused which could be avoided by transfer of appeals to the jurisdictional Tribunal Bench at Mumbai.

However no follow up action was taken by the revenue for transfer of the appeal from Bangalore Bench to Mumbai since then. On 19.03.2019 when the matter finally came for hearing before Bangalore Bench, the Hon'ble Tribunal Bangalore Bench noted that the revenue had failed to produce the satisfaction note. The Departmental representative expressed his inability as all the records were already transferred to Mumbai and requested the bench for the transfer of appeal to Mumbai for which the request was already made.

The petitioner as well as the departmental representative was heard by the Hon'ble Bangalore Bench on the issue of transfer of appeals on 20.02.2020 and Bangalore Bench recommended for the transfer of the appeals to Mumbai for the Order of Hon'ble President ITAT vide order dt.19.3.2020. President Income tax appellate tribunal by exercising its power under Rule 4 of the Income tax appellate tribunal rules,1963 passed order dt.20.08.2020 asking the Bangalore Bench to transfer these appeals to Mumbai. The petitioner received the copy of the said order, on 11.09.2020, passed by the President, Income tax Appellate Tribunal under Rule 4 of the Income tax Appellate Tribunal Rules 1963. A copy of order dated 19.03.2020 passed by the Bangalore Bench of the Tribunal recommending the request for transfer of the appeals was also provided to the Petitioner.

The present writ petition under Article 226 was filed by the Petitioner challenging the order of the President ITAT for transferring the appeals from Bangalore Benches to Mumbai Benches being invalid.

In the affidavit filed, the revenue (the First Respondent) contended before the Hon'ble Bombay High Court,

1. Petitioner did not oppose transfer of jurisdiction under section 127 of the Act to Mumbai.
2. Petitioner informed the CIT, Karnataka that it had no objection to transfer of its assessment proceedings to Mumbai.
3. It is not open to the Petitioner to oppose transfer of cases by the Tribunal.
4. Post transfer of assessment jurisdiction from Bangalore to Mumbai, petitioner has been regularly filing its income tax returns at Mumbai and for certain assessment years has filed appeals before the appellate authorities at Mumbai.
5. Therefore, no prejudice would be caused to the petitioner on transfer of the appeals from Bangalore Bench to Mumbai Benches of the Tribunal.

The Hon'ble Income tax Appellate Tribunal also filed (the Second Respondent) an affidavit STATING THEREIN:-,

1. Petitioner did not oppose transfer of jurisdiction under section 127 of the Act to Mumbai. Having not challenged such transfer of jurisdiction, it is now not open to the petitioner to oppose transfer of appeals by Tribunal.
2. The writ petition seeks to challenge an administrative decision of the Tribunal which falls within the realm of subjective satisfaction.
3. As per standing orders issued under the Tribunal Rules the jurisdiction of the Bench is to be determined by the location of the Assessing Officer.
4. It is an administrative decision and not a judicial decision. In case of an administrative decision, what is required to be considered or seen is that it should be arrived at reasonably. Before such transfer reasonable opportunity of hearing was granted to the petitioner.

A Rejoinder to the affidavit was filed by the Petitioner before the Hon'ble Bombay High Court stating that: -

1. Provisions of section 127 relating to transfer of assessment jurisdiction cannot be pressed into service to support transfer of pending appeals from one Bench of the Tribunal to another Bench. Section 127 has no application to transfer of appeals pending before the income tax tribunal.
2. The adjudication of the appeals in Bangalore would be more convenient to the Petitioner because it is nearer to its mining units.

The Counsel of the Petitioner argued before the Hon'ble Bombay High Court that,

- (1) The real purpose behind the move to transfer the pending appeals out of the Bangalore Bench of the Tribunal was to avoid the binding force of the decision of the Karnataka High Court in the case of C. Ramaiah Reddy. As per the said judgment, in the absence of satisfaction note, a search and seizure operation under section 132 of the Act would be invalid.

- (2) The Bangalore Bench of the Tribunal accepted the request of the petitioner for production of the satisfaction note before the Tribunal but revenue has not till date produced the same.
- (3) Since the Bangalore Bench of the Tribunal has been insisting on production of satisfaction note, respondents have come up with this plea of transfer of the appeals from Bangalore to Mumbai.
- (4) Neither section 255 of the Act nor rule 4 of the Income Tax appellate Tribunal Rules empower such transfer of pending appeals from one Bench of the Tribunal in one State to another Bench of the Tribunal situated in another State.
- (5) Impugned order passed by the President transferring the appeals from Bangalore to Mumbai on the application of Revenue is in violation of the principles of natural justice; even if it is an administrative decision, principles of natural justice are required to be complied with.

Counsel of the Respondent No. 2 (i.e. Income tax Appellate Tribunal) argued:

- (1) The foundational order which is under challenge in the writ petition is dated 19.03.2020 passed by the Tribunal at Bangalore. Therefore, the writ petition ought to have been filed before the Karnataka High Court and not before the Bombay High Court.
- (2) An appeal shall lie to the High Court from “every order” passed in appeal by the Appellate Tribunal if the High Court is satisfied that the case involves a substantial question of law. Therefore, an appeal under section 260A of the Act was required to be filed against the order dated 19.03.2020, and not a writ petition.
- (3) If section 255 of the Income Tax Act is read in conjunction with rule 4 of the Income tax appellate Tribunal Rules, 1963 and the standing orders issued thereunder, no fault can be found with the order dated 19.03.2020 and the consequential administrative decision dated 20.08.2020.

Counsel of the Petitioner in rejoinder submitted:-

- (1) The present writ petition has been filed challenging amongst others the ultimate order dated 20.08.2020 passed by the President of Tribunal at Mumbai.
- (2) Decision of the Bangalore Bench of the Tribunal dated 19.03.2020 is not on the merit of the subject appeals but on the application of transfer of the appeals from Bangalore Benches to Mumbai Benches made by the revenue. Therefore, such an order cannot be construed to be an order passed in the appeals or arising out of the appeals. Thus, section 260A of the Act would have no application.
- (3) Section 127 of the Act has no bearing at all in the present case.

FINDING OF THE HON'BLE BOMBAY HIGH COURT:

Hon'ble Bombay High Court after considering the arguments of the counsels held as under: -

37. From a careful analysis of section 255, more particularly subsection (5) thereof, it is not discernible as to how power of the President to transfer a pending appeal from one Bench to another Bench outside the headquarters in a different State can be said to be traceable to this provision. What sub section (5) says is that the Tribunal shall have

power to regulate its own procedure and that of its various Benches while exercising its powers or in the discharge of its functions. This includes notifying the places at which the Benches shall hold their sittings e.g., a particular Bench at Mumbai may hold its sittings at, say, Thane for a particular period for administrative reasons. This provision cannot be interpreted in such a broad manner to clothe the President of the Tribunal the jurisdiction to transfer a pending appeal from one Bench to another Bench outside the headquarters in another State.

38. We have also noticed from sub section (6) that a proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193, 196 and 228 of the Indian Penal Code and it shall also be deemed to be a civil court for the purpose of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898. Therefore, there is no manner of doubt that a proceeding before the Tribunal is a judicial proceeding and for certain limited purpose it is deemed to be a civil court. Question for consideration is when an appeal or a bunch of appeals are being heard by a Bench of the Tribunal in one State, can an order on the administrative side be passed by the President transferring alive appeal from one Bench to another Bench that too in a different State outside the headquarters ? In our opinion, no such power is discernible in section 255 of the Act. Reading or conferring such a power would amount to interference in a judicial proceeding of the Tribunal.

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41. From an analysis of rule 4 as extracted above, we find that sub rule (1), a Bench shall hear and determine such appeals and applications made under the Act as the President may by general or special order direct. Sub rule (2) says that where there are two or more Benches of the Tribunal working at any headquarters, the President or, in his absence, the senior Vice President or Vice President of the concerned zone or in his absence the senior most member of the station present at the headquarters may transfer an appeal or an application from any one of such Benches to any other. While sub rule (1) empowers the President to direct hearing of appeals by a Bench by a general or special order, sub rule (2) is more specific. It deals with a situation where there are more than two Benches of the Tribunal at any headquarter; when there are multiple Benches in a headquarter, the President or, in his absence the senior Vice President etc. may transfer an appeal or an application from one of such Benches to any other. Meaning thereby that it is a transfer of an appeal or an application from one Bench to another Bench within the same headquarters. For example, in Mumbai the number of Benches is twelve and in Bangalore, the number of Benches is three. Thus, this provision can be invoked to transfer an appeal from one Bench in Mumbai to another Bench in Mumbai or from one Bench in Bangalore to another Bench in Bangalore. But this provision cannot be invoked to transfer a pending appeal from one Bench under one headquarter to another Bench in a different headquarter.

42. While on the Tribunal Rules, we may also refer to rules 13 and 28. Who may be joined as respondent in an appeal by the assessee is dealt with in rule 13. In an appeal by an assessee under sub-section (1) of section 253, the concerned Assessing Officer shall

be made a respondent to the appeal. Concerned Assessing Officer would mean the Assessing Officer who had passed the assessment order from which the appeal to the Tribunal arises. As per rule 28, Tribunal has the power to remand an appeal to the authority from whose order the appeal has been preferred or to the concerned Assessing Officer with such directions as the Tribunal may think fit.

43. Standing Order has been made in pursuance of sub rule (1) of rule 4 of the Tribunal Rules. Standing Order provides for hearing of appeals and applications by different Benches of the Tribunal. In other words, it provides for the territorial jurisdiction of the different Benches. It is seen therefrom that the three Benches of the Tribunal at Bangalore have jurisdiction over the entire State of Karnataka, excluding the districts of Belgaum, Mangalore, Karwar and North Kanara over which the Panaji Bench has jurisdiction. In so far as the Benches at Mumbai are concerned, those have jurisdiction over Mumbai City, Mumbai Suburban and Thane Districts of Maharashtra. Clause 4 is interesting and it says that the ordinary jurisdiction of the Bench will be determined not by the place of business or residence of the assessee but by the location of the office of the Assessing Officer.

46. Though provisions of the Civil Procedure Code, 1908 may not be applicable to the Act as well as to proceedings before the Tribunal, nonetheless as a matter of principle, we can advert to section 20 thereof, which says that every suit shall be instituted in a court within the local limits of whose jurisdiction the defendant or in the case of multiple defendants, each of the defendants resides or carries on business or personally works for gain. This principle finds manifestation in clause 4 of the Standing Order. Whether it be a suit or an appellate proceeding before the Tribunal the place of institution of the suit would be where the defendants reside or work for gain and in case of appeal under the Tribunal Rules where the Assessing Officer is located.

47. It is needless to say that under the Income Tax law assessment proceeding for each assessment year is a separate proceeding. Merely because for assessment years prior to assessment year 2005-06, the Assessing Officer was at Mumbai or for the subsequent assessment years i.e. subsequent to assessment year 2008-09 the Assessing Officer is at Mumbai would be no ground to transfer a pending appeal or appeals pertaining to assessment years 2005-06 to 2008-09 from one Bench of the Tribunal in a different State / Zone to another Bench of the Tribunal in another State / Zone.....

48. Petitioner is the appellant in all the four subject appeals before the Bangalore Bench of the Tribunal. In other words it is the petitioner who had filed the appeals. Petitioner does not want the appeals to be transferred from Bangalore to Mumbai and wants to prosecute the appeals at Bangalore where we have seen the appeals were rightly filed. Ordinarily if a court has jurisdiction to hear a case, the case ought to proceed in that court only. This principle can certainly be extended to appeals before the Tribunal. In such circumstances transfer cannot be forced upon the appellant i.e. the petitioner against its express objection.

50.Neither the Commissioner of Income Tax-1, Mumbai nor the Chief Commissioner of Income Tax (OSD), Mumbai who had filed the applications for transfer are respondent in the subject appeals. Therefore not being parties to the appeals, they were not competent to make the applications for transfer. In such circumstances the applications for transfer of appeals were invalid and on such invalid applications no order for transfer of appeals could have been passed.

51..... While certainly the appropriate authority under section 127 has the power and jurisdiction to transfer a case from one Assessing Officer to another Assessing Officer subject to compliance of the conditions mentioned therein, principles governing the same cannot be read into transfer of appeals from one Bench of the Tribunal to another Bench that too in a different State / Zone, for the simple reason that it is not a case before any Assessing Officer.

52. The opinion rendered by the Bangalore Bench of the Tribunal vide order dated 19.03.2020 attained finality when the President of the Tribunal passed the impugned order dated 20.08.2020 which order was passed at Mumbai. That apart, clause (2) of Article 226 makes it clear that the power to issue directions, orders or writs by any High Court within its territorial jurisdiction would also extend to a cause of action or even a part thereof which arises within the territorial limits of the High Court notwithstanding the fact that the seat of the authority is not within the territorial limits of the High Court. Therefore, in the light of the above and having regard to the mandate of clause (2) of Article 226 of the Constitution of India, this Court certainly has the jurisdiction to entertain the writ petition. In so far filing of appeal instead of writ petition is concerned, a careful reading of section 260A(1) would go to show that an appeal shall lie to the High Court from “every order” passed in appeal by the Tribunal if the High Court is satisfied that the case involves a substantial question of law... “Every order” in the context of section 260A would mean an order passed by the Tribunal in the appeal..... The order with which we are concerned is order dated 19.03.2020. It is not an order on the merit of the appeal. In other words, it is not an order passed in the appeal. It is an order related to transfer of the appeal. Such an order would be beyond the scope and ambit of sub section (1) of section 260A of the Act.

Thus, the Hon’ble Bombay High Court took the view that both the orders dated 19.03.2020 and 20.08.2020 are wholly unsustainable in law and are accordingly set aside and quashed those orders.

Divergent View on the Power of President of Income tax Appellate Tribunal for transfer of appeals:

Hon’ble Bombay High Court in the said judgment considered the power of the Hon’ble President Income tax Appellate Tribunal for transfer of an appeal before a bench to another bench which is outside the headquarter of the earlier bench.

Sub-section (5) of Section 255 of the Income tax Act was considered which provides that **“Subject to the provisions of this Act, the 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 powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings.”

Vide Notification No. I-AT/63, dated 17.04.1963, in exercise of the powers conferred by sub-section (5) of section 255 of the Income-tax Act, 1961 (43 of 1961), the Appellate Tribunal pleased to make the Rules to regulate the procedure of the Appellate Tribunal and the procedure of the Benches of the Tribunal referred as ‘Income tax (Appellate Tribunal) Rules, 1963’.

Rule 4 of the said Rules describes the Powers of President as under: -

(1) A Bench shall hear and determine such appeals and applications made under the Act as the President may by general or special order direct.

(2) Where there are two or more Benches of the Tribunal working at any headquarters, the President or, in his absence, the Senior Vice-President/Vice-President of the concerned zone or, in his absence, the seniormost member of the station present at the headquarters may transfer an appeal or an application from any one of such Benches to any other.

Sub-Rule (1) gives the President of the ITAT a power to direct by a general order or a special order a bench which appeals and applications shall be heard and determined by it. This rule nowhere stipulates that the bench which has to hear and determine the appeal has to be within the particular headquarter. Sub-Rule (2) deals with the power for transfer of an appeal or an application from one bench to another if there are two or more benches of the Tribunal working at any headquarters. The question may arise whether the power entrusted with the President ITAT under rule 4(1) includes the power to transfer the appeals or application from one Bench to another Bench if these benches are not located within particular headquarter but are located at different headquarters. Whether President can pass special order in respect of any appeal/s or application/s for transferring the appeals and direct a particular bench not situated within the same headquarter to hear and determine the appeal or application.

In the case of **Ferro Alloys Corporation Limited Vs. Income tax Officer [1983] 6 ITD 521 (Delhi)[02-06-1983]**, the appeal was transferred as per the order of the President ITAT from the Nagpur Bench to the New Delhi Bench. The revenue contended that after having set out the jurisdiction of different Benches in standing order No. 1 of 1973 made under rule 4(1) of the Appellate Tribunal Rules, the power of the President under that rule was exhausted and that he could not transfer cases from one Bench to another.

The Hon’ble Delhi Bench of ITAT held that,

Rule 4 is made in accordance with the powers vested in the Tribunal to make its own rules for its functioning. As seen from the rule, the President can pass a general order by which cases are assigned to different Benches. He can also pass special order in respect of a class of cases or of a particular case. The general order passed by the President under rule 4 is standing order No. 1 of 1973, which was from time to time amended in conformity with the needs. The President has also the power to pass a special order in respect of a particular case and it is by virtue of this provision that the President can transfer a case from one Bench to another Bench. (Para 3)

Hon'ble Allahabad High Court in the case of **Commissioner of Income-tax (TDS) Lucknow Vs. Sahara India Financial Corporation Ltd. [2013] 38 taxmann.com 104 (Allahabad)** also had considered the issue relating to the power of President for transfer of appeal. In the said case, the issue involved before the Hon'ble High Court was “*whether the Income tax Appellate Tribunal, New Delhi had decided appeal without jurisdiction since the original appellate order was passed by CIT (A), Lucknow?*” The moot question was regarding the jurisdiction of the Appellate Tribunal as the CIT (A) order was passed by CIT (A) Lucknow. The Hon'ble Allahabad High Court did not find any infirmity in the order of the Tribunal and held that the Delhi Tribunal was within Jurisdiction as under: -

7. *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.***

8. *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.*

Thus, the Hon'ble Allahabad High Court considered that the President of the Tribunal has the power to transfer the case from one Bench to another even outside the headquarter as in this case appeal was relating to Lucknow and was decided by the Delhi Bench and both benches were not within the same headquarter.

In the case at present, the Hon'ble Bombay High Court held that the jurisdiction of the ITAT Bench will be where the Assessing Officer is located. Reference is also made to the judgment of the Hon'ble Bombay High Court in the case of **Principal Commissioner of Income-tax, Pune Vs. Sungard Solutions (I) (P.) Ltd. [2019] 105 taxmann.com 67 (Bombay)**, the issue before the Hon'ble Court was that Whether appeal from order of Tribunal is to be filed to High Court which exercises jurisdiction over seat of Tribunal?

The Hon'ble High Court in para 13 of the Order held that,

*“The submission on behalf of the Revenue that the seat of the Assessing Officer alone would decide the jurisdiction of the High Court on the basis of Section 127 of the Act, is misplaced. This for the reasons that **the bare reading of the provisions show that the Court to which appeal would lie is not governed by the seat of the Assessing Officer. It for this reason that, the Income Tax Appellate Tribunal (ITAT) Rules specifically provides in Rule 4(1) thereof, the Bench which shall hear the appeals, filed before it in terms of Section 253 of the Act, shall be decided by the President of the Tribunal.***

*Therefore, which bench/seat of the Tribunal will hear the appeals is not decided by the seat of the Assessing Officer as provided in Section 127 of the Act, as it does not apply in case of the Tribunal as it is not an Income Tax Authority under the Act. It is the President of the Tribunal in exercise of his powers under Rule 4(1) of the ITAT Rules, issued a standing order No.63/97 dated 2.7.2013 as amended, inter alia, providing the jurisdiction of the bench dependent upon the areas from where the impugned orders have originated. In the above standing order, Note 4 specifically states that the jurisdiction of a bench will not be determined by the place of business or residence of the assessee but by the location of the office of the Assessing Officer. **If the seat of the Assessing Officer were in terms of Section 127 of the Act, to govern/control the jurisdiction of the Authorities other than those listed in Section 116 of the Act, then a specific provision in terms of Note 4 in the standing order issued by the President of the Tribunal was not called for/required. Thus in terms, the above standing order where an assessment proceedings have been transferred from one place to another under Section 127 of the Act, then the bench of the Tribunal before which appeals would lie, may shift with the seat of the Assessing Officer before the filing/hearing of the appeal.***

The Hon'ble Bombay High Court in the said case clearly stated that in case the order is passed u/s 127 of the Act, then the bench of the Tribunal before which the appeals would lie, may shift with the seat of the assessing officer before the hearing of appeal. Since this decision has not been referred on behalf of Income Tax Tribunal before Hon'ble High Court, therefore, perhaps Hon'ble High Court took the view in the present case that the jurisdiction of the Bench will not be affected by the transfer of the jurisdiction of the assessing officer passed under section 127 of the Income Tax Act, 1961. Not citing this decision by the senior Counsel engaged by Income tax Tribunal has unsettled the settled law of the power of President Income Tax Appellate Tribunal in the impugned decision.

In the case of **Vedanta Limited Vs. Assistant Director of Income tax, International Taxation, Ahmedabad [2018] 93 taxmann.com 203 (Ahmedabad - Trib.)**, the Hon'ble Tribunal held that,

“So far as the jurisdiction of the bench to hear an appeal is concerned, the legal position is quite clear and unambiguous. The notification no. F No. 63-Ad(AT) 97, dated 16-9-1997 relied upon by the assessee states that the ordinary jurisdiction of the bench will be determined not by the place of business or residence of the assessee but by the location of the Assessing Officer. [Para 5]

As this notification is issued under rule 4(1) of the Income Tax Appellate Tribunal Rules 1963, it has a force of law and it does not leave any discretion with the bench- or, for that purpose, with anyone other than the President of the Income Tax Appellate Tribunal, so far as determination of the jurisdiction for hearing of an appeal is concerned. In view of this unambiguous legal position, the arguments advanced by the assessee, with respect to determination of jurisdiction on the basis of location of the authority whose order is impugned in the related appeal, are devoid of legally sustainable merits. That is not, however, the end of the matter. There is sometimes a change in the jurisdiction, as in this case, of the Assessing Officer. In the case of this very assessee, the assessment was, in the

initial years, done by an Assessing Officer located in Surat. Later, the jurisdiction to assess this assessee shifted to another Assessing Officer located in Ahmedabad. As the things now, the jurisdiction to assessee this assessee vests with an Assessing Officer based in New Delhi. As can be seen from the case history, the designation of these three Assessing Officer located in three different cities are (i) Income Tax Officer (International Taxation) Surat, (ii) Assistant Director of International Taxation, Ahmedabad, and (iii) Assistant Commissioner, Gurgaon. The question naturally arises as to how the appellate jurisdiction is to be decided-on the basis of the jurisdiction of the Assessing Officer at the point of time when the assessment was framed, at the point of time when appeal is filed or at the point of time when appeal is to be heard. The expression used in the notification issued by the Tribunal is that 'The ordinary jurisdiction of the bench will be determined by the location of the Assessing Officer'. It does not refer to the location of the Assessing Officer at the point of time when assessment was framed or at the point of time when the appeal was filed, or, for that purpose, at any specific point of time. All that the notification refers to is 'the location of the Assessing Officer' and the jurisdiction is the jurisdiction to, as rule 4(1) of the ITAT Rules 1963 states, 'hear and determine such appeals and application made under the (Income Tax) Act'. Therefore, it is the location of the Assessing Officer at the point of time when the Tribunal is to 'hear and determine such appeals and applications' which is relevant for determination of the jurisdiction of the bench which is to hear and determine the appeals and applications under the Act. When the location of the Assessing Officer having jurisdiction over assessment of the assessee changes, the jurisdiction of the bench of the Tribunal, which is to take judicial call on the appeals and applications, automatically changes as a corollary to, and as an offshoot of, the change in the location of the change of the Assessing Officer. It is also important to bear in mind the fact that the assessment of each year is not entirely on standalone basis but in continuity, and that when the new Assessing Officer takes over from the earlier Assessing Officer, as a result of order under section 127, the earlier Assessing Officer becomes completely functus officio so far as the assessee is concerned. It is thus not only the power to assessee the income of the assessee in future but all powers and duties in relation to the assessments framed earlier that gets transferred to the new Assessing Officer. Once jurisdiction under section 127 is transferred, the officer earlier having the jurisdiction to assessee income of the assessee cannot at all be said to be the Assessing Officer of the assessee. [Para 6]

The Assessing Officer having jurisdiction to assess the income of the assessee is located in New Delhi, which falls in jurisdiction of Delhi benches, it is found that the jurisdiction for hearing of these applications, and hearing of the related appeals, vests in Delhi benches of this Tribunal. However, it is for the President to take a final call on the issue, as is the unambiguous thrust of Rule 4(1) of the ITAT Rules. Therefore, it is deemed fit and proper to direct the Registry to place all stay applications and related appeals, as indeed all other appeals of this assessee, before the President for appropriate orders. [Para 10]

In the result, the correct jurisdiction of hearing these appeals is with Delhi benches and accordingly, the matter is to be placed before the President for directing transfer of

appeals, as he, under the scheme of rule4(1) of the ITARules, is the final arbiter on this issue. [Para 11]

In view of aforesaid discussion, we are of the view that the issue whether the President ITAT has the power to transfer the appeals from one bench to another bench situated at different headquarters is still disputable. We noted that Sr. Advocate on behalf of the Income Tax Appellate Tribunal perhaps has not cited the decision of Hon'ble Bombay High Court in the case of **Principal Commissioner of Income-tax, Pune Vs. Sungard Solutions (I) (P.) Ltd. [2019] 105 taxmann.com 67 (Bombay)** and the decision of Hon'ble Allahabad High Court in the case of **Commissioner of Income-tax (TDS) Lucknow Vs. Sahara India Financial Corporation Ltd. [2013] 38 taxmann.com 104 (Allahabad)**. If these decisions would have been cited, Hon'ble High court would have considered the finding given in these decisions specially the decision of Bombay High Court which has the quorum of equal strength. Until, the issue is not decided by Hon'ble Supreme Court, in our view, the view expressed by Bombay High Court cannot be said to be final verdict.