

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION (L) NO.3865 OF 2020**

MSPL Limited,  
Baldota Bhavan,  
117, Maharshi Karve Road,  
Mumbai – 400 020.

..Petitioner

Versus

1. Principal Commissioner of Income  
Tax-1, Mumbai,  
Room No.387, 3<sup>rd</sup> Floor,  
Aayakar Bhavan, M. K. Road,  
Mumbai- 400 020.

2. Income Tax Appellate Tribunal,  
Through the Registrar,  
3<sup>rd</sup> and 4<sup>th</sup> Floors,  
Central Government Office Building,  
101, Maharshi Karve Road,  
Mumbai – 400 020.

3. Union of India,  
Through the Secretary,  
Ministry of Finance,  
Government of India,  
North Block, Raisina Hill,  
New Delhi – 110 001.

..Respondents

Mr. J. D. Mistri, Senior Advocate a/w Mr. Nitesh Joshi i/by Mr. Atul K. Jasani, Advocates for the Petitioner.

Mr. Suresh Kumar, Advocate for Respondent No.1.

Mr. R. V. Desai, Senior Advocate a/w Mr. Parag Vyas & Ms. Karuna Yadav, Advocates for Respondent No.2.

**CORAM : UJJAL BHUYAN &  
MILIND N. JADHAV, JJ.**

**RESERVED ON : 29.01.2021  
PRONOUNCED ON : 21.05.2021**

**JUDGEMNT (Per Ujjal Bhuyan, J.)**

Heard Mr. J. D. Mistri, learned senior counsel for the petitioner; Mr. Suresh Kumar, learned standing counsel revenue for respondent No.1; and Mr. R. V. Desai, learned senior counsel for respondent No.2.

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of order dated 19.03.2020 passed by the Income Tax Appellate Tribunal, Bangalore Bench in ITA Nos.371 to 374/Bang/2011 for the assessment years 2005-06 to 2008-09 as well as order dated 20.08.2020 passed by the President, Income Tax Appellate Tribunal and further seeks a direction that hearing of the above appeals be continued and concluded by the Income Tax Appellate Tribunal, Bangalore Bench.

3. By the order dated 19.03.2020, Bangalore Bench of the Income Tax Appellate Tribunal passed a speaking order expressing its views that request made by the revenue for transfer of the said appeals from the Bangalore Bench of the Income Tax Appellate Tribunal to Mumbai Benches of the Income Tax Appellate Tribunal is justified and to place the said views before the President to enable the President of the Income Tax Appellate Tribunal to pass orders on the request for transfer of the appeals from the Bangalore Bench to Mumbai Benches. By order dated 20.08.2020 President of Income Tax Appellate Tribunal directed that the above appeals pending in the Income Tax Appellate Tribunal, Bangalore Bench should be heard and determined by the Income Tax Appellate Tribunal, Mumbai Benches at Mumbai.

4. Facts leading to the above orders as pleaded may be briefly noted.

4.1. Petitioner is a company incorporated under the Companies Act, 1956 on 18.10.1961 having its registered office at Maharshi Karve Road, Mumbai. It is stated that since its incorporation its registered office has remained unchanged at Mumbai. Petitioner is engaged in the business of mining, running gas unit and generating power through windmills. It has two mining divisions i.e. mining division-1 and mining division-2 at Hospet, Karnataka.

5. A search and seizure operation under section 132 of the Income Tax Act, 1961 was carried out in the business premises of the petitioner on 26.10.2007. Pursuant to the search action, proceedings were initiated under section 153A of the Income Tax Act, 1961 (briefly “the Act” hereinafter). Consequently, assessment proceedings were drawn up in respect of four assessment years i.e. assessment years 2005-06, 2006-07, 2007-08 and 2008-09. Separate assessment orders were passed by the Assessing Officer i.e. Assistant Commissioner of Income Tax, Central Circle-2(1), Bangalore on 31.12.2009 for the above four assessment years. In so far the first three assessment years are concerned, the assessments were made under section 143(3) read with section 153A of the Act. However, for the assessment year 2008-09, the assessment was made under section 143(3).

6. In the assessment proceedings petitioner filed report under section 10B of the Act along with audit report under section 44AB of the said Act and claimed deduction under section 10B for the assessment years 2006-07, 2007-08 and 2008-09. Petitioner also claimed deduction on account of expenditure and depreciation for use of aircrafts for all the

four assessment years. Assessing Officer negated the claim of the petitioner for deduction under section 10B of the Act as according to the Assessing Officer petitioner had violated the conditions laid down under section 10B(2) of the Act. Thus, vide the assessment orders dated 31.12.2009 it was held that petitioner would not be entitled to deduction under section 10B in respect of the assessment years 2006-07, 2007-08 and 2008-09. Accordingly such claim was disallowed and brought to tax as income of the respective years. In so far claim of expenditure and depreciation for use of aircraft is concerned, the Assessing Officer disallowed 50% of the operational expenses as well as depreciation.

7. Being aggrieved by the aforesaid orders of the Assessing Officer dated 31.12.2009 for the four assessment years from 2005-06 to 2008-09, petitioner filed four separate appeals before the Commissioner of Income Tax (Appeals)-VI, Bangalore [briefly “the CIT(Appeals)” hereinafter]. All the four appeals were heard together and were disposed of by a common order dated 03.02.2011. In so far disallowance of deduction under section 10B of the Act is concerned, CIT(Appeals) upheld the decision of the Assessing Officer. Regarding disallowance of operational expenses and depreciation of aircraft to the extent of 50% by the Assessing Officer, the same was upheld for the assessment year 2005-06. However, for the remaining three assessment years certain reliefs were granted to the petitioner. In the result, the appeal for the assessment year 2005-06 was dismissed and the appeals for the assessment years 2006-07, 2007-08 and 2008-09 were partly allowed.

8. Aggrieved by the order dated 03.02.2011 passed by the CIT (Appeals), petitioner filed four appeals on 06.04.2011 before the Income Tax Appellate Tribunal, Bangalore Bench for the four assessment years

which were registered as follows :-

- i) ITA No.371/B/2011 for the assessment year 2005-06.
- ii) ITA No.372/B/2011 for the assessment year 2006-07.
- iii) ITA No.373/B/2011 for the assessment year 2007-08.
- iv) ITA No.374/B/2011 for the assessment year 2008-09.

9. One of the grounds taken in the appeals was that the search and seizure action carried out in the business premises of the petitioner under section 132 of the Act was invalid as no satisfaction note was recorded prior to the search and seizure as is the requirement under section 132 of the Act.

10. From the order-sheet of the appellate proceedings, we find that there is an order of the Income Tax Appellate Tribunal (briefly “the Tribunal” hereinafter), Bangalore Bench dated 02.06.2011 which would go to show that both the authorized representative of the petitioner and the departmental representative had argued the matter at length whereafter the matter was kept as part heard for continuation of the hearing. The hearing continued thereafter and the matter remained part heard. However, on 08.09.2011 on transfer of the accountant member to Ahmedabad Bench of the Tribunal the appeals were released from part heard and posted for hearing in regular course. Be that as it may, in the proceedings held on 21.11.2012 counsel for the petitioner argued that the search was invalid in view of the decision of the jurisdictional High Court i.e. Karnataka High Court in the case of *C. Ramaiah Reddy Vs. ACIT, 339 ITR 210*. However, departmental representative contended that revenue had taken up the matter before the Supreme Court and therefore sought time. In the hearing held on 11.02.2013 Bangalore Bench of the Tribunal directed the

departmental representative to produce the satisfaction note on the basis of which the search and seizure operation under section 132 of the Act was initiated.

11. In the proceedings held on 29.07.2013, it was recorded that the departmental representative had filed an application for transferring the appeals pending before the Bangalore Bench of the Tribunal to the Mumbai Benches of the Tribunal. However, referring to the order dated 11.02.2013, Bangalore Bench of the Tribunal noted that its direction for production of satisfaction note was not complied with. At that stage departmental representative assured to produce the satisfaction note within one month. On such assurance Tribunal, Bangalore Bench directed the departmental representative to file the satisfaction note within three weeks.

12. It may be mentioned that Commissioner of Income Tax-1, Mumbai wrote to the Vice President of the Tribunal, Bangalore on 12.08.2013 stating that jurisdiction of the case of the petitioner is now with the DCIT-1(2)(2), Mumbai under Commissioner of Income Tax-1, Mumbai with effect from 30.08.2012 after decentralization of the case from Commissioner of Income Tax, Karnataka (Central), Bangalore to Mumbai. However, appellate proceedings were going on before the Bangalore Bench of the Tribunal. It was submitted that issue of multiplicity of jurisdiction of Mumbai and Bangalore may arise in the appellate proceedings before the Bangalore Bench of the Tribunal. Reference was made to a writ petition filed by the petitioner before this Court against recovery of demand. An apprehension was expressed that 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 appeal proceedings to the jurisdictional Tribunal Bench at Mumbai. Therefore, request was made that all the pending proceedings of appeal before the Tribunal, Bangalore Bench may be transferred to the Mumbai Benches of the Tribunal for effective coordination of appellate proceedings. Commissioner of Income Tax, ITAT-II, Bangalore by his forwarding letter dated 14.08.2013 forwarded the aforesaid letter dated 12.08.2013 to the Vice President of the Tribunal at Bangalore.

13. Though the transfer request was made vide application dated 12.08.2013 no follow up steps were taken by the departmental representative and the four appeals continued to remain pending before the Bangalore Bench of the Tribunal. From the order-sheet annexed to the writ petition, we find that in the hearing held on 07.10.2013 departmental representative had submitted before the Tribunal, Bangalore Bench that the question of law in the case of *C. Ramaiah Reddy (supra)* was admitted by the Supreme Court and was pending for adjudication in Civil Appeal No.2734 of 2013. He therefore requested for deferring of the hearing of the appeals till disposal of Civil Appeal No.2734 of 2013 by the Supreme Court. In view of the above, Bangalore Bench of the Tribunal adjourned the hearing of the four appeals *sine die* and stayed collection of demand till disposal of the appeals.

14. The order-sheet annexed to the writ petition discloses that the hearing of the four appeals was revived on 05.03.2018 fixing the hearing on 20.03.2018. However, the hearing did not commence on 20.03.2018 and thereafter on subsequent dates.

15. In the proceedings held on 13.12.2018 it was noted that

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revenue had not complied with the earlier order for production of satisfaction note whereafter the hearing was deferred to 07.02.2019 when also the earlier direction for production of satisfaction note was reiterated. In the hearing held on 19.03.2019 Tribunal noted that revenue had failed to produce the satisfaction note. Further regarding transfer request of the revenue, Bangalore Bench of the Tribunal noted that nothing was done by the revenue in respect of the transfer request. Thus, it was observed that revenue was no more interested in getting the appeals transferred from Bangalore to Mumbai though the departmental representative submitted that the records were transferred to Mumbai. It was also noted that the application for transfer was made to the Vice President though it should have been made to the President. No materials were placed to show that revenue had made any application before the President for transfer of the appeals from Bangalore to Mumbai. Thus, Bangalore Bench of the Tribunal opined that plea of transfer raised by the revenue was not a serious one, rather it was a casual submission. While adjourning the hearing final opportunity was granted to the revenue to either drop the transfer plea or to make serious efforts.

16. It may be mentioned that petitioner had requested Bangalore Bench of the Tribunal to provide personal hearing before disposing of the transfer application. In this connection petitioner submitted objections dated 27.06.2019. Departmental representative filed written submissions on 12.12.2019 in support of the prayer for transfer of the appeals.

17. The matter was heard by the Bangalore Bench of the Tribunal on 20.02.2020.

18. On 11.09.2020 petitioner received a copy of the impugned



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order dated 20.08.2020 passed by the President of the Tribunal under rule 4 of the Income Tax Appellate Tribunal Rules, 1963 directing that the four subject appeals be transferred from the Bangalore Bench of the Tribunal to be heard and determined by the Mumbai Benches of the Tribunal at Mumbai.

19. Subsequently, when the petitioner sought for a copy of the order passed by the Bangalore Bench of the Tribunal following which the President had passed the impugned order dated 20.08.2020, it was provided with a copy of order dated 19.03.2020 passed by the Bangalore Bench of the Tribunal accepting the request for transfer and placing its views to enable the President to pass necessary orders.

20. Aggrieved, petitioner has preferred the present writ petition for quashing of the two orders dated 19.03.2020 and 20.08.2020 and for a direction to continue the hearing of the four subject appeals by the Bangalore Bench of the Tribunal.

21. Respondent No.1 in his reply affidavit has taken the stand that petitioner did not oppose transfer of jurisdiction under section 127 of the Act to Mumbai. As a matter of fact, petitioner vide letter dated 31.08.2012 had informed the Commissioner of Income Tax, Karnataka (Central) that it had no objection to transfer of its assessment proceedings to Mumbai. In such circumstances, it is not open to the petitioner to oppose transfer of cases by the Tribunal. Assessment jurisdiction of the petitioner is now with the Mumbai office where all the records are available. 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. Therefore, no prejudice would be caused to the petitioner on transfer of the appeals from Bangalore Bench to Mumbai Benches of the Tribunal reiterating the view expressed by the Tribunal that while considering the request for transfer of an appeal the primary consideration is balance of convenience of all the parties.

21.1. On the contention of the petitioner that the plea of transfer was made to avoid compliance of the direction of the Bangalore Bench for production of satisfaction note authorizing search and seizure, it is stated that revenue has already filed an application before the Tribunal for modification/recall of such order for production of satisfaction note since satisfaction note, being an administrative act, cannot be questioned by an assessee. Upon transfer, Mumbai Bench of the Tribunal will adjudicate on this issue.

21.2. Since appeal by the revenue in the Supreme Court in the case of *C. Ramaiah Reddy (supra)* is pending therefore hearing of the four appeals was adjourned *sine die* by the Tribunal. Delay in hearing the appeals therefore cannot be attributed to the revenue. Finally, it is submitted that since petitioner had expressed no objection to transfer of assessment jurisdiction from Bangalore to Mumbai, the application for transfer of the appeals from Bangalore to Mumbai was a natural corollary to the transfer of assessment jurisdiction.

21.3. In the circumstances, it is submitted that the writ petition so filed is premature and should be dismissed.

22. Respondent No.2 i.e. Income Tax Appellate Tribunal (already referred to as “the Tribunal” hereinabove) has filed reply affidavit through

the Assistant Registrar. Maintainability of the writ petition has been questioned on two grounds. Firstly, 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 the Tribunal. Secondly, the writ petition seeks to challenge an administrative decision of the Tribunal which falls within the realm of subjective satisfaction. This cannot be challenged in a writ proceeding.

22.1. On merit, it is submitted that Commissioner of Income Tax-1, Mumbai vide letter dated 12.08.2013 had requested for transfer of the appeals from the Bangalore Bench of the Tribunal to Mumbai Benches of the Tribunal which was repeated subsequently. Petitioner raised objection to such transfer on 27.06.2019. Matter was put up before the President of the Tribunal on 22.10.2019 for administrative orders but the President directed that the Bench at Bangalore may deal with the issue of transfer by way of a speaking order. Personal hearing was granted to the petitioner by the Bangalore Bench of the Tribunal on 20.02.2020 and after hearing both the parties passed a speaking order dated 19.03.2020. Thereafter the file was put up before the President who passed the order dated 20.08.2020.

22.2. It is submitted that such transfer of appeals has been carried out in exercise of the powers under section 255(5) of the Act read with rule 4 of the Income Tax Appellate Tribunal Rules, 1963 (briefly “the Tribunal Rules” hereinafter) and by following the procedure contained in the manual. It is stated that 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.

22.3. The administrative decision to transfer the appeals from Bangalore to Mumbai was taken after due consideration and cannot be said to be unreasonable. 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.

23. Petitioner has filed rejoinder affidavit to reply affidavits of both the respondents. On the contention of the respondents that since petitioner had not opposed transfer of jurisdiction under section 127 of the Act, it is not open to the petitioner to oppose transfer of the appeals from one Bench of the Tribunal to another Bench, it is submitted that in view of the search and seizure action carried out on 26.10.2007, petitioner's case along with other related cases was centralized at Bangalore. Thereafter assessment orders for the four related assessment years being 2005-06, 2006-07, 2007-08 and 2008-09 were passed by the Assessing Officer at Bangalore. By order dated 31.05.2012 passed under section 127 assessment jurisdiction of the petitioner was restored back to Mumbai. Since petitioner was all along assessed at Mumbai except for the period related to the search, it could not have any objection. 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. Therefore, the contention in this regard made by the respondents is not only untenable but is also misleading. Petitioner has further stated that even an administrative order is subject to judicial scrutiny and must therefore conform to the requirements of law.

23.1. In so far convenience of parties is concerned, it is submitted

that adjudication of the appeals in Bangalore would be more convenient to the petitioner because it is nearer to its mining units at Hospet, Karnataka.

23.2. In the circumstances, it is submitted that objection of the respondents have no legs to stand. There is merit in the writ petition filed by the petitioner which is accordingly liable to be allowed.

24. Mr. J. D. Mistri, learned senior counsel for the petitioner submits that the transfer application was made on 12.08.2013. For six years no steps were taken by the respondents to press the transfer application so much so that Bangalore Bench of the Tribunal is on record opining that plea of transfer was not a serious plea; rather it was a casual submission. According to Mr. J. D. Mistri, the real purpose behind the move to transfer the pending appeals out of the Bangalore Bench of the Tribunal was to avoid the decision of the Karnataka High Court in the case of *C. Ramaiah Reddy (supra)*. As per the said judgment, in the absence of any satisfaction note, a search and seizure operation under section 132 of the Act would be invalid. If the search and seizure is invalid, consequential assessment(s) under section 153A would be of no legal consequence. Though the Civil Appeal is pending before the Supreme Court, the decision of the Karnataka High Court has not been stayed. Bangalore Bench of the Tribunal being within the territorial jurisdiction of Karnataka High Court would be bound by the ratio of the said judgment. It is with a view to avoid the said situation that the plea of transfer has been made. This has been acerbated by the prayer made by the petitioner which has found acceptance by the Bangalore Bench of the Tribunal for production of the satisfaction note before the Tribunal. Till date, it has not been produced; efforts made by the petitioner under the Right to Information Act, 2005 to obtain a copy of the satisfaction note has also

turned out to be futile. In the circumstances, petitioner has reason to believe that there could be no satisfaction note preceding the search and seizure action. Since the Bangalore Bench of the Tribunal has been insisting on production of satisfaction note, respondents have come up with this plea of transfer to circumvent such order.

24.1. Learned senior counsel submits that while the Bangalore Bench of the Tribunal in the impugned order dated 19.03.2020 has relied upon section 255 of the Act, more particularly to sub section (5) thereof, to take the view that such transfer of pending appeals is permissible, President of the Tribunal in the impugned order dated 20.08.2020 has exercised his power under rule 4 of the Tribunal Rules. He submits that neither section 255 of the Act nor rule 4 of the Tribunal Rules empower such transfer of pending appeals from one Bench of the Tribunal in one State to another Bench of the Tribunal in another State. Therefore, the impugned orders are without any authority of law and are as such liable to be set aside and quashed.

24.2. Mr. Mistri submits that the entire move for transfer of the pending appeals from Bangalore to Mumbai is for wholly extraneous considerations and not for the convenience of the parties. Impugned order of the President is in violation of the principles of natural justice; even it is an administrative decision, principles of natural justice are required to be complied with. In support of his submissions, Mr. Mistri has relied upon the following decisions :-

- I) *(AIR 1959 SC 308) Gullapalli Nageswara Rao Vs. Andhra Pradesh State Road Transport Corporation.*
- II) *(AIR 1963 Cal 331) Ramchandra Jagdishchand Vs. Deputy*

*Collector of Customs, Calcutta.*

II) [(1969) 2 SCC 262] *A. K. Kraipak Vs. Union of India.*

25. Mr. Desai, learned senior counsel appearing for respondent No.2 at the outset has referred to the prayer portion of the writ petition. He submits that 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. On this ground itself the writ petition may be dismissed.

25.1. He has also questioned invocation of writ jurisdiction of the High Court under Article 226 of the Constitution of India by the petitioner. Referring to section 260A of the Act, he submits that 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.

25.2. Mr. Desai painstakingly refers to the averments made in the reply affidavit filed by respondent No.2. He submits therefrom that when the petitioner had no objection to the transfer of assessment jurisdiction back to Mumbai under section 127 of the Act, he cannot possibly have any objection to transfer of the appeals from Bangalore to Mumbai. That apart, Tribunal had given full opportunity to the petitioner before passing the order dated 19.03.2020. Petitioner was given full hearing and all the contentions raised by the petitioner were duly considered. He submits that whether the appeals are heard by the Bangalore Bench of the Tribunal or

by the Mumbai Benches of the Tribunal, no prejudice will be caused to the petitioner. To that extent, it cannot have any grievance to such transfer.

25.3. Mr. Desai has referred to section 255 of the Act, more particularly to sub section (5) thereof, and submits that power to transfer of appeals from one Bench of the Tribunal to another Bench of the Tribunal is traceable to the said provision. If section 255 of the Act is read in conjunction with rule 4 of the Tribunal Rules and the standing orders issued under the Tribunal Rules, no fault can be found with the order dated 19.03.2020 and the consequential administrative decision dated 20.08.2020. He submits that there is no merit in the writ petition and therefore, the writ petition should be dismissed. Learned senior counsel for respondent No.2 has placed reliance on the following decisions :-

- A) *AIR 1960 SC 493, S. Kapur Singh Vs. Union of India.*
- B) *AIR 1961 Kerala 299, Raghava Menon Vs. Inspector General of Police, Kerala.*
- C) *AIR 1970 SC 1102, A. Sanjeevi Naidu Vs. State of Madras.*
- D) *AIR 1971 SC 1093, Union of India Vs. Jyoti Prakash Mittal.*
- E) *AIR 1983 MP 65, Indore Textiles Limited Vs. Union of India.*
- F) *AIR 1990 SC 1744, Ossein and Gelatine Manufacturers' Association of India Vs. Mody Alkalies and Chemicals Ltd..*
- G) *2015 (320) ELT 3, Dharampal Satyapal Ltd. Vs. Dy. Commissioner of Central Excise.*
- H) *AIR 1959 SC 1376, Gulapalli Nageshwar Rao Vs. Andhra Pradesh State Road Transport Corporation.*



I) *Civil Appeal No.3498 of 2020 decided on 16.10.2020, State of U.P.  
Vs. Sudhir Kumar Singh.*

26. Mr. Suresh Kumar, learned standing counsel revenue appearing for respondent No.1 has adopted the arguments of Mr. Desai, learned senior counsel for respondent No.2. Mr. Suresh Kumar argued against maintainability of the writ petition on the ground that when the petitioner did not object to transfer of jurisdiction under section 127 of the Act, he cannot object to or challenge transfer of appeals from one Bench of the Tribunal to another Bench.

27. In his reply, Mr. Mistri, learned senior counsel for the petitioner submits that contention of Mr. Desai that the writ petition should have been filed before the Karnataka High Court in view of order dated 19.03.2020 passed by the Bangalore Bench of the Tribunal is legally unsound. The present writ petition has been filed challenging amongst others the ultimate order dated 20.08.2020 passed by the President of the Tribunal at Mumbai. Cause of action for filing the writ petition had arisen in Mumbai and, therefore, the present writ petition filed before this Court is certainly maintainable.

27.1. In so far submission of Mr. Desai that instead of writ petition an appeal under section 260A of the Act ought to have been filed, submission of Mr. Mistri is two fold. According to him, decision of the Bangalore Bench of the Tribunal dated 19.03.2020 is not on the merit of the subject appeals but on the plea of transfer of the appeals 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.

27.2. On the submissions of Mr. Desai, learned senior counsel and Mr. Suresh Kumar, learned standing counsel revenue as to petitioner not raising any objection to transfer of jurisdiction under section 127 and thus is debarred from objecting to transfer of appeals from one Bench of the Tribunal to another Bench of the Tribunal, Mr. Mistri submits that the said submission is completely fallacious and totally misleading. A reading of section 127 of the Act would go to show that it deals with transfer of assessment jurisdiction from one assessing officer to any other assessing officer. The said provision cannot be pressed into service to justify transfer of pending appeals from one Bench of the Tribunal to another Bench of the Tribunal that too in a different State. He therefore submits that section 127 of the Act has no bearing at all in the present case.

28. Submissions made by learned counsel for the parties have been duly considered. Also perused the materials on record and the judgments cited at the bar.

29. From the pleadings and materials on record, it is evident that the four subject appeals being ITA Nos.371 to 374/B/2011 for the assessment years 2005-06, 2006-07, 2007-08 and 2008-09 were pending before the Bangalore Bench of the Tribunal since the year 2011. From the order-sheet of the appeals annexed to the writ petition, we find that as early as 02.06.2011, learned counsel for the parties had argued at length before the Bangalore Bench of the Tribunal. The matter was kept as part heard for further hearing. In the course of the hearing, departmental representative had filed written submissions on 28.06.2011. However, in view of the transfer of the accountant member to Ahmedabad Bench, the four appeals were released from part heard on 08.09.2011. It is true that Karnataka High Court in the case of *C. Ramaiah Reddy (supra)* has held

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that in the absence of satisfaction note, the related search under section 132 of the Act becomes invalid. This point was raised on behalf of the petitioner before the Bangalore Bench of the Tribunal as early as on 21.11.2012. In that context, Bangalore Bench of the Tribunal in its order dated 11.02.2013 had directed the departmental representative to produce the satisfaction note for initiating search under section 132 of the Act before the Tribunal. It is also true that satisfaction note has not been produced before the Tribunal till passing of the impugned order dated 19.03.2020. Though from the order-sheet dated 29.07.2013, we find that the departmental representative had prayed for transferring the appeals from Bangalore to Mumbai, the application for transfer was filed by Commissioner of Income Tax-1, Mumbai before the Vice President of the Tribunal on 12.08.2013. However, from 12.08.2013 no steps were taken by the revenue to pursue the transfer application so much so that the Bangalore Bench of the Tribunal in its order dated 19.03.2019 was constrained to pass adverse observations on the revenue. Tribunal opined that plea raised by the revenue for transfer was not a serious plea; rather it was a casual submission.

30. Petitioner has contended that Bangalore Bench of the Tribunal being within the territorial jurisdiction of the Karnataka High Court is bound to follow the ratio of the decision in *C. Ramaiah Reddy (supra)*. Though the Civil Appeal filed by the revenue against the said decision is pending before the Supreme Court, apparently there is no stay of the High Court judgment. Therefore, according to the petitioner, the High Court decision will be binding on the Bangalore Bench of the Tribunal. In order to avoid this adjudication in Karnataka as well as to frustrate the order of the Tribunal for production of satisfaction note, the plea of transfer of the appeals has been raised. However, this contention

or allegation of the petitioner has been denied by the respondents.

31. Without entering into this dispute, we may refer to the two impugned orders. But before that we find from the exhibits annexed to the reply affidavit of respondent No.2 that the matter was put up before the President of the Tribunal. The corresponding office note at page No.289 of the paper-book discloses that Chief Commissioner of Income Tax (OSD), Mumbai had addressed a letter dated 11.04.2019 to the President of the Tribunal requesting transfer of the four appeals from Bangalore Bench of the Tribunal to Mumbai Benches of the Tribunal since the jurisdiction over the assessee i.e., the petitioner is now with DCIT-1(2)(2), Mumbai. Proposal was put up before the President that a copy of the above letter be forwarded to the Bangalore Bench of the Tribunal with a request to send the above appeal file in original. This was approved by the President on 13.06.2019. Thereafter on 22.10.2019 it was noted that the assessee had objected to transfer of appeals vide letter dated 30.06.2015 and reiterated thereafter on 27.06.2019. President noted that Bangalore Bench of the Tribunal may deal with the above letters by a speaking order.

32. Let us now examine the order dated 19.03.2020 passed by the Bangalore Bench of the Tribunal. Relevant portion of the order reads as under :-

“7. The revenue through the Principal Commissioner of Income Tax-1, Mumbai through letter dated 25.4.2019 applied for transfer of the appeals to ITAT Mumbai Benches from ITAT Bangalore Benches. The Assessee had addressed letter dated 27.06.2019 raising objections from the request for such transfer. The Hon’ble President vide his directions dated 22.10.2019 has directed the Bench to deal with the objections by speaking order and obtain its view in the matter

and communicate the same to the Head Office.

\* \* \* \* \*

11. We have given a careful consideration to the rival submissions. With regard to objection of the Assessee based on Rule 4(2) of the ITAT Rules and Rule 34 of the Office Manual, we are of the view that the said objections are without any merit. In terms of Sec.255(1) of the Act, the powers and functions of the Appellate Tribunal are exercised and discharged by Benches constituted by the President of the Appellate Tribunal from among the members thereof. Sec.255(5) of the Act provides that *“subject to the provisions of this Act, the Appellate Tribunal shall have power to regular 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”*. Therefore, the power of the President to transfer appeals from one Bench to other Bench, including the power to transfer from one Bench to another Bench not within the same headquarters, can be traced to provisions of Sec.255 of the Act and the rules and Office Manual being subordinate legislation cannot be said to be exhaustive of the power of transfer, as was sought to be canvassed on behalf of the Assessee. Similarly, the power to transfer can be exercised at the request of either party to the proceedings before it, be it the Appellant or the Respondent. The primary consideration while considering a request for transfer is the balance of convenience of all the parties. The Assessee has shifted his registered office to Mumbai and the jurisdiction of the Assessing Officer of the Assessee has also been changed from Bangalore to Mumbai as early as 25.5.2012. The convenient forum for deciding the case would be the Benches of ITAT at Mumbai. The inability to produce evidence in the form of original ledgers and other documents are arguments without any merit and based on a surmise that production of original evidence would be

demanded by the Tribunal. With the change of registered office of the Assessee to Mumbai there can be no such difficulty, as expressed by the learned counsel for the Assessee. The submission on behalf of the learned counsel for the Assessee that since the Assessment order and the first appellate authority order was passed in Bangalore, it is only Bangalore Benches of ITAT that should hear the appeals as it is those benches that have jurisdiction over the authorities who passed the orders, is without any merit. The argument would hold good to decide the jurisdiction of the Bench at which appeal has to be filed and not a case where a request for transfer is made. The decisions cited on behalf of the Assessee in support of this argument are therefore not relevant and needs no discussion.

12. The next argument on behalf of the Assessee was that the satisfaction note was directed to be produced by the Tribunal and since such directions have to be necessarily complied with by the revenue in view of the decision of the Hon'ble Karnataka High Court which is the Jurisdictional High Court in the case of the Assessee, the revenue with a view to avoid complying with the directions of the Tribunal is seeking transfer of the appeals from ITAT Bangalore Benches to ITAT Mumbai Benches, so that it can take advantage of decisions of certain High Courts taking a view contrary to the decision rendered in the case of *Ramaiah Reddy (supra)* regarding the power of the Tribunal to examine the validity of issue of warrant of search u/s.132 of the Act. This argument is without any merit as the ITAT Benches will deal with the same in accordance with law and the apprehension of the Assessee in this regard is baseless.

13. We have accordingly dealt with the objections of the Assessee by way of this speaking order and as directed by the Hon'ble President, place our views in the matter to enable the Hon'ble President to pass orders on the request for transfer of appeals from Bangalore Benches to Mumbai Benches.”

33. From a careful scrutiny of the reasons given by the Bangalore Bench of the Tribunal, it is seen that according to the Tribunal the power of the President to transfer appeals from one Bench to another Bench including the power to transfer from one Bench to another Bench not within the same headquarters can be traced to section 255 of the Act. Thereafter Tribunal noted that the power to transfer can be exercised at the request of either of the parties to the proceedings, be it the appellant or the respondent. Primary consideration while considering such a request is the balance of convenience of all the parties. After observing that registered office of the petitioner has been shifted to Mumbai and that Assessing Officer of the petitioner has also been changed from Bangalore to Mumbai, it was held that the convenient forum for deciding the appeals would be the Benches of the Tribunal at Mumbai. [At this stage, we may mention that petitioner has stated on oath that since its incorporation its headquarter has always been at Mumbai.] Accordingly, the views of the Bangalore Bench of the Tribunal as expressed through the order dated 19.03.2020 was requested to be placed before the President to enable him to pass order on the request for transfer of appeals from Bangalore Bench to Mumbai Benches.

34. Chapter XX of the Act deals with appeals and revision. Part B of Chapter XX deals with appeals to the Appellate Tribunal. Part B comprises of sections 252 to 255. While section 252 provides for constitution of Appellate Tribunal consisting of judicial and accountant members, section 252A deals with qualifications, terms and conditions of service of President, Vice-President and other members of the Appellate Tribunal. Section 253 provides for filing of appeals to the Appellate Tribunal and the orders against which such appeals may be filed. Orders of Appellate Tribunal are dealt with in section 254.

35. That brings us to section 255 of the Act which deals with procedure of Appellate Tribunal. Since Bangalore Bench of the Tribunal in its impugned order dated 19.03.2020 has taken the view that power to transfer appeals from one Bench of the Tribunal to another Bench of the Tribunal including the power to transfer from one Bench to another Bench not within the same headquarters is traceable to section 255 of the Act, the same is extracted hereunder :-

**“Procedure of Appellate Tribunal.**

**255.** (1) 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.

(2) Subject to the provisions contained in sub-section (3), a Bench shall consist of one judicial member and one accountant member.

(3) The President or any other member of the Appellate Tribunal authorised in this behalf by the Central Government may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member and which pertains to an assessee whose total income as computed by the Assessing Officer in the case does not exceed fifty lakh rupees, and the President may, for the disposal of any particular case, constitute a Special Bench consisting of three or more members, one of whom shall necessarily be a judicial member and one an accountant member.

(4) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President of the Appellate Tribunal for hearing on such point or points by one or more of the other members of the Appellate Tribunal,



and such point or points shall be decided according to the opinion of the majority of the members of the Appellate Tribunal who have heard the case, including those who first heard it.

(5) 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.

(6) The Appellate Tribunal shall, for the purpose of discharging its functions, have all the powers which are vested in the income-tax authorities referred to in section 131, and any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code (45 of 1860), and the Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (5 of 1898).”

36. Sub section (1) of section 255 says that 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. As per sub section (5), subject to the provisions of the Act, the Appellate Tribunal shall have power to regulate its own procedure and the procedure of Benches in all matters arising out of the powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings. To complete the narrative, we may also refer to sub section (6) of section 255 which clearly says that a proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code. It also says that the Appellate Tribunal shall be deemed to be a civil court for all the purposes

of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898.

37. From a careful analysis of section 255, more particularly sub section (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 regular 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 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 a live 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

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section 255 of the Act. Reading or conferring such a power would amount to interference in a judicial proceeding of the Tribunal.

39. In so far the order dated 20.08.2020 passed by the President of the Tribunal is concerned, the same has been passed in exercise of the powers conferred by rule 4 of the Tribunal Rules. Relevant portion of the order dated 20.08.2020 reads as under :-

“In pursuance of Rule 4 of the Income Tax Appellate Tribunal Rules 1963, I hereby direct that the appeals mentioned below pertaining to Income Tax Appellate Tribunal, Bangalore Benches, Bangalore shall be heard and determined by Income Tax Appellate Tribunal, Mumbai Benches, Mumbai.

Sr. No.	Appeal No. & A.Ys.	Appellant	Respondent	State
1	ITA 371 to 374/Bang/2011 A.Y.2005-06 to 2008-09	M/s. MSPL Limited, Mumbai	Assistant Commissioner of Income Tax, Central Circle 2(1), Bangalore	Karnataka

”

40. The Tribunal Rules have been framed in exercise of the powers conferred by sub section (5) of section 255 of the Act to regulate the procedure of the Appellate Tribunal and the procedure of the Benches of the Tribunal. Since the order dated 20.08.2020 has been passed under rule 4 of the Tribunal Rules, the same is extracted hereunder :-

**“Power of Bench.**

4. (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.

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(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.”

41. From an analysis of rule 4 as extracted above, we find that as per 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 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. 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 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.

44. In the present case, the Assessing Officer is Assistant Commissioner of Income Tax, Central Circle-2(1), Bangalore and the first appellate authority is Commissioner of Income Tax (Appeals)-VI, Bangalore. In terms of rule 13 of the Tribunal Rules, in the four subject

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appeals filed by the petitioner, Assistant Commissioner of Income Tax, Central Circle-2(1), Bangalore is the respondent which is also reflected in the impugned order dated 20.08.2020. Further, in the event of remand in terms of rule 28, the matter would go back to the Commissioner of Income Tax (Appeals)-VI, Bangalore against whose orders the appeals were filed before the Tribunal or to the Assistant Commissioner of Income Tax, Central Circle-2(1), Bangalore, the Assessing Officer.

45. Because of search and seizure action under section 132 of the Act against the petitioner in connection with the mining operations at Hospet in the State of Karnataka consequential assessment proceedings were initiated for the assessment years 2005-06, 2006-07, 2007-08 and 2008-09. In so far the first three assessment years are concerned, the assessment orders were passed under section 153A of the Act read with 143(3) thereof. For the last assessment year i.e. 2008-09, the assessment order was made under section 143(3). Following centralization of the cases at Bangalore, the assessments were carried out at Bangalore and in all the assessment orders the Assessing Officer was Assistant Commissioner of Income Tax, Central Circle-2(1), Bangalore. As we have already seen, the first appeals against the assessment orders were preferred before CIT-A at Bangalore whereafter the appeals were filed before the Tribunal at Bangalore and rightly so because the Assessing Officer i.e., the respondent was from Bangalore.

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 works 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. Petitioner has explained and it has not been denied that post search and seizure assessments for the four assessment years under consideration were carried out in Bangalore along with other cases following centralization of assessment. Now for assessment years subsequent to assessment year 2008-09 the assessment jurisdiction of the petitioner has been reverted back to Mumbai and conferred upon DCIT-1(2)(2), Mumbai. This would not mean DCIT-1(2)(2) Mumbai to be the Assessing Officer for the four assessment years i.e. assessment years 2005-06, 2006-07, 2007-08 and 2008-09 in respect of which Assistant Commissioner of Income Tax, Central Circle-2(1), Bangalore continues to be the Assessing Officer and as a consequence the respondent in the subject appeals; DCIT-1(2)(2), Mumbai is not and cannot be the respondent in the said appeals.

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.

49. It is also a settled proposition that convenience of a party in a case can hardly be a criteria for transferring a case out of a State. [Please see judgment and order dated 07.05.2021 passed by the Supreme Court in Transfer Petition (Criminal) No.17 of 2021, Rajkumar Sabu -Vs- M/s. Sabu Trade Pvt. Ltd.]. Plea that records were transferred from Bangalore to Mumbai and that it would be convenient for the revenue if the appeals are heard at Mumbai cannot be a valid ground for transfer. Cases are transferred to serve the ends of justice and justice must not only be done but must be seen to have been done, that too, from the perspective of the litigant.

50. In the order dated 19.03.2020 Bangalore Bench of the Tribunal noted in paragraph 11 that the power to transfer of the appeal can be exercised by the Tribunal at the request of either party to the proceedings before it, be it the appellant or the respondent and that the primary consideration while considering such a request is the balance of convenience of the parties. In so far convenience of a party is concerned we have already dealt with it in the preceding paragraph. What is of significance is that even according to the Tribunal the power to transfer



can be exercised at the request of either party to the proceedings before the Tribunal, be it the appellant or the respondent. Appellant in the subject appeals is the petitioner and the respondent is Assistant Commissioner of Income Tax, Central Circle-2(1), Bangalore. While petitioner has objected to the transfer, there is nothing on record to show that the respondent i.e. Assistant Commissioner of Income Tax, Central Circle-2(1), Bangalore had filed any application before the Bangalore Bench of the Tribunal or even before the President for transfer of the appeals from Bangalore to Mumbai. As we have seen the application for transfer was filed by the Commissioner of Income Tax-1, Mumbai before the Vice President of the Tribunal on 12.08.2013; subsequently, Chief Commissioner of Income Tax (OSD), Mumbai addressed a letter dated 11.04.2019 to the President of the Tribunal requesting transfer of the appeals from Bangalore Bench to Mumbai Benches. 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. In so far the contention of the respondents that it is not open to the petitioner to object to transfer of the appeals because it did not object to transfer of jurisdiction under section 127, in our view the said contention has got no substance at all. Section 127 of the Act deals with transfer of any case from one Assessing Officer to another Assessing Officer. In other words, it deals with transfer of assessment jurisdiction from one Assessing Officer to another Assessing Officer. While certainly the appropriate authority under section 127 has the power and jurisdiction to

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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. Petitioner may have expressed no objection to transfer of assessment jurisdiction from the Assessing Officer at Bangalore to the Assessing Officer at Mumbai after assessment for the assessment years covered by the search period, but that cannot be used to non-suit the petitioner in his challenge to transfer of appeals from one Bench of the Tribunal to another Bench in a different State and in a different Zone. The two are altogether different and have no nexus with each other. So, the preliminary objection raised on behalf of the respondents on this count has to fail.

52. The other preliminary objection raised by the respondents, more particularly by Mr. Desai, learned senior counsel for respondent No.2 that firstly, the writ petition should have been filed before the Karnataka High Court and secondly an appeal under section 260A of the Act ought to have been filed instead of a writ petition, we find both the objections to be without any merit. 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. Mr. Desai has laid great emphasis on the expression “every order” to contend that an appeal shall lie from the order dated 19.03.2020 passed by the Tribunal as well. We are afraid we cannot accept such a submission. “Every order” in the context of section 260A would mean an order passed by the Tribunal in the appeal. In other words, the order must arise out of the appeal; it must relate to the subject matter of 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.

53. Thus, having regard to the discussions made above and upon thorough consideration of the matter, we are of 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.

54. Consequently, the writ petition is allowed. However, there shall be no order as to cost.

**MILIND N. JADHAV, J**

**UJJAL BHUYAN, J**