

Appeal to the Income Tax Appellate Tribunal - Territorial Jurisdiction - Filing of an appeal.

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1. Introduction

The concept of Jurisdiction is fundamental in any judicial proceeding. It is the authority that a court of law has to decide matters or to take cognizance of matters litigated before it. It indicates the legal capacity of a court of law to adjudicate matters before them. This authority of the courts is subject to certain statutory limits which includes but is not restricted to, territorial limits, also called, territorial jurisdiction of a court of law. The territorial jurisdiction dictates the geographical area within which a court of law can exercise its statutory powers.

Complexities arise when cases are centralized, and an assessee's tax proceedings are transferred from one city to another. This raises an important legal question like, Where should the appeal be filed if the case is transferred? For example, if an assessee was originally assessed in Mumbai but their case is centralized in Pune, should the appeal be filed before the Mumbai Tribunal or the Pune Tribunal? If the appeal is mistakenly filed before the Mumbai Tribunal and decided on merits, can the Revenue or the assessee later challenge the decision on the grounds of lack of jurisdiction, thereby seeking to nullify the order?

This article explores these jurisdictional challenges, analyzing statutory provisions, judicial precedents, and the implications of territorial jurisdiction in Income Tax Appellate Tribunal proceedings.

2. Understanding Jurisdiction

Jurisdiction is a key aspect in any judicial proceedings. It represents a court's legal authority to hear and decide cases. Jurisdiction can also be said to be a restriction set upon a court of law by a statute or legislation, upon the powers of a court to adjudicate matters. Territorial jurisdiction, a part of this broader concept, delineates the geographical boundary within which a court can lawfully exercise its powers. A court acting beyond these limits risks rendering its decisions void or voidable, depending on the nature of the jurisdictional defect.

The Code of Civil Procedure, 1908, provides guidance with this regard under section 21(1), which reads as:

"No objection as to the place of suing shall be allowed by any appellate or revisional Court unless such objection was taken in the court of the first instance at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice."

This provision emphasises that the objections regarding territorial jurisdiction must be raised at the earliest possible opportunity, and failure to do so will lead to waiver of such objections, unless there is a demonstrated failure of justice. It is also important to note that as per this section, it is not proper on the part of the appellate court to set aside the judgement or order passed by the original court on this technical ground, unless there was a finding that due to assumption of such jurisdiction, the case is likely to end in failure of justice. In *Om Prakash Agarwal v. Vishan Dayal Rajpoot AIR 2018 SC 5486*, the Supreme Court emphasized that the primary objective of Section 21 of the Code of Civil Procedure is to prevent parties from raising objections to territorial jurisdiction only after an unfavorable decision is rendered against them. The Court highlighted that Section 21 embodies a clear legislative policy

aimed at discouraging technical objections that could lead to unnecessary retrials on the basis of merits.

3. When Does Territorial Jurisdiction Matter?

Section 21(1) Code of Civil Procedure sets out clear conditions that must be met for an appellate or revisional court to entertain objections to territorial jurisdiction:

1. Timely Objection: The issue must be raised at the earliest possible opportunity, typically in the court of first instance.
2. Before Framing of Issues: If issues are framed, the objection must surface before this stage.
3. Failure of Justice: The objecting party must demonstrate that proceeding in the court of wrong jurisdiction led to a tangible injustice.

Failing these conditions, the objection risks being deemed waived.

4. Provisions for Appeal under the Income-Tax Act, 1961 and relevancy of Jurisdiction

Section 253 of the Income-tax Act, 1961 governs the provisions related to appeals before the Income-Tax Appellate Tribunal (ITAT). It specifies who can file an appeal, the types of orders that can be appealed against, and the procedural framework for filing such appeals. Appeals to the ITAT can only be filed before the bench having territorial jurisdiction over the matter.

According to Rule 4(1) of the Income-Tax (Appellate Tribunal) Rules, 1963, jurisdiction of the bench is determined not by the place of business or residence of the assessee but by the location of the office of the Assessing Officer (AO). For instance, as per the Notification [(1997) 228 ITR 10 (St)] under rule 4(1) of the Income-tax (Appellate Tribunal) Rules, 1963, dated

16.09.1977, the Mumbai Bench has jurisdiction over Mumbai City, Mumbai Suburban, and Thane Districts, while the Pune Bench covers the rest of Maharashtra, except the districts of Bhandara, Chandrapur, Gadchiroli, Mumbai City, Mumbai Suburban, Nagpur, Thane and Wardha.

The Supreme Court has reinforced the principle that the jurisdiction of the ITAT and the relevant High Court depends on the location of the Assessing Officer who passes the order. In *PCIT v. ABC Papers Ltd.* (2022) 289 Taxman 150/447 ITR 1 (SC), the Court held that the ITAT jurisdiction should be determined based on the location of the Assessing Officer and the same is applicable to the jurisdiction of the High Court while filing appeal against the order of the ITAT. The Court also ruled that even if an assessee's case is transferred under Section 127 of the Income Tax Act, the High Court within whose jurisdiction the AO passed the order retains appellate jurisdiction. The power of transfer under Section 127 pertains exclusively to the jurisdiction of the Income Tax Authorities and does not impact the jurisdiction of the ITAT or the High Court.

This stance was reaffirmed in *PCIT v. MSPL Ltd.* [(2023) 454 ITR 280/294 Taxman 74/332 CTR 606 (SC)], where the Supreme Court upheld the Bombay High Court's decision to quash the ITAT President's order transferring four appeals from the Bangalore Bench to the Mumbai Bench. The transfer order, issued under Rule 4 of the Income Tax Appellate Rules, was found to be legally untenable.

5. Judicial Precedents

1. In **Punjab National Bank v. Atin Arora & Anr., (2020) (SC) [SLP(C) Nos. 15347-15348 of 2020, dt. 03.01.2025 2025 LiveLaw (SC) 27]** , it was held that the High Court erred in setting aside the NCLT order of rejection of application for recall. It mentioned

that the High Court overlooked the provision under Section 21 of CPC, which says that the objections regarding the place of suing shall not be allowed unless they are raised before the court/tribunal of the first instance at the earliest possible opportunity.

2. In **Harshad Chiman Lal Modi v. DLF Universal Ltd and Anr** **MANU/SC/0710/2005 AIR 2005 SC 4446 / (2005) 7 SCC 791**, it was held that so far as territorial and pecuniary jurisdiction are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such an objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage.
3. In **Subhash Mahadevasa Habib v. Nemasa Ambasa Dharmadas (D) by Lrs. and Ors.** **MANU/SC/7247/2007**, the Supreme Court held that the Code of Civil Procedure distinguishes between lack of inherent jurisdiction and objections to territorial or pecuniary jurisdiction. A decree passed by a court lacking inherent jurisdiction is void, whereas one passed by a court lacking territorial jurisdiction is not automatically void but voidable, subject to the conditions of Section 21. Section 21 states that objections regarding the place of suing can only be raised at the earliest opportunity in the trial court and must also demonstrate a failure of justice. Further, Section 21A bars filing suits to challenge a decree's validity based on objections related to the place of suing.
4. In **Kiran Singh and Ors vs Chaman Paswan and Ors.** **MANU/SC/0116/1954 [dt. 14.04.1954] 1954 AIR 340 / 1955 SCR 117 / AIR 1954 SUPREME COURT 340**, it was held that Section

21 of the Civil Procedure Code enacts that no objection to the place of suing should be allowed by an appellate or revisional court, unless there was a consequent failure of justice.

5. In **Hasham Abbas Sayyad v. Usman Abbas Sayyad, (2007) 2 SCC 355**, a two-Judge Bench of the Supreme Court held that, a distinction must be made between a decree passed by a court which has no territorial or pecuniary jurisdiction in the light of Section 21 of the Code of Civil Procedure, and a decree passed by a court having no jurisdiction in regard to the subject-matter of the suit. Whereas in the former case, the appellate court may not interfere with the decree unless prejudice is shown, ordinarily the second category of the cases would be interfered with.
6. In **Sneh Lata Goel v. Pushpalata 2019 (3) SCC 567**, it was held by a two-judge bench of the Supreme Court that the provisions of Section 21(1) contain a clear legislative mandate that an objection of this nature has to be raised at the earliest possible opportunity, before issues are settled. Moreover, no such objection can be allowed to be raised even by an appellate or revisional jurisdiction, unless both sets of conditions are fulfilled.
7. In **Mantoo Sarkar v. Oriental Insurance Co. Ltd and Ors (2009) 2 SCC 244 : (2009) 1 SCC (Civ) 482 : (2009) 1 SCC (Cri) 738**, a two judge bench of the Supreme Court held that, ordinarily an appellate court shall not, having regard to the provisions contained in sub-section (1) of Section 21 of the Code of Civil Procedure, entertain an appeal on the ground of lack of territorial jurisdiction on the part of the court below unless he has been prejudiced thereby.

8. In **Ansal Housing and Construction Ltd v. Ajb Developers (p) Ltd (2012) 130 DJR 383 / MANU/DE/2227/2012 / (2012)ILR 4Delhi418**, the Delhi High Court held that Section 21 of CPC restrains a party from raising the question of jurisdiction before the appellate or the revisional court unless and until it is not raised before the trial court.

6. Conclusion

The principle of territorial jurisdiction plays a crucial role in ensuring that legal proceedings are conducted within the appropriate geographical limits, preventing unnecessary jurisdictional conflicts. In tax litigation, particularly before the ITAT, jurisdiction is determined by the location of the Assessing Officer rather than the assessee's place of business or residence. The Supreme Court has consistently upheld this principle, reinforcing that appellate jurisdiction remains with the High Court under whose territorial authority the AO functions.

Jurisdictional objections must be raised at the earliest possible stage, as failure to do so may result in a waiver of such objections unless a failure of justice is demonstrated. Courts have clarified that a lack of territorial jurisdiction does not automatically render an order void but may make it voidable, subject to procedural compliance.

Judicial precedents reaffirm that jurisdictional challenges should not be used as a mere procedural tool to overturn decisions retrospectively. The legislative framework and case law emphasize that jurisdictional objections must be substantiated and raised in a timely manner. As tax administration becomes more digitized and centralized, clarity on jurisdictional aspects will become increasingly significant to ensure judicial efficiency and procedural fairness.