HC-KAR
NC: 2026:KHC:58416-DB
ITA No. 84 of 2021
CNR: KAHC010042282020

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF OCTOBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE S.G.PANDIT

AND

THE HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA

INCOME TAX APPEAL NO. 84 OF 2021

BETWEEN:

1. PRINCIPAL COMMISSIONER OF
INCOME TAX - 7
BMTC COMPLEX,
KORAMANGALA,
BENGALURU.

2. THE ASSISTANT COMMISSIONER
OF INCOME TAX,
CIRCLE - 5,
KOLKATA.

...APPELLANTS

(BY SRI. E. I. SANMATHI, ADVOCATE)

AND:

M/S UNITED SPIRITS LTD.,
(IN THE MATTER OF SHAW
WALLACE FINANCIAL SERVICES LTD.,)
UB TOWERS NO. 24,
VITTAL MALLYA ROAD,
BANGALORE- 560001.
PAN : AAFCS 4451D.

...RESPONDENT

(BY SRI. MISTRI JEHANGIR, SR.COUNSEL FOR
MISS. TANMAYEE RAJKUMAR, ADVOCATE)

Digitally signed by AASEEFA PARVEEN
Location: HIGH COURT OF KARNATAKA

CNR: KAHC010042282020

THIS ITA / INCOME TAX APPEAL UNDER SEC.260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 28/08/2019 PASSED IN ITA NO. 210/KOL/2008, FOR THE ASSESSMENT YEAR 2004-2005 PRAYING TO DECIDE THE FOREGOING QUESTION OF LAW AND/OR SUCH OTHER QUESTIONS OF LAW AS MAY BE FORMULATED BY THE HON'BLE COURT AS DEEMED FIT AND SET ASIDE THE APPELLATE ORDER DATED 28.08.2019 PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, BENGALURU IN APPEAL PROCEEDINGS NO. ITA NO. 210/KOL/2008 (ANNEXURE-A) FOR ASSESSMENT YEAR 2004-2005, AS SOUGHT FOR IN THIS APPEAL.

THIS APPEAL, COMING ON FOR HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.G.PANDIT
and
HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE S.G.PANDIT)

The above appeal filed under Section 260A of the Income Tax Act, 1961 is directed against the order dated 28.08.2019 in ITA No.210/KOL/2008 for the assessment year 2004-05 by the Income Tax Appellate Tribunal, 'B' Bench, Bangalore.

2. The above appeal was admitted for hearing by order dated 27.01.2022 to examine the following two Substantial Questions of Law:

1. *Whether on the facts and circumstances of the case and in law the Tribunal was justified in setting aside the addition in the hands of the assessee made in respect of sale of shares of RITPL on protective basis by holding the shares of RITPL were acquired by the assessee as a strategic holding to have control of the brewery business carried on by Shaw Wallace Breweries Ltd and thus income from the sale of same was taxable as Long Term Capital Gains as against income from business ignoring that even when the conditions for granting benefit of section 54EC are not satisfied and without appreciating that transaction in question was purely a business transaction considering the intention of assessee in making profit alone?*

2. *Whether on the facts and circumstances of the case and in law the Tribunal was justified in allowing deduction of fee of Rs.6,94,29,123/- paid to M/s. Kinsley & Co., claimed by the assessee as deduction towards professional charges simply relying on the fact that the*

payment was made to M/s. Kinsley & Co., and services were rendered by them while ignoring the findings of the assessing officer as well as the Commissioner of Income Tax (Appeals) that no evidence was furnished by the assessee to show that the services were rendered in connection with the transactions of transfer of shares of RITPL?"

3. Heard learned counsel Sri.Sanmathi.E.I for appellants-Revenue and learned Senior Counsel Sri.Mistri Jehangir for learned counsel Ms.Tanmayee Rajkumar for respondent-Assessee.

4. At the outset, learned Senior Counsel for the respondent-Assessee points out that the appeal before this Court questioning the order of the ITAT dated 28.08.2019 in ITA No.210/KOL/2008 is not maintainable in view of the fact that the assessment order was passed by the Assistant Commissioner of Income Tax, Circle-5, Kolkata. Learned Senior Counsel placing reliance on the decision of the Hon'ble Apex Court in ***PRINCIPAL COMMISSIONER OF***

INCOME-TAX V. ABC PAPERS LTD reported in ***[2022] 141 TAXMANN.COM 332 (SC)*** submits that appeal against the decision of the ITAT would lie before the High Court within the jurisdiction in which the Assessing Officer passed the assessment order. It is submitted that since the assessment order in the instant case is passed by the Assessing Officer at Kolkata, the present appeal would not be maintainable before this Court.

5. However, learned counsel Sri.Sanmathi.E.I. for the appellants would submit that since the appellate order is passed by the ITAT, Bangalore, this Hon'ble Court has jurisdiction. Further, learned counsel would submit that the respondent-Assessee has taken over the company i.e., M/s.Shaw Wallace Financial Services Ltd and the respondent-Assessee Company Registered Office is situated at Bangalore, this Court would get jurisdiction. Thus, he would submit that the above appeal is properly

filed before this Court and prayed for hearing the appeal on merits.

6. On hearing learned counsel for the parties and on perusal of the entire material on record, we are of the opinion that there is substance in the submission of the learned Senior Counsel for respondent-Assessee Company. The above appeal relates to the Assessment Year 2004-2005. As on the date of assessment, the Assessee-company was not taken over by the respondent-M/s.United Spirits Limited. The registered office of the Assessee-company i.e., M/s.Shaw Wallace Financial Services Ltd was at Kolkata. Therefore, the contention of the appellants-Revenue that the registered office of the respondent i.e, M/s.United Spirits Limited is at Bangalore, hence, the appeal would be maintainable at Bangalore in the facts and circumstances, is liable to be rejected.

7. Admittedly, the assessment order in respect of M/s.Shaw Wallace Financial Services Limited is passed by

Assistant Commissioner of Income Tax Circle-5, Kolkata on 27.12.2006. The appellants-Revenue has enclosed a wrong assessment order to the present appeal. The assessment order enclosed to the present appeal relates to the Assesse-Shaw Wallace Breweries Limited.

8. Be that as it may, the Hon'ble Apex Court in ABC Papers Ltd., *supra* was considering the question as to the jurisdiction of the High Court to challenge the decisions of the ITAT where the assessment orders are passed by different jurisdictional Assessing Officers and the Hon'ble Apex Court at paragraphs 33 and 34, has held as follows:

> *"33. In conclusion, we hold that appeals against every decision of the ITAT shall lie only before the High Court within whose jurisdiction the Assessing Officer who passed the assessment order is situated. Even if the case or cases of an assessee are transferred in exercise of power under section 127 of the Act, the High Court within whose jurisdiction the Assessing Officer has passed the order, shall continue to exercise the jurisdiction of appeal. This*

principle is applicable even if the transfer is under section 127 for the same assessment year(s).

34. We will now deal with the decisions of certain High Court which have taken a view that the jurisdiction of the High Court must be based on the location of the ITAT. These judgments are Parke Davis (India) Ltd. (supra), CIT v. A.B.C. India Ltd. [2003] 126 Taxman 18 (Cal.), CIT v. J.L. Marrison (India) Ltd. [2005] 272 ITR 321 (Cal.), CIT v. Akzo Nobel India Ltd. [2014] 47 taxmann.com 332 (Cal.), Pr. CIT v. Sungard Solutions (I) (P.) Ltd. [2019] 105 taxmann.com 67/263 Taxman 277/415 ITR 294 (Bom.) and CIT v. Shree Ganapati Rolling Mills (P.) Ltd. [2013] 39 taxmann.com 12/219 Taxman 36 (Mag.)/356 ITR 586. We have examined these cases in detail and found that the Assessing Officers in each of these cases were in fact not located within the territorial jurisdiction of these High Courts. For this reason, the aforesaid decisions are correct to the extent of these High Courts not exercising jurisdiction. However, while returning the files to be represented in the appropriate court, certain observations were made stating that the appeals could be filed in the High Court which exercises territorial jurisdiction over the concerned ITAT. These observations are only obiter. In any event they did

not preclude the party from filing the appeal before the appropriate High Court where the Assessing Officers exercised jurisdiction. However, we are reiterating for clarity and certainty that the jurisdiction of a High Court is not dependent on the location of the ITAT, as sometimes a Bench of the ITAT exercises jurisdiction over plurality of states."

9. The above decision of the Hon'ble Apex Court makes it abundantly clear that the jurisdiction to challenge the decision of the ITAT shall be decided based on the assessment order. To file an appeal before the High Court under Section 260A of the Act, assessment order would become relevant and not the decision of the ITAT. Since the assessment order in the present case is passed by the Assistant Commissioner of Income Tax Circle-5, Kolkata in terms of the above decision, the present appeal would not be maintainable before this Court. However, learned counsel Sri.Sanmathi.E.I tried to submit that based on the location of the ITAT, the jurisdiction to file an appeal before the High Court shall be decided. The said

contention is also answered by the Hon'ble Apex Court in the above decision at paragraph 34.

10. Thus, we are of the considered opinion that the above appeal would not be maintainable before this Court. Accordingly, the appeal stands ***dismissed*** with liberty to file an appeal before the Jurisdictional High Court, in accordance with law.

Sd/-
(S.G.PANDIT)
JUDGE

Sd/-
(DR.CHILLAKUR SUMALATHA)
JUDGE

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