

(1999) 06 AP CK 0015

Andhra Pradesh High Court

Case No: Tax Case No. 93 of 1998, 8 June 1999

COMMISSIONER OF INCOME TAX

APPELLANT

Vs

PARKE DAVIS (INDIA) LTD.

RESPONDENT

Date of Decision: June 8, 1999

Acts Referred:

- Income Tax Act, 1961 - Section 121, 123, 124, 125, 127

Citation: (1999) 106 TAXMAN 16

Hon'ble Judges: P. Venkatarama Reddi, J; A. Hanumanthu, J

Bench: Full Bench

Judgement

Venkatarama Reddi, J.

This is an application filed by the Commissioner under section 256(2) of the Income Tax Act, 1961 seeking reference of certain questions of law for the opinion of this Court.

2. As we are of the view that the High Court of Andhra Pradesh has no jurisdiction to entertain this petition, we are not expressing any view on the merits, any of the questions are questions of law to be referred for the opinion of the High Court.

3. The appeals before the Tribunal, Mumbai, "E" Bench (it is not clear whether it is "E" bench or "B" bench) arose out of the assessment made for the year 1983-84 u/s 143(3) by the IAC, Assessment Range - V (A), Bombay. The reference application was dismissed by Mumbai "D" Bench by an order dated 18-3-1997 communicated to the respondent on 15-7-1997.

The application u/s 256(2), in our view, should have been filed in the High Court of Bombay and this Court has no territorial jurisdiction to entertain and decide the application. The words "the High Court" occurring in section 256 have obviously reference to the High Court within whose jurisdiction the appellate Tribunal which declined to state the case is located. It is not open to the petitioner to choose any

other High Court for filing the application u/s 256(2).

4. The apparent reason for filing the application in the Andhra Pradesh High Court, though not disclosed in the petition as such, seems to be that subsequent to the disposal of the appeal, the assessment files of the respondent-company were transferred to Hyderabad and, therefore, all the proceedings, in whatever form they are pertaining to the assessments, past or present, should be dealt with by the authorities or courts having jurisdiction over Hyderabad. The learned standing counsel for the department sought to justify the action of the petitioner in filing the reference application in the Andhra Pradesh High Court on the basis of the Explanation to section 127 of the Act. Section 127(1) deals with the power of the Director General/Chief Commissioner/ Commissioner to transfer the case from one Assessing Officer to another at any stage of" the proceedings. The Explanation amplifies the meaning of the word "case" and it reads as follows :

"Explanation.-In this section and in sections 121, 123, 124 and 125, the word "case", in relation to any person whose name is specified in any order or direction issued thereunder, means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year."

5. We are unable to appreciate how section 127 together with its Explanation could be resorted to be transfer the proceedings from one Tribunal to another and to invest the jurisdiction in the High Court which it does not otherwise possess. The whole purport and purpose of section 127 is to transfer the proceedings from one Assessing Officer to another. The Explanation should be understood in relation to the main provision which stipulates the transfer of case from one or more Assessing Officers to any other Assessing Officer or Officers. The words "All proceedings under the Act in respect of any year" occurring in the Explanation cannot be understood in vacuum and cannot be stretched to cover reference applications already filed or decided by the date of transfer u/s 127. The reference application having been rejected by the Mumbai Bench of the Tribunal, the application u/s 256(2) sought to have been filed before the High Court of Bombay only. The interpretation sought to be placed on the Explanation to section 127 leads to incongruous results quite contrary to the scheme of the Act and has the effect of investing the prescribed authorities with the power to virtually interfere with the territorial jurisdiction of the concerned High Court. Hence, we are of the view that this ITO u/s 256(2) is not maintainable, as this Court has no jurisdiction. Hence, the ITO is dismissed.