(2004) 10 CAL CK 0007

Calcutta High Court

Case No: Writ Petition No. 767 of 1997 and G.A. No. 1852 of 2003

India Glycols Ltd. and Another		APPELLANT
	Vs	
Commissioner of Income Tax and Others		RESPONDENT

Date of Decision: Oct. 7, 2004

Acts Referred:

- Constitution of India, 1950 - Article 226
- Income Tax Act, 1961 - Section 124, 142(1)

Citation: (2005) 196 CTR 191 : (2004) 2 ILR (Cal) 417 : (2005) 274 ITR 137

Hon'ble Judges: Kalyan Jyoti Sengupta, J

Bench: Single Bench

Advocate: Poddar, for the Appellant; Som and Chakaraborty, for the Respondent

Final Decision: Allowed

Judgement

Kalyan Jyoti Sengupta, J.
In spite of the direction no affidavit-in-opposition has been filed in this matter. Pursuant to the earlier order supplementary affidavit has been filed.

2. This petition is directed against an order dated April 25,1994, passed by respondent No. 3, namely, the Commissioner, Moradabad, and the Order dated April 30, 1996, passed by the Deputy Commissioner of Income Tax, Moradabad. The petitioners have also challenged various notices dated October 30, 1996 and March 12,1997, issued by the Deputy Commissioner of Income Tax (Assessment), Special Range, Moradabad. The short facts of the case are narrated hereunder :

3. The first petitioner is having its principal place of business at Calcutta, as such since day one it has been filing returns in Calcutta and is being assessed by respondent No. 2. Petitioner No. 1 has a factory and registered office at Moradabad. On or about September 13, 1993, respondent No. 4 issued notices to petitioner No. 1 for filing returns in Moradabad as it is having its registered place of business

thereat. Despite repeated representation made by petitioner No. 1 for withdrawal of this notice the said respondent went on insisting to file returns there. Challenging the aforesaid action petitioner No. 1 filed a writ petition in the Allahabad High Court at its Lucknow Bench and this court passed an order directing the Commissioner of Lucknow to decide the question of jurisdiction as regards filing of returns. Respondent No. 3 in terms of the order of the High Court passed the aforesaid first mentioned impugned order dated April 25, 1994, and held that the Assessing Officer, Moradabad, had got jurisdiction as petitioner No. 1 is having registered office thereat. So petitioner No. 1 should have filed and in future would file returns with appropriate official, respondent No. 4. In spite of the decision no follow up action was taken by any of the officials at Moradabad, the matter was kept pending for two years. Meanwhile, petitioner No. 1 also prayed for recalling of the aforesaid order on the ground that petitioner No. 1 is having its principal place of business and/or controlling office at Calcutta and further all the time returns were being filed at Calcutta and the same were being assessed. So, under the provisions of Section 124 of the Income Tax Act, 1961, the Assessing Officer concerned at Calcutta had and still has jurisdiction. This application for recalling was not disposed of specifically. On the contrary, by the subsequent notice petitioner No. 1 was asked to file returns at Moradabad on the strength of the earlier order of the Commissioner dated April 25, 1994, followed by the second impugned Order dated October 30, 1996.

4. Mr. Poddar, learned senior counsel, appearing in support of the writ petition, contends on the question of jurisdiction that this court can entertain this writ petition as part of the cause of action has arisen within the territorial limit of this court though two impugned Orders were passed and further the impugned notices were issued at and from the place situated outside the territorial limit of this court in its writ jurisdiction. He contends while explaining the jurisdiction fact that petitioner No. 1 has got a statutory right to file returns in Calcutta as it is having its principal place of business here. His client cannot be compelled to file returns at a different place in breach of the statutory provisions. By the impugned orders and notices petitioner No. 1 is sought to be compelled to do exactly, and thereby its statutory right has been affected and such affection has been felt at Calcutta as the petitioner subsequently has filed returns in Calcutta. During the relevant period when the impugned orders were passed, and pendency of this writ petition respondent No. 2 has asked petitioner No. 1 to file returns in Calcutta. In support of his submission he has relied on a decision of a Division Bench of this court dated May 13, 1993, reported in Everest Coal Company v. Coal Controller [1987] 90 CWN 438 and also an unreported decision of the single Bench of this court, rendered in Matter No. 634 of 1993 (Rani Hi-Tech Ltd. v. CIT).

5. He contends on the merits that the two impugned orders are palpably bad in law, firstly because the Commissioner at Lucknow (respondent No. 3) has not decided the core issue particularly legal implication of filing returns at Calcutta. He has also

not adverted his mind to the factual question whether the principal place of business of petitioner No. 1 at Calcutta can be treated to be a place of business within the meaning of Section 124 of the aforesaid Act or not. He contends that he has misunderstood the law treating the registered office as being principal place of business as mentioned in Section 124 of the Act. He submits further that it has been settled authoritatively by the courts in this country that the principal place of business as mentioned and defined in section 124 of the said Act and Under the corresponding provisions of the old Act is the place wherefrom the direction and controlling orders are issued, in other words, it is the principal seat of the corporate body. The registered office is not necessarily the controlling office or principal seat. In Order to decide the principal place of business for the purpose of Section 124 one has to judge and decide which is the place having controlling power and/or seat of the corporate body. These points have not been decided at all. According to him, since day one the returns have been filed with respondent No. 2 at Calcutta as the principal place of business was and still is at Calcutta. Petitioner No. 1 cannot legitimately be asked to file returns at Moradabad. On this ground this writ petition should be allowed and the Order should be set aside.

6. Mr. Som, learned senior counsel appearing with Mr. Chakraborty, learned counsel on behalf of the respondents, contends on the question of jurisdiction that this court has no territorial jurisdiction in view of the fact that the impugned orders were passed by the Lucknow Commissioner whose office is situate outside the territorial limit of this court. Similarly, the impugned notices were issued by the officer whose place of office is located, admittedly, beyond the territorial limit of this court in its writ jurisdiction. He contends that no cause of action either partly or wholly has arisen or could arise within the territorial limit of this court as the Orders impugned were passed at Lucknow. At least there is no pleading that any part of the cause of action has arisen within the territorial limit of this court. He submits that the allegations to the effect that the petitioners are prejudiced and have suffered loss at Calcutta, or they will be deprived of the filing of the return at Calcutta by themselves do not constitute any portion of the cause of action. He has reminded me of the meaning of the words, cause of action as has been accepted by several judicial pronouncements saying that the facts and the bundle of facts, which are essential if traversed to prove and to get reliefs.

7. In this case, the petitioners have only to plead the factum of passing of the impugned orders and issuance of the impugned notices for disclosing cause of action. In support of his submission he has relied on the decisions reported in State of Rajasthan and Others Vs. Swaika Properties and Another, ; Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, ; Abdul Kafi Khan Vs. Union of India (UOI) and Others, and AIR 2000 SC 126 (?)

8. He has drawn my attention to the meaning of the word ""integral" in Black''s Law Dictionary, 6th edition at page 808. If the fact as has been pleaded, is analysed it will

appear that no portion of the averment can be said to be an integral portion of the cause of action. The records, which led to the passing of the impugned orders and issuance of the notice, are also lying at Lucknow. Significantly, the petitioners filed the previous writ petition challenging the previous Orders in relation to different assessment years in the Allahabad High Court at Lucknow and pursuant to the order passed by the Allahabad High Court (Lucknow Bench) the first impugned Order has been passed and the second impugned order was also passed subsequently, and the impugned notice. This fact amply demonstrates that the petitioners are forum shopping and they should not be allowed to do so.

9. On the merits he contends that the impugned order has been passed in lawful exercise of jurisdiction as vested with the Commissioner to decide the question of jurisdiction. He rightly or wrongly has come to the conclusion that petitioner No. 1 is having its principal place of business, as spelt in section 124(1) at Moradabad, within the jurisdiction of respondent No. 4. This factual finding should not be upset by this court, as it is not justiciable ordinarily. So, petitioner No. 1 has no option but to furnish returns with him. It is an admitted fact that the petitioner is having its registered office at Moradabad. So, the presumption is always that the registered office is the principal place of business. Mere filing of the returns successively before filing the writ petition or during the pendency of the writ petition on the strength of the interim order of the court does not ipso facto confer a right upon petitioner No. 1 to file returns in Calcutta if it is not permissible under the law in view of the findings of the Commissioner of Income Tax. The Commissioner at Calcutta should be directed to send the file to Moradabad.

10. Under these circumstances, the writ petition should be dismissed and the Commissioner at Calcutta should be directed to take action in accordance with law.

11. After having heard learned counsel and considered the materials placed in the writ petition, I think though no affidavit-in-opposition has been filed, the question of jurisdiction has to be decided first, before addressing other issues. Mr. Som, learned senior counsel for the Revenue, contends that this court has no territorial jurisdiction. Admittedly, in this case the impugned two orders dated April 25, 1994 and October 30, 1996 and the notices dated October 30, 1996 then March 12, 1997 u/s 142(1) of the Income Tax Act, 1961 (hereinafter referred to as "the said Act"), were passed and issued at Lucknow and Moradabad, respectively, in the State of Uttar Pradesh. The two impugned Orders were passed by respondents Nos. 3 and 4 whose office is located at the aforesaid place outside the territorial limit of this hon''ble court in its writ jurisdiction. However, copies of the aforesaid two orders were communicated to their counterpart of the Calcutta office.

12. Mr. Poddar has submitted, so also there is averment in the writ petition that the first petitioner''s legal obligation is to file returns with the appropriate Assessing Officer at Calcutta, u/s 124 of the said Act, since the principal place of business is situate at Calcutta notwithstanding having its registered office at Moradabad and

also having factory and other branch offices at various places all over India. For deciding the question of jurisdiction I think it has to be decided whether the principal place of business of writ petitioner No. 1 at the time of filing of the writ petition or at the time of passing of the two impugned orders, as required u/s 124 of the Act is situated in Calcutta within the territorial limit of this hon''ble court in its writ jurisdiction.

13. Mr. Som has drawn my attention to the findings of respondent No. 3, to the effect that the principal place of business is situated at Moradabad, being the place of the registered office. The decision of the said authority is for the time being, a decisive factor in relation to the question of jurisdiction. The plea of jurisdiction is to be decided by the writ court at this stage in the context of the statements, averment and pleadings in the writ petition. It is true the core issue in this case on the merits is whether the principal place of business of the writ petitioner within the meaning of section 124 of the said Act is situate at Moradabad or at Calcutta. Whether the decision of respondent No. 3 in this context is correct or not, will be decided a little later and this has to be examined as to whether such decision was correct on the face of the materials and the statement and averment made by the writ petitioner in their written objection.

14. In the writ petition, in paragraph 3 the petitioner has stated, "it has been filing its Income Tax return in Calcutta", where its principal place of business, viz., its corporate office is situated. It has also been averred that the permanent account number (PAN) of petitioner No. 1 under the said Act as been allotted by respondents Nos. 1 and 2 in Calcutta. This statement and averments have not been denied and disputed by any of the respondents. It is further submitted by Mr. Poddar that till today his client, writ petitioner No. 1, has been filing returns and the appropriate Assessing Officer has been assessing the same. Of course, during the pendency of the writ petition, he contends, pursuant to the interim order passed in this petition, returns are being filed regularly. It is the settled position of law to decide the question of jurisdiction in a writ matter, the court is to look into amongst others the place of business of the respondent against whom the relief is sought for and the records relating to the case situate within the territorial limit of the particular court, and the cause of action either partly or wholly shall have arisen within the territorial limit of the court. This will be clear from a careful reading of article 226, Clause (2) of the Constitution of India.

"226. (2) The power conferred by Clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."

15. The language of Clause (2) of the aforesaid article makes it clear that irrespective of the place of office of the respondent against whom the relief is sought for, if part of the cause of action either wholly or partly arises within the territorial limit of any High Court, exercising jurisdiction under article 226 of the Constitution of India, that court can exercise power.

16. It is the settled position of law that the phraseology "cause of action" is that the facts or the bundle of facts if traversed by the adversary, the petitioner, is to prove for getting the relief claimed. Therefore, the fact or the bundle of facts constituting cause of action, which are required to be proved for getting relief, depends upon each and every individual fact of a case. One set of facts may be essentially an integral part of the cause of action in one case but the same may not be in another case.

17. In the decision cited by Mr. Som, reported in State of Rajasthan and Others Vs. Swaika Properties and Another, , the Supreme Court held on the facts stated therein that the petitioner challenged the acquisition proceedings of land situated in the State of Rajasthan, in the Calcutta High Court. In Calcutta, the petitioner received the notice of acquisition. In this context the Supreme Court held that the receipt of notice of the acquisition proceedings by the petitioner at Calcutta did not constitute an integral part of the cause of action. The petitioner was required to prove in the writ petition that the land belonged to the petitioner and this right of holding of land was wrongfully and illegally being taken away and the petitioner was going to lose the land. This was sought to be done in the State of Rajasthan. So, none of the aforesaid bundle of facts, which gave rise to cause of action, occurred within the territorial limit of the Calcutta High Court.

18. In the decision of the Supreme Court cited by Mr. Som reported in Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, , it has been held on the facts that the petitioner''s reading of the advertisement for submitting tenders in relation to a contract in Calcutta did not constitute cause of action, naturally, the Calcutta High Court had no jurisdiction. Reading a tender notice in relation to the action of inviting tenders for entering into a contract could not be an integral part of the cause of action. Because proof of the factum of reading of the tender notice is not at all relevant for decision of the court for granting relief to the petitioner.

19. In the decision of the Supreme Court reported in AIR 2000 SC 126 cited by Mr. Som on the factual issue it was held that no integral part of the cause of action did arise within the territorial limit of the High Court concerned. The Calcutta decision cited by Mr. Som reported in Abdul Kafi Khan Vs. Union of India (UOI) and Others, , does not help in this case, fact contributing cause of action therein is entirely different from that of this case. Besides what set of facts will constitute cause of action depends upon each and every individual case. The guidelines for deciding question of jurisdiction do not stand in a straightjacket formula.

20. Mr. Som has rightly stated that the meaning of the word "integral" as it is mentioned in Black''s Law Dictionary at page 808, VI Edition, that "essential part of the facts, which constitute cause of action for getting relief", is apposite.

21. As I have already observed that each set or bundle of facts will be an integral part of the cause of action, will depend upon each and every individual facts of a particular case, in this case as I understand from the averment and statement made in the writ petition that an essential part of the fact constituting cause of action is whether petitioner No. 1 has been able to establish that the two impugned orders were passed and the two impugned notices were issued and what is the effect of such two impugned orders and two impugned notices, how the first petitioner''s right is affected.

22. It is stated in the petition that the cause of action has also arisen partly as the principal place of business of the petitioner situate within the territorial limit of this court. Ordinarily the place of business of the petitioner in the writ petition or plaintiff in a suit is not the relevant factor as regards accrual of the cause of action unless, of course, an integral part of the essential facts giving rise to the cause of action has taken place. In the case of Everest Coal Co. v. Coal Controller reported in [1987] 90 CWN 438, the Division Bench while discussing the issue relating to cause of action in paragraph 5 has observed amongst others as follows :

"... the Supreme Court in the case of State of Rajasthan and Others Vs. Swaika Properties and Another, , has pointed out that mere service of notice would not give rise to cause of action unless service of notice was integral part of the cause of action, in other words, service of such notice must give occasion for filing writ petition. For the purpose of accrual of cause of action for filing a writ petition, it is also necessary to make a distinction between actual or apprehended injury to the writ petitioner and indirect effect or remote consequences upon him. Obviously, for giving rise to cause of action for filing a writ petition what is material is whether or not within the territorial limits of the said High Court, there has been any proximate or direct effect upon the petitioner. Indirect or remote result of the impugned cause of the respondents cannot be pleaded for establishing that cause of action, either wholly or in part, had arisen within the territorial limits of a particular High Court."

23. Again in paragraph 10 of the same judgment their Lordships of the Division Bench after considering and discussing the judgment rendered in the case of Union of India (UOI) and Others Vs. Hindustan Aluminium Corporation Limited and Another, , has been pleased to observe "... The correct test would be to find out whether by reason of the making of the two impugned orders by the Bihar Government whether or not the appellant has or is likely to suffer any loss or injury within the territorial limits of this court."

24. I respectfully adopt and follow the aforesaid observation of the Division Bench of the Calcutta High Court and while analysing this case I find that the two impugned

orders as well as the notices issued by respondents Nos. 3 and 4 will certainly cause suffering, loss or injury to the petitioner. It is not an indirect or remote effect upon the petitioner by the aforesaid two impugned orders and the notices. It is absolutely a direct or proximate effect upon the petitioner by reason of the fact that the petitioner will be deprived of all its advantage of filing its returns u/s 124 of the said Act in Calcutta. Since the beginning such return is being filed by the petitioner under the aforesaid provision. It is stated in the petition that the petitioners will suffer actually such loss and prejudice and will continue to suffer in future. I am of the opinion that u/s 124 of the said Act an assessee cannot be compelled to file its return with the Assessing Officer, within whose jurisdiction the assessee does not have its principal place of business, meaning thereby an inappropriate Assessing Officer cannot ask the petitioner to submit returns and this statutory protection is being enjoyed by the assessee under the aforesaid section. Such protection of the petitioners will be taken away by the impugned two orders as well as notices. Moreover, the petitioners have already submitted the returns for the assessment years for which the impugned notice has been issued and the orders have been passed. The petitioner-company therefore, in effect, would be compelled to file fresh returns and to be assessed once again and it may so happen that because of late filing of returns the petitioner might be subjected to penalty and also payment of interest. In the premises I am of the view that the petitioner has been able to establish that part of the cause of action having arisen within the territorial jurisdiction of this court in relation to this proceeding.

25. The fact of filing of the previous writ petition in the Allahabad High Court (Lucknow Bench) has no nexus with the cause of action in the present writ petition. This writ petition could have been filed in the High Court within whose jurisdiction the Income Tax Commissioner, Lucknow, and the Assessing Officer, Moradabad, was situated. The previous writ petition was filed impugning the notice issued at and from the Moradabad office and received by the petitioner at Moradabad and by the said notices petitioner No. 1 had no occasion at that point of time to suffer any loss or injury or prejudice. The mere fact of issuance of notices and receipt thereof by themselves could not constitute integral part of the cause of action, unless they do have direct or proximate effect upon the petitioner''s advantage of filing returns at Calcutta.

26. It appears in an unreported decision of this court dated May 30, in Matter No. 634 of 1993 (Ravi Hi-Tech Ltd. v. CIT) the learned single judge of this court while passing the restraint order decided the question of jurisdiction in a case of this nature. It has been held since the petitioner/assessee in that case has already been assessed to tax in Calcutta so part of the cause of action has certainly arisen in Calcutta, so this court had jurisdiction.

27. While deciding the merits of the case I find pursuant to the judgment and order of the Allahabad High Court the then Commissioner of Income tax, Lucknow, on

April 25, 1994, has found that because the registered office of the company is situated within the jurisdiction of the Deputy Commissioner of Income Tax, Special Range, Moradabad, the petitioner is deemed to have the principal place of business of the company within the jurisdiction of the aforesaid officer. This finding in my view is not legally tenable by reason of the fact that the petitioner in its objection specifically stated that though petitioner No. 1 does have its registered office at Moradabad and also has various branch offices at various places, its principal place of business and/or corporate office is located at Calcutta. This fact has not been dealt with and/or adverted to by the Commissioner. Perhaps, he has equated registered office with the principal place of business. Principal place of business of the company is termed and/or treated as the place wherefrom all control over the business activities is exercised. In other words, the centre of power of the corporate body is located. This principal place of business may or may not be a registered place of business. In a very old decision of the Allahabad High Court in the case of Dina Nath Hemraj of Cawnpore v. CIT reported in [1927] 2 ITC 304, the aforesaid position as regards principal place of business has been stated. In another decision of the Andhra Pradesh High Court reported in DEVI DAYAL MARWAH Vs. COMMISSIONER OF Income Tax, ANDHRA PRADESH, AND OTHERS., the corresponding provision of the old Income Tax Act, namely Section 64 (1 and 2) the court has been pleased to observe the principal place of business related to the controlling place.

28. In this case the petitioners have stated in the writ petition specifically that the principal place of business is located at Calcutta and as such respondent No. 2 having been satisfied as to the fact of location of the petitioner''s principal place of business at Calcutta, has assessed. I am unable to find lawful reason how such a decision could be rendered nugatory by the counterpart at Lucknow or for that matter at Moradabad.

29. From the material placed in the writ petition and uncontroverted averments made therein I hold writ petitioner No. 1 has its principal place of business within the meaning of Section 124 of the said Act.

20. Accordingly two orders are set aside. Naturally the impugned notices which are sequel to the aforesaid two impugned orders are also set aside.

31. Thus the writ petition is allowed. However, without any order as to costs. Interim order already passed stands confirmed.