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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ C.A.(COMM.IPD-PAT) 30/2023

FILO EDTECH INC ..... Appellant

Through: Mr. Vivek Ranjan Tiwary, Ms. Radhika Pareva and Mr. Asavari Mathur, Advs.

versus

UNION OF INDIA & ANR. ..... Respondents

Through: Mr. Harish Vaidyanathan Shankar, CGSC with Mr. Srish Kumar Mishra, Mr. Alexander Mathai Paikaday and Mr. Krishnan V, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

% 21.11.2023

1. This appeal, under Section 117A (2)[1] of the Patents Act, 1917, assails order dated 24 March 2023 passed by the Assistant Controller of Patents and Designs, rejecting Application No. 202221006191 dated 4 February 2022 filed by the appellant for grant of a patent for an invention titled "CONNECTING A TUTOR WITH A STUDENT".

[1] **117-A. Appeals to High Court**. –
(1) Save as otherwise expressly provided in sub-section (2), no appeal shall lie from any decision, order or direction made or issued under this Act by the Central Government, or from any act or order of the Controller for the purpose of giving effect to any such decision, order or direction.
(2) An appeal shall lie to the High Court from any decision, order or direction of the Controller or Central Government under Section 15, Section 16, Section 17, Section 18, Section 19, Section 20, sub-section (4) of Section 25, Section 28, Section 51, Section 54, Section 57, Section 60, Section 61, Section 63, Section 66, sub-section (3) of Section 69, Section 78, sub-sections (1) to (5) of Section 84, Section 85, Section 88, Section 91, Section 92 and Section 94.

2. Mr. Harish Vaidyanathan Shankar, learned Senior Standing Counsel for the respondent advanced a preliminary objection to the maintainability of the present appeal before this Court. He submits that the appeal would lie before the High Court of Bombay. He bases this submission, *inter alia,* on the judgment of a Coordinate Bench of this Court in ***Dr. Reddys Laboratories v. Controller of Patents***[2]**.**

3. If the objection is justified, the appeal must be dismissed, as this Court would be *coram non judice*. I have, therefore, heard Mr Vivek Ranjan Tiwary, learned Counsel for the appellant, and Mr. Vaidyanathan, learned CGSC, at length on this aspect.

Facts

4. Before adverting to the decision in ***Dr. Reddys Laboratories,*** a brief reference to the facts in the present case, insofar as they are relevant to deal with the preliminary objection of Mr. Vaidyanathan, would be apposite.

5. Application No. 202221006191, as noted above, was filed by the appellant before the Mumbai Patent Office on 4 February 2022. Apparently in accordance with Office Order No. 15 of 2016 dated 7 March 2016 and Office Order No. 34 of 2016 dated 3 June 2016 issued by the Controller General of Patents and Designs and Trademarks, the application of the appellant was auto-allotted to the

[2] **295 (2022) DLT 591**

Assistant Controller of Patents posted in the New Delhi Patent Office for examination and adjudication. The Assistant Controller, to whom the application was allotted happened to be one Mr. Praveen Kumar.

6. Consequent on examination, First Examination Report (FER) dated 21 March 2022 was issued to the appellant, under the signature of Mr. Praveen Kumar but on the letter head of the Mumbai Patent Office. Annexed to the said letter were the objections raised by the Assistant Controller to the appellant's application.

7. The appellant submitted its reply to the FER under cover of letter dated 30 May 2022, which was also addressed to the Mumbai Patent Office.

8. Thereafter, Mr. Praveen Kumar issued a notice dated 26 July 2022, on the letter head of the Delhi Patent Office, fixing hearing of the appellant's application on 26 August 2022 at 11 am through video conferencing.

9. The appellant submitted written submissions dated 1 September 2022, which were also addressed to the Mumbai Patent Office.

10. Personal hearing was granted to the appellant by Mr. Praveen Kumar through video conferencing on 26 August 2022, whereafter he, in his capacity as the Assistant Controller to whom the file had been auto - allotted, proceeded to pass the impugned order on 24 March 2023. Unfortunately, the impugned order does not reflect the place

from which it is issued, and has not been issued on any letter head, unlike the FER or the hearing notice.

11. It is against the said order that the appellant has preferred the present appeal before this Court under Section 117A of the Patents Act.

Rival Submissions

12. As already noted, Mr. Vaidyanathan contends on the basis of the Coordinate Bench of this Court in ***Dr. Reddys Laboratories,*** that the present appeal would lie, not before this Court, but before the High Court of Bombay.

13. Mr. Tiwary, learned Counsel for the appellant, valiantly tried to convince this Court that the point of view expressed in ***Dr. Reddys Laboratories***, at the very least, required a reconsideration, and I must confess that I was also inclined to examine the matter in some depth, for which purpose I heard extensive arguments advanced by Mr. Vaidyanathan and Mr. Tiwary.

14. Mr. Tiwary's submission is that the judgment in ***Dr. Reddys Laboratories*** does not examine, with the requisite depth, the position which flows, in the matter of the jurisdictional High Court which could entertain an appeal under Section 117A of the Patents Act, especially when juxtaposed with Section 2(1)(i)[3] of the Patents Act

[3] (i) "High Court", in relation to a State or Union territory, means the High Court having territorial jurisdiction in that State or Union territory, as the case may be;

which defines "High Court". His submission is that, if one were to substitute, for the words "High Court" in Section 117A (2), the words "the High Court having territorial jurisdiction in that State or Union Territory", by borrowing the said words from Section 2(1)(i), the position that would emerge would be that the High Court which could justifiably exercise dominion over the appeal would be the High Court within whose jurisdiction the Controller has passed the impugned order. He submits that Section 117A (2) clearly envisages the passing of the order by the Controller as the proximate cause of action for filing the appeal. Seen in that light, Mr. Tiwary's submission is that the State or Union Territory, which would determine the situs of the High Court as per section 2(1)(i) has to be the State or Union Territory within which the Controller who has passed the impugned order is located.

15. [I may, at this point, note an incidental fact to which Mr. Vaidyanathan drew my attention. He submitted that Mr. Praveen Kumar who has passed the impugned order was, in fact, transferred to the Kolkata Patent Office as Assistant Controller *vide* Office order dated 20 May 2022. He has also provided the Court a copy of the said Office order. I do not intend venture into that thicket as, after 20 May 2022, Mr. Praveen Kumar has, in fact, issued the notice of hearing on 26 July 2022 on the letter head of the Delhi Patent Office. As such, I proceed on the presumption that, despite his transfer, Mr. Praveen Kumar was authorised to continue with the present proceedings.]

16. In conjunction with the above submission, Mr. Tiwary's

contention is that the reliance, by the learned Coordinate Bench, on Rule 4 of the Patent Rules, to determine the situs of the High Court which can be approached in appeal under Section 117A is inappropriate. He submits that, where the situs of the High Court is apparent from the provisions in the Act, there is no question of resorting to the Rules in that regard. According to Mr. Tiwary, as it is clear, on a conjoint reading of Section 2(1)(i) and Section 117A (2) of the Patents Act, that the appeal would lie before the High Court having territorial jurisdiction over the Controller who passed the order under challenge, there was no justification for the learned Coordinate Bench to place reliance on Rule 4 of the Patent Rules. In the same context, Mr. Tiwary submits that the Patents Act does not empower framing of Rules fixing the jurisdiction of the High Court which can entertain an appeal under Section 117A (2). In this context, Mr. Tiwary has also taken me to Section 159 of the Patents Act whereunder the Central Government has been empowered to frame rules to effectuate the provision of the Patents Act.

17. In this context, Mr. Tiwary has placed reliance on para 37 of the judgment of the Supreme Court in ***Kerala Samsthana Chethu Thozhilali Union v. State of Kerala***[4]**.**

18. Mr. Tiwary also placed considerable reliance on the judgment of the Supreme Court in ***Principal Commissioner of Income Tax-I, Chandigarh v. ABC Papers Ltd***[5], specifically drawing attention to

[4] **2006 4 SCC 327**
[5] **2022 9 SCC 1**

paras 21 and 40 of the said decision. Inasmuch as the Coordinate Bench has, in ***Dr. Reddys Laboratories***, not taken into consideration the decision in ***ABC Papers***, Mr. Tiwary submits that the decision of the Coordinate Bench in ***Dr. Reddys Laboratories*** ought not to be treated as laying down the correct law on the subject.

19. Mr. Tiwary submits that, apart from the physical fact of filing of Application No. 202221006191, nothing else took place at the Mumbai Patent Office. The application was examined at Delhi, the FER was issued at Delhi, the notice of hearing was issued at Delhi, the hearing took place at Delhi and the impugned order also came to be passed by Mr. Praveen Kumar in his capacity as Assistant Controller of Patents, Delhi. In such circumstances, Mr. Tiwary submits that the relegation of the appellant to the Bombay High Court, in respect to the present appeal, would be completely unjustified.

20. Mr. Vaidyanathan, on the other hand, submits that the position of law as enunciated in ***Dr. Reddys Laboratories*** is unexceptionable. He submits that the exercise of allotment of a patent application to a particular Assistant Controller for examination and adjudication cannot determine the situs of the High Court before which the appeal under Section 117A of the Patents Act would lie. He submits that the Patent Office had, in fact, devised a system, whereby, in order to expedite decisions on patent applications, an application, once filed, was auto-allotted by the system, without any human intervention, to an Assistant Controller who had the time to decide the application, irrespective of the geographical location in which he was situated. He

has drawn my attention, in this context, to Office Order No. 15 of 2016, particularly to the opening paragraphs as well as Clauses 1, 2, 3 and 7 thereof, which read thus:

"OFFICE ORDER NO. 15 OF 2016

On successful completion of pilot project for electronic transfer of patent applications within four jurisdictions of patent offices and recently implemented scheme of Uniform Patent Application / Request for examination Number Generation, it has been decided to develop an advanced system for auto-allotment of patent applications, without any human intervention, in order to streamline disposal of RQs uniformly in the four examination groups across all the four Patent Office locations.

Accordingly, all new patent applications shall be allotted automatically to examiners/Controllers through electronic module w.e.f. 01/04/2016. The following directions are hereby issued in this regard:

1. Committee:

A committee of following officers is hereby constituted to ensure smooth implementation and management of various activities of auto-allocation of patent applications:

1. Shri B P Singh, DC PO Delhi
2. Shri N.K. Mohanty, DC PO Mumbai
3. Shri Kamal Singh Goondli, DC PO Delhi
4. Shri Sameer Swarup, DC, PO Delhi
5. Dr. Sudeep J. Sahu, DC, PO Kolkata
6. Shri S Thangapadian, DC, PO Chennai
7. Shri Vikash Kumar, AC, PO Delhi
8. Dr. Prithipal Singh, AC, PO Delhi

The committee shall be responsible for preparation and implementation of module for auto-allotment incorporating IPC mapping of all examiners and Controllers. The module shall have inherent capability for assessing the available work load of examiners and Controllers and subsequently allotting the applications to them as per possible IPC availability of examiners and Controllers. While doing so, all RQs of a respective Examination Group across all IPO Locations shall be pooled together. Thus, there shall be only four such pools as per the

existing four groups combining all IPO locations. The committee shall ensure that the system of the auto-allotment is ready for trial run by 21/03/2016.

2. File verification by RECS at Pre-allotment Stage

The RECS shall verify electronic records with physical files or, in case of e-filed applications, through electronic records and CBR details of the respective files. Apart from all other checks, RECS shall ensure correctness of Form-18, e-mail ids, address for service, correctness, validation & consistency of IPC, Date of Publication, Type of Specification and Date of RQ. They shall also ensure that IPC classification is error free. Errors, if any, detected shall be immediately corrected by the RECS section, RECS shall further ensure that any subsequent documents, filed either through e-filing or offline mode, are digitised immediately (if required), verified and made available in the electronic module for electronic processing.

3. Allotment:

After receiving applications from publication moudle, the same shall be automatically allotted to the examiners of the respective group on the basis of their location, IPC, work load etc. The scheme of allotment shall be such that, firstly both examiners and Controllers shall be chosen from the original jurisdiction, secondly at least Controllers shall be from the original jurisdiction and lastly, examiners/ Controllers may be from other jurisdictions. Applications shall be allotted in batches and examiners shall examine the applications in order of date of filing of the RQs available in their examination module.

The examiner shall ensure that all the documents are available in the electronic file and/or CBR details. They shall also ensure that all the documents are duly uploaded in .pdf/.tiff format.

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7. Examination:

Once the file is allotted for examination, the concerned examiner will examine the patent application through new module and in accordance with the New Format for FER.

An examiner shall submit his report to the concerned Controller for generation of First Examination Reports (FER) which shall be communicated by the concerned Controller to the applicant or

authorized agents, directly from the Patent Office, where the FER has been generated.

FERs will bear a note that the applicant/agent shall submit the reply to FER at the appropriate office only. The concerned examiner shall consider the reply to FER and forward his report to the concerned Controller."

21. Mr. Vaidyanathan has also placed reliance on Office Order No. 34 of 2016 dated 3 June 2016, the opening passages of which read as under:

"OFFICE ORDER NO. 34 OF 2016

In order to improve the efficiency of the system followed by the Patent Office, in matters related to examination of patent applications, Circular No. 5 of 2009 dated 29.4.2009 was issued by this Office. This Circular introduced the 'Group System' that formed the backbone of the Patent Office and is functional as on date. In the subsequent years, in order to improve the public service delivery, the Patent Office brought in various changes that were appreciated by a wide range of stakeholders, globally.

With a view to further streamline the allotment of patent applications and to provide a favourable working environment to the Officers of the Patent Office, Office Order No. 23 of 2016 dated 31.03.2016 introduced the auto-allotment system that was implemented with effect from 01.04.2016. As envisaged, the examination system of the Patent Office has now become 'virtual'. An application filed at one location can now be examined by an Examiner posted at a second location, and can be disposed by a Controller posted at a third location, without any inconvenience to the applicant. However, in order to bring more accountability into the system, the following directions are hereby issued and will come into force with effect from 1st June 2016:"

22. Mr. Vaidyanathan submits that the reliance, by the learned Coordinate Bench, on Rule 4 of the Patents Rules was completely justified. He has drawn my attention to Rule 4(2) of the Patent Rules, which expressly stipulates that the "appropriate office", once decided

in respect of any proceedings under the Patents Act, shall not ordinarily be changed. He submits that Rule 4(1)(i)(b) grants an applicant, who files an application for registration of a patent, the choice to determine the Patent Office before which he would file the application. Once, however, the applicant exercises such choice, that Patent Office, as the Coordinate Bench has held in ***Dr. Reddys Laboratories***, becomes frozen as the appropriate office for the purposes of the Patents Act, from the point of filing of the application till the point of filing of the appeal under Section 117A. He, therefore, echoes the view of the learned Coordinate Bench in ***Dr. Reddys Laboratories*** that the issue of the appropriate High Court which could exercise jurisdiction under Section 117A could not be determined merely on the basis of the system which had been put in place by the Patent Office for the sake of administrative convenience in the interests of applicants who desired expeditious disposal of applications for grant of patents, by the afore-noted Office Orders.

23. Inasmuch as the "appropriate office", which exercised dominion over the application filed by the appellant for registration of the patent continued, from start to finish, remained the Mumbai Patent Office, Mr. Vaidyanathan submits that no exception can be taken to the decision of the learned Coordinate Bench in ***Dr. Reddys Laboratories*** opining that the appeal under Section 117A would also lie not before any High Court other than the High Court of Bombay.

24. Mr. Vaidyanathan therefore, exhorts this bench to adopt the same view.

Analysis

25. I have heard learned Counsel for both sides and have applied my mind to the rival contentions

26. Certainty in the law is a cherished virtue. It is well settled that decisions even of Coordinate Benches are to be regarded as binding in nature, with the sole caveat that a Bench, if it finds itself entirely unable to subscribe to the view expressed by a Coordinate Bench, has the liberty to refer the matter to a larger Bench. It cannot, however, blindly differ from the Coordinate Bench, without due reason, unless the difference is based on a decision of a superior judicial authority. In the interests of fostering certainly in the law, and crystallizing of a firm legal position, difference with the decision of a Coordinate Bench is ordinarily something to be sedulously avoided. Of course, that, the ultimate goal of every judge should be dispensation of justice in accordance with the law as he dispassionately espies it to be, and if, in that endeavour, he has to differ with the decision of a colleague, he should not shirk from doing so. Circumspection remains, however, the guiding principle.

27. I have, therefore, considered the rival submissions keeping this aspect in mind. The issue in controversy relates to the situs of the High Court where an appeal under Section 117A may be filed. Inasmuch as the provision refers to "*the* High Court" it is quite clear that the appeal would lie only before one High Court, and not before a

multitude of High Courts.

28. The Coordinate Bench, in ***Dr. Reddys Laboratories,*** has taken a conscious decision that the geographical location of the High Court, which could exercise jurisdiction under Section 117A(2) would have to be determined on the basis of the geographical location of the "appropriate office" having dominion over the application within the meaning of Rule 4(2) of the Patent Rules. The question to be addressed is whether the said decision can be treated as so unacceptable that the matter requires reconsideration by a larger Bench.

29. Having heard learned Counsel for both sides and considered the matter with due seriousness, I am not inclined, for the reasons which follow, to upset the precedential apple cart.

30. On a reading of the judgment in ***Dr. Reddys Laboratories***, there is no wishing away the position that the facts in that case were similar to those which obtained in the present matter. In that case, too, the patent application was initially filed at Bombay and was allotted to the office of the Assistant Controller of Patents, Delhi for examination and adjudication. The order rejecting the patent came to be issued by the Assistant Controller of Patents, Delhi. As in the present case, an appeal against the said order was preferred to this Court.

31. The Coordinate Bench, however, held, in its judgment dated 10 November 2022, that the appeal would lie, not before this Court, but

before the High Court of Bombay. The judgment is considerably detailed and pivots, largely, on the definition of "appropriate office" as contained in Rule 4[6] of the Patents Rules, 2003.

32. The manner in which Mr. Tiwary has sought to interpret Section 117A(2), by substituting the word "High Court", as employed in the said sub-section, the words "the High Court having territorial jurisdiction in that State or Union Territory", in my view, cannot be legally accepted. In the first place, while applying definition clauses, defining expressions in a statute, to the provisions in which those expressions find place, the principle of substituting words from the definition clause into the substantive clause in which the expression figures, has no known legal sanction. Even if it did, in substituting the words "High Court" in Section 117A (2) with the words "the High Court having territorial jurisdiction in that State or Union Territory", as he has chosen to do, Mr. Tiwary has ignored the words "in relation to a State or Union Territory" contained in Section 2(1)(i) of the Patents Act. In fact, Section 2(1)(i) does not define "High Court" in

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[6] **4. Appropriate office**. –

(1) The appropriate office of the patent office shall –

(i) for all the proceedings under the Act, be the head office of the patent office or the branch office, as the case may be, within whose territorial limits—

(a) the applicant or first mentioned applicant in case of joint applicants for a patent, normally resides or has his domicile or has a place of business or the place from where the invention actually originated; or

(b) the applicant for a patent or party in a proceeding if he has no place of business or domicile in India, the address for service in India given by such applicant or party is situated; and

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(2) The appropriate office once decided in respect of any proceedings under the Act shall not ordinarily be changed.

(3) Notwithstanding anything contained in sub-rule (2), the Controller may transfer an application for patent so filed, to head office or, as the case may be, branch office of the Patent Office.

(4) Notwithstanding anything contained in sub-rule (1), further application referred to in Section 16 of the Act, shall be filed at the appropriate office of the first mentioned application only.

(5) All further applications referred to Section 16 of the Act filed in an office other than the appropriate office of the first mentioned application, before the commencement of the Patents (Amendment) Rules, 2013, shall be transferred to the appropriate office of the first mentioned application.

absolute terms. It defines "High Court", in relation to a State or Union Territory. Any application of the said definition to any substantive provision of the Patents Act in which the words "High Court" figure would, therefore, have meaning only if that provision uses the expression "High Court" in relation to a State or Union Territory, and not otherwise.

33. Section 117A(2) does not refer to the "High Court" apropos any State or Union Territory.

34. Mr. Tiwary's contention that Section 117A(2) envisages the passing of the order by the Controller as the cause of action for filing an appeal to the High Court is correct. That, however, is not determinative of the situs of the High Court which can entertain the appeal. In fact, there is no clear provision in the Patents Act which identifies the High Court which can exercise jurisdiction under Section 117A(2). Section 159(1) of the Patents Act specifically empowers the Central Government to make rules for carrying out the purposes of the Patents Act by notification in the official gazette. Among the purposes of the Patents Act, in respect of which Rules can, therefore, be made under Section 159(1), is the providing of an appellate remedy under Section 117A (2). In as much as there is no provision in the Patent Act which prescribes otherwise there is no informity whatsoever in making reference to the Rules to ascertain the situs of the High court which could exercise appellate jurisdiction under section 117 A of the Patent Act.

35. Rule 4(1)(i) specifically states that the appropriate office of the

Patent Office shall, "for all proceedings under the Act", be the Patent Office where the application seeking grant of patent is initially filed. Sub-rule (2) of Rule 4 further stipulates that the appropriate office, once decided in respect of any proceedings under the Act, shall ordinarily not be changed.

36. The words "for all proceedings under the Act" would clearly embrace all proceedings from the stage of filing of the application before the Patent Office under Section 7 till the filing of the appeal before the High Court under Section 117A. All these proceedings are proceedings under the Patents Act. In respect of all such proceedings, therefore, the appropriate office would, for the purposes of the case at hand, statutorily be the Mumbai Patent Office.

37. An appeal, as already noted, is a continuation of the original proceedings. That being so, once the appropriate office, for the purposes of Application No. 202221006191 filed by the appellant, was fixed as the Bombay Patent Office by virtue of Rule 4(1)(b), read with Rule 4(2) of the Patent Rules, I see no infirmity in the decision of the Coordinate Bench in holding that the situs of the High Court which would hear the appeal under Section 117A(2) would also be determined by the location of the "appropriate office".

38. The judgment of the Supreme Court in ***Pr. CIT-I Chandigarh v. ABC Papers Ltd***[7], in my view, does not militate against this legal position. The controversy before the Supreme Court in ***ABC Papers***

[7] **(2022) 9 SCC 1**

was, in fact, completely different from the controversy which arises before this Court in the present case. In that case, ABC Papers Ltd. ("ABC" hereinafter) filed income tax returns, for the assessment year 2008-2009 before the Assessing Officer, New Delhi. The Deputy Commissioner of Income Tax (the Deputy CIT), New Delhi assessed the returns *vide* assessment order dated 30 December 2010. The said order was, however, reversed by the CIT (Appeals), New Delhi *vide* order dated 16 February 2012, which was carried by the Revenue in appeal to the Income Tax Appellate Tribunal (ITAT), New Delhi. The ITAT, New Delhi, by order dated 11 May 2017, upheld the order of the CIT (Appeals) and dismissed the appeal of the Revenue.

39. In the interregnum, ABC's assessment for AYs 2006-2007 to 2013 to 2014 were centralized and transferred to the Central Circle, Ghaziabad. The Deputy CIT, Ghaziabad passed an assessment order on 31 March 2015. ABC's appeal, thereagainst, was allowed by the CIT (Appeals) on 20 December 2016. The Revenue appealed, against the said decision, to the ITAT, New Delhi. The ITAT, New Delhi, dismissed the appeal *vide* order dated 1 September 2017, following its own earlier order dated 11 May 2017 against which the Revenue had already preferred ITA 517/2017 before the High Court of Punjab and Haryana.

40. In the interregnum, the cases of ABC were transferred, under Section 127 of the Income Tax Act, to the Deputy CIT, Chandigarh w.e.f. 13 July 2017. The Revenue, therefore, preferred ITA 517/2017 against the order dated 11 May 2017, of the ITAT, New Delhi and

ITA 130/2018, against the order dated 1 September 2017 of the ITAT, New Delhi before the High Court of Punjab and Haryana.

41. The Revenue rather, strangely, also filed a separate appeal, being ITA 515/2019, before this Court, challenging the order dated 11 May 2017 of the ITAT, New Delhi.

42. By diametrically opposite orders, the High Court of Punjab and Haryana and this Court proceeded to dismiss the appeals filed by the Revenue before each of them. The High Court of Punjab and Haryana held that, though the proceedings had been transferred to Chandigarh under Section 127 of the Income Tax Act w.e.f. 13 July 2017, as the initial assessment order had been passed by the Deputy CIT, New Delhi, the High Court of Punjab and Haryana did not possess territorial possession to deal with the matter. Adopting the exactly opposite view, this Court dismissed ITA 515/2019, holding that, as the assessment proceedings had been transferred to Chandigarh under Section 127 of the Income Tax Act, this court had no jurisdiction to entertain the appeal.

43. Thus, as both the High Courts, that it had approached, had refused to entertain its appeals against the orders passed by the ITAT, the revenue carried the matter to the Supreme Court.

44. It is apparent, at a bare glance, therefore, that the controversy before the Supreme Court was contextually, completely different from that which is engaging this Court in the present matter.

45. It may be noted, however, that the statutory provisions governing the proceedings before the Supreme Court were, to an extent, similar to those with which we are concerned in this case, as Section 260A and Section 269 of the Income Tax Act read thus:

> "Section 260A
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> 260A. Appeal to High Court. (1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal before the date of establishment of the National Tax Tribunal, if the High Court is satisfied that the case involves a substantial question of law."
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> Section 269
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> **269. Definition of "High Court**". —In this Chapter, —
> "High Court" means, —
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> (i) in relation to any State, the High Court for that State;
> (ii) in relation to the Union Territory of Delhi, the High Court of Delhi;
> (iii) [* * *]
> (iv) in relation to the Union Territory of the Andaman and Nicobar Islands, the High Court at Calcutta;
> (v) in relation to the Union Territory of Lakshadweep, the High Court of Kerala;
> (v-a) in relation to the Union Territory of Chandigarh, the High Court of Punjab and Haryana;
> (vi) in relation to the Union Territories of Dadra and Nagar Haveli and [* * *] Daman and Diu, the High Court of Bombay; and
> (vii) in relation to the Union Territory of Pondicherry, the High Court at Madras."

46. The Supreme Court, after referring to a catena of authorities, held that the situs of the High Court before which the appeal under Section 260A of the Income Tax Act would lie would have to be determined on the basis of the location of the Assessing Officer, and

not the location of the ITAT against whose order the appeal was being preferred. In this context, one of the considerations that the Supreme Court bore in mind was the binding nature of the decision of the High Court on assessing officers. The Supreme Court held that, as dominion over the case rested with the assessing officer, and not with the ITAT, the appropriate High Court which would rule on the appeal under Section 260A ought to be the High Court having jurisdiction over the assessing officer and over whom the order of the High Court would be binding. Paras 39 to 42 of the decision merit reproduction, in this context, thus:

> "39. Returning to the analyses in the decision in Sahara2, we have noticed that the Division Bench of the High Court of Delhi sought to distinguish the two decisions of the very same High Court in Suresh Desai17 and Digvijay Chemicals19 on the ground that those cases did not involve the transfer of cases of the very same assessment year. We will reformulate this as a proposition of law. If it is the accepted principle to determine the jurisdiction of a High Court under Section 260-A of the Act on the basis of the location of the assessing officer who assessed the case, then, by the strength of the very same logic, upon transfer of a case to another assessing officer under Section 127, the jurisdiction under Section 260-A must be with the High Court in whose jurisdiction the new assessing officer is located. A logical extension of this argument is that, once the case is transferred to an assessing officer situated outside the jurisdiction of the existing High Court, the entire files relating to the case should now be in the possession and custody of the new assessing officer. It could be argued that the assessing officer who exercised the jurisdiction before its transfer will not be in a position to assist the High Court, further, he cannot implement the decision of that High Court, after it decides the question of law as he is no more the assessing officer. We will now proceed to deal with these arguments.
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> 40. The binding nature of decisions of an appellate court established under a statute on subordinate courts and tribunals within the territorial jurisdiction of the State, is a larger principle involving consistency, certainty and judicial discipline, and it has a

direct bearing on the rule of law. This "need for order" and consistency in decision making must inform our interpretation of judicial remedies. An important reason adopted in Seth Banarasi Dass Gupta1, further highlighted by Lahoti, J. in Suresh Desai17, is that a decision of a High Court is binding on subordinate courts as well as tribunals operating within its territorial jurisdiction. It is for this very reason that the assessing officer, Commissioner of Appeals and ITAT operate under the High Court concerned as one unit, for consistency and systematic development of the law. It is also important to note that the decisions of the High Court in whose jurisdiction the transferee assessing officer is situated do not bind the Authorities or ITAT which had passed orders before the transfer of the case has taken place. This creates an anomalous situation, as the erroneous principle adopted by the authority or ITAT, even if corrected by the High Court outside its jurisdiction, would not be binding on them.

41. The legal structure under the Income Tax Act commencing with assessing officer, the Commissioner of Appeals, ITAT and finally the High Court under Section 260-A must be seen as a lineal progression of judicial remedies. Culmination of all these proceedings in question of law jurisdiction of the High Court under Section 260-A of the Act is of special significance as it depicts the overarching judicial superintendence of the High Court over Tribunals and other Authorities operating within its territorial jurisdiction.

42. The power of transfer exercisable under Section 127 is relatable only to the jurisdiction of the Income Tax Authorities. It has no bearing on ITAT, much less on a High Court. If we accept the submission, it will have the effect of the executive having the power to determine the jurisdiction of a High Court. This can never be the intention of Parliament. The jurisdiction of a High Court stands on its own footing by virtue of Section 260-A read with Section 269 of the Act. While interpreting a judicial remedy, a constitutional court should not adopt an approach where the identity of the appellate forum would be contingent upon or vacillates subject to the exercise of some other power. Such an interpretation will clearly be against the interest of justice."

47. Thus, the appropriate High Court, to exercise appellate jurisdiction under Section 260A was held to be the High Court having territorial jurisdiction over the assessing officer.

48. Strictly speaking, ***ABC Papers***, involved an issue which is qualitatively completely different from that which arises before this Court in the present case. If, however, one were to attempt an analogy with the position which obtains in ***ABC Papers***, it is possible to hold that, as the appropriate office, having dominion over the application filed by the appellant for grant of the patent continued, from start to finish, was the Mumbai Patent Office – because of the opening words of Rule 4(1)(i) read with Rule 4(2) of the Patent Rules – the High Court which had jurisdiction over the appropriate office and on whom its decision would be binding, was, therefore, the appropriate High Court to hear and entertain the appeal under Section 117A.

49. That High Court, indisputably, is the High Court of Bombay.

50. Even applying the decision in ***ABC Papers***, therefore, I do not find any justification to adopt a view different from that taken by the Coordinate Bench in ***Dr. Reddy's Laboratories***.

51. Inasmuch as the coordinate Bench has examined all the legal provisions, including Section 117A, Section 2(1)(i) of the Patents Act and Rule 4 of the Patent Rule, in considerable detail, and as I do not find the decision of the Coordinate Bench to be unacceptable either in law or on facts, in the interests of maintaining consistency and to lend certainty to legal position, I deem it appropriate to adopt the same view.

52. Accordingly, this appeal would, following the decision of the coordinate Bench in ***Dr. Reddy's Laboratories***, not be maintainable before this Court, and would appropriately have to be filed before the High Court of Bombay.

53. The preliminary objection of Mr. Vaidyanathan, on the aspect of territorial jurisdiction is, therefore, upheld. The appeal is dismissed for want of territorial jurisdiction, reserving liberty with the appellant to institute the appeal before the appropriate forum in accordance with law.

C.HARI SHANKAR, J

NOVEMBER 21, 2023
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Click here to check corrigendum, if any