

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

OWP No. 1319/2009, CMP No.1704/2009,
CMP No.650/2010 c/w OWP No. 919/2010,
CMP No. 1248//2010.

Date of decision: 06.10.2010

M/s Sun Pharmaceutical Inds Vs. Chief Commissioner of Income tax and another.

Coram:

Hon'ble Mr. Justice Sunil Hali, Judge.

Appearing counsel:

M/s D.S.Chouhan, R.L.Gupta, Intiqhab Hussain Shah,
Advocates and Miss Mudasir Yousf, Advocate for the petitioner-
firm.

Mr. D.S.Thakur, Advocate for respondents.

i/ Whether to be reported in : Yes.
Press, Journal/Media.

ii/ Whether to be reported in : Yes.
Digest/Journal.

The petitioner is a partnership firm which is duly registered under the Jammu and Kashmir Partnership Act, 1996. The partnership firm was constituted on the 1st day of March, 2003, which consists two partners, namely, (i) Sun Pharmaceutical Industries Limited and (ii) Sun Pharmaceutical Key Employees Benefit Trust. The petitioner-firm was registered as a partnership firm with the Registrar of Firms, Jammu (J&K) on 24.12.2003. The name and place of the business indicated in the partnership firm is Jammu. It transpires that supplementary partnership deed was executed where name of 'the principal place of business' is stated to be Jammu. However, on

13.09.2008, fourth supplementary deed of partnership was executed wherein for the first time, change of 'the principal place of business' from Jammu to Mumbai was shown. The petitioner-firm was assessed at Jammu by the Assessing Authority under the Income Tax Act for the Assessment Years 2004-05 to 2008-09.

It seems that the application under Section 124 of the Income Tax Act, 1961 came to be filed before respondent no.1.-Chief Commissioner of Income Tax, Amritsar, who was authorized to entertain the application by the Central Board of Direct Taxes. The case set out by the petitioner-firm before respondent no.1 was that 'the principal place of business' stands shifted from Jammu to Mumbai, as such, the petitioner-firm be directed to file the returns before the concerned Assessing Officer under relevant rules. The following are the main reasons whereby the transfer of the records was sought by the petitioner-firm:-

- (i) Due to disturbance in Jammu region, no body is willing to work in Accounts department by staying in Jammu and the local resident at Jammu is not competent at all. As a result, we have been facing continuous problem of competent accounts staff. Hence, the accounts personnel in Dadra/Mumbai are frequently sent to Jammu to look after and comply with the deadlines of the statutory requirements.

- (ii) Consolidation process (of unit wise trial balances of Dadra Unit and head office) is done at Mumbai.
- (iii) Tax return is also prepared at Mumbai.
- (iv) Out statutory auditors are also based in Mumbai. They also face difficulties during the course of audits and finalization of financial statements year and after year due to location/logistic problems. Even the Assessing Officer has to camp at Mumbai to obtain details from auditors.
- (v) Out tax consultant is based in Mumbai and the assessment matters are handled/represented from Mumbai (department officials are well aware of this fact). Therefore, many times, difficulty arises to the department in serving the notices/letters because, the same is first sent to Jammu office, who ultimately send to Mumbai office. In this process, delay always taken place.

Similar, delay take place while sending/submitting the required details, because the courier or speed post takes minimum 304 days to reach at Jammu, which results into delay.

Moreover, taking the tax consultant to Jammu to represent the assessment matters become difficult for him to adjust due to locational/logistic problem.

- (vi) Commissioner of Income-tax (Appeals), who is assigned the case is at 'Bathinda' which place is totally inconvenient for our Mumbai based consultant due to non-availability of direct flight as well as difficulties in arranging the transport.
- (vii) Out tax counsel (who represents our tribunal matter) is based at Ahmedabad and the Tribunal Jurisdiction is at Amritsar. This place is inconvenient for our Mumbai/Ahmedabad based consultant/counsel as the scheduling/arranging the programme from Ahmedabad to Amritsar and vice versa is very difficult especially due to non-availability of direct flight as well as difficulties in arranging the transport).

2. It is further submitted in the said application dated 11.10.2008 received on 22.10.2008 that the firm has changed

its registered office address from Jammu to Mumbai as under:-

Sun Pharmaceutical Industries,
Acme Plaza, Andheri-Kurla Roadm
Andheri (East), Mumbai-400 059.

2.1. It is further added that a form No.11 has been filed with Registrar of Firms, Jammu (J&K) in this respect. In this respect I have got necessary inquiries made by the assessing officer, i.e. ITO, Ward 1(3), Jammu as well as Addl. CIT., Range-1, Jammu and CIT, Jammu who have examined the request of the assess/firm and submitted their report to the undersigned which shall be discussed in the subsequent paragraphs. Meanwhile, opportunity has also been allowed to Shri S.C.Jalana, CA the authorized representative of the assessee-firm who attended before me on 01.05.2009 when written submissions dated 01.05.2009 were filed. The matter was heard. He had asked time till 21.05.2009 for further written submissions to be made before the matter is decided. Accordingly, in continuation to the said submissions filed on 01.05.2009 further written submissions dated 15.05.2009 are again submitted. I have carefully considered the facts stated in the original application submitted on 22.10.2008 as well as written submissions dated 01.05.2009 and 15.05.2009 and also the case laws cited therein by the authorized representative Shri Jalan to support his arguments and also perused the report of the CIT, Jammu and the Assessing Officer referred to above and the petition is disposed as under :-

3. On perusal of the submissions it is noticed that the main ground taken by the Assessee firm is that the principal office of business is in Mumbai since all accounts are consolidated at Mumbai, tax returns are prepared at Mumbai and statutory auditors are based in Mumbai and that registered office is also stated to be at Mumbai as referred earlier. It would be necessary to examine the relevant provisions for deciding the correct jurisdiction of the Assessing Officers. This has been enumerated in Section 124(1) and (2) as under :-

“124. Jurisdiction of Assessing Officer.

(1) Where by virtue of any direction or order issued under sub-section (1) or sub-section (2) of section

120, the Assessing Officer has been vested with jurisdiction over any area, within the limits of such areas, he shall have jurisdiction-

(a) in respect of any person carrying on a business or profession, if the place at which he carries on his business or profession institute within the area, or where his business or profession is carried on in more place than one, if the principal place of his business or profession is situate within the area, and

(b) in respect of any other person residing within the area.

(2) Where a question arises under this section as to whether an Assessing Officer has jurisdiction to assess any person, the question shall be determined by the Director General or the Chief Commissioner or the Commissioner; or where the question is one relating to areas within the jurisdiction of different Director Generals or Chief Commissioners or Commissioners, by the Directors General or Chief Commissioners or Commissioners concerned or, if they are not in agreement, by the Board or by such Director General or Chief Commissioner or Commissioner as the Board may, by notification in the official Gazette, specify.”

4. As seen from the above, the Assessee's case falls in 124(1)(a) since it is carrying on a business or profession. As per the said provisions the jurisdiction shall be vested with the Assessing Officers within whose limits such place where 'the principal place of business' is situated. Therefore, it would be relevant to adjudicate as to what is 'the principal place of business' of the assessee. It has been submitted by the assessee's representative Shri Jalan that 'the principal place of business' should be taken as Mumbai as per para 2 of written submissions dated 15.05.2009. It is submitted that the following activities are carried out at Mumbai.

In support of its contention regarding 'the principal place of business', it is stated by the

petitioner-firm that following activities are carried out at Mumbai.

- (i) Purchase of materials for respective units, identification of suppliers, rate negotiation, time of supply payment terms etc.
- (ii) Sale of goods of respective units, identification of customers, rate negotiation, time of supply, payment terms etc.
- (iii) Decision to recruit the person/s at respective units.
- (iv) Booking of sales of products manufactured by different units.
- (v) Maintenance of books of accounts of HO.
- (vi) TDS payment returns etc.
- (vii) Calling the periodical trial balance from 'Dadra' and 'Jammu' units.
- (viii) Preparation of unit wise Profit and Loss Account and balance sheet.
- (ix) Preparation of consolidation Profit and Loss Account and Balance Sheet.
- (x) Preparation and filing of Income Tax Return.
- (xi) Payment of taxes determined by Jammu AO
- (xii) Preparation of submissions to be given to the Tax Authorities.
- (xiii) Preparation of submissions to be given to the Tax Authorities.

The Chief Commissioner of Income Tax-respondent no.1 after hearing the parties, dismissed the application of the petitioner-firm by holding that since the firm stands registered under the J&K Partnership Act, 1996, as such, it has to be presumed that 'the principal place of business' is being carried out by the firm in Jammu.

The other aspect which has weighed with the respondents for the purpose of determining 'the

principal place of business' is that sales of the Unit located at Jammu have increased from 24.7 % to 80.9 % for the Assessment Years 2005-06 to 2008-09. This could be logical basis for construing that 'the principal place of business,' is Jammu.

Findings returned by the Commissioner of Income Tax-respondent no.1 regarding the management activities of the Company being carried at Mumbai has been repelled on the premise that it runs in contravention of the Jammu and Kashmir Partnership Act, 1996.

The other issue dealt with by the Commissioner-respondent no.1 while rejecting the plea of the petitioner-firm need not to be dealt with by this Court. The only issue that was required to be determined by respondent no.1. for the purpose of jurisdiction under Section 124 clause 1 (a) was that which is 'the principal place of business' after 2004. This section envisages that while exercising territorial jurisdiction in respect of the company or firm which is carrying on business activities at more than one place, such power can be exercised only where 'the principal place of business' is located within the area. So in determining the territorial area, 'principal place of business' carried out by the company or the firm will

confer the jurisdiction on the said assessing authority. What is 'the principal place of business' is not defined under the statute.

The Apex Court and other High Courts of the country in number of judicial pronouncements held that 'the principal place of business of the company' is termed and/or treated as the place wherefrom all control over of the business activities is exercised. In other words, it is where the centre of power of the corporate body is located. This principal place of business may or may not be a place where the firm is registered.

In *Erin Estate. Galah, Ceylon Vs. Commissioner of Income Tax Madras*, it has been categorically held that the control and management contemplated evidently refers to the controlling and directing power and this power has been described in judicial decisions as the "head and brain", of the firm/company where policy decision are taken and need not necessarily be place where industrial activities of the firm are carried. In terms of the aforesaid decision, respondent no.1 was required to address itself to this issue, which he has not done. The issue with regard to 'the principal place of business' should have been addressed looking to the averments made in the

application and the material placed with it. The decision on this question has been taken by stating that since the firm is registered under the Jammu and Kashmir Partnership Act, 1996, 'principal place of business' shall always be presumed to be at Jammu.

This, in my opinion, is not the correct decision in law. The respondent no.1 was required to inquire about the 'principal place of business' of the petitioner-firm, which he has not done.

The petitioner-firm states that its 'principal place of business' has been shifted to Mumbai for which the petitioner-firm is required to show some proof. It has placed on record some instances in support of its written submissions filed before respondent no.1 but without placing any material in support of it. Merely stating that 'principal place of business' has been shifted from Jammu to Mumbai, is not sufficient. Some evidence is required to be produced by the petitioner-firm to substantiate this plea.

Mr. Thakur, learned counsel for respondents states that no material has been produced before respondent no.1 by the petitioner-firm to substantiate this plea.

In view of the above, I allow this writ petition and set aside order dated 29.05.2009 passed by

respondent no.1 with a further direction to said respondent as under :-

- (i) to determine the issue as to when the place of business has been shifted from Jammu to Mumbai;
- (ii) What is evidence supporting the fact that said place of business has been shifted from Jammu to Mumbai.'

Respondent no.1 shall take decision in this respect on the basis of material produced by the petitioner-firm in this behalf and decide the same within a period of two months from today.

Disposed of along with connected CMP(s).

OWP No. 919/2010.

In terms of the disposal of OWP No.1319/2009, no order is required in this petition. Accordingly, the same shall also stand disposed of along with connected CMP(s).

(Sunil Hali)
Judge

Jammu.
06.10.2010.
'Madan'