IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1st DAY OF MARCH, 2018

PRESENT

THE HON'BLE MR.DINESH MAHESHWARI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE S. SUNIL DUTT YADAV

<u>WRIT APPEAL NOS. 828-829 OF 2018 (T-IT)</u>

<u>BETWEEN</u>

GOOGLE INDIA PRIVATE LIMITED
NO.3, RMZ INFINITY, TOWER-E
4TH FLOOR
OLD MADRAS ROAD
BENGALURU - 560 016
(PAN: AACCG0527D)
REPRESENTED BY ITS
AUTHORIZED SIGNATORY
MR. GANGAPPA THIRUMALESH

... APPELLANT

(BY SRI UDAYA HOLLA, SENIOR ADVOCATE FOR
SRIYUTHS SHRAVANTH ARYA TANDEA, ANMOL ANAND &
MEHUL KOTHARI, ADVOCATES)

<u>AND</u>

1. THE DEPUTY COMMISSIONER OF
INCOME TAX
(INTERNATIONAL TAXATION)
CIRCLE -1(1), ROOM NO.441
4TH FLOOR, BMTC BUILDING
80 FEET ROAD
KORAMANGALA
BENGALURU - 560 095

2. THE COMMISSIONER OF
INCOME TAX-INTERNATIONAL TAXATION
BMTC COMPLEX
80 FEET ROAD
KORAMANGALA
BENGALURU - 560 095

... RESPONDENTS

(BY SRIYUTHS ARAVIND K.V. & DILIP.M, ADVOCATES
FOR C/R-1 & R-2)

THESE WRIT APPEALS ARE FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT, 1961, PRAYING TO SET ASIDE THE ORDER DATED 22/02/2018 PASSED BY THE LEARNED SINGLE JUDGE, THE HON'BLE HIGH COURT OF KARNATAKA, AT BENGALURU IN THE INTERLOCUTORY APPLICATION DATED 30/01/2018 UNDER SECTION 151 OF THE CODE OF CIVIL PROCEDURE, 1908 [I.A.NO.1/2018] IN W.P.NOS.52358-52359/2017 [T-IT] FOR THE ASSESSMENT YEAR 2013-14 TO THE EXTENT IT DIRECTS THE HEARING OF THE APPEALS BY THE CURRENT MEMBERS AT THE BENGALURU BENCHES OF THE INCOME TAX APPELLATE TRIBUNAL ONLY.

THESE WRIT APPEALS COMING ON FOR PRELIMINARY HEARING THIS DAY, CHIEF JUSTICE DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner/appellant, said to be a private limited company engaged in the business of global outsourced information technology and IT enabled services, has preferred these intra-Court appeals against the order dated 22.02.2018, as passed by a learned Single Judge of this Court in I.A.No.I/2018 that was moved in a decided matter, i.e., W.P.Nos.52358-52359/2017, whereby the learned Single Judge has issued directions to the Income Tax Appellate Tribunal, Bengaluru Bench, to hear and dispose of the appeals of the appellant by its Members in an expeditious manner, on or before 16.04.2018.

The appellant seeks to state grievance as regards such directions of the learned Single Judge with reference to the facts and events immediately preceding the impugned order dated 22.02.2018, whereby its appeal was proposed to be heard by a Touring Bench of the Tribunal.

Shorn of unnecessary details, the relevant background aspects of the matter are that the appellant preferred the aforesaid W.P.Nos.52358-52359/2017 for being aggrieved of the order dated 07.11.2017, as passed by the Income Tax Appellate Tribunal, 'C' Bench, Bengaluru, in the Stay Petition bearing No.229/Bang/2017 in ITA No.1190/Bang/2014 pertaining to the Assessment Year 2013-14. By the said order dated 07.11.2017, the Tribunal vacated the stay earlier granted to the appellant.

The learned Single Judge of this Court, after examining the subject matter and the contentions urged, considered it proper to direct the Tribunal to dispose of the pending appeal in an expeditious manner and on or before 31.01.2018 and also made interim arrangements in the balance of equities. The learned

Single Judge disposed of the writ petitions on 22.11.2017, while observing and directing as under:

> *"8. Having heard learned counsel for the respective parties at length, I find that granting of any interim order in these writ petitions and keeping the writ petitions pending before this Court would not serve any purpose particularly, when the matter is set down for final arguments before the Appellate Tribunal tomorrow (23/11/2017). In the circumstances, a direction is issued to the Tribunal to dispose of the appeal in an expeditious manner i.e., on or before* ***31/01/2018.*** *It is needless to observe that in view of the specific direction issued by this Court for expeditious disposal of the appeal by the Appellate Tribunal, both parties are directed to co-operate with the Tribunal.*
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> *9. It is noted that the demand is about Rs.129,00,00,000/- (Rupees one hundred and twenty nine crore only). It is an admitted fact that a sum of Rs.70,00,00,000/- (Rupees seventy crore only) is deposited by the petitioner which amounts to about 55% of the outstanding demand. In order to further protect the interest of the revenue and keeping in mind the fact that the appeal is slated for final arguments before the Appellate Tribunal and balancing the equities on both sides, the petitioner is directed to retain a balance of another 20% in Account No.0037238007 maintained with CITI Bank, M.G.Road Branch, Bengaluru-560 001. The said balance is rounded off to Rs.26,00,00,000/- (Rupees twenty six crore only) shall be maintained pending disposal of the appeal by the Appellate Tribunal. It is directed that the respondent shall not take further steps pursuant to order dated 15/11/2017 (Annexure-H) and notice dated 20/11/2017 till the disposal of the appeal by the Appellate Tribunal."*

It appears that after the directions aforesaid, the appellant made a request to the President of the Tribunal to constitute a Special Bench to hear its appeals and, thereafter, made another request on 12.12.2017 to the President of the Tribunal to transfer its appeals to a Bench outside Bengaluru while also alleging a so-called hostile approach of the Members of the Bengaluru Bench of the Tribunal. The said appeal before the Tribunal, being ITA No.1190/Bang/2014, was adjourned on 19.12.2017 and again on 10.01.2018. Thereafter, on 19.01.2018, the appellant was informed that the President of the Tribunal had rejected its request for constitution of Special Bench. Thereafter, under the administrative orders of the President of the Tribunal, various appeals of the appellant, including ITA No.1190/Bang/2014, were listed before a Touring Bench of the Tribunal at Bengaluru on 29.01.2018, but the same were adjourned at the request of the department to 05.03.2018.

At the aforesaid stage, as the time for disposal of the appeal envisaged in the order dated 22.11.2017 was expiring, the appellant made an application before the learned Single Judge for extension of time. In the meantime, another relevant event took place that the President of the Tribunal, by his order dated 20.02.2018, rejected the request of the appellant for transfer of its appeals outside the Bengaluru Bench. Thereafter, I.A.No.1/2018, as moved in W.P.Nos.52358-52359/2017, was taken up for consideration and the learned Single Judge, taking note of all the facts and circumstances of the case and the order passed by the President of the Tribunal on 20.02.2018, directed the Appellate Tribunal, Bengaluru Bench, to hear and dispose of the appeals by its Members in an expeditious manner, on or before 16.04.2018. The learned Single Judge, *inter alia,* observed and directed as under:-

> *"In the circumstances, a direction is issued to the Appellate Tribunal, Bengaluru Bench to hear and dispose of the appeals by its Members in an expeditious manner, on or before 16/04/2018.*
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> *As it is stated at the Bar that the appeals are now listed on 5th March 2018 for commencement of arguments and in view of the fact that arguments in the appeals have not yet commenced and time granted by this Court for disposal of the appeals by 31st January, 2018 having gone by, the Bengaluru Bench is requested to hear the appeals on a day to day basis.*
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> *It is needless to observe that in view of the specific direction issued by this Court to dispose of the appeals in an expeditious manner, both parties are directed to co-operate with the Tribunal.*
>
> *I.A.1/18 stands disposed."*

Seeking to challenge the order aforesaid, learned counsel for the appellant has strenuously, argued that by the order impugned, the learned Single Judge has practically confined the matter to be heard only by the Members of the Bengaluru Bench of the Tribunal and neither there was any occasion nor any justification for such directions by the learned Single Judge. Learned counsel would argue that the constitution of Benches and place of sitting, etc., are the matters within the jurisdiction and control of the President of the Tribunal and the High Court, in exercise of its power under Article 226 of the Constitution of India, is not to sit in appeal over such administrative decisions of the President. Learned counsel has referred to and relied upon the decisions of the Hon'ble Supreme Court of India in the case of ***INCOME-TAX APPELLATE TRIBUNAL v. DEPUTY COMMISSIONER OF INCOME TAX: (1996) 218 ITR 275, AJAY GANDHI AND ANOTHER v. B.SINGH AND OTHERS: (2004) 2 SUPREME COURT CASES 120*** as also a decision of the Hon'ble Madras High Court in the case of ***PRESIDENT, ITAT v. A.KALYANASUNDARAM: (2005) 279 ITR 305***.

Learned counsel has referred to the facts that the appeals filed by the appellant were assigned to a Touring Bench of the

Tribunal and even after adjournment on 29.01.2018, the President had provided for further Touring Bench with effect from 05.03.2018, which had been cancelled in view of the order passed by the learned Single Judge. According to the learned counsel, the order impugned, taking away the discretion of the President of the Tribunal, cannot be sustained. Learned counsel has also argued that there was no justification in the learned Single Judge providing for any particular Bench, while dealing with only a prayer for extension of time, as granted in the earlier order dated 22.11.2017.

Learned counsel for the respondents, on the other hand, has duly supported the order impugned, particularly with reference to the fact that the prayer of the appellant for transfer of the appeals outside Bengaluru has already been rejected. Learned counsel would submit that the President had constituted Bench in his discretion and in due discharge of his administrative functions; and the appellant is not entitled to suggest as to which Bench or the Member should hear its matter.

During the course of submissions, learned counsel for the respondents has also placed before us for perusal different orders for constitution of Touring Benches as issued by the President of the Tribunal, including the orders dated 19.01.2018, 29.01.2018, 02.02.2018 and 27.02.2018.

Having given thoughtful consideration of the rival submissions and having examined the record, we are not inclined to consider interference in the order passed by the learned Single Judge; and, in our view, a little clarification would suffice.

Background aspects of the matter make it clear that after the Tribunal vacated the interim order and the appellant approached this Court, the learned Single Judge found no justification to keep the writ petitions pending and considered it proper to issue directions to the Tribunal to dispose of the appeals expeditiously, i.e., on or before 31.01.2018 and also issued directions for retention of certain amount in the bank account by the appellant over and above the amount already deposited.

It appears that after the order aforesaid, the appellant came out with different requests for constitution of Special Bench and then for transfer of the appeals from Bengaluru Bench. The request for constitution of Special Bench was declined and the prayer for transfer of the matters was also rejected by a specific and considered order passed by the President on 20.02.2018. It appears that, while such requests of the petitioner/appellant were pending, the President considered it proper to provide for a Touring Bench at Bengaluru, whose sitting was earlier proposed from 29.01.2018 to 02.02.2018, but then was restricted only to 29.01.2018. The matters were adjourned on 29.01.2018 and, thereafter, the prayer for extension of time was considered by the learned Single Judge. Before such consideration, the prayer for transfer was rejected by the President on 20.02.2018. In the given set of facts and circumstances and the position as obtaining, the learned Single Judge found it just and proper to extend the time for disposal of the appeal/s by the Members of the Bengaluru Bench of the Tribunal. Obviously, the anxiety of the learned Single Judge had to make it clear that the appeals are to be heard and for that matter, expeditiously.

The observations occurring in the decisions relied upon by learned counsel for the appellant and the principles available therein are neither of any doubt nor of debate. However, we are unable to agree that the learned Single Judge has at all passed any order overriding the powers of the President. In fact, the learned Single Judge passed the order impugned only after taking note of the fact that the President had rejected the prayer of the appellant for transfer of the appeals outside Bengaluru.

In the given set of facts and circumstances, we are unable to take any exception against the impugned order dated 22.02.2018 as passed by the learned Single Judge but, of course, deem it appropriate to observe that the said order cannot be construed to mean that the powers of the President to constitute appropriate Bench for hearing and disposal of the appeals has been dealt with by the Court; and obviously, it goes without saying that the President has the powers to constitute appropriate Bench/Benches for consideration of the appeal/s in accordance with law.

Accordingly and in view of the above, these appeals stand dismissed subject to the observations foregoing.

All pending interlocutory applications also stand disposed of. No costs.

Sd/-
CHIEF JUSTICE

Sd/-
JUDGE

bkv/AHB