

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

***Dated this the 18<sup>th</sup> day of April, 2016***

Before

***THE HON'BLE DR JUSTICE VINEET KOTHARI***

***Writ Petitions 26370 c/w 26371 c/w 26369 c/w  
26368 / 2015 (T)***

***Between***

M/s Teleradiology Solutions Pvt Ltd  
# 7G1m Vishveshwaraiah Industrial Area  
ITPL Road, Opp. Graphite India  
Bangalore 48 - by its Managing Director      Common  
Dr Arjun Kalyanpur      Petitioner

(By Sri M V Seshachala, Sr. Counsel  
For Sri Aravind V Chavan, Adv.)

***And***

***In WP 26370/2015***

- 1 Dy. Commr. Of Income Tax – Circle 12(4)  
# 14/3, 4<sup>th</sup> Floor, Rashtrothana Bhavan  
Nrupathunga Road, Bengaluru
- 2 Commissioner of Income Tax VII  
C R Building, Queens Road  
Bengaluru
- 3 Commr. Of Income Tax (Appeals) - 7  
C R Building, Queens Road  
Bengaluru      Respondents

**In WP 26371/2015 & 26369/2015**

- 1 Joint Commr. Of Income Tax (OSD)  
Circle 12(4), # 14/3, 4<sup>th</sup> Floor  
Rashthrothana Bhavan  
Nrupathunga Road, Bengaluru
- 2 Commissioner of Income Tax VII  
C R Building, Queens Road  
Bengaluru
- 3 Commr. Of Income Tax (Appeals) - 7  
C R Building, Queens Road  
Bengaluru
- 4 Asst. Commr. Of Income Tax, Circle 12(4)  
# 14/3, 4<sup>th</sup> Floor, Rashthrothana Bhavan  
Nrupathunga Road, Bengaluru Respondents

**In WP 26368/15**

- 1 Joint Commr. Of Income Tax (OSD)  
Circle 12(4), # 14/3, 4<sup>th</sup> Floor  
Rashthrothana Bhavan  
Nrupathunga Road, Bengaluru
- 2 Commissioner of Income Tax VII  
C R Building, Queens Road  
Bengaluru
- 3 Commr. Of Income Tax (Appeals) - 7  
C R Building, Queens Road  
Bengaluru Respondents

(By Sri Jeevan J Neeralgi, CGSC)

Petitions are filed under Art.226 / 227 of the Constitution of India praying to quash the order dated 10.6.2015 – annexure E passed by 3<sup>rd</sup> respondent in all these cases, etc.

The Petitions coming on for Preliminary hearing this day, Court made the following:

**ORDER**

In these four cases the challenge is laid to the interlocutory order passed by the Commissioner of Income Tax (Appeals) rejecting the stay application filed by the assessee. The impugned demand raised against the assessee was rejected by the Assessing Authority denying it the deduction of income under S.10A of the Income Tax Act, 1961 read with Explanation (ii) defining the term 'computer software'.

2 The assessee carries on the business of rendering medical transcription of the diagnostic images taken of various patients with the help of advanced equipments and machineries of the various patients. Such medical transcriptions are exported outside the country and the assessee claims deduction in respect of the said income for these assessment years, which was denied by the Assessing Authority and aggrieved with which, the assessee filed regular appeals before the Commissioner of

Income Tax (Appeals) for these four assessment years. By the impugned order passed on 10.6.2015, the learned Commissioner of Income Tax (Appeals) rejected the stay applications and aggrieved by the same, assessee has approached this Court by filing the present writ petitions.

3 During the course of arguments, learned Senior counsel Mr M V Seshachala brought to the notice of the Court that in view of the recent Office Memorandum of Central Board of Direct Taxes (CBDT) dated 29.2.2016, in partial modification of Instruction 1914 dated 21.3.2016 which provides for guidelines of the stay of demand at the first appellate stage, CBDT has directed that in cases where the outstanding demand is disputed before the Commissioner of Income Tax (Appeals), the Assessing Officer shall grant stay of demand till disposal of the first appeal on payment of 15% of the disputed demand, unless the case was in the exception category of para B of such Circular.

4 Learned counsel for the petitioners/assessee urged that since the impugned order was passed by the Commissioner of Income Tax (Appeals) way back on 10.6.2015 and despite lapse of more than one year, since the learned Commissioner of Income Tax has not decided the appeals finally, he may be directed to decide such pending appeals before him expeditiously and the writ petitions may be disposed of with appropriate directions.

5 On the other hand, learned counsel for the Revenue submitted that even while the Commissioner of Income Tax (Appeals) is directed to decide the pending appeals, the assessee should be directed to comply with the conditions of the recent Instructions of CBDT dated 29.2.2016. The assessee company should be directed to pay at least 15% of the disputed demand of Rs.24.16 crores in terms of the recent Instructions of the CBDT.

6 I have heard learned counsel on both sides and perused the record.

7 The prayer made by learned counsel for petitioners appears to be justified and deserves acceptance. Though there was no interim stay granted by this Court against the proceedings and hearing of appeals pending before the Commissioner of Income Tax (Appeals) and he could have decided the pending appeals before him on merits by now, but in view of the admitted position that these appeals having not been decided for the last more than one year or so, it appears appropriate and expedient to dispose of these writ petitions with a direction to the Commissioner of Income Tax (Appeals) to decide the pending appeals expeditiously preferably within a period of six months from today.

8 The assessee or its authorised representative may appear in the first instance before the Commissioner of Income Tax (Appeals) on **17<sup>th</sup> May, 2016**. The petitioner shall deposit 15% of the total disputed demand under the impugned assessment orders within a period of one month from today and the Commissioner of Income Tax (Appeals) may thereafter, decide the appeals in accordance with law

on merits within the aforesaid stipulated period. The assessee will be free to raise all contentions on merits before the Commissioner of Income Tax (Appeals).

9 With the above observations, these writ petitions are disposed of. No costs. Copy of the order be sent to the parties forthwith.

**Sd/-**  
**Judge**

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