

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF APRIL, 2018

BEFORE:

THE HON'BLE MRS. JUSTICE S.SUJATHA

WRIT PETITION No.13913/2018 (T - IT)

BETWEEN:

FINCARE BUSINESS SERVICES LTD.
(FORMERLY FINANCE BUSINESS SERVICES PVT. LTD.)
No.835, 5TH FLOOR, SARJAPUR MAIN ROAD
"BREN MERCURY"
BANGALORE-561103
REPRESENTED HEREIN BY ITS
DIRECTOR
Mr.PANKAJ GULATI.

... PETITIONER

[BY SRI K.P.KUMAR, SENIOR COUNSEL FOR
SRI T.SURYA NARAYANA, ADV.]

AND:

1. THE INCOME-TAX OFFICER – WARD 3(1)(1)
II FLOOR, BMTC BUILDING
80 FEET ROAD, KORAMANGALA
BENGALURU-560095.
2. THE PRINCIPAL COMMISSIONER OF INCOME TAX -3
BMTC COMPLEX
80 FEET ROAD, KORAMANGALA
BANGALORE-5600095.
3. COMMISSIONER OF INCOME-TAX (APPEALS) -3
ROOM No.732, 7TH FLOOR, BMTC BUILDING
80 FEET ROAD, KORAMANGALA
BANGALORE – 560095.

...RESPONDENTS

[BY SRI E.I.SANMATHI, ADV.)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE COMMUNICATION DATED 22.03.2018 (ANNEXURE-W) ISSUED BY THE RESPONDENT No.3 DECLINING TO ADJUDICATE ON THE APPLICATION FOR STAY OF RECOVERY OF BALANCE DEMAND FILED BY THE PETITIONER AND ETC.

THIS PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner has challenged the communication dated 22.03.2018 issued by the 3rd respondent declining to adjudicate upon the application for stay of recovery of balance demand filed by the petitioner as well as the notice dated 23.03.2018 issued by the first respondent under Section 226 (3) of the Income Tax Act, 1961 ['Act' for short], to the petitioner's bank directing it to pay an amount of Rs.4,50,46,575/- from the petitioner's account and for other consequential reliefs.

2. The petitioner is a company registered under the Companies Act, 1956 and has engaged in the provision of the Managing Consultancy Services. During the financial year 2014-15 relevant to the assessment

year 2015-16, scrutiny assessment was made under Section 143(3) of the Act. The first respondent passed an order dated 30.12.2017 under Section 143(3) of the Act, re-computing the total income of the petitioner at Rs.33,30,78,840/-, an addition of Rs.33,20,960,053/- was made under Section 69 of the Act against the returned income on the basis that the petitioner was unable to explain the source of funds in respect of the investment made by him. It is the grievance of the petitioner that before the petitioner availing its statutory remedy, the first respondent had issued a notice dated 23.01.2018 calling upon to make payment of the same by 31.01.2018, failing which coercive measures would be taken to recover the demand. It appears that on the same day, the petitioner electronically filed an appeal before the Commissioner of Income Tax [Appeals] challenging the assessment order passed by the first respondent on various grounds and manually filed on 24.01.2018. In the meantime, the petitioner filed

an application for stay of demand in terms of the Section 220(6) of the Act with the first respondent requesting to stay the demand until disposal of the appeal filed by it before the respondent No.3 and also bringing to the notice of the first respondent the various CBDT circulars/instructions as regards the recovery of demands in cases of high-pitched assessments. However, the first respondent passed an order directing the petitioner to pay 50% of the demand on or before 02.02.2018 subject to which the recovery of balance demand is stayed. The petitioner, however deposited 20% of the demand in terms of the official memorandum dated 31.07.2017 and approached the respondent No.2 seeking for direction to the first respondent to stay the recovery of balance demand until disposal of the appeal. The second respondent has passed an order on 14.02.2018 confirming the 50% of the demand made by the respondent No.1. The petitioner filed an application dated 22.03.2018 with the respondent No.3, praying for

stay of the recovery of the balance demand until disposal of the appeal by the said Authority, which is pending disposal. While so, the first respondent issued a communication dated 20.03.2018 to proceed with the recovery notwithstanding the pendency of the said application before the respondent No.3. The petitioner challenged the said communication dated 20.03.2018 by way of Writ Petition No.13144/2018 before this Court. This Court considering the pendency of stay application before the respondent No.3, disposed of the said writ petition with an observation that the Authorities shall not initiate any precipitative action during the pendency of the stay application before the respondent No.3. In the event a decision is taken against the petitioner, the Authorities shall not precipitate the matter for a period of one week from the date of passing of the order by the Appellate Authority. Respondent No.3 has passed an order on 22.03.2018 referring to the judgment in the case of **JAGADISH N**

HINDUJA V/S. COMMISSIONER OF INCOME TAX

(APPEALS) cited by the assessee and held that the respondent No.3 has no jurisdiction to pass an order on the said application on the premise that the issue has been decided by the Principal CIT/respondent No.2. Pursuant to which, respondent No.1 has issued garnishee notice under Section 226(3) of the Act dated 23.03.2018 directing the bank to make the payment towards the demand of tax from the account of the petitioner. Being aggrieved by the order of the respondent No.3 dated 22.03.2018 at Annexure-W and garnishee notice dated 23.03.2018 at Annexure-Y, petitioner is before this Court.

3. Heard the learned counsel for the parties and perused the material on record.

4. The Co-ordinate Bench of this Court analyzing the parameters set out in Circular No.1914, issued by the CBDT in **FLIPKART INDIA PRIVATE**

LIMITED VS. THE ASSISTANT COMMISSIONER OF INCOME TAX AND OTHERS IN W.P.NCS.1339-1342/2017 (T-IT), has held that the two important factors mentioned in Circular No.1914 are whether the assessment order suffers from being “*unreasonably high-pitched*” or whether “*any genuine hardship would be caused to the assessee*” in case the assessee were required to deposit 20% of the disputed demand amount or not, has not been examined. Without assigning any reasons, the Income Tax Officer cannot direct the assessee to deposit 20% of the demand amount which is *ab-initio*, void and illegal. However, in the present case, the petitioner has deposited 20% of the demand amount. If that being so, the respondent Nos.1 and 2 ought to have examined the matter in detail in as much as whether the assessment is unreasonably high-pitched or whether any genuine hardship would be caused to the assessee in case the assessee were required to deposit 50% of the demand amount, while

disposing of the stay application. Further, second respondent has passed a cryptic order without assigning any reasons confirming the order of the respondent No.1 demanding 50% of the demand amount for grant of stay.

5. It is prima facie apparent that the order of the second respondent dated 14.02.2018 is a non-speaking order which cannot be sustained. Referring to the same, respondent No.3 has passed an order on 22.03.2018 that the request of the stay of demand cannot be considered in view of the decision taken by the second respondent which culminated in the issuance of garnishee notice dated 23.03.2018 at Annexure-Y in defiance with the order of this Court in not providing one week time before initiating coercive recovery action. Respondent No.3 referring to the same, failed to exercise the statutory powers vested with him. Statutory Appellate Authority ought to have adjudicated

upon the Application for stay filed by the petitioner. Be that as it may, the basis for declining to entertain the stay application is the order of the second respondent dated 14.02.2018 which goes to the root of the matter. Had the second respondent considered the request of the petitioner in accordance with law and passed the speaking order, it would have been appreciated. However, it is well settled principle that any order passed without assigning reasons is a nullity and not valid in the eye of law. Hence, the order of the second respondent is not in conformity with the well settled principles of law. Accordingly, order passed by the respondent No.3 at Annexure-W as well as garnishee notice dated 23.03.2018 at Annexure-Y cannot be held to be valid in the eye of law.

6. Hence, the following:

ORDER

The writ petition is ***allowed***.

Annexures-L, W and Y are quashed and the matter is remitted to the second respondent to consider the stay application filed by the petitioner in accordance with law and pass a speaking order after providing an opportunity of hearing to the petitioner as expeditiously as possible.

The petitioner shall appear before the second respondent on 10.04.2018 without expecting any notice.

The second respondent shall hear the petitioner and pass appropriate orders in accordance with law in an expedite manner.

**Sd/-
JUDGE**

NC.