

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF MARCH, 2018

BEFORE

THE HON'BLE MRS.JUSTICE S.SUJATHA

WRIT PETITION Nos.12789-12790/2018 (T-IT)

BETWEEN:

M/s. Charishma Hotels Pvt. Ltd.,
Sy.No.90/4, Hotel Park Plaza,
Marathahalli Outer Ring Road,
Munnekollalu,
Bengaluru - 560 037.
Rep. by its Managing Director
Sri. Austin Roach

....Petitioner

(By Sri.M.V.Seshachala, Senior Counsel for
Sri. Aravind V. Chavan, Advocate)

AND:

1. The Income Tax Officer,
Ward - 2(1)(3),
Room No.207,
2nd Floor, BMTC Building,
6th Block, 80 Feet Road,
Koramangala,
Bengaluru - 560 095.
2. The Commissioner of Income Tax (Appeals) - 2,
BMTC Building,
7th Floor, 80 Feet Road,
6th Block, Koramangala,
Bengaluru - 560 095.

3. The Principal Commissioner of Income Tax,
Bengaluru – 2,
5th Floor, BMTC Building,
80 Feet Road,
6th Block, Koramangala,
Bengaluru – 560 095.Respondents

(By Sri.Jeevan J. Neeralgi, Advocate)

These writ petitions are filed under Articles 226 & 227 of the Constitution of India, praying to direct the respondent No.2 to consider and dispose of the Appeals for the Assessment years 2012-13 and 2015-16 pending before him within a period of two months and to quash the interim order passed by the respondent No.1 dated 07.02.2018 produced as Annexure – K and dated 12.03.2018 produced as Annexure – M and reconsider in accordance with CBDT Circular and the judgment of this Court and etc.

These writ petitions coming on for *preliminary hearing* this day, the Court made the following:

ORDER

Learned Counsel Sri. Jeevan J. Neeralgi, accepts notice on behalf of respondents.

2. The petitioner has challenged the interim order passed by the 1st respondent on 07.02.2018 marked at Annexure-K to the Writ Petition as well as the order passed by the 1st respondent dated 12.03.2018

marked at Annexure-M to the writ petition, *inter alia* seeking for a direction to the 2nd respondent to consider and dispose of the appeals for the assessment years 2012-2013 and 2015-2016 pending before him within a period of two months.

3. Petitioner is an assessee being assessed as per the provisions of Income Tax Act, 1961 (hereinafter referred to as 'Act' for short). It is a company registered under the Companies Act, 1956. The assessee claims deduction under Section 35AD of the Act, of the entire capital of Rs.118,74,31,816/-. Assessments for the assessment year 2012-13 were concluded rejecting the claim of the petitioner for the deduction under Section 35AD of the Act. Aggrieved by the same, petitioner preferred an appeal before Commissioner of Income Tax (Appeals)-2, Bengaluru (hereinafter referred to as 'CIT(A)' for short), for the assessment year 2012-2013.

4. On 30.03.2016, Assessment order was passed for the assessment year 2013-14 declining the mandatory depreciation under Explanation 5 to Section 32(1) of the Act. Aggrieved by the same, appeal was preferred before the CIT(A) on 29.01.2018. It appears, on 07.02.2018, application for interim stay of recovery for assessment year 2015-16 got disposed of with a conditional order to pay 20% of the demand made by the Assessing Officer. The same was confirmed by the Principal Commissioner of Income Tax. Being aggrieved by the said orders of the Assessing officer as well as the Commissioner of Income Tax directing the petitioner to make payment of 20% of the demand as well as the appeals not being disposed of by the Appellate Authority-CIT(A), the petitioner is before this Court.

5. Learned Senior Counsel Sri.M.V.Seshachala appearing for the petitioner-assessee submitted that the parameters set out in the Circular No.1914 issued by

the CBDT has not been properly appreciated by the Assessing Officer as well as the Principal Commissioner of Income Tax, while directing the petitioner to make 20% of the demand. Inviting the attention of this Court to Instruction No.4(B) and 4(C) of the Circular 1914, the learned counsel submitted that in a case where stay of demand is granted by the Assessing Officer on payment of 20% of the disputed demand and the assessee is still aggrieved, he may approach the jurisdictional administrative Principal Commissioner of Income Tax/CIT for a review of the decision of the Assessing officer. Since the petitioner was aggrieved by the order of the Assessing officer directing him to deposit 20% of the demand amount, Review petition was filed before the Principal Commissioner of Income Tax, which came to be rejected by the Income Tax Officer. The order of rejection by the Income Tax Officer dated 12.03.2018 at Annexure-M is null and void as the Income Tax Officer has no competency to decide the review petition.

Whereas the Principal Commissioner of Income tax is the competent authority to decide the review petition. That being so, the order at Annexure-M deserves to be quashed. It is further submitted that at the first instance Income Tax Officer mechanically passed order at Annexure-K dated 07.02.2018 contrary to the Circular instructions namely Circular No.1914. The two important factors mentioned in Circular No.1914 is whether the assessment order suffers from being “*unreasonably highpitched*” 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 directed the petitioner-assessee to deposit 20% of the demand amount which is *ab-initio*, void and illegal. In support of his contention, the learned Senior Counsel placed reliance on the order passed by this Court in the case of ***Flipkart India Private Limited Vs. The***

***Assistant Commissioner of Income Tax and others
in W.P.Nos.1339-1342/2017 (T-IT).***

6. It is the contention of the Learned Senior counsel appearing for the petitioner that in terms of Section 250 (6A) of the Act, appeal filed by the assessee before the Appellate Authority-CIT(A) requires to be disposed of within a period of one year from the end of the financial year in which the appeal has been filed before the Appellate Authority. Though the appeal was filed on 29.04.2015 relating to the assessment year 2012-2013 and on 29.01.2018 relating to the assessment year 2015-16, both involving the same issue relating to the depreciation under Explanation 5 of Section 32(1) of the Act and deduction under Section 35AD, non-disposal of the appeals by the Appellate Authority within the reasonable time has caused hardship to the assessee to face the demand made by

the respondent-authorities where huge tax liability is created without valid basis.

7. Learned Counsel Sri.Sanmathi would fairly submit that Annexures K and M are not passed in accordance with law and the same requires reconsideration. As regards the other contentions of the learned Senior Counsel, it was submitted that the Appellate Authority shall dispose of the appeals in accordance with law and no directions are warranted.

8. Heard the learned counsel for the parties and perused the materials on record.

9. Annexures K and M deserves to be set-aside for the reason that no speaking order is passed by the authorities while directing the petitioner-assessee to deposit 20% of the demand amount, mechanically referring to CBDT instruction No.1914 dated 21.03.1996. In the light of the judgment of this Court in the case of **Flipkart India Private Limited**, referred

supra, the Income Tax Officer i.e. the Assessing Authority has to examine the applicability of the instructions of Circular No.1914 in as much as whether the assessment is “*unreasonably highpitched*” 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. Without any application of mind, the Assessing Authority has demanded 20% of the demand amount while disposing of the said application. Surprisingly, though the review petition was filed before the Principal Commissioner of Income tax, Income Tax Officer has passed the order which is wholly without jurisdiction. It is well settled law that any order passed without jurisdiction is nullity and not valid in the eye of law. Hence, for these reasons, Annexures K and M cannot be sustained, accordingly quashed. Matter is remitted to respondent No.1 to reconsider the application for stay in accordance with law in an expedite manner.

10. As regards the pendency of appeals before the Appellate Authority-CIT(A), ordinarily this Court would not have ventured to direct the Appellate Authority to dispose of the appeals within a time frame. But, considering the totality of the circumstances of the case, this Court is of the considered opinion that justice would be sub-served in directing the Appellate Authority-CIT(A) to dispose of the appeals filed by the petitioner for the assessment years 2012-13 and 2015-16 in accordance with law, in an expedite manner, in any event not later than six months from the date of receipt of certified copy of this order.

With the aforesaid observations, Writ petitions stand disposed of.

**Sd/-
JUDGE**

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