

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

ON THE 4<sup>TH</sup> DAY OF FEBRUARY, 2020

BEFORE

THE HON'BLE MR. JUSTICE RAVI MALIMATH

AND

THE HON'BLE MR. JUSTICE M.I.ARUN

WRIT APPEAL No.5854 OF 2017 (T-IT)

BETWEEN:

M/S CANBANK FINANCIAL SERVICES LTD.  
(WHOLLY OWNED SUBSIDIARY OF  
CANARA BANK), HAVING ITS  
REGISTERED OFFICE AT  
NAVEEN COMPLEX, 14  
M.G.ROAD, TRINITY CIRCLE  
BENGALURU - 560 001.  
REPRESENTED BY S. NARAYANA SETTY,  
AGED ABOUT 55 YEARS,  
SON OF LATE S. SEETHARAMAIAH SETTY,  
RESIDING AT BENGALURU.

... APPELLANT

(BY SRI. BALRAM R. RAO, ADVOCATE)

AND:

CHIEF COMMISSIONER OF INCOME TAX  
CENTRAL REVENUE BUILDING  
QUEEN'S ROAD, BENGALURU- 560 001,  
KARNATAKA

... RESPONDENT

(BY SRI. E. I. SANMATHI, ADVOCATE FOR  
SRI. K. V. ARAVIND, ADVOCATE)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER DATED 21/08/2017 IN WRIT PETITION NO.7276 OF 2017 (TAX-IT) PASSED BY THE LEARNED SINGLE JUDGE AND TO ALLOW THIS WRIT APPEAL WITH COSTS.

THIS WRIT APPEAL COMING ON FOR HEARING, THIS DAY, M.I.ARUN J., DELIVERED THE FOLLOWING:

### **JUDGMENT**

Aggrieved by the order dated 21.08.2017 passed by the learned Single Judge in dismissing writ petition No.7276 of 2017, the petitioner therein is in appeal.

2. The brief facts of the case are as follows:

The appellant had a dispute with M/s.Hongkong & Shanghai Banking Corporation Limited (hereinafter referred to as 'M/s.HSBC' for short). It went up to Supreme Court of India. On 15.07.2013, the Hon'ble Supreme Court dismissed the appeal filed by M/s.HSBC and on 05.08.2013 directed the Registry of the Supreme Court to release the money deposited by M/s.HSBC in favour of the appellant

herein. Accordingly, the appellant received a sum of Rs.102,59,36,115/-, which resulted in profit of Rs.56,01,36,301/- for the financial year 2013-2014. The same was deposited in the appellant's account on 03.10.2013. In the meantime, on 14.08.2013, M/s. HSBC filed a review petition against the judgment of the Hon'ble Supreme Court of India directing the release of money to the appellant herein. The Hon'ble Supreme Court on 03.12.2013, dismissed the review petition filed by M/s.HSBC.

3. The appellant on the ground that matter was pending before the Supreme Court, paid the required advance tax for the Assessment Year 2014-2015 only in the third quarter. However, the authorities on the ground that advance tax was not paid in the first two quarters, charged interest under Section 234C of Income Tax Act, 1961, amounting to Rs.20,21,466/-. The appellant challenged the same before the respondent herein seeking waiver of

complete interest charged under Section 234C of the Income Tax Act. It has to be noted that the said waiver of interest is governed by CBDT's order under Section 119(2)(a) in F.No.400/29/2002-IT(B) dated 26.06.2006. The relevant provision of the said order reads as follows:-

*"4.1 Waiver of Interest under section 234C: Waiver of interest charged under Section 234C is governed by the guidelines specified in paragraph No.2 of the Board's order (supra) as reproduced below:-*

*Para 2(b) Any income chargeable to income-tax under any head of income, other than Capital gains is received or accrued after due date of payment of the first or subsequent installments of advance tax, which was neither anticipated nor was in the contemplation of the assessee, and the advance tax on such income is paid in the remaining installment or installments, and the Chief Commissioner/Director General is satisfied on the facts and circumstances of the case that this is a fit case for reduction or waiver of the interest chargeable under Section 234C if the Income Tax Act."*

4. The respondent in its order dated 19.09.2016 has observed that the Hon'ble Supreme

Court dismissed the appeal filed by M/s.HSBC on 15.07.2013 against the appellant herein and directed the Registry on 05.08.2013 to release the money to the appellant herein. The said amount was kept in fixed deposit and after TDS on interest and other deductions, the assessee company i.e., appellant herein received a pay order of Rs.102,59,36,115/- on 03.10.2013. As the Hon'ble Supreme Court dismissed the appeal against the appellant herein on 15.07.2013, the appellant became eligible to receive the sum accrued to it. The 2<sup>nd</sup> installment of income tax was due on 15.09.2013. It was only the first installment of advance tax which was due on 15.09.2013 had lapsed. Hence, the respondent passed an order waiving the interest for not paying the advance tax prior to 15.06.2013 but held that the appellant company is liable to pay interest for not paying the advance tax prior to 15.09.2013 and thus fixed interest liability at Rs.15,16,107/-.

5. The same is challenged by the appellant in the instant writ petition. The learned Single Judge taking into consideration the date on which the Hon'ble Supreme Court dismissed the appeal as against the appellant herein and after appreciating the reasoning given by the respondent in the impugned order, dismissed the writ petition. Aggrieved by the same, the petitioner therein has preferred this appeal.

6. It is the contention of the appellant that the amount was received by it on 03.10.2013, though the Hon'ble Supreme Court had dismissed the appeal on 15.07.2013 and a direction was issued to the Registry to release the amount in favour of the appellant on 05.08.2013. Thus, the amount was received after 15.09.2013, the date when the 2<sup>nd</sup> installment for advance tax became due. On this ground, the appellant has contended that the

reasoning given by the respondent and the learned Single Judge are bad. The other ground raised by the appellant is that M/s.HSBC filed a review petition against the order passed by the Supreme Court and the review petition was dismissed only on 03.12.2013, which was not considered by the respondent or the learned Single Judge while passing the order.

7. Heard learned counsels for the parties.

8. Though the amount was released to the appellant on 03.10.2013, the same accrued to it on 15.07.2013 when the Hon'ble Supreme Court dismissed the appeal of M/s.HSBC. Further, the Supreme Court has directed its Registry to release the amount in favour of appellant herein on 05.08.2013. The order of CBDT dated 26.06.2006 as mentioned in paragraph 4.1 *supra* is clear that in such a situation, the appellant will be obliged to pay

the advance tax and on the accrual of the income which in the instant case accrued on 15.07.2013. Further, in the absence of any interim order, mere filing of a review petition before the Hon'ble Supreme Court is no ground for non payment of advance tax.

For the aforementioned reasons, we do not find it to be a fit case to interfere with the order passed by the learned Single Judge. Consequently, the writ appeal is dismissed.

No order as to costs.

Sd/-  
JUDGE

Sd/-  
JUDGE

MH/-