

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20<sup>TH</sup> DAY OF JULY, 2020

BEFORE

THE HON'BLE MR.JUSTICE P.S. DINESH KUMAR

WRIT PETITION No.8531 OF 2020 (T-IT)

**BETWEEN :**

1. M/S. PENTIUM CONSTRUCTION PRIVATE LIMITED  
S J PATEL BUSINESS CHAMBERS  
II FLOOR, NO.2/2, II MAIN  
VINAYAKA CIRCLE  
PALACE GUTTAHALLI  
BANGALORE-560 003  
[REPRESENTED BY  
MR. VELLALATH GOPINATHAN  
MANAGING DIRECTOR  
AGED ABOUT 54 YEARS  
S/O LATE KARUNAKARAN NAIR]
2. MR. VELLALATH GOPINATHAN  
MANAGING DIRECTOR OF  
M/S. PENTIUM CONSTRUCTIONS PVT LTD  
II FLOOR, MANANCHIRA TOWER  
A.G. ROAD, KOZHIKODE  
KERALA-673 001

...PETITIONERS

(BY SHRI. V. RAGHURAMAN, ADVOCATE)

**[THROUGH VIDEO CONFERENCE]**

**AND :**

1. THE INCOME TAX OFFICER  
WARD-5 (1) (3)  
BMTc BUILDING  
80 FEET ROAD, 6<sup>TH</sup> BLOCK  
NEAR KHB GAMES VILLAGE  
KORAMANGALA  
BANGALORE-560 095

2. SYNDICATE BANK  
(REPRESENTED BY BANK MANAGER)  
HOTEL FOURA BUILDINGS  
MAVOOR ROAD, TEA KOZHIKODE  
KERALA-673 001
  3. PRINCIPAL COMMISSIONER OF INCOME TAX-5  
BMTc BUILDING  
80 FEET ROAD, 6<sup>TH</sup> BLOCK  
NEAR KHB GAMES VILLAGE  
KORAMANGALA  
BANGALORE-560 095
- ... RESPONDENTS

(BY SHRI. E.I. SANMATHI, ADVOCATE FOR R1 & R3)

**[THROUGH VIDEO CONFERENCE]**

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THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ASSESSMENT ORDER DTD.30.12.2019 (ANNEXURE-A) PASSED BY R-1 AS BEING VIOLATIVE OF ARTICLE OF ARTICLE 14, ARTICLE 19 (1) (g) OF THE CONSTITUTION AND ETC.

THIS WRIT PETITION COMING ON FOR *ORDERS* THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

Though this matter is listed for orders regarding completion of service of notices to respondents. Shri E.I.Sanmathi, learned Standing Counsel appears for respondents No.1 & 3, the Income Tax Department.

2. The matter being in a short compass, as prayed for by learned advocates for petitioner and respondents No.1 & 3, it is taken up for final disposal.

3. Petitioner has challenged the assessment order dated 30<sup>th</sup> December 2019 (Annexure-A) passed by the 1<sup>st</sup> respondent- Income Tax Officer, Bengaluru. On 12<sup>th</sup> March 2020, the Assessing Authority instructed second respondent bank to freeze petitioner's Bank account. Petitioner has filed an application before the Assessing Authority on 20<sup>th</sup> March 2020 seeking stay of assessment order and the Assessing Authority rejected the same on 23<sup>rd</sup> March 2020. Thereafter, petitioner filed an application for stay before third respondent namely, the Principal Commissioner of Income Tax-5, Bengaluru ('the PCIT' for short)) under Section 246A of Income Tax Act, 1961. Since no orders were passed by the PCIT, the petitioner has approached this Court with a prayer to quash the assessment order.

4. Shri Raghuraman, learned advocate for petitioner submitted that whilst this writ petition is pending consideration, on 17<sup>th</sup> July 2020, the PCIT has passed an order directing petitioner to deposit 20% of the tax amount

in six installments. The said order has been passed without notice and without hearing the petitioner. Shri Raghuraman further submitted that the Assessing Authority has disallowed expenditure of nearly Rs.7.87 crores, which the petitioner has incurred by making payment to its contractors. The list of eighteen such contractors has been recorded in the assessment order. Notices were issued to the said contractors and they have given reply to the Assessing Authority. However, without properly appreciating the replies, the Assessing Authority has disallowed the expenditure and assessed the payment of tax of Rs. 3.35 Crores.

5. To substantiate his submission, Shri Raghuraman adverted to letter dated 24<sup>th</sup> December 2019 written by M/s SanWe MEP Contracting Private Limited and email by M/s Credai Calicut on 26<sup>th</sup> December 2019. He submitted that these replies were given prior to date of assessment order namely, 30<sup>th</sup> December 2019. He argued that though this is the factual matrix, the Assessing Authority has called these expenses as 'bogus expenses'

and disallowed. Petitioner is thus not liable to pay any tax. Therefore, the conditional order passed by the PCIT directing the petitioner to pay 20% of the amount assessed in the assessment order is also not sustainable in law. Accordingly, he prayed for allowing this petition.

6. Shri Sanmathi argued opposing the petition. He submitted that the appeal is pending before the appellate authority and the PCIT has partly allowed the stay application and directed payment of 20% tax amount in six easy installments. When the appeal is pending, a writ petition challenging the assessment order is not maintainable.

7. I have carefully considered rival submissions and perused the records.

8. It is not in dispute that the assessment order is passed on 30<sup>th</sup> December 2019. M/s SanWe MEP Contracting Private Limited have sent their reply to the Income Tax Officer on 24<sup>th</sup> December 2019 and M/s Credai Calicut on 26<sup>th</sup> December 2019. As per Raghuraman's

submission, all the contractors have submitted their reply and petitioner is prepared to furnish them before the PCIT. The said two letters addressed to the Income Tax Officer *prima facie* show that the Assessing Authority has not taken note them while passing the assessment order on 30<sup>th</sup> December 2019. The Assessing Authority has disallowed the expenditure of Rs.7.87 crores, by calling the expenditure as 'bogus'. As noticed herein, the replies of two contractors are on record and the same are admittedly received prior to the date of assessment order. Therefore, saddling on the assessee to pay taxes by disallowing the expenditure without appreciating replies received under Section 133(6) of the Income Tax Act will meet an assessee with consequences of making the payment. It is always expected of the Assessing Authority to take note of and examine the replies of the recipients of such expenditure. In the instant case, it appears the same is overlooked.

9. Admittedly, an application was filed before the PCIT seeking stay of assessment order. The same has also been disposed of without hearing the petitioner. Generally, in all

cases, an application filed before any quasi judicial authority is required to be heard before any orders are passed and more so, in the case of this nature, where the assessee becomes liable to pay huge taxes. The application has been presented before the PCIT on 30<sup>th</sup> April 2020 and the order has been passed on 17<sup>th</sup> July 2020. Though the application was pending for more than two months, petitioner has not been heard.

10. In the facts and circumstances of the case, the submission of Shri Sanmathi, seeking to defend the Revenue by contending that petitioner has been shown concession to pay 20% of the tax amount, that too in six equal instalments is too fragile to be countenanced.

11. Hence, the following:

ORDER

The third respondent- PCIT shall grant an opportunity to petitioner to put forth its case so far as the application for stay is concerned. The PCIT, subject to his convenience, may either hear the petitioner in person or

through the video conference. The petitioner shall appear before the PCIT on 30<sup>th</sup> July 2020 and take further instructions. The PCIT, after hearing the petitioner, shall dispose of the said application within a period of four weeks from the date of petitioner's appearance. No coercive steps to recover the tax amount shall be initiated till PCIT passes his order.

12. The writ petition is accordingly ***disposed of.***

No costs.

**Sd/-  
JUDGE**

Yn.