

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF MARCH 2020

BEFORE

THE HON'BLE MR.JUSTICE S. SUNIL DUTT YADAV

WRIT PETITION No. 4952/2020 (T-IT)

Between:

M/s. Monarch
No.54, Monarch Plaza,
Brigade Road,
Bangalore 560 001.
Represented by
Shri Dawood Mohammed
Partner
Aged about 69 years
S/o. Mchammed Dawood

... Petitioner

(By Sri Raghuraman V. Adv.)

And:

1. Income Tax Officer
Ward 1(2)(1), BMTC Building,
80 Feet Road, 6th Block,
Near KHB Games Village,
Koramangala,
Bangaluru 560 095.
2. Deputy Commissioner of Income Tax
Circle 1(2)(1), BMTC Building,
80 Feet Road, 6th Block,
Near KHB Games Village,

Koramangala,
Bengaluru 560 095.

... Respondents

(By Sri. K. V. Aravind, Adv.)

This Writ Petition is filed under Articles 226 & 227 of Constitution of India, praying to quash the impugned notice (1) dated 24.09.2018 (2) dated 29.09.2018 (Annexures-A1 and A2) issued by the R-1 as being illegal and without jurisdiction and quash the impugned order (1) dated 13.12.2019 (Annexure-B) passed by R-2 as being violative of Article 14, Article 19, Article 265 and 300A of the Constitution of India and etc.

This Writ Petition coming on for preliminary hearing this day, the Court made the following:

ORDER

The petitioner has challenged the impugned notice issued under Section 143 of the Income Tax Act, 1961, copies of which are produced as Annexures-A1 and A2 and has also challenged the order dated 13.12.2019, copy of which is enclosed as Annexure-B and the demand pursuant to the assessment order at Annexure-C dated 13.12.2019.

2. The petitioner submits that as against the assessment order at Annexure-B, an appeal has been filed before the Commissioner of Income Tax (Appeals).

It is further submitted that the petitioner had filed an application for stay and had sought for interim relief and the Assessing Officer as per the order at Annexure-X has ordered that there would be stay of 80% of the disputed demand till disposal of the appeal, subject to payment of Rs.61,17,317/- (20% of the demand) on or before 07.02.2020.

3. It is the contention of learned counsel for the petitioner that subsequent to the order at Annexure-X, the petitioner has approached the Principal Commissioner of Income Tax on 07.02.2020 and had sought for stay of recovery of demand including the direction of Assessing Officer directing the petitioner to deposit Rs.61,17,317/- of the demand. The petitioner has furnished copy of the detailed representation made to the Principal Commissioner of Income Tax detailing various contentions, justifying stay of recovery of demand and making out a case that the demand is high

pitched and has also contended that the assessment order has disallowed expenditure of Rs.6,53,34,735/- as allowable under Section 37(1) of the Income Tax Act, 1961, as the said amount was already declared as income during the assessment year 2012-2013. Various other contentions have also been raised.

4. It is further contended that when the application for stay is taken up for consideration by the Assessing Officer, the Assessing Officer should pass an order after due application of mind and that subsequently after the application for stay is disposed off, the petitioner has an opportunity of approaching the Principal Commissioner of Income Tax in light of the Circular bearing No.1914, further amended on 25.01.2017, 29.02.2016 and 31.07.2017 and despite representation there is no consideration by the Principal Commissioner of Income Tax.

5. It is also contended that the Principal Commissioner of Income Tax is also to take note of the guidelines as observed in the case of **Flipkart India Private Limited v. The Assistant Commissioner of Income Tax (W.P.Nos.1339-1342/2017** decided on **23.02.2017**) and apply his mind and pass a considered order. It is contended that the contents of stay application make out a case for consideration of relaxing the condition as sought for.

6. Learned counsel appearing for the Revenue submits that the petition is premature and no doubt, the Principal Commissioner of Income Tax has not passed any order on the representation of the petitioner dated 07.02.2020, but the same would be considered in accordance with law and in accordance with the existing circulars as applicable.

7. In light of the appeal having been filed, the question of intervening as regards to the assessment

order at this stage is not appropriate. However, as regards the contention that the consideration of application for stay and further exercise of power of the Principal Commissioner of Income Tax, keeping in mind the circular bearing No.1914 as amended on 21.5.2017, 29.2.2016 and 31.7.2017 request of the petitioner is to be considered in a meaningful manner. In fact, the power of granting stay has been considered by the High Court of Judicature at Madras in the case of **M/s. Shriram Finance v. Principal Commissioner of Income Tax (1) and Others (W.P.No.5425/2019 & W.P.Nos.6166 & 6168/2019** decided on **01.03.2019**) wherein, certain guidelines have been referred to in para-5 which may be taken note of. So also the manner of exercise of power of the Principal Commissioner of Income Tax is detailed in **Flipkart's case (supra)** at paras – 18 and 19, which needs to be kept in mind. This Court refrains from expressing any opinion on the merits of contentions raised but reiterates that the

Principal Commissioner of Income Tax is to exercise power conferred upon him as per the circulars in a meaningful manner.

8. The petitioner to be present before the Principal Commissioner of Income Tax on **05.03.2020** at **11.30 a.m.** and the request of petitioner as contained in the representation dated 07.02.2020 would be disposed of in light of the observations made above.

9. In light of the submission that there has been attachment of bank account and in light of the direction being passed, the attachment already resorted to would be limited to Rs.61,17,317/-. However, in light of the attachment being restricted to Rs.61,17,317/-, the Principal Commissioner of Income Tax to dispose of the representation of the petitioner within a period not later than one week from the date of appearance of the petitioner as noticed above. All contentions of parties are kept open. It is made clear that if the Principal

Commissioner of Income Tax does not decide the matter within a period of one week as stipulated, the attachment would automatically stand vacated.

This petition is accordingly ***disposed off***.

**Sd/-
JUDGE**

VGR