



IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 09TH DAY OF JANUARY 2018

BEFORE

THE HON'BLE Dr.JUSTICE VINEET KOTHARI

WRIT PETITION No.12913/2017 (T-IT)

BETWEEN:

ASSISTANT COMMISSIONER OF INCOME TAX
CIRCLE-2(1)(2)
ROOM NO.218, 2ND FLOOR
BMTc DEpCT, 6TH FLOOR
BANGALORE-560 095.

...PETITIONER

(BY SRI.ARAVIND K.V., ADV.)

AND:

M/S EPSON INDIA PVT. LTD.
12TH FLOOR, THE MILLENIA TOWER A
NO.1, MURPHY ROAD, ULSOOR
BANGALORE-560 008.
PAN NO.AAACE7858F.

...RESPONDENT

(BY SRI.T.SURYANARAYANA, ADV.)

THIS W.P. IS FILED UNDER ARTICLES 226 & 227 OF
THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE
ORDER DTD.10-03-2017 PASSED BY THE INCOME-TAX
APPELLATE TRIBUNAL, BANGALORE BENCH-C,
BANGALORE VIDE ANNEXURE-F AND ETC.

THIS W.P. COMING ON FOR ORDERS THIS DAY, THE
COURT MADE THE FOLLOWING:-

ORDER

Mr.K.V.Aravind, Adv. for Petitioner-Income Tax Department
Mr.T.Suryanarayana, Adv. for Respondent-Assessee

This writ petition has been filed by the petitioner-Assistant Commissioner of Income Tax, Circle-2(1)(2), Bengaluru, challenging the interim stay order passed by the Income Tax Appellate Tribunal (ITAT) vide **Annexure-F** dated **10-03-2017** in the stay application filed in the Income Tax Appeal by the respondent-assessee M/s. Epson India Private Limited.

2. The Division Bench of the ITAT finding that the assessee had a good prima facie case in the pending appeal before it granted stay against the recovery of the demand from the respondent-assessee which, as per the impugned order was to an extent of **Rs.22.17 Crores**, against which the assessee had already paid a sum of **Rs.3.32 Crores**. Before granting stay, the learned

Tribunal further directed the assessee to deposit **Rs.2.00 Crores** and balance demand was stayed for a period of 90 days, directing that the appeal itself to be fixed for hearing on **17-04-2017**.

3. The ground assigned by the petitioner-Income Tax Department before this Court under Articles 226/227 of the Constitution of India is that the DRP (Dispute Resolution Panel) consisting of three Commissioners of the Income Tax Department categorically recorded a finding in the impugned order that the expenditure incurred by the respondent-assessee towards AMP (Advertisement, Marketing and Promotion) was for promotion of Brand owned by the Associated Enterprises, a Foreign Company and therefore, certain AMP adjustments were required to be made to determine the Arm Length Price (ALP) in the hands of the respondent-assessee in their declared income and the said findings resulted in the impugned demand

against the respondent-assessee to an extent of
Rs.22.17 Crores.

4. The respondent-assessee was required to file a regular appeal against the said order before the ITAT which undoubtedly has a power to grant interim relief also and after considering the averments made in the stay application filed by the respondent-assessee and after hearing Departmental counsel also, the ITAT in its wisdom and exercise of its discretion has granted the aforesaid interim order on **10-03-2017**. The Revenue has preferred this writ petition before this Court as aforesaid on **22-03-2017**.

5. This court called upon the Chief Commissioner of Income Tax to file an Affidavit before this Court as to why the Revenue has chosen to challenge the said interim order passed by the ITAT before this Court by invoking its extraordinary jurisdiction under Articles

226/227 of the Constitution of India by way of present writ petition, as prima facie it appeared that the interim order passed by the learned Tribunal was in fair exercise of its discretion and apparently no good reason was found for the Revenue to challenge the said order before this Court.

6. In pursuance of the directions of this Court dated **02-01-2018**, instead of the Chief Commissioner of Income Tax, a lower authority the Principal Commissioner, one Mr.Yogesh Pande Son of B.D.Pande, working as Principal Commissioner of Income Tax (2), Bengaluru, other than the Principal Commissioner who approved the sanction of filing of the present writ petition through the Assistant Commissioner of Income Tax has filed an Affidavit before this Court today. While no order sanctioning or approving the action of filing of the present writ petition has been produced before this Court along with the said Affidavit, the said Principal

Commissioner of Income Tax has stated in his Affidavit dated **08-01-2018** that the Revenue Department relying upon the decision of the Hon'ble Supreme Court in the case of **ASSISTANT COLLECTOR OF CENTRAL EXCISE, CHANDAN NAGAR, WEST BENGAL v/s DUNLOP INDIA LTD. AND OTHERS** reported in **(1985) 1 SCC 260** has chosen to file this writ petition on the ground that the ITAT in its impugned order dated **10-03-2017**, without properly appreciating the orders passed by the TPO, Assessing Officer and the DRP proceeded to stay the demand, subject to payment of **Rs.2.00 Crores** in addition to **Rs.3.32 Crores** paid against the outstanding demand of **Rs.22.17 Crores**, though it was contended by the Revenue before the ITAT that the entire demand was collectable by the Revenue. It was further contended that no prima facie case has been made out by the assessee and no financial difficulty has been expressed by the assessee. Therefore, no hardship is likely to be caused, if the

entire demand is directed to be paid. This is so stated in paragraph 6 of the Affidavit of the Principal Commissioner.

7. On the other hand, learned counsel for the respondent-assessee has submitted before this Court that the impugned interim order passed by the ITAT is not only absolutely justified and sustainable order which was passed upon a fair and objective consideration of the relevant facts and therefore does not call for any challenge to the same before this Court under the extraordinary jurisdiction under Articles 226/227 of the Constitution of India.

8. He has further submitted that on merits of the case also since the impugned orders before the ITAT were not sustainable and the matter was covered in favour of assessee by the decision of the Delhi High Court in the case of **CIT v/s CANON INDIA PVT. LTD.**

reported in **374 ITR 118** and a similar view was already taken by the Bengaluru Bench of the ITAT also in the case of **M/s. ESSILOR INDIA PRIVATE LIMITED v/s DCIT** as referred in paragraph 11.1 of their stay application, in fact the entire demand of **Rs.22.17 Crores** raised in the impugned orders by the authorities below deserved to be set aside.

9. He submitted that the interim order granted by the ITAT in fact protected interest of the Revenue more and caused prejudice to the assessee by directing it to pay a further sum of **Rs.2.00 Crores** in addition to a sum of **Rs.3.32 Crores** already paid by it and particularly when the appeal itself was fixed for hearing on **07-04-2017** i.e., shortly after the date of impugned order dated **10-03-2017** and there was absolutely no reason for the Revenue to assail the said interim order before this Court by filing this petition on **22-03-2017**.

10. He has further produced before this Court the subsequent orders passed by the ITAT on **02-06-2017** and **13-10-2017** extending the said interim order for further periods and has pointed that when the said appeal was fixed before the ITAT on **22-11-2017** and **11-12-2017**, the Departmental Representative appearing on behalf of the Revenue sought time and adjournment to argue the said appeal before the ITAT and now hearing of the said appeal is fixed before the ITAT on **11-01-2018**. He has also submitted before the Court that the recent decision of the Hon'ble Supreme Court relied upon by the learned counsel for the Revenue in the case of **Assistant Collector of Central Excise V/S Dunlop India** is not applicable to the present case in as much as the ratio of the said decision is to lay down certain guidelines for the Constitutional Courts while considering the matters for grant of interim orders, particularly in the cases of indirect taxation, where the Hon'ble Supreme Court said that

furnishing of Bank Guarantees to protect the interest of the Revenue is not sufficient as Governments cannot run on such Bank Guarantees, which fact situation or legal position is not even available in the facts of the present case and therefore the Revenue cannot justify its action in filing the present writ petition before this Court assailing the aforesaid interlocutory order passed by the ITAT.

11. I have heard the learned counsel for the parties at some length and perused the material on record.

12. The issues raised in the present writ petition have larger implications and connotations rather than deciding one case in peculiar facts. It is the unnecessary dogged approach of the Revenue to multiply the litigations in the Constitutional Courts, in turn wasting the precious public hours of time and unholy desire to become a litigant in the Constitutional

Courts at Government costs, though there may be absolutely no justification for doing so. The efforts of the Revenue to prove their point that they had a good case on merits before the Constitutional Courts rather than respecting the orders passed by the statutorily created Tribunals not only shows lack of judicial discipline and hierarchical discipline which they should maintain, but treating the constitutional remedies as a vested right with them. The public functionaries and public officials cannot be allowed to spend Government money and public time much less public time of the Constitutional Courts just for the sake of proving their such fictional desires. First raising unsustainable, illegal and high pitched demands and then seeking to coercively recover the same even showing scant regard to the orders passed by highest Tribunal under the Act and for that invoking the writ jurisdiction to seek support to their such effort is nothing but an utterly irresponsible and unfair behaviour. It is the lack of

such discipline with the Government Officials which turns Government Departments as a major litigant in the Constitutional Courts, in turn depriving the Constitutional Courts to devote their time for looking into the causes of poor people, which deserve their time and attention of the court more than such Government Departments.

13. Turning back to the facts of the present case, one can very clearly see that the entire demand raised by the authorities below prima facie was not even sustainable when once the controversy was apparently covered by the decision of the Delhi High Court and also the Bench of the Tribunal itself at Bengaluru, in favour of assessee. Therefore, the grant of absolute stay against the recovery would have been more appropriate in the circumstances, rather than calling upon the assessee to deposit a further sum of **Rs.2.00 Crores**. The ITAT, perhaps to serve the interest of the Revenue

leaned to some extent in favour of Revenue for the time being subject to the final decision of the appeal itself and chose to pass this order, which brought to the kitty of Revenue more than a sum of **Rs.5.00 Crores** against a prima facie unsustainable demand of **Rs.22.17 Crores**, still the Revenue did not feel satisfied and instead of pursuing hearing of the appeal before the ITAT, chose to file the present writ petition before this Court which is absolutely misconceived remedy availed by them. Were these officials trying to prove their superior wisdom over the wisdom of Tribunal and already rendered precedent or overawe the Tribunal by the intervention of the higher constitutional courts, even on a misconceived petition?

14. In these circumstances, the reliance placed by the learned counsel for the petitioner-Revenue on the decision of the Hon'ble Supreme Court in the case of **ASSISTANT COLLECTOR OF CENTRAL EXCISE v/s**

DUNLOP INDIA LIMITED is also equally without any merit. The Hon'ble Supreme Court while dealing with the case of Central Excise, an indirect taxation in which the incidence of tax is admittedly passed on by the assessee to the customers as against the direct taxes, like Income Tax in the present matter, where the demand is raised against the assessee and is required to be paid by them, was laying down certain guidelines for the Constitutional Courts while exercising writ jurisdiction under Articles 226/227 of the Constitution of India. The blanket interim orders in such indirect tax matters causes prejudice to the public interest and therefore should not be so granted blindly. The directions of Constitutional Courts to the assesseees to furnish Bank Guarantees, which is nothing more than a piece of paper under which the Bank stands guarantee for the default of the assessee, the Governments cannot be expected to meet the public expenses out of their general funds and the Hon'ble Supreme Court

expressed their concern about the public revenue of the public bodies like Municipal Corporation which have to incur huge day to day expenses for the public services rendered by them was laying down their guidelines.

15. The said guidelines laid down by the Hon'ble Supreme Court in **Dunlop India** case are not at all attracted in the circumstances, in which the ITAT has passed the interim order, nor does it fortify the stand of petitioner-Revenue for having chosen to file this writ petition before this Court against the said interim order of Tribunal. The Income Tax Department can neither be compared with the Municipal Corporation nor do they deal with the indirect taxation. Therefore, both the basic parameters on which the observations of Hon'ble Supreme Court in **DUNLOP** case is relied upon by the learned counsel for the petitioner-revenue before this Court justifying the filing of the present writ petition are not applicable. It further shows a non-application of

mind on the part of the Principal Commissioner, while sanctioning the filing of this writ petition before this Court.

16. Seeking adjournments from the ITAT on the dates fixed by it for hearing the appeal itself which was apparently covered in favour of the respondent-assessee by the Departmental counsel adds insult to the injury. The irresponsible and uncoordinated manner in which authorities of the petitioner-Income Tax Department have displayed their dealing of the serious matters like invoking the constitutional remedy has prompted this Court to take up this matter to deprecate strongly such tendency on the part of the Revenue authorities and other Government Departments, who choose to avail constitutional remedies for not so good reasons at all, wasting the public money and court's time taken even to hear and reject such frivolous writ petitions.

17. Irrespective of the policy decisions taken at the highest levels of Government in the form of National Litigation Policy and CBDT Instructions restricting these authorities not to invoke superior courts' even regular appellate jurisdiction with the small stakes and petitions not involving larger and important questions of law which require interpretation by the constitutional courts, the individual officers at their own lower level continue to defeat these avowed policies, as is reflected in the present case.

18. Therefore, in the considered opinion of this Court, the present writ petition deserves to be dismissed with exemplary costs on the officials involved in filing of this writ petition. The costs are quantified at Rs.50,000/- to be paid by each of the Principal Commissioner of Income Tax-2, Bengaluru Mr.Yogesh Pande, who has filed the response Affidavit justifying the filing of this writ petition, the Principal Commissioner who

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sanctioned filing of this writ petition and the Assistant Commissioner of Income Tax, Circle-2 (1)(2), Bengaluru Ms.Preeth Ganapathy, who has filed this writ petition and the said costs will be paid by these officials from their personal resources and not from the Government fund within a period of two months from today to the Legal Services Authority of the State, to be utilized for the cause of poor litigants.

**Sd/-
JUDGE**

mpk/-*
(Sl.No.3 of List No.1).