IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF APRIL, 2018

BEFORE:

THE HON'BLE MRS. JUSTICE S.SUJATHA

WRIT PETITION No. 13714/2018 (T-IT)

BETWEEN:

M/S BRIGHT PACKAGING PVT LTD
REPRESENTED BY ITS AUTHORISED
REPRESENTATIVE SRI STANY
SANTHOSH RODRIGUES
S/O SRI MARIAN RODRIGUES
AGED ABOUT 44 YEARS
NO.162-BM BAIKAMPADY INDUSTRIAL AREA
MANGALURU-575011.

... PETITIONER

(By Sri. S.ANNAMALAI, ADV. & Sri.M.LAVA, ADV. FOR Sri.A.SHANKAR, ADV.)

AND

1. THE ASSISTANT COMMISSIONER OF INCOME TAX
CIRCLE-1(1)
C R BUILDING
ATTAVAR
MANGALURU-575001

2. THE PETITIONER. COMMISSIONER OF INCOME TAX
C R BUILDING
ATTAVAR
MANGALURU-575001

... RESPONDENTS

(By Sri. K. V. ARAVIND, ADV.)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTIONL OF INDIA PRAYING TO QUASH THE ORDER UNDER SECTION 220[6] OF THE INCOME-TAX ACT, 1961 PASSED BY THE R-1 VIDE DTD:26.3.2018 FOR THE ASSESSMENT YEAR 2010-11 ANNEXURE-A, AND ETC.

THIS PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:-

O R D E R

Petitioner has challenged the order dated 26.3.2018 passed under Section 220(6) of the Income Tax Act, 1961 ('Act' for short} relating to the assessment year 2010-11 whereby the petition filed by assessee for grant of absolute stay and collection of disputed demand is rejected. The assessee is directed to pay the entire demand immediately, failing which recovery proceedings as per the provisions of the Act shall be initiated.

2. The petitioner is a company registered under the Companies Act, 1956 and is in the business of HDPE/PP woven sacks/Fabrics, etc. The petitioner has filed his return of income and declared Nil income.

The return of the petitioner was processed and for the reasons recorded for reassessment of the assessment under Section 143(1) of the Act, determined the income of Rs.98,08,840/-, on re-opening under Section 147 of the Act, addition of Rs.4,65,00,000/- was made and demand was raised. Being aggrieved by the said reassessment, the petitioner filed an appeal before the Commissioner of Income-tax (Appeals), Mangalore and an application was filed before 1st respondent to stay the disputed demand. At the first instance, respondent No.1 though directed the petitioner to pay 20% of the demand, on adjudication of the said application rejected the same and directed the petitioner to pay the entire demand. Hence this writ petition.

3. Learned counsel for the petitioner would contend that in terms of the Office Memorandum/Circular dated 29.2.2016, the assessee has paid 20% of the disputed demand. Accordingly,

respondent No.1 ought to have stayed the balance demand. Learned counsel would submit that clause 4(A) of the Circular instructions dt. 29.2.2016 is squarely applicable to the facts of the case and the impugned order being contrary to the same, deserves to be set-aside.

4. Learned counsel for respondents justifying the impugned order submitted that clause 4(A) of Circular dated 29.2.2016 though contemplates that in a case where the outstanding demand is disputed before the CIT(A), the Assessing Officer shall grant stay of demand till disposal of the First Appeal on payment of 20% of the disputed demand unless the case falls in the category discussed in para (B). Para (B) deals with the situation where the Assessing Officer is of the view that none of them relating in the disputed demand is such that payment of a lump sum amount higher than 15% is warranted in a case, where addition is based on

credible evidence collected in a search or survey operation etc, payment of 20% of the disputed demand would not be applicable. Learned counsel would contend that on the basis of the undisclosed income of the assessee, detailed investigation was made, on collecting the credible evidence, determination of tax amount is made. However, the petitioner has not availed opportunity of cross-examining the witnesses before the Appellate Authority to discard the evidence relied upon by the Authorities. In such circumstances, clause 4(B) of the Circular instructions dated 29.2.2016 is applicable. Considering the same, the respondent - Authorities have rejected the request of the petitioner for granting stay as sought for and directed to make the entire demand forthwith which is justifiable and do not warrant any interference by this court.

5. I have given my thoughtful consideration to the arguments advanced at the hands of the learned

counsel appearing for the parties and perused the material on record.

6. It is not in dispute that by letter dated 15.2.2018 respondent No.1 had directed the petitioner to pay the demand raised to the extent of 20% as per CBDT order F.No.404/72/93-ITCC if the petitioner is challenging the order before the Appellate Authority. Accordingly, the petitioner has paid the said 20% of the demand and sought for further stay of the entire demand. On the said application filed by the petitioner, respondent No.1 referred the matter to the CIT seeking his approval for collection of the entire demand which proposal was approved by the Pr. CIT. Based on the same the impugned demand is passed. The main reason to reject the request of the petitioner is, fabrication of capital and share premium contributed from other companies. It is the case of the department that assessee has failed to prove the genuineness of the

said companies who contributed to the share capital. It is based on the vague statement and the statement on oath recorded of certain persons relating to those companies, additions have been made. It is not in dispute that the petitioner has challenged the said assessment order before the Appellate Authority and the matter is pending consideration. Prima facie, the determination made by the Assessing Officer appears to be high-pitched. In the circumstances, the respondents ought to have considered the said application judiciously.

7. The coordinate Bench of this Court in ***FLIPKART INDIA PRIVATE LIMITED VS. THE ASSISTANT COMMISSIONER OF INCOME TAX AND OTHERS IN W.P.NOS.1339-1342/2017 (T-IT)*** *reported in [2017] 79 tax 159*, while considering the very same Circular dated 29.2.2016 observed that the CIT has failed to notice the fact that letter/circular is only

partially modified the former Circular No.1914 and failed to consider whether the assessment order suffers from being unreasonable, high-pitched or whether any genuine hardship would be caused to the assessee in case the assessee were required to deposit 15% of the disputed amount or not. It is true that said Judgment refers to deposit of 15% of the disputed amount, but it cannot be held that even in other cases, the respondent-Authorities can insist for the deposit of the entire demand sans considering these two relevant factors. Considering the facts and circumstances of the case, the matter being seized of by Appellate Authority, the respondent -Authorities are expected to consider the genuine hardship that would be caused to the assessee due to the high-pitched assessment.

8. Hence, in the circumstances, this court is of the opinion that interest of justice would be sub-served in directing the petitioner to deposit 20% of the total

enforceable demand in addition to 20% deposited and furnishing suitable security for another 35% of the total demand. Hence the following:

ORDER

Writ petition is allowed.

The impugned order at Annexure-A is modified. The petitioner shall deposit 40% of the total enforceable demand. Deductions shall be given to the amount already deposited. Sufficient security shall be furnished for 35% of the enforceable total demand within a period of four weeks from today.

Subject to the payment of the amount as aforesaid, notices issued under Section 226(3) shall be revoked.

Any observations made in this writ petition shall not be treated as a precedent.

Sd/-
JUDGE

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