IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 15TH DAY OF NOVEMBER 2016

BEFORE

THE HON'BLE Dr.JUSTICE VINEET KOTHARI

WRIT PETITION No.18581/2016 (T-IT)

BETWEEN:

ADC INDIA COMMUNICATIONS LIMITED
(EARLIER KNOWN AS KRONE COMMUNICATIONS LIMITED)
#485/8A & 8B, 14TH CROSS, 4TH PHASE
P.B.No.5812, PEENYA INDUSTRIAL AREA
BANGALORE – 560058.

…PETITIONER

(BY SRI. N. VENKATARAMAN, SR. ADV. FOR
SRI. P. DINESHA, ADV.)

AND:

THE ASSISTANT COMMISSIONER OF INCOME-TAX
CIRCLE 1(1)(1), 2ND FLOOR, BMTC BUILDING
80 FEET ROAD, KORAMANGALA
BANGALORE – 560095.

…RESPONDENT

THIS W.P. IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS OF THE CASE AND TO QUASH THE IMPUGNED ORDERS DATED 29.2.2016 ALONG WITH THE NOTICE OF DEMAND DATED 29.2.2016 VIDE ANN-A.

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

ORDER

Mr. N. Venkataraman, Sr. Adv., for
Mr. **P. Dinesha**, Adv. for Petitioner

1. This writ petition has been filed by the petitioner-assessee aggrieved by the impugned assessment order passed by the respondent-Assessing Authority, Assistant Commissioner of Income Tax, for the Assessment year 1994-95 raising a demand of Rs.1,95,56,185/-.

2. The learned senior counsel Mr.N.Venkataramana appearing for the petitioner urged before the Court that the said demand upon a rectification order, stands reduced, however, the rectification order passed by the same authority was not placed on record.

3. The issue raised in this second round of litigation is that the earlier remand to the Assessing Authority has been upheld by this Court while deciding

the appeal of the Revenue vide **ITA No.1294/2006** in the case of **Commissioner of Income Tax & another vs. M/s.Krone Communications Ltd.**, (now taken over by the petitioner M/s.ADC India Communications Ltd.,) and the Division Bench of this Court while upholding the order of the ITAT remanding the matter back to the Assessing Authority has observed as under:-

> "5. Heard, Learned counsel for both sides. It is clarified that the remand is an open remand. The Assessing Authority is free to assess sale value of the product with reference to the **materials pertaining to the supplier and other relevant material if any.** Accordingly, the appeal is disposed of".

4. The matter in issue is, as to whether the plants and equipments, namely two Biogas Plants and one Flameless Furnace shown to have been purchased by the petitioner-assessee during the relevant Assessment Year at the stated the price of Rs.50 lakhs for two biogas plants and Rs.44,20,800/- for one flameless

furnace, was a genuine price or not, because the petitioner-assessee as per the relevant Rules under the Income Tax Act, 1961, (for short 'the Act'), was entitled to claim 100% depreciation of the purchase value of the said plants, which after they were purchased by the assessee-company, were given on lease to other two companies. The assessee has contended before the Assessing Authority that even the lessor was entitled to claim depreciation in its hands and on the lease rent earned by the assessee during the previous year, the tax has been paid by the assessee-company.

5. However, to check the exaggerated claim of depreciation on the so called inflated price of these plants, the Assessing Authority relied upon the certificate of a Chartered Engineer, M/s.Techno Economic Consultants, which opined in the said Certificate that the price of the said two Biogas plants and one Flameless Furnace in his estimation, was only

to the extent of Rs.2.53 lakhs in the year 1996 as stated in paragraph-13(c) of the impugned Assessment order.

6. Though, the learned senior counsel for the petitioner pointed out that the said valuation certificate dealt with only one biogas plant and not with the cost of Flameless Furnace, after the remand of case by the learned ITAT as well as this Court, the respondent-Assessing Authority has now again passed the impugned assessment order relying upon the same valuation of these plants and equipments viz., Biogas plants and Flameless Furnace to the extent of Rs.2.53 lakhs and reducing the claim of depreciation accordingly, has computed the net tax payable by the assessee company along with the interest and penalty in the impugned order. Therefore, the petitioner-assessee has approached this Court by way of this writ petition, aggrieved by the said order.

7. The learned senior counsel appearing for the petitioner-assessee urged before the Court that after the lapse of more than 20 years, in this second round of litigation, the evidence of the erstwhile or contemporary period is almost lost and therefore, both the sides, the petitioner-assessee as well as the Revenue were rendered clueless about the proper purchase value and assessment of price of these equipments and therefore, the impugned order is not sustainable and the writ petition deserves to be entertained by this Court, notwithstanding the availability of remedy by way of appeal, again before the next higher appellate authority namely, the Commissioner of Income Tax (Appeals) as per Section 254 of the Act, 1961. He also urged that the due tax as earlier assessed has been paid on the lease rentals earned by the petitioner-assessee and the same has been paid.

8. Having heard the learned senior counsel appearing for the petitioner-assessee, this Court is of the opinion that the impugned assessment order directly cannot be assailed before this Court in the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, in view of an effective alternative remedy by way of appeal available to the petitioner, notwithstanding the fact that the said order has been passed after remand twice over by the higher appellate forums, upheld even by this Court while disposing of the appeal filed by the Revenue as aforesaid.

9. The burden of proving the correct cost, market value/price of the plant and machineries purchased by the assessee, on which the claim of 100% depreciation was allowable under the relevant Rules was certainly on the assessee. The contra evidence adduced was by the Revenue in the present case in the form of the

Certificate issued by M/s.Techno Economic Consultants, who valued these plants at only Rs.2.53 lakhs in the year 1996. The burden of rebuttal of that evidence adduced by the Revenue also was on the assessee. Irrespective of the rounds of litigation, the assessee perhaps cannot claim any immunity from this burden to be discharged by it for establishing the fair and correct market value or the cost of the plant and machineries in question. If the invoices produced by it in support of the said purchase of the equipments were not relied upon by the Assessing Authority finding them to be *prima-facie* highly inflated on the face of the valuation Ccertificate given by one of the Chartered Engineer, namely, M/s. Techno Economic Consultants, were to be treated by the gospel truth and the petitioner was to be allowed 100% depreciation on that basis, that would obviously cut into the income taxable at the hands of the petitioner-assessee to a largely inflated extent, which cannot be permitted. The right of the

assessing authority to question the inflated claim of depreciation cannot be doubted.

10. This Court cannot readily accept the contention of the assessee that a Biogas plant, which as per one of the Chartered Engineers was having a Replacement cost only at Rs.2.53 lakhs, was purchased by the assessee-company at Rs.50 lakhs and claim of 100% depreciation could be made thereon. Therefore, this burden of the assessee does not seem to have been appropriately discharged by the assessee in the present case.

11.The very purpose of remand to the Assessing Authority and the exercise to be undertaken by the fact finding bodies, including appellate forums at the level of Commissioner of Income Tax (Appeals) and ITAT, the authorities prescribed under the provisions of the I.T.Act, 1961, would be frustrated, if this Court were to undertake this exercise in writ jurisdiction of this Court.

Therefore, without expressing any opinion on the valuation of the plant and machineries purchased by the assessee-company and its right to claim depreciation thereon, the petitioner-company is relegated back before the first appellate authority namely, the Commissioner of Income Tax (Appeals). It goes without saying that if the assessee-company leads appropriate evidence to support its claim even before the first appellate authority, who undoubtedly has the co-extensive powers as are available to the Assessing Authority under the Act, the said first appellate authority is expected not to shirk its responsibility, but decide the appeal on merits weighing such evidence and he is expected to record his own appropriate findings of fact, because multiple rounds of litigation and remands have already taken place in this case.

12. With these observations, the writ petition is disposed of and it is directed that, if the appeal against

the impugned order dated **29.02.2016** is filed by the petitioner within a period of one month from today, the first appellate authority namely, CIT (Appeals) will not raise any objection as to the limitation for filing the said appeal against the petitioner assessee and will decide the appeal on merits. No costs.

For a period of four weeks from today, till the assessee files the appeal before the Commissioner of Income Tax (Appeals), it is expected that the assessing authority will not take any coercive steps to recover the disputed demand under the impugned order. However, after the period of four weeks from today, the recovery of tax, interest and penalty under the impugned order will abide by the further orders to be passed by the Appellate Authority, if any.

Sd/-
JUDGE

Srl.