

ITEM NO.36

COURT NO.6

SECTION IIIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

PETITION(S) FOR SPECIAL LEAVE TO APPEAL (C) NO(S). 36554/2012
(ARISING OUT OF IMPUGNED FINAL JUDGMENT AND ORDER DATED 20/03/2012
IN WA NO. 1611/2008 PASSED BY THE HIGH COURT OF KARNATAKA AT
BANGALORE)

COMMISSIONER OF INCOME TAX & ANR.

PETITIONER(S)

VERSUS

KARN. PLANTERS COFFEE CURING WORK(P) LTD.
(WITH INTERIM RELIEF AND OFFICE REPORT)

RESPONDENT(S)

Date : 22/08/2016 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE PRAFULLA C. PANT

For Petitioner(s)

Mr. A.N.S. Nadkarni, ASG
Ms. Shirin Khajuria, Adv.
Ms. Shweta Garg, Adv.
Mrs. Anil Katiyar, Adv.

For Respondent(s)

Mr. Pritesh Kapur, Adv.
Mr. Senthil Jagadeesan, Adv.
Mr. Govind Manoharan, Adv.
Ms. Shruti Iyer, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.

[VINOD LAKHINA]
COURT MASTER

[ASHA SONI]
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8219 OF 2016

[Arising out of Special Leave Petition
(Civil) No.36554/2012]

COMMISSIONER OF INCOME TAX
& ANR.

...APPELLANTS

VERSUS

KARNATAKA PLANTERS COFFEE CURING
WORK (P) LTD.

...RESPONDENT

ORDER

1. Leave granted.
2. The challenge in the present appeal is to the judgment and order dated 20th March, 2012 in Writ Appeal No.1611 of 2008 passed by the Division Bench of the High Court of Karnataka at Bangalore reversing the judgment and order of the learned single judge dated 10th September, 2008 passed in Writ Petition No.10507 of 2007. The learned single judge, it may be noticed, had dismissed the writ petition filed by the Assessee against the

revisional order upholding the order of assessment insofar as addition of an amount of Rs.2,72,19,285/- is concerned, which was claimed by the Assessee as being legally liable for deduction. The learned Commissioner of Income Tax (C.I.T.) in coming to the impugned finding had recorded as follows:

"Regarding the addition relating to trade creditors, the records establish that the assessee has shown sudden in trade creditors without any significant transactions of purchases during the year. Obviously, there cannot be trade creditors without matching transactions. The investigation carried out by the A.O. exposed the modus operandi of the assessee. It is claimed before the A.O. that crop loans were raised in the names of planters within the family circle hailing from Chennai purportedly owning some estates. The loans-raised by them from the bank where the assessee also operated its bank accounts were claimed to be given to the assessee. The investigation further revealed that these crop loan applications were prepared

and signed by none other than the top man in the management of the assessee. On top of it, the crop loans accounts in the bank were also operated by the same person from the assessee. When the investigation arm was extended to Chennai and some details were collected about these so-called estate owners, no such accounts appear in their records. Besides, the nexus of their sacrificial loans to bail out the assessee could not be bridged either. In effect, there was clear instance of creation of accounts by way of name leading, a fraudulent practice. All these aspects were fully exposed in the investigation carried out by the A.O. The representative tried to sell the idea that these people are IT payees having proper economic existence. It may be true that these persons are separately assessed to tax, but the nexus of their running estates and their leading financial support could not be substantiated. In my view, there is no cause for interference in the present proceedings to approve the findings of the excellent investigation carried out by A.O."

The aforesaid view was upheld by the learned single judge in the writ petition by observing as follows:

"6. The material on record discloses that the crop loan was raised in the names of planters within the family circle hailing from Chennai purportedly owning some estates. The loans raised by them from the Bank where the assessee also operated its bank accounts were claimed to be given to the assessee. These crop loans applications were prepared and signed by none other than the top man in the management of the assessee. The crop loan accounts in the Bank was operated by the same persons. In the records of the said estate owners, his bank transaction is not reflected. In fact though all those accounts holders are also income tax assesseees, the returns did not disclose the payment of the aforesaid amount to the assessee. Even the assessee accounts also did not disclose the receipt of the said amount from those account holders. It is only at the time of investigation when he was asked the source of this income, he pointed out that the said amount has come from transfer of amounts of the very same Bank account. It is in that context, a detailed

investigation was made and it was found out that it is a clear instance of creation of accounts by way of name lending, a fraudulent practice. In those circumstances, the revisional authority was justified in rejecting the case of the petitioner and upholding the assessment order. In that view of the mater, I do not find any merit in this petition. Accordingly, it is dismissed."

3. From the above, it would transpire that both the Assessing Officer and the C.I.T. had recorded findings of fact adverse to the Assessee which has been upheld by the learned single judge of the High Court. The Division Bench of the High Court in the Writ Appeal thought it appropriate to reverse the said findings on the ground that the 37 persons who had advanced the loan to the Assessee ought to have been given notice. The jurisdiction of the Division Bench in a Writ Appeal is primarily one of adjudication of questions

of law. Findings of fact recorded concurrently by the authorities under the Act and also in the first round of the writ proceedings by the learned single judge are not to be lightly disturbed. In the present case, in the face of the clear findings that the loan applications were processed by the Officers of the Assessee and the loan transactions in question of the aforesaid 37 persons were also handled really by the Assessee and further in view of the categorical finding that the loan amounts were not reflected in the returns of the 37 persons in question, we do not see how the High Court could have taken the above view and remanded the matter to the Assessing Officer. It has been pointed out before us that pursuant to the impugned order passed by the Division Bench of the High Court fresh assessment proceedings have been finalized by the Assessing

Officer. The said exercise has been done in the absence of any interim order of this Court. However, merely because fresh assessment proceedings has been carried out in the meantime it would certainly not preclude the Court from judging the validity and correctness of the order of the Division Bench of the High Court.

4. For the reasons stated, we cannot uphold the order of the Division Bench passed in the Writ Appeal in question. Consequently, we allow this appeal and set aside the order of the Division Bench and consequently all further orders passed pursuant thereto.

.....,J.
(RANJAN GOGOI)

.....,J.
(PRAFULLA C. PANT)

NEW DELHI
AUGUST 22, 2016