



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF JULY, 2024

BEFORE

THE HON'BLE MR JUSTICE S SUNIL DUTT YADAV

WRIT PETITION NO. 12903 OF 2024 (T-IT)

BETWEEN:

BAREGUNDI JAGADHISHA YEDIYALA,
S/O DEVRAO PATEL SANYASIGUDDE,
ULLOORU ROAD, MOODLKATTE POST,
KUNDAPURA TALUK,
UDUPI DISTRICT - 576 217.

...PETITIONER

(BY SRI. VIKRAM HUILGOL, SENIOR ADVOCATE FOR
SMT. POORNIMA H.S., ADVOCATE)

AND:

1. THE INCOME TAX OFFICER,
WARD 1, AAYAKAR BHAVAN,
MALPE ROAD, AADIUDUPI,
AMBALPADI P.O., UDUPI,
KARNATAKA - 576 103.
2. THE PRINCIPAL COMMISSIONER
OF INCOME TAX, AAYAKAR BHAVAN,
EDC COMPLEX, PATTO-PLAZA,
PANAJI, GOA - 403 001.
3. THE COMMISSIONER OF
INCOME TAX (APPEALS),
ROOM NO. 245-A, NORTH BLOCK,
NEW DELHI - 110 001.

...RESPONDENTS

(BY SRI. THIRUMALESH M., ADVOCATE)





THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER BEARING NO. ITBA/COM/F/17/2023-24/1056302904(1) DATED 18/09/2023 PASSED BY THE R2 AT ANNEXURE-R DECLARING IT AS NULL AND VOID AND ETC.,

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE S SUNIL DUTT YADAV

ORAL ORDER

(PER: HON'BLE MR JUSTICE S SUNIL DUTT YADAV)

The petitioner has challenged the order at Annexure-'R', whereby the Principal Commissioner of Income Tax has disposed off the stay petition directing the assessee to pay 20% of the demand raised while taking note that it was a case of appeal pending before the Commissioner of Income Tax (appeals).

2. Learned Senior Counsel Sri. Vikram Huilgol appearing for the petitioner submits that when the stay application is put up before the Principal Commissioner of Income Tax, is required to dispose off the same insofar as the condition of deposit is concerned by taking note of the circulars and also the law laid down by this Court in the



case of ***Flipkart India Private Limited v. Assistant Commissioner of Income Tax*** in W.P.Nos.1339-1342/2017.

3. It is submitted that in terms of the applicable circulars regarding condition of deposit, the Principal Commissioner of Income Tax is to examine as to whether the assessment is 'unreasonably high pitched' or where 'genuine hardship is likely to be caused to the assessee'. It is submitted that in terms of the order at Annexure-'R' while Principal Commissioner of Income Tax has clearly stated that there are no financial difficulties in payment of tax, the question of unreasonably high pitched demand was not considered. It is submitted that the order is a non speaking order.

4. Learned counsel appearing for the revenue would submit that the petitioner is required to furnish necessary documents to demonstrate the case of 'unreasonable high pitched demand' or 'genuine hardship' and in the absence of relevant documents placed before



the Principal Commissioner of Income Tax, petitioner cannot assail such order.

5. After hearing both sides, a perusal of the order at Annexure-'R' would indicate that the finding as regards requirements of unreasonably high pitched demand and genuine hardship of the assessee have not been considered in proper prospective. Mere absence of financial difficulties as observed by the Principal Commissioner of Income Tax by itself does not amount to consideration of the ground of genuine hardship of the assessee, even otherwise we find that there is no finding recorded as regards unreasonably high pitched demand.

6. Accordingly, the order at Annexure-'R' is set aside. Matter is remanded to respondent No.2 for fresh consideration taking note of the applicable circulars including the direction of this Court in the case of ***Flipkart India Private Limited v. Assistant Commissioner of Income Tax*** in W.P.No.1339-1342/2017. During such



consideration, petitioner is at liberty to produce such other documents to make out his case.

7. While noticing that the appeal is still pending consideration, the Appellate authority is permitted to expedite hearing of the appeal. Taking note of the submission made on behalf of the revenue that the attachment has not yielded any funds towards appropriation of funds towards demand, in the peculiar facts of the case, order of attachment would stand lifted and Annexures-'J' to 'M' are set aside while reserving liberty to the Principal Commissioner of Income Tax to pass appropriate orders after reconsidering the contentions in light of setting aside of the order at Annexure-'R'.

8. All contentions are kept open. Needless to state, there would be a direction for not to take further coercive action till the application of stay is reconsidered in light of the observations made above.



9. I.A.No.3/2024 is allowed. Petitioner is dispensed with production of certified copy of Annexure-R.

10. Accordingly, petition is ***disposed off***.

Sd/-
(S SUNIL DUTT YADAV)
JUDGE

MCR