IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF APRIL, 2025

BEFORE

THE HON'BLE MR JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 34975 OF 2024 (T-IT)

BETWEEN:

M/S INSTAKART SERVICES
PRIVATE LIMITED.,
A COMPANY INCORPORATED
UNDER THE PROVISIONS OF THE
COMPANIES ACT, 2013,
HAVING ITS REGISTERED OFFICE AT:
BUILDINGS ALYSSA, BEGONIA AND
CLOVER, EMBASSY TECH VILLAGE,
OUTER RING ROAD,
DEVARABEESANAHALLI VILLAGE,
VARTHUR HOBLI,
BENGALURU- 560 103,
THROUGH ITS AUTHORISED
SIGNATORY
MR. RITESH LUNIA
(SENIOR MANAGER, TAXATION)

...PETITIONER

(BY SRI. TARUN GULATI, SENIOR ADVOCATE FOR
SMT.ANUPAMA G HEBBAR,
SRI. PRADEEP NAYAK,
SRI.KISHORE KUNAL AND
SMT. ANKITA PRAKASH, ADVOCATES)

AND:

1. THE PRINCIPAL
COMMISSIONER OF INCOME
TAX (CENTRAL), BENGALURU,
3RD FLOOR,
CENTRAL REVENUE BUILDING,

QUEENS ROAD,
BENGALURU -560 001.

2. THE ASSISTANT/DEPUTY
COMMISSIONER OF INCOME
TAX, CENTRAL CIRCLE 1(4)
CENTRAL REVENUE BUILDING,
QUEENS ROAD,
BENGALURU-560 001.

3. ADDL. COMMISSIONER OF
INCOME TAX, CENTRAL
RANGE-1, BENGALURU
CENTRAL REVENUE BUILDING,
QUEENS ROAD,
BENGALURU- 560 001.

4. COMMISSIONER OF INCOME
TAX (APPEALS),
BENGALURU-11
CENTRAL REVENUE BUILDING,
QUEENS ROAD,
BENGALURU- 560 001.

...RESPONDENTS

(BY SRI. DILIP AND SRI. Y.V RAVIRAJ, ADVOCATES
FOR R1 TO R4)

THIS WP IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DATED 05.12.2024 BEARING F NO. 25(41) /STAY/ PR.CIT(C)/2024-25 (ANNEXURE A) PASSED BY THE RESPONDENT NO.1 AND ETC.,

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

CORAM: HON'BLE MR JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

In this petition, petitioner seeks the following reliefs:

" (a) Issue a Writ, order or directions in the nature of certiorari or any other writ, order or direction of like nature quashing the Impugned Order dated 05.12.2024 bearing F No. 25(41)/Stay/ Pr.CIT(C)/2024-25 (Annexure 'A') passed by the Respondent No. 1;

(b) Issue a Writ, order or directions in the nature of certiorari or any other writ, order or direction of like nature quashing the Impugned Order dated 25.11.2024 bearing DIN and Letter No. ITBA/ASK/F/73/2024-25/1070623312(1) (Annexure 'B') issued by R2 and 13.11.2024 bearing DIN and Letter No. ITBA/RCV/F/17/2024-25/1070338250(1) (Annexure 'C') issued Respondent No. 2;

(c) Issue a Writ of mandamus, or a Writ in the nature of mandamus, or any other appropriate Writ, Order or directions, directing unconditional stay of recovery of the demand from the Petitioner for the relevant Assessment Year 2020-21 pending adjudication of appeal before Respondent No. 4;

(d) Issue a Writ of prohibition, or a Writ in the nature of prohibition, or any other appropriate Writ, Order or directions, prohibiting the Respondents from giving effect to the demand notice bearing DIN and Notice No. ITBA/AST/M/143(3)/2024-25/1068068030 (1) dated 28.08.2024 (Annexure 'T') issued by R2 as rectified vide Demand notice dated 11.12.2024 bearing DIN ITBA/REC/M/154/2024-25/Issued by R2 1071087567(1) (Annexure 'AA') issued by R2 and recovering of the demand quantified therein from the Petitioner for the relevant Assessment Year 2020-21;

(e) Issue a Writ of prohibition, or a Writ in the nature of prohibition, or any other appropriate Writ, Order or directions, prohibiting the Respondents from adjusting any refunds due to the Petitioner for any Assessment Year with the outstanding demand raised in Assessment Year 2020-21;

f) Issue a Writ of mandamus, or any other appropriate Writ, Order or directions, directing the Respondent No. 4 to hear and dispose the Petitioner's pending appeal for Assessment Year 2020-21; and

(g) for such further and other reliefs, as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case.

2. Heard learned Senior Counsel for the petitioner and learned counsel for the respondents and perused the material on record.

3. In addition to reiterating the various contentions urged in the petition and referring to the material on record, learned Senior Counsel for the petitioner invited my attention to the impugned order dated 25.11.2024 passed by respondent No.2 in order to point out that respondent No.2 has erroneously followed the Circular dated 29.02.2016 by wrongly holding that the requirement of depositing 20% as pre-condition for grant of stay in the appeal filed by the petitioner is mandatory for the purpose of passing an order of stay.

4. In this context, my attention is invited to the judgment of this Court in the case of **Flipkart India (P.) Ltd., Vs. Assistant Commissioner of Income-tax, Circle 3(1) (1), Bengaluru (2017) 79 Taxmann.com 159 (Karnataka)** in order to contend that under

identical circumstances, this Court has directed the appeals pending before the Appellate Authority to be disposed of within a stipulated time frame by granting an unconditional order of stay without calling upon the petitioner to pay 20% of the amount demanded having regard to the fact that the same were high-pitched demands. It is submitted that despite the aforesaid facts and circumstances, review petition filed by the petitioner before respondent No.1 has also been rejected by a cryptic, non-speaking order without any application of mind and consequently, the impugned order at Annexures - A and B deserves to be quashed.

5. Per contra, learned counsel for the respondents would support the impugned order and submits that there is no merit in the petition and the same is liable to be dismissed.

6. As rightly contended by the learned Senior Counsel for the petitioner, under identical circumstances in Flipkart's case supra, the Co-ordinate Bench of this Court has held as under:

> *"9. Undoubtedly, the present case raises the issue of balancing the interest of the Revenue, and the interest of an assessee. Needless to say, the Revenue does have the right to realise the assessed income tax amount from the*

assessee. However, while trying to realise the said amount, the Revenue cannot be permitted, and has not been permitted by the Circulars mentioned above, to act like a Shylock. It is precisely to balance the conflicting interests that certain guidelines have been prescribed by Circular No. 1914, and Circular dated 29.2.2016.

10. The Circular dated 29.2.2016 clearly states that the circular is "in partial modification of Instruction No. 1914". Therefore, the Circular dated 29.2.2016 does not supersede the Circular No. 1914 in toto, but merely "partially modifies" the instructions contained in Circular No. 1914.

11. A comparative perusal of both the Circulars clearly reveal that Circular No. 1914 deals with collection and recovery of the income tax, broadly divided into four parts: firstly responsibility of the collection and recovery; secondly, the stay petitions; thirdly, the guidelines for staying the demand; fourthly, the miscellaneous provisions. In the second part, namely the part dealing with the stay petitions, the relevant portion of said part, marked as Instruction No.2-B(iii) is as under:

> *" 2-B (iii): The decision in the matter of stay of demand should normally be taken by Assessing Officer/TRO and his immediate superior. A higher superior authority should interfere with the decision of the AO/TRO only in exceptional circumstances e.g. where the assessment order appears to be unreasonably highpitched or where genuine hardship is likely to be caused to the assessee. The higher authorities should discourage the assessee from filing review petitions before them as a matter of routine or*

in a frivolous manner to gain time for withholding payment of taxes."

12. The third part, marked as 2-C', deals with "Guidelines for staying the demand". This part stipulates the conditions under which the demand can be stayed; it also deals with certain conditions which the Assessing Officer is free to impose upon the assessee.

13. However, interestingly, the Circular No. 1914 does not standardize the quantum of lumpsum payment required to be made by the assessee, as a pre-condition of stay of disputed demand before CIT (A). Since the Circular No.1914 is silent on this aspect, the vacuum has been filled up by Circular dated 29.2.2016. The relevant extract of Circular dated 29.2.2016 is as under:

"4. In order to streamline the process of grant of stay and standardize the quantum of lump sum payment required to be made by the assessee as a pre-condition for stay of demand disputed before CIT (A), the following modified guidelines are being issued in partial modification of Instruction No. 1914:

(A) In a case where the outstanding demand is disputed before CIT (A), the assessing officer shall grant stay of demand till disposal of first appeal on payment of 15% of the disputed demand, unless the case falls in the category discussed in para (B) hereunder.

(B) In a situation where,

(a) the assessing officer is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount higher than 15% is warranted (e.g. in a case where addition on the same issue has been confirmed by appellate

authorities in earlier years or the decision of the Supreme Court or jurisdictional High Court is in favour of Revenue or addition is based on credible evidence collected in a search or survey operation, etc.) or,

(b) the assessing officer is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount lower than 15% is warranted (e.g. in a case where addition on the same issue has been deleted by appellate authorities in earlier years or the decision of the Supreme Court or jurisdictional High Court is in favour of the assessee, etc.), the assessing officer shall refer the matter to the administrative Pr.CIT/CIT, who after considering all relevant facts shall decide the quantum/proportion of demand to be paid by the assessee as lump sum payment for granting a stay of the balance demand.

(C) In a case where stay of demand is granted by the assessing officer on payment of 15% of the disputed demand and the assessee is still aggrieved, he may approach the jurisdictional administrative Pr.CIT/CIT for a review of the decision of the assessing officer.

(D) The assessing officer shall dispose of a stay petition within 2 weeks of filing of the petition. If a reference has been made to Pr.CIT/CIT under para 4 (B) above or a review petition has been filed by the assessee under para 4 (C) above, the same shall also be disposed of by the Pr.CIT/CIT within 2 weeks of the assessing officer making such reference or the assessee filing such review, as the case may be.

(E) In granting stay, the Assessing Officer may impose such conditions as he may think fit. He may, inter alia,-

(i) require an undertaking from the assessee that he will cooperate in the early disposal of appeal failing which the stay order will be cancelled;

(ii) reserve the right review the order passed after expiry of reasonable period (say 6 months) or if the assessee has not co-operated in the early disposal of appeal, or where a subsequent pronouncement by a higher appellate authority or Court alters the above situations,

(iii) reserve the right to adjust refunds arising, if any, against the demand, to the extent of the amount required for granting stay and subject to the provisions of section 245."

14. Instruction No.4 uses the words "partial modification of Instruction No. 1914". Thus, obviously Circular dated 29.2.2016 has left Instruction No.2-B(iii) contained in Circular No. 1914 absolutely untouched. In fact, Circular dated 29.2.2016 merely prescribed the percentage of the disputed demand that needs to be deposited by the assessee.

15. According to Instruction No.4(A) of Circular dated 29.2.2016, it is a general rule, that 15% of the disputed demand should be asked to be deposited. But, according to Instruction No.4(B) (a) of the Circular dated 29.2.2016, the demand can be increased to more than 15%; according to Instruction No.4(B)(b) of the Circular dated 29.2.2016, the percentage can be lower than 15%, provided the permission of the Pri. CIT is sought by the Assessing Officer. However, in case the Assessing Officer does not seek the permission from the Prl.CIT, and in case the assessee is aggrieved by the demand of 15% to be deposited, the assessee is free to independently approach the Prl. CIT. The assessee would be free to request the Prl. CIT to make the percentage of disputed demand amount to be less than 15%.

16. It is true that Instruction No.4 (B) (b) of the Circular OFlex 29.2.2016, gives two instances where less than 15% to be deposited. However, it is equally true that the factors, which were directed to be kept in mind both by the Assessing Officer, and by the higher superior authority, contained in Instruction No.2-B(iii) of Circular No. 1914, still continue to exist. For, as noted above, the said part of Circular No.1914 has been left untouched by the Circular dated 29.2.2016. Therefore, while dealing with an application filed by an assessee, both the Assessing Officer, and the Prl. CIT, are required to see if the assessee's case would fall under Instruction No.2-B(iii) of Circular No. 1914, or not? Both the Assessing Officer, and the Prl. CIT, are required to examine whether the assessment is "unreasonably highpitched", or whether the demand for depositing 15% of the disputed demand amount "would lead to a genuine hardship being caused to the assessee" or not?

17. A bare perusal of the two orders, both dated 23.11.2016, Annexures-'A' and 'B', clearly reveal that the Assessing Officer has relied upon Instruction No.4(B)(b) of the Circular dated 29.2.2016, and has concluded that since the petitioner's case does not fall within the two illustrations given therein, therefore, it is not entitled to seek the relief that less than 15% should be demanded to be deposited by it. Moreover, the Assessing Officer has jumped to the conclusion that the petitioner's finances do not indicate any hardship in this case. However, the Assessing Officer has not given a single reason for drawing the said conclusion.

Since the petitioner has been constantly claiming that it has suffered loss from the very inception of its business, from to 2016, the least that the Assessing Officer was required to do was to elaborately discuss as to whether "genuine hardship" would be caused to the petitioner in case the petitioner were directed to pay 15% of the disputed demand amount or not? Yet the Assessing Officer has failed to do so. Therefore, this part of the order, naturally, suffers from being a non-speaking order. Hence, the said orders are legally unsustainable.

18. A bare perusal of the order dated 25.1.2017 also reveals that the Prl. CIT has failed to appreciate the co-relation between Circular No. 1914, and Circular dated 29.2.2016. The Prl. CIT has failed to notice the fact that the latter Circular has only "partially modified the former Circular, and has not totally superceded it. The Prl. CIT has also ignored the fact that Instruction No.2-B(iii) contained in Circular No. 1914 continues to exist independently of and in spite of the Circular dated 29.2.2016. Therefore, it has failed to consider the issue whether the assessment orders suffers from being "unreasonably highpitched", or whether "any genuine hardship would be caused to the assessee" in case the assessee were required to deposit 15% of the disputed demand amount or not? Thus, the Prl. CIT has failed to apply the two important factors mentioned in Circular No. 1914.

19. Most curiously, the Prl. CIT has relied upon the case of M/s. Teleradiology Solutions Pvt. Ltd., (supra),

without realizing that the issue whether an assessee can be to pay 15% of the disputed demand amount, and circumstances he can be so directed, and under what circumstances less than 15% of the disputed demand amount could be asked for, these issues were not even involved in the case of M/s. Teleradiology Solutions Pvt. Ltd. (supra). Despite the fact that totally different issues were raised in the said case, the Prl. CIT has blindly applied the order passed in the said case to the present case. Considering the fact that this blind appreciation of a precedent is a frequent occurrence, in catena of cases, the Hon'ble Supreme Court has clearly opined that a judgment should not be read as a provision of law. A judgment is confined to the facts and circumstances of its own case. It is only when the facts and circumstances in two cases are similar that the ratio of the former case becomes applicable to the latter case. But without realizing this aspect of rule of stare decisis, the Prl. CIT has erred in applying the reasons given in M/s. Teleradiology Solutions Pvt. Ltd., (supra). Therefore, even the impugned order dated 25.1.2017 is legally unsustainable.

20. Mr. K. G. Raghavan, the learned Senior Counsel for the petitioner, has also pleaded before this Court that another anxiety and the pain of the petitioner is that, despite the fact that appeals have been filed against the Assessment Order dealing with Assessment Year 2012-13, and 2013-14, they are still pending before respondent No.3; the respondent No.3 is yet to decide the appeals. The learned Senior Counsel submits that the issues in the said

appeals are similar to the issues that have been raised by the petitioner in the present appeals, vis-à-vis, Assessment Year 2014-15, and 2015-16. Since the legal issues are the same, since the appeals of the subsequent assessment years can easily be decided if the appeals of the previous assessment years were to be decided, the learned Senior Counsel seeks directions from this Court to respondent No.3 to decide the appeals of the Assessment Year 2012-13, and 2013-14, within a limited time frame.

21. To this request made by the learned Senior Counsel, the learned counsel for the Revenue submits that respondent No.3 is over-burdened with large number of appeals to be decided. Therefore, a limited time frame should not be imposed upon the respondent No.3 by this Court. Therefore, the learned counsel opposes the prayer made by the learned Senior Counsel.

22. Needless to say, appeals cannot be kept in an animated suspension over a long period of time. Keeping any appeal pending will adversely affect not only the interest of the assessee, but also adversely affects the interest of the Revenue, and, therefore, of the nation at large. Thus, it will be in the interest of justice if the appeals filed by the petitioner for the Assessment Year 2012-13, and 2013-14 were to be decided as expeditiously as possible by respondent No.3.

23. For the reasons stated above, this Writ Petition is, hereby, allowed. The twin orders dated 23.11.2016, and the order dated 25.1.2017, are set aside. The case is

remanded back to the Prl. CIT to again decide the Review Petitions filed Moner. The Prl. CIT is further directed to decide the Review Petition within a period of two weeks from the date of receipt of the certified copy of this order.

The Revenue is directed not to take any coercive action against the petitioner as long as the matter is pending before the Pri. CIT."

7. As is clear from the aforesaid judgment passed by the Co-ordinate Bench of this Court, the requirement of deposit of 20% as indicated in the Circular has been held to be directory and not mandatory and depending on the facts and circumstances of the given case. In *Flipkart's* case supra, this Court stayed the order passed by the Reviewing Authority and remitted the matter back to the Reviewing Authority for reconsideration of the said application afresh, in accordance with law.

8. At this stage, learned Senior Counsel for the petitioner submits that instead of remitting the matter back to the Reviewing Authority for reconsideration, the petitioner would co-operate with the Appellate Authority for disposal of the main appeal, in accordance with law, for the Assessment Year 2020-21 and the Appellate Authority may be directed to dispose of the appeal as

expeditiously as possible without insisting on payment of 20% towards stay.

9. In view of the aforesaid peculiar / special facts and circumstances obtaining in the instant case and submissions made on behalf of the petitioner that he would co-operate with the Appellate Authority for expeditious disposal of the appeal and in the light of the judgment of this Court in *Flipkart's* case supra, I deem it just and appropriate to dispose of this petition by setting aside the impugned order and issuing necessary directions for disposal of the appeal pending before the Appellate Authority respondent No.4.

10. In the result, I pass the following:

ORDER

(i) The petition is hereby ***allowed***.

(ii) The impugned orders at Annexures - A and B dated 05.12.2024 and 25.11.2024 passed by respondent Nos.1 and 2, respectively, are hereby quashed.

(iii) Respondent No.4 Appellate Authority is directed to dispose of the appeal, in accordance with law, within a period of two months from the date of receipt of a copy of this order without insisting for payment of 20% by the petitioner.

(iv) It is further directed that till respondent No.4 Appellate Authority disposes of the appeals in accordance with law, respondent Nos.1 and 2 shall not take any coercive / precipitative steps against the petitioner.

(v) Petitioner shall co-operate with respondent No.4 Appellate Authority for disposal of the appeals, in accordance with law.

(vi) It is made clear that this order is passed in peculiar/special facts and circumstances of the instant case since appeal is pending before respondent No.4 Appellate Authority and this order shall not be treated as precedent nor shall have any precedential value for any purpose whatsoever.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

BK
List No.: 1 Sl No.: 97