(2018) 02 KAR CK 0059

In the Karnataka High Court

Case No : 6533 of 2018

M/S FLIPKART INDIA PRIVATE LIMITED — APPELLANT

Vs

UNION OF INDIA & ORS. — RESPONDENT

Date of Decision : 15-02-2018

Acts Referred:

Citation : (2018) 02 KAR CK 0059

Hon'ble Judges : Vineet Kothari

Bench : Single Bench

Advocate : Tarun Gulati, Kishore Kunal, Pradeep Nayak, E.I.Sanmathi

Final Decision : Disposed off

Judgement

1. Heard. Issue notice to respondents.

2. The present writ petition has been filed by the Assessee, M/s Flipkart India Limited, Bangalore aggrieved by the interlocutory order passed by

the Income Tax Appellate Tribunal on 06.02.2018 on the stay application filed by the petitioner-assessee for the Assessment year 2015-16 in its

pending appeal against the order passed by the first appellate authority viz., Commissioner of Income Tax (Appeals).

3. The operative portion of the said order passed by the learned tribunal is quoted below for ready reference.

In the present case also, drawing support from the decision of the Hon''ble jurisdictional High Court in the case of Google India Pvt. Ltd., (cited

supra) we direct the assessee-company to pay 50% of the demand in question on or before 28.02.2018 and furnish bank guarantee for balance

demand for a period of 6 months before the Assessing Officer on or before 28.02.2018. The stay order is valid for a period of six months from the date of the order or till disposal of the appeal whichever is earlier. The matter is already listed for hearing for 17.05.2018. However, we direct the

registry to advance the hearing date to 09.04.2018. The stay order is subject to condition that the assesseecompany shall not seek adjournment of

the appeal without any just and reasonable. In the result, stay petition is disposed of on the above lines.

4. Various contentions have been raised by the learned counsel for the petitioner on merits of the case itself for assailing the impugned interlocutory

order. However, this court would not express any opinion on the merit or otherwise of the contentions raised at bar by the learned counsel for the

petitioner in this regard, since, the regular appeal filed by the assessee-petitioner is pending before the learned Tribunal itself and the date is fixed

for final hearing on 09.04.2018. Any observation made by this Court may affect the rights of either party viz., assessee or revenue before the

learned Income Tax Appellate Tribunal, therefore, no observation is made on merits of the case at all.

5. The learned counsel for the assessee vehemently submitted that a very high pitched assessment was made and consequently huge demand was

made against the assessee against the declared losses for the said Assessment year & the Assessee- Company is unable to deposit the 50% of the

demand in question on or before 28.02.2018 and furnish the back guarantee for the balance amount within a period of six months as directed by

the learned Tribunal. He has drawn the attention of the Court towards the figures given in the stay application filed before the learned Tribunal and

submitted before the Court that the Assessing Authority raised a net demand of Rs.136.99 Crores against the assessee for the assessment year

2015-16, which was reduced to Rs.109.52 Crores by the First Appellate Authority viz., CIT (Appeals) and against the said demand a sum of

Rs.25.66 Crores has already been paid by the petitioner-Company so far.

6. Though normally this Court will not interfere in writ jurisdiction against said interlocutory orders passed by the Appellate Authority, which is

seized of the appeal before it, but in view of the peculiar facts and circumstances of the case and looking to the fact that the appeal itself is coming

up for final hearing after its pre-ponement of date on 09.04.2018 itself, and on which date it is expected that the learned Tribunal will take up the said appeal for final hearing and decide the said appeal, it is considered just and proper in the facts and circumstances, for the limited period, to

direct the petitioner-assessee to further deposit a sum of Rs.10 Crores against the impugned demand within a period of two weeks with the

respondent-Income Tax Department and further to undertake before the Tribunal that they will not seek any adjournment of hearing of the said

appeal on the date fixed by the Tribunal on 09.04.2018. The Revenue is also directed to cooperate in the matter and argue the said appeal before

the learned Tribunal on the given date.

7. It is expected that the learned Tribunal shall decide the appeal not later than three months from today.

8. The aforesaid impugned operative portion of the order of the learned Tribunal shall therefore, stand modified to this limited extent as indicated

above.

9. With these observations and directions the writ petition is disposed of. No costs. Copy of this order be sent to learned ITAT forthwith.