

IN THE HIGH COURT OF KARNATAKA AT BENGALURU**DATED THIS THE 8TH DAY OF JANUARY 2018****PRESENT****THE HON'BLE MR.H.G.RAMESH
ACTING CHIEF JUSTICE****AND****THE HON'BLE MR. JUSTICE P.S.DINESH KUMAR****I.A.No.4/2017
IN
ITA NO.879/2017****BETWEEN :**

M/S.GOOGLE INDIA PRIVATE LTD

...APPELLANT

(BY SRI DEEPAK CHOPRA A/W SRI ANMOL ANAND, SRI ADITYA
V. BHAT & SRI SHRAVANTH ARYA TANDRA, ADVOCATES)**AND :**

THE COMMISSIONER OF INCOME-TAX

...RESPONDENT

(BY SRI K.V.ARAVIND, ADVOCATE FOR C/R)

THIS I.A.No.4/2017 IS FILED UNDER SECTION 151 OF CODE OF CIVIL PROCEDURE PRAYING TO STAY THE OPERATION OF THE COMMON ORDER DATED OCTOBER 23, 2017 (PRODUCED AS ANNEXURE-"C" AT PAGE NOS.255 TO 388 IN THE ABOVE APPEAL) PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, BENGALURU UNDER SECTION 254(1) OF THE INCOME-TAX ACT, 1961, IN ITA No.1511/Bang/2013 BEING PART OF THE COMMON ORDER FOR ASSESSMENT YEAR 2007-08 ("IMPUGNED ORDER") AND GRANT SUCH OTHER ORDER/S AND/ OR RELIEF/S AND/OR DIRECTION/S IN THE INTEREST OF JUSTICE AND EQUITY.

THIS I.A.No.4/2017 IN INCOME TAX APPEAL No.879/2017, HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 13.12.2017, COMING ON FOR PRONOUNCEMENT OF ORDER ON I.A.No.4/2017, THIS DAY, **P.S. DINESH KUMAR J.**, PRONOUNCED THE FOLLOWING:-

ORDER ON I.A.No.4/2017

1. Heard Shri Deepak Chopra, learned Counsel appearing for the appellant and Shri K.V.Aravind, learned Counsel appearing for the respondent.
2. This appeal is presented challenging the common order passed by the Income Tax Appellate Tribunal, 'C' Bench, Bengaluru ('Tribunal' for short), dated 23.10.2017 in IT(TP)A.1511-1518/Bang/2013 for the Assessment Years 2007-08 to 2012-13.
3. On 15.11.2017, this Court admitted this appeal to consider the substantial questions raised in the appeal. So far as the order on application for stay (I.A.No.2/2017), filed along with the appeal was concerned, the same was disposed of by recording the submission of the learned Senior Counsel appearing for the appellant. The order dated 15.11.2017, reads as follows:-

"Heard Dr.A.M.Singhvi, learned Senior Counsel appearing for Sri Aditya Vikram Bhat, learned counsel for the appellant. The learned Senior Counsel submits that substantial questions of law formulated at paras III(1), III(2), III(3), III(4), III(5) and III(7) in the appeal memorandum require determination by this Court.

Sri K.V.Aravind, learned Standing Counsel is directed to take notice for the respondent and is heard.

Perused the record.

The matter requires consideration. The appeal is admitted to consider substantial questions of law formulated at paras III(1), III(2), III(3), III(4), III(5) and III(7) in the appeal memorandum.

ORDER ON IA No.2/2017

The learned Senior Counsel appearing for the appellant submits that IA.No.2/2017 may be disposed of by directing the Income Tax Appellate Tribunal, Bengaluru, to dispose of the appeals namely, I.T.A.No.1190/Bang/2014, I.T.A.No.949/Bang/2017 and I.T.A.No.950/Bang/2017 without being influenced by the order dated 23.10.2017 passed in IT(TP)A.1511/Bang/2013 which is impugned in this appeal.

We find no legal impediment to grant the aforesaid prayer. Accordingly, we direct the Income Tax Appellate Tribunal, Bengaluru, to dispose of the appeals in I.T.A.No. 1190/Bang/2014, I.T.A.No.949/Bang/2017 and I.T.A.No.950/Bang/2017 in accordance with law and without in any way being influenced by the order dated 23.10.2017 passed in IT(TP)A.1511/Bang/2013 which is impugned in this appeal. IA No.2/2017 stands disposed of accordingly."

4. Now, the appellant has filed the instant application (I.A.No.4/2017), which is verbatim same as I.A.No.2/2017, which has already been disposed of.

5. The reasons assigned in the affidavit accompanying the instant I.A.No.4/2017 are that, this Court by order dated 15.11.2017, directed the Tribunal to dispose of the appeals No.1190/Bang/2014 and connected cases in accordance with law, without being influenced by the order dated 23.10.2007 in IT(TP)A.1511/Bang/2013. However,

while considering Stay Petitions No.271/Bang/2017 to No.274/Bang/2017, the Tribunal has held as follows:-

"08. We have heard the rival submissions and perused the record. The Hon'ble Division Bench in ITA.879/2017 in IA.2/17, has directed the Tribunal to adjudicate the appeals bearing no ITA No.1190/Bang/2014, ITA No.949/Bang/2017 and ITA No.950/Bang/2017 without being influenced by the decision rendered by the Tribunal in ITA No.1511/Bang/2013 (supra). The ITA no Nos.69/Bang/2014, 68/Bang/2015, 559/Bang/2016 & 387/Bang/2017 were not the subject matter of proceedings before Hon'ble Division Bench directions dated 15.11.2017."

6. Thus, it is stated in the affidavit that the Tribunal has acted in a contumacious manner contrary to the directions issued by this Court and it has seriously prejudiced appellant's interest.

7. It was urged by the learned Counsel for the appellant that this Court may consider granting an absolute stay of the impugned order dated 23.10.2017.

8. Opposing the application, Shri K.V.Aravind, learned Standing Counsel for the Revenue, contended that the first application for Stay filed along with the appeal has already been disposed of. The order dated 15.11.2017 passed by this Court is referable only to appeals filed against proceedings initiated under Section 40(a)(i) of the Income

Tax Act ('Act' for short). The stay petitions bearing No.271/Bang/2017 and connected petitions referred to in the instant I.A. are filed in appeals arising out of regular assessments orders passed under Section 143(3) of the Act. The appellant is thus seeking to obtain stay of tax liability arising out of regular assessment orders in this indirect manner.

9. We have carefully considered the submissions of the learned Counsel for the parties.

10. It is not in dispute that the application for Stay filed along with the appeal has been disposed of on 15.11.2017.

11. The Principal ground urged by the appellant in support of this IA seeking absolute stay of the impugned order, is that the Tribunal, in it's order extracted supra, has misinterpreted the order of this Court dated 15.11.2017.

12. Admittedly, the order complained of by the appellant is passed in a proceeding arising out of 143(3) of the Act in ITA No.69/Bang/2014 and connected cases. The said order is not under challenge in these proceedings.

13. Shri Aravind, learned Standing Counsel, is right in his submission that the stay application filed along with this appeal having been disposed of by order dated 15.11.2017, by filing the instant I.A, the appellant is seeking to obtain stay of liability in proceedings under Section 143(3) of the Act in this indirect manner.

14. In the circumstances, we see no merit in I.A.No.4/2017 and the same is accordingly dismissed.

I.A.No.4/2017 dismissed.

We make no order as to costs.

**Sd/-
ACTING CHIEF JUSTICE**

**Sd/-
JUDGE**

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