

HC quashed demand order passed by Pr. CIT without considering genuine hardship of assessee

Summary – The High Court of Karnataka in a recent case of Fincare Business Services Ltd., (the Assessee) held that where Principal Commissioner failed to consider genuine hardship of assessee who was required to deposit 50 per cent of disputed tax demand, said order was legally unsustainable

Facts

- The assessee-company was engaged in the provision of the Managing Consultancy Services. The Income Tax Officer passed an order under section 143(3) and an addition was made under section 69 against the returned income on the basis that the assessee was unable to explain the source of funds in respect of the investment made by him. The Income Tax Officer had issued a notice calling upon to make payment of the same failing which coercive measures would be taken to recover the demand.
- On the same day, the assessee electronically filed an appeal before the Commissioner (Appeals) challenging the assessment order passed by the Income Tax Officer on various grounds. In the meantime, the assessee filed an application for stay of demand in terms of section 220(6) with the Income Tax Officer requesting to stay the demand until disposal of the appeal filed by it before the Commissioner (Appeal) and also brought to the notice of the first respondent the various CBDT circulars/instructions as regards the recovery of demands in cases of high-pitched assessments. However, the Income Tax Officer passed an order directing the assessee to pay 50 per cent of the demand subject to which the recovery of balance demand was stayed.
- The assessee, deposited 20 per cent of the demand in terms of the official memorandum and approached Principal Commissioner seeking for direction to the Income Tax Officer to stay the recovery of balance demand until disposal of the appeal. The Principal Commissioner had passed an order confirming the 50 per cent of the demand made by the Income Tax Officer.
- The assessee filed an application with the Commissioner (Appeals), praying for stay of the recovery of the balance demand until disposal of the appeal by the said authority, which was pending disposal. While so, the Income Tax Officer issued a communication to proceed with the recovery notwithstanding the pendency of the said application before the Commissioner (Appeals).
- The assessee challenged the above said communication by way of writ petition before this Court. This Court considering the pendency of stay application before the Commissioner (Appeals), disposed of the said writ petition with an observation that the authorities should not initiate any precipitative action during the pendency of the stay application before the Commissioner (Appeals). The Commissioner (Appeals) had no jurisdiction to pass an order on the said application on the premise that the issue had been decided by the Principal Commissioner. Pursuant to which, Income Tax Officer had issued garnishee notice under section 226(3) directing the bank to make the payment towards the demand of tax from the account of the assessee.
- On writ:

Held

- In the instant case, the petitioner has deposited 20 per cent of the demand amount. If that being so, the Income Tax Officer and the Principal Commissioner ought to have examined the matter in detail in as much as whether the assessment is unreasonably high-pitched or whether any genuine hardship would be caused to the assessee in case the assessee were required to deposit 50 per cent of the demand amount, while disposing of the stay application. Further, the Principal Commissioner had passed a cryptic order without assigning any reasons confirming the order of the Income Tax Officer demanding 50 per cent of the demand amount for grant of stay.
- It is *prima facie* apparent that the order of the Principal Commissioner is a non-speaking order which cannot be sustained. The Commissioner (Appeals) has passed an order that the request of the stay of demand cannot be considered in view of the decision taken by the Principal Commissioner which culminated in the issuance of a garnishee notice in defiance with the order of the Court in not providing one week time before initiating coercive recovery action. The Commissioner (Appeals) referring to the same, failed to exercise the statutory powers vested with him. Statutory Appellate Authority ought to have adjudicated upon the application for stay filed by the assessee. Be that as it may, the basis for declining to entertain the stay application is the order of the Principal Commissioner which goes to the root of the matter. Had the Principal Commissioner considered the request of the assessee in accordance with law and passed the speaking order, it would have been appreciated. However, it is well settled principle that any order passed without assigning reasons is a nullity and not valid in the eye of law. Hence, the order of the Principal Commissioner is not in conformity with the well settled principles of law. Accordingly, the order passed by the Commissioner (Appeals) as well as garnishee notice cannot be held to be valid in the eye of law.
- Hence, the instant writ petition is allowed.