

Circular dated 29 Feb 2016 held not to supersede earlier Instruction 1914 dated 02 Feb 1993 in toto, but to only partially modify guidelines contained therein

March 20, 2017

In brief

The Karnataka High Court (HC) held that the Circular dated 29 February, 2016, clearly was 'in partial modification of Instruction No. 1914' and merely prescribed the percentage of the disputed demand that needed to be deposited by the taxpayer. Thus, although this Circular had streamlined and standardised the grant of stay, it had left Guideline No. 2-B(iii) contained in Instruction No. 1914 dealing with the situation wherein the assessment was unreasonably high pitched, or wherein genuine hardship was likely to be caused to the taxpayer, absolutely untouched. Therefore, both these factors had to be examined by both, the Tax Officer (TO) and the Principal Commissioner of Income-tax (Pr. CIT) before directing the taxpayer to pay 15% of the disputed demand sum.

In detail

Facts

- The taxpayer¹ was engaged in the business of wholesale distribution of books, mobiles, media, computers, gaming consoles and other related accessories. Since its business began in 2011, the taxpayer had suffered losses in assessment year (AY) 2012-13, AY 2013-14, AY 2014-15 and AY 2015-16. However, the TO, in scrutiny assessment, had made substantial additions in the taxpayer's hands for AY 2014-15 and AY 2015-16 *vide* separate orders and determined the outstanding demand payable.

- The taxpayer filed appeals before the Commissioner (Appeals) against both orders of the TO, and requested the TO to keep the disputed demand in abeyance. However, the TO directed the taxpayer to deposit 15% of the disputed demand outstanding for the relevant years. Being aggrieved, the taxpayer filed review petitions before the Pr. CIT that were rejected. Hence, these petitions before the HC.

Issue before the HC

Had Circular dated 29 February, 2016, superseded Instruction No. 1914 dated 02 February, 1993, *in toto*?

Taxpayer's contentions

- Guideline 2-B of Instruction No. 1914 dealt with stay petitions that could be filed before the TO while an appeal was filed before the appellate authority. Further, Guideline 2-C of Instruction No. 1914 prescribed 'guidelines for staying the demand'.
- Circular dated 29 February, 2016, did not supersede Instruction No. 1914 *in toto*. Rather, it was a partial modification of the guidelines contained in Instruction No. 1914, and merely related to the streamlining and standardisation of the

¹ W.P. No 1339-1342/2017 (T-IT)

process of granting stay as a precondition for stay of disputed demand before the Commissioner (Appeals). Thus, Guideline No. 2-B(iii) contained in Instruction No. 1914 was not erased by Circular dated 29 February, 2016.

- The Pr. CIT failed to see the inter-relationship between the two Circulars as explained above.
- The TO's orders were non-speaking orders, being bereft of any reason.
- The judicial precedent² cited by the Pr. CIT did not deal with the present case.

Revenue's contentions

- The Circular dated 29 February 2016 had superseded Instruction No. 1914 *in toto* as a new procedure prescribed for streamlining the process of granting stay.
- The taxpayer would be entitled to deposit less than 15% of the disputed demand provided an addition on the same issue had been deleted by the Appellate Authorities in earlier years, or a decision of the Supreme Court or of the jurisdictional HC was in the taxpayer's favour.
- As general rule, Instruction No. 4(A) prescribes the taxpayer to deposit 15% of the disputed demand amount.
- The taxpayer had neither made out a case that it was facing hardship nor revealed any circumstance that would impose a hardship.

High Court's decision

- The Revenue had to precisely balance conflicting interests between certain guidelines

prescribed by Instruction No. 1914 dated 02 February 1993 and Circular dated 29 February, 2016. Further, the HC observed that the Revenue could not, and had not been permitted by the Circulars to act like 'Shylock'.

- The Circular dated 29 February, 2016, clearly did not supersede Instruction No. 1914 *in toto*, but "*partially modifies*" the guidelines contained in Instruction No. 1914.
- A comparative perusal of both Circulars clearly revealed that Instruction No. 1914 dealt with collection and recovery of income tax, broadly divided into four parts: *firstly*, responsibility for collection and recovery; *secondly*, stay petitions; *thirdly*, guidelines for staying demand; and *lastly*, miscellaneous provisions. However, the Instruction did not standardise the quantum of lump-sum payment required to be made by the taxpayer as a pre-condition for stay of disputed demand before the Commissioner (Appeals). This vacuum has been filled by Circular dated 29 February, 2016, which merely prescribed the percentage of disputed demand to be deposited by the taxpayer.
- Guideline No. 4 of the Circular dated 29 February 2016 used the words "*partial modification of Instruction No. 1914*" and thus, obviously left Guideline No. 2-B(iii) contained in Instruction No. 1914 absolutely untouched. Therefore, both the TO and the Pr. CIT were required to see if the taxpayer's case would fall under Guideline No. 2-B(iii) of Instruction No. 1914 or not.

- Guideline No. 4(A) of the Circular dated 29 February, 2016 was a general rule asking the taxpayer to deposit 15% of the disputed demand amount. However, according to Guideline No. 4(B)(a), the demand could be increased to more than 15%; and according to Guideline No. 4(B)(b), the demand could be lower than 15%, provided the TO sought the Pr. CIT's permission. However, if the TO does not seek permission from the Pr. CIT and the taxpayer was aggrieved by the demand of 15% to be deposited, the taxpayer was free to independently approach the Pr. CIT.
- The HC held that the TO's orders were non-speaking orders and were legally unsustainable, as a bare perusal of the orders revealed that the TO had jumped to the conclusion that the taxpayer was not entitled to seek relief merely because the taxpayer's case did not fall within the two illustrations given in Guideline No. 4(B)(b) of the Circular dated 29 February, 2016, and that the taxpayer's finances did not indicate any hardship. The least the TO was required to do was to elaborately discuss whether "genuine hardship" would be caused to the taxpayer in case it was directed to pay 15% of the disputed demand amount.
- The order passed by the Pr. CIT was legally unsustainable on the ground that the Pr. CIT had failed to appreciate the correlation between Instruction No. 1914 and the Circular dated 29 February 2016, and had failed to notice the fact that the latter Circular had only partially modified the former

² M/s Teleradiology Solutions Private Limited v. DCIT Circle-12(4) & Others

(Writ Petition No.26370/2015, dated 18 April, 2016)

Instruction; and that Guideline No. 2-B(iii) in Instruction No. 1914 continued to exist independent of, and in spite of, Circular dated 29 February 2016. Thus, the Pr. CIT had failed to apply the two important factors mentioned therein. Furthermore, the Pr. CIT had erred in applying the reasons given in *Teleradiology Solutions Private Limited*,² wherein the issues involved were entirely different from those in the present case, and had blindly cited the precedent.

- Therefore, the HC set aside the orders and remanded the case back to the Pr. CIT with directions to decide the review petition.

The takeaways

With the huge pressure of payment of disputed demand faced by taxpayers emanating from high-pitched assessments by TOs, this ruling is welcome, and is expected to give some relief to the taxpayers facing genuine hardships. This ruling states that in case of unreasonably high-

pitched assessment, or where genuine hardship is likely to be caused to the taxpayer, the taxpayer is free to independently request the Pr. CIT to reduce the percentage of disputed demand to be paid to below 15%. Overall, this judgment definitely serves as a strong basis for requesting the tax authorities to decide each application on its merits.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor.

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