

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25<sup>TH</sup> DAY OF JULY, 2019

BEFORE:

THE HON'BLE MRS. JUSTICE S.SUJATHA

**WRIT PETITION No.4349/2018 (T- IT)**

**BETWEEN:**

LOKESH CHANDRAPPA  
S/O CHANDRAPPA,  
AGED ABOUT 34 YEARS,  
THALGHATTAPURA,  
KANAKAPURA MAIN ROAD,  
BANGALORE-560 062.

... PETITIONER

[BY SRI SHANKAR A., SENIOR COUNSEL FOR  
SRI B.S.BALACHANDRAN, ADV.]

**AND:**

INCOME TAX OFFICER  
WARD-3(2) (4)  
ROOM NO.114, 1<sup>ST</sup> FLOOR,  
BMTc DEPOT BUILDING,  
80 Ft. ROAD, KORAMANGALA  
BANGALORE-560 095.

...RESPONDENT

[BY SRI E.I.SANMATHI, ADV. FOR SRI K.V.ARAVIND, ADV.]

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH ANNEXURE-D THE ORDER PASSED BY THE RESPONDENT ASSESSING OFFICER UNDER SECTION 143(3) W.R.T. 254, DATED 26.12.2017 AND DIRECT THE ASSESSING OFFICER TO PASS AN ORDER TAKING INTO CONSIDERATION OF THE ITAT ORDER AND ETC.

THIS PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:-

**ORDER**

The petitioner has assailed the order dated 26.12.2017 passed by the respondent – Assessing Officer, under Section 143(3) of the Income Tax Act, 1961 ('Act' for short) *inter alia*, seeking a direction to the respondent – Assessing Officer to implement the orders of the Income Tax Appellate Tribunal, Bangalore Bench – C (ITAT) dated 09.11.2016 in I.T.A.No.1254/Bang/2015 relating to the Assessment Year 2009-10.

2. The petitioner had filed returns for the Assessment year in question as on 31.03.2011 which has been culminated in the order of the of the ITAT dated 09.11.2016 in I.T.A.No.1254/Bang/2015, whereby the Tribunal remanded the matter to the Assessing Officer with certain directions. The relevant portion of the said order is quoted hereunder for ready reference:-

*“Further since the assessee’s case has been decided by the Assessing Officer as well as the CIT (Appeals) without any representative therefore in the facts and circumstances of the case, we set aside this matter to the record of the Assessing Officer for granting one more opportunity to the assessee for explanation of the source of cash deposit and in any case the addition if any it should not be more than the peak credit in the bank account.”*

3. Pursuant to the said order of the ITAT, the Assessing Officer has passed the Assessment Order impugned herein determining the tax and penalty amount sans computing peak credit in the bank account.

4. Learned Senior counsel Sri. Shankar A., appearing for the petitioner would point out that the Assessing Officer is bound to give effect to the order of the ITAT in letter and spirit. The Assessing Officer has proceeded to conclude the assessments sans giving

effect to the order of the ITAT inasmuch as the determination of the peak credit in the bank account is concerned.

5. Learned counsel for the revenue made an endeavour to justify the impugned order.

6. It is trite law that the Assessing Officer has a legal obligation to implement the order of the ITAT strictly and such failure would result in the failure of justice. A writ of mandamus would be issued in such circumstances to the respondent – Assessing Officer to carry out the directions given to him by the ITAT. This view is fortified by the judgment of the Hon'ble Apex Court in the case of ***Bhopal Sugar Industries Ltd., vs. Income Tax Officer, Bhopal*** reported in **40 ITR 618**. It is *ex-facie* apparent that no peak credit of the bank account has been worked out by the Assessing Officer to conclude the assessments on remand by the ITAT.

7. Hence, the order impugned at Annexure – D dated 26.12.2017 being perverse and illegal stands quashed. The proceedings are restored to the file of the respondent - Assessing Officer to redo the assessment in the light of the observations made by the ITAT inasmuch as any addition if to be made to the tax declared, it should not be more than the peak credit in the bank account of the petitioner. The respondent – Assessing Officer shall comply with this order in an expedite manner preferably within a period of four weeks from the date of receipt of certified copy of the order.

Writ petition stands disposed of accordingly.

**Sd/-  
JUDGE**

PMR