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Tribunal has power to grant extension of stay beyond 365 days in deserving cases where the delay in disposing the appeal is not attributable to the assessee – Delhi HC strikes down the third proviso to Section 254(2A) of the Act.

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Synopsis

The Delhi High Court in the case of Pepsi Foods Pvt. Ltd (now merged with Pepsico India Holding Pvt. Ltd) has struck down the third proviso to section 254(2A) of the Act i.e., 'even if the delay in disposing of the appeal is not attributable to the assessee' as being violative of Article 14 of the Constitution of India.

Accordingly, the Delhi High Court has held that where the delay in disposing of the appeal is not attributable to the taxpayer, the Tribunal has the power to grant extension of stay beyond 365 days, in aggregate.

Facts

- The taxpayer company, Pepsi Foods Pvt Ltd had filed an appeal with the Tribunal which were pending for disposal. The taxpayer applied for initial stay which was granted by the Tribunal.
- However, in view of the provisions of section 254(2A) of the Act and after the expiry of the period of 365 days from the grant of initial stay has elapsed, the Tribunal rejected any further extension of stay inspite of the fact that the appeals filed before the Tribunal has not been disposed off.
- There was no delay in the disposal of the appeal on account of any conduct attributable to the taxpayer.
- The taxpayer has filed writ petition before the High Court, challenging the constitutional validity of the third proviso to section 254(2A) of the Act and an alternative plea with the High Court to read down the provisions to mean that the power of the Tribunal to grant interim relief is co-terminus with the main power of disposal of the appeal.

Issue before the High Court

- Whether the amendment vide Finance Act 2008, in respect of the third proviso to section 254(2A) of the Act which inserts an expression – ‘even if the delay in disposing of the appeal is not attributable to the assessee’ is constitutionally valid and non violative of the non-discrimination clause of Article 14 of the Constitution of the India.
- Whether the Tribunal has power to grant extension of stay beyond 365 days in aggregate, in cases where assessee is not in default?

Ruling of the High Court

- The Delhi High Court relied on the decisions¹ referred by the taxpayer and observed that if it the Tribunal who has power to pass an order in an appeal which is pending before it for disposition, did not have power to continue the grant of interim relief for no fault of the assessee, would be unreasonable or violative of Article 14 of the Constitution of India.
- The High Court has also examined the decision of the Supreme Court in case of ITO v. M. K. Mohammed Kunhi² wherein it was held that the power to grant stay by the Tribunal is incidental or ancillary to its appellate jurisdiction.
- The High Court has also examined the principles relating to applicability of Article 14 of the Constitution in relation to invalidation of a legislation which are:
 - discrimination, based on an impermissible or an invalid classification and
 - excessive delegation of powers
- The High Court has further relied on Supreme Court decision in Dr. Subramanian Swamy³ to examine the sustainability of constitutional validity of the proviso of section 254(2A) of the Act and observed that the question of discrimination, based on an impermissible or invalid classification needs to be examined.
- The High Court has observed that the intention of the legislature, which has been made explicit by insertion of words – ‘even if the delay in disposing of the appeal is not

¹ Narang Overseas Private Limited v. Income Tax Appellate Tribunal (2007) 295 ITR 22 (Bombay)
CIT v. Maruti Suzuki (India) Limited (2014) 362 ITR 215 (Delhi) (DB)

² 71 ITR 815

³ (2014) 8 SCC 682 (SC)

attributable to the assessee' – renders the right of appeal granted to the assessee by the statute to be illusory for no fault on the part of the assessee.

- The High Court further observed that assessee who after having obtained stay order and by their conduct delay the appeal proceedings, have been treated in the same manner in which assesses, who have not delayed the proceedings in the appeal. The two classes of assesses are distinct and cannot be clubbed together. The clubbing together has led to hostile discrimination against the assesseees to whom the delay is not attributable.
- Accordingly, the Delhi High Court has struck down the third proviso to section 254(2A) of the Act i.e., 'even if the delay in disposing of the appeal is not attributable to the assessee' as being violative of Article 14 of the Constitution of India
- The High Court also ruled that Tribunal has the power to grant extension of stay beyond 365 days in deserving case wherein the delay in disposing of the appeal is not attributable to the assessee.

Comments

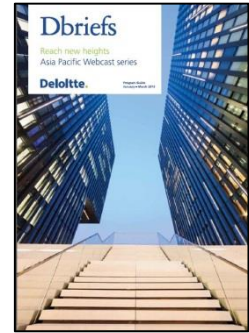
The Bombay High Court in *Ronak Industries Ltd.*, (2010) in IT Appeal No. 3190 of 2009 and the Special Bench Mumbai ITAT in *Tata Communications* (2012) S.A. Nos.196 to 198/Mum/2009 (Arising I.T.A.Nos. 1106 to 1108/Mum/2008) have similarly held that the Tribunal can grant stay of demand beyond 365 days if the delay in disposing the appeal is not attributable to the assessee.

However the Karnataka High Court in *M/S ECOM GILL COFFEE TRADING PVT. LTD.*, in ITA NO. 160 OF 2012, has after considering the above decisions, held that the Appellate Tribunal has committed a positive error in consciously extending the interim order of stay granted in the pending appeal beyond the period of 365 days, which is the outer limit stipulated in the Statutory provision.

Source: Delhi High Court decision dated 19 May 2015, in the case of *Pepsi Foods Pvt. Ltd* (now merged with *Pepsico India Holding Pvt. Ltd Vs. ACIT (W.P.(C) 1334/2015 & CM 2337/2015*

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