

GIB/DL/COMMISSIONER OF INCOME TAX/06.04.2021/SC-23

Supreme Court Category : REVENUE

State : Delhi

Order No.: GIB/DL/COMMISSIONER OF INCOME TAX/06.04.2021/SC-23

Name of Entry :
DEPUTY COMMISSIONER OF INCOME TAX & ANR.

Date : 06-04-2021

Breif Issue :

FACTS AND ISSUE OF THE CASE:

Pepsi Foods Ltd. ("the Respondent") is an Indian Company and engaged in the business of manufacture and sale of concentrates, fruit juices, processing of rice and trading of goods for exports.

On September 30, 2008, a return of income was filed for the Assessment Year 2008-2009 declaring a total income of Rs. 92,54,89,822/-. A final assessment order was passed on October 19, 2010 ("Impugned Order") which was adverse to the Respondent. Aggrieved by the Impugned order, the Respondent filed an appeal before the Income-Tax Appellate Tribunal ("ITAT") on April 29, 2013. On May 31, 2013, ITAT stayed the operation of the Impugned order for a period of six months. Further, the stay was extended till January 8, 2014 and continued being extended until May 28, 2014.

Since the period of 365 days as provided in Section 254(2A) of the IT Act was to end on May 30, 2014, beyond which no further extension could be granted, the Respondent, apprehending coercive action from the Revenue ("the Petitioner"), filed a writ petition before the Hon'ble Delhi High Court on May 21, 2014 challenging the constitutional validity of the third proviso to Section 254(2A) of the IT Act. By a judgment dated May 19, 2015, the Delhi High Court struck down a part of the third proviso to Section 254(2A) of the IT Act which did not permit the extension of a stay order beyond 365 days even if the assessee was not responsible for delay in hearing the appeal.

Whether automatic vacation of stay granted by ITAT after expiry of 365 days even if the assessee is not responsible for delay in hearing the appeal is unconstitutional in the eyes of law?

Decision of Advance Ruling Authority :

DECISION:

Since the object of the third proviso to Section 254(2A) is the automatic vacation of a stay that

has been granted on the completion of 365 days, whether or not the assessee is responsible for the delay caused in hearing the appeal, such object being itself discriminatory is liable to be struck down as violating Article 14 of the Constitution of India. Also, the said proviso would result in the automatic vacation of a stay upon the expiry of 365 days even if the Appellate Tribunal could not take up the appeal in time for no fault of the assessee. Further, vacation of stay in favour of the revenue would ensue even if the revenue is itself responsible for the delay in hearing the appeal. In this sense, the said proviso is also manifestly arbitrary being a provision which is capricious, irrational and disproportionate so far as the assessee is concerned.

Consequently, the third proviso to Section 254(2A) will now be read without the word "even" and the words "is not" after the words "delay in disposing of the appeal". Any order of stay shall stand vacated after the expiry of the period or periods mentioned in the Section only if the delay in disposing of the appeal is attributable to the assessee. **Therefore, the appeal of the Revenue is dismissed.**