

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

ITA No.57 of 2016 (O&M)

Date of decision: 09.05.2016

The Principal Commissioner of Income Tax, Gurgaon

.....Appellant

Jindal Steel and Power Limited, Hissar

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? **YES**
3. Whether the judgment should be reported in the Digest?

Present: Mr. Tajender K.Joshi, Advocate for the appellant.

Ajay Kumar Mittal, J.

1. This appeal has been preferred by the revenue under section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 8.6.2015, Annexure A.III passed by the Income Tax Appellate Tribunal, Delhi Bench, New Delhi (Friday) (in short, "the Tribunal") in Stay Application 327/Delhi/2015 (in ITA No.3052/DEL/2014) for the assessment year 2008-09, claiming following substantial questions of law:-

Second Proviso of Section 254(2A) of the Income Tax Act, 1961 as the combined period of stay has exceeded 365 days?

2. Whether the order of the ITAT be treated as void ab initio in the light of third proviso to section 254(2A) of the Income Tax Act, 1961, which provides that stay of demand stands vacated after expiry of a period of 365 days even if delay in disposal of appeal is not attributable to the assessee?"

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The assessee furnished its return of income for the assessment year 2008-08 declaring income of ₹ 766,99,04,200/- on 29.9.2008. Subsequently, a revised return of income was filed on 29.3.2010 wherein income of ₹ 766,72,79,900/- was declared and tax was paid under the provisions of Section 115JB of the Act. Assessment under section 143(3) of the Act was completed on 27.12.2010 at a total income of ₹ 10,33,26,17,034/- and penalty proceedings under section 271(1)(c) of the Act were also initiated. Aggrieved by the assessment order, the assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 10.3.2014, the CIT(A) dismissed the appeal. The Assessing Officer imposed penalty under section 271(1)(c) of the Act at ₹ 28,21,94,177/- vide order dated 28.11.2013, Annexure A.I for the assessment year 2008-09. Against the penalty order, the assessee filed appeal before the CIT(A). Vide order dated 13.3.2014, Annexure A.II, the CIT(A) dismissed the appeal. The assessee had deposited demand of ₹ 14,11,77,088/- on 29.3.2014 and the balance demand outstanding was of ₹ 14,10,17,089/-. Against

the order passed by the CIT(A) under section 271(1)(c) of the Act, the assessee filed appeal before the Tribunal. Original stay of demand application was also filed by the assessee before the Tribunal praying for staying the outstanding demand of ₹ 14,10,17,089/- as penalty under section 271(1)(c) of the Act. The Tribunal granted stay vide order dated 16.6.2014 for six months. The assessee filed further application for extension of second stay of demand. The Tribunal granted stay upto 15.6.2015 vide order dated 20.2.2015. The assessee filed another application for extension of stay of demand. The Tribunal vide order dated 8.6.2015, Annexure A.III extended the stay for a further period of six months or till the disposal of the appeal whichever was earlier by relying upon the decision of the Delhi High Court in *Pepsi Foods Pvt. Limited vs. ACIT*, 2015-TIOL-1306 HC-DEL-IT. According to the appellant-revenue, the decision of the Tribunal is not in accordance with law as it is contrary to the second and third provisos to section 254(2A) of the Act. Hence the instant appeal by the revenue.

3. We have heard learned counsel for the appellant-revenue.

4. The matter is no longer res integra. While interpreting the provisions of Section 35C(2A) of the Central Excise Act, 1944 which is pari materia to section 254(2A) of the Act, this Court in STA No.15 of 2015 (*Commissioner of Central Excise, Rohtak vs. M/s Voice Telesystem*) decided on 20.1.2016 after considering the relevant case law on the point concluded that wherever the appeal could not be decided by the Tribunal due to pressure of pendency of cases and delay in the

disposal of the appeal is not attributable to the assessee in any manner, the interim protection can continue beyond 365 days in deserving cases. Reference was made to the judgment of the Apex Court in *Commissioner of Customs & Central Excise, Ahmedabad vs. Kumar Cotton Mills Pvt. Limited*, (2005) 180 ELT 434. Further, this Court in *Principal Commissioner of Income Tax vs. Carrier Air Conditioning and Refrigeration Limited*, ITA No.5 of 2016 decided on 25.4.2016, adjudicating identical issue interpreting Section 254(2A) of the Act following the judgment in *M/s Voice Telesystem's case* (supra) had held similar view.

5. Accordingly, we do not find any error in the impugned order passed by the Tribunal. Thus, no substantial question of law arises. The appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

May 09, 2016
'gs'

(Raj Rahul Garg)
Judge