

No stay of demand by ITAT beyond 365 days after insertion of third proviso to sec. 254(2A)

Summary – The High Court of Uttarakhand in a recent case of Seacor Offshore Dubai LLC., (the Assessee) held that even if Tribunal is unable to hear appeal within 365 days, stay of demand cannot be extended beyond 365 days.

JUDGMENT

The matters in these two appeals are identical and, accordingly, are dealt with by the following common judgment.

2. The Bombay High Court rendered its judgment in *CIT v. Ronuk Industries Ltd.* [[2011\] 333 ITR 99/203 Taxman 90/15 taxmann.com 369](#) on 22nd November, 2010 and, thereby, repeated its decision rendered in the case of *Narang Overseas (P.) Ltd. v. ITAT* [[2007\] 295 ITR 22/165 Taxman 557 \(Bom.\)](#), which was rendered on 30th July, 2007 without taking note of the fact that as on 30th July, 2007, the third proviso to sub-section (2A) of Section 254 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") was not in existence, which came to be inserted only with effect from 1st October, 2008. This aspect of the matter, the Tribunal failed to take note of and erroneously held as if it was held in *Ronuk Industries Ltd. (supra)* that the Tribunal has power to extend stay of demand beyond the period of 365 days even after insertion of third proviso to sub-section (2A) of Section 254 of the Act. First of all, there is no such pronouncement in *Ronuk Industries Ltd. (supra)* and, secondly, a statutory authority, which has been granted statutory power, can exercise such power within the four corners of the statute granting such power and in the instant case as on the date when the Tribunal exercised the power of extending stay of demand beyond 365 days, the power of the Tribunal to do so was withdrawn by inserting the proviso in question in the statute.

2.1 We, accordingly, interfere, allow the appeals and set aside the orders of the Tribunal under appeals. However, from the orders of the Tribunal, it appears that for some reason or the other the Tribunal could not hear an appeal of the respondent assessee within 365 days' time and, as such, extended the stay beyond 365 days. In the circumstances, it shall be open to the assessee to take such recourse to law as is available to it.