

ITAT could extend stay of demand beyond 365 days if delay in disposing of appeal wasn't attributable to assessee

Summary – The Bangalore ITAT in a recent case of SAP Labs India (P.) Ltd., (the Assessee) held that where delay in disposing of appeal is not attributable to assessee, Tribunal has power to grant extension of stay of recovery of outstanding demand beyond 365 days in deserving cases

Facts

- The assessee-company filed an appeal before the Tribunal against the order of the Assistant Commissioner. The assessee also filed a petition for an order of grant of stay of recovery of outstanding demand arising out of the order of the assessment impugned in appeal.
- The Tribunal by an order dated 31-8-2012 granted an order of stay of recovery of outstanding demand only for a period of 180 days or till disposal of the appeal by the Tribunal, whichever was earlier.
- The appeal could not be heard within the period of 180 days and the assessee filed another application for extending the order of stay. The Tribunal by an order dated 23-8-2013 extended the period of stay for a further period of 180 days from 23-8-2013 or till disposal of appeal whichever was earlier.
- The appeal of the assessee could not be heard by the Tribunal even within this period and, therefore, the assessee filed instant application praying for an order extending the order of stay for recovery of outstanding demand.
- The revenue relying upon decision of Karnataka High Court in the case of *CIT v. Ecom Gill Coffee Trading (P.) Ltd.* [\[2014\] 362 ITR 204/\[2012\] 209 Taxman 190/23 taxmann.com 235](#) contended that total duration of the stay of demand granted by the Tribunal cannot exceed 365 days.

Held

- Where the delay in disposing of the appeal is not attributable to the assessee, the Tribunal has the power to grant extension of stay of recovery of outstanding demand beyond 365 days in deserving cases.
- The Karnataka High Court in the case of *Ecom Gill Coffee Trading (P.) Ltd. (supra)* has not dealt with the constitutional validity of the 3rd proviso to section 254(2A). The Court only held that Tribunal has no power to extend stay beyond a period of 365 days in view of the clear language of 3rd proviso to section 254(2A) and that statutory Tribunals have to follow the statutory provisions as it is. When the 3rd proviso has been held to be unconstitutional by the Delhi High Court in the case of *Pepsi Foods (P.) Ltd. v. Asstt. CIT* [\[2015\] 376 ITR 87/232 Taxman 78/57 taxmann.com 337](#) (the decision of Delhi High Court is later in point of time to that of the Karnataka High Court), then the

3rd proviso to the extent it lays that extension of order of stay cannot be granted beyond 365 days 'even if the delay in disposing of the appeal is not attributable to the assessee', has to be considered as not existing in the statute book, in a case where such default is not attributable to the assessee.

- The existence of all conditions for grant of stay has already been considered by the Tribunal and at this stage, new conditions cannot be imposed. The non-existence of financial hardship cannot be conclusive in the matter. In any event these parameters have already been tested by the Tribunal when it originally granted an order of stay subject to certain conditions.
- For the reasons given above, it is directed that there shall be an order of stay of recovery of outstanding demand for a period of 180 days from this day or till disposal of the appeal of the assessee by the Tribunal, whichever is earlier.