Constitutional validity of the third proviso to Section 254(2A) DCIT V M/S. Pepsi Foods Ltd. (Now Pepsico India Holdings Pvt. Ltd

Facts of the case

In this case the Respondent-assessee is an Indian company incorporated on 24.02.1989 and is engaged in the business of manufacture and sale of concentrates, fruit juices, processing of rice and trading of goods for exports. The assessee is a group company of the multi-national Pepsico Inc. The assessee-company merged with Pepsico India Holdings Pvt. Ltd. w.e.f. 01.04.2010, in terms of a scheme of arrangement duly approved by the Hon'ble Punjab and Haryana High Court. On 30.09.2008, 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 19.10.2012 which was adverse to the assessee. Aggrieved by the aforesaid order, the assessee filed an appeal before the Income Tax Appellate Tribunal (hereinafter referred to as "Tribunal") on 29.04.2013. On 31.05.2013, a stay of the operation of the order of the assessing officer was granted by the Tribunal for a period of six months. This stay was extended till 08.01.2014 and continued being extended until 28.05.2014. Since the period of 365 days as provided in Section 254(2A) of the Income Tax Act was to end on 30.05.2014 beyond which no further extension could be granted, the assessee, apprehending coercive action from the Revenue, filed a writ petition before the Delhi High Court on 21.05.2014 challenging the constitutional validity of the third proviso to Section 254(2A) of the Income Tax Act. By a judgment dated 19.05.2015, the Delhi High Court struck down that part of the third proviso to Section 254(2A) of the Income Tax 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. It is this judgment and several other judgments from various High Courts that have been challenged by the revenue in these appeals.

Issue under Consideration

If the third proviso to Section 254(2A/0 is arbitrary, discriminatory and violative of Article 14 of the Constitution of India, as it did not allow the extension of stay beyond 365 days, even if the delay in the hearing is not due to assessee's fault.

Judgement

It is settled law that challenges to tax statutes made under Article 14 of the Constitution of India can be on grounds relatable to discrimination as well as grounds relatable to manifest arbitrariness. These grounds may be procedural or substantive in nature.

The Hon'ble Supreme Court held that there can be no doubt that the third proviso to Section 254(2A) of the Income Tax Act, introduced by the Finance Act, 2008, would be both arbitrary and discriminatory and, therefore, liable to be struck down as offending Article 14 of the Constitution of India.

First and foremost, as has correctly been held that unequal's are treated equally in that no differentiation is made by the third proviso between the assessees who are responsible for delaying the proceedings and assessees who are not so responsible.

This is a little peculiar in that the legislature itself has made the aforesaid differentiation in the second proviso to Section 254(2A) of the Income Tax Act, making it clear that a stay order may be extended up to a period of 365 days upon satisfaction that the delay in disposing of the appeal is not attributable to the assessee.
It is held in Narang Overseas that the second proviso was introduced by the Finance Act, 2007 to mitigate the rigour of the first proviso to

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Section 254(2A) of the Income Tax Act. Ordinarily, the Appellate Tribunal, where possible, is to hear and decide appeals within a period of four years from the end of the financial year in which such appeal is **filed. It is only when a stay of the order before the Appellate Tribunal is granted, that the appeal is required to be disposed of within 365 days. So far as the disposal of an appeal by the Appellate Tribunal is concerned, this is a directory provision**. However, so far as vacation of stay on expiry of the said period is concerned, this condition becomes mandatory so far as the assessee is concerned.

The object sought to be achieved by the third proviso to Section 254(2A) of the Income Tax Act is without doubt the speedy disposal of appeals before the Appellate Tribunal in cases in which a stay has been granted in favour of the assessee. But such object cannot itself be discriminatory or arbitrary, as held in Nagpur Improvement Trust v. Vithal Rao (1973) 3 SCR 39 as follows:

The object itself cannot be discriminatory, for otherwise, for instance, if the object is to discriminate against one section of the minority the discrimination cannot be justified on the ground that there is a reasonable classification because it has rational relation to the object sought to be achieved."

Since the object of the third proviso to Section 254(2A) of the Income Tax Act 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, and 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. Thus, the third proviso to section 254(2A) is also manifestly arbitrary being a provision which is capricious, irrational and disproportionate so far as the assessee is concerned.

In Atma Ram Mittal v. Ishwar Singh Punia [Atma Ram Mittal v. Ishwar Singh Punia, (1988) 4 SCC 284] , the Hon'ble Supreme Court applied the maxim to time taken in legal proceedings under the Haryana Urban (Control of Rent and Eviction) Act, 1973, holding:

It is well settled that no man should suffer because of the fault of the court or delay in the procedure. Broom has stated the maxim actus curiae neminem gravabit - an act of court shall prejudice no man*. Therefore, having regard to the time normally consumed for adjudication, the ten years' exemption or holiday from the application of the Rent Act would become illusory, if the suit has to be filed within that time and be disposed of finally. That will make the ten years holiday from the Rent Act illusory and provide no incentive to the landlords to build new houses to solve problem of shortages of houses. The purpose of legislation would thus be defeated. Purposive interpretation in a social amelioration legislation is an imperative irrespective of anything else."*

The object of the criminal law is to punish perpetrators of crime. *This is in tune with the well-known legal maxim nullum tempus aut locus occurrit regi, which means that a crime never dies.* ***At the same time, it is also the policy of law to assist the vigilant and not the sleepy.*** *This is expressed in the Latin maxim vigilantibus et non dormientibus, jura subveniunt. Chapter XXXVI CrPC which provides limitation period for certain types of offences for which lesser sentence is provided draws support from this maxim.*

In Neeraj Kumar Sainy v. State of U.P. [Neeraj Kumar Sainy v. State of U.P., (2017) 14 SCC 136 : 8 SCEC 454] ,

The time taken in legal proceedings cannot possibly harm a litigant if the Tribunal itself cannot take up the litigant's case within the requisite period for no fault of the litigant.

The Hon'ble Apex Court's judgment in Mardia Chemicals. where the constitutional validity of a condition for the exercise of the right of appeal is assailed. The Hon'ble court held as follows:

"The requirement of pre-deposit of any amount at the first instance of proceedings is not to be found in any of the decisions cited on behalf of the respondent. All these cases relate to appeals. ***The amount of deposit of 75% of the demand, at the initial proceeding itself sounds unreasonable and oppressive, more particularly when the secured assets/the management thereof along with the right to transfer such interest has been taken over by the secured creditor or in some cases property is also sold. Requirement of deposit of such a heavy amount on the basis of a one-sided claim alone, cannot be said to be a reasonable condition at the first instance itself before start of adjudication of the dispute. Merely giving power to the Tribunal to waive or reduce the amount, does not cure the inherent infirmity leaning one-sidedly in favour of the party****. Such an onerous and oppressive condition should not be left operative in expectation of reasonable exercise of discretion by the authority concerned. Placed in a situation as indicated above, where it may not be possible for the borrower to raise any amount to make the deposit, his secured assets having already been taken possession of or sold, such a rider to approach the Tribunal at the first instance of proceedings, captioned as appeal, renders the remedy illusory and nugatory.*

In the case of Seth Nand Lal [1980 Supp SCC 574] while considering the question of validity of pre-deposit before availing the right of appeal the Court held:

Right of appeal is a creature of the statute and while granting the right the legislature can impose conditions for the exercise of such right so long as the conditions are not so onerous as to amount to unreasonable restrictions rendering the right almost illusory.

The Hon'ble Supreme Court ultimately struck down Section 17(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act") holding that in the circumstances mentioned, the deposit of 75% of the amount claimed as a pre-condition to the hearing of an "appeal" before the Debt Recovery Tribunal under Section 17 of the SARFAESI Act was onerous, oppressive, unreasonable, arbitrary and hence violative of Article 14 of the Constitution of India.

In case of State of M.P. v. Bhopal Sugar Industries Ltd. (1964) 6 SCR 846 it is held that if the statute discloses a permissible policy of taxation, the Courts will uphold it. If, however, the tax was imposed deliberately with the object of differentiating between persons similarly circumstanced, such tax would be liable to be struck down.

Thus, in this case unequals have been treated equally so far as assessees who are responsible for delaying appellate proceedings and those who are not so responsible, resulting in a violation of Article 14 of the Constitution of India. Also, the expression "permissible" policy of taxation would refer to a policy that is constitutionally permissible. If the policy is itself arbitrary and discriminatory, such policy will have to be struck down,

The well-settled principle that in the field of taxation hardship or equity has no role to play in determining eligibility to tax. Thus, the appeal in this case has nothing to do with determining eligibility to tax. **They have only to do with a frontal challenge to the constitutional validity of an appeal provision in the Income Tax Act. Also, it is important to remember that the golden rule of interpretation is not given a go-by when it comes to interpretation of tax statutes.**

In the case of CIT v. J.H. Gotla (1985) 4 SCC 343, the Hon'ble Supreme Court held that:

Where the plain literal interpretation of a statutory provision produces a manifestly unjust result which could never have been intended by the Legislature, the Court might modify the language used by the Legislature so as to achieve the intention of the Legislature and produce a rational construction. *The task of interpretation of a statutory provision is an attempt to discover the intention of the Legislature from the language used. It is necessary to remember that language is at best an imperfect instrument for the expression of human intention. It is well to remember the warning administered by Judge Learned Hand that one should not make a fortress out of dictionary but remember that statutes always have some purpose or object to accomplish and sympathetic and imaginative discovery is the surest guide to their meaning.*

We should find out the intention from the language used by the Legislature and if strict literal construction leads to an absurd result i.e. result not intended to be subserved by the object of the legislation found in the manner indicated before, and if another construction is possible apart from strict literal construction then that construction should be preferred to the strict literal construction. ***Though equity and taxation are often strangers, attempts should be made that these do not remain always so and if a construction***

results in equity rather than in injustice, *then such construction should be preferred to the literal construction."*

The law laid down by the judgment of the Delhi High Court in M/s Pepsi Foods Ltd. is correct. Thus, the judgments of the various High Courts which follow the aforesaid declaration of law are also correct. **Consequently, the third proviso to Section 254(2A) of the Income Tax Act 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.** The appeals of the revenue are, therefore, dismissed.

Therefore, the Hon'ble Supreme Court struck off the arbitrary and discriminatory taxation proviso to section 254(2A) which led to the denial of stay beyond 365 days in the cases where the delay in the proceedings is not due to assessee's faults.