

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (Lodg) NO.3437 OF 2015

Commissioner of Income Tax ...Petitioner
Vs.
M/s.Tata Teleservices (Maharashtra) Ltd. ... Respondent

AND

WRIT PETITION (Lodg) NO.3438 OF 2015

Commissioner of Income Tax ...Petitioner
Vs.
M/s.Tata Teleservices (Maharashtra) Ltd. ... Respondent

AND

WRIT PETITION (Lodg) NO.3439 OF 2015

Commissioner of Income Tax ...Petitioner
Vs.
M/s.Tata Teleservices (Maharashtra) Ltd. ... Respondent

AND

WRIT PETITION (Lodg) NO.3440 OF 2015

Commissioner of Income Tax ...Petitioner
Vs.
M/s.Tata Teleservices (Maharashtra) Ltd. ... Respondent

Mr.Suresh Kumar, for the Petitioner.

Mr.Nishant Thacker with Mr.Jas Sanghvi & Ms.Megha Sharma i/b. PDS
Legal, for the Respondent.

CORAM : M.S. SANKLECHA &
G.S. KULKARNI, JJ.

DATE : 16th DECEMBER, 2015.

PC. :

1. In these Appeals under Section 260-A of the Income Tax Act, 1961 (the Act), the challenge is to the common order dated 26 June 2015 passed by the Income Tax Appellate Tribunal (the Tribunal), in the pending appeals filed by the respondent-assessee. By the common impugned order dated 26 June 2015, the Tribunal extended the stay of the demand in respect of the appeals pending for the Assessment Years 2009-10 to 2012-13, for further period of six months or the earlier disposal of the Appeals. These were in line with its earlier order dated 27 February 2015.

2. The grievance of the petitioner with the impugned order is that in terms of the third proviso to Section 254(2A) of the Act, the Tribunal has no power under the Act to extend the stay of demand in the appeals pending before it beyond the period of 365 days.

3. We find that the impugned order being conscious of the provisions of Section 254(2A) of the Act, granted the extension in view of the Court's orders in "*Narang Overseas (P) Ltd. Vs. ITAT, (2007)295 ITR 22*" and "*Commissioner of Income Tax Vs. Ronuk Industries Ltd., (2011)333 ITR 99(Bom)*". The aforesaid decisions have been consistently followed by this Court in "*Director of Income Tax vs.*

M/s.Ingram Micro(India) Exports Pte.Ltd. in Income Tax Appeal (L) No.137 of 2013 rendered on 6 March 2013; “Director of Income Tax (IT)-1 Vs. M/s.St.Jude Medical Inc. in Income Tax Appeal (L) No.2121 of 2012 rendered on 1 March 2013; The Commissioner of Income Tax-II, Pune Vs. PTC Software (I) Private Limited in Income Tax Appeal (L) No.1927 of 2012 rendered on 28 February 2013, by not entertaining these appeals. Thus the grievance raised appear to stand concluded against the Revenue. In the above view, we were not inclined to entertain the Petitions filed by the Revenue.

4. However, Mr.Suresh Kumar, learned Counsel appearing for the Revenue submits that the view taken by this Court in above decisions would require reconsideration. This is for the reason that all the above decisions have essentially relied upon the decision of this Court in “*Narang Overseas (P) Ltd.*” (supra) which in fact was concerned with the earlier proviso i.e. prior to the substituted third proviso to Section 254(2A) of the Act. It is, therefore, submitted that the decisions relied upon would not apply to the substituted third proviso to Section 254(2A) of the Act.

5. We find that this Court has consistently taken a view that the

Tribunal has power to extend the stay even after the substituted third proviso to sub-section 2A to Section 254 of the Act was introduced. This is evident from all the orders referred to in para 3 hereinabove. The Revenue has not filed appeal against the above orders of this Court in the context of the substituted third proviso to Section 254(2A) of the Act. Nothing has been shown to us as to why when the Revenue has accepted the above orders, a different stand is taken in this appeal.

6. In any case the ratio of the decision of this Court in “**Narang Overseas (P) Ltd.**” (supra) would apply even to the substituted third proviso to Section 254(2A) of the Act. The basis of the decision in “**Narang Overseas (P) Ltd.**” (supra) was on the basis of the following:-

“ We have considered the object of the amendment and before answering the issue, let us consider the position of law in the matter of grant of interim relief before the amendment. The power to grant interim relief has been recognised by the Supreme Court [See ITO Vs. M.K.Mohammed Kunhi (1969) 71 ITR 815 (SC)]. We may gainfully reproduce the following paragraph:

“It is difficult to conceive that the legislature should have left the entire matter to the administrative authorities to make such orders as they choose to pass in exercise of unfettered discretion. The assessee, as has been pointed out

before, has no right to even move an application when an appeal is pending before the Tribunal under S.220(6) and it is only at the earlier stage of appeal before the AAC that the statute provides for such a matter being dealt with by the ITO. It is a firmly established rule that an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective (Sutherland's Statutory Construction, Third Edition, arts.5401 and 5402). The powers which have been conferred by S.254 on the Tribunal with widest possible amplitude must carry with them by necessary implication all powers and duties incidental and necessary to make the exercise of those powers fully effective."

The Supreme Court while disposing of the appeal noted that the Tribunal is not a Court, but it exercises judicial powers and that the Tribunal's powers to deal with appeals are of the widest amplitude and have in some cases been held similar to and identical with the powers of an appellate Court under the CPC. The Supreme Court quoted with approval what Jessel M.R. said about the powers of the Court of Appeal to grant stay in *Polini Vs. Gray* (1879) 12 Ch.D. 438 and we quote :

"It appears to me on principle that the Court ought to possess that jurisdiction, because the principle which underlies all orders for the preservation of

property pending litigation is this, that the successful party in the litigation, that is, the ultimately successful party, is to reap the fruits of that litigation, and not obtain merely a barren success. That principle, as it appears to me, applies as much to the Court of first instance before the first trial, and to the Court of appeal before the second trial, as to the Court of last instance before the hearing of the final appeal.”

It would, therefore, be clear that the power to grant stay or interim relief has to be read as co-extensive with the power to grant final relief. The object being that in the absence of the power to grant interim relief the final relief itself may be defeated.”

This Court thereafter followed the decision of the Apex Court in “**CCE vs. Kumar Cotton Mills(P) Ltd., (2005(180) ELT 434 (SC))** and held that notwithstanding the pre-substituted third proviso to Section 254(2A) of the Act the Tribunal continues to have powers to grant interim relief.

7. In the above view, therefore, the ratio of the decision in “**Narang Overseas (P) Ltd.**” (supra) would apply even in case of substituted third proviso to Section 254(2A) of the Act.

8. It may be pointed out that the only substantial difference in the pre-substituted third proviso and substituted third proviso to Section 254(2A) of the Act is the addition of the words “even if delay in disposing of the appeal is not attributable to the assessee” These additional words added in the substituted third proviso to Section 254(2A) of the Act has been struck down by the Delhi High Court in “*Pepsi Foods (P) Ltd. Vs. Asstt. Commissioner of Income Tax, (232 Taxmann 78.)*”.

9. In the above view, we see no reason to entertain the petitions. Accordingly, petitions dismissed. No order as to costs.

(G.S.KULKARNI, J.)

(M.S. SANKLECHA, J.)