



STAY

Before :

➤ A.O.

➤ Additional CIT

➤ CIT

➤ CIT(A)

➤ HC

➤ SC

FACTORS

- GUIDELINES FOR STAYING DEMAND : **CBDT Instruction** : No. 1914, dated 2-12-1993
- **Prima Facie Case-** Guidelines laid down in KEC International Ltd. V. B.R. Balakrishnan [2001 - BOMBAY High Court] guidelines has been laid down to be kept in mind by the Authorities while disposing of the stay applications . One of the factors to be considered while granting stay is to examine the question in appeal before directing the petitioner to deposit the full amount or pay the amount partially till the disposal of the appeal by the CIT(A).
- Balance Of Convenience
- Loss or injury suffered

STAY APPLICATION

- In **UTI Mutual Fund vs. ITO [2012 BOMBAY HIGH COURT]** it has been held that the orders passed by the Authorities under the Act would not be enforced till such time as the period to file an appeal before the Appellate Authority expires and where stay applications have been filed, the Revenue would not adopt coercive proceedings till the disposal of the stay application by the Appellate Authorities.

Powers Of CIT(A) TO STAY

- The first appellate authority has power to grant stay which is incidental and ancillary to its appellate jurisdiction: **ITO Vs. M.K. Mohammed Kunhi (1969) 71 ITR 815 (SC).**
- CIT(Appeals) have inherent and implied power to grant stay: **Maheshwari Agro Industries Versus Union of India, [2012] 346 ITR 375 (Raj.)**



POWERS OF ITAT

- Stay of demand- Matter to be pending before ITAT



POWERS OF ITAT

- **Rule 35A-** Power to grant stay
- **ITO Vs, M.K. Mohamed Kunhi (1969) 71 ITR 815(SC)-** Where an Act confers jurisdiction, it impliedly also grants the power of doing all such acts or employing such means as one essentially necessary to its execution.

POWERS OF ITAT

➤ 263 Matters

- Stay Proceedings
- Stay Demand – only if demand arises out of the matter pending

➤ ITAT has power to stay proceedings to give effect to 263 revision : **CIT (Central II) Vs. Income Tax Appellate Tribunal & ORS. (W.P. (C) No. 4684/2010 DHC**

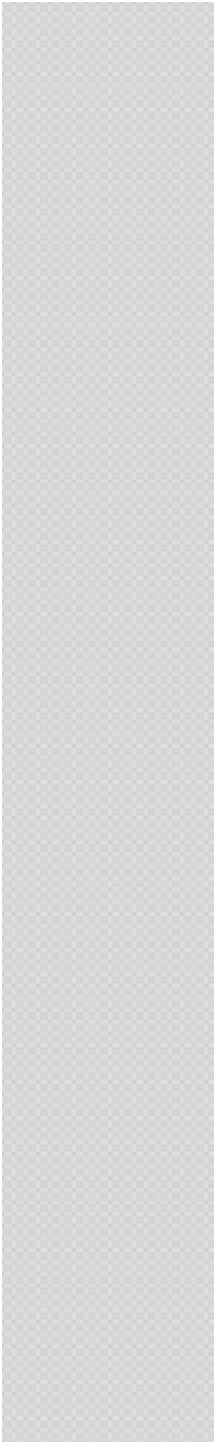
POWERS OF ITAT

- Duration

 - For 180 Days

- Extention CIT vs. Maruti Suzuki (india) Ltd,
(DEL HC)

 - Total 365 days- Proviso to Section 254(2A)



⁶**[Provided** that the Appellate Tribunal may, after considering the merits of the application made by the assessee, pass an order of stay in any proceedings relating to an appeal filed under sub-section (1) of section 253, for a period not exceeding one hundred and eighty days from the date of such order and the Appellate Tribunal shall dispose of the appeal within the said period of stay specified in that order:

Provided further that where such appeal is not so disposed of within the said period of stay as specified in the order of stay, the Appellate Tribunal may, on an application made in this behalf by the assessee and on being satisfied that the delay in disposing of the appeal is not attributable to the assessee, extend the period of stay, or pass an order of stay for a further period or periods as it thinks fit; so, however, that the aggregate of the period originally allowed and the period or periods so extended or allowed shall not, in any case, exceed three hundred and sixty-five days and the Appellate Tribunal shall dispose of the appeal within the period or periods of stay so extended or allowed:

¹⁰["Provided also that if such appeal is not so disposed of within the period allowed under the first proviso or the period or periods extended or allowed under the second proviso, which shall not, in any case, exceed three hundred and sixty-five days, the order of stay shall stand vacated after the expiry of such period or periods, even if the delay in disposing of the appeal is not attributable to the assessee"]

POWERS OF ITAT

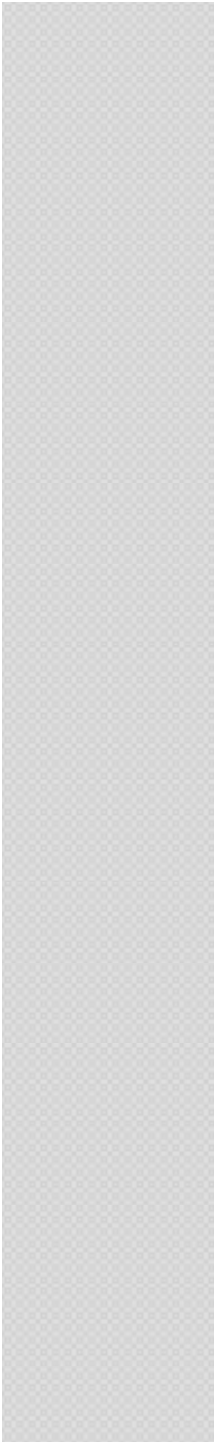
- JUDICIAL history on interpretation of 3rd Proviso to Sec 254(2A)
- **Narang Overseas Vs. ITAT (2007) 295 ITR 22 (Bom)**- Extention can be granted,
- relying on **Commr. Of C&CE, Ahd. Vs. Kumar Cotton Mills Pvt. Ltd. (2005) 180 ELT 434 (SC)**
- Followed by **Ronuk Properties (Bom HC)**
- Followed by **Jethmal Faujimal Soni vs. ITAT (2011) 333 ITR 96(Bom)**

➤ **CIT vs. Maruti Suzuki (India) Ltd. (Del HC)** , dt. 21.02.2014- not on constitutional validity, but revenue may undertake to not take coercive actions

➤ Constitutional validity of the third proviso to section 254(2A) challenged- discrimination, based on an impermissible or invalid classification- grant extension of stay beyond 365 days- **PEPSI FOODS PVT. LTD. (NOW MERGED WITH PEPSICO INDIA HOLDING PVT. LTD) AND OTHERS Versus ASSISTANT COMMISSIONER OF INCOME TAX & ANR**

Dated: 19-5-2015 the insertion of the expression – 'even if the delay in disposing of the appeal is not

attributable to the assessee'— by virtue of the Finance Act, 2008, violates the non-discrimination clause of Article 14 of the Constitution of India. The object that appeals should be heard expeditiously and that assesses should not misuse the stay orders granted in their favour by adopting delaying tactics is not at all achieved by the provision as it stands. On the contrary, the clubbing together of 'well behaved' assesses and those who cause delay in the appeal proceedings is itself violative of Article 14 of the Constitution and has no nexus or connection with the object sought to be achieved. The said expression introduced by the Finance Act, 2008 is, therefore, struck down as being violative of Article 14 of the Constitution of India. This would revert us to the position of law as interpreted by the Bombay High Court in Narang Overseas.



(supra), with which we are in full agreement. Consequently, we hold that, where the delay in disposing of the appeal is not attributable to the assessee, the Tribunal has the power to grant extension of stay beyond 365 days in deserving cases.



POWERS OF ITAT

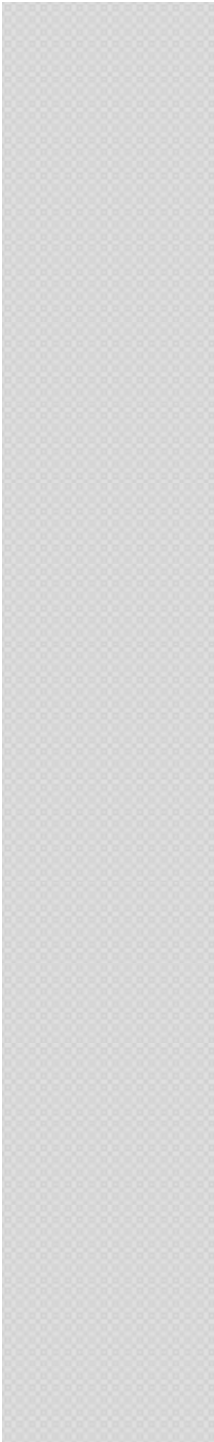
- Interim Stay

POWERS OF ITAT

➤ **DEPARTMENTAL AGGRESSION**

➤ **Johnson & Johnson Ltd. Versus Additional Commissioner of Income-tax, LTU** ITA No.829/Mum/2014, S.A. NO. 288 (MUM.) OF 2014, dt. 31.10.2014

➤ We have recently come across in few other cases where similar consent letters were obtained or the Department has collected tax despite the stay order passed by the . We deplore this practice and direct the Chief



Commissioner of Income Tax to issue a letter to all the concerned Assessing Officers not to adopt this kind of approach of obtaining consent letters and to respect the order passed by the Tribunal as otherwise the Tribunal would be constrained to view the conduct of the Department adversely. Collection of outstanding demand for a further period of six months is stayed . AO is directed to refund the amount collected along with interest contrary to the order passed by the ITAT within 15 days.



HIGH COURT

➤ Writ

➤ Appeal Against order of ITAT denying stay.



SUPREME COURT

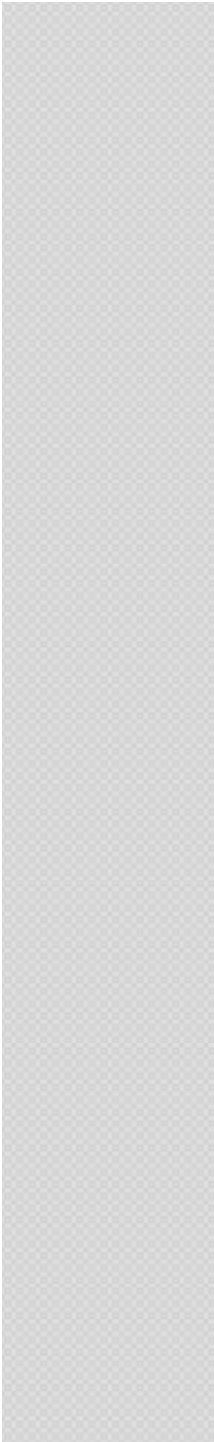
➤ SLP



ASSEESSEE IN DEFAULT

➤ **Jalan Jee Polytex Ltd. Versus Asstt. Commissioner of Income Tax And Another (HC-ALL)**

➤ Mere filing of appeal does not suo-moto stay the recovery proceedings and on presentation of appeal under Section 246 of Section 246 A, the Assessing Officer is empowered to exercise his discretion, subject to conditions as he may think fit to impose in the circumstances of case, for treating the assessee as not



being in default in respect of amount in dispute in appeal, even though the time for payment has expired, as long as such appeal remains disposed of.



CONSEQUENCES OF NON GRANTING OF STAY

- Bank Attachment
- Garnishee Proceedings