

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WRIT PETITION (CIVIL) NO. 5086/2013**

% **Reserved on: 7th November, 2013**
Date of Decision: 21st February, 2014

Commissioner of Income Tax- IIPetitioner
Through Mr. N.P. Sahni, Sr. Standing Counsel and
Mr. Ruchir Bhatia, Adv.

Versus

M/s Maruti Suzuki (India) Limited ...Respondent
Through Mr. S. Ganesh, Sr. Advocate with
Mr. Anand Sukumar, Mr. S. Sukumaran
And Mr. Bhupesh Kumar, Adv.

WRIT PETITION (CIVIL) NO. 5003/2013

Commissioner of Income Tax- IPetitioner
Through Mr. Rohit Madan, Advocate.

Versus

Income Tax Appellate Tribunal & Anr. ...Respondents
Through Mr. M.S. Syali, Sr. Advocate with
Mr. Mayank Negi, Ms. Husnal Syali
And Mr. Harkunal Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJIV KHANNA, J.

The present decision will dispose of the writ petitions filed by the Commissioners of Income Tax impugning orders passed by the Income Tax Appellate Tribunal (tribunal, in short) on the stay applications filed by Maruti Suzuki (India) Limited and Bose Corporation India Pvt. Ltd. By the impugned orders, stay of recovery

of demand in favour of the respondent-assessee has been extended beyond period of 365 days. The contention of the Revenue is that the Tribunal does have power to grant stay of demand pending consideration of the appeal but the said right is circumscribed and has to be exercised within the four corners of Section 254(2A) of the Income tax Act, 1961 (Act for short). The said section reads:-

“254. Orders of Appellate Tribunal.- (1) The Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.

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(2A) In every appeal, the Appellate Tribunal, where it is possible, may hear and decide such appeal within a period of four years from the end of the financial year in which such appeal is filed under sub-section (1) or sub-section (2) of section 253 :

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:

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.”

2. The contention of the petitioner/Revenue is that language of Section 254(2A) mandates that no stay order can exceed total period of 365 days and tribunal is foreclosed and barred from passing an order extending stay of demand beyond 365 days. The Statute is clear. The tribunal being a creation of the statute is bound by the said provision and cannot violate and negate the express letter of law. The violation has to be checked and the legislation respected.

3. On the other hand, learned counsel for the respondents submit that the said section is not clear and the Supreme Court had examined paramateria provisions i.e. Section 35C(2A) of the Central Excise Act, 1944 (CE Act, for short), introduced w.e.f. 11th May, 2002 and had approved the ratio and view taken by the larger Bench of the tribunal constituted under the CE Act in ***IPCL vs. Commissioner of Central Excise, Vadodra*** 2004 (169) E.L.T. 267 (Tri. – LB). Stay orders can be extended if the delay is not attributable to the assessee and the assessee is not to be blamed.

4. The tribunal is an appellate forum and the final fact finding authority under the provisions of the Act. Power to grant interim stay by the tribunal was recognized by the Supreme Court in ***ITO vs. M.K. Mohammed Kunhi*** [1969] 71 ITR 815 (SC), observing that express grant of statutory appellate power carries by it with by necessary implication, the authority to use all reasonable means to make such

grant effective. Power to the tribunal under Section 254 of the Act, was/is of widest amplitude and, therefore, carried with it by necessary implication all powers and duties incidental and necessary to make the exercise of power fully effective. Reference was made to the powers of the court of appeal to grant stay in *Polini vs.Gray* [1879] 12 Ch.D 438, wherein it has been observed as under:-

“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.”

5. The aforesaid incidental powers are subject to and can be circumscribed by the statute. Tribunals have statutory power under Rule 35A of the Appellate Tribunals Rules 1963 to grant stay of demand. Section 254(2A) was inserted by Finance Act, 1999 w.e.f. 1st June, 1999, at the time of insertion it was as under:-

"(2A) In every appeal, the Appellate Tribunal, where it is possible, may hear and decide such appeal within a period of four years from the end of the financial year in which such appeal is filed under sub-section (1) of section 253.”

6. Provisos were inserted by Finance Act, 2001 w.e.f. from 1st June, 2001 read as under:-

“**Provided** that where an order of stay is made in any proceedings relating to an appeal filed under sub-section (1) of section 253, the Appellate Tribunal shall dispose

of the appeal within a period of one hundred and eighty days from the date of such order:

Provided further that if such appeal is not so disposed of within the period specified in the first proviso, the stay order shall stand vacated after the expiry of the said period.”

The said provisos were subsequently substituted by Finance Act, 2007 w.e.f. 1st June, 2007 and the substituted provisos used to read as under:-

“**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:

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, the order of stay shall stand vacated after the expiry of such period or periods.”

7. The effect of the added provisos as they then existed was considered by the Bombay High Court in *Narang Overseas P. Ltd.v. ITAT and others* (2007) 295 ITR 22 (Bom) and it was held that the

provisos and the Section did not exclude or negate the power of the tribunal to grant relief after the period of 180 days. The intent of the Parliament was not to denude the tribunal of its incidental power to continue the interim reliefs and the mischief which the amendment sought to curtail was long delay and disposal of the proceedings where interim relief was obtained by the assessee. The second proviso read in a reasonable manner was to avoid and check this mischief and not an arbitrary mandate to deny an assessee continuation of interim relief beyond 180 days, when he was not at fault. Amendment of 2007 had extended the period of interim relief to 365 days with the intent that the tribunal should take note of the delay and it was not with the objective to defeat the rights of the assessee when the appeal could not be disposed of even when there was no omission or failure on the assessee's part but either for failure of the tribunal or acts of the Revenue.

8. Revenue did prefer an appeal against the said judgment but the same was disposed of as infructuous, leaving the question of law open. However, we find that the ratio of the said decision was acceptable and in accordance with law, as identical and *pari materia* provision of the CE Act was examined by the Supreme Court in ***Commissioner of Customs and Central Excise, Ahmedabad v. Kumar Cotton Mills Pvt. Ltd.*** (2005) 180 ELT 434 (SC) and approving the decision of the Larger Bench of the Tribunal in ***IPCL's case (supra)***, it was observed as under:-

“3. The provision has clearly been made for the purpose of curbing the dilatory tactics of those assesses who, having got an interim order in their favour, seek to continue the interim order by delaying the disposal of the proceedings. Thus, depriving the revenue not only

of the benefit of the assessed value but also a decision on points which may have impact on other pending matters.

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6. The sub-section which was introduced in terrorem cannot be construed as punishing the assessee for matters which may be completed beyond their control. For example, many of the Tribunals are not constituted and it is not possible for such Tribunals to dispose of matters. Occasionally by reason of other administrative exigencies for which the assessee cannot be held liable, the stay applications are not disposed of within the time specified. The reasoning of the Tribunal expressed in the impugned order and as expressed in the Larger Bench matter, namely *IPCL v. Commissioner of Excise, Vadodara* (supra) cannot be faulted. However, we should not be understood as holding that any latitude is given to the Tribunal to extend the period of stay except on good cause and only if the Tribunal is satisfied that the matter could not be heard and disposed of by reason of the fault of the Tribunal for reasons not attributable to the assessee.”

9. We are aware that the Karnataka High Court in *CIT vs. Ecom Gill Coffee Trading (P) Ltd.* [2012] 252 CTR 281 (Kar.) has dissented from the view taken by Bombay High Court in *Narang Overseas Pvt. Ltd. (supra)*. However, the said decision was dealing with and interpreting provisos to Section 254 (2A) after amendment by way of Finance Act, 2008 w.e.f. 1st October, 2008. The said amendment has made substantial difference and has to be duly noted as reflecting a different legislative intent consequent to the amendment. At this stage, we would like to take notice of the decision of Punjab and Haryana High court in *PML Industries Ltd. vs. Commissioner of Central Excise* 2013 (30) STR 113 (P&H), relating to provisions of Section 35(2A) of the CE Act. In the said decision after extensively referring to the case law on the subject and applying the doctrine of reading down, the High Court has held that

the circular in question, which stipulated that the demand if not stayed by the tribunal within 30 days would be recovered, should be struck down. It was observed:-

“52. The assessee having preferred appeal and that Tribunal being satisfied that condition for dispensing with the pre-deposit of duty demanded and penalty levied is made out, is compelled to pay the duty demanded and penalty levied, if the appeal is not decided within 180 days. The assessee has no control in respect of matters pending before the Tribunal; in the matter of availability of infrastructure; the members of the Tribunal and the workload. Therefore, for the reason that the Tribunal is not able to decide appeal within 180 days, the vacation of stay is a harsh and onerous and unreasonable condition. The condition of vacation of stay for the inability of the Tribunal to decide the appeal is burdening the assessee for no fault of his. Such a condition is onerous and renders the right of appeal as illusory. An order passed by a judicial forum is sought to be annulled for no fault of assessee. Therefore, in terms of judgments in Anant Mills Ltd. and Seth Nandlal cases (supra), such condition of automatic vacation of stay on the expiry of 180 days, has to be read down to mean that after 180 days the Revenue has a right to bring to the notice of the Tribunal the conduct of the assessee in delay or avoiding the decision of appeal, so as to warrant an order of vacation of stay. If the provision is not read down in the manner mentioned above, such condition suffers from illegality rendering the right of appeal as redundant.”

10. The third proviso to section 254(2A) after the amendment in 2008 vide Finance Ac, 2008 for the sake of convenience, is again reproduced below:

“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.”

The relevant portion of the proviso has been underlined for the purpose of clarity and appreciation.

11. We have quoted above, relevant portion of the decision of the Supreme Court in ***Kumar Cotton Mills Pvt. Ltd.*** (supra). The said decision had drawn distinction and held that the proviso did not prohibit the tribunal from extending the interim order beyond 365/180 days if the assessee was not at fault or the delay in disposal was not attributable to him. This aspect was also highlighted in ***Narang Overseas Pvt. Ltd.*** (supra). It was held that the provisos as they existed did not bar or prohibit the tribunal from extending the stay order. However, the Legislature in view of the said judgment and keeping in view the language of the existing provisions and the reasoning given in the said judgments has specifically introduced and added the words “not attributable to the assessee”. This amendment/substitution made to the third proviso is significant. The said words are not redundant or inconsequential and in fact have been added in view of the ratio and the reasoning given in the aforesaid two decisions. This clearly underscores and highlights the intention of the Legislature.

12. Learned counsel for the assesseees have submitted that the provision after amendment is unduly harsh, if not draconian as the assessee will now suffer for no fault or even when faults or delay are directly attributable to the Revenue. There could be faults and delay because the Bench of the tribunal may not be able to hear the appeal or the upper time limit specified comes to an end even when the judgment is reserved or judgment of the High Court or of special Bench is awaited.

13. Indeed there can be numerous reasons and causes why appeals, after grant of stay, may not get finally decided within 365 days. There is also merit in the contention of the counsel for the assesseees that when an assessee is at fault and delay is attributable to him, invariably a stay granted is vacated or should be vacated by the tribunal. Stay is granted or extended only when prima facie case is made out and the assessee does not delay the proceedings. The provisions are clear that the tribunal can vacate or modify the stay order; if not, the Constitutional Courts can be moved.

14. Keeping these aspects in mind, in ITA No. 67/2013 relating to HCL Technologies Limited on 15th July, 2013, the following order was passed:-

“Learned counsel for the appellant has been asked to answer what the tribunal should do, when departmental representative pray for an adjournment in a stay granted matter and the period of 365 days is about to expire? Whether the tribunal can and should foreclose the right of the departmental representative to argue and proceed to dispose of the matter ex parte or at best by relying upon the assessment order or the first appellate order? Tribunal is the final fact finding body.

Learned Senior Standing Counsel for the Revenue submits that he is not in a position to answer this question without obtaining instructions”.

15. The response given by Commissioner of Income Tax Central III in letter dated 31st July, 2013 was ambiguous and vague. He has relied upon the statutory provision without meeting the question or the query raised and has observed as under:-

“4. So far as appeal is concerned, it may be disposed of depending upon various facts and circumstances including the genuine requests for adjournments and principles of natural justice. It may be mentioned that even after expiry of about 17 months from the

impugned order, the ITAT has not been able to dispose of the said appeal till date.”

16. Indeed the effect of the substituted third proviso would be that the tribunal may refuse to grant adjournment on request of the Revenue, even when the briefed and arguing departmental representative is on leave or has not been able to prepare the case. However, it can be assumed that the Revenue is aware of the said consequences and the negative effect it may have.

17. In these circumstances, we have examined whether we can read down the third proviso, by applying principles of equity, justice and fair play and also the principle that the court should interpret a provision in a manner that it does not lead to arbitrary results or make it violative of Article 14 or would render it unconstitutional. However, it is clear to us that the legislative mandate has to be respected and the courts do not legislate but interpret the statute as a legislative edict. The third proviso after amendment, undoubtedly bars and prohibits the tribunal from extending interim stay order beyond 365 days. It stipulates deemed vacation and imposes no fault consequences in strict terms. The language is clear and therefore has to be respected. However, the provision does not bar or prohibit an assessee from approaching the High Court by way of writ petition for continuation, extension or grant of stay. Fairly, the standing counsel for Revenue accepts and admits that in spite of Section 254(2A), the High Court has power to grant and extend stay where the appeal is pending before the tribunal. The constitutional power and right is available and has not and cannot be curtailed. The powers of the High Court under Articles 226 and 227 form a part and parcel of the basic structure of the Constitution and cannot be over written and nullified

as held by the Constitutional Bench in *L. Chandra Kumar versus Union of India*, (1997) 3 SCC 261. Thus, the High Court in appropriate matters can grant or extend stay even when the tribunal has not been able to dispose of an appeal within 365 days from the date of grant of initial stay. This perhaps appears to be and apparently is the intention of the Parliament. High Court while granting or rejecting the writ petition will examine the factual matrix, record reasons as to who is to be blamed and is responsible for the default and can also issue appropriate directions or orders for expeditious and early disposal of the appeal. The provision will propel and ensure that the tribunal will try and dispose of and decide appeals within 365 days of the grant of stay order. The Bombay High Court in *Jethmal Faujimal Soni vs. Income Tax Appellate Tribunal* [2011] 333 ITR 96, had occasion to deal with a similar situation and entertained the writ petition. In the said case constitutional validity of the third proviso inserted in Section 254(2A) of the Act by Finance Act, 2008, w.e.f. 1st October, 2008 was challenged. It was observed that the proviso enacted a stringent provision as a result of which even if the delay in disposing of the appeal was/is not attributable to the assessee, the stay stands vacated after 365 days. Thus, the tribunal was/is under binding duty and obligation to dispose of the appeal within the said time, particularly when the fault was not on the part of the assessee. In the said case, directions were issued for expeditious disposal of the appeal and it was also directed that the Revenue shall not take coercive steps for enforcing demand subject matter of the appeal.

18. The view we have taken, raises an incidental issue whether the High Court should be burdened with such litigation and whether the Revenue should be allowed to take advantage even if there were defaults and lapses on their part. The later part can be corrected by the High Court in exercise of writ jurisdiction but it would be appropriate and necessary for the officers of the Revenue to examine and in appropriate cases make a statement before the tribunal that no coercive steps would be taken to recover the demand as the delay was occasioned and attributable to their fault and lapse. Section 254(2A) does not bar or prohibit the Revenue from not enforcing the demand, even when there is no stay of the challenged demand. The first aspect is a matter of policy and in the realm of Legislation.

19. During the course of hearing before us, it was submitted on behalf of the Revenue that there are large number of appeals in which demands have been stayed by the tribunal, these appeals are not being decided within 365 days and in spite of third proviso, tribunal has been extending the stay order. It was highlighted that in the case of ***Maruti Suzuki Ltd.***, the tribunal had stayed the demand for a period of 6 months or till disposal of the appeal whichever was earlier by order dated 3rd February, 2012. The stay was extended vide order dated 28th August, 2012 for 5 months, which came to an end on 28th January, 2013. The stay was further extended by the tribunal vide order dated 8th February, 2013 for another period of 4 months. Similarly, in the case of ***Bose Corporation India Private Limited*** stay was granted for the first time on 9th December, 2011 for a period of 6 months, second time on 15th June, 2012 for a period of 180 days and third time on 4th January, 2013 for a period of 6 months. In spite of

objections of the Revenue, for the fourth time stay was granted on 12th July, 2013 for another period of 180 days.

20. In light of the said submissions, while reserving the judgment on 7th November, 2013, we had asked Mr. Rajeeve Mehra, Additional Solicitor General of India to furnish information/details from the tribunal. The relevant portion of the order dated 7th November, 2013 reads as under:-

“ We feel it appropriate and proper to get data from the Tribunal for last three years with regard to:

a) Number of appeals filed before the Tribunal by the assessee and the revenue;

b) Average time taken for disposal of an appeal before the Tribunal;

c) Number of cases in which the stay orders were passed and average time of disposal of an appeal where stay order was passed;

d) Number of cases/appeals where stay orders were passed but matters had/have remained pending beyond 365 days and;

e) The number of appeals disposed of within 365 days from the date of grant of stay.

We are not asking the Tribunal to compile the data but if the said data is available, the same may be furnished and made available as it is required for just and equitable disposal of the present writ petitions.

A copy of the order be given dasti to the office of the learned Additional Solicitor General.”

21. Information/data in this regard was received vide letter dated 30th January, 2014 written by Assistant Registrar, Tribunal. The relevant portion of the said letter reads as under:-

“ a) Number of appeals filed before the Tribunal by the assessee and the revenue is as under:-

Year	Assessee	Revenue	Total
2011	3359	3013	6372
2012	3593	3462	7055
2013	3975	3102	7077
Total	10927	9577	20504

b) No data is available with regard to average time taken for disposal of the appeal before the Tribunal.

c) (i) The year-wise details of the stay orders passed by the Tribunal are as under:-

<u>Year</u>	<u>Number of stay orders</u>
2011	173
2012	278
2013	321

(ii) The complete details in respect of each and every appeal where stay order was passed is annexed as Annexure-1, 2 & 3.

d) The year-wise details of the cases/appeals which remained pending beyond 365 days of the stay order are as under:-

<u>Year</u>	<u>Number of appeals disposed-off after 365 days or pending for more than 365 days</u>
2011	90 Appeals
2012	131 Appeals

2013 36 Appeals

e) The year-wise details of the number of appeals disposed of within 365 days from the date of grant of stay are as under:-

<u>Year</u>	<u>Number of appeals disposed-off within 365 days or pending within 365 days</u>
2011	83 Appeals
2012	147 Appeals
2013	285 Appeals”

22. The aforesaid data does not mention the quantum of demand, which was subject matter of stay, but the position is certainly not bleak and unpalatable. Most of the appeals in which stay had/has been granted, were/are being disposed of within 365 days. Number of appeals, which were not disposed of within 365 days of grant of stay, have come down sharply in the year 2013. Grant of stay by the tribunal is not a matter of right, but is decided by a speaking order, recording prima facie view on merits. In case there is an error or the tribunal has erred in granting stay, Revenue is not without remedy and can approach the High Court in accordance with law.

23. We do not have figures or data on whether the demands raised, which was subject matter of stay, was sustained/upheld or were deleted by the tribunal. Merits and justification of additions is examined by the appellate forums and demands raised have relevance when they are sustained by the tribunal/High Court and the Supreme Court.

24. Registry of this Court has made available to us following data:-

A	B	C	D	E
Year	TOTAL NUMBER OF INCOME TAX APPEALS	APPEALS FILED BY CIT	APPEALS FILED BY ASSESSEE	% OF APPEALS FILED BY ASSESSEE
2009	1367	1128	239	18
2010	2063	1790	273	13
2011	1303	1121	182	14
2012	711	578	133	19
2013	584	464	120	21

(The data/figures in columns C and D have been manually calculated and thus subject to marginal calculation error).

25. The aforesaid data reveals that Revenue is the appellant before the High Court in disproportionately large percentage of cases, being aggrieved by the finding/adjudication by the tribunal on the question of law and fact. Appeals are preferred by the Revenue mostly in cases where the tax demand is Rs.10 lakhs or above. The aforesaid figures/data does indicate that in substantial number of matters, Revenue may not have succeeded before the tribunal in sustaining the tax demand.

26. In view of the aforesaid discussion, we have reached the following conclusion:-

- (i) In view of the third proviso to Section 254(2A) of the Act substituted by Finance Act, 2008 with effect from 1st October, 2008, tribunal cannot extend stay beyond the period of 365 days from the date of first order of stay.
- (ii) In case default and delay is due to lapse on the part of the Revenue, the tribunal is at liberty to conclude hearing and decide the

appeal, if there is likelihood that the third proviso to Section 254 (2A) would come into operation.

(iii) Third proviso to Section 254 (2A) does not bar or prohibit the Revenue or departmental representative from making a statement that they would not take coercive steps to recover the impugned demand and on such statement being made, it will be open to the tribunal to adjourn the matter at the request of the Revenue.

(iv) An assessee can file a writ petition in the High Court pleading and asking for stay and the High Court has power and jurisdiction to grant stay and issue directions to the tribunal as may be required. Section 254(2A) does not prohibit/bar the High Court from issuing appropriate directions, including granting stay of recovery.

27. We have not examined the constitutional validity of the provisos to Section 254 (2A) of the Act and the issue is left open.

28. We would now like to deal with the individual facts relating to each writ petition, though some facts have been stated in paragraph 19, above.

W.P.(C) 5003/2013 (CIT versus ITAT & Base Corpn. India Pvt. Ltd.)

29. Appeal filed by the respondent-assessee relates to assessment year 2007-08 and was filed in the year 2011. Stay of the impugned demand was granted by order dated 9th December, 2011 and was extended by order dated 15th June, 2012. The question relates to determination of arms length pricing on international transactions and the tax amount involved is Rs.4,63,35,706/- which includes interest of Rs.96 lakhs under Section 234B of the Act. By the impugned order dated 4th January, 2013, stay was extended by 180 days or till the disposal of the appeal, whichever occurs first. The impugned order

records that after 15th June, 2012, the appeal was listed thrice for hearing on 3rd July, 2012, 13th August, 2012 and 8th November, 2012, but adjournments were taken by the departmental representative. Earlier also on 16th February, 2012, the departmental representative had taken an adjournment. However, the assessee had taken adjournment on 11th April, 2012 on the ground of change in counsel.

30. The aforesaid facts have not been denied in the writ petition, but reference is made to the statutory provisions.

W.P.(C) 5086/2013 (CIT versus M/s Maruti Suzuki (India) Ltd.)

31. The writ petition relates to assessment year 2007-08 and the impugned order granting stay or extending stay beyond 365 days is dated 8th February, 2013. The impugned order records submission of the assessee that additional demand raised by the Assessing Officer including interest stands at Rs. 359 crores. As per the impugned order, demand of Rs.184 crores is already concluded or covered by issues which have been decided in favour of the assessee. The other major addition relates to transfer pricing adjustment resulting in demand of Rs.155.78 crores on account of advertisement, marketing and promotion (AMP). As per the impugned order, the issue was prima facie covered by the decision of the special bench of the tribunal in the case of ***L.G. Electronics***, wherein an order of remand was passed. Application for rectification in respect of demand of Rs.18 crores was pending before the Assessing Officer. Refund of Rs.62 crores has already been adjusted against pending demand. As per the impugned order, the assessee has been asked to deposit Rs. 23 crores. Therefore, as per the assessee, on final adjudication, an amount of Rs.85 crores would be refundable.

32. Commissioner of Income Tax vide letter dated 31st July, 2013 had furnished a chart giving details of hearing before the tribunal, which indicates that 24 hearings were held till 4th June, 2013. The said chart reads as under:-

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S.No.	Date of Hearing	Adjourned to	Adjournment sought (A/R)
1	02.02.2012	14.02.2012	Part heard and continue hearing alongwith ITA No.5622, 5623/10 & 5465/2011
2	14.02.2012	15.02.2012	Adjourned
3	15.02.2012	06.03.2012	Arguments of assessee counsel partly heard. Adjourned to 06.03.2012.
4	06.03.2012	29.03.2012	Judicial members on leave
5	29.03.2012	30.04.2012	Constitution of Bench ends to be presented before regular Bench
6	30.04.2012	11.07.2012	Adjourned by Bench for want of time
7	11.07.2012	01.08.2012	Adjourned on request of both parties
8	01.08.2012	02.08.2012	Adjourned
9	02.08.2012	23.08.2012	Assessee's argument. Part Heard
10	23.08.2012	03.09.2012	Adjourned on request of both parties
11	03.09.2012	05.09.2012	Adjourned on request of both parties
12	05.09.2012	15.10.2012	Adjourned on request of both parties
13	15.10.2012	01.11.2012	Adjourned on request of both parties
14	01.11.2012	08.11.2012	Both counsel's busy in special Bench Adjourned on request of both parties
15	08.11.2012	21.11.2012	Adjourned on request of both parties
16	21.11.2012		To be listed in regular course
17	03.01.2013	30.01.2013	Adjourned on request of DR
18	30.01.2013	11.03.2013 12.03.2013	Adjourned due to paucity of time by bench

19	11.03.2013	01.04.2013	Adjourned on request of both parties
20	01.04.2013 02.04.2013		Assessee's counsel's argument heard
21	03.04.2013 09.04.2013		Special Counsel's argument continued. Adjourned to 08.05.2013.
22	08.05.2013 15.05.2013	23.05.2013	Special counsel's argument continued.
23	23.05.2013	04.06.2013	Member on leave
24	04.06.2013	02.07.2013	Member on leave and Adjourned by both parties.

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33. It is apparent that the department had engaged special counsel in the present case.

34. It is noticeable that in the writ petition the Revenue has not stated or averred that the assessee is responsible for the delay or was adopting dilatory tactics to prevent adjudication of the appeal.

35. Keeping in view the aforesaid facts, we direct that in case appeals filed by the two assessees have not been disposed of, the same should be disposed of expeditiously and preferably within a period of two months. The impugned demand shall remain stayed during the said period in case appeals have not yet been disposed of. However, in case the appeals are not disposed of within the said period, it will be open to the assessee to file a writ petition in the High Court for grant of stay of the impugned demand. It will be also open

to the tribunal to proceed in accordance with the law as indicated above.

36. The writ petitions are accordingly disposed of, without any order as to costs.

**-sd-
(SANJIV KHANNA)
JUDGE**

**-sd-
(SANJEEV SACHDEVA)
JUDGE**

**February 21st, 2014
kkb/VKR**