

**IN THE HIGH COURT OF KARNATAKA  
AT BANGALORE**

Dated this the 5<sup>th</sup> day of July, 2012

PRESENT

**THE HON'BLE MR JUSTICE D V SHYLENDRA KUMAR**

**AND**

**THE HON'BLE MR JUSTICE B MANOHAR**

Income Tax Appeal No. 160 of 2012

C/w

Income Tax Appeal No. 161 of 2012

**IN ITA NO. 160 OF 2012**

**BETWEEN:**

1. THE COMMISSIONER OF INCOME-TAX  
C.R. BUILDING,  
QUEENS ROAD  
BANGALORE
2. THE DEPUTY COMMISSIONER  
OF INCOME-TAX  
CIRCLE - 11(3),  
C.R. BUILDING,  
QUEENS ROAD  
BANGALORE. ... APPELLANTS

[By Sri K V Aravind, Adv.]

**AND:**

M/S ECOM GILL COFFEE TRADING PVT. LTD.,  
NO.489/11, BOREWELL ROAD  
WHITEFIELD  
BANGALORE – 560 066. ... RESPONDENT

[By Sri K K Chythanya, Adv.]

THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961 ARISING OUT OF ORDER DATED 19.01.2012 PASSED IN SP NO.7/BANG/2012 (IN ITA NO. 1389/BANG/2010), FOR THE ASSESSMENT YEAR 2006-07, PRAYING TO SET ASIDE THE SAID ORDER OF THE TRIBUNAL AND ETC.,

**IN ITA NO. 161 OF 2012**

**BETWEEN:**

1. THE COMMISSIONER OF INCOME-TAX  
C.R. BUILDING,  
QUEENS ROAD  
BANGALORE.
2. THE DEPUTY COMMISSIONER  
OF INCOME-TAX  
CIRCLE - 11(2),  
C.R. BUILDING,  
QUEENS ROAD  
BANGALORE. ... APPELLANTS

[By Sri K V Aravind, Adv.]

**AND:**

M/S B FOURESS P. LTD.,  
(FORMERLY KNOWN AS  
M/S BOVING FOURESS PVT. LTD.,)  
PLOT NO.7, P.B. NO. 11,  
KIADB INDUSTRIAL AREA  
HOSAKOTE - 562 114. ... RESPONDENT

[By Sri A Sai Prasad, Adv.]

THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961 ARISING OUT OF ORDER DATED 20.01.2012 PASSED IN SP NO.196/BANG/2011 (IN ITA NO. 764/BANG/2010), FOR THE ASSESSMENT YEAR 2006-2007, PRAYING TO SET ASIDE THE SAID ORDER OF THE TRIBUNAL AND ETC.,

THESE APPEALS COMING ON FOR FINAL DISPOSAL, THIS DAY, **SHYLENDRA KUMAR J.**, DELIVERED THE FOLLOWING:

## **J U D G M E N T**

These two appeals by the revenue are under Section 260A of the Income Tax Act, 1961 [for short, the Act], directed against the orders dated 19-1-2012 and 20-1-2012 respectively and both orders passed on applications filed by the respondent-assessee for extending orders of stay which had been granted earlier by the tribunal beyond the period of 365 days in all and till the disposal of the appeals.

2. Revenue had come up in appeal contending that the orders passed by the tribunal are in the teeth of statutory provisions, particularly the provisos to 254(2A) of the Act and more particularly being in ignorance of third proviso to the Section, introduced by way of Finance Act 2008 with effect from 1-10-2008.

3. It is on such grounds the appeals had been admitted for examining the following common substantial question of law:

*Whether the Tribunal was correct in holding that it is entitled to extend the stay beyond a period of 365 days which is contrary to Section 254 of the Act?*

4. Revenue is represented by Sri K V Aravind, learned standing counsel and the respondent-assessees are represented by Sri Chaithanya K K and Sri A Sai Prasad in ITA Nos 160 of 2012 and 161 of 2012 respectively.

5. We have heard learned standing counsel for the revenue and the learned counsel for the assesseees.

6. Sri Aravind has submitted that though the main appeals wherein the interim orders have been passed by the tribunal have themselves been subsequently disposed of, the question being one of interpretation of the provisions of the Act, particularly the third proviso to Section 254(2A) of the Act and one arising frequently and

with the tribunal acting contrary to the statutory provisions time and again, it is necessary that the legal position should be clarified one way or the other and therefore, notwithstanding a preliminary objection that the main appeals are disposed of and answer to the question will be more in the nature of an academic exercise, nevertheless, it should be examined and answered, as that will be a guidance for future functioning of the tribunal in the matter of understanding and applying the provisions of the Act etc.

7. Sri Aravind has taken us through the provisions, particularly three provisos to Section 254(2A) of the Act and has also brought to our notice the legislative background for introduction of the third proviso; that it was precisely to provide for a situation and in express terms, in the wake of the judgment of the Bombay High Court rendered in the case of **NARANG OVERSEAS (P)**

**LTD vs INCOME TAX APPELLATE TRIBUNAL &  
OTHERS [(2007) 295 ITR 22].**

8. By drawing our attention to the provisions of Section 254(2A) of the Act, reading as under:

**254.** (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) or sub-section (2A) 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 or stay shall stand vacated after the expiry or such period or periods, even if the delay in disposing of the appeal is not attributable to the assessee.*

submission of Sri Aravind is that the third proviso has made it amply clear that the reason for non-disposal of the main appeal within a period of 365 days, whether it is attributable to the assessee or otherwise, and even if it is not attributable to the assessee, nevertheless, the interim order of stay granted by the tribunal stands automatically vacated by operation of the statute and in the wake of the intention of the legislature coupled with the second proviso, it is obvious that the tribunal is positively mandated not to pass orders having the effect of extending an interim order of stay beyond the maximum period of

365 days. Submission is that the tribunal is virtually restrained by statute from passing an order having the effect of extending the stay beyond 365 days and is divested of its power to pass such orders.

9. Sri Aravind has also drawn our attention to a judgment of the Bombay High Court, rendered in the case of **COMMISSIONER OF INCOME TAX vs RONUK INDUSTRIES LTD [(2011) 333 ITR 99]**, which purports to follow the view taken earlier by the very court in the case of **NARANG OVERSEAS (P) LTD** [supra], but having ignored the legislative development such as introduction of third proviso to Section 254(2A) of the Act with effect from 1-10-2008.

10. It is submitted that a Full Bench decision of the Bombay Bench of the tribunal, following and applying the law as indicated by the Bombay High Court in the two decisions referred to above also cannot stand to reason, as it is only following the binding decision of the High Court.



11. Reliance is placed on the judgment of the Supreme Court in the case of **HEMALATHA GARGYA vs COMMISSIONER OF INCOME TAX [(2003) 259 ITR 1]** to submit that the tribunal, a creator of the statute, does not have powers to pass orders contrary to the statutory provisions.

12. Reliance is also placed on a Single Bench decision of this court in the case of **MAGILAL S JAIN vs COMMISSIONER OF INCOME & ANOTHER [(2004) 267 ITR 693]**.

13. On the contrary, submissions of Sri Chaithanya K K and Sri A Sai Prasad, learned counsel appearing for the assesseees, in the first instance is to raise a preliminary objection about the tenability of these appeals and the need for examining the question and answer the same. It is submitted that with the disposal of the main appeal in which the interim orders have been passed, the question becomes academic, as the interim orders have now

merged with the final orders passed by the tribunal and do not survive independently. It is, therefore, submitted that there is no need for examining the appeals and they should be dismissed.

14. Even on merits, both Sri Chaithanya and Sri Sai Prasad have very assertively submitted that a provision of this nature, which is more in the nature of a provision *in terrorem* and to impress upon the tribunal to see that in an appeal where it has granted an order of stay, the appeal is disposed of expeditiously and an outer time limit is fixed for such disposal, but it does not affect the power of the tribunal either for granting or extending the stay even beyond the period of 365 days.

15. With reference to the statutory provisions, learned counsel for the assesseees have submitted that the emphasis is on the expedition disposal of the appeal by the tribunal and not so much for grant of stay or extension of stay and therefore to understand the

provisions as one restricting the power of the tribunal to extend a stay order beyond the period of 365 days is virtually missing the main purpose and object of this provision; that this view is well supported by the authority of the Judgment of the Supreme Court and that judgment of the Supreme Court is though not on the very statutory provision, the Supreme Court while examining an analogous provision occurring in another taxing statute such as Central Excise Act, 1944, it had opined that the provisions should not be understood as one restricting the power of the tribunal to pass orders of stay beyond the stipulated period. Reliance is placed on the judgment of the Supreme Court in the case of **COMMISSIONER OF CENTRAL EXCISE, AHMEDABAD vs KUMAR COTTON MILLS PVT LTD [2005 (180) ELT 434]**. Particular reliance is placed on the contents of paragraph 6 of this judgment.

16. It is also submitted by the learned counsel for the assesseees that while the provisions in the Central Excise Act and the contents of third proviso to Section 254(2A) of the Act are almost identical, a distinction is to be found in the corresponding provisions in the Karnataka Value Added Tax Act, 2003 and the legislature having not attempted to bring out changes in the provisions of Section 254(2A) of the Act, on par with the corresponding provisions of Section 63 of the Karnataka Vat Act, it cannot be said that the intention of the legislature was to curtail the power of the tribunal in the matter of granting or extending of stay orders, but was more for the purpose of impressing upon the tribunal for expeditious disposal of the appeals before it wherein interim orders are granted.

17. Reference is made to Section 63(7)(b) of the Karnataka Vat Act to submit that the language in the proviso to Section 254(2A) of the Act being different and when it is only the language of the Section 63(7)(b) of the

Karnataka Vat Act could achieve the object of limiting or restricting the power of the tribunal for passing interim orders and the legislature though was aware this, has not made similar provisions in the Act, the provisions should not be either understood or interpreted as one to restrict or curtail the power of the tribunal to pass interim orders, but as interpreted by the Supreme Court in the case **KUMAR COTTON MILLS PVT LTD** [supra], it should be read as one to instill a sense of urgency over the tribunal for disposal of the appeals.

18. Sri Chaithanya has also pointed out that the embargo or curtailment of power on the tribunal in passing interim order if at all is to be found only in the second proviso to Section 254(2A) of the Act and the third proviso does not place any embargo and restrictive manner of functioning of the tribunal, but only seeks to achieve a statutory provision acting for vacating or dissolving the interim order granted by the tribunal earlier

and therefore when once the second proviso had been examined and interpreted as not one achieving the object of curtailing the power of the tribunal, as in the decision of the Bombay High Court, the addition of the third proviso cannot make any difference and request for our comments on the view taken by the Bombay High Court and therefore seek for dismissal of the appeals.

19. The view taken by a Division Bench of this Court in the case of **COMMISSIONER OF CENTRAL EXCISE, MANGALORE vs INDIAN OIL CORPORATION [2010 (20) STR 458]** is also relied upon to submit that the view expressed and the understanding of the corresponding provisions in the Central Excise Act should be followed and applied for understanding and interpreting the provisions of Section 253(2A) of the Act, more particular for understanding the third proviso to this Section.

20. Perused the orders impugned and the submissions made at the bar in the wake of the authorities cited and referred to above.

21. Sri.K.V.Aravind learned standing counsel has taken us through the notes on clauses of the Finance Act, 2008, particularly clause 46 of the notes on clauses relating to the amendment to Section 254 of the Act, reading as under:

*Sub-section (2A) of the said section provides that the Income-tax Appellate Tribunal, where it is possible, may hear and decide an 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.*

*The first proviso to this sub-section provides that the said Appellate Tribunal may, on merit, pass an order of stay in any proceedings relating to an appeal. However, such period of stay cannot exceed 180 days from the date of such order and the said Appellate Tribunal shall dispose of the appeal within the specified period of stay.*

*The second proviso to this sub-section provides that where the appeal has not been disposed of within the said specified period*

*and the delay in disposing of the appeal is not attributable to the assessee, the Appellate Tribunal can further extend the period of stay originally allowed. However the aggregate of period originally allowed and the period so extended should not exceed 365 days. The Appellate Tribunal is required to dispose of the appeal within the extended period.*

*The third proviso to this sub-section provides that if such appeal is not decided within the period allowed originally or the period or periods so extended or allowed, the order of stay shall stand vacated after the expiry of such period or periods.*

*The intention behind these provisions have been very clear that the Appellate Tribunal cannot grant stay either under the original order or under any subsequent order, beyond the period of 365 days in aggregate.*

*To make this intention clear, it is proposed to amend section 254 of the Income tax Act and further provide 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, even if the delay in disposing of the appeal is not attributable to the assessee.*

*This amendment will take effect from 1<sup>st</sup> October, 2008.*



22. This is the notes relating to the modification brought about to the third proviso to Section 254(2A) of the Act by including the portions “even if the delay in disposing of the appeal is not attributable to the assessee.” Section 254 of the Act deals with the manner of disposal of an appeal by the Appellate Tribunal. The Appellate Tribunal being a creature of statute which powers jurisdiction and manner of functioning are all as enabled under the Statutory provisions and is fully regulated and should function within the bounds of the statutory provisions by the statute.

23. The Income Tax Appellate Tribunal is not an Authority akin to a Court but is a Special Tribunal with limited jurisdiction as indicated in the statutory provisions and for a precise purpose. It is not open to the Tribunal to assume such powers and jurisdiction as are not conferred on it by the statutory provisions.

24. As the appeal itself is a statutory right, whether to the assessee or to the Revenue and can be availed of in the manner provided for under the statutory provisions, there is no question of availing this right of appeal, independent or *de hors* the statutory provisions. If the statute regulates the manner of availing the appellate remedy and also imposes restrictions and limitations in the manner of consideration of the appeal and disposal of the appeal, the Appellate Tribunal is bound by that. The Appellate Tribunal cannot go beyond the limits stipulated by its creator, the legislature. Such legal position is very well settled. It is, therefore, necessary that we have to look into the statutory provisions to find out the scope of the power and jurisdiction of the Appellate Tribunal to pass orders particularly in the matter of granting or extending an order of stay and the duration up to which such order of stay can be prolonged.

25. Insofar as the decisions of Bombay High Court referred to and relied upon by the learned counsel appearing for the assesseees and also the Bombay Bench of the Tribunal are concerned, we find that none of these decisions have any significance or an impact on the amendment brought about to the third proviso to the Section by way of Finance Act 2008. We respectfully disagree with the view expressed by the learned Judges of the Bombay High Court in the two decisions referred to above with regard to the powers of the Tribunal for granting stay order beyond the outer period stipulated by the statute.

26. While emphasis, no doubt, is laid on expeditious disposal of the appeal and more so in appeals wherein some interim orders have been passed by the Tribunal, in our considered opinion, the third proviso not merely indicates that the extension of stay order cannot be beyond total number of 365 days put together, but also

indicates that even assuming an order of this nature had been passed, such an order of stay shall stand vacated after the expiry of outer limit of 365 days and in our considered opinion, in the first instance, the Tribunal which is the creature of statute should abide by these statutory provisions in letter and spirit and the introduction of the third proviso to Finance Act 2008 makes it abundantly clear that the purpose of putting the outer limits is only for curtailing the period an order of stay can operate and to ensure that it has no effect after the period of 365 days from the date of initial order.

27. In our considered opinion, the interpretation of provision of this nature particularly to interpret in a manner so as to enable or confer power on the Tribunal to extend a stay order beyond 365 days, would be to understand contrary to such statutory provision. It is not the interpretation which can be attempted for understanding the scope of this provision. It is a cardinal

rule of interpretation that any interpretation if so warranted and if the statutory provisions are a little ambiguous for understanding it, should be interpreted in consonance and for achieving the object for which change is brought about and in a manner to effectuate the legislative intent and not to defeat the same. It is for this reason, we are in disagreement with the view expressed by the learned Judges of the Bombay High Court in the two decisions referred to above.

28. However, learned counsel for the assessee has placed reliance on the judgment of the Supreme Court in the case of **KUMAR COTTON MILLS PVT. LTD.** [supra] to submit that while examining the scope of analogous provisions under the Central Excise Act, 1944, the Supreme Court had an occasion to interpret the provisions of Section 35(C) to the effect that it cannot be a fetter on the power of the Tribunal to extend the interim order beyond the stipulated period and has therefore

urged that a like interpretation of the present statutory provisions is inevitable.

29. While it is no doubt true that any law declared by the Hon'ble Supreme Court is one to be followed and applied by all courts in the Country in view of the mandate under Article 141 of the Constitution of India, it is only such law that is declared in a particular context and in respect of the particular statutory provision and not in general. An interpretation placed in a particular enactment cannot be just engrafted to the provisions of another enactment, assuming that the same provision or similar analogous and the language is more or less similar. The provisions of Section 254(2A) has its own legislative history and amendments have been brought about against this provisions and therefore, we are afraid that we cannot just accept any interpretation which has been placed on a statutory provision occurring in a

different legislation, wherein the circumstances could have been quite different.

30. Be that as it may, the judgment of the Hon'ble Supreme Court in **KUMAR COTTON MILLS PVT. LTD.**, (supra) cannot constitute law declared for the purpose of understanding or interpreting the provisions of Section 254(2A) of the Income Tax Act and therefore, we are not accepting the submissions of the learned counsel for the assesseees that the provisions of Section 254(2A) also should be interpreted in a like manner, as was done by the Supreme Court in the case of **KUMAR COTTON MILLS PVT. LTD.**

31. Insofar as decision of this court in the case of **INDIAN OIL CORPORATION** [supra] is concerned, that again was a decision in the wake of the provisions of Central Excise Act and we find that the particular view taken by the Tribunal in that case being based on an incorrect understanding of provision of law, the matter

was remanded and therefore, in our considered opinion, this cannot be an authority for the purpose of understanding or interpreting the provision of Section 254(2A) of the Act.

32. Though the learned counsel for the assessee's have very vehemently urged that more often than not an assessee cannot be blamed for non-disposal of the appeal either within initial 180 days or extended period of another 185 days and therefore, an assessee should never be deprived of the benefit of stay, which the assessee had otherwise enjoyed till then and the interpretation to be placed on the provisions should not be to cause hardship or injustice to the assessee, as it is the provision which occurs in the context of interpretation of an enabling provision to grant stay etc., while we appreciate this argument, at the same time we cannot ignore the language of Section and intended amendment brought about and the language of the legislature being quite clear about the



outer time limit stipulated for the duration of the operation of stay and if the legislature has stipulated the outer time limit of 365 days within which the stay order granted by the Tribunal can operate, it only leaves us to hold that the Tribunal is not enabled to pass orders granting stay beyond the period of 365 days. Any other understanding or interpretation is nothing short of doing violence to the language of the statutory provision in the name of interpretation of the provision and permitting an action which is clearly in contravention of the statutory provisions.

33. Insofar as the function and duty of the High Courts is concerned, this court being the jurisdictional High Court in respect of the matters within the territorial jurisdiction and the view taken by this court to be followed by the Tribunal functioning within the domain of territorial jurisdiction of this court, it is the responsibility of this Court, not only to clarify the legal position if there

is a doubt, and also to impress upon the Tribunal functioning within the territorial jurisdiction to act within the sphere of the statutory provision and not to permit the tribunal to assume jurisdiction not vested in it.

34. In this appeal which is brought to this court under Section 260-A of the Act, even though we are conscious that the interim order appealed against has not remained independently as of now and it has got merged with the order passed on the main appeal, we have examined this question as a matter of duty and responsibility of this Court to clarify the legal position and also to ensure that the Tribunal which is functioning within the territorial limits of this court abides by the statutory provisions.

35. Viewed from any angle, we are of the opinion that the Appellate Tribunal has committed a positive error in consciously extending the interim order of stay granted in the pending appeal beyond the period of 365 days, which is the outer limit stipulated in the Statutory provision.

For this reason we allow these appeals. Though the main matter has been disposed of as of now and the appeal was against an interim order, by clarifying the legal position.

36. However, it is made clear that this judgment will not in any way affect the main decision of the Tribunal and it remains without being affected by this judgment and subject to other statutory remedies which the parties may pursue. Therefore, we answer the question in favour of the appellant-Revenue and against the assessee.

37. Accordingly, the appeals are allowed.

No order as to costs.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

\*pjk/MPK