

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1744 OF 2010

Shri Jethmal Faujimal Soni

..Petitioner.

Versus

Income-tax Appellate Tribunal, Pune & Others

..Respondents.

*Mr.R.G. Sikhwal i/by Mr.Sagar Kasar and Mr.M.K. Kulkarni for the petitioner.
Ms.Anamika Malhotra for the respondents.*

**CORAM : Dr.D.Y. Chandrachud &
J.P. Devadhar, JJ.**

DATE : 12th April 2010.

P.C. :

1. The challenge in these proceedings under Article 226 of the Constitution is to the constitutional validity of the third proviso inserted in Section 254(2A) of the Income Tax Act, 1961 by the Finance Act of 2008, with effect from 1 October 2008.

2. In the present case, a stay petition was filed before the Income Tax Appellate Tribunal at Pune on 29 July 2008 for stay under Section 254(2A). By an order dated 29 August 2008, stay was granted by the Tribunal for a period of six months. On the expiry of the period, an application was filed on 11 March 2009 for the extension of the period of

stay. The Tribunal extended the stay by its order dated 15 April 2009 for a period of six months. On 4 November 2009, a fresh application for stay was filed before the Tribunal for extension. The Tribunal dismissed the application by an order dated 13 January 2010. The Tribunal observed that the case was adjourned from time to time for no fault of the assessee, but only in view of the fact that an identical issue was pending before a Special Bench of the Tribunal. The Tribunal however observed that in view of the third proviso which was inserted into Section 254(2A) by the Finance Act of 2008, it had no power to extend the stay beyond a period of 365 days. Accordingly, the application for stay was rejected and the appeal was posted for final hearing on 25 February 2010. The appeal, the Court is informed, is still pending.

3. Under the first proviso to Section 254(2A), the Appellate Tribunal is empowered to pass an order of stay for a period of not exceeding one hundred and eighty days from the date of such order and the Tribunal has to dispose of the appeal within the said period. In the second proviso it is provided that where such appeal is not so disposed of within the said period of stay, the Tribunal on an application by the assessee and on being satisfied that the delay in disposing of the appeal is not attributable to the assessee may extend the period of stay for a further period or periods; so, however, that the aggregate of the period originally allowed and the extended period shall not, in any case, exceed three hundred and sixty-five days, within which

the appeal is to be disposed of. The third proviso which was inserted by the Finance Act of 2008, with effect from 1 October 2008 provides that if there is a delay in disposing of the appeal within the period allowed under the first proviso or the extended period 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.

4. A stringent provision is made by the third proviso to Section 254(2A), as a result of which even if the delay in disposing of the appeal is not attributable to the assessee, the stay has to stand vacated in any event upon the lapse of a period of three hundred and sixty-five days. Having regard to the nature of the provision which has been enacted by Parliament, the Tribunal is under a bounden duty and obligation to ensure that the appeal is disposed off, so as to not result in prejudice to the assessee, particularly in a situation like the present, where no fault can be found with the conduct of the assessee. The fact that an issue was pending before the Special Bench was not a reason for the Tribunal not to dispose of the appeal, particularly since the consequence of the inability of the Tribunal to do so would result in the vacating of the order of stay, which was passed originally in favour of the assessee. It is unfortunate that the Tribunal simply adjourned the appeal merely on the ground of the pendency of an identical issue before the Special Bench. The state of affairs which has come to pass

could well have been avoided by the appeal being taken up for final disposal.

5. Be that as it may, Counsel appearing on behalf of the Revenue has, on instructions from the Commissioner of Income Tax – II, Pune, informed the Court that should this Court be inclined to issue directions for expeditious hearing of the appeal within a period of four months from today, the Revenue shall not take any coercive steps for enforcing the demand which forms the subject matter of the appeal. The statement which has been made on behalf of the Revenue is recorded and the assurance is accepted by the Court.

6. The Tribunal is directed to dispose of the pending appeal within a period of four months from today. In view of the directions which have been passed as aforesaid, based on the statement of the Revenue, it is not necessary for the Court to deal with the constitutional validity of the third proviso to Section 254(2A) in the facts of this case. The parties shall appear and produce a duly authenticated copy of this order before the Tribunal on 19 April 2010 in order to enable the Tribunal to issue necessary directions in that regard.

7. The petition is accordingly disposed of. There shall be no order as to costs.

(J.P. Devadhar, J.)

(Dr.D.Y. Chandrachud, J.)