

IN THE INCOME TAX APPELLATE TRIBUNAL,
AHMEDABAD SPECIAL BENCH C , AHMEDABAD

[Coram: Justice P P Bhatt, President, Pramod
Kumar Vice President, and
Mahavir Prasad Member]

S P No. 68 and 69/Ahd/ 2018
In ITA No 1285/Ahd/2012 and 1822/Ahd/2014
Assessment year: 2007-08 and 2008-09

Doshi Accounting Services Pvt LtdAppellant
5th floor, BBC Towers, Sayajigunj
Vadodara 390 005 [PAN: AABCD2974J]

Vs

Deputy Commissioner of Income Tax
Circle 1(1), Vadodara Respondent

Appearances by
Tushar P Hemani, *for the applicant*
Vinod Tanwani *for the respondent*

Date of concluding the hearing : December 26, 2018
Date of pronouncement : December 26, 2018

ORDER

1. These stay applications seek extension of the stay granted by the Tribunal on 8th June 2018, in respect of balance income tax and interest demands, arising out of the assessment orders for the assessment year 2007-08 and 2008-09, which are impugned in appeals before this Tribunal and have been referred to a Special Bench of the Tribunal. Out of the total demand of tax and interest aggregating to Rs 41,80,729 for the assessment year 2007-08, the assessee has already paid Rs 24,50,000 and the balance amount of Rs 17,30,730 is outstanding payable amount in respect of which the stay is sought. Similarly, for the assessment year 2008-09, the amount of total demand, demand paid and amount outstanding is Rs 1,20,59, 673, Rs 67,00,010 and Rs 53,59,663 respectively.

2. Shri Tushar Hemani, learned counsel for the assessee, begins by pointing out that these appeals were heard on 31st December 2015, and, thereafter, a special bench was constituted by the then President, accepting the division bench's recommendation for constitution of a special bench, on 15th April 2016. He submits that even though the special bench was constituted almost two years ago, the matter has not come up for hearing at all. He submits that when despite the constitution of special bench the

hearing has not at all taken up, there is nothing that the assessee can do to ensure the expeditious disposal of appeal. That is the reason that the assessee has to move to this Tribunal time and again to seek extension of stay granted to the assessee. Learned counsel invites our attention to second proviso to Section 254(2A) of the Income Tax Act, 1961, which unambiguously indicates the will of the legislature that hearing of a stay granted appeal should be concluded within one year. Learned counsel, however, hastens to add that while Hon'ble Courts have read down the provisions of Section 254(2A) extending the scope of stay beyond one year, on account of ground realities about delay in disposal of appeals without the fault of the assessee, this fact does not belittle or overshadow unambiguous intent of legislature for expeditious hearing in such cases. He submits that here is a case in which despite the constitution of a special bench and the stay having been granted, the appeals have not even been listed for hearing for almost two years. Learned counsel submits that usually special benches are constituted on important issues of national importance and these cases should thus be given highest priority but the fact is that once a special bench is constituted, the matter gets into cold storage. He further submits that so far as Third Member hearings are concerned, things are much worse. Even simple Third Member cases remain pending for years without any rhyme or reason. He submits that now that this bench has the benefit of being headed by the President of the Tribunal, not only instructions may kindly be issued for expeditious hearing of these appeals but also some guidelines may kindly be issued for expeditious hearing of the Special Bench and Third Member cases so that the efficacy and utility of the mechanism of Special Benches and Third Members are not lost. He concludes by submitting that there is no way that the assessee can ensure expeditious hearing in these cases, except by beseeching our indulgence for appropriate directions for early hearing of the appeals and for extension of the stay already granted for the intervening period. In response to our question as to when can he argue the matter on merits, he suggests the date of 13th February 2019 but adds that any date, as the bench may deem fit, is convenient to him.

3. Shri Vinod Tanwani, learned Departmental Representative, does not oppose the extension of the stay granted to the assessee and submits that he has nothing much to say. He submits that he would also pray for earliest disposal of these appeals so as to have the benefit of this Tribunal's guidance on this issue, for other cases as well.

4. We have noted that this bench was constituted, vide order dated 20th June 2016, to decide the following question:

Whether or not the provisions of Section 92 can be invoked in a situation in which income of the assessee is eligible for tax exemption or tax holiday and thus not actually chargeable to tax in India, or in a situation in which there cannot be any motive in manipulating the prices at which international transactions have been entered into?

5. While the special bench was so constituted, it was observed that the "date (of hearing) will be notified later". However, no date of hearing was scheduled thereafter.

As a matter of fact, on 18th August 2017, a note was sent by Shri Rajpal Yadav, JM, to the Registry which reads as follows:

Re: ITA No. 1285/Ahd/2012 and 1822/Ahd/2014 in the case of M/s Doshi Accounting Services P. Ltd. Vs. DCIT, Baroda.

In the above matter, ITAT, Bench-"C" vide order dated 15.04.2016 has recommended constitution of a Special Bench. In pursuance thereof, Asstt. Registrar, ITAT, Mumbai Bench vide UO No.F.12-Cent.JD-Ad/2016 dated 20.6.2016 has intimated constitution of a Special Bench consisting of the then President, Shri G.D. Agrawal, Accountant Member and Shri R.S. Syal, Judicial Member, with a noting that date will be notified later. As of now, the status of matter is not known. Registry is directed to appraise Hon'ble President about the status of these appeals, being stay granted matter, for taking a decision on the recommendation made by the Bench for constitution of Special Bench.

6. The hearing of the appeal was not fixed even thereafter, and, in the meantime, stay was extended from time to time.

7. We share the anguish of the learned counsel. The sequence of events, as set out above, does clearly shows inordinate delay in the special bench case being taken up. It appears that despite specific requisition by the learned Judicial Member and for the reasons best known to the persons concerned, the Registry has not taken care to do the necessary follow up and ensure that the matter is listed for hearing expeditiously, so as to ensure timely disposal of appeals referred to the special benches. The importance of timely disposal of special bench cases and Third Member cases can hardly be over-emphasised. These cases deserve to be taken up on top priority basis. We are of the view that such an inordinate delay in fixation of hearing of special benches cases, particularly when stay is granted, is not only inappropriate and contrary to the scheme of the Act, but it does reduce the efficacy and utility of the mechanism of special benches to deal with important matters on which there is divergence of views by the division benches or which are otherwise of wider ramifications and national importance. Similarly, inordinate delays in disposal of Third Member cases, by itself, makes the expression of dissenting opinion less effective and useful. We, therefore, deem it fit and proper to formulate the following guidelines with a view to ensure the expeditious hearing of cases referred to Special Benches and Third Members:

(a) Wherever special benches are constituted, the special benches shall, as far as possible, commence hearing within 120 days of the benches being constituted. In the cases in which the respective bench is not in a position to commence hearing of the matter within 120 days for any specific reason, e.g. directions of the Hon'ble Court above or blocking the hearing awaiting decision of a higher judicial forum, it shall record the reasons, in brief, for delay in commencement for hearing. Sincere endeavour shall be made for expeditious disposal of Special Bench cases.

(b) It is only in exceptional circumstances that the adjournment may be granted, at the instance of the either party, in Special Benches and Third Member cases, and the hearing of such matters should be scheduled by the registry in due consultation with both the parties. Even when adjournment is granted, it shall not be generally granted beyond 30 days. The learned representatives at the bar are expected to extend their cooperation in this regard. It goes without saying that the intended results in this regard can only be achieved with sincere endeavour and cooperation of all the stakeholders.

(3) The above guidelines shall also be followed with respect to Third Member cases, and the Registry will take up the matter with the respective benches, for scheduling the hearing, in terms of the above guidelines.

8. Let us now revert to the facts of this case. With the consent of the parties, the hearing of the related appeals is scheduled for 13th February 2019. As the date is announced in the open court, there is no need of issuing formal notices in this regard. As the delay in disposal of these appeals is not on account of any lapse on the part of the assessee, and as there is no change in the material facts and circumstances vis-à-vis the material facts and circumstances when the stay was originally granted in this case, the stay on collection/ recovery of outstanding demands of tax and interest, as set out in first paragraph earlier, is extended till 180 days from the date of this order or till the disposal of these appeals- whichever is earlier. Ordered, accordingly.

9. In the result, the stay applications are allowed in the terms indicated above. Pronounced in the open court today on the 26th day of December, 2018.