

IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI A.K.GARODIA, ACCOUNTANT MEMBER

SP No.8/Bang/2019 [In ITA No.214/Bang/2018]
Assessment year : 2012-13

Inatech India Pvt. Ltd., 3rd Floor, No.149, RVI Tower, Velachery Tambaram Main Road, Pallikaranai, Chennai, Tamilnadu-600 100 PAN :	Vs.	The Income-tax Officer, Ward-3(1)(1), Bengaluru.
APPELLANTS		RESPONDENT

Applicant by	:	Shri K.P Kumar, Sr. Advocate
Respondent by	:	Dr. P.V Pradeep Kumar, Addl.CIT (DR)

Date of hearing	:	18.01.2019
Date of Pronouncement	:	18.01.2019

ORDER

Per N.V. Vasudevan, Vice President

This is an application filed by the assessee praying for an order extending the order of stay of recovery of outstanding demand passed by the Tribunal in SP No. 29/Bang/2018 order dated 5.2.2018. By the order dated 5.2.2018 the Tribunal passed an order of stay of recovery of outstanding demand of Rs.2,95,37,104/- arising out of the order of assessment dated 24.05.2016 passed u/s 143(3) r.w.s 144C of the Income-tax Act 1961 (Act) by the IT, Ward-3(1)(4), Bengaluru.

2. At the time of hearing, it was brought to our notice by the Id counsel for the assessee that this Tribunal vide order dated 5/2/2018 in S.P No.29/Bang/2018 has granted an order of status-quo in the application filed for an order for grant of stay of recovery outstanding demand. The Tribunal in the said order after noticing that there was a prima facie case made out by the assessee, ordered status quo. No period for which the stay was to be in operation was specified in the said order. In view of the first proviso to sec. 254(2A) of the Act, an order of stay cannot be granted for period exceeding 180 days from the date of the order. Therefore, the earlier order of the Tribunal granting stay would not be operational beyond the aforesaid period. The Id counsel brought to our notice that though the appeal was fixed for hearing from time to time, the non disposal of the appeal of the assessee is not attributable to any default on the part of the assessee and the following facts were brought to our notice in this regard.

“15. Pursuant to the above, the petitioner has filed the stay petition before the Hon'ble Tribunal and the case was scheduled for hearing on 02 February 2018 (in SP No.29/Bang/2018). The Hon'ble Tribunal after hearing the matter considered this case as fit case and has granted stay of demand to the petitioner vide order dated 05 February 2018 and the case on merits for the said year was scheduled on 21 February 2018. The Copy of order is enclosed vide Appendix I.

16. On 21 February 2018, the Hon'ble Tribunal has heard the merits of the case. Subsequently, the Hon'ble Tribunal scheduled another hearing on 15 June 2018 for certain clarification. On 15 June 2018, the petitioner was ready to take-up the case, however, the Hon'ble Tribunal has adjourned the case to 22 June 2018. Further, on 22 June 2018, the Hon'ble Tribunal has adjourned the case to 27 June 2018 though the petitioner was ready to take-up the case.

17. On 27 June 2018, due to change in the bench members, the Hon'ble Tribunal has again heard the merits of the case. During the course of hearing, the learned DR did not carry the compilation of judicial precedents and requested the Hon'ble Tribunal to grant short adjournment. Accordingly, the Hon'ble Tribunal scheduled the hearing on 04 July 2018.

18. On 04 July 2018, the petitioner explained the judicial precedents relied upon and requested the Hon'ble Tribunal to quash the assessment order passed by the learned AO. In this regard, the Hon'ble Tribunal directed the petitioner to file synopsis of judicial precedents and also directed the learned DR to file objections, if any. Accordingly, the petitioner has filed the synopsis of judicial precedents and written submission with the Hon'ble Tribunal on 12 July 2018. The Copy of acknowledgment of written submission is enclosed vide Appendix J."

19. Subsequently, the Hon'ble Tribunal has scheduled the hearing on 29 November 2018. However, since the concerned Bench of the Tribunal is not sitting on the said date, the appeal has been adjourned to 21 March 2019. From a reading of the above, it is clear that the non-disposal of the appeal is not attributable to the Petitioner."

3. We have heard the rival submissions. From the narration of facts with regard to the non disposal of the appeal of the Assessee, it is clear that the delay in non disposal of the appeal is not attributable to any default on the part of the assessee. The law is by now well settled that if the delay in non-disposal of the appeal is not attributable to the assessee, then the Tribunal has power to extend the period of stay even beyond the time limit laid down in third proviso to section 254(2A) of the Act. Reference may be made to the decision of the Hon'ble Delhi High Court in the case of *Pepsi Foods (P) Ltd. v. ACIT, 376 ITR 87 (Del)* which was followed by the ITAT Bangalore Bench in the case of *M/s. SAP Labs (I) Pvt. Ltd. v. ACIT, 67*

taxmann.com 78. There are no change in the facts and circumstances of the case as it existed when the tribunal granted an order of stay. In these circumstances, we are of the view that there should be an order of stay for a period of 6 months from today or till the disposal of the appeal of the assessee, whichever is earlier. We hold and direct accordingly.

4. In the result, the stay petition is allowed.

Pronounced in the open court on **18th January, 2019.**

Sd/-
(A.K GARODIA)
Accountant Member

Bangalore,
Dated, the 18th January, 2019.
/ vms /

Sd/-
(N.V. VASUDEVAN)
Vice President

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore

1. Date of Dictation
2. Date on which the typed draft is placed before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
4. Date on which the fair order is placed before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
8. Date on which the file goes to the Bench Clerk
9. Date on which order goes for Xerox & endorsement.....
10. Date on which the file goes to the Head Clerk
11. The date on which the file goes to the Assistant Registrar for signature on the order
12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
13. Date of Despatch of Order.