

ITAT EMPOWERED TO EXTEND STAY WITHOUT MANDATING PAYMENT – DELHI ITAT IN MSIL

Recent amendments in Section 254 (2A) of the Income tax Act, 1961 ('the Act') by the Finance Act, 2020 seeking to dilute the powers of the ITAT to grant stay of demand by mandating payment of 20% of tax demand, have been subject matter of substantial debate and anxiety amongst the taxpayers, more particularly taxpayers in whose cases ITAT had granted stay prior to the amendment.

In a recent landmark decision, Delhi ITAT vide order dated 15th February, 2021 in the case of Maruti Suzuki India Limited ('MSIL') held that amendments shall only apply to cases where stay is sought and granted for the first time on or after 01.04.2020; in other words, the amendments do not apply qua extension of stay sought after 01.04.2020, where stay was originally granted prior to that date.

Background:

Section 254(2A) of Act statutorily recognizes inherent powers of the ITAT to grant stay against the recovery of outstanding demand arising for a period not exceeding one hundred and eighty days (180 days). In the event that the appeal is not disposed within the period of stay granted, the Tribunal may, on application made by assessee and on being satisfied that the delay in disposal of the appeal is not attributable to the assessee, extend the stay for a further period or periods as it may deem fit, so, however, that the aggregate period of stay originally allowed and the period or periods so extended or allowed do not in any case exceed three hundred and sixty five days (365 days).

Third proviso to section 254(2A) of the Act further provides that if the appeal is not disposed within 365 days, the ITAT is not empowered to grant any further stay even if the delay in disposal of the appeal is not attributable to the assessee. The said third proviso has, however, been read down by the Courts in various cases¹ to hold that ITAT may extend stay granted beyond 365 days, if delay in disposal of the appeal is not attributable to the assessee. (The issue is sub judice before the Supreme Court and likely to be heard soon).

The Finance Act, 2020 with effect from 01.04.2020 amended the first proviso and substituted the existing second proviso to section 254(2A) of the Act to dilute the powers of the ITAT to grant stay. First proviso as amended provides that the ITAT may grant stay subject to the condition that the assessee deposits not less than twenty per cent of the amount of tax, interest, fee, penalty, or any other sum payable or furnishes security of equal amount in respect thereof. The amended second proviso further provides that the ITAT shall not extend stay unless the assessee makes an application and has complied with the conditions referred to in the first proviso and the ITAT is satisfied that delay in disposal of the appeal is not attributable to the assessee.

¹ Pepsi Foods Pvt Ltd vs. ACIT: 367 ITR 87 (Del) – Department's SLP dismissed in DCIT vs. Pepsi Foods Pvt. Ltd.: 246 Taxman 223; PCIT vs. Maruti Suzuki India Ltd: ITA 694/2016 and ITA 486/2017

In the aforesaid background, the issue that has been bothering the taxpayers is whether the amendments shall also cover cases of extension of stay without requiring such payment, where stay was originally granted prior to 1.04.2020?

Facts of MSIL

In case of MSIL, stay had been granted in appeals for assessment years 2010-11 to 2015-16, which was also extended from time to time on being satisfied that delay in disposal was not attributable to MSIL. Application was filed for extension of stay, wherein the Revenue, relying upon the above amendments contended that MSIL should be directed to pay 20% of the demand, notwithstanding that the stay originally granted for each of the years did not mandate such a condition.

MSIL's arguments:

On behalf of MSIL, it was argued that amendments made to Section 254(2A) of the Act are applicable only to stay(s) granted for the first time on or after 01.04.2020 and not to mere extension for stay granted before the said date. It was alternatively argued that substantial amount of outstanding demand pertained to issues which stood covered in its favour by orders passed for earlier year(s) and therefore, the same could not, in any case, be recovered² even as per the amended law.

Department's arguments:

The Department, *inter alia*, contended that the amendments in the first and second proviso to section 254(2A) of the Act are independent of each other and are applicable even to extension of stay being granted on or after 01.04.2020. It was argued that the law providing for payment of 20% of the demand or furnishing adequate security comes into force at the time of passing order for extension of stay and cannot, therefore, be said to be not applicable, only for the reason that stay was originally granted under the unamended law.

ITAT Decision:

The ITAT held that since majority of the demand was arising on account of issues covered in favour of the assessee, it would be unfair to direct payment thereagainst.

In respect of fresh issues, the ITAT held that the amended provisions are applicable only to stay sought and granted for the first time on or after 01.04.2020 and cannot be applied qua mere extension of stay granted post that date in respect of stay originally granted before 01.04.2020. In coming to the said conclusion, the ITAT agreed with MSIL's contention that the second proviso requiring compliance of condition for payment of 20% of demand mandated in the first proviso, only applies where stay had originally been sought and granted under the first proviso.

² Maruti Suzuki India Ltd vs. DCIT: 347 ITR 43 (Del.)

VA Comments:

The aforesaid decision of Delhi ITAT now brings clarity on the prospective applicability of the amended provisions to stay sought and granted for the first time and not to extension(s) of stay granted before 01.04.2020.

Lot of clarity is, however, still awaited from the judiciary on applicability of amended provisions to fresh stays sought on or after 01.04.2020, viz., whether the amended provisions are mandatory or directory; what kind of security is contemplated by the amended provisions and so on.

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