Deputy Commissioner Of Income Tax vs M/S Pepsi Foods Ltd. (Now Pepsico India ... on 6 April, 2021

Equivalent citations: AIR 2021 SUPREME COURT 2692, AIRONLINE 2021 SC 252

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Bench: Hrishikesh Roy, B.R. Gavai, Rohinton Fali Nariman

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 1106 OF 2021
[ARISING OUT OF SLP (CIVIL) NO.30284 OF 2015]

DEPUTY COMMISSIONER OF INCOME TAX & ANR. ..APPELLANTS
VERSUS
M/S. PEPSI FOODS LTD. ..RESPONDENT

(NOW PEPSICO INDIA HOLDINGS PVT. LTD.) WITH CIVIL APPEAL NO. 1127 OF 2021 [ARISING OUT OF SLP (CIVIL) NO.32081 OF 2017] CIVIL APPEAL NO. 1107 OF 2021 [ARISING OUT OF SLP (CIVIL) NO.34987 OF 2015] CIVIL APPEAL NO. 1108 OF 2021 [ARISING OUT OF SLP (CIVIL) NO.31311 OF 2015] CIVIL APPEAL NO. 1109 OF 2021 [ARISING OUT OF SLP (CIVIL) NO.31295 OF 2015] CIVIL APPEAL NO. 1110 OF 2021 [ARISING OUT OF SLP (CIVIL) NO.30283 OF 2015] CIVIL APPEAL NO. 1111 OF 2021 [ARISING OUT OF SLP (CIVIL) NO.31297 OF 2015] CIVIL APPEAL NO. 1112 OF 2021 [ARISING OUT OF SLP (CIVIL) NO.34142 OF 2016] CIVIL APPEAL NO. 1113 OF 2021 [ARISING OUT OF SLP (CIVIL) NO.3138 OF 2017] CIVIL APPEAL NO. 1114 OF 2021 [ARISING OUT OF SLP (CIVIL) NO.3136 OF 2017] CIVIL APPEAL NO. 1115 OF 2021 [ARISING OUT OF SLP (CIVIL) NO. OF 2021] CC NO.8612 OF 2017 CIVIL APPEAL NO. 1116 OF 2021 [ARISING OUT OF SLP (CIVIL) NO. OF 2021] CC NO.8215 OF 2017 CIVIL APPEAL NO. 1117 OF 2021 [ARISING OUT OF SLP (CIVIL) NO.19322 OF 2017] CIVIL APPEAL NO. 1118 OF 2021 [ARISING OUT OF SLP (CIVIL) NO. OF 2021] CC NO.8924 OF 2017 CIVIL APPEAL NO. 1119 OF 2021 [ARISING OUT OF SLP (CIVIL) NO. OF 2021] DIARY NO.15229 OF 2017 CIVIL APPEAL NO. 1120 OF 2021 [ARISING OUT OF SLP (CIVIL) NO.720 OF 2018] CIVIL APPEAL NO. 1121 OF 2021 [ARISING OUT OF SLP (CIVIL) NO.27498 OF 2017] CIVIL APPEAL NO. 1122 OF 2021 [ARISING OUT OF SLP (CIVIL) NO.30215 OF 2017] CIVIL APPEAL NO. 1123 OF 2021 [ARISING OUT OF SLP (CIVIL) NO.722 OF 2018] CIVIL APPEAL NO. 1124 OF 2021 [ARISING OUT OF SLP (CIVIL) NO.31873 OF 2017] CIVIL APPEAL NO. 1126 OF 2021 [ARISING OUT OF SLP (CIVIL) NO.31720 OF 2017] CIVIL APPEAL NO. 1125 OF 2021 [ARISING OUT OF SLP (CIVIL) NO.32236 OF 2017] CIVIL APPEAL NO. 1128 OF 2021 [ARISING OUT OF SLP (CIVIL) NO.33218 OF 2017] CIVIL APPEAL NO. 1129 OF 2021 [ARISING OUT OF SLP (CIVIL) NO.12200 OF 2018] CIVIL APPEAL NO. 1130 OF 2021 [ARISING OUT OF SLP (CIVIL) NO.4186 OF 2018] CIVIL APPEAL NO. 1131 OF

2021 [ARISING OUT OF SLP (CIVIL) NO.12202 OF 2018] CIVIL APPEAL NO. 1132 OF 2021 [ARISING OUT OF SLP (CIVIL) NO.12204 OF 2018] CIVIL APPEAL NO. 1133 OF 2021 [ARISING OUT OF SLP (CIVIL) NO. OF 2021] DIARY NO.4363 OF 2018 CIVIL APPEAL NO. 1134 OF 2021 [ARISING OUT OF SLP (CIVIL) NO. OF 2021] DIARY NO.6113 OF 2018 CIVIL APPEAL NO. 1135 OF 2021 [ARISING OUT OF SLP (CIVIL) NO.16889 OF 2018] CIVIL APPEAL NO. 1136 OF 2021 [ARISING OUT OF SLP (CIVIL) NO.16245 OF 2018] CIVIL APPEAL NO. 1137 OF 2021 [ARISING OUT OF SLP (CIVIL) NO.26053 OF 2018] CIVIL APPEAL NO. 1138 OF 2021 [ARISING OUT OF SLP (CIVIL) NO. OF 2021] DIARY NO.22819 OF 2018 CIVIL APPEAL NO. 1139 OF 2021 [ARISING OUT OF SLP (CIVIL) NO.10941 OF 2019] JUDGMENT R.F. Nariman, J

1. Delay condoned. Leave granted.

2. The appeals before us raise an important question as to the constitutional validity of the third proviso to Section 254(2A) of the Income Tax Act, 1961 (hereinafter referred to as “Income Tax Act”).

3. The facts in Deputy Commissioner of Income Tax & Anr. v. M/s Pepsi Foods Ltd. [now Pepsico India Holdings Pvt. Ltd] (Civil Appeal arising out of Special Leave Petition (C) No.30284 of 2015) may be set out as being illustrative of the facts in all the appeals before us. The Respondent-assessee is an Indian company incorporated on 24.02.1989 and is engaged in the business of manufacture and sale of concentrates, fruit juices, processing of rice and trading of goods for exports. The assessee is a group company of the multi-national Pepsico Inc., a company incorporated and registered in the United States of America. The assessee-company merged with Pepsico India Holdings Pvt. Ltd. w.e.f. 01.04.2010, in terms of a scheme of arrangement duly approved by the Hon’ble Punjab and Haryana High Court. On 30.09.2008, a return of income was filed for the assessment year 2008-2009 declaring a total income of INR 92,54,89,822. A final assessment order was passed on 19.10.2012 which was adverse to the assessee. Aggrieved by the aforesaid order, the assessee filed an appeal before the Income Tax Appellate Tribunal (hereinafter referred to as “Tribunal”) on 29.04.2013. On 31.05.2013, a stay of the operation of the order of the assessing officer was granted by the Tribunal for a period of six months. This stay was extended till 08.01.2014 and continued being extended until 28.05.2014. Since the period of 365 days as provided in Section 254(2A) of the Income Tax Act was to end on 30.05.2014 beyond which no further extension could be granted, the assessee, apprehending coercive action from the Revenue, filed a writ petition before the Delhi High Court on 21.05.2014 challenging the constitutional validity of the third proviso to Section 254(2A) of the Income Tax Act. By a judgment dated 19.05.2015, the Delhi High Court struck down that part of the third proviso to Section 254(2A) of the Income Tax Act which did not permit the extension of a stay order beyond 365 days even if the assessee was not responsible for delay in hearing the appeal. It is this judgment and several other judgments from various High Courts that have been challenged by the revenue in these appeals.

4. Shri Vikramjit Banerjee, learned ASG, assailed the impugned judgment of the Delhi High Court and other judgments following it, arguing that there is no right to stay of a judgment in an appellate proceeding as such stay is dependent upon the discretion of the Appellate Court. The discretion having been exercised once would not mean that automatic extensions of the same could be granted

despite a reasonable period having gone-by. He also argued that the discretionary remedy of a stay is part and parcel of the right to appeal which itself is a statutory right, and can be taken away by the legislature. He then argued that Article 14 of the Constitution of India is not to be applied mechanically as a far greater freedom in the joints is given qua tax legislation and so long as the State has laid down a valid policy which it has followed without singling out anybody, no discrimination can possibly ensue. He also argued that equitable considerations and arguments based on hardship are out of place when it comes to tax statutes, which must be read literally. For all these propositions, he cited case law which will be dealt with later in this judgment.

5. Shri Ajay Vohra, learned Senior Advocate, Shri Himanshu S. Sinha, Shri Deepak Chopra and Shri Sachit Jolly, learned Advocates, appearing for the assessees, countered each of the submissions of Shri Banerjee, learned ASG. They relied strongly upon the reasoning of the impugned judgment of the Delhi High Court and argued that once discretionary relief has been granted based upon a strong prima facie case, balance of convenience, etc. it would be wholly arbitrary and discriminatory that such relief be vacated automatically without reference to whether it is the assessee who is prolonging the appellate proceedings. Once there is a vested right of appeal, there is a right to obtain a stay which, once obtained, cannot be vacated without dilatory tactics on the part of the Appellant being found against the Appellant. They cited judgments of this Court to show that discriminatory taxation has been struck down under Article 14 of the Constitution of India. They also argued that the State cannot take shelter under a "policy", if the policy or object laid down in the statutory provision is itself arbitrary or discriminatory. They also cited judgments to show that even in interpreting a tax statute, though equitable considerations are not to be given effect, yet they are not wholly irrelevant when the constitutional validity of the provision is itself challenged.

6. The genesis of the stay provision contained in Section 254 of the Income Tax Act is in the celebrated judgment of this Court in Income Tax Officer v. M.K. Mohammed Kunhi (1969) 2 SCR 65. In this judgment, Section 254 of the Income Tax Act, as originally enacted, came up for consideration before this Court. After setting out Section 254(1), this Court referred to Sutherland, Statutory Construction (3rd Edn., Arts. 5401 and 5402), and then held that the power which has been conferred by the said Section on the Appellate Tribunal with the widest possible amplitude must carry with it, by necessary implication, all powers incidental and necessary to make the exercise of such power fully effective. The Court held:

> "Section 255(5) of the Act does empower the Appellate Tribunal to regulate its own procedure, but it is very doubtful if the power of stay can be spelt out from that provision. In our opinion the Appellate Tribunal must be held to have the power to grant stay as incidental or ancillary to its appellate jurisdiction. This is particularly so when Section 220(6) deals expressly with a situation when an appeal is pending before the Appellate Assistant Commissioner, but the Act is silent in that behalf when an appeal is pending before the Appellate Tribunal. It could well be said that when Section 254 confers appellate jurisdiction, it impliedly grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution and that the statutory power carries with it the duty in proper cases to make such orders for staying proceedings as will prevent the appeal if successful from being rendered

nugatory.

> A certain apprehension may legitimately arise in the minds of the authorities administering the Act that if the Appellate Tribunals proceed to stay recovery of taxes or penalties payable by or imposed on the assessees as a matter of course the revenue will be put to great loss because of the inordinate delay in the disposal of appeals by the Appellate Tribunals. It is needless to point out that the power of stay by the Tribunal is not likely to be exercised in a routine way or as a matter of course in view of the special nature of taxation and revenue laws. It wilt only be when a strong prima facie case is made out that the Tribunal will consider whether to stay the recovery proceedings and on what conditions and the stay will be granted in most deserving and appropriate cases where the Tribunal is satisfied that the entire purpose of the appeal will be frustrated or rendered nugatory by allowing the recovery proceedings to continue during the pendency of the appeal." [at page 72] Importantly, this Court recognised that orders of stay prevent the appeal, if ultimately successful, from being rendered nugatory or futile, and are granted only in deserving and appropriate cases.

7. The judgment of this Court was followed for many decades, the Appellate Tribunal granting stay without being constrained by any time limit. However, by Finance Act, 2001 (w.e.f. 01/06/2001), two provisos were introduced to Section 254(2A) as follows:

> "254. Orders of Appellate Tribunal.
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> xxx xxx xxx (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) of section 253:
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> Provided that where an order of stay is made in any proceedings relating to an appeal filed under sub- section (1) of section 253, the Appellant Tribunal shall dispose of the appeal within a period of one hundred and eighty days from the date of such order: Provided further that if such appeal is not so disposed of within the period specified in the first proviso, the stay order shall stand vacated after the expiry of the said period."

8. Realising that a hard and fast provision which is directory so far as the disposal of appeal is concerned, but mandatory so far as vacation of the stay order is concerned, would lead to great hardship, the legislature stepped in again and amended Section 254(2A) vide Finance Act, 2007 (w.e.f. 01/06/2007) as follows:

> "254. Orders of Appellate Tribunal.
>
> xxx xxx xxx (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) 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, the order of stay shall stand vacated after the expiry of such period or periods."

9. The aforementioned provision (as amended by Finance Act, 2007) became the subject matter of challenge before the Bombay High Court in Narang Overseas Pvt. Ltd. v. ITAT (2007) 295 ITR 22. The Bombay High Court, after referring to the judgment in Mohammed Kunhi (supra), then held:

" Did the section as it stood before the Finance Act of 2007, and after the Finance Act of 2007, exclude the power of the Tribunal to grant interim relief after the period provided in the proviso. Was it the intendement of Parliament that the Tribunal even in a case where the assessee was not at fault should be denuded of its incidental power to continue the interim relief granted and if so what mischief was it seeking to avoid. The mischief if and at all was the long delay in disposing of proceedings where interim relief had been obtained by the Assessee. The second proviso as it earlier stood, in a case when in an appeal interim relief was granted, if the appeal was not disposed off within 180 days provided that the stay shall stand vacated. The proviso as it stood could really have not have stood the test of non-arbitrariness as it would result in an appeal being defeated even if the assessee was not at fault, as in the meantime the revenue could proceed against the assets of the assessee. The proviso as introduced by the Finance Act, 2007 was to an extent to avoid the mischief of it being rendered unconstitutional. Once an appeal is provided, it cannot be rendered nugatory in cases were the assessee was not at fault.

The amendment of 2007 conferred the power to extend the period of interim relief to 360 days. Parliament clearly intended that such appeals should be disposed of at the earliest. If that be the object the mischief which was sought to be avoided was the

non- disposal of the appeal during the period the interim relief was in operation. By extending the period Parliament took note of laws delay. The object was not to defeat the vested right of Appeal in an assessee, whose appeal could not be disposed off not on account of any omission or failure on his part, but either the failure of the Tribunal or acts of revenue resulting in non-disposal of the appeal within the extended period as provided.

Can it then be said that the intention of Parliament by restricting the period of stay or interim relief upto 360 days had the effect of excluding by necessary intendment the power of the Tribunal to continue the interim relief. Would not reading the power not to continue the power to continue interim relief in cases not attributable to the acts of the assessee result in holding that such a provision would be unreasonable. Could Parliament have intended to confer the remedy of an Appeal by denying the incidental power of the Tribunal to do justice. In our opinion for reasons already discussed it would not be possible to so read it. It would not be possible on the one hand to hold that there is a vested right of an appeal and on the other hand to hold that there is no power to continue the grant of interim relief for no fault of the assessee by divesting the incidental power of the Tribunal to continue the interim relief. Such a reading would result in such an exercise being rendered unreasonable and violative of Article 14 of the Constitution. Courts must, therefore, construe and/or give a construction consistent with the constitutional mandate and principle to avoid a provision being rendered unconstitutional." [at page 30-31] The High Court then referred to the judgment of this Court in Commissioner of Customs & Central Excise v. Kumar Cotton Mills (2005) 13 SCC 296, which dealt with a similar provision contained in the Central Excise Act, 1944, namely, Section 35C(2A), and then held:

" We are of the respectful view that the law as enunciated in Kumar Cotton Mills Pvt. Ltd. (supra) should also apply to the construction of the third proviso as introduced in section 254(2A) by the Finance Act, 2007. The power to grant stay or interim relief being inherent or incidental is not defeated by the provisos to the sub-section. The third proviso has to be read as a limitation on the power of the Tribunal to continue interim relief in case where the hearing of the Appeal has been delayed for acts attributable to the assessee. It cannot mean that a construction be given that the power to grant interim relief is denuded even if the acts attributable are not of the assessee but of the revenue or of the Tribunal itself. The power of the Tribunal, therefore, to continue interim relief is not overridden by the language of the third proviso to section 254(2A). This would be in consonance with the view taken in Kumar Cotton Mills Pvt. Ltd. (supra). There would be power in the Tribunal to extend the period of stay on good cause being shown and on the Tribunal being satisfied that the matter could not be heard and disposed of for reasons not attributable to the assessee." [at page 32]

10. Close on the heels of this judgment, Section 254(2A) of the Income Tax Act was again amended, this time by the Finance Act, 2008 (w.e.f. 01/10/2008). This amendment reads as follows:

> "254. Orders of Appellate Tribunal.
>
> xxx xxx xxx (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) of section 253:
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> 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 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."

11. The amended provision came to be considered by a Division Bench of the Delhi High Court in Commissioner of Income Tax v. M/s Maruti Suzuki (India) Ltd. (2014) 362 ITR 215.The constitutional validity of the said provision had not been challenged, as a result of which the Delhi High Court interpreted the third proviso to Section 254(2A) as follows:

> "In view of the aforesaid discussion, we have reached the following conclusion:-
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> (i) In view of the third proviso to Section 254(2A) of the Act substituted by Finance Act, 2008 with effect from 1st October, 2008, tribunal cannot extend stay beyond the period of 365 days from the date of first order of stay.
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> (ii) In case default and delay is due to lapse on the part of the Revenue, the tribunal is at liberty to conclude hearing and decide the appeal, if there is likelihood that the third proviso to Section 254(2A) would come into operation.

(iii) Third proviso to Section 254(2A) does not bar or prohibit the Revenue or departmental representative from making a statement that they would not take coercive steps to recover the impugned demand and on such statement being made, it will be open to the tribunal to adjourn the matter at the request of the Revenue.

(iv) An assessee can file a writ petition in the High Court pleading and asking for stay and the High Court has power and jurisdiction to grant stay and issue directions to the tribunal as may be required.

Section 254(2A) does not prohibit/bar the High Court from issuing appropriate directions, including granting stay of recovery.

We have not examined the constitutional validity of the provisos to Section 254(2A) of the Act and the issue is left open." [at page 231]

12. Close upon the heels of the judgment in Maruti Suzuki (supra), the Gujarat High Court in DCIT v. Vodafone Essar Gujarat Ltd. (2015) 376 ITR 23, while disagreeing with the view taken in Maruti Suzuki (supra), interpreted the third proviso to Section 254(2A) of the Income Tax Act as follows:

" Applying the decision of the Division Bench of this court in the case of Small Industries Development Bank of India (supra) to the facts of the case on hand, more particularly while considering the powers of the Tribunal under section 254(2A) of the Act, it is observed and held that by section 254(2A) of the Act, it cannot be inferred a legislative intent to curtail/withdraw the powers of the Appellate Tribunal to extend stay of demand beyond the period of 365 days. However, the aforesaid extension of stay beyond the period of total 365 days from the date of grant of initial stay would always be subject to the subjective satisfaction by the learned Appellate Tribunal and on an application made by the assessee-appellant to extend stay and on being satisfied that the delay in disposing of the appeal within a period of 365 days from the date of grant of initial stay is not attributable to the appellant-assessee. For that purpose, on expiry of every 180 days, the appellant-assessee is required to make an application to extend stay granted earlier and satisfy the learned Appellate Tribunal that the delay in not disposing of the appeal is not attributable to him/it and the learned Appellate Tribunal is required to review the matter after every 180 days and while disposing of such application of extension of stay, the learned Appellate Tribunal is required to pass a speaking order after having satisfied that the assessee-appellant has not indulged into any delay tactics and that the delay in disposing of the appeal within stipulated time is not attributable to the assessee-appellant. However, at the same time, it may not be construed that widest powers are given to the Appellate Tribunal to extend the stay indefinitely and that the Appellate Tribunal is not required to dispose of the appeals at the earliest. The object and purpose of section 35C(2A) of the Act particularly one of the object and purpose is to see that in a case where stay has been granted by the learned Appellate Tribunal, the learned Appellate Tribunal is required to dispose of the appeal within total period

> of 365 days, as ultimately revenue has not to suffer and all efforts should be made by the learned Appellate Tribunal to dispose of such appeals in which stay has been granted as far as possible within total period of 365 days from the date of grant of initial stay and the Appellate Tribunal shall grant priority to such appeals over appeals in which no stay is granted. For that even the Appellate Tribunal and/or registrar of the Appellate Tribunal is required to maintain separate register of the appeals in which stay has been granted fully and/or partially and the appeals in which no stay has been granted.

[at page 42-43] xxx xxx xxx With greatest respect to the Delhi High Court, if the aforesaid procedure is adopted, either it would lead to multiplicity of proceedings before the High Court and/or even granting the stay of demand by the Department itself. We are of the opinion that instead if the aforesaid procedure is followed, it would meet the ends of justice and it may not increase the litigation either before the High Court and/or appropriate forum and the purpose and object of section 254(2A) of the Act is achieved." [at page 45-46]

13. The impugned judgment in M/s Pepsi Foods Ltd. v. ACIT (2015) 376 ITR 87 dealt with the challenge to the constitutional validity of the third proviso to Section 254(2A) of the Income Tax Act, as amended by the Finance Act, 2008. A Division Bench of the Delhi High Court, after setting out the Bombay High Court judgment in Narang Overseas (supra), then referred to the previous judgment of the Delhi High Court in Maruti Suzuki (supra) and held:

> "12. From the above extract, it is evident that the Division Bench was not called upon and did not examine the constitutional validity of the provisos to Section 254(2A) of the said Act and left the issue open. It is only on a plain reading of the provisos, as they existed, that the Division Bench came to the conclusion that the Tribunal had no power to extend stay beyond a period of 365 days from the date of the first order of stay but that an assessee could file a writ petition in the High Court asking for stay even beyond the said period of 365 days and the High Court had the power and jurisdiction to grant stay and issue directions to the Tribunal and that Section 254(2A) did not prohibit/bar the High Court from issuing appropriate directions, including grant of stay of recovery. A similar view was taken by the Bombay High Court in Jethmal Faujimal Soni (supra). But that decision was also rendered on a plain meaning of the provisos, as they stood. There was no challenge to the constitutional validity of the third proviso to Section 254(2A) of the said Act after the amendment introduced by the Finance Act, 2008. No decision of any High Court has been brought to our notice by the learned counsel for the parties, wherein the constitutional validity of the third proviso to Section 254(2A) of the said Act has been examined." [at page 96-97] After referring to this Court's judgment in Mardia Chemicals Ltd. v.
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> Union of India (2004) 4 SCC 311 and the judgment of a Division Bench of the Punjab and Haryana High Court in PML Industries Ltd.

v. CCE (2013) SCC OnLine P&H 4440, which dealt with a similar provision contained in Section 35C (2A) of the Central Excise Act,1944, the Court held:

"23. Keeping in mind the principles set out by the Supreme Court in Dr Subramanian Swamy (supra), we need to examine whether the present challenge to the validity of the third proviso to Section 254(2A) can be sustained. This is not a case of excessive delegation of powers and, therefore, we need not bother about the second dimension of Article 14 in its application to legislation. We are here concerned with the question of discrimination, based on an impermissible or invalid classification. It is abundantly clear that the power granted to the Tribunal to hear and entertain an appeal and to pass orders would include the ancillary power of the Tribunal to grant a stay. Of course, the exercise of that power can be subjected to certain conditions. In the present case, we find that there are several conditions which have been stipulated. First of all, as per the first proviso to Section 254(2A), a stay order could be passed for a period not exceeding 180 days and the Tribunal should dispose of the appeal within that period. The second proviso stipulates that in case the appeal is not disposed of within the period of 180 days, if the delay in disposing of the appeal is not attributable to the assessee, the Tribunal has the power to extend the stay for a period not exceeding 365 days in aggregate. Once again, the Tribunal is directed to dispose of the appeal within the said period of stay. The third proviso, as it stands today, stipulates that if the appeal is not disposed of within the period of 365 days, then the order of stay shall stand vacated, even if the delay in disposing of the appeal is not attributable to the assessee. While it could be argued that the condition that the stay order could be extended beyond a period of 180 days only if the delay in disposing of the appeal was not attributable to the assessee was a reasonable condition on the power of the Tribunal to the grant an order of stay, it can, by no stretch of imagination, be argued that where the assessee is not responsible for the delay in the disposal of the appeal, yet the Tribunal has no power to extend the stay beyond the period of 365 days. The intention of the legislature, which has been made explicit by insertion of the words - 'even if the delay in disposing of the appeal is not attributable to the assessee'- renders the right of appeal granted to the assessee by the statute to be illusory for no fault on the part of the assessee. The stay, which was available to him prior to the 365 days having passed, is snatched away simply because the Tribunal has, for whatever reason, not attributable to the assessee, been unable to dispose of the appeal. Take the case of delay being caused in the disposal of the appeal on the part of the revenue. Even in that case, the stay would stand vacated on the expiry of 365 days. This is despite the fact that the stay was granted by the Tribunal, in the first instance, upon considering the prima facie merits of the case through a reasoned order.

24. Furthermore, the petitioners are correct in their submission that unequals have been treated equally.

Assessees who, after having obtained stay orders and by their conduct delay the appeal proceedings, have been treated in the same manner in which assessees, who have not, in any way, delayed the proceedings in the appeal. The two classes of assessees are distinct and cannot be clubbed together. This clubbing together has led to hostile discrimination against the assessees to whom the delay is not attributable. It is for this reason that we find that the insertion of the expression

- 'even if the delay in disposing of the appeal is not attributable to the assessee'- by virtue of the Finance Act, 2008, violates the non-discrimination clause of Article 14 of the Constitution of India. The object that appeals should be heard expeditiously and that assesses should not misuse the stay orders granted in their favour by adopting delaying tactics is not at all achieved by the provision as it stands. On the contrary, the clubbing together of 'well behaved' assesses and those who cause delay in the appeal proceedings is itself violative of Article 14 of the Constitution and has no nexus or connection with the object sought to be achieved. The said expression introduced by the Finance Act, 2008 is, therefore, struck down as being violative of Article 14 of the Constitution of India. This would revert us to the position of law as interpreted by the Bombay High Court in Narang Overseas (supra), with which we are in full agreement. Consequently, we hold that, where the delay in disposing of the appeal is not attributable to the assessee, the Tribunal has the power to grant extension of stay beyond 365 days in deserving cases. The writ petitions are allowed as above." [at page 107-109]

14. It is settled law that challenges to tax statutes made under Article 14 of the Constitution of India can be on grounds relatable to discrimination as well as grounds relatable to manifest arbitrariness. These grounds may be procedural or substantive in nature. Thus, in Suraj Mall Mohta and Co. v. A.V. Visvanatha Sastri (1955) 1 SCR 448, this Court struck down Section 5(4) of the Taxation on Income (Investigation Commission) Act, 1947 on the ground that the procedure prescribed was substantially more prejudicial and more drastic to the assessee than the procedure contained in the Indian Income Tax Act, 1922. Section 5(4) of the aforesaid Act was thus struck down as a piece of discriminatory legislation offending against the provisions of Article 14 of the Constitution of India.

15. Instances of taxation statutes being struck down on substantive grounds which had alleged discrimination can be found in the 5-Judge decision of this Court in Kunnathat Thatehunni Moopil Nair v. State of Kerala (1961) 3 SCR 77, in which a uniform tax called "basic tax" levied under the provisions of the Travancore Cochin Land Tax Act, 1955 was held to be discriminatory as it treated unequals equally. The Court held:

> "Ordinarily, a tax on land or land revenue is assessed on the actual or the potential productivity of the land sought to be taxed. In other words, the tax has reference to the income actually made, or which could have been made, with due diligence, and, therefore, is levied with due regard to the incidence of the taxation. Under the Act in question we shall take a hypothetical case of a number of persons owning and possessing the same area of land. One makes nothing out of the land, because it is arid desert. The second one does not make any income, but could raise some crop after a disproportionately large investment of labour and capital. A third one, in due course of husbandry, is making the land yield just enough to pay for the incidental

> expenses and labour charges besides land tax or revenue. The fourth is making large profits, because the land is very fertile and capable of yielding good crops. Under the Act, it is manifest that the fourth category, in our illustration, would easily be able to bear the burden of the tax. The third one may be able to bear the tax. The first and the second one will have to pay from their own pockets, if they could afford the tax. If they cannot afford the tax, the property is liable to be sold, in due process of law, for realisation of the public demand. It is clear, therefore, that inequality is writ large on the Act and is inherent in the very provisions of the taxing section. It is also clear that there is no attempt at classification in the provisions of the Act. Hence, no more need be said as to what could have been the basis for a valid classification. It is one of those cases where the lack of classification creates inequality. It is, therefore, clearly hit by the prohibition to deny equality before the law contained in Article 14 of the Constitution." [at page 91-92] Likewise, in Union of India v. A. Sanyasi Rao (1996) 3 SCC 465, this Court struck down Section 44-AC of the Income Tax Act as being discriminatory when only particular trades were singled out for discriminatory treatment, reliefs under Sections 28 to 43-C of the Income Tax Act being denied only to such trades. This was done as the denial of such relief had no nexus to the object sought to be achieved by the legislation and resulted in unfairness, arbitrariness and denial of equality of treatment (see paragraph 22).

16. The other facet of Article 14 has been recently resurrected by a 5- Judge Bench judgment in Shayara Bano v. Union of India (2017) 9 SCC 1 as follows:

> "101. It will be noticed that a Constitution Bench of this Court in Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641 : 1985 SCC (Tax) 121] stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article
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> 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14."

17. Judged by both these parameters, there can be no doubt that the third proviso to Section 254(2A) of the Income Tax Act, introduced by the Finance Act, 2008, would be both arbitrary and discriminatory and, therefore, liable to be struck down as offending Article 14 of the Constitution of India. First and foremost, as has correctly been held in the impugned judgment, unequals are

treated equally in that no differentiation is made by the third proviso between the assessees who are responsible for delaying the proceedings and assessees who are not so responsible. This is a little peculiar in that the legislature itself has made the aforesaid differentiation in the second proviso to Section 254(2A) of the Income Tax Act, making it clear that a stay order may be extended upto a period of 365 days upon satisfaction that the delay in disposing of the appeal is not attributable to the assessee. We have already seen as to how, as correctly held by Narang Overseas (supra), the second proviso was introduced by the Finance Act, 2007 to mitigate the rigour of the first proviso to Section 254(2A) of the Income Tax Act in its previous avatar. Ordinarily, the Appellate Tribunal, where possible, is to hear and decide appeals within a period of four years from the end of the financial year in which such appeal is filed. It is only when a stay of the impugned order before the Appellate Tribunal is granted, that the appeal is required to be disposed of within 365 days. So far as the disposal of an appeal by the Appellate Tribunal is concerned, this is a directory provision. However, so far as vacation of stay on expiry of the said period is concerned, this condition becomes mandatory so far as the assessee is concerned. The object sought to be achieved by the third proviso to Section 254(2A) of the Income Tax Act is without doubt the speedy disposal of appeals before the Appellate Tribunal in cases in which a stay has been granted in favour of the assessee. But such object cannot itself be discriminatory or arbitrary, as has been felicitously held in Nagpur Improvement Trust v. Vithal Rao (1973) 3 SCR 39 as follows:

> "It is now well-settled that the State can make a reasonable classification for the purpose of legislation. It is equally well-settled that the classification in order to be reasonable must satisfy two tests: (i) the classification must be founded on intelligible differentia and (ii) the differentia must have a rational relation with the object sought to be achieved by the legislation in question. In this connection it must be borne in mind that the object itself should be lawful. The object itself cannot be discriminatory, for otherwise, for instance, if the object is to discriminate against one section of the minority the discrimination cannot be justified on the ground that there is a reasonable classification because it has rational relation to the object sought to be achieved." [at page 47] Since the object of the third proviso to Section 254(2A) of the Income Tax Act is the automatic vacation of a stay that has been granted on the completion of 365 days, whether or not the assessee is responsible for the delay caused in hearing the appeal, such object being itself discriminatory, in the sense pointed out above, is liable to be struck down as violating Article 14 of the Constitution of India. Also, the said proviso would result in the automatic vacation of a stay upon the expiry of 365 days even if the Appellate Tribunal could not take up the appeal in time for no fault of the assessee. Further, vacation of stay in favour of the revenue would ensue even if the revenue is itself responsible for the delay in hearing the appeal. In this sense, the said proviso is also manifestly arbitrary being a provision which is capricious, irrational and disproportionate so far as the assessee is concerned.
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> 18. In fact, in a recent judgment of this Court in Essar Steel India Ltd.

Committee of Creditors v. Satish Kumar Gupta (2020) 8 SCC 531, the word "mandatorily" in the 2 nd proviso inserted through an amendment made to Section 12(3) of the Insolvency and Bankruptcy Code, 2016 was struck down. This Court held:

> "124. Given the fact that timely resolution of stressed assets is a key factor in the successful working of the Code, the only real argument against the amendment is that the time taken in legal proceedings cannot ever be put against the parties before NCLT and NCLAT based upon a Latin maxim which subserves the cause of justice, namely, actus curiae neminem gravabit.
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> 125. In Atma Ram Mittal v. Ishwar Singh Punia [Atma Ram Mittal v. Ishwar Singh Punia, (1988) 4 SCC 284] , this Court applied the maxim to time taken in legal proceedings under the Haryana Urban (Control of Rent and Eviction) Act, 1973, holding: (SCC pp. 288-89, para 8) "8. It is well settled that no man should suffer because of the fault of the court or delay in the procedure. Broom has stated the maxim actus curiae neminem gravabit — an act of court shall prejudice no man. Therefore, having regard to the time normally consumed for adjudication, the ten years' exemption or holiday from the application of the Rent Act would become illusory, if the suit has to be filed within that time and be disposed of finally. It is common knowledge that unless a suit is instituted soon after the date of letting it would never be disposed of within ten years and even then within that time it may not be disposed of. That will make the ten years holiday from the Rent Act illusory and provide no incentive to the landlords to build new houses to solve problem of shortages of houses.

The purpose of legislation would thus be defeated. Purposive interpretation in a social amelioration legislation is an imperative irrespective of anything else."

126. Likewise, in Sarah Mathew v. Institute of Cardio Vascular Diseases [Sarah Mathew v. Institute of Cardio Vascular Diseases, (2014) 2 SCC 62 : (2014) 1 SCC (Cri) 721] , this Court held that for the purpose of computing limitation under Section 468 of the Code of Criminal Procedure, 1973 the relevant date is the date of filing of the complaint and not the date on which the Magistrate takes cognizance, applying the aforesaid maxim as follows: (SCC pp. 96-97, para 39) "39. As we have already noted in reaching this conclusion, light can be drawn from legal maxims. Legal maxims are referred to in Bharat Kale [Bharat Damodar Kale v. State of A.P., (2003) 8 SCC 559 :

> 2004 SCC (Cri) 39] , Japani Sahoo [Japani Sahoo v. Chandra Sekhar Mohanty, (2007) 7 SCC 394 : (2007) 3 SCC (Cri) 388] and Vanka Radhamanohari [Vanka Radhamanohari v. Vanka Venkata Reddy, (1993) 3 SCC 4 : 1993 SCC (Cri) 571] . The object of the criminal law is to punish perpetrators of crime. This is in tune with the well-

known legal maxim nullum tempus aut locus occurrit regi, which means that a crime never dies. At the same time, it is also the policy of law to assist the vigilant and not the sleepy. This is expressed in

the Latin maxim vigilantibus et non dormientibus, jura subveniunt. Chapter XXXVI CrPC which provides limitation period for certain types of offences for which lesser sentence is provided draws support from this maxim. But, even certain offences such as Section 384 or 465 IPC, which have lesser punishment may have serious social consequences. The provision is, therefore, made for condonation of delay. Treating date of filing of complaint or date of initiation of proceedings as the relevant date for computing limitation under Section 468 of the Code is supported by the legal maxim actus curiae neminem gravabit which means that the act of court shall prejudice no man. It bears repetition to state that the court's inaction in taking cognizance i.e. court's inaction in applying mind to the suspected offence should not be allowed to cause prejudice to a diligent complainant. Chapter XXXVI thus presents the interplay of these three legal maxims. The provisions of this Chapter, however, are not interpreted solely on the basis of these maxims. They only serve as guiding principles."

127. Both these judgments in Atma Ram Mittal [Atma Ram Mittal v. Ishwar Singh Punia, (1988) 4 SCC 284] and Sarah Mathew [Sarah Mathew v. Institute of Cardio Vascular Diseases, (2014) 2 SCC 62 : (2014) 1 SCC (Cri) 721] have been followed in Neeraj Kumar Sainy v. State of U.P. [Neeraj Kumar Sainy v. State of U.P., (2017) 14 SCC 136 : 8 SCEC 454] , SCC paras 29 and 32. Given the fact that the time taken in legal proceedings cannot possibly harm a litigant if the Tribunal itself cannot take up the litigant's case within the requisite period for no fault of the litigant, a provision which mandatorily requires the CIRP to end by a certain date — without any exception thereto — may well be an excessive interference with a litigant's fundamental right to non-arbitrary treatment under Article 14 and an excessive, arbitrary and therefore unreasonable restriction on a litigant's fundamental right to carry on business under Article 19(1)(g) of the Constitution of India. This being the case, we would ordinarily have struck down the provision in its entirety. However, that would then throw the baby out with the bath water, inasmuch as the time taken in legal proceedings is certainly an important factor which causes delay, and which has made previous statutory experiments fail as we have seen from Madras Petrochem [Madras Petrochem Ltd. v. BIFR, (2016) 4 SCC 1 : (2016) 2 SCC (Civ) 478] . Thus, while leaving the provision otherwise intact, we strike down the word "mandatorily" as being manifestly arbitrary under Article 14 of the Constitution of India and as being an excessive and unreasonable restriction on the litigant's right to carry on business under Article 19(1)(g) of the Constitution. The effect of this declaration is that ordinarily the time taken in relation to the corporate resolution process of the corporate debtor must be completed within the outer limit of 330 days from the insolvency commencement date, including extensions and the time taken in legal proceedings. However, on the facts of a given case, if it can be shown to the Adjudicating Authority and/or Appellate Tribunal under the Code that only a short period is left for completion of the insolvency resolution process beyond 330 days, and that it would be in the interest of all stakeholders that the corporate debtor be put back on its feet instead of being sent into liquidation and that the time taken in legal proceedings is largely due to factors owing to which the fault cannot be ascribed to the litigants before the Adjudicating Authority and/or Appellate Tribunal, the delay or a large part thereof being attributable to the tardy process of the Adjudicating Authority and/or the Appellate Tribunal itself, it may be open in such cases for the Adjudicating Authority and/or Appellate Tribunal to extend time beyond 330 days. Likewise, even under the newly added proviso to Section 12, if by reason of all the aforesaid factors the grace period of 90 days from the date of commencement of the Amending Act of 2019 is exceeded, there again a

discretion can be exercised by the Adjudicating Authority and/or Appellate Tribunal to further extend time keeping the aforesaid parameters in mind. It is only in such exceptional cases that time can be extended, the general rule being that 330 days is the outer limit within which resolution of the stressed assets of the corporate debtor must take place beyond which the corporate debtor is to be driven into liquidation."

19. Coming to the arguments of the learned ASG, his reliance upon passages contained in M/s M. Ramnarain (P) Ltd. v. State Trading Corpn. of India Ltd. (1983) 3 SCC 75 (paragraph 16) and M. Janardhana Rao v. CIT (2005) 2 SCC 324 (paragraph 14) do not carry the matter any further. In M/s M. Ramnarain (supra) what was held in paragraph 16 was that the statutory right of appeal conferred on a party may be lost by application of the provisions of some law or by the conduct of the party. This was held in the context of the provisions of Order XX Rule 11 of the Code of Civil Procedure, 1908, which was held by the High Court in that case to deprive the Appellant of his right to prefer an appeal against the main decree. The High Court judgment was set aside, this Court holding:

> "21. Though by virtue of the provisions of the Original Side Rules of the Bombay High Court the earlier appeal could be permitted to be filed without a certified copy of the decree or order, the appeal would not be valid and competent unless the further requirement of filing the certified copy had been complied with. At the time when the earlier Appeal No. 36 of 1981 had been withdrawn, the certified copy of the decree had not been filed. The said appeal without the certified copy of the decree remained an incompetent appeal. The withdrawal of an incompetent appeal which will indeed be no appeal in the eye of law cannot in any way prejudice the right of any appellant to file a proper appeal, if the right of appeal is not otherwise lost by lapse of time or for any other valid reason. We are, therefore, of the opinion that the provisions contained in Order 20 Rule 11 of the Code do not in the facts and circumstances of the present case deprive the appellant of his right to file an appeal against the decree." This judgment is distinguishable as it does not deal with the constitutional validity of an appeal provision.

20. Likewise, the judgment in Janardhana Rao (supra), which held that a right of appeal is neither a natural nor inherent right but has to be regulated in accordance with the law in force at the relevant time, the conditions of the appellate provision having to be strictly fulfilled, is also a judgment which has no reference to the constitutional validity of an appeal provision being assailed. In point of fact, this Court's judgment in Mardia Chemicals (supra) comes nearer home when the constitutional validity of a condition for the exercise of the right of appeal is assailed. This was felicitously put by this Court as follows:

> "60. The requirement of pre-deposit of any amount at the first instance of proceedings is not to be found in any of the decisions cited on behalf of the respondent. All these cases relate to appeals. The amount of deposit of 75% of the demand, at the initial proceeding itself sounds unreasonable and oppressive, more particularly when the secured assets/the management thereof along with the right to

> transfer such interest has been taken over by the secured creditor or in some cases property is also sold. Requirement of deposit of such a heavy amount on the basis of a one-sided claim alone, cannot be said to be a reasonable condition at the first instance itself before start of adjudication of the dispute. Merely giving power to the Tribunal to waive or reduce the amount, does not cure the inherent infirmity leaning one-sidedly in favour of the party, who, so far has alone been the party to decide the amount and the fact of default and classifying the dues as NPAs without participation/association of the borrower in the process. Such an onerous and oppressive condition should not be left operative in expectation of reasonable exercise of discretion by the authority concerned. Placed in a situation as indicated above, where it may not be possible for the borrower to raise any amount to make the deposit, his secured assets having already been taken possession of or sold, such a rider to approach the Tribunal at the first instance of proceedings, captioned as appeal, renders the remedy illusory and nugatory.
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> 61. In the case of Seth Nand Lal [1980 Supp SCC 574] while considering the question of validity of pre-deposit before availing the right of appeal the Court held: (SCC p. 590, para 22) [R]ight of appeal is a creature of the statute and while granting the right the legislature can impose conditions for the exercise of such right so long as the conditions are not so onerous as to amount to unreasonable restrictions rendering the right almost illusory." [emphasis supplied] This Court ultimately struck down Section 17(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act") holding that in the circumstances mentioned, the deposit of 75% of the amount claimed as a pre-condition to the hearing of an "appeal" before the Debt Recovery Tribunal under Section 17 of the SARFAESI Act was onerous, oppressive, unreasonable, arbitrary and hence violative of Article 14 of the Constitution of India.

21. The learned ASG then relied upon judgments which indicate that when Article 14 of the Constitution of India is applied to tax legislation, greater freedom in the joints must be allowed by the Court in adjudging the constitutional validity of the same. For this purpose, he relied upon State of M.P. v. Bhopal Sugar Industries Ltd. (1964) 6 SCR 846. In this case, the judgment of this Court held that if the statute discloses a permissible policy of taxation, the Courts will uphold it. If, however, the tax was imposed deliberately with the object of differentiating between persons similarly circumstanced, such tax would be liable to be struck down.

22. We have already seen how unequals have been treated equally so far as assessees who are responsible for delaying appellate proceedings and those who are not so responsible, resulting in a violation of Article 14 of the Constitution of India. Also, the expression "permissible" policy of taxation would refer to a policy that is constitutionally permissible. If the policy is itself arbitrary and discriminatory, such policy will have to be struck down, as has been found in paragraph 17 above.

23. The other judgment relied upon by the learned ASG is the judgment in N. Venugopala Ravi Varma Rajah v. Union of India (1969) 1 SCC 681 (paragraph 14). This judgment speaks of a larger play in the joints to legislative discretion in the matter of classification being granted when such legislation is a tax legislation. The caveat applied in this paragraph is that a taxing statute may contravene Article 14 of the Constitution of India if it seeks to impose upon the same class of property, persons, etc., something which leads to obvious inequality. It is this caveat that has been applied to the third proviso to Section 254(2A) of the Income Tax Act.

24. The learned ASG then relied upon Commr. of Customs v. Dilip Kumar & Co. (2018) 9 SCC 1 (paragraphs 32 to 34). This judgment only reiterates the well-settled principle that in the field of taxation hardship or equity has no role to play in determining eligibility to tax. The present appeals have nothing to do with determining eligibility to tax. They have only to do with a frontal challenge to the constitutional validity of an appeal provision in the Income Tax Act. Also, it is important to remember that the golden rule of interpretation is not given a go-by when it comes to interpretation of tax statutes. This Court in CIT v. J.H. Gotla (1985) 4 SCC 343, put it well when it said:

> "46. Where the plain literal interpretation of a statutory provision produces a manifestly unjust result which could never have been intended by the Legislature, the Court might modify the language used by the Legislature so as to achieve the intention of the Legislature and produce a rational construction. The task of interpretation of a statutory provision is an attempt to discover the intention of the Legislature from the language used. It is necessary to remember that language is at best an imperfect instrument for the expression of human intention. It is well to remember the warning administered by Judge Learned Hand that one should not make a fortress out of dictionary but remember that statutes always have some purpose or object to accomplish and sympathetic and imaginative discovery is the surest guide to their meaning.
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> 47. We have noted the object of Section 16(3) of the Act which has to be read in conjunction with Section 24(2) in this case for the present purpose. If the purpose of a particular provision is easily discernible from the whole scheme of the Act which in this case is, to counteract the effect of the transfer of assets so far as computation of income of the assessee is concerned then bearing that purpose in mind, we should find out the intention from the language used by the Legislature and if strict literal construction leads to an absurd result i.e. result not intended to be subserved by the object of the legislation found in the manner indicated before, and if another construction is possible apart from strict literal construction then that construction should be preferred to the strict literal construction. Though equity and taxation are often strangers, attempts should be made that these do not remain always so and if a construction results in equity rather than in injustice, then such construction should be preferred to the literal construction. Furthermore, in the instant case we are dealing with an artificial liability created for counteracting the effect only of attempts by the assessee to reduce tax liability by transfer. It has also been noted how for various purposes the business from which profit is included or loss is set off is treated

> in various situations as assessee's income. The scheme of the Act as worked out has been noted before."

25. The law laid down by the impugned judgment of the Delhi High Court in M/s Pepsi Foods Ltd. (supra) is correct. Resultantly, the judgments of the various High Courts which follow the aforesaid declaration of law are also correct. Consequently, the third proviso to Section 254(2A) of the Income Tax Act will now be read without the word "even" and the words "is not" after the words "delay in disposing of the appeal". Any order of stay shall stand vacated after the expiry of the period or periods mentioned in the Section only if the delay in disposing of the appeal is attributable to the assessee. The appeals of the revenue are, therefore, dismissed.

.....J. [ROHINTON FALI NARIMAN] .....J. [B.R. GAVAI] .....J. [HRISHIKESH ROY] New Delhi;

April 06, 2021.