

Deputy Commissioner of Income Tax and Another v. M/s. Pepsi Foods Ltd. (now PepsiCo India Holdings Pvt. Ltd.)

Civil Appeal No. 1106 of 2021 and connected proceedings (full list below)

[2021] 4 S.C.R. 1 | 2021-04-06

Whether the third proviso to section 254(2A), as amended in 2008, could constitutionally vacate an ITAT stay after the prescribed period, including the 365-day limit, even where delay in disposing of the appeal was not attributable to the assessee; and the resulting extent of protection against expiry-based vacation of stay.

254(2A)

Three-judge bench | Rohinton Fali Nariman, J. | B.R. Gavai, J. | Hrishikesh Roy, J.

Assessment years: 2008-2009

01 FACTS OF THE CASE

The Revenue appealed against the Delhi High Court's judgment of 19 May 2015 and other High Court decisions concerning the constitutional validity of the third proviso to section 254(2A). The Supreme Court condoned delay, granted leave and decided the connected appeals together. It used Pepsi Foods' circumstances as illustrative, rather than making them the facts of every connected case (paragraphs 1-3; SCR PDF pages 6-7).

The lead assessee manufactured and sold concentrates and fruit juices, processed rice and traded goods for export. It had merged with PepsiCo India Holdings Pvt. Ltd. with effect from 1 April 2010 under an approved arrangement. Its return filed on 30 September 2008 for assessment year 2008-2009 declared income of INR 92,54,89,822. An adverse final assessment order followed on 19 October 2012, and an appeal to the ITAT was filed on 29 April 2013. The stated amount is returned income, not the disputed tax demand or an amount adjudicated by this judgment (paragraph 3; SCR PDF page 6).

The Tribunal granted a six-month stay on 31 May 2013. The judgment records extensions to 8 January 2014 and thereafter to 28 May 2014. With the 365-day period due to end on 30 May 2014, the assessee filed its writ petition on 21 May 2014, apprehending coercive recovery. The High Court invalidated the restriction that prevented extension beyond 365 days even when the assessee had not caused the delay. The assessment's substantive additions or deductions were not the issue before the Supreme Court (paragraph 3; SCR PDF pages 6-7).

The Revenue argued that stay was discretionary, that appeal itself was a statutory right subject to legislative conditions, that taxation legislation deserved considerable latitude under Article 14, and that hardship or equity could not displace clear tax provisions. The assessee answered that automatic loss of an already justified stay, without examining responsibility for delay, was discriminatory and arbitrary, and that an unconstitutional policy could not be saved merely by describing it as tax policy. These are recorded rival submissions, not an independent holding that every appeal carries an unconditional entitlement to stay (paragraphs 4-5; SCR PDF pages 7-8).

Source: [scr report / paragraphs 1-3 / PDF pages 6, 7 / judgment](#); [scr report / paragraphs 4-5 / PDF pages 7, 8 / judgment](#)

02 DISCUSSION BY THE HON'BLE COURT

The Hon'ble Court began with *Income Tax Officer v. M.K. Mohammed Kunhi*, [1969] 2 SCR 65. Section 254's appellate jurisdiction implied the incidental power needed to prevent a successful appeal from becoming futile through recovery in the meantime. The source of that power was not simply the Tribunal's procedural rule-making power under section 255(5). The quoted precedent also emphasised that stay was appropriate in deserving cases showing a strong prima facie case, not routinely or as a matter of course. The present Court expressly adopted the protective function of stay while preserving its discretionary character (paragraph 6; SCR PDF pages 8-9).

The statutory history mattered. The Finance Act, 2001, effective 1 June 2001, introduced a 180-day disposal period where stay had been granted, with vacation on expiry. The Finance Act, 2007, effective 1 June 2007, expressly allowed an initial stay not exceeding 180 days and extensions, on the assessee's application and satisfaction that delay was not attributable to it, up to an aggregate 365 days. The judgment contrasts directory disposal requirements with mandatory consequences for the assessee when stay expires. These are the historical texts reproduced and examined in this case, not a representation of the complete present statutory text (paragraphs 7-8; SCR PDF pages 9-10).

Narang Overseas Pvt. Ltd. v. ITAT, (2007) 295 ITR 22, had treated continued interim protection as available for good cause where the assessee did not cause the delay. It drew support from *Commissioner of Customs and Central Excise v. Kumar Cotton Mills*, (2005) 13 SCC 296, concerning an analogous excise provision. The Finance Act, 2008, effective 1 October 2008, then expressly inserted the 365-day ceiling and the requirement to vacate stay even where the assessee was not responsible for the delay. That 2008 change was the target of the constitutional challenge (paragraphs 9-10; SCR PDF pages 10-13).

The Court traced the differing High Court approaches. *Maruti Suzuki*, (2014) 362 ITR 215, read the amended proviso literally but expressly left its constitutional validity open and recognised the High Court's writ powers. *Vodafone Essar Gujarat*, (2015) 376 ITR 23, permitted extensions on satisfaction that the assessee had not delayed the appeal, with applications, reasoned review and priority disposal. Those procedural directions are reproduced as the Gujarat High Court's reasoning, not separately restated as new operative directions of the Supreme Court. The impugned *Pepsi Foods* judgment, (2015) 376 ITR 87, directly addressed constitutionality and held that grouping diligent assessee with delay-causing assessee violated Article 14. Its passages are quoted at length within Supreme Court paragraph 13 (paragraphs 11-13; SCR PDF pages 13-19).

Article 14 scrutiny of taxation legislation can address both discrimination and manifest arbitrariness, whether procedural or substantive. *Suraj Mall Mohta*, *Moopil Nair* and *A. Sanyasi Rao* were invoked as illustrations of discriminatory taxation or tax procedure. The Court then applied the manifest-arbitrariness test quoted from *Shayara Bano*: capricious or irrational legislation, legislation without an adequate determining principle, or excessive and disproportionate legislation can fail Article 14. These discussions of earlier authorities are

02 DISCUSSION BY THE HON'BLE COURT

not new holdings on the earlier statutes or Pepsi Foods' taxable income (paragraphs 14-16; SCR PDF pages 19-21).

The decisive reasoning appears in paragraph 17. Assesseees who caused delay and those who did not were treated alike, although the second proviso itself recognised that difference when allowing extensions. The ordinary four-year disposal formulation and the accelerated timetable for stayed appeals could not justify a rule that prejudiced an innocent assessee because the Tribunal could not hear the appeal. Worse, automatic vacation could benefit the Revenue when the Revenue itself caused the delay. The provision was therefore both discriminatory and manifestly arbitrary. Speedy disposal was a legitimate concern, but the legislative object or means could not themselves be discriminatory or arbitrary; Nagpur Improvement Trust v. Vithal Rao supported that limit (paragraph 17; SCR PDF pages 21-22).

The Court reinforced its conclusion through Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta, (2020) 8 SCC 531. That decision had removed the mandatory character of an insolvency timetable in circumstances where adjudicatory delay could not fairly be laid at the litigant's door. The extended quotation illustrates the principle that court-caused delay should not prejudice a diligent litigant. Its 330-day resolution period, exceptional-extension parameters, discussion of Article 19(1)(g), and nested criminal-limitation and tenancy authorities belong to the quoted insolvency reasoning; they are not additional tax-stay time limits or separate grounds of relief here (paragraph 18; SCR PDF pages 22-25).

The Revenue's reliance on M. Ramnarain and M. Janardhana Rao did not answer the constitutional question. Those cases concerned the statutory nature of appeal and compliance with appellate conditions, not a challenge to the validity of the condition itself. Mardia Chemicals was closer in principle: an onerous procedural condition could make a remedy illusory. The Court's discussion of that case's former 75% pre-deposit requirement does not invalidate every deposit requirement or decide any separate deposit condition under the Income-tax Act (paragraphs 19-20; SCR PDF pages 25-28).

The latitude accorded to fiscal classifications in Bhopal Sugar Industries and N. Venugopala Ravi Varma Rajah did not save the provision. A permissible taxation policy must be constitutionally permissible; fiscal discretion does not authorise obvious inequality. Treating blameworthy and blameless assesseees alike fell outside that latitude (paragraphs 21-23; SCR PDF page 28).

Finally, Dilip Kumar and Co.'s rule concerning hardship and equity in determining tax eligibility did not control a direct constitutional challenge to an appellate provision. The Court also invoked J.H. Gotla on avoiding a manifestly unjust or absurd literal construction inconsistent with a statute's purpose. This reasoning concerns constitutional protection and rational construction of the stay provision; it is not a general licence to ignore clear charging or exemption provisions on equitable grounds (paragraph 24; SCR PDF pages 28-29).

02 DISCUSSION BY THE HON'BLE COURT

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Source: [scr report / paragraphs 6 / PDF pages 8, 9 / judgment](#); [scr report / paragraphs 7-8 / PDF pages 9, 10 / judgment](#); [scr report / paragraphs 9-10 / PDF pages 10, 11, 12, 13 / judgment](#); [scr report / paragraphs 11-13 / PDF pages 13, 14, 15, 16, 17, 18, 19 / judgment discussing prior authorities](#); [scr report / paragraphs 14-16 / PDF pages 19, 20, 21 / judgment](#); [scr report / paragraphs 17 / PDF pages 21, 22 / judgment](#); [scr report / paragraphs 18 / PDF pages 22, 23, 24, 25 / judgment discussing prior authorities](#); [scr report / paragraphs 19-20 / PDF pages 25, 26, 27, 28 / judgment](#); [scr report / paragraphs 21-23 / PDF pages 28 / judgment](#); [scr report / paragraphs 24 / PDF pages 28, 29 / judgment](#)

03 JUDICIAL DECISION

The Court upheld the law declared by the Delhi High Court in Pepsi Foods and the High Court judgments following that declaration. Its precise operative direction was that the third proviso to section 254(2A) be read without the word "even" and the words "is not" after "delay in disposing of the appeal". It stated that a stay would stand vacated after expiry of the statutory period or periods only if the delay in disposal was attributable to the assessee. The Revenue's appeals were dismissed (paragraph 25; SCR PDF page 30; official PDF pages 35-36).

The constitutional defect identified in paragraph 17 was therefore cured through the specified textual excision, rather than by erasing the whole section or abolishing all time limits and conditions for stay. The result protects the possibility of continued stay beyond 365 days where the assessee is not responsible for delay. It does not confer an unconditional stay upon filing an appeal, order an indefinite stay in every case, or decide the merits of the lead assessment. There is no remand, quantified tax relief, separate costs direction, or new case-specific timetable for the ITAT in the operative paragraph.

Source: [scr report / paragraphs 17; 25 / PDF pages 21, 22, 30 / judgment](#); [official signed judgment / paragraphs 25 / PDF pages 35, 36 / judgment](#)

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Respondent assessee on the constitutional validity of automatic stay vacation; Revenue appeals dismissed

Delhi High Court declaration and following High Court judgments affirmed; specified words excised from the third proviso to section 254(2A); Civil Appeal Nos. 1106-1139 of 2021 dismissed

Constitutional stay-procedure issue finally decided; substantive tax assessments not adjudicated

Expiry-based vacation applies only if appeal delay is attributable to the assessee. Continued stay remains a matter for the applicable statutory framework and judicially exercised discretion; this is not automatic indefinite protection or a present-law certificate.

Source: [scr report / paragraphs 25 / PDF pages 30 / judgment](#); [official signed judgment / paragraphs 25: signatures/date / PDF pages 35, 36 / judgment](#)

05 AKHB REVIEW POINT

For a stay-extension application, paragraph 25 supplies the operative rule and paragraph 17 the Article 14 rationale. Prepare a dated hearing and adjournment chronology, the original stay order, extension orders, pending applications and evidence identifying who caused each material delay. Distinguish Tribunal unavailability or Revenue-requested adjournments from delay attributable to the assessee; the mere passage of 365 days is not the whole enquiry under the declaration made here. Continue seeking timely, reasoned orders rather than assuming that a stay renews automatically.

Separate the constitutional rule against fault-blind expiry from the initial merits of granting stay and from any independent deposit, security or other condition applicable to the relevant statutory version. The judgment's historical 2001, 2007 and 2008 extracts do not establish the complete requirements of a later stay application. The quoted 180-day review procedure in Vodafone Essar and insolvency deadlines in Essar Steel should not be presented as fresh operative commands in this Supreme Court judgment.

The AY 2008-2009 and INR 92,54,89,822 figure belong to the illustrative lead case; the amount is returned income. Do not use them as a common year or tax demand for the entire batch, or describe dismissal of these Revenue appeals as deletion of Pepsi Foods' assessment additions. Verify the original order, applicable statutory text, later amendments and subsequent judicial treatment before current professional use. This note makes no automatic mapping to the Income-tax Act, 2025 and does not certify current law.

Source: [scr report / paragraphs 3; 6; 10; 12; 17; 25 / PDF pages 6, 7, 8, 9, 13, 14, 15, 16, 21, 22, 30 / editorial synthesis](#)

APPEAL AND PROCEEDING NUMBERS

Civil Appeal No. 1106 of 2021 / Civil Appeal No. 1107 of 2021 / Civil Appeal No. 1108 of 2021 / Civil Appeal No. 1109 of 2021 / Civil Appeal No. 1110 of 2021 / Civil Appeal No. 1111 of 2021 / Civil Appeal No. 1112 of 2021 / Civil Appeal No. 1113 of 2021 / Civil Appeal No. 1114 of 2021 / Civil Appeal No. 1115 of 2021 / Civil Appeal No. 1116 of 2021 / Civil Appeal No. 1117 of 2021 / Civil Appeal No. 1118 of 2021 / Civil Appeal No. 1119 of 2021 / Civil Appeal No. 1120 of 2021 / Civil Appeal No. 1121 of 2021 / Civil Appeal No. 1122 of 2021 / Civil Appeal No. 1123 of 2021 / Civil Appeal No. 1124 of 2021 / Civil Appeal No. 1125 of 2021 / Civil Appeal No. 1126 of 2021 / Civil Appeal No. 1127 of 2021 / Civil Appeal No. 1128 of 2021 / Civil Appeal No. 1129 of 2021 / Civil Appeal No. 1130 of 2021 / Civil Appeal No. 1131 of 2021 / Civil Appeal No. 1132 of 2021 / Civil Appeal No. 1133 of 2021 / Civil Appeal No. 1134 of 2021 / Civil Appeal No. 1135 of 2021 / Civil Appeal No. 1136 of 2021 / Civil Appeal No. 1137 of 2021 / Civil Appeal No. 1138 of 2021 / Civil Appeal No. 1139 of 2021

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

254(1); 253(1); 253(2); 255(5); 220(6)

PROVISION-SPECIFIC SCOPE

1.

Act: Income-tax Act, 1961

Section: 254(2A), third proviso

Role: challenged provision and direct holding

Basis: Automatic vacation clause as substituted by the Finance Act, 2008 with effect from 1 October 2008; Article 14 analysis and operative textual excision in paragraphs 17 and 25.

2.

Act: Income-tax Act, 1961

Section: 254(2A), main provision and first and second provisos

Role: historical statutory context

Basis: The judgment reproduces the 2001 and 2007 frameworks and the 2008 version. The first/second provisos and disposal periods supply the internal comparison; this is not a comprehensive current-law construction of all stay conditions.

3.

Act: Income-tax Act, 1961

Section: 254(1); 255(5); 220(6)

Role: prior precedent context

Basis: Mohammed Kunhi is discussed in paragraph 6 for the implied incidental stay power attached to appellate jurisdiction; section 255(5) procedural power is distinguished from that basis, and section 220(6) is a contextual comparison.

4.

Act: Income-tax Act, 1961

Section: 253(1); 253(2)

Role: statutory cross reference

Basis: Mentioned in the section 254(2A) extracts; no separate holding on appeal maintainability or standing.

5.

Act: Income-tax Act, 1961

Section: 44AC; 28-43C

Role: prior case discussion only

Basis: Paragraph 15 discusses A. Sanyasi Rao as an equality illustration; these provisions do not concern the assessment merits decided in this appeal.

6.

Act: Central Excise Act, 1944

Section: 35C(2A)

Role: analogous prior precedent

Basis: Kumar Cotton Mills and PML Industries are discussed as analogous stay-time-limit cases; not a separate excise disposition.

7.

Act: Insolvency and Bankruptcy Code, 2016

Section: 12(3)

Role: analogous prior precedent

Basis: Paragraph 18 quotes Essar Steel on mandatory procedural time limits; its insolvency timetable is not an ITAT rule.

8.

Act: Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

Section: 17(2), historical provision

Role: analogous prior precedent

Basis: Mardia Chemicals is discussed in paragraph 20 on oppressive conditions rendering a remedy illusory; no fresh SARFAESI holding is made.

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

Rohinton Fali Nariman, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

CONSTITUTIONAL PROVISIONS CONSIDERED

14

SOURCE & VERIFICATION

[Hon'ble Supreme Court source PDF \(official signed judgment\)](#)

Identified source rendition: 36 PDF pages; SHA-256 dd35f671cdeef9a63ba84762f79235162c4d7f4a90836faba357d0f7ef6431c4. Original bytes preserved. Official judicial body runs from paragraph 1 on physical page 4 through paragraph 25 and signatures on page 36. Pages 1-3 list the lead and connected appeals; no editorial headnote.

Open cited source rendition

One common final judgment, not 34 separate case notes. Civil Appeal No. 1125 is listed out of numerical order on the source cover; it is included once in the numerically sorted batch list.

The SCR headnote on pages 1-4, references and appeal particulars on page 5, and counsel material on page 6 are not the judicial reasons. Judicial paragraphs 1-25 run from pages 6-30; quoted High Court paragraphs 23-24 and other nested numbering must not be mistaken for this Court's paragraph numbers.

All primary pinpoints use physical pages of the preserved 30-page SCR PDF. The separate official rendition has 36 pages, begins the judgment on page 4 and carries paragraph 25 on pages 35-36; its pinpoints use its own URL and physical pages.

The actual disposition is a specified textual excision from the third proviso. The broad description that the proviso is unconstitutional must be read with paragraph 25; the entire section and every stay condition were not erased.

Narang Overseas is quoted with references to 360 days on SCR page 11. The statutory text on pages 10 and 13 and the present judgment's holding use 365 days. The quoted figure is not adopted as the applicable ceiling or silently used to change the preserved source.

The Vodafone Essar quotation on SCR page 15 refers to section 35C(2A); the same wording appears on official page 16. It is preserved quoted material, not a separate excise issue decided in Pepsi Foods. The 180-day review procedure is attributed to that quoted High Court reasoning.

Paragraph 15 describes A. Sanyasi Rao in terms of striking down section 44AC. This note uses it only as the present Court's equality illustration; the earlier judgment and its precise operative treatment of sections 44AC and 206C were not independently re-reviewed.

The Essar Steel quotation contains Article 19(1)(g), 330-day and 90-day periods, and nested tenancy/criminal-law precedents. The present holding rests on Article 14 and the income-tax stay provision, not those other statutory time limits.

AY 2008-2009 and the stated returned income relate to the illustrative lead assessee alone. The Court did not decide the tax merits or quantify the disputed demand in these appeals.

The cover metadata's 2021INSC227 is not treated as independently verified neutral citation. The SCR report citation, bench, decision date and author were checked on the source and corroborated by the official original.

Later treatment, present statutory consolidation and current-law consequences are not verified. No automatic 2025 Act crosswalk or current-law certification is supplied.

SCR citation verified on the preserved report cover; printed SCR pages 1-30 coincide with physical PDF pages 1-30. The frozen metadata also records 2021INSC227, but that neutral-citation string was not independently verified on either PDF and is not adopted as the publication citation.

This is the lead assessee's assessment year in paragraph 3, supplied as illustrative of the batch. It is not assigned to every connected assessee. No assessment-year-specific tax merits are decided.

One common judgment disposes of Civil Appeal Nos. 1106-1139 of 2021. The lead appeal arises from SLP (Civil) No. 30284 of 2015. The source lists Civil Appeal No. 1125 immediately after the lead appeal, before Nos. 1107-1124; the list here is numerically ordered. The challenged lead order is the Delhi High Court judgment dated 19 May 2015 in W.P. (C) No. 3650 of 2014.

STATUTORY SCOPE

Historical section 254(2A) provisions reproduced in paragraphs 7-10: 2001 regime effective 1 June 2001, 2007 regime effective 1 June 2007, and challenged 2008 substitution effective 1 October 2008. The statutory narrative is verified against the judgment, not independently against every historical Gazette or the complete later consolidated Act.

No automatic mapping to the Income-tax Act, 2025. Later treatment and the full statutory conditions applicable to a current stay application, including any independent deposit or security requirement, have not been certified.

LATER TREATMENT

Source checked 2026-10-04. Subsequent review proceedings, clarifications, stays, implementation, amendments and later judicial treatment have not been comprehensively checked. This is not a citator or current-law certificate.

IDENTIFIED SOURCE LINKS

[official signed judgment - Official cover pages 1-3; judicial opening page 4; paragraph 25 pages 35-36; signatures and decision date page 36 - PDF pages: 36](#)

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[scr report - \[2021\] 4 S.C.R. 1; physical PDF pages 1-30 coincide with printed SCR pages 1-30 - PDF pages: 30](#)

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