* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **ITA Nos. 469-71/2005**

\# THE COMMISSIONER OF INCOME-TAX ..... Appellant
! Through Mr. R.D. Jolly with Ms.Rashmi Chopra, Advs.

versus

$ M/S. ORIENTAL INSURANCE CO. LTD..... Respondent
^ Through NEMO.

CORAM:
HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MR. JUSTICE BADAR DURREZ AHMED

1. Whether reporters of local papers may be allowed to see the judgment? NO

2. To be referred to the Reporter or not? NO

3. Whether the judgment should be reported in the Digest? NO

: T.S. THAKUR, J

For original signed orders, see ITA No. 468/2005 and connected matters.

T.S. THAKUR, J.

BADAR DURREZ AHMED, J.

September 22,2005
pk/ss

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

1. \+ **ITA Nos.468, 469, 470 & 471/2005**

Date of Decision: September 22 ,2005

\# THE COMMISSIONER OF INCOME-TAX ..... Appellant
! Through Mr. R.D. Jolly with Ms.Rashmi Chopra, Advs.

versus

$ M/S. ORIENTAL INSURANCE CO. LTD..... Respondent
^ Through NEMO.

2. **ITA No.394/2005**

\# THE COMMISSIONER OF INCOME-TAX ..... Appellant.
! Through Mr. R.D. Jolly with Ms.Rashmi Chopra, Advs.

versus

$ M/S MMTC ..... Respondent
^ Through NEMO.

3. **ITA No.464/2005**

\# THE COMMISSIONER OF INCOME-TAX ..... Appellant.
! Through Mr. J.R. Goel, Adv.

versus

$ M/S INTERNATIONAL AIRPORT AUTHORITY INDIA LTD. ..... Respondent
^ Through NEMO.
%

CORAM:
HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MR. JUSTICE BADAR DURREZ AHMED

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1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether the judgment should be reported in the Digest?

: **T.S. THAKUR, J.**

What is the appropriate order that this Court ought to make in cases where the appellant has preferred appeals without complying with the procedural requirements of obtaining clearance from the Committee on Disputes (COD) in terms of the directions of the Supreme Court, is the short question that falls for our consideration for the present. In similar situations this Court has passed orders of disposal of the appeals in the following words:

> "14.12.2004
>
> Present : Ms. Prem Lata Bansal for the appellant.
>
> +ITA No. 58/2004
>
> The learned counsel for the appellant states that the Committee on Disputes has been approached for clearance for preferring and prosecuting the appeal. They are awaiting the sanction. Hence, we dispose of this appeal with liberty to the appellant to revive the

appeal on obtaining clearance from the Committee on Disputes.

CHIEF JUSTICE

BADAR DURREZ AHMED, J.
December 14, 2004
as"

2. Learned counsel for the appellant submitted that the appeals could be adjourned *sine die* to be taken up after the clearance from the Committee is produced before the Court, in which event the appellants were not averse to this court fixing a time-frame within which the requisite clearance shall be obtained and produced failing which the Court could pass appropriate orders for dismissal of the appeals. Since the issue arises rather frequently and involves questions of procedural rectitude and judicial proprietary, the same was heard at some length by us. The present order would, therefore, address itself only to the limited question as to whether the appeals can in themselves be disposed of for want of clearance by the High Power Committee constituted in terms of the directions issued by the Supreme Court.

3. It was in *Oil and Natural Gas Commission and Anr. vs. Collector of Central Excise,* **1995 Suppl (4) SCC 541** that the apex Court, for the first time, noticed the undesirable phenomena

of public sector undertakings fighting litigation with the State or the Central Government in different courts involving wasteful expenditure and loss of valuable public time. Directions were issued by their Lordships in terms of their order dated 11th September, 1991 to the Government to take appropriate initiative in preventing such anomalous situations where the Government was fighting litigation against its own instrumentalities. The Government fell in line with the view expressed by the Court that public undertaking of Central Government and the Union of India should not fight their litigation in the Courts spending money on counsel's fees, Court fees and procedural expenses and that regardless of the nature and the type of disputes, the same should be resolved amicably by mutual consultation or through the good offices of empowered agencies of the Government. The Supreme Court, therefore, directed the Government of India to set up a committee consisting of representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law to monitor disputes between the Government of India and its public sector undertakings or between public sector undertakings themselves to ensure that no litigation comes to the Court or to a Tribunal without the matter having been first examined by the

Committee and its clearance for litigation. Having said so, the Court observed :

> "It shall be the obligation of every Court and every Tribunal where such a dispute is raised hereafter to demand a clearance from the committee in case it has not been so pleaded and in the absence of the clearance, the proceedings would not be proceeded with."

4. The above direction came up for consideration before the Supreme Court in *Oil and Natural Gas Commission vs. Collector of Central Excise,* **(1994) 116 CTR (SC) 643** (hereinafter referred to as "the second ONGC case"). The Court held that its previous order did not efface the statutory remedies of Union of India and statutory corporations and that the object was only to ensure that no litigation came to the Court without the parties having had an opportunity of conciliation before an in-house Committee. The Court further held that even pending matter should also be the subject matter of the deliberation of the High Power Committee and that they should be referred to the High Power Committee by appellant or the petitioner as the case may be within one month. What is significant is that the Court made it clear that wherever appeals and petitions are filed without the clearance of the High Power Committee to same limitation, the appellant or the

petitioner shall, within a period of one month from such filing, refer the matter to the High Power Committee with prior notice to the designated authority in the Cabinet Secretariat of Government of India authorised to receive notices in that behalf. The procedure which the Court devised in this regard is stated in the following passage extracted from the said decision :

> "Wherever appeals, petitions, etc., are filed without the clearance of the High Power Committee so as to save limitation, the appellant or the petitioner, as the case may be, shall within a month from such filing, refer the matter to the High Power Committee, with prior notice to the Designated Authority in Cabinet Secretariat of Government of India authorised to receive notices in that behalf. The Additional Solicitor General stated that in order to coordinate these references of the High Power Committee the Government proposes to nominate the Under Secretary (Co-ordination) in the Cabinet Secretariat as the nodal authority to coordinate these references. The reference shall be deemed to have been made and become effective only after a notice of the reference is lodged with the said nodal authority. The reference shall be deemed to be valid if made in the case of the Union of India by its Secretary, Ministry of Finance, Department of Revenue, and in the case of Public Sector Undertakings by its Chairman, Managing Director or chief Executive, as the case may be. It is only after such reference to the High Power Committee is made in the manner indicated that the operation of the order or proceedings under challenge shall be suspended till the High Power Committee resolves the dispute or gives clearance to the litigation. If the

> High Power Committee is unable to resolve the matter for reasons to be recorded by it, it shall grant clearance for the litigation. The High Power Committee shall submit a half yearly report instead of quarterly report as earlier indicated to this court as to the number of matters referred to it and the manner in which they are dealt with and disposed of. This order will be read as part of and supplementary to the order dt 11 Oct., 1991 – Oil & Natural Gas Commission & Anr. vs. Collector of Central Excise (1992) 104 CTR (SC) 31 explained and supplemented."(emphasis supplied)

5. The above directions were followed in *Collector of Central Excise, Calcutta vs. Jeesop and Co. Ltd.,* **(1999) 9 SCC 181** and *Canara Bank vs. National Thermal Power Corporation,* **(2001) 1 SCC 43.** In the later decision, the Court observed that the directions given in ONGC's case were intended to prevent frivolous litigation between the Government and public sector undertakings from being dragged into the Court. It held that the reference to the Committee was, in the circumstances of that case, unnecessary. In *Chief Conservator of Forests vs. Collector and others,* **(2003) 3 SCC 472**, the court, on the analogy of its directions in ONGC's case, observed that the State Governments could also set up a Committee to resolve inter-departmental controversies at the level of the Government itself so that such disputes should not carried to a Court of law for resolution of the

controversy. In *Mahanagar Telephone Nigam Ltd. vs. Chairman, Central Board, Direct Taxes & Anr.*, **2004 (5) SCALE 705**, the Court reiterated that while the right to appeal cannot be effaced, it must be remembered that courts are over-burdened with large number of cases, majority of which pertained to Government Departments and Public Sector Undertakings. The mechanism set up by the Court was, therefore, meant to ensure that frivolous disputes do not come before it without the clearance from the High Powered Committee who would first try to resolve the dispute and in case it is not resolved would undoubtedly give clearance. The committee could also prevent frivolous litigation proposed by Government Department or a public sector undertaking. The Court held that if the Committee declined to give clearance, the proceedings before the Court cannot be proceeded with.

6. Cases instituted in the courts can be classified in the following categories :

Category I : Cases that were pending on the date of the constitution of the Committee.

Category II: Cases which were filed after the constitution of the Committee with the permission of the committee.

Category III : Cases filed without the clearance of the Committee

to save limitation.

Category IV : Cases in which the Committee has considered and either declined permission to pursue the matter in the Court or failed to resolve the controversy itself.

Re: Categories I & II

In so far as cases falling under categories (I) & (II) are concerned, there is no difficulty whatsoever. Cases that were pending on the date the committee was constituted, were also to be referred to the High Powered Committee, who can make an attempt to resolve the matter, and in case the same is not resolved, permit the aggrieved party to agitate the matter in the Court. For cases falling in category (II) where permission of the Committee has been obtained, there is no impediment in the Court examining the matter and taking a decision on merits.

Re: Category (III)

This is by far the only category of cases in which there is some difficulty in devising the correct procedure to be adopted by the Court. What is manifest from the reading of the order passed in the Second ONGC case is that filing of a case without the clearance of the COD in order to save limitation is not forbidden. The procedure to be followed in such cases is also indicated by the

Supreme Court and requires a reference to be made within the stipulated period of one month. In case, a reference is made within the said period, the proceedings in the case shall have to remain suspended till such time the Committee resolves the disputes or gives clearance to the litigation in the Court. On a proper construction of the directions issued by the Supreme Court in the second ONGC case, disposal of the appeals merely because the same are not accompanied by the permission of the COD is not envisaged. It is only if no reference is made as contemplated in the judgments delivered by their Lordships that the Court may dispose of the appeal on the ground that an essential requirement of law as declared by the Supreme Court has failed. Such a disposal would then be a disposal in accordance with law and can put an end to the lis instead of the matter hanging in balance indefinitely for being revived at the choice of the appellants. That would not be so in cases where a reference is envisaged by the second ONGC case has been made within the time-frame permissible for the same. Disposal of the appeal despite such a reference may tantamount to summarily throwing out the matter even when the right of appeal is not effaced by the pronouncement of the Supreme Court and the appellant has done everything expected of

it.

That apart, disposal of the appeal with liberty to have it revived at any future date may present its own difficulties. There is no provision either in the Income Tax Act or the Code of Civil Procedure empowering the Court to dispose of an appeal with liberty to have it revived at the will of the appellant. In any event, what is the purpose which such a disposal can serve if the matter can bounce back at the instance of one of the parties. Cases need to be decided rather than disposed of. The effort ought to be to put an end to litigation in one of the modes recognised by law. Dismissal for no-prosecution is one such method. Hearing and disposal on merits whether by way of acceptance or dismissal of the appeal is another mode. But disposal which is neither a dismissal for default nor a disposal on merits, is something that neither puts an end to litigation nor serves any other purpose, except creating an illusion that the matter is no longer on the board.

There is another angle to the controversy which cannot be ignored. In a given case the Court may be inclined to issue directions to either the parties to the lis or even to the committee to expedite a decision in the matter. Such directions may be

necessary if the party in appeal has applied for COD clearance, but the request is not taken up by the committee for one reason or the other. The Court may in such cases consider it appropriate to issue directions for an expeditious disposal of the matter by the committee. But such directions may not be possible if the appeal itself has been disposed of summarily. The Court and indeed the party concerned will be helpless in such a situation, till such time the appeal is revived. The end result would, therefore, be nothing but a waste of time and effort. If the appeal is for all intents and purposes awaiting a clearance from the COD, why dispose it of. Why not keep it on board and if necessary monitor and control the progress of the matter at different stage rather than wash ones hands of the case summarily.

There is also the possibility of an appeal disposed of by the Court being revived after years in the process keeping the entire issue raised in the same alive and creating resultant confusion. Would such a course be conducive to administration of justice? Can the respondent not claim prejudice by the abuse of the liberty given to the appellant to seek revival at his sweet will even after a considerable period has rolled by. These and other aspects referred to above do not appear to have either been

argued before this Court or dealt with while disposing of the appeals filed in similar circumstances. Suffice it to say that as between the two procedures – one devised by the Supreme Court which permits filing of the appeal to save limitation and its pendency if a reference has been made and the other adopted by this Court in disposing of even such appeals, this Court is bound to follow the former. At any rate an order by which the appeal is disposed of, with liberty to the appellant to have it revived, can at best be an interim order in which no principle of law can be said to have been authoritatively stated so as to operate as a binding precedent. Consistency in approach and procedure may, therefore, have to give way to correction.

Re: Category IV

In cases where the Committee has considered the matter and resolved the controversy, the question of pursuing the appeal in the Court does not arise but where the Committee fails to resolve the same and yet declines the grant of permission to the aggrieved party to agitate the matter in the Court, the party concerned may be entitled to seek redress. That is because the procedure envisaged by the decision of the Supreme Court is aimed at finding a solution within the administrative machinery

available to the Government and its instrumentality. If such a solution is not found, the legal remedy open to the aggrieved party is not effaced. The position may be different in cases where the committee is of the view that the matter cannot be resolved by it , but the same need not be taken to the Court straightway. The Committee may take the view that the matter may go to the court only at the appropriate stage. Refusal of permission on that ground may be binding on the party who wishes to agitate the matter in the court. Such situations may often arise in cases where the party seeking to agitate the matter in the court wishes to challenge a show cause notice and not a final order.

7. That brings us to the cases at hand which are all freshly instituted. The appellant has not produced the requisite permission from the Committee for filing these appeals. It was argued by counsel for the appellant that these appeals have been filed only to save limitation. As noticed earlier, the appeals cannot be dismissed in such a situation just because they are not accompanied by the permission of the COD. The proper course for the appellant would be to apply for permission within the time stipulated in the judgment. In case, it is satisfactorily shown that the procedure stipulated for making reference has been followed

and that a proper reference stands made, the proceedings in the appeal shall have to remain suspended. There is nothing on record to suggest whether any reference has been made by the appellant so far. The proper course for the appellant, therefore, is to produce evidence to show that a reference in terms of procedure prescribed by the Supreme Court stands made to the Committee. If neither the permission of the Committee nor even evidence suggesting the making of a reference is produced, the appeal shall have to be dismissed on account of failure of an essential requirement of law stipulated under the orders of the Supreme Court.

8. In the circumstances the following directions are issued:

(i)The appellant shall within four weeks from today furnish evidence of the fact that a reference to the Committee of disputes has been made in accordance with the procedure stipulated by the Hon'ble Supreme Court in the second ONGC case.

(ii)In such of the cases where evidence regarding the making of the reference is furnished, further proceedings shall remain suspended till such time the Committee takes a decision.

(iii)Cases in which the requisite evidence is not produced regarding the making of the reference, shall be posted for orders before the Court.

T.S. THAKUR, J

September 22, 2005
pk/ss.

Sr. No.	Date	Orders
		% 20.01.2006 Present : Mr. R.D. Jolly, Adv. for the appellant. ITA Nos.468-471/2005 & ITA Nos.394/05, 464/05, We had, by our order dated 22nd September, 2005, directed t appellants to place on record evidence to demonstrate that references have bee made to the Committee on Disputes within the period stipulated for the purpos by the Supreme Court in Oil and Natural Gas Commission Vs. Collector Central Excise, (1994) 116 CTR (SC) 643. For reasons, which we ha separately recorded, we had held that appeals, in which no reference was mad to the Committee on Disputes within the period stipulated in terms of the abo judgment were liable to be dismissed on account of failure of an essential leg requirement. Since the appellants claimed to have made references, they we directed to furnish evidence about the same to this Court in terms of our ord dated 22nd September, 2005 which is as under: "In the light of what we have stated in our respective opinions, appeals in which no reference has been made to the Committee on Disputes within the period stipulated for the purpose are liable to be dismissed. There is, however, a difference of opinion as to what should happen in cases in which such a reference has been made. To the extent the conflict needs to be resolved a reference to a third Judge would become necessary but before any such reference is made we need to verify whether any reference has at all been made in the present cases and, if so, when. We accordingly direct the appellants to place on record evidence about the making of the references in these cases within a period of four weeks.

Sr. No.	Date	Orders

Post for further orders on 28th Oct. 2005.

-Sd/
T.S. THAKUR, J.

-Sd/
BADAR DURREZ AHMED, J

September 22,2005"

Mr.Jolly has filed an affidavit stating that although reference have been made to the Committee on Disputes, yet all such references were beyond the period of one month stipulated for the purpose. Learned counsel all the same, argued that the delay in making of the references should not by itself result in dismissal of the appeals. He urged that this Court had the power to extend the period prescribed for making the references. We do not think so. The period of one month for making a reference has been stipulated by the Supreme Court in the decision referred to earlier. The decision does not go to the length of saying that the High Courts can extend the period for making the reference in appropriate cases. This Court would not, therefore, be justified in ignoring the time frame prescribed by a binding decision of the Apex Court. In the circumstances, therefore, we have no option but to dismiss these appeals which we hereby do.

T.S. THAKUR, J.

BADAR DURREZ AHMED, J.

JANUARY 20, 2006
ss