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OPINION

It is a well-known fact that the Assessing Officers (AOs) in many cases make high-pitched assessments and raise huge uncalled for demands against the assessee, as a result thereof. It is also a well-known fact that after raising such uncalled for and unjustified high demands, the Revenue authorities take recourse to coercive measures for the recovery of such demands in a highly arbitrary and hasty manner. In such a situation, the assessee feels totally at a loss as to which IT authority to approach, in order to safeguard his interests.

In this context, it may be appropriate to refer to the observations of the Hon. Rajasthan High Court in para 53, on page 168 of the judgement, in the case of *Maheshwari Agro Industries Vs Union of India [2012] 65 DTR 129 (Raj).* The aforesaid observations are as follows :

The tendency of making high-pitched assessments by the AOs is not unknown and it may result in serious prejudice to the assessee and miscarriage of justice and sometimes may even result into insolvency or closure of the business if such power was to be exercised only in a pro Revenue manner. It may be like execution of death sentence, whereas the accused may get even acquittal from higher appellate forums or Courts.

Almost similar observations were made by the Hon.Bombay High Court, in the case of *UTI Mutual Fund Vs ITO [2012] 345 ITR 71 (Bom).* The aforesaid observations are to be found on page 78 of the Report and the same are reproduced as follows :

Administrative directions for fulfilling recovery targets for the collection of revenue should not be at the expense of foreclosing remedies which are available to assesses for challenging the correctness of a demand. The sanctity of the rule of law must be preserved. The remedies which are legitimately open in law to an assessee to challenge a demand cannot be allowed to be foreclosed by a hasty recourse to coercive powers. Assessing Officers and appellate authorities perform quasi-judicial functions under the Income-Tax Act, 1961. Application for stay requires judicial consideration.

Rejecting such applications without hearing the assessee, considering the submissions and indicating at least brief reasons is impermissible.

In this regard, it may be further stated that under section 220(6) of the Income-Tax Act, 1961 (the Act), the AO may stay such a demand till the disposal of the appeal in cases where the assessee has filed an appeal before the CIT(A). However, it is normally observed in practice that most of the AOs do not judicially examine the stay petition filed by the assessee and they tend to reject such stay petition without giving any reasons for the same. The reason for such an approach on the part of the AO is not far to seek, as the AO is always under pressure to recover the demand, even if such demand has been raised as a result of highly unjustified and totally high-pitched assessment.

As a matter of practice prevailing in the Department, the CIT or the Addl.CIT in exercise of their administrative powers can provide relief to the assessee by staying the recovery of such demands. But that can hardly be placed at par with a statutory power as is contained in section 220(6) of the Act. Unfortunately, in view of the aforesaid reasons, most of the CsIT(A) in the country are under an erroneous impression that they have got no power to stay the disputed demands, which are involved in the appeals filed before them and in view of such an erroneous view, the CsIT(A) do not entertain any such stay petitions.

In the present Opinion, I intend to discuss three very relevant and important issues relating to stay petition before CIT(A), in respect of disputed IT demand for keeping the same in abeyance, till the disposal of the appeals pending before the CIT(A) and also the approach, which the AO should follow in such a situation. The same are as follows :

(i) The CIT(A) is the appropriate authority for entertaining a stay petition, in respect of the disputed IT demand involved in appeal pending before him.

(ii) As per the relevant Instructions of the CBDT and the judgements of the High Courts, very reasonable parameters have been laid down for the grant of stay of disputed demand, by the CIT(A) and the other IT authorities.

(iii) The AO / TRO is precluded from making any recovery of the disputed IT demand, during the period allowed for filing an appeal against the assessment order and thereafter, during the pendency of the stay petition before any IT authority or the Tribunal.

All the aforesaid aspects are discussed in detail as follows :

I. **The CIT(A) is the appropriate authority for entertaining a stay petition, in respect of the disputed IT demand involved in appeal pending before him.**

It may be emphatically stated in this context that the view of the CIT(A) that he has got no power to stay the disputed demands involved in appeals pending before him, is totally erroneous.

The CIT(A) is the appropriate authority to grant stay in respect of the demands involved in the appeals pending before him. In support of this stand, reliance is placed on the following legal precedents :

1. *ITO Vs M.K.Mohammed Kunhi [1969] 71 ITR 815 (SC)*

   It was held in this case that section 254 of the Income-Tax Act, 1961, which confers on the Appellate Tribunal powers of the widest amplitude in dealing with appeals before it, grants by implication the power of doing all such acts, or employing such means, as are essentially necessary to its execution. The statutory power under section 254 carries with it the duty in proper cases to make such orders for staying recovery proceedings pending an appeal before the Tribunal, as will prevent the appeal, if successful, from being rendered nugatory.

   Besides, it is firmly established that an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective.

   Further, in this context the observations of the Hon. Supreme Court, on page 819 of the Report are also relevant, which are reproduced as follows :

   The right of appeal is a substantive right and the questions of fact and law are at large and are open to review by the Appellate Tribunal. Indeed the Tribunal has been given very wide powers under section 254(1), for it may pass such orders as it thinks fit after giving full hearing to both the parties to the appeal. If the ITO and the CIT(A) have made assessments or imposed penalties raising very large demands and if the Appellate Tribunal is entirely helpless in the matter of stay of recovery, the entire purpose of the appeal can be defeated if ultimately the orders of the Departmental authorities are set aside. It is difficult to conceive that the Legislature should have left the entire matter to the administrative authorities to make such orders as they choose to pass in exercise of unfettered discretion.

   Further, the observations of the Hon. Supreme Court, on page 822 of the Report are also relevant, which are reproduced as follows :

   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 proceeding as will prevent the appeal if successful from being rendered nugatory.

The aforesaid judgement of the Hon. Supreme Court will equally apply to the appellate jurisdiction of the CIT(A) and accordingly, the CIT(A) will have inherent power to grant stay of demand involved in the appeals pending before him.

2. *Prem Prakash Tripathi Vs CIT [1994] 208 ITR 461 (All)*

It was held in this case that law does not require that once the assessment is made, recovery of tax should be made immediately, notwithstanding the remedy of appeal having been provided in the Act. Rather, sub-section (6) of section 220 of the Income-Tax Act, 1961, clearly provides that the assessee against whom an assessment is made, should not be treated as being in default so long as his appeal remains un-disposed of. If such is the intention of law, then it can hardly be said that the CIT(A) is not vested with the powers of granting stay order, which is not only necessary but expedient for effective adjudication of the appeal. Unless there is an exclusionary provision, power to grant stay will ordinarily be deemed to have been conferred on the appellate authorities. Before rule 35A was inserted in the Income-Tax (Appellate Tribunal) Rules, 1963, the Supreme Court stated that the Tribunal must be held to have the power to grant stay as incidental or ancillary to its appellate jurisdiction. **The same legal position would follow in the case of the CIT(A), who is also an appellate authority like the Tribunal. Hence the CIT(A) must be held to have the power to grant stay, which is incidental or ancillary to its appellate jurisdiction.**

In the present context, the observations of the Hon. High Court, on page 464 of the Report are also relevant, which are reproduced as follows :

When the Appellate Tribunal was held to have the power to grant stay as incidental or ancillary to its appellate jurisdiction, we see no reason why the same legal position should not follow in the case of the Commissioner of Income-Tax (Appeals), who is also an appellate authority like the Appellate Tribunal. In this situation, what holds good in the case of the Appellate Tribunal equally applies to the Commissioner of Income-Tax (Appeals). Following this authority, we hold that the Commissioner of Income-Tax (Appeals) must be held to have

the power to grant stay, which is incidental or ancillary to its appellate jurisdiction.

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3. *Smita Agarwal (Individual) Vs CIT [2010] 321 ITR 491 (All)*

It was held in this case that the CIT(A) has got jurisdiction to grant stay of demand involved in the appeals pending before him.

In this regard, the observations of the Hon. High Court, on page 493 of the Report are relevant, which are reproduced as follows :

So far as the power of stay of the Commissioner of Income-Tax (Appeals) is concerned, in our view, the law laid down by the Apex Court, in the case of ITO Vs. M.K.Mohammed Kunhi [1969] 71 ITR 815 and a Division Bench of this Court in Prem Prakash Tripathi Vs CIT [1994] 208 ITR 461, clinches the issue in favour of the proposition advanced by the petitioner. We have no manner of doubt that the stay application is maintainable and the Commissioner of Income-Tax (Appeals) does possess power to pass an interim order, which he has to consider judiciously in accordance with law.

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4. *Jagdish N.Hinduja Vs CIT [2011] 59 DTR 333 (Karn)*

It was held in this case that the CIT(A) has got inherent power to grant stay of demand though such power is not expressly conferred on him under section 246A of the Act.

In this regard, the observations of the Hon. High Court in para 7, on page 336 of the Report are relevant and the same are reproduced as follows :

Therefore, the view of the first appellate authority that what is preferred is a statutory appeal and the statutory provision did not expressly confer the power to grant stay to the appellate authority, and therefore the authority has no power to grant stay, is erroneous. When a statute provides a right of appeal and the said statute does not expressly provide a power on the appellate authority to grant an order of stay, such appellate authority has the inherent power to grant stay in the absence of statutory provision. That is precisely what has been held in the Apex Court's judgment.

It is also directed on page 336 of the Report that until the application of the applicant for a stay is considered by the CIT(A), on merits and order is passed, the Revenue shall not precipitate the recovery proceedings.

5. *Maheshwari Agro Industries Vs Union of India [2012] 65 DTR 129 (Raj)*

It was held in this case that the first appellate authority, namely, Dy.CIT(A) or CIT(A) have inherent, implied and ancillary powers to grant stay against the recovery of disputed demand of tax, while seized of the appeal filed before them under section 246 or 246A.

In the present context, the observations of the Hon. High Court, in para 51, on page 167 of the Report, are relevant and the same are reproduced as follows :

In view of aforesaid legal position culled out from different judgments and there being no contrary view available before this Court cited from the side of Revenue or otherwise, this Court is inclined to hold that first appellate authority, namely, Dy. CIT(A) or CIT(A) have inherent, implied and ancillary powers to grant stay against the recovery of disputed demand of tax while seized of the appeal filed before them in accordance with s. 246 or 246A of the Act. There is yet another reason for holding so, and such inherent powers have to be inferred even in the absence of any specific statutory provision conferring the power to grant stay upon such authorities under the Act.

Besides, the observations of the Hon. High Court in para 58, on page 170 of the Report are also relevant and the same are reproduced as follows :

As already held, since the CIT(A) also has inherent and implied powers to grant stay, the assessee-petitioner may also file stay application before the CIT(A), who may also consider such stay application on its own merits upon the relevant factors as enumerated above viz. prima facie case, balance of convenience, irreparable injury, nature of demand and hardship likely to be caused to the assessee, liquidity available to the assessee etc. It is directed that all the first appellate authorities in the cases of other appellant assessees within the State of Rajasthan also, would entertain stay applications filed before them during the pendency of appeals and would decide the same on their own merits in future also. The assessing authorities will also decide applications under s. 220(6) of the Act in accordance with

Instruction No. 96 dt. 21st Aug., 1969 and observations made hereinbefore.

It is, thus**,** clearly established that the CIT(A) is the appropriate authority to grant stay of demand involved in appeals pending before him.

II. As per the relevant Instructions of the CBDT and the judgements of the High Courts, very reasonable parameters have been laid down for the grant of stay of disputed demand by the CIT(A) and the other IT authorities.

As per the relevant Instructions of the CBDT and the judgements of the High Courts, very reasonable parameters have been laid down for the grant of stay of disputed demand by the CIT(A) and the other IT authorities.

There are two relevant Instructions issued by the CBDT and two judgements of the Bombay High Court, which have laid down certain parameters / guidelines which must be borne in mind by the IT authorities, including the CIT(A), while adjudicating upon the stay petition filed by the appellant. The same are discussed as follows :

1. Instruction No.1914, dated 2.12.1993, issued by the CBDT

In the present context, the Instruction No.1914, dated 2.12.1993, issued by the Central Board of Direct Taxes (CBDT) is very relevant. In this Instruction, guidelines for the stay of demand have been provided in para 2(C) thereof. In the present context, para 2(C)(i) of the aforesaid Instruction is relevant and the same is reproduced as follows :

C. GUIDELINES FOR STAYING DEMAND

(i) A demand will be stayed only if there are valid reasons for doing so. Mere filing an appeal against the assessment order will not be a sufficient reason to stay the recovery of demand.

A few illustrative situations where stay could be granted are –

(a) if the demand in dispute relates to issues that have been decided in assessee's favour by an appellate authority or court earlier ; or

(b) if the demand in dispute has arisen because the Assessing Officer had adopted an interpretation of Law in respect of which there exist conflicting decisions of one or more High Courts (not of the High Court under whose jurisdiction the Assessing Officer, is working) ; or

(c) if the High Court having jurisdiction has adopted a contrary interpretation but the Department has not accepted that judgement.

It is clarified that in these situations also, stay may be granted only in respect of the amount attributable to such disputed points. Further, where it is subsequently found that assessee has not cooperated in the early disposal of appeal or where a subsequent pronouncement by a higher appellate authority or court alters the above situation, the stay order may be reviewed and modified. The above illustrations are, of course, not exhaustive.

From the aforesaid guidelines, it may be seen that the disputed demand may be stayed if –

(a) the demand in dispute relates to issues that have been decided in assessee's favour by an appellate authority, viz. CIT(A) or ITAT or Court, viz. the High Court or the Supreme Court, or

(b) the demand in dispute has arisen because the Assessing Officer had adopted an interpretation of Law in respect of which there exist conflicting decisions of one or more High Courts, other than the Jurisdictional High Court, or

(c) the Jurisdictional High Court has adopted a contrary interpretation but the Department has not accepted that judgement.

2. Instruction No. 96 [F.No. 1/6/69-ITCC], dated 21.8.1969 of the CBDT

In this context, Instruction No. 96, dated 21.8.1969, issued by the CBDT is also relevant. The same is reproduced, as follows:

Income determined on assessment was substantially higher than returned income – Whether collection of tax in dispute is to be held in abeyance till decision on appeal.

1. One of the points that came up for consideration in the 8th meeting of the Informal Consultative Committee was that income-tax assessments were arbitrarily pitched at high figures and that the collection of disputed demands as a result thereof was also not stayed in spite of the specific provision in the matter in section 220(6).

2. The then Deputy Prime Minister had observed as under:

"…..where the income determined on assessment was substantially higher than the returned income, say, twice the latter amount or more, the collection of the tax in dispute should be held in abeyance till the decision on the appeals, provided there were no lapse on the part of the assessee."

3. The Board desire that the above observations may be brought to the notice of all the Income-tax Officers working under you and the powers of stay of recovery in such cases up to the stage of first appeal may be exercised by the Inspecting Assistant Commissioner / Commissioner of Income-tax.

From the aforesaid Instruction, it may be seen that disputed demand may normally be stayed in a case where the income determined on assessment is substantially higher than the returned income, namely, where the income assessed is more than twice the amount of income returned. In this context, it may be clarified that the aforesaid Instruction No.96 has been considered in detail, in the case of *Taneja Developers and Infrastructure Ltd Vs ACIT [2010] 324 ITR 247 (Del)*. It has been held in this case that where the income determined is substantially higher than the returned income, i.e., twice the latter amount or more, then collection of tax in dispute should be held in abeyance, till the decision on the appeal is taken.

It has also been held in this case that in view of the judgement, in the case of *Soul Vs Dy.CIT [2010] 323 ITR 305 (Del),* the Instruction No.96, dated 21.8.1969, issued by the CBDT had not been superseded by Instruction No.1914 of 1993, issued by the CBDT and accordingly, the same is still valid.

3. KEC International Ltd. Vs. B.R. Balakrishnan & Ors. [2001] 251 ITR 158 (Bom.)

In this case, the Assessing Officer (AO) passed the assessment order under section 143(3) of the Act, for the AY 1998-99 and pursuant to the said assessment order, a notice of demand of Rs.12.93 crores was issued under section 156 of the Act. On receipt of the notice of demand, the assessee filed a stay petition before the AO and requested him to stay the demand, in order to enable the assessee to file an appeal before the CIT(A). The stay petition was rejected by the AO, without assigning any reasons for the same. Thereafter, the assessee carried the matter before the CIT. However, the CIT also dismissed the stay petition of the assesee, without assigning any reasons for the same.

In the aforesaid background of the case, the Hon. Bombay High Court laid down certain parameters, which are required to be followed by the authorities in cases where a stay petition is made by an assessee pending appeal before the first appellate authority. The aforesaid parameters are to be found on page 160 of the Report and the same are reproduced as follows :

Parameters :

(a) While considering the stay application, the authority concerned will at least briefly set out the case of the assessee.

(b) In cases where the assessed income under the impugned order far exceeds returned income, the authority will consider whether the assessee has made out a case for unconditional stay. If not, whether looking to the questions involved in appeal, a part of the amount should be ordered to be deposited for which purpose, some short prima facie reasons could be given by the authority in its order.

(c) In cases where the assessee relies upon financial difficulties, the authority concerned can briefly indicate whether the assessee is financially sound and viable to deposit the amount if the authority wants the assessee to so deposit.

(d) The authority concerned will also examine whether the time to prefer an appeal has expired. Generally, coercive measures may not be adopted during the period provided by the statute to go in appeal. However, if the authority concerned comes to the conclusion that the assessee is like to defeat the demand, it may take recourse to coercive action for which brief reasons may be indicated in the order.

(e) We clarify that if the authority concerned complies with the above parameters while passing orders on the stay application, then the authorities on the administrative side of the Department like respondent No. 2 herein need not once again give reasoned order.

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4. UTI Mutual Fund Vs ITO [2012] 345 ITR 71 (Bom)

It was held in this case that administrative directions for fulfilling recovery targets for the collection of revenue should not be at the expense of foreclosing remedies which are available to assesses for challenging the correctness of a demand. The sanctity of the rule of law must be preserved. The remedies which are legitimately open in law to an assessee to challenge a demand cannot be allowed to be foreclosed by a hasty recourse to coercive powers. Assessing Officers and appellate authorities perform quasi-judicial functions under the Income-Tax Act, 1961. Application for stay requires judicial consideration. Rejecting such applications without hearing the assessee, considering the submissions and indicating at least brief reasons is impermissible.

In this case again the Bombay High Court has laid down certain guidelines which should be borne in mind by the IT authorities for effecting recovery of disputed demands. The aforesaid guidelines are to be found on pages 79 and 80 of the Report and the same are reproduced as follows :

These are, we may say so with respect, sage observations which must be borne in mind by the assessing authorities. Consistent with the parameters which were laid down by the Division Bench in KEC International Ltd. (supra) and the observations in the judgement in Coca Cola (P.) Ltd. (supra), we direct that the following guidelines should be borne in mind for effecting recovery:

1. *No recovery of tax should be made pending*
   (a) *Expiry of the time limit for filing an appeal*
   (b) *Disposal of a stay application, if any, moved by the assessee and for a reasonable period thereafter, to enable the assessee to move a higher forum, if so advised. Coercive steps may, however, be adopted where the authority has reason to believe that the assessee may defeat the demand, in which case brief reasons may be indicated.*
2. *The stay application, if any, moved by the assessee should be disposed of after hearing the assessee and bearing in mind the guidelines in KEC International Ltd (Supra)*
3. *If the Assessing Officer has taken a view contrary to what has been held in the preceding previous years without there being a material change in facts or law, that is a relevant consideration in deciding the application for stay.*
4. *When a bank account has been attached, before withdrawing the amount, reasonable prior notice should be furnished to the assessee to enable the assessee to make a representation or seek recourse to a remedy in law.*
5. *In exercising the powers of stay, the Income-Tax Officer should not act as a mere tax gatherer but as a quasi judicial authority vested with the public duty of protecting the interest of the Revenue while at the same time balancing the need to mitigate hardship to the assessee. Though the assessing officer has made an assessment, he must objectively decide the application for stay considering that an appeal lies against his order : the matter must be considered from all its facets, balancing the interest of the assessee with the protection of the Revenue.*

The aforesaid Instructions of the CBDT and the judgements of the Bombay High Court, if followed by the IT authorities, both in their letter and in spirit, will go a long way in avoiding the uncalled for distress, harassment and inconvenience caused to the tax-payers as a result of high-pitched assessments and the resultant demands, for the recovery of which the AO / TRO, takes recourse to coercive measures against the tax-payers.

III. The AO / TRO is precluded from making any recovery of the disputed IT demand, during the period allowed for filing an appeal against the assessment order and thereafter, during the pendency of the stay petition before any IT authority or the Tribunal.

It may be emphatically stated in the present context that the AO / TRO is precluded from making any recovery of the disputed IT demand, during the period allowed for filing an appeal against the assessment order and thereafter, during the pendency of the stay petition before any IT authority or the Tribunal.

Unfortunately, in spite of a number of legal precedents supporting the aforesaid stand, the AO / TRO takes recourse to coercive measures for the recovery of the disputed demands. It is hoped that the AO / TRO will function within the parameters laid down by the High Courts and the Tribunal, regarding the recovery of such disputed demands.

In support of the aforesaid stand, reliance is placed on the following legal precedents :

1. *RPG Enterprises Ltd. Vs Dy.CIT [2001] 251 ITR (AT) 20 (Mum)*

   It was, *inter-alia*, held in this case that the Assessing Officer (AO) is precluded from taking coercive action for the recovery of the disputed demand until the expiry of the period of limitation allowed for filing of the appeal against the decision of the first appellate authority and also during the pendency of stay application before any revenue authority or the Trubunal.

   In this case, the judgement of the Bombay High Court in the case of *Mahindra and Mahindra Ltd. Vs Union of India [1992] 59 ELT 505 (Bom),* was followed.

   In this connection, the observations of the Hon.Tribunal, on page 28 of the Report, are reproduced as follows :

   It is thus evident that the Tribunal has the power to grant stay of recovery of the disputed demand. This power can be exercised only when an appeal is filed by the assessee against the decision of the first appellate authority. There is a period of sixty days allowed for filing of an appeal to the Tribunal against the decision of the first appellate authority. The question arises as to what is the fate of the assessee's right to seek stay of the disputed demand in the period which is available to them for filing an appeal against the decision of the first appellate authority. The answer to this question is found in the decision of the Bombay High Court in the case of Mahindra and Mahindra Ltd. [1992] 59 ELT 505. In this case the customs authorities had recovered the disputed demand by encashment of bank guarantee during the pendency of the stay application and before the expiry of the statutory period of three months for filing the

appeal. ***Their Lordships of the Bombay High Court held that the customs authorities were not justified to recover the disputed demand by encashment of the bank guarantee during pendency of the stay application and before the expiry of the statutory period of three months for filing the appeal.*** *The Department was accordingly directed by the Bombay High Court to pay back the entire amount recovered by encashing the bank guarantee. Therefore, it is evident that when the assessee is having a right to seek extension of time / stay of recovery of the disputed demand pending an appeal before the respective authorities, it will be unreasonable to hold that during the intervening period the Assessing Officer has unfettered powers of resorting to coercive action for recovery of the disputed demand. The rationale behind the decision of the Bombay High Court in the case of Mahindrra and Mahindra Ltd. [1992] 59 ELT 505, is that the authorities cannot by their actions render the provisions of the Act as in-effective and nugatory. If the Assessing Officer is allowed to resort to coercive action within the time allowed for filing of appeal to the Tribunal, the power of the Tribunal to grant stay of recovery pending an appeal will be rendered ineffective.* [Emphasis added]

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2. *Mahindra and Mahindra Ltd. Vs Union of India [1992] 59 ELT 505 (Bom)*

It was held in this case that the Customs authorities were not justified to recover the disputed demand by encashment of the bank guarantee during the pendency of the stay application and before the expiry of the statutory period of three months for filing the appeal. The Department was, accordingly, directed by the Hon. Court to pay back the entire amount recovered from the assessee.

The aforesaid judgement of the Hon. Bombay High Court has been elaborately discussed by the Hon. Tribunal in the aforesaid case of *RPG Enterprises Ltd.*

3. *Mahindra and Mahindra Ltd. Vs Assessing Officer [2007] 295 ITR 42 (Bom)*

In this case the Assessing Officer (AO), without even affording fair opportunity to reply to the show-cause notice, hurriedly sent garnishee notice to the assessee's bank and the bank accounts were frozen and money also was recovered from the said banks on the same day.

The aforesaid action of recovery by the AO was held to be *ab initio void.* In this regard the relevant observations of the Hon. High Court on Page 44 of the Report are relevant and the same are reproduced as follows :

In the instant case, without even affording fair opportunity to reply to the show-cause notice, hurriedly, garnishee notice was sent by respondent No.1 to the petitioner's banks and the

bank accounts were frozen and the money also came to be recovered from the said banks on the same day i.e. on March 29, 2007.

Entire action of respondents Nos.1 and 2 shocks our judicial conscience. Rule of law has been given a total go-bye and willfully ignored. The income-tax authorities have acted in a high handed manner. The impugned action is prima facie ab initio void.

On being repeatedly asked, learned counsel for the respondents has categorically answered, on instructions from respondent No.2, that the Revenue is not ready and willing to bring back the money; which was forcibly, in a high handed manner recovered, totally, ignoring the abovementioned two judgments of this court.

Under the aforesaid facts and circumstances, we are constrained to direct respondent No.2 to bring back the said sum of Rs.29,42,56,264 and the same shall be deposited with the Registrar General of this court, latest by April 4, 2007.

The concerned Joint Commissioner Mr. J.R. Dahad, respondent No.2 herein, is personally present in this court. It is made clear that this order has been pronounced loudly in the open court and learned counsel for the respondents, Mr. Chatterji, has fully understood the above order and Mr. J.R. Dahad has also fully understood the above order.

Issue notice to show cause to respondent No.1 as to why contempt action should not be initiated under the provisions of the Contempt of Courts Act for prima facie knowingly and willfully disobeying the aforesaid two judgments of our High Court. The Registrar General is directed to take steps to execute show-cause notice as per rules. [Emphasis added]

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4. *UTI Mutual Fund Vs ITO [2012] 345 ITR 71 (Bom)*

As already pointed out in earlier para II(4), the Hon. Bombay High Court has laid down certain guidelines which should be borne in mind by the IT authorities for effecting recovery of disputed demands. Vide clause (i) of the aforesaid guidelines, it has been clearly laid down by the Bombay High Court that –

(a) No recovery of tax should be made during the period allowed for filing an appeal against the impugned assessment order or appellate order.

(b) No recovery of tax should be made during the pendency of a stay petition moved by the assessee and for a reasonable period thereafter, to enable the assessee to move a higher forum.

5. *Glaxo Smith Kline Asia Pvt. Ltd. Vs Addl. CIT [2005] 2 SOT 457 (Del)*

In this case, the Department coercively recovered the entire demand before the assessee even filed an appeal to the Tribunal. Severely criticizing the action of the Department and directing

it to refund the amount so collected, the Tribunal expressed its anguish in the following razor-sharp language at page 459:

However, this power of the Tribunal has been frustrated by the revenue authorities by recovering the entire outstanding amount before the assessee could file an appeal before the Tribunal and also apply for stay on the recovery. Our concern is not so much against frustrating the power of the Tribunal, but it is more towards the fact that by this process, the right of the assessee to approach for a stay is also frustrated. **If the rights of the citizens are allowed to be crushed in this manner which is akin to Tsunami wave, then the day is not far, when we shall be driven into utter anarchy where people will forget what 'rule of law' is.** [Emphasis Added]

It is, thus, clearly established that during the pendency of a stay petition before any IT authority, including the CIT(A) or the Tribunal, the ITO / TRO is precluded from taking any steps, for the recovery of the disputed demand.

IV. Conclusion

In the light of the discussion in the preceding paras (I), (II) and (III), it is clearly established that –

1. The CIT(A) is the appropriate authority for entertaining a stay petition, in respect of the disputed IT demand involved in appeal pending before him.
2. As per the relevant Instructions of the CBDT and the judgements of the High Courts, very reasonable parameters have been laid down for the grant of stay of disputed demand by the CIT(A) and the other IT authorities.
3. The AO / TRO is precluded from making any recovery of the disputed IT demand, during the period allowed for filing an appeal against the assessment order and thereafter, during the pendency of the stay petition before any IT authority or the Tribunal.

In view of the detailed discussion in the aforesaid paras (I), (II) and (III), it is hoped that tax-payers faced with high-pitched assessments will make full use of the legal position brought out therein and the same will be borne in mind by the IT authorities, before whom the stay petitions in respect of the disputed demands are filed by the tax-payers.

Place : Pune (S.K.Tyagi)

Date : 1.8.2012