

S. K. Tyagi

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Subject: Bombay HC judgement - CIT(A) to grant stay of demand - Published in ITR

Dear Sir / Madam,

Please refer to my earlier e-mail, dt.29.9.2014, wherein Bombay High Court judgement, in the case of one of my clients was brought to your notice.

It was also intimated vide the aforesaid e-mail that as per the aforesaid judgement, the CIT(A) is the appropriate authority for granting stay of demand in respect of appeal pending before him.

A copy of the aforesaid judgement was also forwarded with the aforesaid e-mail.

The above judgement has now been published in ITR as follows :

Gera Realty Estates Vs CIT(A) [2014] 368 ITR366 (Bom)

The Catch-Note and Head-Note of the aforesaid judgement are reproduced for your benefit as follows :

Catch-Note :

“ Appeal to Commissioner (Appeals). Jurisdiction. Inherent jurisdiction to deal with application for stay. Income-Tax Act, 1961, section 220(6) ”.

Head-Note :

“ The jurisdiction of the Commissioner (Appeals) to deal with applications for stay of the order in appeal before him is inherent as an appellate authority. The exercise of this jurisdiction is to be exercised on examining the order in appeal. As against this, the jurisdiction with the Assessing Officer of staying the demand under section 220(6) of the Income-Tax Act, 1961, and that of the Commissioner to stay the demand, are on different considerations, i.e., including other factors over and above the order. The Assessing Officer and the Commissioner do not stay the order in appeal but only stay the demand issued consequent to the order which is in appeal. This is only to ensure that the assessee is not deemed to be an assessee in default. The jurisdiction of the Commissioner (Appeals) as an appellate authority ought not to be confused with that of either the Assessing Officer under section 220(6) of the Act or of the Commissioner in his administrative capacity.

Where the Commissioner (Appeals) dismissed the stay application in a pending appeal recording that though he had inherent power to consider the stay application, it would not be considered as an administrative measure which according to him, was to avoid multiple stay application before different authorities, on a writ petition :

Held, allowing the petition, that the Commissioner (Appeals) was directed to dispose of the stay application as expeditiously as possible. In the meantime, the Revenue was not to adopt coercive proceedings against the assessee till the disposal of its stay application by the Commissioner (Appeals) ”.

Kindly acknowledge the receipt of this e-mail.

With warm regards,

S.K.Tyagi

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