

S. K. Tyagi

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Sent: 29 September 2014 17:31
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Subject: Bombay High Court judgement - CIT(A) to grant stay of demand
Attachments: Order in Writ Petition No 7293 of 2014.pdf

Dear Sir / Madam,

I am writing this e-mail with a view to bringing to your notice the recent judgement of the Bombay High Court, in the case of one of my clients. The relevant facts are as follows :

1. The Assessing Officer (AO) had passed an assessment order under section 143(3) of the Income-Tax Act, 1961 (the Act), dt.27.3.2014, for the AY 2011-12, in the case of the aforesaid client. Vide the aforesaid assessment order, the AO had raised a huge demand. The main reason for the aforesaid demand was disallowance of claim of deduction under section 80-IB(10) of the Act.
2. Against the aforesaid assessment order, the assessee / client filed an appeal before the CIT(A)-1, Pune.

In addition, a stay petition, dt.3.5.2014, was also filed before the CIT(A)-1, Pune, with a request that the aforesaid demand may be kept in abeyance, till the disposal of the aforesaid appeal pending before him.

3. The CIT(A)-1, Pune, however, did not entertain the aforesaid stay petition, as communicated vide letter, dt.30.6.2014, addressed to the assessee.

Vide the aforesaid letter, the CIT(A) has stated that though the CIT(A) has inherent power under the Act to dispose of the stay petition filed during the pendency of the relevant appeal before the CIT(A), yet as an administrative measure and to avoid multiple stay applications before different authorities, his office does not entertain direct stay applications for keeping the outstanding demand in abeyance, till the disposal of first appeal.

The CIT(A), accordingly, advised the assessee to approach the AO or Addl.CIT or the administrative CIT concerned, as according to him, the collection and recovery of demand is normally pursued under the supervision / directions of these authorities.

4. Against the aforesaid letter of the CIT(A), dt.30.6.2014, refusing to entertain the aforesaid stay petition, the assessee filed a Writ Petition No.7293 of 2014 before the Bombay High Court.

The Bombay High Court, thereafter, passed an order, dt.11.8.2014, in the aforesaid case.

Vide the aforesaid order, the Hon. Bombay High Court has clearly laid down that the CIT(A) ought not to have confused his jurisdiction as an appellate authority with that of either the Assessing Officer under section 220(6) of the Act or to that of the Commissioner of Income-Tax, in his administrative capacity.

Accordingly, the aforesaid order of the CIT(A) was set aside and he was directed to dispose of the stay application on merits.

5. A scanned copy of the aforesaid judgement of the Bombay High Court, dt.11.8.2014, is attached herewith, for your perusal.

6. It may be stated here that there are judgements of numerous High Courts, wherein it has been laid down that the CIT(A) is the appropriate authority for granting stay of demand in respect of the appeal pending before him. Vide the aforesaid judgement, the Bombay High Court has also agreed with the aforesaid view.

Please go through the aforesaid judgement of the Bombay High Court carefully, so that the same may be used by you in case you are required to file a stay petition before the CIT(A), as in the case of the aforesaid assessee / client.

Kindly acknowledge the receipt of this e-mail.

With warm regards,

S.K.Tyagi

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