

## Stay of Demand When Tax Payable and When Assessee Deemed in Default



*Proceeding for taking stay of demand is separate from assessment proceeding, and generally the taxpayers become quite panicky in this process. The impetus of this article is to cover the legal position for filing of application/WRIT for stay of demand under the provision of the Income-tax Act, 1961/the Constitution of India. Also, various jurisprudence of the Hon'ble courts has been covered under that would be helpful for the readers to understand the situations, whereby the stay of demand has been granted by the Courts to the taxpayers. To bring certainty and clarity over the matter under discussion of this Article, it is important to note that the Central Board of Direct Taxes has issued various circulars/instructions from time to time in this regard. Still, the matter of stay of demand is quite coercive from the perspective of the taxpayers. Read on...*

### Preamble

The occurrence of high pitched assessment order by the Assessing Officer ('AO') may at times result in serious prejudice to the assessee. It may even

result in insolvency or closure of the business, and, therefore, it is important to understand the steps required and situations where the demand can be stayed. High pitched assessment means where the income is determined and assessment was substantially higher than the returned income, say twice the later amount or more.

While determining the income or loss after completion of assessments, AO may disallow or add back any of the expenses or reduce deduction claimed by the assessee in the return of income. When any tax, interest, penalty, fine or any



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other sum is payable by the assessee on the said determined income, the Section 156 of Income-tax Act, 1961 ('the Act') stipulates that the AO shall serve upon the assessee a notice of demand (in Form no. 7). Serving this notice of demand is a statutory requirement and very foundation for initiating the recovery proceedings. Therefore, no proceedings for recovery of tax can be initiated against an assessee without the said notice.

It is pertinent to mention at this stage that the issue of aforesaid notice is very critical. Support can be drawn from the ruling held by Hon'ble Supreme Court in the case of *Mohan Wahi v. Commissioner of Income Tax*<sup>1</sup> that assessee could not have been deemed to be in default and any proceedings for recovery of tax against him, without serving notice of demand, shall be invalid.

The assessee has two options upon receipt of tax demand either to pay tax by accepting the disallowances of claim of expenses/ additions to returned income/ reduction of claim of deduction or to file a stay application.

### Position under Law

**Stay application before AO:** As per the provisions of Section 220(1) of the Act, where the demand, provided in specified Form no. 7, is not paid within period of thirty days or shorter as directed by the AO, the assessee is liable to pay interest as per the provisions of Section 220(2) of the Act. However, as per Section 220(3) of the Act, on filing application by the assessee and based upon the circumstances, the AO has power to extend the aforesaid period or to allow paying demand in instalments. Further as per provisions of Section 220(4), the assessee shall be deemed to be in default, if he does not pay the demand within period specified in Section 220(1) or 220(3), as the case may be.

Furthermore, as per the provisions of Section 220(6) of the Act, where the assessee has preferred an appeal before Commissioner (Appeals), the AO has discretionary power, *inter-alia*, to treat the assessee as not being in default, even though the time limit provided by the AO has expired.

On a conjoint reading of Section 220(3) the Act and Section 220(6) of the Act, it appears that since Section 220(6) of the Act thereof does not provide for any period of limitation, thus, the AO has power to treat assessee as not being in default

under section 220(6) even though the time for payment has expired, subject to, the assessee has preferred an appeal before the Commissioner (Appeals). This analysis can be explained through an example hereunder:

Assessment was concluded vide order dated 20<sup>th</sup> December 2017 and notice of demand, mentioning to pay demand within thirty days of the service of this notice, issued along with the said order. The date of receipt of the same is supposed to be as 25<sup>th</sup> December 2017. Now, the assessee has preferred an appeal before the Commissioner (Appeals) on 24<sup>th</sup> January 2018 i.e. on or before expiry of thirty days. Simultaneously, the assessee is also required to pay the demand by 24<sup>th</sup> January 2018, as per the condition mentioned in the notice of demand, otherwise the assessee shall be deemed to be in default. However, in the instant case, since the assessee has preferred to appeal before the Commissioner (Appeals), under section 220(6) of the Act, AO may, in his discretion, treat the assessee as not being in default with respect to the amount in dispute in the appeal even after 24<sup>th</sup> January, 2018.

**Stay application before Principal Commissioner or Commissioner:** Section 225 of the Act empowers the Tax Recovery Officer ('TRO') to grant time for payment of demand and shall stay proceeding until expiry of the time so granted. Further, under section 118 of the Act, Commissioner is having the administrative control over TRO working in his jurisdiction. Thus, it is implied that Commissioner is having power to grant stay over the recovery of demand.

Further, under the provisions of Section 264, *inter alia*, an assessee can make an application for revision before Commissioner against any order, mentioned in said section. This view has been upheld by Hon'ble High Court of Allahabad in the case of *Daya Shankar v. Tax Recovery Officer*<sup>2</sup>.

**Stay application before the Appellate Tribunal ('the Tribunal'):** As per the provisions of Section 253(7) of the Act, by following rule 35A of the Appellate Tribunal Rules, 1963, an assessee can make an application for stay of demand before the Tribunal, accompanied by a fee of five hundred rupees. Further, under the provisions of Section 254(2A) of the Act empowered to Tribunal to grant stay of demand, when the appeal is pending before the Tribunal.

<sup>1</sup> [2001] 248 ITR 799 (SC)

<sup>2</sup> [1985] 21 Taxman 303 (All.)

In this regard, it is provided that the Tribunal may pass an order to stay, after considering the merits of the application made by the assessee, for a period not exceeding one hundred and eighty days and it shall dispose of the appeal within said period of stay.

It has been further provided that where such appeal is not disposed of within such period, on an application of the assessee and satisfaction of the Tribunal that the delay in disposing of the appeal is not attributable to the assessee, it may extend the period of stay for further period as it thinks fit, not exceeding three hundred and sixty-five days in aggregate of the original and extended period. And the Tribunal shall dispose of the appeal within the period of periods of stay, so extended or allowed.

It has been further provided that where such appeal is not disposed of within such extended period, the order of stay shall stand vacated, even if the delay in disposing of the appeal is not attributable to the assessee. Thus, assessee is required to file another stay application in defence of his interest.

**Writ before High Court:** An assessee, by virtue of article 226 of the Constitution, can file writ petition, aggrieved against order. Further, the High Court has power by virtue of section 151-Civil Procedure Code, 1908 and of article 227 of the Constitution.

## CBDT's Instructions, Circulars and Clarifications

Central Board of Direct Taxes ("CBDT") has issued from time to time various instructions, circulars and clarifications on certain points. The references of some of those instructions, circulars and clarifications have been enumerated hereunder:

**Instruction No. 95, dated 22<sup>th</sup> August, 1969:** This instruction was an assurance given by the then Deputy Hon'ble Deputy Prime Minister during the 8<sup>th</sup> Meeting of the Informal Consultative Committee held on 13<sup>th</sup> May, 1969. The observations made by the Hon'ble Deputy Prime Minister were 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 appeal provided there were no lapses on the part of the assesseees."*

The above observations were circulated to the field officers by the Board as Instruction No. 95, dated 22<sup>th</sup> August, 1969.

**Circular No. 334, [F. No. 400/3/81-ITCC], dated 3<sup>rd</sup> April, 1982:** This circular discussed the revision in calculation of amount of interest under section 220(3) in the certain conditions discussed in this circular.

**Circular No. 530, dated 6<sup>th</sup> March, 1989:** This circular talked about the situations where the AO will exercise his discretion under section 220(6) of the Act, so as to treat the assessee as not being in default in respect of the amount in dispute in the appeal, subject to the assessee has not co-operated in the early disposal of appeal or where a subsequent pronouncement by a higher appellate authority or Court.

Furthermore, it is also discussed that the AO will take into account all the relevant factors and communicate his decision to the assessee in the form of a speaking order. Also, while exercising discretion under the provision, the financial capacity of the assessee to pay demand will not be relevant."

**Circular No. 589, dated 16<sup>th</sup> January, 1991:** This circular was in partial modification to the above Circular No. 530, and the word 'while exercising discretion under the provision, the financial capacity of the assessee to pay demand will not be relevant' has been deleted.

**Instruction No. 1914, dated 2<sup>nd</sup> December, 1993:** This instruction streamlined the procedure for recovery of tax demand. CBDT is of the view that, as a matter of principle, every demand should be recovered as soon as it becomes due, and demand may be kept in abeyance for valid reasons only in accordance with the guidelines mentioned in this instruction.

**Clarification Letter [F. No. 404/10/2009-ITCC], dated 1<sup>st</sup> December 2009:** Vide this clarification, CBDT clarified that there is no separate existence of the Instruction number 95 dated 21.8.1969. Also, certain Instructions on the issue also ceased to exist the day Instruction number 1914 came into operation.

**Office Memorandum [F. No. 404/72/93-ITCC], dated 29<sup>th</sup> February, 2016:**

CBDT has considered that to recover the demand, the field authorities often insist on payment of a very high proportion of the disputed demand before granting stay of the balance demand. This often results in hardship for the taxpayers seeking stay of demand.

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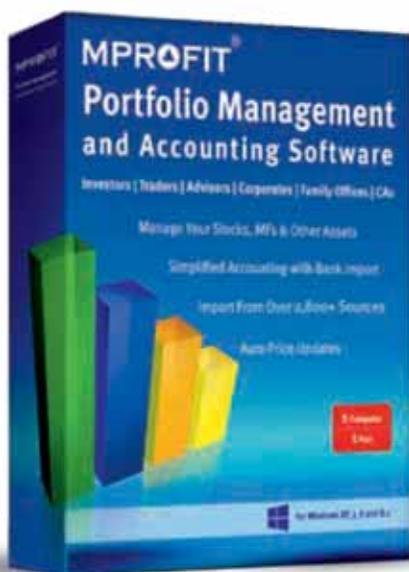
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SCHEME PERFORMANCE SUMMARY				
Aditya Birla Sun Life Tax Relief 96 - Regular Plan - Growth Option				
NAV as on November 30, 2018: ₹ 29.11				
Fund Manager: Mr. Ajay Garg (Since October, 2006)				
Particulars	CAGR % Returns			
	1 Year	3 Years	5 Years	Since Inception
Aditya Birla Sun Life Tax Relief 96	-1.01	12.32	19.89	24.56
B: S&P BSE 200 TRI	3.54	12.65	14.95	12.95
AB: Nifty 50 TRI	7.82	12.54	13.37	12.76
<b>Value of ₹ 10,000 invested</b>				
Aditya Birla Sun Life Tax Relief 96	9,899	14,176	24,793	14,59,626
B: S&P BSE 200 TRI	10,354	14,301	20,086	1,58,423
AB: Nifty 50 TRI	10,782	14,260	18,742	1,52,749
Inception Date: March 29, 1996				

Past performance may or may not be sustained in future. The above scheme performance is of Regular Plan - Growth Option. Kindly note that different plans have different expense structure. Load and Taxes are not considered for computation of returns. The scheme is in existence for more than 5 years. When scheme/additional benchmark returns are not available, they have not been shown. Mr. Ajay Garg manages 4 open-ended schemes of Aditya Birla Sun Life Mutual Fund. The scheme is currently managed by Mr. Ajay Garg since October 01, 2006 (12) years. All dividends declared prior to the splitting of the scheme on March 06, 2008 into Dividend & Growth options are assumed to be reinvested in the units of the scheme at the prevailing NAV (ex-dividend NAV).

PERFORMANCE OF OTHER OPEN-ENDED SCHEMES MANAGED BY SAME FUND MANAGER						
Fund Manager: Mr. Ajay Garg						
Scheme Nameis	CAGR % Returns					
	1 year		3 years		5 years	
	Scheme	Benchmark	Scheme	Benchmark	Scheme	Benchmark
Aditya Birla Sun Life Index Fund	6.21	7.82	10.99	12.54	11.89	13.37
Aditya Birla Sun Life MNC Fund	-1.03	1.92	7.91	15.29	21.14	19.80
Aditya Birla Sun Life Tax Plan	-1.62	10.51	11.80	12.92	19.07	13.27

**Note:**

- a. Mr. Ajay Garg manages 4 open-ended schemes of Aditya Birla Sun Life Mutual Fund.
- b. Different plans shall have a different expense structure. The performance details provided herein are of Regular Plan - Growth Option.

PRODUCT LABEL		
Name of Scheme	This product is suitable for investors who are seeking*:	Riskometer
Aditya Birla Sun Life Tax Relief 96 (An open-ended equitylinked saving scheme with a statutory lock in of 3 years and tax benefit)	long term capital growth investments in equity and equity related securities, with tax benefit under section 80C, subject to eligibility	<p>Investors understand that their principal will be at moderately high risk</p>
*Investors should consult their financial advisors if in doubt about whether the product is suitable for them.		

Note: Performance as on November 30, 2018

B: Benchmark, AB: Additional Benchmark

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Therefore, in order to streamline the process of grant of stay and standardize the quantum of lump sum payment required to be made by the assessee as a pre-condition for stay of demand disputed before CIT(A), CBDT modified guidelines in partial modification of Instruction No. 1914, dated 2<sup>nd</sup> December, 1993 and issued that where the outstanding demand is disputed before Commissioner (Appeals), the AO shall grant stay of demand till disposal of first appeal on payment of 15% of the disputed demand, subject to conditions mentioned in Para B (i.e. the said payment may be more or less to 15% based upon nature of addition and judgement for the same before appellate authorities or Hon'ble Courts).

**Office Memorandum [F. No. 404/72/93-ITCC], dated 31<sup>st</sup> July, 2017:** The references to 15% of the disputed demand in the above mentioned Office Memorandum [F. No. 404/72/93-ITCC], dated 29<sup>th</sup> February, 2016 stand modified to 20% of the disputed demand vide this office memorandum of CBDT.

## Recent Judicial Pronouncements

### No coercive action to be taken against assessee:

- In the case of *Surendra Singh Rawat v. Union of India*<sup>3</sup>, Hon'ble High Court of Rajasthan held and directed for not taking any coercive action assessee for recovery of impugned demand till decision of Commissioner (Appeals).
- In the case of *Vodafone South Ltd. v. Deputy Commissioner, TDS Circle-2(1)*<sup>4</sup>, Hon'ble High Court of Andhra Pradesh found that issue under consideration is highly debatable and matter was set for hearing before Hon'ble Supreme Court, thus, it was held not to take any coercive steps for recovery of disputed tax demand subject to assessee depositing 40 per cent of demanded amount.
- With this respect, the same view have been taken by Hon'ble High Court of Gujarat in case of *M.D. Infra Developers v. Deputy Commissioner of Income-tax, Central Circle-2 & 3*<sup>5</sup> and held that coercive recovery is not justified.
- In the case of *Flipkart India (P.) Ltd. v. Assistant Commissioner of Income-tax, Circle*

*3(1)(1), Bengaluru*<sup>6</sup>, the Hon'ble High Court of Karnataka found that the order was high pitched and also the financial hardships with the Assessee. Thus, it was held that order, requiring to deposit 15% of the demand, is unsustainable and also it was directed not to take any coercive action against assessee.

- In the case of *Vodafone India Ltd. v. Commissioner of Income-tax*<sup>7</sup>, there were findings that the assessee had already deposited 38% of the outstanding demand and delay in disposal of the appeal was not on account of the assessee. Thus, Hon'ble High Court of Bombay held that no coercive steps to recover outstanding demand to be taken and adjourned for further hearing.
- In the case of *Commissioner of Income-tax v. Google India Private Limited*<sup>8</sup>, the Hon'ble High Court of Karnataka found that interest of revenue is sufficiently safeguard with the bank guarantee furnished by the assessee, thus it was held that the action of the revenue to increase the tax demand is not justified.
- In the case of *Samms Juke Box v. Assistant Commissioner of Income-tax*<sup>9</sup>, the Hon'ble High Court of Madras has analysed the circumstances and held the matter in favour of the assessee.

### Benefit for stay of demand not to be granted on not falling in the condition of instruction No. 1914:

- In the case of *Bank of Baroda v. Income-tax Officer, (TDS)*<sup>10</sup>, the petitioner-bank has not been able to show as to which appellate authority, or by which court the issues involved in the present case have already been decided, that, too in favour of the petitioner-bank. Since the petitioner-bank cannot claim that it falls under illustration (a) of para-C of Instruction No.1914, thus the petitioner bank was denied for benefit of stay of outstanding demand.
- In the case of *Vodafone Mobile Services Limited Vs. The Deputy Director of Income Tax (International Taxation), Circle 1(1), Bangalore*<sup>11</sup>, it was observed that identical

<sup>3</sup> [2017] 81 taxmann.com 344 (Rajasthan)

<sup>4</sup> [2016] 66 taxmann.com 15 (Andhra Pradesh)

<sup>5</sup> [2016] 287 CTR 431 (Gujarat)

<sup>6</sup> [2017] 79 taxmann.com 159 (Karnataka)

<sup>7</sup> [2018] 89 taxmann.com 54 (Bombay)

<sup>8</sup> [2018] 92 taxmann.com 38 (Karnataka)

<sup>9</sup> [2018] 95 taxmann.com 247 (Madras)

<sup>10</sup> [2016] 73 taxmann.com 55 (Karnataka)

<sup>11</sup> S.P. No. 300/Bang/2017 or IT(IT)A No. 2818/Bang/2017

issue was examined by the Tribunal in assessee's own case and the facts of the issue was covered against the assessee. Thus, Hon'ble Bench of ITAT, Bangalore, held to deposit further a partial amount and to retain a sum of money as balance in bank account. Further, the case was adjourned.

### **Tribunal may grant stay beyond the period of 365 days:**

- In the case of *Deputy Commissioner of Income-tax v. Pepsi Foods (P.) Ltd.*<sup>12</sup>, Hon'ble Supreme Court held that where delay in disposing of appeal is not attributable to assessee, Tribunal has power to grant extension of stay beyond 365 days in deserving cases.
- In the case of *SAP Labs India (P.) Ltd. v. Additional Commissioner of Income-tax, Range 12, Bangalore*<sup>13</sup>, the Hon'ble Bench held that since the delay in disposing of the appeal is not attributable to the assessee, thus, the Tribunal has the power to grant extension of stay of recovery of outstanding demand beyond 365 days in deserving cases.

### **Instruction No. 1914, dated 2<sup>nd</sup> December, 1993 has not superseded to Instruction No. 95, dated 21<sup>st</sup> August, 1969:**

- In the case of *N. Jegatheesan v. Deputy Commissioner of Income-tax, Non Corporate Circle-2 Madurai*<sup>14</sup>, the assessment made by the AO was a 'High Pitched Assessment', higher than the return income by way of 14 times. Therefore, stay was granted till the disposal of the appeal as well as in consideration of the reasons to treat the assessee as 'not being in default' and held that Instruction No. 1914, dated 2<sup>nd</sup> December, 1993 has not superseded to Instruction No. 95, dated 21<sup>st</sup> August, 1969, which is binding on all assessing authorities created under Act.
- In the case of *Dimension Data Asia Pacific (Pte.) Ltd. v. Deputy Commissioner of Income-tax, (International Taxation) Mumbai*<sup>15</sup>, it was found that the AO made assessment at sum 10 times higher to returned income and raised demand, thus it was held that stay on said demand should be granted to assessee in

view of Instruction No. 95 dated 21<sup>st</sup> August, 1969.

### **Order should be as a speaking order:**

- In the case of *Tamil Nadu State Transport Corporation (Villupuram) Ltd. v. Chief Commissioner of Income-tax-4, Chennai*<sup>16</sup>, the orders as found on record, do not disclose the reasons, at least not in entirety, which propelled the revenue to stay the demand on the terms indicated therein. Thus, it was held that the revenue will, once again, consider the application for stay preferred by the petitioner and attaching the bank account of the petitioner will get lifted.
- In the case of *Khandelwal Laboratories (P.) Ltd. v. Deputy Commissioner of Income-tax 6(3) (2), Mumbai*<sup>17</sup>, the assessee filed rectification application to the AO against assessment order and stay application for stay of the demand. The AO rejected assessee's rectification application and attached assessee's bank accounts and withdrew certain amounts therefrom. In this case, the assessee's application for stay is still pending disposal before the AO. Thus, it was held that any action to recover taxes adopting coercive means is not permissible till the assessee's application for stay is disposed of. Further, the action of the Assessing Officer in attaching the assessee's bank accounts as well as subsequent withdrawal of the attached amounts from the bank accounts is without jurisdiction and bad in law.

### **Merits of petitioner's case are required to be considered while granting stay:**

- In the case of *Maharashtra Industrial Development Corporation v. Commissioner of Income-tax, (Exemptions)*<sup>18</sup>, it was found that the amounts received as lease premium and shown as deposits by assessee was taxed as income and the same issue was concluded in assessee's favour by decision jurisdictional Tribunal of Mumbai in other case. Thus, the assessee's application was restored to the file of the Commissioner (Exemptions) for fresh disposal in accordance with law and after considering *prima facie*, merits of the petitioner's case.

<sup>12</sup> [2017] 79 taxmann.com 251 (SC)

<sup>13</sup> [2016] 67 taxmann.com 78 (Bangalore - Trib.)

<sup>14</sup> [2015] 64 taxmann.com 339 (Madras)

<sup>15</sup> [2017] 183 TTJ 673 (Mumbai - Trib.)

<sup>16</sup> [2017] 78 taxmann.com 9 (Madras)

<sup>17</sup> [2016] 285 CTR 178 (Bombay)

<sup>18</sup> [2016] 290 CTR 337 (Bombay)

- In the case of *GMV Projects & Systems v. Assistant Commissioner of Income-tax, Circle 15(1) Chennai*<sup>19</sup>, the Hon'ble High Court of Madras granted stay of demand till disposal of appeal before the Commissioner (Appeals) by analysing and considering the merits of the matter.
- In the case of *Jagdish Gandabhai Shah v. Principal Commissioner of Income-tax, Valsad*<sup>20</sup>, the Hon'ble High Court of Gujarat held that there is no requirement of pre-deposit of 15% of the demand before considering the merits of the stay application.

### Cardinal principles to be considered while granting stay:

- In the case of *Kalapet Primary Agriculture Co-Op. Credit Society Ltd. v. Income-tax Officer, Ward 4, Puducherry*<sup>21</sup>, it was found that on the identical issue under consideration, the Commissioner (Appeals) had passed order in the favour of assessee-company in its own case in earlier year. However, the AO granted stay on a payment of 15% of total demand.

In this case, it is well considered that cardinal principles which have to be taken note of while granting interim order are three fold, viz., (i) *prima facie* case, (ii) balance of convenience, and (iii) irreparable hardship. Thus, the total demand in question against the assessee deserved to be stayed till disposal of appeals by the Commissioner (Appeals).

### Commissioner (Appeals) has power to grant stay:

As per various judicial pronouncements held by the Hon'ble Courts, it has been decided that Commissioner (Appeals) has inherent power to stay the demand when appeal is pending for disposal before him. In this regard, the precedents have been supplied hereunder:

- The Hon'ble High Court of Bombay in the case of *Gera Reality Estates v. Commissioner of Income-tax (Appeals)*<sup>22</sup>, wherein, assessee has filed application for stay of demand neither before the AO nor before the Commissioner, held that Commissioner

(Appeals) should dispose of stay application filed in appeal.

- Further, ITAT bench of Delhi in the case of *Employees' Provident Fund Organisation v. Additional Commissioner of Income-tax (T.D.S.), Ghaziabad*<sup>23</sup> held that the Commissioner (Appeals) has inherent power to stay demand, when appeal is pending for disposal before him.

### Commissioner (Appeals) cannot enhance the amount to be deposited to grant stay of demand

- In the case of *Vodafone M-Pesa Limited v. Principal Commissioner of Income-tax*<sup>24</sup>, the hon'ble High Court of Bombay found that appeal is pending before Commissioner (Appeals), and the Commissioner (Appeals) has directed to pay 50% of outstanding demand, which is enhanced from 20% as per the AO. The court has remanded back the matter by deciding that power of suo-moto enhancement of payment of demand is not available to Commissioner (Appeals) in terms of Circular dated 29-2-2016.

### Stay can be adjusted with amount of refund of previous years but adjustment of refund couldn't extend to the total tax demand raised for granting stay:

- In the case of *Jindal Steel & Power Ltd. v. Principal Commissioner of Income-tax*<sup>25</sup>, stay was granted subject to the assessee paying the amounts which constituted 15%. The Hon'ble High Court of Punjab & Haryana held that the last sentence in the order granted the Assessing Officer the right to adjust any refund which might arise in favour of the assessee in respect and to the extent of the said 15 per cent of the demand only.
- In the case of *Andrew Telecommunications India (P.) Ltd. v. Principal Commissioner of Income-tax, Goa*<sup>26</sup>, it was held that demand can be adjusted against refunds of previous years.

### Assessee cannot be granted stay on mere pendency of appeal, thus he is necessarily to

<sup>19</sup> [2017] 249 Taxman 468 (Madras)

<sup>20</sup> [2017] 81 taxmann.com 45 (Gujarat)

<sup>21</sup> [2016] 241 Taxman 367 (Madras)

<sup>22</sup> [2015] 274 CTR 358 (Bombay)

<sup>23</sup> [2015] 153 ITD 642 (Delhi – Trib.)

<sup>24</sup> [2018] 92 taxmann.com 73 (Bombay)

<sup>25</sup> [2017] 391 ITR 42 (Punjab & Haryana)

<sup>26</sup> [2017] 295 CTR 557 (Bombay)



### file application for stay:

- In the case of *Uttar Pradesh Bhumi Sudhar Nigam Ltd., v. Principal Commissioner of income-tax*<sup>27</sup>, the Hon'ble High Court of Allahabad held the scheme of the Act provides a specific remedy under section 220(6) and the same having not been invoked by the petitioner did not entitle him to the protection on the ground of mere pendency of the appeal or till the disposal of interim stay application.
- In this respect, the akin view has been taken by Hon'ble ITAT Bengaluru bench in the case of *Google India (P.) Ltd. v. Deputy Commissioner of Income-tax (International Taxation), Bengaluru*<sup>28</sup> and held that merely because assessee is proposing to appeal against recent orders of Tribunal for earlier years before High Court and also intends to file miscellaneous application before Tribunal, same cannot be a valid ground for stay of demand.
- In the case of *Maharashtra Industrial Development Corporation v. Commissioner of Income-tax (exemptions)*<sup>29</sup>, the assessee has contended that that the hearing of the appeals from the Orders of the Assessing Officer for the subject Assessment years had almost been concluded before the CIT(A). The Hon'ble High Court of Bombay found that the assessee has sought only adjournment

for the date to start to deposit by one month (i.e. 31<sup>st</sup> December, 2016 in place of 30<sup>th</sup> November, 2016). Thus, it was held that since assessee had accepted directions of impugned order by only seeking adjournment of one month's time to begin paying instalment, there was no ground to interfere with impugned order.

### Appeal filed before the Tribunal had to be construed as first appeal for granting stay of demand for the application of office memorandum dated 29-02-2016

- In the case of *Organon (India) Private Limited v. Deputy Commissioner of Income-tax*<sup>30</sup>, it was analysed and held that the appeal before the Tribunal would also be considered as first appeal, as it was against the final assessment order passed under section 143(3) of the Act read with Section 144C(5) of the Act pursuant to DRP directions, therefore requirements laid down for keeping the demand in abeyance in the office memorandum dated 29-02-2016 would apply to the assessee.

### Conclusion

Even according to the law and Instructions, the Assessing Officer has discretion to grant stay by requiring the assessee to offer suitable security to safeguard the interest of the revenue. The Assessing Officer can also require the assessee to pay towards the disputed tax either a reasonable amount in lump sum or in instalments. Thus, it is not in every case that the entire demand amount is required to be deposited while granting stay. In fact directing an assessee to deposit the entire amount as a condition for granting stay is incongruous in as much as if the entire amount is recovered there is no purpose of granting stay.

Thus, considering the action of lower authorities for collection of revenue, it is important for an assessee to be well aware with the rights and remedies provided under law to safeguard the interest of justice. ■

<sup>27</sup> [2016] 290 CTR 669 (Allahabad)

<sup>28</sup> [2017] 87 taxmann.com 149 (Bangalore – Trib.)

<sup>29</sup> [2017] 297 CTR 21 (Bombay)

<sup>30</sup> [2018] 94 taxmann.com 421 (Kolkata- Trib.)