STAY & RECOVERY PROCEEDINGS

UNDER THE INCOME TAX ACT, 1961

SPEAKER

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Tax demand & demand notice

Adverse tax assessment orders passed by the tax authorities typically results in creation of an additional tax liability ("**Tax Demand**") which is raised under Section 156 ("**Demand Notice**") of the Act.

Such Tax Demand needs to be paid within the timeline prescribed under Section 220 of the IT Act (generally 30 days from the date of receipt of Demand Notice), failing which a taxpayer is treated as an '**assessee in default**' making him or her liable to pay interest @ 1% per month or part of the month for non-payment of Tax Demand in time. Section 220(1) states that *"a demand under section 156 shall be paid…"*

However, the Assessee is also entitled to seek a stay (Section 220(6)) in which case, and subject to such conditions, the Tax Demand will not be enforced.

Section 220 of the Act

Chapter D.—Collection and recovery
When tax payable and when assessee deemed in default

220. (1) Any amount, otherwise than by way of advance tax, specified as payable in a notice of demand under section 156 shall be paid within thirty days of the service of the notice at the place and to the person mentioned in the notice :

Provided that, where the Assessing Officer has any reason to believe that it will be detrimental to revenue if the full period of thirty days aforesaid is allowed, he may, with the previous approval of the Joint Commissioner, direct that the sum specified in the notice of demand shall be paid within such period being a period less than the period of thirty days aforesaid, as may be specified by him in the notice of demand.

(2) If the amount specified in any notice of demand under section 156 is not paid within the period limited under sub-section (1), the assessee shall be liable to pay simple interest at one per cent for every month or part of a month comprised in the period commencing from the day immediately following the end of the period mentioned in sub-section (1) and ending with the day on which the amount is paid:…

(3) Without prejudice to the provisions contained in sub-section (2), on an application made by the assessee before the expiry of the due date under sub-section (1), the Assessing Officer may extend the time for payment or allow payment by instalments, subject to such conditions as he may think fit to impose in the circumstances of the case.

(4) If the amount is not paid within the time limited under sub-section (1) or extended under sub-section (3), as the case may be, at the place and to the person mentioned in the said notice the assessee shall be deemed to be in default.

(5) If, in a case where payment by instalments is allowed under sub-section (3), the assessee commits defaults in paying any one of the instalments within the time fixed under that sub-section, the assessee shall be deemed to be in default as to the whole of the amount then outstanding, and the other instalment or instalments shall be deemed to have been due on the same date as the instalment actually in default.

(6) Where an assessee has presented an appeal under section 246 or section 246A the Assessing Officer may, in his discretion and subject to such conditions as he may think fit to impose in the circumstances of the case, treat the assessee as not being in default in respect of the amount in dispute in the appeal, even though the time for payment has expired, as long as such appeal remains undisposed of.

Relevant CBDT Instruction on Stay of Demand [1]

Power And Valid Reason For Stay

Mere filing of an appeal is NOT sufficient for a stay.

- **AO -** Must dispose of stay petitions within **two weeks** of filing. Assessee must be informed without delay.
- **DC/CIT/CC -** Also mandated to dispose of petitions within **two weeks** of receipt and communicate the decision to the assessee and AO immediately.

Note - Normally, the AO/TRO and their immediate superior should decide on stay. Higher authorities should only interfere in exceptional cases (e.g., high-pitched assessment, genuine hardship). Routine or frivolous review petitions to higher authorities should be discouraged.

Illustrative Valid Reasons for Stay:

- Demand related to issues previously decided in the assessee's favor by an appellate authority or court.
- Conflicting High Court decisions on the legal interpretation (excluding the AO's jurisdictional High Court).
- Jurisdictional High Court has a contrary view, not accepted by the Department.

1. CBDT Instruction No. 1914 of 1993 – Guidelines for staying and recovery of outstanding demand

Relevant CBDT Instruction on Stay of Demand [1]

GUIDELINES FOR GRANT OF STAY

1. Payments by instalments may be liberally allowed so as to collect the entire demand within a reasonable period not exceeding 18 months
2. Speaking Order
3. Higher superior Authority should interfere with decision of AO/TRO only in exceptional circumstances
4. Superior Authorities should discourage filing of review as a matter of routine
5. Review of Stay Orders: Even after stay is granted, AO has the right to review the order
6. Appeal Effects & Rectification to be adjudicated in 2 weeks
7. Responsibility for Compliance

Conditions for Granting Stay:

Offering suitable security.

Paying a reasonable amount of the disputed tax (lump sum or instalments).

Undertaking to cooperate in early appeal disposal (failure can lead to stay cancellation).

Reserving the right to review the stay order (e.g., after 6 months or non-cooperation).

Reserving the right to adjust refunds against the demand.

1. CBDT Instruction No. 1914 of 1993 – Guidelines for staying and recovery of outstanding demand

Office memorandum DATED 29.02.2016 [2]

Issue of revised guidelines for stay of demand at the first appeal stage – Has partially modified the earlier Guidelines

"Para 2: Under the revised guidelines, where the outstanding demand is disputed before Commissioner (Appeals), the assessing officer shall grant stay of demand till disposal of first appeal on payment of 15% of the disputed demand. In case any deviation from the standard pre-payment of 15% is proposed by the assessing officer, he shall refer the matter to the administrative Principal Commissioner or Commissioner, who after considering all relevant facts shall decide the quantum/ proportion of demand to be paid by the assessee as lump sum payment for granting a stay of the balance demand. In a case where stay of demand is granted by the assessing officer on payment of 15% of the disputed demand and the assessee is still aggrieved, he may approach the jurisdictional administrative Principal Commissioner or Commissioner for a review of the decision of the assessing officer.

…

4. 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), the following modified guidelines are being issued in partial modification of Instruction No. 1914: (A) In a case where the outstanding demand is disputed before CIT (A), the assessing officer shall grant stay of demand till disposal of first appeal on payment of 15% of the disputed demand, unless the case falls in the category discussed in para(B) hereunder.

(B) In a situation where,

a. the assessing officer is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount higher than 15% is warranted (e.g. in a case where addition on the same issue has been confirmed by appellate authorities in earlier years or the decision of the Supreme Court /or jurisdictional High Court is in favour of Revenue or addition is based on credible evidence collected in a search or survey operation, etc.) or,

b. the assessing officer is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount lower than 15% is warranted (e.g. in a case where addition on the same issue has been deleted by appellate authorities in earlier years or the decision of the Supreme Court or jurisdictional High Court is in favour of the assessee, etc.), the assessing officer shall refer the matter to the administrative Pr. CIT/ CIT, who after considering all relevant facts shall decide the quantum/ proportion of demand to be paid by the assessee as lump sum payment for granting a stay of the balance demand."

2. O.M. N0.404/72/93-ITCC dated 29.2.2016 as modified on 31.07.2017 to the extend of 20%

Pre-deposit of 20% not a precondition to grant stay

PCIT V. LG Electronics India Pvt Ltd | [2018] 18 SCC 447

It is apposite to state that the 20% deposit which is spoken of in the OM dated 31 July 2017 is not liable to be viewed as a condition etched in stone or one which is inviolable. The same has been held by various judicial authorities time and again including the Hon'ble Supreme Court of India in the case of ***Pr. CIT v. LG Electronics India (P.) Ltd.***.

The Hon'ble SC on 20 July 2018 clarifies that Commissioner is not bound by administrative circulars issued by the CBDT –can grant stay of demand on payment of an amount less than 20%.

"Having heard Shri Vikramjit Banerjee, learnd ASG appearing on behalf of the appellant, and giving credence to the fact that he has argued before us that the administrative circular will not operate as a fetter on the Commissioner since it is a quasi-judicial authority, we only need to clarify that in all cases like the present, it will be open to the authorities, on the facts of individual cases , to grant deposit orders of a lesser amount than 20%, pending appeal. The appeal is disposed of accordingly."

Pre-deposit of 20% not a precondition to grant stay

NASSCOM V. DCIT W.P.(C) 9310/2022 DELHI HIGH COURT

Hon'ble High Court of Delhi in the case of ***National Association of Software and Services Companies (Nasscom) v. Deputy Commissioner of Income-tax (Exemption)*** *[in W.P.(C) No. 9310 of 2022]* vide its order dated 01.03.2024 has held as follows:

"11. In our considered opinion, the respondents have proceeded on a wholly incorrect and untenable premise that the assessee was obliged to tender or place evidence of having deposited 20% of the disputed demand before its application for stay under section 220(6) of the Act could have been considered. The interpretation which is sought to be accorded to the aforesaid OM is clearly misconceived for the following reasons.

12. It must at the outset be noted that the two OMs' noticed above neither prescribe nor mandate 15% or 20% of the outstanding demand as the case may be, being deposited as a pre-condition for grant of stay. The OM dated 29 February 2016 specifically spoke of a discretion vesting in the AO to grant stay subject to a deposit at a rate higher or lower than 15% dependent upon the facts of a particular case. The subsequent OM merely amended the rate to be 20%. In fact, while the subsequent OM chose to describe the 20% deposit to be the "standard rate", the same would clearly not sustain in light of the discussion which ensues.

19. …In our considered opinion, the respondents have clearly erred in proceeding on the assumption that the application for consideration of outstanding demands being placed in abeyance could not have even been entertained without a 20% pre-deposit. The aforesaid stand as taken is thoroughly misconceived and wholly untenable in law."

Refund adjustment of demand

MOTHERSON TECHNOLOGY SERVICES LIMITED vs. DCIT, W.P.(C) 16531/2024,

4. It is the case of the petitioner that the refunds due to the petitioner could not be adjusted against the outstanding demand for AY 2016-17 beyond 20% of the said demand, being a condition imposed for the grant of stay order.

5. We find merit in the aforesaid contention. Para no.4 (E) (iii) of the office memorandum dated 29.02.2016 issued by the Central Board of Direct Taxes (CBDT) expressly provides that the AO may impose such conditions for grant of the stay including right to adjust refund, if any, against the demand to the extent required for grant of stay, subject to the conditions as provided under Section 245 of the Act. Para No.4(E)(iii) of the circular dated 29.02.2016 is set out below:-

"4. 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), the following modified guidelines are being issued in partial modification of instruction No. 1914:

A to D *** ***

(E) In granting stay, the Assessing Officer may impose such conditions as he may think fit. He may, inter alia,-

(i) & (ii) *** ***;

(iii) reserve the right to adjust refunds arising, if any, against the demand, to the extent of the amount required for granting stay and subject to the provisions of section 245."

STAY OF DEMAND AT AO LEVEL | RELEVANT JUDICIAL PRECEDENTS

ALM Industries Ltd. v. DCIT | 455 ITR 319

- **Background of the case**: Huge reassessment demand (₹197 Cr); appeal filed - AO rejected stay for **non-payment of 20%** as per CBDT Instruction - PCIT upheld rejection despite strong merits and financial hardship
- **High Court Ruling – Key Points**:
- **Judicial discretion** under S.220(6) must not be exercised mechanically
- **CBDT's 20% rule is directory**, not mandatory
- **3 legal tests** to be considered • *Prima facie* case • Balance of convenience • Irreparable hardship.

Relevant paragraph reproduction:

"15. From the reading of the aforesaid provision it is clear that once an appeal has been filed under section 246 or 246A of Act of 1961, it is the discretion of the 'Assessing Officer' and subject to the condition as he may think fit to impose in the circumstances of the case, treat the Assessee as not being in default in respect of the amount in dispute in the appeal.

16. The argument of the petitioner's counsel to the extent that the presentation of the appeal within statutory period should be treated as "Assessee as not being in default" cannot be accepted because it is clarified to the extent that discretion has been given to the Assessing Officer who has to impose a condition in each of such cases treating the Assessee as not being in default in respect of the amount in dispute in the appeal.

17. Thus, it is clear that mere pendency of an appeal will not give any benefit to an Assessee, but only upon the satisfaction having been recorded by the Assessing Officer and the condition being imposed by him in each of such cases that an Assessee shall be treated to be not in default in respect of the outstanding demand of tax, which is matter of dispute in appeal.

18. However, the word 'discretion', which occurs in the aforesaid provision of law, does not give a blanket power to the Assessing Officer. He has to exercise his discretion within the four corners of law and while passing an order imposing a condition, he has to justify his action.

19. In the instant case, the Deputy Commissioner of Income-tax while passing the order dated 30-8-2022 had solely relied upon the circular of 2016, which was partially modified in the year 2017 and directed for deposit of 20% of the disputed amount of tax and rejected the stay application while the Principal Commissioner of Income-tax proceeded to consider the audit report and balance sheet partially and considering the assets while ignoring the liability part had rejected the stay application holding the financial position of the petitioner to be strong enough and directed for depositing 20% of the disputed amount of tax.

20. This Court finds that while considering the stay application, neither the Deputy Commissioner of Income-tax nor Principal Commissioner of Income-tax had considered three basic principles i.e. prima facie case, balance of convenience and irreparable loss…….

STAY OF DEMAND AT AO LEVEL | RELEVANT JUDICIAL PRECEDENTS

Rajendra Kumar v. ACIT| [2022] 138 taxmann.com 490 (Rajasthan)

Key Takeaways: Filing of appeal in time means that no assessee-in-default under S.220(6) - No legal requirement to file stay application for protection under S.220(6) - AO's adjustment of refund violated S.220(6) & S.245 – held ultra vires - Mandatory pre-deposit of 20% is only administrative, not statutory - Revenue's action termed high-handed, unconstitutional, violative of Articles 14, 19 & 265

Relevant Para Reproduction:

""6. After considering the records of the writ petition, hearing arguments advanced by learned counsel for both the sides and also considering the judgments cited at bar, we observe as under :—

a. *The case in hand is a classic example of 'absolute power corrupts absolutely'. The petitioner-assessee was quite prompt in filing appeal under section 246-A of the IT Act against the order dated 13/12/2019 without waiting for thirty days of statutory time. He filed the appeal on merits in the prescribed format on 26/12/2019. It is a fact on record which is admitted by the respondents themselves that till date, the CIT(A), for the reasons best known to him, has not considered the said appeal which is beyond control of the petitioner. In spite of the specific statutory provisions under section 220(6) of the IT Act that on filing appeal in the prescribed format, the petitioner-assessee will not be considered as an 'assessee in default', giving go-bye to the statutory provisions contained under sections 220(6), 222, 223 and 245 of the IT Act, giving intimation under section 245 of the IT Act for staying of refund against the outstanding demand, the respondents have failed to consider the response rather have given a technical argument that the said application was not made as per specific provision of section 220(6) of the IT Act. Nowhere in the provisions of section 220(6) of the IT Act, it is specified that the stay application has to be filed. The mandate of section 220(6) of the IT Act makes it very clear that once an appeal is filed within time in the prescribed format, the assessee will not be deemed as an 'assessee in default'. Further, the notice under section 156 of the IT Act categorically specifies that the demand can only be initiated in the case of default under the provisions of sections 222, 223 of the IT Act which in the given case is not made out.*

a. *Further, the series of judgments, referred above, have categorically held that when an appeal of the assessee is pending and the same is not disposed of for the reasons beyond his control, on account of autocratic, lethargy and administrative constraints on the part of the respondents, the recovery of demand pending appeal will be an act in terrorem.*

b. *Learned counsel for the respondent-Revenue was not able to reflect that why the appeal was not disposed of when the same was filed promptly nor was he able to refute the fact that under section 220(6) of the IT Act, once on filing the appeal, the petitioner was not to be treated as an 'assessee in default' and that the recovery taken place is de-hors the provisions of section 245 of the IT Act. Learned counsel for the respondent-Revenue only cited and contended that the application for stay under section 220(6) of the IT Act was only made on 22/02/2021 and thereafter, the stay on demand was made. In this context, it is important to note that unlike the provisions of section 129(e) of the Customs Act, 1962 and the provisions of section 235(f) of the Central Excise Act, there is no mandatory requirement of pre-deposit for entertaining the appeal. It is only by administrative fiat under the Income-tax Act that a provision of stay is granted if a demand of 20% is pre-deposited, vide office memorandum dated 29/02/2016 meaning thereby that without a statutory fiat, power and authority of law, office memorandums are issued. The respondents have failed to consider the provisions of section 220(6) of the IT Act whereby on filing of appeal, the assessee will not be deemed in default. The recovery action as per sections 222, 223 of the IT Act can only be initiated by the Tax Recovery Officer, the adjustment from due refund can only be carried out after serving intimation and giving opportunity of hearing as per provisions of section 245 of the IT Act as held in the catena of judgments (supra).”*

STAY OF DEMAND AT AO LEVEL | RELEVANT JUDICIAL PRECEDENTS

Mumbai Metropolitan Region Development Authority v. DDIT (Exemption-1) [2015] 55 taxmann.com 307 (Bombay HC)

📌 **AO Level Stay Guidelines:**

- **Strong prima facie case → Stay must be granted**
- Financial hardship **not mandatory** if the legal case is strong.
- Stay should not be **denied** if issues have already been decided in favor of the taxpayer by a higher forum.

As per KEC Intl. & UTI Mutual Fund cases:

- ✅ **Strong prima facie case → Stay must be granted**
- ❌ **Financial hardship not mandatory** if case is strong
- ❌ **Can't deny stay just because issues discussed in assessment order**

Relevant Para Reproduction:

"11. We have today, disposed of another Petition bearing No.2542 of 2014 filed by the Slum Rehabilitation Authority and set out the parameters in deciding stay application as laid down by this Court in KEC International Ltd. v. B. R. Balakrishnan [2001] 251 ITR 158/119 Taxman 974; UTI Mutual Funds v. ITO [2012] 345 ITR 71/19 taxmann.com 250/206 Taxman 341 (Bom.) and UTI Mutual Fund v. ITO [2013] 31 taxmann.com 222 (Bom.) which can for the purposes of disposing an application of stay can be summarized as under:

(a) The order on stay application must briefly set out the issue and the submission of the assessee/applicant in support of the stay;

(b) In cases where the assessed income under the impugned order far exceeds returned income so as to make the demand arbitrary or the issue arising for consideration stands concluded by a decision of an higher forum or where the order appealed against is in breach of Natural Justice or the view taken in the order being appealed against is contrary to what has been held in the preceding previous years (even if issue pending before higher forum) without there being a material change in facts or law, stay should normally be granted;

STAY OF DEMAND AT AO LEVEL | RELEVANT JUDICIAL PRECEDENTS

Mumbai Metropolitan Region Development Authority v. DDIT (Exemption-1) [2015] 55 taxmann.com 307 (Bombay HC)

"(c) If not, whether looking to the questions involved in appeal, keeping in view the likelihood of success in appeal what part of the demand the whole(in case issue covered against the applicant by a decision of higher forum) or part of it and must be justified by short reasons in the order disposing of the stay application;.

(d) Lack of financial hardship would not be a sole ground to direct deposit/payment of the demands if the assessee/applicant has a strong arguable case on merits;

(e) In cases where the assessee/ applicant relies upon financial difficulties, the authority concerned should briefly indicate whether the assessee is financially sound and viable to deposit the amount or the apprehension of the revenue of non recovery later. Thus warranting deposit. This of course, if the case is not otherwise sustainablSe on merits;

(f) 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 likely to defeat the demand, it may take recourse to coercive action for which brief reasons may be indicated in the order.

(g) In exercising the powers of stay, the Authority should always bear in mind that as a quasi judicial authority it is 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 application for stay must be considered from all its facets and the order should be passed, balancing the interest of the assessee with the protection of the Revenue."

The above guidelines are only illustrative and the authority concerned would have to have exercise his discretion in matters of stay on the facts of the case before him. Keeping in view of the above broad parameters we shall now examine whether the authorities have properly exercised their jurisdiction.

STAY OF DEMAND AT AO LEVEL | RELEVANT JUDICIAL PRECEDENTS

Chaitanya Memorial Educational Society v. CIT (Exemptions)
[2023] 155 taxmann.com 378 (Telangana) / [2024] 296 Taxman 297

📌 **Court's Ruling:** Considering the charitable status and **undecided appeal/rectification** applications, the **entire demand** was stayed until the **appeal's disposal -** Stay granted due to **prima facie case** and the **absence of prejudice** to the department.

⚖️ **Key Point: Stay under Section 220(6)**: In cases of strong **prima facie case** (like charitable institutions), a **full stay** on demand is warranted until the appeal is decided.

Relevant Para Reproduction:

"7. The High Court of Bombay in the case of *UTI MUTUAL FUND* v. *ITO* 2013 LawSuit (Bom) 340/[2013] 31 taxmann.com 222 in paragraph No. 18 held as under:

"*Counsel appearing on behalf of the Revenue has sought to rely upon an order of the Karnataka High Court in ITA 31 of 2023 dated 4 February 2013 taking the view that in a revenue matter an interim order should be passed only in the case of genuine financial hardship and not otherwise. With respect, the order of the Karnataka High Court cannot be read to mean that consideration of whether an assessee has made out a strong prima facie case for stay of enforcement of a demand is irrelevant. Nor is the law to the effect that the absent a case of financial hardship, no stay on the recovery of a demand can be granted even though a strong prima facie case is made out. In considering whether a stay of demand should be granted, the Court is duty bound to consider not merely the issue of financial hardship if any, but also whether a strong prima facie raising a serious triable issue has been raised which would warrant a dispensation of deposit. In CEAT Limited v. Union of India. (2010 250 ELT 200) the Division Bench of this Court has held as follows:*

If the party has made out a strong prima facie case, that by itself would be a strong ground in the matter of exercise of discretion as calling on the party to deposit the amount which prima facie is not liable to deposit or which demand has no legs to stand upon, by itself would result in undue hardship of the party is called upon to deposit the amount."

STAY OF DEMAND AT AO LEVEL | RELEVANT JUDICIAL PRECEDENTS

Chaitanya Memorial Educational Society v. CIT (Exemptions)
[2023] 155 taxmann.com 378 (Telangana) / [2024] 296 Taxman 297

Where the issue has raised a strong *prima facie* case which requires serious consideration as in the present case, a requirement of predeposit would itself be a matter of hardship. Finally, we express our serious disapproval of the manner in which the Revenue has sought to brush aside a binding decision of this Court in the case of the assessee on the issue of a stay on enforcement for the previous year. The rule of law has an abiding value in our legal regime. No public authority, including the Revenue, can ignore the principle of precedent. Certainty in tax administration is of cardinal importance and its absence undermines public confidence.

"9. *If the contention of the learned counsel for the petitioner is to be accepted then, the petitioner has been availing the exemption of payment of Income-tax on account of the fact that the petitioner is a charitable institution and the works executed by it again is with a charitable purpose. Since the petitioner availed the said benefits all along prior to the issuance of demand notice and even in the subsequent years as well, there does not seem to be any prejudice going to be caused if the stay application under section 220(6) is decided in favour of the petitioner. Yet another fact which is more important to be appreciated is that though the appeal was filed as early as on 17-4-2021 and the rectification application also was filed on 20-3-2021, and both the rectification application and the appeal by now are still pending consideration or is undecided for more than 2½ years."*

STAY OF DEMAND AT AO LEVEL | RELEVANT JUDICIAL PRECEDENTS

Nisarg Developers v. ACIT | [2025] 171 taxmann.com 804 (Bombay)

⚖️ **Key Point:** A **financial hardship claim** must be backed by **genuine evidence** for an unconditional stay to be considered.

*" **8.** If the Petitioner is a very reputed big builder undertaking various projects, we find it difficult to believe that the Petitioner is unable to even pay 20% of the tax amount amounting to approximately Rs.3.2 crores to secure a stay on the recovery of the balance amount. The Petitioner has also not been candid with the authorities. Despite more than adequate opportunities, full details regarding the Petitioner's financial health were not disclosed. Based on some alleged contradictions between the orders made by the AO and PCIT, no case is made out for the grant of an unconditional stay.*

*…**11.** On perusing the reasoning in paragraphs 4.3 to 4.10 of the assessment order, good and adequate reasons have been given for insisting upon the Petitioner paying at least 20% demanded tax amount. There is no perversity in the reasoning, which has ultimately been confirmed by the PCIT. In this petition, we do not exercise any appellate jurisdiction. Going by the parameters of the judicial review, we are satisfied that no case is made out warranting interference."*

Powers of the CIT(A) to grant stay of demand

Issues	
Remarks	Based on rulings such as: • *Tin Manufacturing Co. of India* [(1994) 212 ITR 451 (All.)] • *Kesav Cashew Co.* [(1994) 210 ITR 1014 (Ker.)] ➤ It is **legally permissible** for an assessee to **approach the CIT(A)** directly for a stay of tax recovery **without first approaching the AO**. However, **practically advisable**: ➤ Assessee should **first file a stay application with the AO**. ➤ If rejected, then approach **CIT(A)** with a formal stay petition.

The **CIT(A) has the authority** to grant or reject stay of recovery:

➤ Only **after the assessee files an appeal**.

➤ It is **discretionary** and depends on **facts and circumstances** of each case.

The power of the **CIT(A) to grant stay** is:

➤ **Independent** of Section 220(6) of the Income Tax Act.

➤ It flows from the **appellate authority's inherent powers** when the demand is under dispute in an appeal.

STAY OF DEMAND AT CIT(A) LEVEL | RELEVANT JUDICIAL PRECEDENTS

Tin Manufacturing Co. of India v. CIT | [1996] 222 ITR 323 (Allahabad HC)

Issue: Whether the **CIT(A)** had the authority to grant a **stay of tax demand** at the appellate stage, especially in the absence of any statutory provision mandating such a stay.

"4. Reliance is placed on a judgment of this court in Prem Prakash Tripathi v. CIT [1994] 208 ITR 461 in which this court held that the power to grant stay of the recovery of the demand disputed in appeal is incidental or ancillary to the appellate jurisdiction and, therefore, the Commissioner of Income-tax (Appeals) has the jurisdiction to stay the dues.

5. Learned counsel for the respondents referred to Sub-section (6) of Section 220 of the Income-tax Act, 1961, which gives power to the Assessing Officer to treat the assessee as not in default when an assessee has presented an appeal under Section 246 of the Act. It is contended that the assessee must move an application before the Assessing Officer under Section 220(6) of the Act and it is only after the Assessing Officer declines the request that the jurisdiction of the first appellate authority may be invoked. He pointed out that, in the present case, by an order dated September 22, 1994, a copy of which is annexure '4' to the writ petition, the Assessing Officer declined to stay payment of the demand. He, therefore, contended that the petitioner's application dated August 12, 1994, was not maintainable before the Commissioner of Income-tax (Appeals) because, by that time, the petitioner's application under Section 220(6) of the Act had not been decided. This contention, in my view, is not correct. The power of the appellate authority to stay the recovery of the demand of dues which are the subject-matter of appeal pending before him, is independent of the provisions of Sub-section (6) of Section 220 of the Act and it is not necessary that before invoking the power of the first appellate authority, an assessee should approach the Assessing Officer under the aforesaid provision or that the Assessing Officer must reject the assessee's prayer for stay of the demand.

6. Since the assessee has moved an application for stay before the Commissioner of Income-tax (Appeals), Muzaffarnagar, it is his duty to dispose of the same expeditiously. This writ petition is, accordingly, allowed and the Commissioner of Income-tax (Appeals), Muzaffarnagar, is directed to dispose of the petitioner's application for slay within a period of one month from the date a certified copy of this order is filed by the petitioner before him. The petitioner is directed to do so within ten days from today. Till the disposal of the stay application by the Commissioner of Income-tax (Appeals), the recovery of income-tax dues for the assessment year 1991-92 shall remain stayed."

STAY OF DEMAND AT CIT(A) LEVEL | RELEVANT JUDICIAL PRECEDENTS

Keshaw Cashew v. DCIT | [1994] 210 ITR 1014 (Kerala HC)

The Petitioner, **Keshaw Cashew**, was a cashew processing company that had raised an appeal against the assessment order before the CIT. At the same time, the assessee requested the CIT to grant a stay of the recovery of the tax demand. The recovery of the demand was contested on the ground of financial difficulties and the company's appeal.

Whether the CIT could grant a stay of the recovery of tax demand during the pendency of the appeal at the CIT(A) level, even when there were no immediate grounds for financial hardship?

Relevant extract is reproduced herewith:

"Learned standing counsel pointed out that the petitioner-firm has not approached the first respondent with a petition under section 220(6) of the Act. Of course, the petitioner could have approached the first respondent but that does not mean the petitioner cannot invoke the inherent power of the second respondent to stay the collection of tax pending the appeal. As far as this position is concerned, there is no dispute. ***Even in a case where the assessee has not filed an application under section 220(6), he can very well approach the appellate authority invoking the inherent jurisdiction for staying collection of tax pending the appeal. It is said that no order has been passed on exhibit P-6 application for stay. In view of the fact that exhibit P-5 notice has been issued to recover the tax, I feel, in the interest of justice, a direction can be issued to the second respondent to consider and dispose of the appeal at an early date. In that view of the matter, I direct the second respondent to consider and dispose of exhibit P-3 appeal as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this judgment.***

Learned counsel appearing for the petitioner submits that unless further steps pursuant to exhibit P-5 are restrained, the petitioner-firm will be put to irreparable prejudice. It is said that the firm has no liquid funds to comply with the demand now. Apart from that the petitioner-firm contends that it has got a fair chance of success in the appeal. The assessee's case is that it is an exporter and is entitled to claim the exemption in respect of the entire income. It is also brought to my notice, exhibit P-4, circular issued by the Central Board of Direct Taxes which indicates certain guidelines as to how the stay of collection of tax pending the appeal is to be dealt with. Considering all the aspects of the case, I direct respondents Nos. 1 and 3 not to take further proceedings pursuant to exhibit P-5 till the disposal of exhibit P-3 appeal by the second respondent as directed above."

Stay proceedings before ITAT –Powers of Tribunal to grant stay of demand

Assessee can approach to stay the recovery only when a valid appeal is pending before the Tribunal.

The Tribunal has the **authority to grant stay of recovery** not only for **tax** but also for **interest and penalty**.

➤ Recognized in key cases:

- Bhoja Reddy [(231 ITR 47) (Andhra Pradesh High Court)]
- Shiv Shakti Rubber & Chemical Works [(213 ITR 299) (Allahabad High Court)]

Maintainability of Stay Application

- **Assessee can file stay application directly before ITAT**

➤ Even if no stay application was filed before lower authorities (AO/CIT(A)).

➤ Supported by:

- DHL Express (India) Pvt. Ltd. [(140 TTJ 38) (Mumbai)]
- Honeywell Automation India Ltd. [(138 TTJ 373) (Pune)]

Statutory Power of ITAT to Grant Stay | Section 254(2A) of the Income Tax Act, 1961

- **First Proviso**: FINANCE ACT, 2020 AMENDMENT
- Provided that the Appellate Tribunal may, after considering the merits of the application made by the assessee, pass an order of stay in any proceedings relating to an appeal filed under sub-section (1) of section 253, for a period not exceeding one hundred and eighty days from the date of such order subject to the condition that the assessee deposits not less than twenty per cent of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnishes security of equal amount in respect thereof and the Appellate Tribunal shall dispose of the appeal within the said period of stay specified in that order:

STAY OF DEMAND AT ITAT LEVEL | RELEVANT JUDICIAL PRECEDENTS

Honeywell Automation India Limited v. DCIT| Stay Application No. 08/Pn/2011 (Trib.)

Direct Stay Application – 'DSA' maintainability before the Tribunals

"5. We have heard the parties and perused the orders of the Revenue on the Stay Application with its Annexures. We have also gone through various citations relied upon by the assessee's Counsel in support of the said arguments that the Tribunal has jurisdiction in respect of the Direct Stay Applications (DSA) before the Tribunal (those stay applications without going to the Revenue authorities or without waiting for the decision of the Revenue authorities). On the issue of maintainability of the DSAs, we find that it is a settled issue at the level of Tribunals that the DSAs are maintainable as held by various Benches of the Tribunal viz. Pune (M/s. Kumar and Company & Starent Networks I. Pvt. Ltd.), Delhi (Reuters India (P) Ltd., Mumbai and Vodafone Essar Limited & M/s. KEC International Limited). In our opinion, these are the cases, were the assessee never filed a stay application before the AO or any other IT authorities. For the sake of completeness of the order, we reproduce para 8 and 9 of the decision of the Tribunal in the case of Vodafone Essar Limited dated 11.12.2009 and the same read as under.

"8. ..Whether the assessee was in any way prohibited from approaching this Tribunal for stay of recovery of demand without first approaching the revenue authorities<

….

9. As regards point No.(1) above, we find that this issue is covered by the judgment of the Calcutta High Court in the case of Susanta Kumar Nayak [cited supra], wherein the Hon'ble High Court has held that the authority which is vested with the power to exercise discretion must do so either in favour of the assessee or against him and it cannot refuse to exercise discretion on the ground that the assessee has alternative remedies. Respectfully following the aforesaid decision of the Calcuitta High Court, the Tribunal at Hyderabad in the case of Nagarjuna Fertilisers & Chemicals Ltd., k[cited supra], has also held that it is not necessary that assessee should necessarily approach the Commissioner of Income Tax before approaching the Tribunal for grant of stay. ….

7. Therefore, Direct Stay Application filed before us is maintainable and it is not the requirement of the law that assessee should necessarily approach the Commissioner of Income Tax before approaching the Tribunal for grant of stay. It does not make any difference whether the assessee filed any application before the Revenue and not awaited their decisions before filing application before the Tribunal or directly approaching the Tribunal without even filing the applications before the Revenue authorities, when there exists threat of coercive action by the AO. Thus, therefore, the objections raised by the Revenue in this regard are dismissed."

STAY OF DEMAND AT ITAT LEVEL | RELEVANT JUDICIAL PRECEDENTS

DHL Express (India) Pvt. Ltd. v. ACIT | Stay Application No. 119/Mum/2010 (Trib.)

In the case of **DHL Express (India) Pvt. Ltd. vs. ACIT**, the Mumbai ITAT clarified that it is **not mandatory for an assessee to first file a stay application before the Revenue Authorities before approaching the Tribunal for stay of demand recovery**. **Relying on the ruling in Broswel Pharmaceutical Inc. v. ITO (83 TTJ 126)**, the Tribunal held that **while it is a general practice for assessees to seek stay before lower authorities**, this is **directory and not a legal prerequisite**. The Tribunal **emphasized its unfettered powers to entertain and grant stay applications directly**, particularly where the assessment arises from DRP directions under section 144C. Relevant extract is reproduced herewith:

"3. ……We find in the instant case, the assessment order has been framed which is in conformity with the directions of the Dispute Resolution Panel u/s 144C of the I T Act and therefore, the assessee has filed appeal before the Tribunal directly. ***We find the assessee in the instant case has also not moved any application before the Revenue authorities seeking stay of realization of the outstanding demand and has directly approached the Tribunal for stay of realization of the demand. From the various decisions filed before us, we find different views are available regarding the approach before the Tribunal directly for stay of realization of demand. In our opinion and in view of the decision of the Allahabad Bench of the Tribunal in the case of Broswel Pharmaceutical Inc ., (supra) it is not mandatory on the part of the assessee to move application before the Revenue Authorities for granting of stay of outstanding demand. We, therefore, do not find any merit in the arguments advanced by the ld DR that the stay application should be rejected outright since the assessee has not moved any petition before the Revenue Authorities seeking stay of the demand. In our opinion, seeking stay before the lower authorities is directory and not mandatory.*** *……*

STAY OF DEMAND AT ITAT LEVEL | RELEVANT JUDICIAL PRECEDENTS

Samsung India Electronics Private Limited| W.P.(C) 16608/2024 02.12.2024

In a recent case, Delhi High Court, in this case, reaffirmed the **right of an assessee to directly approach the ITAT for stay of demand**, holding that a **stay application cannot be dismissed as premature solely because coercive recovery steps have not yet been initiated by the Revenue**. The Court set aside the ITAT's rejection of Samsung's stay application on the ground of prematurity, emphasizing that **once a demand is raised and is outstanding, the assessee is entitled to seek stay**, regardless of whether recovery actions have commenced. Relevant extract is reproduced herewith:

*"3.5 The **petitioner has filed the stay application on 18.11.2024 before the learned ITAT seeking stay of the outstanding demand, which was dismissed by the learned ITAT by the impugned order on the ground that said application was premature.***

*4. Concededly, the reasoning of the learned ITAT rejecting the petitioner's stay application is unsustainable. **There is no dispute that the demand was raised as outstanding and therefore, the petitioner's application cannot be considered as premature on the basis that no coercive or precipitative steps had been taken by the Revenue.***

*5. In view of the above, the **impugned order is set aside and the petitioner's stay application no.451/Del/2024 in ITA No.5256/Del/2024 is restored before the learned ITAT for consideration on merits.** We request the learned ITAT to dispose of the petitioner's application as expeditiously as possible."*

POWER OF ITAT – STAY OF DEMAND

ITO v. M. K. Mohammed Kunhi | [1969] 71 ITR 815 (SC)

1. **Judicial Powers of the Tribunal:** The ITAT, though not a court, **exercises judicial powers** and its jurisdiction is similar to that of an appellate court under the **Civil Procedure Code, 1908**.

2. **Implied Powers:** When **statutory powers are granted**, they imply the authority to use all reasonable means to make those powers effective (**Sutherland's Statutory Construction**).

3. **Amplitude of Section 254:** Section 254 grants **broad powers to the ITAT**, and it implies **incidental powers** necessary to make the exercise of those powers fully effective.

4. **Power to Stay as Ancillary:**

Under **Section 255(5)**, the ITAT can regulate its own procedure, including the power to grant stay of recovery, as an **incidental or ancillary power** to its appellate jurisdiction.
Section 220(6) deals with stays before the Appellate Assistant Commissioner but does not address stays before the ITAT, implying that the ITAT has the power to stay recovery in appellate matters.

5. **Discretionary Nature of Stay:** The ITAT will **not grant stay routinely**; it will do so only when:
    1. A **strong prima facie case** is made out.
    2. The recovery proceedings would **frustrate the appeal** if allowed to continue.

6. **Substantive Right to Appeal:** The right to appeal is **substantive** and **open to review**, with the ITAT having the authority to pass **appropriate orders** to prevent the appeal from becoming **nugatory**. **HELD** - The **power of the ITAT to grant stay** is **necessary and incidental** to its appellate jurisdiction. It is exercised with caution, based on the specific circumstances and after assessing the merits of the case.

POWER OF ITAT – STAY OF DEMAND

High Court Bar Association, Allahabad v. State of U.P.|Criminal Appeal No. 3589 of 2023 (SC)

Dated 29.02.2024

"I. Object of passing interim orders

13. Before we examine the questions, we need to advert to the object of passing orders of interim relief pending the final disposal of the main case. The reason is that the object of passing interim order has not been considered while deciding Asian Resurfacing1. An order of interim relief is usually granted in the aid of the final relief sought in the case. An occasion for passing an order of stay of the proceedings normally arises when the High Court is dealing with a challenge to an interim or interlocutory order passed during the pendency of the main case before a trial or appellate Court. The High Court can grant relief of the stay of hearing of the main proceedings on being satisfied that a prima facie case is made out and that the failure to stay the proceedings before the concerned Court in all probability may render the remedy adopted infructuous. When the High Court passes an interim order of stay, though the interim order may not expressly say so, the three factors, viz; prima facie case, irreparable loss, and balance of convenience, are always in the back of the judges' minds. Though interim orders of stay of proceedings cannot be routinely passed as a matter of course, it cannot be said that such orders can be passed only in exceptional cases. ……An occasion for passing an order of stay of proceeding arises as it is not possible for the High Court to take up the case for final hearing immediately. While entertaining a challenge to an order passed in a pending case, if the pending case is not stayed, the trial or the appellate Court may decide the pending case, rendering the remedy before the High Court ineffective. Such a situation often leads to the passing of an order of remand. In our legal system, which is facing a docket explosion, an order of remand should be made only as a last resort. The orders of remand not only result in more delays but also increase the cost of litigation. Therefore, to avoid the possibility of passing an order of remand, the grant of stay of proceedings is called for in many cases."

NATURE OF APPELLATE POWER

- Though not a court, the **ITAT exercises judicial powers** akin to an appellate court under the **CPC, 1908**.
- It holds **judicial review authority**, including **incidental powers like granting stay** on tax and penalty demands.
- ITAT functions as a **judicial body**, not an administrative one — it finds facts and applies legal rules impartially.
- Created under special statutes (e.g., Income Tax Act, 1961) as an **alternative to regular courts**.
- In **S.P. Sampath Kumar v. Union of India** and **Minerva Mills Ltd. v. Union of India**, the **Supreme Court affirmed judicial review as a basic structure of the Constitution**.
- Any attempt to **remove or limit judicial review** through constitutional amendment would **subvert the Constitution**.

- If **20% deposit is treated as mandatory**, it would **conflict with the Tribunal's appellate powers** under **Section 254(1).**
- The **word "may"** in the **first proviso to Section 254(2A)** shows that the **Tribunal has discretion** to **waive the deposit**,if
- **Prima facie case** exists
- **Balance of convenience** favors the assessee
- **Irreparable loss** would be caused otherwise
- Forcing deposit even after these conditions are met would be **arbitrary** and **unfair**.
- Therefore, the **20% deposit is directory, not mandatory**, and any **rigid interpretation would go against principles of equity and justice**.
- **What about covered matters, exceptions are created in the Circulars aswell.**

STAY ON PENALTY PROCEEDINGS

PROCEEDINGS CAN BE STAYED TO AVOID MULTIPLICITY OF LITIGATION AND UNDUE HARASSMENT.

GE India Industrial Pvt. Ltd. v. DCIT | [(2013) 148 ITD 70 (Ahmedabad ITAT)]

📌 **Facts of the Case:** Penalty proceedings initiated under **Section 271(1)(c)** for alleged concealment of income - assessee had already filed an **appeal against the quantum addition -** Application was filed before the ITAT to **stay the penalty proceedings** pending final outcome of the appeal.

⚖️ **Held by Ahmedabad ITAT**

- **Where the quantum appeal is pending**, it is **inappropriate** to proceed with the **penalty proceedings**.
- Premature penalty action could result in **multiplicity of proceedings** and **prejudice** the assessee.
- **Directed** that penalty proceedings **should be kept in abeyance** until the **quantum appeal is decided**.

Key Takeaways

- **Judicial discipline** warrants that penalty should await finality of the **quantum issue**.
- ITAT can grant stay in **fit cases** to prevent undue hardship.
- Reinforces principle that **penalty proceedings are consequential**, not independent of disputed facts.

Tribunal has power to stay penalty proceedings pending disposal of appeal as being incidental or ancillary to its appellate jurisdiction

Oracle India (P.) Ltd. Vs. Additional Commissioner of Income-tax, Range 13, New Delhi [2017] 88 taxmann.com 241 (Delhi - Trib.) Relevant extract:

4.2 As is apparent from first proviso to section 254(2A) in an appeal pending before the Tribunal it can pass an order of stay "in any proceedings relating to an appeal filed before it". It is important to note that the said sub-section recognizes a stay in "any" proceedings "related to an appeal". It does not say in a proceeding of the appeal. As such the power cannot be read in a limited manner by which the express words employed by the statute are whittled down. When a stay can be granted in any proceeding relating to an appeal then it covers also a proceeding which is a direct result of the pending appeal. Where the gravamen of the default is the same or fall out it will be covered "in any proceedings relating to an appeal".

4.3 …..In the case of ITAT (supra) Hon'ble Jurisdictional High Court was concerned with a case in which a stay was granted by the ITAT of the assessment proceedings which were a fall out of an order passed u/s 263 of the Act. Order u/s 263 was also the subject matter of appeal before the Tribunal. Upholding that the Tribunal possesses the power to stay such related assessment proceedings it was held by Hon'ble High Court as under:—

"21. So far as the order of the Tribunal passed on 21.05.2010 is concerned, it is well settled by the judgment of the Supreme Court in ITO v. M.K. Mohammed Kunhi [1969] 71 ITR 815 that the Tribunal, while exercising its appellate powers under the Income Tax Act has also the power to ensure that the fruits of success are not rendered futile or nugatory and for this purpose it is empowered, to pass appropriate orders including orders of stay. In ITO v. Khalid Mehdi Khan [1977] 110 ITR 79 the Andhra Pradesh High Court, applying the rule laid down in M.K Mohammed Kunhi(supra), stayed the assessment proceedings pending before the Assessing Officer consequent to the directions of the CIT given in orders passed under Section 263 of the Act. The stay order passed by the Tribunal on 21.05.2010 is, therefore, supported by ample authority. It is part of the exercise of the appellate power of the Tribunal under Section 254(1). The object of the order is twofold: the first is to prevent multiplicity of proceedings and harassment to the assessee, with the possibility of the proceedings before the Assessing Officer becoming meaningless if ultimately the order passed by the CIT is found to be invalid on grounds of jurisdiction or on merits and, second, to ensure that the fruits of success in the appeals are not rendered meaningless or nugatory. It has not been shown before us by the petitioner as to what error was committed by the Tribunal in passing the stay orders, nor was it argued that the Tribunal did not exercise its discretion on the basis of settled parameters for granting stay of proceedings."

STAY OF PROSECUTION – RELEVANT PRECEDENT

Jindal Steel & Power Ltd. vs. ACIT [2015] 60 taxmann.com 475 (Delhi – Trib.)-:

"11. Hon'ble Delhi High Court in the case of ITO v. Giggles (P.) Ltd. [2008] 301 ITR 32/[2006] 157 Taxman 362 took the view that the proceedings under s. 271(l)(c) of the IT Act would have a clear and definite bearing on those under s. 276C. The Hon'ble Delhi High Court in the case of Spice Corpn. Ltd. v. Dy. CIT [2002] 257 ITR 766/123 Taxman 986 took the view that where the prosecution is launched on a matter pending appeal on merits, the finality in the matter of merits has to be awaited. In the case of Gauri Shankar Prasad v. Union of India [2003] 261 ITR 522/133 Taxman 463 (Pat), the Hon'ble Patna High Court pointed out that tax and prosecution proceedings are independent of each other but where tax proceedings have a bearing on the proceedings, the latter will have to await the outcome of the other.

12. .....We also noted that there is no limitation prescribed for launching the prosecution proceedings under the said provision. Therefore, when the order of the Tribunal will have a bearing on the prosecution proceedings, in our opinion, there will not be any loss to the Revenue if the prosecution proceedings are not launched immediately but kept pending till the outcome of the order of the Tribunal. It will also save the cost to be incurred by the Revenue by way of fees to advocate and other costs to be incurred, what to talk of the cost of time being devoted by the senior officers of Revenue. All will be a waste if the appeals pending before this Tribunal are decided in favour of the assessee. .....Since in this case the Revenue has not launched so far the prosecution against the assessee in any criminal Court, therefore, in our opinion, this Tribunal has jurisdiction to stay the proceedings in view of proviso to s. 254(2A)."

CURTAILING WIDE POWERS OF ITAT IN VIEW OF THE RECENT AMENDMENT

- **First Proviso**: FINANCE ACT, 2020 AMENDMENT
- Provided that the Appellate Tribunal may, after considering the merits of the application made by the assessee, pass an order of stay in any proceedings relating to an appeal filed under sub-section (1) of section 253, for a period not exceeding one hundred and eighty days from the date of such order subject to the condition that the assessee deposits not less than twenty per cent of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnishes security of equal amount in respect thereof and the Appellate Tribunal shall dispose of the appeal within the said period of stay specified in that order:
- As seen and discussed already, ITAT being akin to Court has always had wide/inherent powers and this amendment is only a means to curtail the same.
- As discussed, ITAT not only has the powers to stay the demand but also has the powers to stay the proceedings, stay the notices, however in light of amendment to the first proviso, which calls for payment of 20%, will that be applied to stay in proceedings also, can we argue that this proviso is to be read disjunctively and not conjunctively.
- This question is yet untested by the Courts.

High pitched assessment

Binding instructions of the CBDT

- **Instruction No. 96 [F. No. 1/6/69-ITCC]** issued by the Central Board of Direct Taxes pursuant to proceedings of Lok Sabha dated 11.12.1970 when in reply to the unstarred question No. 4289 the Hon'ble Minister for Revenue and Expenditure assured:

"(a) and (b), suitable instructions (to the effect that 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 should be held in abeyance till the decision of the appeals, provided there were no lapse on the part of the assessee) have been issued by the Central Board of Direct Taxes to all Commissioners of Income-tax in view of the recommendation made by the informal Consultative Committee of the Ministry" (pp 420-421)."

- The said **Instruction No. 96 [F. No. 1/6/69-ITCC]** issued by the Central Board of Direct Taxes in connection with the stay of demand in cases of harsh assessments, clarifies as under:

"Stay in cases of harsh assessments- 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) of the Income-tax Act, 1962.

*"The then **Deputy Prime Minister** 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 appeals, provided there were no lapses on the part of the assessee" The Board desires that the above observations may be brought to the notice of all the Income-tax Officers working under you and the power of stay of recovery in such cases upto the stage of first appeals may be exercised by the Inspecting Assistant Commissioner/Commissioner of Income-tax."*

High pitched Assessment

INSTRUCTION F. NO. 225/101/2021-ITA-II

CBDT vide Instructions no. 17/2015, dated 09-11-2015, had constituted 'Local Committees to deal with Taxpayer's Grievances from High Pitched Scrutiny Assessment'. Considering the launch of the Faceless Assessment regime, the CBDT issued revised instructions in 2022 for the constitution and functioning of such committees thereby superseding 2015 instructions by 2022 guidelines.

Action by Local Committees: Examine if there's a **prima facie case** of high-pitched assessment or **violation of natural justice -** investigate whether **additions are supported by sound reasoning** and if **law is misinterpreted or facts ignored -** call for **assessment records** from the **Jurisdictional Pr. CIT**.

Reporting & Monitoring: **Monthly** review of Local Committee performance - **Quarterly reports** submitted to CBDT, providing details on grievances handled and actions taken.

Objective: Ensure fair, reasonable, and prompt resolution of taxpayers' grievances. **Note**: Local Committees are not a substitute for appellate or dispute resolution forums

Relevant Extract Reproduced:

"….D. Action to be taken by the Local Committees on grievance petitions:

(iii) *The grievance petition received by Local Committee would be examined by it to ascertain whether there is a prima-facie case of High-Pitched Assessment, non-observance of principles of natural justice, non-application of mind or gross negligence of Assessing Officer/Assessment Unit.*

(iv) *The Local Committee may call for the relevant assessment records to peruse from the Jurisdictional Pr.CIT concerned.*

(vi) *The Local Committee may seek inputs from the Directorate of Systems (ITBA/efiling/CPC-ITR, CPC-TDS, etc.), on Systems-related issues emanating from the grievance/matter under consideration, if considered necessary.*

(vii) *Local Committee would ascertain whether the addition(s) made in assessment order is/are not backed by any sound reason or logic, the provisions of law have grossly been misinterpreted or obvious and well-established facts on records have outrightly been ignored. The Committee would also take into consideration whether principles of natural justice have been followed by the Assessing Officer/Assessment Unit. Thereafter, Local Committee shall submit a report treating the order as High-Pitched/Not High-pitched, along with the reasons, to the Pr. CCIT concerned.*

(viii) *The Local Committee shall endeavor to dispose of each grievance petition within two months from the end of the month in which such petition is received by it.*

3. *The purpose of constitution of Local Committees is to effectively and efficiently deal with the genuine grievances of taxpayers and help in supporting an environment where assessment orders are passed in a fair and reasonable manner. It is to be noted that Local Committees cannot be treated as an alternative forum to dispute resolution/appellate proceedings."*

High pitched assessment

Binding instructions of the CBDT and various decisions laying down the parameters for stay in cases of High Pitched Assessment

2. Circular dated 1st December, 2009 (Board's Letter F.No.404/10/2009-ITCC, dt. 1st Dec., 2009) [also reported in 236 CTR (St) 17]. The said circular also makes it patently clear that after coming into force of Instruction No.1914 (supra) still continues to cover cases of unreasonably high-pitched assessment order and cases involving genuine hardship. The relevant extracts of the said circular are also reproduced hereunder:

"3.It is clear that the substance of the assurance as laid down in Instruction No.95, dated 21st August, 1969 was submerged in the Instruction No. 1362, dated 15th October, 1980 which was issued in supersession of all earlier Instructions on the subject. Instruction No. 1914 dated 2nd December, 1993 was issued subsequently in supersession of all the earlier Instructions on the subject and the said Instruction also covers unreasonably high-pitched assessment order and genuine hardship cases.

4. It is therefore clarified that there is no separate existence of the Instruction number 95 dated 21.8.1969. Instruction number 95 and all subsequent Instructions on the issue ceased to exist from the date Instruction No. 1362 came into operation. In turn Instruction number 1362 and all subsequent Instructions on the issue also ceased to exist the day Instruction number 1914 came into operation i.e. 2/12/1993.The Instruction number 1914 holds the field currently and a copy of Instruction number 1914 is enclosed for reference."

High pitched assessment

Dalpatbhai Vasabhai Ukava vs. PCIT | [2019] 108 taxmann.com 265 (Gujarat)

"14. The issue of granting stay pending appeal is governed principally by the two circulars issued by the CBDT. The first circular was issued way back on 2nd February 1993 being instructions no.1914. The circular contained guidelines for staying the demand pending appeal. It was stated that the demand would be stayed if there are valid reasons for doing so and mere filing of appeal against the order of assessment would not be sufficient reason to stay the recovery of demand. The instructions issued under the office memorandum dated 29th February 2016 are not in super-session of the instructions no.1914 dated 2nd February 1993 but are in partial modification thereof. The preamble of these instructions provide that in order to streamline the process of grant of stay of standardization of quantum of lump-sum payment to be made as a pre-condition for stay of demand of dispute before the Commissioner of Income Tax (Appeals), such modified guidelines were being issued. The relevant portion of these instructions read as under:

"15. This circular thus lays down 15% of the disputed demand to be deposited for stay, by way of a general condition. The circular does not prohibit or envisage that there can be no deviation from this standard formula. In other words, it is inbuilt in the circular itself to either decrease or even increase the percentage of the disputed tax demand to be deposited for an assessee to enjoy stay pending appeal. The circular provides the guidelines to enable the Assessing Officers and Commissioners to exercise such discretionary powers more uniformly."

Flipkart India Private Limited vs. ACIT W.P. (C) 1339/2017 (Karnataka HC)

1. In the case of **Flipkart India Private Limited vs. ACIT *W.P. (C) 1339/2017,*** the Hon'ble High Court of Karnataka vide order dated 23.02.2017 has stated that:

"CBDT Circular dated 29.02.2016 does not supersede Instruction No.1914 but modifies it. Both have to be read together. The assessing officer and CIT cannot straightaway demand payment of 15 percent of the dues but have to grant complete stay if the assessment is "unreasonably high pitched" or the demand for depositing 15% of the disputed demand leads to "genuine hardship" to the assessee".

2. In the case of **Valvoline Cummins Limited v. DCIT: 307 ITR 103 (Delhi)**, wherein the **Hon'ble Delhi High Court**, while upholding the applicability of the above referred Instruction No. 96 [F.No.1/6/69-ITCC dated 21.08.1969], held as under:

"40.It may be recalled that the returned income of the assessee was Rs. 7.25 Crores, but the assessed income is Rs. 58.68 Crores, which is almost 8 times the returned income. In this regard, the learned Counsel has drawn our attention to Instruction No. 96 dated 21st August, 1969, issued by the CBDT, which deals with the framing of an assessment which is substantially higher than the returned income. The relevant portion of the Instruction reads as under:-
Income determined on the assessment was substantially higher than the returned income. Whether collection of tax in dispute is to be held in abeyance till the decision of appeal……..

Contd. on right side

1. One of the points that came up for consideration in the 8th meeting of the Internal 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) of the Act.
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 should be held in abeyance till the decision of the appeals, provided there were no lapse on the part of the assessee.

1. The Board desire that 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.
41. A perusal of paragraph 2 of the aforesaid extract would show that where the income determined on assessment is substantially higher than the returned income, say, twice the latter amount or more, the, the collection of the tax should be held in abeyance till the decision on appeal is taken. In this case, as we have noted above, the assessment is almost 8 times the returned income. Clearly, the above extract from the Instruction No. 96 dated 21st August, 1969, would be applicable to the facts of the case.
…

*43. Under the circumstances, we are of the view that the assessee would, in normal course, be **entitled to an absolute stay of the demand** on the basis of the above Instruction."*

HIGH PITCHED ASSESSMENT

Soul vs. DCIT 323 ITR 305 (Del.)

Backgound: Dispute regarding **assessment of income** under a **high-pitched scrutiny**, particularly concerning **claim of business expenses** and **transfer pricing adjustments - Soul**, was subjected to **high-pitched scrutiny assessments** by the Assessing Officer, resulting in **substantial disallowances** of expenses - Issues arose from **disputed claims of business expenses** and **transfer pricing arrangements** with associated entities - The Assessing Officer took an **aggressive stance** on the taxpayer's deductions and adjustments, without sufficiently considering the business's nature and substance.

Court's Ruling - The **Delhi High Court** ruled that **high-pitched scrutiny assessments** should not lead to **arbitrary additions** or **disallowances** without adequate **examination of facts -** emphasized that the **Assessing Officer** must follow **due process** and must not make **unsubstantiated claims** during high-pitched assessments.

Instruction No.1914 dated December 2, 1993 issued by the CBDT which reiterates the above-mentioned guidelines for granting stay on recovery of demand. The said instruction was relied upon by the **Hon'ble Delhi High Court** in the case of **Soul vs DCIT** ***(2008) 220 CTR 210*** for granting a stay of demand. The relevant extract from the judgment discussing the principles laid down by Instruction No. 96 and 1914 (supra) is reproduced hereunder:

"…… paragraph No. 2 (A) which speaks of responsibility specifically indicates that it shall be the responsibility of the Assessing Officer and the TRO to collect every demand that has been raised "except the following", which includes "(d) demand stayed in accordance with the paras B and C below". Para B relates to Stay petitions. As extracted above, sub-clause (iii) of paragraph B clearly indicates that a higher/superior authority could interfere with the decision of the Assessing Officer/TRO only in exceptional circumstances. The exceptional circumstances have been indicated as - "where the assessment order appears to be unreasonably high pitched or where genuine hardship is likely to be caused to the' assessee". The very question as to what would constitute the assessment order as being reasonably high pitched in consideration under the said instruction No. 96 and, there, it has been noted by way of illustration that assessment at twice the amount of the returned income would amount to being substantially higher or high pitched."

HIGH PITCHED ASSESSMENT

STAY OF DEMAND

Useful reference can also be made to the decision of the **Hon'ble Supreme Court** in the case of **Pennar Industries Ltd. vs. State of A.P. and Ors.:** ***(2009) 3 SCC 177***, wherein the Hon'ble Supreme Court has observed as follows:

"5. Principles relating to grant of stay pending disposal of the matters before the concerned forums have been considered in several cases. It is to be noted that in such matters though discretion is available, the same has to be exercised judicially.

1. The applicable principles have been set out succinctly in Silliguri Municipality and Ors. V. Amalendu Das and Ors. (AIR 1984 SC 653) and M/s Samarias Trading Co. Pvt. Ltd. v. S. Samuel and Ors. (AIR 1985 SC 61) and Assistant Collector of Central Excise v. Dunlop India Ltd. (AIR 1985 SC 330).

6. It is true that on merely establishing a prima facie case, interim order of protection should not be passed. But if on a cursory glance it appears that the demand raised has no leg to stand, it would be undesirable to require the assessee to pay full or substantive part of the demand. Petitions for stay should not be disposed of in a routine matter unmindful of the consequences flowing from the order requiring the assessee to deposit full or part of the demand. There can be no rule of universal application in such matters and the order has to be passed keeping in view the factual scenario involved. Merely because this Court has indicated the principles that does not give a license to the forum/authority to pass an order which cannot be sustained on the touchstone of fairness, legality and public interest. Where denial of interim relief may lead to public mischief, grave irreparable private injury or shake a citizens' faith in the impartiality of public administration, interim relief can be given.

It has become an unfortunate trend to casually dispose of stay applications by referring to decisions in Siliguri Municipality and Dunlop India cases (supra) without analyzing factual scenario involved in a particular case."

Understanding Stay of Demand in High Pitched Assessments

Are AOs mandated to demand 20% in every case?

Premature Recovery and CBDT Office Memorandum (31.7.2017): Requires 20% of tax demand to be paid for stay. Applies even in high-pitched assessments ?

What is a High Pitched Assessment?
The First CBDT Instruction addressing the issue of Grant of Stay of Demand in High Pitched Assessments was CBDT Instruction No. 95 dated 21.8.1969. It categorically provided that:

"*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 assesses.*"

CBDT Instruction No. 95 (21.8.1969): Recovery to be stayed till appeal disposal if no lapse by assessee. **Instruction No. 1914 (2.12.1993)** Replaced earlier instructions. But retained discretion in high-pitched assessments. Key: Para 2-B(iii) - AO/Pr. CIT must assess whether: Assessment is unreasonably high pitched. Recovery causes genuine hardship.
CBDT OMs of 2016 & 2017- AOs treat these as mandatory, ignoring high-pitched exceptions- that is not the purpose of these circulars

Taneja Developers v. ACIT (Del HC, 2009) Court upheld the need to consider genuine hardship. Assessment at 74x returned income termed unreasonably high pitched. Reaffirmed earlier precedent: **Valvoline Cummins Ltd. v. Dy. CIT (2008) 307 ITR 103**, relevant extract of Taneja Developers (supra):
"9.Having considered the arguments advanced by the learned counsel for the parties, we are of the view that although Instruction No.1914 of 1993 specifically states that it is in supersession of all earlier instructions, the position obtaining after the decision of this Court in Valvoline Cummins Ltd., (Supra) is not altered at all. This is so because paragraph No.2(A) which speaks of responsibility specifically indicates that it shall be the responsibility of the Assessing Officer and the TRO to collect every demand that has been raised except the following', which includes: (d) demand stayed in accordance with the paras B and C below. Para B relates to stay petitions. As extracted above, Sub-clause (iii) of para B clearly indicates that a higher/superior authority could interfere with the decision of the Assessing Officer/TRO only in exceptional circumstances. The exceptional circumstances have been indicated as – "where the assessment order appears to be unreasonably high pitched or where genuine hardship is likely to be caused to the assessee…. The very question as to what would constitute the assessment order as being reasonably high pitched in consideration under the said Instruction No.96 and, there, it has been noted by way of illustration that assessment at twice the amount of the returned income would amount to being substantially higher or high pitched. In the case before this Court in Valvoline Cummins Ltd., (supra) that assessee's income was about eight (8) times the returned income. This Court was of the view that was high pitched. In the present case, the assessed income is approximately 74 times the returned income and obviously, this would fall within the expression unreasonably high pitched. (Emphasis supplied)…
A reading of the above dictum would show that if assessment order is unreasonably high pitched or genuine hardship is ~~likely to be~~ caused to the assessee, then the assessee is entitled to be treated as not being in default in respect of the amount in dispute in the appeal."

HIGH PITCHED ASSESSMENT

CBDT slams Committees to Monitor High Pitched Assessment Orders through the then - Chairman, CBDT & Special Secretary to the Government of India D.O.F. No. 225/256//2018/ITA.II Dated the 4th of July, 2018

*"**2.** In last three years, the performance of Local Committees has not been found to be satisfactory. Last Year i.e. for 2016-2017, after follow-up from the Board, Pr. CCsIT furnished their report on cases held to be high-pitched by the Local Committees. In some of the instances/cases, these reports were found to be deficient/incomplete. For 2017-2018, not a single report of Local Committee from any of the Regions has been received in the Board. It may be mentioned that vide Instruction No. 17/2015, Pr. CCsIT were required to highlight outcome of work of Local Committees in their monthly DO Letters to the respective Zonal Member, however, it is observed that very few charges are following this practice. I have also got a personal feedback from some of the charges that Local Committees have not been duly reconstituted after transfer/promotion of Members of the existing Local Committee. I have also been informed that meetings of the Local Committee are not being held regularly in most of the Regions. You would also appreciate that all these deficiencies in functioning of Local Committees are hampering their effectiveness in tackling high-pitched assessments in an institutional manner.*

***3.** Therefore, I would like to take this opportunity to emphasise that it is necessary to give due attention by the Pr. CCsIT themselves to monitor performance of Local Committees on a regular basis so that these Committees serve as a useful mechanism/institution to curb high-pitched assessments in the Income-tax Department. In addition to the mechanism outlined in Instruction No. 17/2015, following further steps should also be taken in cases which are found to be high-pitched by the Local Committees:*

***3.1** Wherever Local Committee has taken a view that addition made in the assessment order is high-pitched, explanation of the Assessing Officer should invariably be called for. Wherever required, administrative action such as inter-city transfer of the concerned Assessing Officer to non-sensitive post should be taken in such cases without any delay. Further, appropriate disciplinary action should also be taken/initiated in these cases;*

***3.2** No coercive action should be taken for recovery of demand in cases which have been identified as high-pitched by the Local Committee; 3.3 The concerned Commissioner (Appeals) should be requested to expedite hearing in such cases.*

***4.** All Pr. CCsIT are requested to furnish the reports of Local Committees regarding assessments framed during the Financial Year 2017-2018 by 31st July, 2018 to Member (IT&C) as per the enclosed format. Thereafter, report of Local Committee would be required to be furnished to the Board every quarter as per the prescribed format."*

Letter issued by CBDT Chairman to all the Pr. Chief-Commissioner

Section 245 – Set Off of Refunds Against Tax Remaining Payable

No Cross-Year Adjustment of Demand – Maruti Suzuki v. DCIT (2011) - Delhi HC Held: Finality in one AY cannot be overridden by **pending litigation in another AY** - Protects taxpayer from arbitrary withholding of refunds.

Provision: Allows the Assessing Officer (AO) to **adjust a refund due** to the assessee against **any outstanding demand**, **after giving prior intimation**.

Case Facts: Refund due to Maruti Suzuki for AY 2001–02 after favorable appellate order - AO withheld refund citing pending demand in AY 2003–04.

Legal Principle:
Adjustment under Section 245 is not automatic. The AO **must apply mind** and **give the assessee an opportunity** (principles of natural justice) - **Refund from one AY cannot be withheld** for a demand **in another AY unless proper procedure under Section 245 is followed - When demand for a year has been quashed**, AO **cannot refuse refund** in that year based on a **pending demand in a different year**.

🧠 **Judicial Insight:** Justice Sanjiv Khanna emphasized that:

“Adjustment under Section 245 is a discretionary power subject to **conditions and safeguards**, not a blanket recovery tool.”

20….In this connection, we may reproduce the observations of a Division Bench of this Court in Glaxo Smith Kline Asia P. Ltd. vs. Commissioner of Income-Tax and Ors., [2007] 290 ITR 37. In the said case, the Division Bench noticed the difference between Sections 241 and 245 in respect of procedure as well as the width and scope of the power but has observed as under:-

"26. In our view, the power under section 245 of the Act, is a discretionary power given to each of the tax officers in the higher echelons to "set off the amount to be refunded or any part of that amount against the same, if any, remaining payable under this Act by the person to whom the refund is due." That this power is discretionary and not mandatory is indicated by the word "may". Secondly, the set off is in lieu of payment of refund. Thirdly, before invoking the power, the officer is expected to give an intimation in writing to the assessee to whom the refund is due informing him of the action proposed to be taken under this section.

27. We reiterate that the restrictions on the power under section 241, as explained judicially, would apply with equal, if not greater, force to section 245. A mechanical invocation of the power under section 245 irrespective of the fact situation, can lead to misuse of the power by the Revenue in order to delay the refund till such time a fresh demand for the subsequent assessment years is finalized. If reasonable time limits are not set for the processing of and disposal of an application for refund by the Revenue, it may result in the assessee not being able to get the refund at all. Also, the statute by stipulating the payment of interest on refunds (section 244A) and interest on delayed refunds (section 243) has underscored the importance of timely processing of refund claims."

OTHER MODES OF RECOVERY – SECTION 226

Other modes of recovery.

226. (1) Where no certificate has been drawn up under section 222, the Assessing Officer may recover the tax by any one or more of the modes provided in this section.

(1A) Where a certificate has been drawn up under section 222, the Tax Recovery Officer may, without prejudice to the modes of recovery specified in that section, recover the tax by any one or more of the modes provided in this section.

(2) If any assessee is in receipt of any income chargeable under the head "Salaries", the Assessing Officer or Tax Recovery Officer may require any person paying the same to deduct from any payment subsequent to the date of such requisition any arrears of tax due from such assessee, and such person shall comply with any such requisition and shall pay the sum so deducted to the credit of the Central Government or as the Board directs :

(*ii*) A notice under this sub-section may be issued to any person who holds or may subsequently hold any money for or on account of the assessee jointly with any other person and for the purposes of this sub-section, the shares of the joint holders in such account shall be presumed, until the contrary is proved, to be equal.

(*iii*) A copy of the notice shall be forwarded to the assessee at his last address known to the Assessing Officer or Tax Recovery Officer, and in the case of a joint account to all the joint holders at their last addresses known to the Assessing Officer or Tax Recovery Officer.

(*iv*) Save as otherwise provided in this sub-section, every person to whom a notice is issued under this sub-section shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary.

(*v*) Any claim respecting any property in relation to which a notice under this sub-section has been issued arising after the date of the notice shall be void as against any demand contained in the notice.

OTHER MODES OF RECOVERY – SECTION 226

(*vi*) Where a person to whom a notice under this sub-section is sent objects to it by a statement on oath that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee, then nothing contained in this sub-section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the Assessing Officer or Tax Recovery Officer to the extent of his own liability to the assessee on the date of the notice, or to the extent of the assessee's liability for any sum due under this Act, whichever is less.

(*vii*) The Assessing Officer or Tax Recovery Officer may, at any time or from time to time, amend or revoke any notice issued under this sub-section or extend the time for making any payment in pursuance of such notice.

(*viii*) The Assessing Officer or Tax Recovery Officer shall grant a receipt for any amount paid in compliance with a notice issued under this sub-section, and the person so paying shall be fully discharged from his liability to the assessee to the extent of the amount so paid.

(*ix*) Any person discharging any liability to the assessee after receipt of a notice under this sub-section shall be personally liable to the Assessing Officer or Tax Recovery Officer to the extent of his own liability to the assessee so discharged or to the extent of the assessee's liability for any sum due under this Act, whichever is less.

(*x*) If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the Assessing Officer or Tax Recovery Officer, he shall be deemed to be an assessee in default in respect of the amount specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it were an arrear of tax due from him, in the manner provided in sections 222 to 225 and the notice shall have the same effect as an attachment of a debt by the Tax Recovery Officer in exercise of his powers under section 222.

(4) The Assessing Officer or Tax Recovery Officer may apply to the court in whose custody there is money belonging to the assessee for payment to him of the entire amount of such money, or, if it is more than the tax due, an amount sufficient to discharge the tax.

(5) The Assessing Officer or Tax Recovery Officer may, if so authorised by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner by general or special order, recover any arrears of tax due from an assessee by distraint and sale of his movable property in the manner laid down in the Third Schedule.

OTHER MODES OF RECOVERY – SECTION 226(3)

GARNISHEE PROCEEDINGS

Garnishee proceedings – Recovery from third parties – Section - 226(3)

- A Garnishee order is a prohibitory order directing the debtors of the assessee to refuse the payment of the same, as the same is attached by the department for the recovery of its tax dues payable by the assessee.

- Such garnishee proceedings can be initiated after the expiry of prescribed time limits i.e. 30 days as provided under section 220(1) provided for paying demand as mentioned in the notice of demand
under section 156.

If Garnishee fails to comply with the notice under section 226(3), the Assessing Officer/TRO can treat him to be an assessee in default in respect of the amount specified in the notice and further proceedings can be taken against him personally, in the manner provided under section 222 to 225. (226(3)(x))

Section 226(3) is applicable only when money is due to the assessee-in-default from any person. When an amount is not payable, such person is not required to pay any such amount or part thereof - Administrator, UTI v. B.M. Malani (2008) 296 ITR 31 (SC) affirming 270 ITR 515 (AP)

Undue haste in recovery of disputed demands by issue of s. 226(3) garnishee notices, in respect of which the hearing of appeal as also the stay petition is already concluded, is indeed inappropriate. The revenue authorities should have at least waited the disposal of the stay petition. Interim stay granted and garnishee proceedings placed under suspension till the disposal of the stay petition

(Cleared Secured Services Pvt Ltd vs. DCIT) (Mumbai ITAT) – SA No. 337/Mum/2019 – 20 January 2020 - 245(2A) :

"In cases where there is stay of recovery of demand of tax, the Tribunal should deal with the appeals pending before it on a higher priority. The Tribunal should consider forming a separate list of such cases which should be heard on priority after arranging the cases on the basis of their seniority as well as the quantum involved in the stay."

OTHER MODES OF RECOVERY

BANK ACCOUNT ATTACHMENT

Recently, Hon'ble Telangana High Court in the case of **Joji Reddy Yeruva vs. PCIT, 441 ITR 137**, held that

11. Attachment of bank account as well as property of a person is a drastic measure. Of course, such provisions are provided in the statute to ensure recovery of the dues. Nonetheless, in the given facts and circumstances of the case, we are of the view that the appeals filed by the revenue and cross-objections filed by the petitioner should be heard expeditiously by the Tribunal.

12. Our attention has also been drawn to the provisions of section 254(2A) of the Act, more particularly, to the first proviso thereto, as per which, the Tribunal can pass an order of stay subject to the condition that the assessee deposits not less than 20% of the amount of tax, interest etc., or furnishes security of equal amount.

13. At this stage, learned counsel for the petitioner submits that as his properties including the stock-in-trade have been attached, his business activities have been completely jeopardized, for which reason he is unable to generate any revenue for payment of the tax dues. 14. In the light of the contentions made and taking an over all view of the matter, we feel that it would meet the ends of justice, if the attachment of the stock-in-trade of the petitioner is withdrawn to enable him to meet the tax dues in terms of the first proviso to section 254{2A) of the Act. In view of the statement made by the revenue itself that not much money could be appropriated through attachment of bank accounts, attachment of the bank accounts may be withdrawn.

…

15. Accordingly, and in the light of the above, we pass the following orders:

1. *Tribunal is directed to expeditiously hear the three appeals of the Revenue and corresponding Cross Objections of the petitioner, preferably within a period of six months .from today.*
2. *Petitioner shall deposit 20% of the tax dues following the order passed by the first appellate authority on 31-3-2018.*
3. *On such deposit, attachment of the petitioner's bank accounts as well as the stock-in-trade shall stand withdrawn forthwith.*
4. *However, we clarify that post-withdrawal of attachment, if the petitioner deposits any amount into the bank accounts, the bank authorities shall ensure that 50% of such deposit is maintained in the accounts till such time as is considered necessary."*

OTHER MODES OF RECOVERY

BANK ACCOUNT ATTACHMENT

Recently, the Hon'ble High Court of Telangana in the case of Kallakuri Dhana Lakshmi Katyayan vs, ITO,. 444 ITR 315, held that-

"7. In the meanwhile, petitioner filed application for stay of demand before respondent No. 1 under section 220(6) of the Act.

8. By order dated 16-12-2021, respondent No. 1 has taken the view that stay can be granted subject to payment of 20% of the outstanding demand within a week. While arriving at the above, respondent No. 1 placed reliance on Circular dated 31-7-2017, issued by the Central Board of Direct Taxes.

9. Learned counsel for the petitioner submits that respondent No. 1 issued notice to State Bank of India, Manikonda Branch (respondent No. 5), for attachment of bank accounts of the petitioner under section 226(3) of the Act whereafter bank accounts of the petitioner maintained with respondent No. 5 have been attached. The three bank accounts of the petitioner maintained with the respondent No. 5-Bank are 31281487025, 34317014106 and 33754560562, respectively.

11. Following such attachment of bank accounts, the regular day-to-day activity of the petitioner has come to a grinding halt. It is in such circumstances the present writ petition has been filed.

…

13. On going through the impugned order of respondent No. 1 dated 16-12-2021, we are of the view that the said order is devoid of reasons. Petitioner was required to be heard, and there should be due application of mind before a decision is taken on the prayer for stay. Impugned order dated 16-12-2021 does not disclose any application of mind on the part of respondent No. 1 in considering the prayer of the petitioner.

14. It is well settled that recording of reasons is essential while dealing with such prayers made by an assessee.

15. In view of above, we set aside the order dated 16-12- 2021 and remand the matter back to respondent No. 1 for taking a fresh decision within a period of thirty (30) days from the date of receipt of a copy of this order in accordance with law by affording an opportunity of hearing to the petitioner.

16. Since we have set aside the order of respondent No. 1 dated 16-12-2021, we direct respondent No. 5 and respondent No: 6 to withdraw the attachment of bank accounts and APT Online account respectively of the petitioner forthwith."

OTHER MODES OF RECOVERY – VICARIOUS LIABILITY

VICARIOUS LIABILITY

Properties which can be attached

Fixed Deposit

- Fixed deposit with bank yet to mature can be covered under section 226(3). In Vysya Bank Ltd. v. JCIT (2000) 241 ITR 178 (Kar .)(High Court) and Global Trust Bank V. JCIT (2000) 241 ITR 178 (Kar) (High Court), the court held that the department can enforce premature encashment of the fixed deposit belonging to the assessee in terms of section 226(3).

Rent

- Rent payable by a tenant is a debt and can be subject matter of attachment under section 226(3)
- Tax due can be recovered by attachment of rents accruing after the death of deceased from property inherited by his legal representatives - Sri Ram Lakhan v. CIT (1962) 46 ITR 613 (All. High Court)

OTHER MODES OF RECOVERY – SECTION 226(3)

GARNISHEE PROCEEDINGS

Amounts In Escrow Cannot Be Appropriated By Tax Authorities

AAA Portfolios Pvt. Ltd. v. DCIT W.P.(C) No.1272/2013

Key Holding (Delhi HC):
Tax authorities cannot appropriate funds in an escrow account unless those funds are **held on behalf of the taxpayer** or **owed to the taxpayer**.

Facts of the Case: Sellers of shares in a company (Escorts Heart Institute) entered into an escrow agreement - A portion of sale consideration was **withheld in escrow** pending resolution of a tax dispute - Tax authorities demanded recovery from escrow agent under Section 226(3).

Court's Ruling: Escrow agent **did not hold funds on behalf of petitioner - Section 226(3)** akin to *garnishee proceedings* – applicable only if debt is admitted -Escrow agreement aimed to **protect purchaser**, not the taxpayer.

Legal Significance: Garnishee powers under **Income-tax Act** are **limited - Escrow funds not accessible** unless taxpayer has a clear legal right to them - Ensures **third-party investor protections** in structured transactions.

***Nature of garnishee proceedings*:** The Court explained that proceedings under section 226(3) are in the nature of garnishee proceedings whereby a garnishee is called upon to directly pay a debt to the creditor of a person to whom the garnishee is indebted. Further, under this section the tax department exercises special powers that enables it to appropriate funds held by the a third party on behalf of the taxpayer, or owed by the third party to the taxpayer. However, an important limitation is that these powers can only be exercised by the tax department as garnisher in cases where a third party admits to owing money to or holding money on behalf of the taxpayer. Thus, no powers are available when the debtor disputes his liability to pay the taxpayer. To reach this conclusion, reliance was placed on the decision of the Calcutta High Court in *Shaw Wallace and Co. v. UOI*[2] which affirms this view.

***Garnishee proceedings under the Civil Procedure Code ("CPC")*:** The Court also discussed the provisions of the CPC, in particular, Order 21 Rule 46 which deals with garnishee proceedings. The Court was of the view that even under the CPC, a court cannot issue a garnishee order against a debtor of the judgment debtor who disputes his indebtedness unless such issue is adjudicated and struck down. The Court went on to state that the ITA, unlike the CPC, does not provide powers to the tax department to adjudicate over the issue on indebtedness. This is clear from the language used in section 226(3)(vi).

OTHER MODES OF RECOVERY

STAY OF DEMAND SUB-JUDICE

Hon'ble Bombay High Court in the case of Milestone Real Estate Fund vs. ACIT- 415 ITR 467 (Bom), even imposed costs on the Income Tax Department in a similar situation and observed as follows-

"14. Before parting, we have to express our dismay at the conduct of the Officers of the Revenue in this matter. We pride ourselves as a State which believes in rule of law. Therefore, the least that is expected of the Officers of the State is to apply the law equally to all and not be over zealous in seeking to collect the revenue ignoring the statutory provisions as well as the binding decisions of this Court. The action of respondent nos. I and 2 as adverted to in para 14 herein above clearly indicates that a separate set of rules was being applied by them in the case of the petitioner. Equal protection of law which means equal application of law has been scarified in this case by the Revenue. It appears that the petitioner is being singled out for this unfair treatment. The desire to collect more revenue cannot be at the expense of Rule of law: In the above view we direct the Respondent-Revenue to pay cost of Rs. 50,0001 -(Rupees Fifty thousand only) to the Petitioner for the unnecessary harassment, it had to undergo at the hands of the Revenue. This amount is to be paid by the Respondent-Revenue to the Petitioner within four weeks from today. "

In **Sultan Leather Finishers (P.) Ltd. vs. ACIT, [1991] 191 ITR 179 (ALL.)**, it has been held that-

"Heard learned counsel for the petitioner. The present writ petition is directed for a writ of mandamus directing respondent No. 1 not to recover the amount referred to in the recovery certificate pending with the Tax Recovery Officer till the disposal of the petitioner's application under section 154 of the Income-tax Act. It seems that the petitioner has already moved an application under section 154 of the Act before the Assistant Commissioner of Income-tax on September 28, 1990. However, the said matter is still pending. In the meantime, the Tax Recovery Officer has proceeded to recover the amount of Rs. 42,089 as against the petitioner. In pursuance of the said recovery, the bank account, of the petitioner has already been attached and the authorities are proceeding to recover the said amount from the petitioner. Since the petitioner's application under section 154 of the Act as aforesaid is still pending, we direct the Tax Recovery Officer not to proceed with the recovery as against the petitioner for the said amount till the disposal of the application of the petitioner pending before the Assistant Commissioner of Income-tax. We feel that the authority concerned will dispose of the said application of the petitioner preferably within one month of the date on which the certified copy of this order is produced before him. The petitioner should file a certified copy of this order within one week before the Assistant Commissioner of Income-tax".

Premature Recovery by Tax Authorities – A Troubling Trend

Chennai Central Cooperative Bank Ltd. v. ACIT

Tax authorities often act hastily, initiating recovery even before issuing a formal demand notice. In a recent case, recovery began immediately after assessment, catching the assessee off guard. Surprisingly, the court upheld the action, reasoning that a procedural lapse doesn't necessarily make the act illegal.

🔷**Key Concern:**
This sets a worrying precedent — an assessee could face recovery without fully understanding the assessment order, leaving their funds exposed and unprotected.

Case precedent: Madras High Court in Chennai Central Cooperative Bank Ltd. v. Assistant Commissioner of Income-tax (W.P. Nos. 10624 & 7205 of 2017, decided on 30.11.2022) - the legality and propriety of tax recovery before the expiry of the appeal period.

Background of the Case: The petitioner: Chennai Central Cooperative Bank Ltd., a cooperative bank licensed by RBI. Assessment Years involved: AY 2009-10, 2010-11, 2013-14. Assessments completed under Section 143(3) r/w Section 147 of the Income-tax Act, 1961. Demand raised: ₹34.63 crore; Petitioner paid ₹7.25 crore.

Legal Issue: Whether the department's recovery of the outstanding demand on the same day as dismissal of appeal by CIT(A) violates the statutory right to appeal under Section 253. Whether such action amounts to premature or coercive recovery.

Statutory Framework: Section 220(6) of the Income-tax Act: Permits stay of recovery pending appeal if "Assessing Officer is satisfied that the appeal is pending and recovery is likely to cause undue hardship."
Section 253(3): Taxpayer has 60 days to appeal to ITAT. CBDT Instruction OF 1993 & 2016: Guidelines against coercive recovery. CIT(A) dismissed appeal on 24.03.2017; communicated on 30.03.2017. Full recovery made on 31.03.2017 without waiting for appeal to ITAT. Petitioner filed rectification applications and intended to appeal. Recovery done via bank account attachment under Section 226(3).
Petitioner's Contentions: Right to appeal under Section 253 rendered illusory by premature recovery. No breathing space to seek stay or file appeal. Cited cases: Mahindra & Mahindra Ltd. v. AO (2007) 295 ITR 35 (Bom) DIT (Exemptions) v. ITAT (2014) 362 ITR 345 (Del) Offered to provide bank guarantee; objected to coercion.

Revenue's Defence: Petitioner did not seek stay from CIT(A). No legal bar to recovery once appeal is dismissed. Invoked Section 226(3) to attach bank accounts. Claimed that action was within powers and instructions.

High Court's Observations: Recognized that AO acted within powers. But criticized the manner and timing of recovery. Found it to be overzealous and lacking judicial temperament. Cited that such action may "smack of arbitrariness" though not illegal - Petition dismissed; no stay granted on recovery. Court noted that petitioner had alternate remedy before ITAT. However, observed that revenue authorities must act with fairness and restraint. Judgment reflects legal correctness but questioned on equitable grounds.

Premature Recovery by Tax Authorities – A Troubling Trend

Chennai Central Cooperative Bank Ltd. v. ACIT

"34. In this case, the first respondent has not given any breathing time for the petitioner or the second respondent to act or react on the issuance of such notice. Undoubtedly such course of action adopted by the first respondent has to be viewed as a bureaucratic overreach and thus, an improper action, though not an illegal one. Therefore, the next question that would arise is as to whether judicial interference is called for against such action of the first respondent. I have already pointed out that the impugned action is only an improper action and not an illegal action in toto. An illegal action can never be condoned, whereas, an improper action, though not appreciable, still can be condoned, depending upon the facts and circumstances of each case. It is not that all improper actions would automatically become illegal or unlawful or void. Certainly such test has to be made only based and on appreciation of all the facts and circumstances of a particular case. Therefore, considering the above stated facts and circumstances, I find that the impugned action of the first respondent cannot be termed as illegal, merely because the recovery was made on the same day of issuance of notice, especially when the liability of the petitioners exists. On the other hand, it only exhibits the over enthusiastic act of the first respondent to see that a target goal is achieved on that day, being the end of the financial year. Apart from the above, it is an admitted fact that the impugned proceedings are already lifted on the same day after recovery and as such those proceedings are not in force as on today.

42. The next case relied on is reported in (2014) 43 Taxmann.com 146 (Bombay), Director of Income Tax (Exemption), Mumbai vs. Income Tax Appellate Tribunal. In that case, the Bombay High Court has pointed out that the Tribunal is empowered to grant stay against any demand in terms of the proviso to Section 254(2A) and consequently the order passed by the Tribunal restoring the status quo ante by ordering the refund of the amount recovered need not be interfered with under Article 226 of the Constitution of India.

43. Certainly, therefore, the petitioners are not remediless. They have already filed the appeal before the Income Tax Appellate Tribunal. They are also entitled to seek for interim protection as proviso to Section 254(2A) of the said Act deals with such relief. Certainly, the Appellate Tribunal will have to consider the merits of the application and pass orders on the same. If the Appellate Tribunal comes to the conclusion, while considering the interim petitions, that the petitioners are entitled to some interim relief, it is open to the Appellate Tribunal to pass such interim orders on such applications, based upon the consideration of the facts and circumstances of the case and the merits of the order of assessment, of course, with a prima facie view. Therefore, these recoveries made by the first respondent is always subject to the result of the order to be passed by the Appellate Tribunal in such applications or the final order to be passed in the main appeal. Needless to say that depending upon the orders to be passed so, the petitioners are entitled to work out their remedies."

OTHER MODES OF RECOVERY – SECTION 281(B)

PROVISIONAL ATTACHMENT

Provisional attachment – Section 281B
During pendency of assessment/reassessment proceedings

AO to be of opinion – to protect interest of revenue – Assessee about to dispose of property to thwart the collection of demand - Previous approval of CIT or CCIT - Max period of 2 yrs - Property can't be attached and sold for income tax arrears of husband. (**Satyabir Singh – Punjab & Haryana HC 248 ITR 785 and Smt Anuja Choudhary – Calcutta HC - 214 ITR 326**)

Provisional attachment (S.281B) - Civil procedure Code,1908- S. 94(b), Order 38 Rule 5.

- Circular no 179 dated 30-9-1975 (1976) 102 ITR (st) 9 (20)
- Raman Tech & Process Engg .Co v. Solanki Traders (2008) 2 SCC 302 [sparingly]
- Gaurav Goel v. CIT (2000) 245 ITR 169 (Cal)(High Court)[mechanical]
- Raghu Ram Grah P. Ltd. v. ITO & Ors. (2006) 281 ITR 147 (All.)(High Court)[No history of past defaults]
- Seshasayee Paper & Boards Ltd. v. CIT (2003) 261 ITR 63 (Mad.)(High Court)[Recording reasons for extension is mandatory.]

THANK YOU !