

THE CHAMBER OF TAX CONSULTANTS

RECOVERY AND STAY PROCEEDINGS

By

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Recovery proceedings before assessment

1 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.]

Recovery proceedings before assessment

- Previous approval of Pr CC,CC,Pr C,C,Pr DG,DG,Pr D,D.
- Order in writing.
- Provisional attachment will cease to have effect after 6 months of date of order.
- Can be extended by approving authorities after recording the reasons in writing.
- Total period of extension shall not exceed 2 years or 60 days after date of assessment or reassessment whichever is later.

1.1 Properties which can be attached.

- S. Subramanian v.CIT (2004)186 CTR 286 /136 Taxman 653 (Mad) (High Court) [jointly owned property-undivided share of assessee]
- Satyabir Singh v. CIT (2001) 248 ITR 785 (P&H) (High Court)[FD – HUF-only share of assessee can be attached]
- Electro Zavod (India) Pvt .Ltd v.CIT (2005) 278 ITR 187 (Cal.)(HC)[Full consideration + possession –registration]
- Gandhi Trading v. ACIT (1999) 239 ITR 337 (Bom)(High Court)[as far as possible immovable property o be provisionally attached]

1.2 Remedies

- Writ Petition challenging the provisional attachment.
- Furnishing guarantee from a scheduled bank for an amount not less than the FMV of the property provisionally attached. AO shall by order in writing revoke provisional attachment.

2. Recovery proceedings after assessment

2.1 Assessee in default. [S.220(4)- amount specified in notice of demand not paid within time specified u/s 220(1) or 220(3)]

2.2 Valid service of Notice. [S.220(1)- Demand notice]

- Mohan Wahi v.CIT (2001) 248 ITR 799(SC)[valid service is mandatory]
- Saraswati Moulding Works v. CIT & Ors(2012) 347 ITR 161 (Guj.)(High Court) [Demand notice not received- recovery proceedings not valid].

2. Recovery proceedings after assessment

2.3 Shortening the period [Proviso – reason to believe-detrimental to revenue – previous approval of Jt C]

- Mahindra and Mahindra Ltd v Assessing Officer (2007) 295 ITR 42 (Bom) (High Court)
- Firoz Tin Factory v. ACIT(2012) 71 DTR 185/209 Taxman 458 (Bom.)(High Court) [Power cannot be exercised casually- reasons and approval must be made available to assessee if he seeks them]

Remedy – Writ Petition - Vinbros & Co v ITO [2006] 286 ITR 439(Mad)(HC)

2. Recovery proceedings after assessment

2.4 Consequences of being assessee in default.[S.222]

- Mandatory interest u/s 220(2)
- Penalty u/s 221
- Attachment/Auction of Immovable/Movable property.
- Appointment of receiver for managing the business.
- Arrest/detention.

2.5 Reply of assessee to keep the demand in abeyance. [Whether desirable ??][No time limit u/s 220(6)]

Recovery proceedings after assessment

2.6 Stay Petitions – Section 220(6).

- Discretionary Powers. [Discretion means according to the rules of reason and justice, not according to private opinion, but according to law and not humour. It is not to be arbitrary, vague and fanciful, but legal and regular to be exercised, not capriciously but on judicial grounds and for substantial reasons. If an authority cast with a public duty of exercising discretion takes into account matters which the Court considers to be improper for guidance of the discretion, then in the eyes of law, it is an improper exercise of the discretion.]
- ICU situation to be dealt with by CA and lawyers.

● **INSTRUCTION : NO. 96 [F. NO. 1/6/69-ITCC], DATED 21-8-1969**

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

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

Recovery proceedings after assessment

- *INSTRUCTION NO. 1914, DATED 2-2-1993*
- A higher superior authority should interfere with the decision of the AO/TRO only in exceptional circumstances e.g. where the assessment order appears to be unreasonably highpitched or where genuine hardship is likely to be caused to the assessee. [Para 2 B(iii)]
- Issue is decided by Appellate authority in favour of assessee.
- Conflicting views of High Courts.
- Department has not accepted view of jurisdictional High Court.
- Stay petition to be disposed off by AO/TRO/Superiors within 2 weeks and communicate the decisions.

Recovery proceedings after assessment

Demand of high pitched assessment can be stayed after Instruction No 1914.

- Maharana Shri Bhagwat Singahiji of Mewar v.ITAT (1997) 223 ITR 192(Raj)(High Court)
- Soul vs. Dy. CIT (2008) 173 Taxman 468 (Delhi)(High Court)
- Valvoline Cummins Ltd v. Dy.CIT (2008) 307 ITR 103 (Delhi) (High Court)
- Maheswari Agro Industries v. UOI (2012)346 ITR 375 (Raj.)(High Court)

Recovery proceedings after assessment

- **OFFICE MEMORANDUM [F.NO.404/72/93-ITCC], DATED 29-2-2016** [15% of demand as pre-deposit for stay]
- “3. It has been reported that the field authorities often insist on payment of a very high proportion of the disputed demand before granting stay of the balance demand. This often results in hardship for the taxpayers seeking stay of demand.”
- Above 15% - 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.)

Recovery proceedings after assessment

- Below 15% - 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.

Recovery proceedings after assessment

- 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 Pr. CIT/CIT for a review of the decision of the assessing officer.
- Time period for disposal of stay petitions – 2 weeks.

***OFFICE MEMORANDUM [F.NO.404/72/93-ITCC],
DATED 31-7-2017 [15% changed to 20%]***

Recovery proceedings after assessment

- **Flipkart India(P) Ltd v ACIT [2017] 396 ITR 551 (Kar)(HC)**

“It is true that Instruction No.4(B)(b) of the Circular dated 29-2-2016, gives two instances where less than 15 per cent can be asked to be deposited. However, it is equally true that the factors, which were directed to be kept in mind both by the Assessing Officer, and by the higher superior authority, contained in Instruction No.2B(iii) of Circular No.1914, still continue to exist. For, as noted above, the said part of Circular No.1914 has been left untouched by the Circular dated 29-2-2016. Therefore, while dealing with an application filed by an assessee, both the Assessing Officer, and the Principal Commissioner, are required to see if the assessee's case would fall under Instruction No.2B(iii) of Circular No.1914, or not? Both the Assessing Officer, and the Principal Commissioner, are required to examine whether the assessment is "unreasonably highpitched", or whether the demand for depositing 15 per cent of the disputed demand amount "would lead to a genuine hardship being caused to the assessee" or not?”

Recovery proceedings after assessment

2.7. How the discretion has to be exercised by the tax authorities – Guidelines-Judicial Precedents.

- **Mumbai Metropolitan Region Development Authority vs. DDIT (2015)**
273 CTR 317 (Bom.)(HC)

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;

Recovery proceedings after assessment

- (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 sustainable on merits;

Recovery proceedings after assessment

- (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.

Recovery proceedings after assessment

UTI Mutual Fund v. ITO (2012)345 ITR 71 (Bom.) (HC)

1 No recovery of tax should be made pending

(a) Expiry of the time limit for filing an appeal;

(b) Disposal of a stay application, if any, moved by the assessee and for a reasonable period thereafter to enable the assessee to move a higher forum, if so advised. Coercive steps may, however, be adopted where the authority has reason to believe that the assessee may defeat the demand, in which case brief reasons may be indicated.

2. The stay application, if any, moved by the assessee should be disposed off after hearing the assessee and bearing in mind the guidelines in KEC International;

3. If the Assessing Officer has taken a view contrary to what has been held in the preceding previous years without there being a material change in facts or law, that is a relevant consideration in deciding the application for stay;

Recovery proceedings after assessment

4. When a bank account has been attached, before withdrawing the amount, reasonable prior notice should be furnished to the assessee to enable the assessee to make a representation or seek recourse to a remedy in law;

5. In exercising the powers of stay, the ITO should not act as a mere tax gatherer but as a quasi judicial authority vested with the public duty of protecting the interest of the Revenue while at the same time balancing the need to mitigate hardship to the assessee. Though the AO has made an assessment, he must objectively decide the application for stay considering that an appeal lies against his order: the matter must be considered from all its facets, balancing the interest of the assessee with the protection of the Revenue.

2. Recovery proceedings after assessment

- Merely because no financial hardship would be caused to assessee would not itself justify the deposit of demand where a prima facie case was made out.

Vodafone India Ltd. vs. Commissioner of Income Tax [2018] 89 taxmann.com 54 (Bom)(HC)

- **KEC International Limited v. B.R Balakrishnan(2001) 251ITR 158 (Bom.)(HC)**[Laid down parameters- not exhaustive]
- **Coca Cola India (2006)285 ITR 419 (Bom) (HC)** [Notice attaching bank account before communicating order on stay application was quashed]
- **HDFC Bank Limited .v. ACIT(2013) 354 ITR 77 (Bom) (HC) –** [Demand on covered issues cannot be adjusted.]

2. Recovery proceedings after assessment

- **Tata Toyo Radiators Pvt Ltd v. UOI(2012) 71 DTR 5/ 250 CTR 11 (Bom.) (High Court)** [Reasoned order]
- **Nishith Madanlal Desai v. CIT (2012) 345 ITR 545 (Bom.)(HC)**[Adjustment of refund and payment of balance- balance stayed]
- **Rajasthan Sammelan Sarvoday v. ADIT[2013] 350 ITR 349 (Bom.) (HC)**[Reasoned order]
- **GMV Projects & Systems vs. ACIT [2017] 249 Taxman 468 (Madras) [HC]** granted stay on demand till disposal of appeal by CIT as assessment order passed by AO was an ex parte order.]
- **RPG Enterprises Ltd v. Dy.CIT (2001) 251 ITR 20 (Mum.)(Trib)**[No coercive action when stay petition pending before revenue authorities or **Tribunal**]
- **Hindustan Rubber works vs. ITO (1971) 81 ITR 397 (Cal) (HC)**[Stay upto a particular date and not upto disposal of appeal is not proper exercise of discretion]

- **Maharashtra housing & Area Development Authority .v. ADIT [2014] 361 ITR 469 (Bombay)**

Action of revenue in attaching bank account and withdrawing money from bank to recover dues, before expiry of time limit for filing appeal before ITAT was against elementary principles of rule of law; revenue was directed to refund amount to assessee.

- **Vignahar Sahakari Sakhar Karkhana Ltd. .v. ITO (2013) 219 Taxman 116(Mag.) (Bom.)(HC)**

Rejection merely stating that no prima face case was made out held to be not proper

2.8 Contents of Stay Petition.

- I. Assessee has a very good case on merits and great prejudice and injury will be caused to the assessee if the demand is not stayed. Balance of convenience is also in favour of the assessee.
 - Facts and legal submissions.
 - Case laws.
 - Violation of principles of natural justice.

- II. Appeal of the assessee is pending before the CIT(A)- for AY **Assessee has also filed application with Ld CCIT for early fixing of appeal for hearing.** Assessee has also filed rectification application u/s 154. [if any]. The same is also pending to be disposed.

- III. The Assessed income is more than times the returned income. The tax demand is more than.....times the returned tax.
- IV. Paying such huge demand would cause undue hardship to the assessee. It will result in Financial hardship and prejudicially affect the liquidity requirements and business of the assessee.
- V. File Paper Book.
- VI. File Additional evidence.
- VII. Assessee history and conduct and co-operation with the department.
- VIII. Chances of recovery???[Whether this should be included]

2.9 Contents of Review Petition.

Same as stay petition and additionally how the Stay Petition has not been correctly disposed off.

2.10 Various Situations/Considerations

- Stay petition to be filed before CIT(A)/AO.

GERA Realty Estates v ACIT [2014] 368 ITR 366 (Bom)(HC)[Where no stay application in respect of demand was pending either before Assessing Officer or before Commissioner, Commissioner (Appeals) should dispose of stay application filed in appeal – CIT(A) can stay the order as well]

- Stay petition rejected. AO did not enforce. Wants to enforce/enforces during course of hearing before CIT(A).
- Stay Petition rejected by AO and Pr CIT but not enforced.

2. Recovery proceedings after assessment

2.11 Valid appeal must be pending?

- “ has presented an appeal”
- Admitted tax not paid.
- Delay.

2.12 Can there be recovery on the basis of protective assessment.[No]

- Sunil Kumar v. CIT (1983) 139 ITR 880 (Bom) (High Court)
- Lalji Haridas v. ITO (1961) 43 ITR 387 (SC)
- Jagannath Bawri v.CIT (1998) 234 ITR 464 (471)(Gau) (High Court)
- Jagannath Hanumanbux v .ITO (1957) 31 ITR 603 (Cal)(High Court)
- R. Rajbabu v. TRO (2004) 270 ITR 256 (Mad)(High Court)

2. Recovery proceedings after assessment

2.13 Rectification is pending under section 154.

- Sultan Leather Finishers Pvt Ltd v. CIT (1991) 191 ITR 179 (All) (High Court)

2.14 Garnishee proceedings –Recovery from third parties – **S.226(3)**

- No certificate has been drawn u/s 222 by TRO then recovery by AO or else TRO.

- Section 226 of the Act provides for various modes of recovery by the Assessing Officer or TRO, such as:-
 - notice in writing to any person from whom money is due to assessee or holds money for or on account of the assessee to pay to the Assessing Officer or to TRO so much of money as is sufficient to pay the amount by the assessee in respect of arrears or the whole of the money when it is equal to or less than that amount

- A notice 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.
- A copy of notice shall be forwarded to the assessee at his last known address and in case of joint holders at their last address known to Assessing Officer or TRO

- Every person to whom notice under this sub section is issued shall be bound to comply with such notice
- 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 in the notice.

- Where a person to whom notice under this sub-section is sent objects to it through statement on Oath that the sum so demanded or any part thereof is not due to the assessee or that he does not hold any money on account of the assessee, then, nothing contained in this section is applicable to him for payment of any part of the demand. However, if subsequently discovered that such statement is false, that person is personally liable to make payment to the extent of his own liability to the assessee on the date of the notice.

- The Assessing Officer or TRO may at any time or from time to time amend or revoke any notice issued under this sub-section.
- The Assessing Officer or TRO shall grant a receipt for any amount paid in compliance with the 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 amount so paid.

- 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 TRO to the extent of his own to the assessee so discharged or to the extent of the assessee's liability for any sum due under this Act, which ever is less.
- If a person to whom notice under this sub-section is sent fails to make payment in pursuance thereof to the Assessing Officer or TRO he shall be deemed to be an assessee in default.

- **Administrator, UTI v. B.M. Malani (2008) 296 ITR 31(SC)**
[Section 226(3)(vi) cannot be interpreted to mean that the Unit Trust of India was fully authorised to dispose of the units on its own without any notice to the holder of the units.]
- **Gopal Das Khandewal & others v. UOI (2012) 340 ITR 235 (All.)(High Court)**[FDR belonging to third party]
- **Central Coal Fields Ltd v. CIT (2012) 249 CTR 523 (Jharkhand)(High Court)**[Writ no first remedy]
- **Nickunj Eximp Enterprises P. Ltd v. Addl.CIT (2012) 346 ITR 78 (Bom.) (High Court)**[Prohibitory order against creditors]
- **Bank of Rajasthan Ltd. v. UOI (2003) 259 ITR 586 (Bom)**[Rent and Loan]

- **Sony India (p) Ltd v ACIT(2014) 363 ITR 330(Del)**[Stay rejected and Garnishee order on same day-not justified]
- **Rapid careTranscription (P.) Ltd. V ITO[2018] 90 taxmann.com 228 (Madras)**

Where revenue initiated recovery proceedings against assessee under section 226(3)(iii) before expiry of statutory period of 60 days of filing appeal before Tribunal, in such a case, even though High Court in writ jurisdiction had power to issue direction to re-credit amount recovered to assessee's bank, yet in view of fact that assessee was already in process of filing appeal to Tribunal liberty was to be granted to assessee to seek such relief before Tribunal.

- **Purnima Das v UOI[2010] 329 ITR 278 (Calcutta)**

The question came up for consideration was whether it was proper on the part of the Assessing Officer to attach and debit a sum without serving a copy of the notice of attachment on the assessee. Looking at the language of section 226(3)(iii) which stipulates that "A copy of the notice shall be forwarded to the assessee at his last address known to the (Assessing) Officer.." the answer had to be in the negative. The argument of the revenue that actual service of the notice of attachment was not necessary could not be accepted since the use of the word 'shall' in section 226(3)(iii) mandates that such notice has to be served before action is taken. If recourse is not taken by the revenue to the mode postulated under the Act, it is bound to take the assessee off guard. Precisely for that reason service of notice prior to attachment is mandatory as evident from the language of section 226(3)(iii).

- **Society of the Franciscan (Hospitaller) Sisters .v. DDIT(2013) 351 ITR 302(Bom)(HC)**

The action of attaching the assessee's bank account u/s 226(3) during the pendency of a stay application and without giving it notice was arbitrary and high handed. The whole object of serving a notice on the assessee is to enable the assessee to have some recourse. While in a given case, it may not be feasible to serve a prior notice on the assessee if there is an apprehension that the monies would be spirited away, this was not a case of that type. In a situation such as the present where appeals filed by the assessee are pending before the CIT (A) and the assessee had sought an opportunity of being heard and filed applications for stay, there was no justification whatsoever to proceed hastily with the enforcement of the recovery of the demand without disposing of the application for stay.

2. Recovery proceedings after assessment

2.13 Properties which can be attached. (Garnishee proceedings)

- Vysya Bank Ltd v. JCIT (2000) 241 ITR 178(Kar)(High Court) and Global Trust Bank Ltd . JCIT (2000) 241 ITR 178 (Kar)(High Court) [Department can enforce premature encashment of fixed deposit]
- V.N.Vasudev v. Kiroi Mal Luhariwala AIR 1965 SC 440 [Rent]
- J. Jermons v. Aliammal & Ors (1999) 156 CTR 31 (SC)[No eviction petition]
- Sri Ram Lakhan v.CIT (1962) 46 ITR 613 (All.)(High Court)[Rent accruing after death]

2. Recovery proceedings after assessment

2.14 Properties which cannot be attached.

As per Rule 10(1) of the second Schedule of the Income-tax Act , all such property as is by the Code of Civil Procedure , 1908 exempted from attachment and sale in execution of a decree of a Civil Court shall be exempt from attachment and sale under the said schedule. Section 60 of the Civil Procedure Code provides the list of assets which cannot be attached , even with the consent of the assessee. Few examples.

- The necessary wearing –apparel
- Personal ornaments, accordance with religious usage cannot be parted with any woman,
- Tools of artisans,
- House occupied by agriculturist,
- Deposit in Public provident fund
- Money payable under policy of Insurance on the judgment debtor
- The interest of lessee of a residential building which the provisions of law for the time being in force relating to control of rents and accommodation apply,

- Stock Exchange, Mumbai v. V.S. Kandalgaonkar (2003) 261 ITR 577 (Bom)(High Court).
- Stock Exchange v. ACIT (2001) 248 ITR 209 (SC) & Vinay Bubna v Stock Exchange (1999) 97(Comp)(Cas) 874 (SC) [Membership rights-personal privilege]
- ITO v. Tippala China Appa Rao & Ors. (2011) 331 ITR 248 (AP)(High Court)[Property of sons not to be attached in case of liability of father]
- Belrex India Ltd v.Singhal Electric Co and Others AIR 1983 (Delhi) 430 (High Court)[Tenant of residential premises covered by Rent Control Act]

- Tangerine Electronic Systems Pvt. Ltd. v. Indian Chemicals AIR (2000) Bom(198, 210) (FB) – Right in Commercial property (tenanted) can be attached.
- Tejal R. Amin (Smt) v.Asst. CIT(1994) 208 ITR 103 (Guj.)(HC)[Salary of debtor]
- K.M.Adam v. ITO (1958) 33 ITR 26 (Mad.)(HC)[OD A/C]
- Kaneria Granito Ltd v ACIT (2016) 241 Taxman 315(Guj). [CC A/C and Term Loan A/c]
- PPF account cannot be attached for recovery of income-tax dues.
Dineshchandra Bhailalbhai Gandhi vs. TRO [2014] 362 ITR 380 (Gujarat)

3. Joint and several liability - Assessee in default.

3.1 Recovery from Directors of Pvt Co –Joint and several- S.179.

A.O. has to give a finding that he is not in a position to recover the tax from the company.

- K.V.Reddy v.Asst CIT (1998) 232 ITR 306 (AP) (High Court)
- Bhagwandas J.Patel v.Dy.CIT (1999) 238 ITR 127 (Guj.)(High Court)
- C.Rajendran and another v.ITO (2000) 253 ITR 139 (Mad.) (High Court)
- Dipik Dutta & Anr v.UOI (2004) 268 ITR 302 (Cal) (High Court)

- Indubhai T. Vasa (HUF) v. ITO (2006) 282 ITR 120 (Guj)(High Court)
- Amit Suresh Bhatnagar v. ITO (2009) 15 DTR 29 (Guj)(High Court) [AO to prove director was responsible for the conduct of business in the PY]
- Jagdish Jagmohandas Kapadia v. CIT (1990) 183 ITR 143 (Bom.)(High Court).[Assessee to be heard before passing order u/s 179]
- Khaders International Construction v.CIT (1998) 229 ITR 450 (Ker) (High Court) [Director unable to prove that no gross neglect,misfeasance and breach of duty]

- Jatinder Bhalla and another v. ITO (2004) 268 ITR 266 (Delhi) (High Court)
- UOI and Others v. Manik Dattatreya Lotlikar (1998) 172 ITR 1 (Bom.) (High Court) [Cant challenge validity of assessments]
- Darshan Kumar v.CIT (1996) 222 ITR 608((P& H) (High Court)
- M. Rajamoni Amma & Anr. v. Dy.CIT (1992) 195 ITR 873 (SC)[Not liable from date of conversion]
- Sanjay Ghai v ACIT [2013] 352 ITR 468 (Delhi) [in terms of provisions of section 179, an assessee cannot be made liable for anything more than tax defined under section 2(43)]

3. Joint and several liability - Assessee in default.

3.2 Remedy against 179 order.[Revision u/s 264]

- Bhupatlal J.Shah v.ITO (2012) 210 Taxman 481 (Bom.)(High Court)[Speaking order and opportunity of hearing]

3.3 Recovery of tax – Director of a company not personally liable for sales tax dues of company: Gujarat Value Added Tax Act 2003:

- C.V. Cherian vs. C.A. Patel (2012) 51 VST 71 (Guj.)(High Court)

3.4 Firm and partners-Partners liability to pay the firm tax jointly and severally. [S.188A]

- ITO v. Arunagiri Chettiar (1996) 220 ITR 232 (SC)
- Iqtida Khan v ITO (1941) 41 ITR 165 (All)(High Court)
- Kethmal Parekh v. TRO (1973) 87 ITR 101 (AP)(High Court)[Certificate not in name of partner]

- 3.5 Limited liability partnership.

Section 167C of the Income tax act, where the tax is due from the limited liability partnership, such tax cannot be recovered then every partner of the LLP at any time during relevant previous year shall be jointly and severally liable unless he proves that non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of LLP.

3.6. Hindu undivided family –Members of HUF.S.171 (6)

As per section 171, the liability of the members of HUF is joint and several, however, if the demand pertains to the period after partition of the HUF, then the liability of the members is restricted to the portion of the joint family property allotted to each of them.

- 3.7. Members of an AOP/Joint venture.

As per section 177 the liability of members of the AOP is joint and several for the amount of tax due from the AOP, it can be recovered from members.

- 3.8. Trust – S.166.

In view of the section 166 beneficiaries of trust are jointly and severally liable for dues of trust and recovery proceedings can be initiated against such beneficiaries .

- 3.9. Successor of a business for recovery of arrears of tax of the predecessor.

As per section 170(3) , the successor is liable for the arrears of the predecessor.

- 3.10. Co-operative society – Liability of members

Members are not individually liable for the tax due of the society and their liability is restricted to their share holding in the capital of society.

- 3.11. Club (Mutual Association)-Members.

As per section 177 the liability is joint and several for such non mutual income .

4. Stay proceedings before ITAT

4.1 Tribunal - Power of Stay: - Rule 35A (Income Tax Appellate Tribunal Rules, 1963)

- *Brosvel Pharmaceuticals Inc. vs. ITO* (2004) 83 TTJ 126 (All)(Trib) [Form prescribed in Appendix-II only for guidance purpose]
- *Chiranjilal S. Goenka vs WTO* (2000) 66 TTJ 728 (Mum).
- *Bhoja Reddy vs. CIT* (1998) 231 ITR 47 (AP)(High Court) (48)[Stay Tax, interest and penalty]
- *Shiv Shakti Rubber & Chemcial Works vs. ITAT* (1995) 213 ITR 299 (All) (High Court)
- *DHL Express (India) Pvt. Ltd. vs. ACIT* (2011) 140 TTJ 38 (Mum)(Trib) [Stay application maintainable even if not filed before lower authority]

4. Remedies against recovery before various authorities

4.2 Tribunal - power to extend period of stay.

- Appellate Tribunal has power to stay the recovery proceedings beyond the period of 365 days Qualcomm Incorporated vs. ADIT [2012] 150 TTJ 661 (Delhi)
- Maruti Suzuki India Ltd v. Dy. CIT (2012) 347 ITR 43 (Delhi)(High Court)[ITAT has power to stay recovery and not permit adjustment of refund]

4. Remedies against recovery before various authorities

4.3 Stay of proceedings-Tribunal has the power to stay the assessment proceedings. [S.263]

- ITO v. Khalid Khan (1997) 110 ITR 79(AP)(High Court)
- Puranmal v.ITO (1975) 98 ITR 39 (Pat)(High Court)
- Ritz Ltd v. Vyas (1990) 185 ITR 311 (Bom.)(High Court)
- CIT v. Income-tax Appellate Tribunal WPNO 4684 /2010 dated 3-8-2012(NIIT Ltd)
www.itatonline.org (Delhi) (High Court)

4. Remedies against recovery before various authorities

4.5 Stay of proceedings-Tribunal – Failure to fulfill conditions

- Sachdeva & Sons vs. UOI (2003) 264 ITR 695 (P&H) (High Court)
- Endeavour Investments Ltd. vs. DCIT (1999) 70 ITD 17 (Chennai)(TM)(Trib)

4. Remedies against recovery before various authorities

4.6 Early hearing of appeals by the Tribunal (www.itatonline.org)

- As per the minutes with President , ITAT Mumbai on 18-4-2012 .
- The registry will not reject any stay applications , letters etc for being entertained except when appeal itself is defective.
- The following appeals will be taken up for hearing if an application is made by an assessee.
 - (1) Covered matters
 - (2) Appeals against orders under section 263,
 - (3) Appeals of senior Citizens aged above 70 years.
 - (4) Appeals against orders passed ex-parte by CIT (A) etc

5 Certain Transfers to be void- S.281

- Circular no 179 . dated September , 30 1975 (1976) 102 ITR (ST) 9 (19)
- Under section 281 of the Act , transfer[sale,mortgage,gift,exchange,or any other mode of transfer whatsoever]of asset effected by an assessee during pendency of any proceeding under the Act with the intention to defraud the revenue are regarded as void as against any claim in respect of any tax or other sum payable by the assessee as a result of the completion of such proceedings , with ceratin exceptions . Transfer/charge for adequate consideration and without notice of the pendency or previous permission of AO will not be void. Stock in trade excluded.
- Circular No 4/2011 dtd 19-7-2011[Guidelines for prior permission]

- S. 281: No demand of tax pending against transferor at the time of transfer of property - Subsequent assessment of transferor - Recovery from a property already sold to a third person prior to raising of demand against transferee is not possible.
P.Kumar & Co v, UOI (1991) 190 ITR 672 (Bom)(High Court)
- Property transferred by the assessee during pendency of recovery proceedings, can be attached and sold without filing suit. Notice to transferee is invariably not necessary before taking such action.
Karnail Singh v. UOI (2011) 63 DTR 336 (P&H) (High Court)
- In respect of tax arrears of tax of husband no recovery proceedings can be taken against property purchased by the wife from the husband after obtaining I.T. Clearance certificate.
Ahuja Chaudhury v. UOI (1995) 214 ITR 326 (Cal)(High Court)

- IT authority do not have power to declare a transfer null and void. Suit be filed to have the transfer declared void.

Shamim Bano G. Rathi & Anr v. OBC Ltd. (2011) 306 ITR 34 (Bom)(High Court)

- The question of validity of transfer arises only when a specific demands are made against properties and proceedings are taken to recover the same by proceedings against properties. Where the assessments made for the relevant assessment year had been set aside and as yet there was no demand outstanding for those years , it was held that properties in question could not be sold for recovery of any tax for said two assessment years .

B.A. Basith v.ITO (1981) 128 ITR 434 (Kar) (High Court)

The Second Schedule

Rule 11 - Investigation by TRO

- Claim/objection to TRO regarding attachment or sale of any property on the ground that such property is not liable to attachment/ sale.
- Can be taken when property is advertised for sale.
- Claimant/objector must adduce evidence that at the date of Rule 2 notice [immovable property] or on date of attachment [movable property] he had some interest in, or was possessed of, the property in question.

- If TRO satisfied that property not in possession of defaulter, or his tenant, or was in his possession not on his own account or as his own property or partly in his own account or partly on account of some other person then TRO shall make an order releasing the property wholly or partly.
- Otherwise TRO will disallow the claim.
- Remedy – Suit in a civil Court.
- Order of TRO conclusive. [Also Rule 10(2)].

Rule 86 – Appeals

- From original order of TRO not being an order which is conclusive. 30 days. To Pr CC/CC/Pr C/C.
- No Form of Appeal.
- To be accompanied by Stay Petition.

Rule 87- Review.

- Any Order passed under the schedule can be reviewed for mistake apparent from the record.

Thank You



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