

# RECOVERY PROCEEDINGS UNDER INCOME TAX ACT, 1961

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# RECOVERY PROVISIONS

- Introduction
- Chapter XVII of the Act provides for various manner for collection and recovery of tax.
- Sections 220 to 232 of the Act provides mechanisms for Collection of tax due from the assessee's.

# SECTION 220 – WHEN TAX PAYABLE – ASSESSEE IN DEFAULT

- Section 220(1) provides that any amount (otherwise than advance tax) specified as payable as per notice of demand issued under s. 156 of the Act shall be paid within 30 days from the service of said notice.
- Section 220(2) provides that if amount specified in notice of demand is not paid within 30 days, the assessee shall be liable to pay interest at the rate of 1% for every month or part of the month till the demand is paid.

# SECTION 220 CONTI.....

- Section 2A provides that the CCIT or CIT may reduce or waive the amount of interest paid or payable if he is satisfied that:
  - i. payment of interest has caused or would cause genuine hardship
  - ii. default in payment of amount on which interest has been paid or payable was due to circumstances beyond the control of the assessee
  - iii. the assessee has co-operated in assessment and recovery proceedings

# SECTION 220 CONTI.....

- Section 220(3) provides that the Assessing Officer, on an application by the assessee before the expiry of date mentioned in the demand notice, may extend the time limit for payment of outstanding demand or allow installments, subjects to such terms and conditions as he thinks fit
- Section 220(4) – If the amount is not paid within the time provided under section 220(1) or 220(3), the person mentioned in the demand notice shall be deemed to be in default

# SECTION 220 CONTI.....

- Section 220(5)- If, in case of payments by installment is allowed, the assessee commits defaults in payment any one of the installments, within the time allowed, he shall be deemed to be in default as to whole of the amount then outstanding.
- Section 220(6) – where an appeal is pending before Ld. CIT(A) under sec. 246A, the Assessing Officer, subject to such conditions as he thinks fit, may 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, till the appeal is disposed off

# SECTION 220 CONTI.....

- Section 220(7) – where an assessee has been assessed in respect of income arising outside India in a country which prohibits or restrict the remittance of money to India, the Assessing Officer shall not treat the assessee as in default in respect of that part of tax which is due in respect of that amount of his income which by reason of such prohibition or restriction cannot be brought into India, until the prohibition or restriction is removed.

# CASE LAWS

- Service of valid notice of demand is mandatory; in case of failure to serve the notice, recovery proceedings are not valid. *Mohan Wahi vs. CIT (2001) 248 ITR 799(SC)*
- Notice of demand not served. Recovery proceedings invalid. *Saraswati Moulding Works vs. CIT (2012) 347 ITR 161 (Guj.)*
- An assessee is deemed to be in default only if he does not pay the tax within the time and in the manner specified in the notice of demand or as permitted u/s. 220(3). Unless an assessee is served with notice of demand and he fails to comply with that notice he cannot be said to be an assessee in default and, consequently, no recovery proceedings can be taken against him. *Satya Pal Verma vs. ITO [1977] 106 ITR 540 (ALL.)*




- The powers of the A.O. to stay the demand are valid only upto the disposal of appeal by Ld. CIT(A). *Maruti Suzuki India Ltd v. Dy. CIT (2012) 347 ITR 43 (Delhi)*
- Commissioner of Income Tax is also competent to grant stay- *K.C. Roy vs. TRO [1993] 204 ITR 511 (KER.)*
- 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 (Bombay)*

- The Commissioner (Appeals) has powers to grant stay of recovery of demand-
  - ITO vs. M. K. Mohammed Kunhi [1969] 71 ITR 815 (SC),*
  - CITY and Industrial Development Corporation of Maharashtra Ltd v. ACIT (2012) 343 ITR 102 (Bom.)*
- Even without making an application u/s. 220(6), the assessee may move CIT(A) for stay of demand – *Kesav Cashew vs. DCIT [1994] 210 ITR 1014 (KER.)*

- Full stay where issue is covered- *ICICI Prudential Life Ins. Co. Ltd. 272 CTR 82 (Bom)*
- Where assessee has moved an application for rectification and the same was pending, recovery proceedings cannot be taken. *Sultan Leather Finishers Pvt. Ltd. vs. ACIT [1991] 191 ITR 179 (ALL.)*
- HC granted stay on demand till disposal of appeal by CIT as assessment order passed by AO was an ex parte order. *GMV Projects & Systems vs. ACIT [2017] 249 Taxman 468 (Madras)*

- Principles laid down by Bom. H.C. in *KEC International Limited vs. B.R Balakrishnan (2001) 251 ITR 158 (Bom)* -
  - a) While considering the stay application, the authority concerned will at least briefly set out the case of the assessee.
  - b) In cases where the assessed income under the impugned order far exceeds returned income, the authority will consider whether the assessee has made out a case for unconditional stay. If not, whether looking to the questions involved in appeal, a part of the amount should be ordered to be deposited for which purpose, some short prima facie reasons could be given by the authority in its order.
  - c) In cases where the assessee relies upon financial difficulties, the authority concerned can briefly indicate whether the assessee is financially sound and viable to deposit the amount if the authority wants the assessee to so deposit.

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- (d) 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.
- (e) We clarify that if the authority concerned complies with the above parameters while passing orders on the stay application, then the authorities on the administrative side of the Department like respondent No. 2 herein need not once again give reasoned order. The above parameters are not exhaustive. They are only recommendatory in nature. It has been held that where the case has been decided in the assessee's favour in the earlier year's by Court/Tribunal, then stay should be granted. Gujarat State fertilizers & Chemicals 226 ITR 270 (Guj.) r/w. circular no.530 .

- Applications for stay cannot be rejected without considering assessee's submissions.- *Balaji Universal Tradelinks P. Ltd. 25 Taxmann.com 256 (Bom.)*
- Rejection of stay application without considering that the issue decided in assessee favour in earlier year by Ld. CIT(A) unjustified - *Bhubaneswar Stock Exchange vs. UOI [2006] 283 ITR 562 (Orissa)*
- Appellate Tribunal has power to stay the recovery proceedings beyond the period of 365 days *Qualcomm Incorporated vs. ADIT [2012] 150 TTJ 661 (Delhi)*

# SECTION 221 – PENALTY PAYABLE WHEN TAX IN DEFAULT

- When an assessee is in default or is deemed to be in default in making payment of tax he shall be liable to pay penalty, in addition to the amounts of arrears and the amount of interest payable under sec.220(2) of the Act.
- Before levying any penalty, the assessee may be provided an opportunity of being heard.
- If default for not making payment was for good and sufficient cause, no penalty shall be levied
- Where as a result of any final order the amount of tax, with respect to the default in the payment of which the penalty was levied, has been wholly reduced, the penalty levied shall be cancelled and the amount of penalty paid shall be refunded.

# CASE LAW

- Penalty under section 221 for default in making payment of tax can be imposed only on arrears of tax excluding interest payable under section 220(2). *CIT vs. Oryx Finance & Investment (P.) Ltd., Mum [2017] 395 ITR 745 (Bombay)*
- Where an assessee does not pay self assessment tax under section 140A at time of filing original return of income, he is liable to pay penalty under section 221(1) even though he subsequently revises his return of income and pays self assessment tax at time of filing said revised return of income. *Claris Life Sciences Ltd. vs. DCIT [2017] 167 ITD 1 (Ahmedabad - Trib.) (SB)*



# SECTION 222 – CERTIFICATE TO RECOVERY OFFICER

- When an assessee is in default or is deemed to be in default in making payment of tax, the TRO may proceed to recover from such assessee the amount specified in such certification by one or more of the following modes:
  - Attachment and sale of movable property
  - Attachment and sale of immovable property
  - Arrest of the assessee and his detention in prison
  - Appointing a receiver for the management of the assessee's movable and immovable properties

# CASE LAWS

- Not mentioning of assessment years on the recovery certificate - Despite request by petitioner no information was furnished as to year or years to which recovery certificates pertained - Hence, the recovery proceedings are bad in law. *Duncan Stratton & Co. Ltd vs. UOI [1990] 183 ITR 204 (BOM.)*

- Where assessee's husband transferred a property to her for inadequate consideration during block period for which search was carried out against him, in case of failure of assessee to pay tax demand determined in block assessment proceedings, department could proceed against aforesaid property of assessee under Explanation to section 222(1). *T.S. Sujatha vs. TRO [2017] 78 taxmann.com 93 (Kerala)*
- PPF account cannot be attached for recovery of income-tax dues. *Dineshchandra Bhailalbai Gandhi vs. TRO [2014] 362 ITR 380 (Gujarat)*

## SECTION 223 - TRO BY WHOM RECOVERY IS TO BE EFFECTED.

- Section 223 (1) – The TRO competent to take action under section 222 shall be –
  - TRO within whose jurisdiction the assessee carried on his business or professions or within whose jurisdiction the principal place of his business or profession is situate, or
  - the TRO within whose jurisdiction the assessee resides or any movable or immovable property of the assessee is situate

# CASE LAW

- Unless department was able to put forth a case of connivance or fraud or misrepresentation on part of assessee, NOC for selling property could not be ignored by TRO. *Vikramsinh Jilubha Vala vs. TRO [2014] 224 Taxman 201 (Gujarat)(MAG.)*



## SECTION 224 – VALIDITY OR CERTIFICATE AND CANCELLATION OR AMENDMENT THEREOF

- It shall not be open to the assessee to dispute the correctness of any certificate drawn by the TRO on any ground whatsoever
- However it shall be lawful for the TRO to cancel the certificate if, for any reason, he thinks it necessary so to do, or to correct any clerical or arithmetical mistake therein



# SECTION 225 – STAY OF PROCEEDINGS IN PURSUANCE OF CERTIFICATE AND AMENDMENT OR CANCELLATION THEREOF

- Section 225 (1) provides that the TRO has power to grant time for the payment of any tax and when he does so, he shall stay the proceedings for the recovery of such tax until the expiry of the time so granted.

# SECTION 225 CONTI.....

- Section 225(2) provides that where the order giving rise to a demand of tax for which a certificate has been drawn up is modified in appeal or other proceeding under this Act, and, as a consequence thereof, the demand is reduced but the order is the subject-matter of further proceeding under this Act, the Tax Recovery Officer shall stay the recovery of such part of the amount specified in the certificate as pertains to the said reduction for the period for which the appeal or other proceeding remains pending.



# SECTION 225 CONTI.....

- Section 225 (3) provides that where a certificate has been drawn up and subsequently the amount of the outstanding demand is reduced as a result of an appeal or other proceeding under this Act, the TRO shall, when the order which was the subject-matter of such appeal or other proceeding has become final and conclusive, amend the certificate, or cancel it, as the case may be.

# CASE LAWS

- Where in course of appellate proceedings, Tribunal passed an order whereby tax demand raised from assessee was completely wiped of, mere fact that revenue had filed an appeal against said order would not make assessee as an assessee-in-default and, thus, order of attachment of property of assessee against tax demand in question was to be struck down. *Coromandel Oils (P.) Ltd. vs. TRO [2017] 291 CTR 600 (Madras)*
- The term 'reduced' in section 225(3) would include a case where the demand consequent upon an appeal or any proceeding under the Act has been reduced to nil also. The TRO is obliged to give effect to such reduction in demand and accordingly amend or cancel the certificate. *Sri Mohan Wahi v. CIT [2001] 248 ITR 799 (SC)*.

# SECTION 226 – OTHER MODES OF RECOVERY

- 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

# SECTION 226 CONTI.....

- 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

# SECTION 226 CONTI.....

- 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.

# SECTION 226 CONTI.....

- Where a person to whom notice under this sub-section is sent object 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.

# SECTION 226 CONTI.....

- 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.

# SECTION 226 CONTI.....

- 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.



# SECTION 226 CONTI.....

- Section 226 (4) provides that the Assessing Officer or TRO 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.
- Section 226(5) provides that the Assessing Officer or the TRO may after obtaining authorization from Chief Commissioner or Commissioner may recover any arrears of tax due by distraint and sale of his movable property in the manner laid down in Third Schedule.

# SECTION 227 – RECOVERY THROUGH STATE GOVERNMENT

- If the recovery of tax in any area has been entrusted to a State Government under clause (1) of article 258 of the Constitution, the State Government may direct, with respect to that area or any part thereof, that tax shall be recovered therein with, and as an addition to, any municipal tax or local rate, by the same person and in the same manner as the municipal tax or local rate is recovered.

## SECTION 228A – RECOVERY OF TAX IN PURSUANCE OF AGREEMENT WITH FOREIGN COUNTRIES

- Section 228A(1) - Where an agreement is entered into by the Central Government with the Government of any country outside India for recovery of income-tax under this Act and the corresponding law in force in that country and the Government of that country or any authority under that Government which is specified in this behalf in such agreement sends to the Board a certificate for the recovery of any tax due under such corresponding law from a person having any property in India, the Board may forward such certificate to any TRO within whose jurisdiction such property is situated and thereupon such TRO shall –

## SECTION 228A CONTI.....

- a) proceed to recover the amount specified in the certificate in the manner in which he would proceed to recover the amount specified in a certificate drawn up by him under Section 222; and
- b) remit any sum so recovered by him to the Board after deducting his expenses in connection with the recovery proceedings.

# SECTION 228A CONTI.....

- Section 228A(2) provides that where an assessee is in default or is deemed to be in default in making a payment of tax, the TRO may, if the assessee has property in a country outside India (being a country with which the Central Government has entered into an agreement for the recovery of income-tax under this Act and the corresponding law in force in that country), forward to the Board a certificate drawn up by him under section 222 and the Board may take such action thereon as it may deem appropriate having regard to the terms of the agreement with such country.



## SECTION 229 - RECOVERY OF PENALTIES, FINE, INTEREST AND OTHER SUMS.

- Any sum imposed by way of interest, fine, penalty, or any other sum payable under the provisions of this Act, shall be recoverable in the manner provided in this Chapter for the recovery of arrears of tax.

# SECTION 230 – TAX CLEARANCE CERTIFICATE

- Section 230 provides that no person who is not domiciled in India, who has come to India in connection with business, profession or employment, and who has income derived from any source in India shall leave the territory of India by land, sea or air unless he furnishes an undertaking in the prescribed form from his employer, or through whom such person is in receipt of the income to the effect that tax payable by such person who is not domiciled in India shall be paid by the employer referred to in clause (i) or the person referred to in clause (ii), and the prescribed authority shall, on receipt of the undertaking, immediately give to such person a no objection certificate, for leaving India:
- However, this provision is not applicable to foreign tourists who is not domiciled in India and visit India for any other purposes not connected with business, profession or employment

# SECTION 230A CONTI.....

- Section 230(1A) provides that every person, who is domiciled in India at the time of his departure from India, shall furnish, in the prescribed form 48 to the income-tax authority or such other authority as may be prescribed
  - a) the permanent account number allotted to him under section 139A
  - b) the purpose of his visit outside India
  - c) the estimated period of his stay outside India



# SECTION 230A CONTI.....

- Provided that no person:-
  - i. who is domiciled in India at the time of his departure; and
  - ii. in respect of whom circumstances exist which, in the opinion of an income-tax authority render it necessary for such person to obtain a certificate under this section, shall leave the territory of India by land, sea or air unless he obtains a certificate from the income-tax authority stating that he has no liabilities under this Act, or the Wealth-tax Act, 1957 (27 of 1957), or the Gift-tax Act, 1958 (18 of 1958), or the Expenditure-tax Act, 1987 (35 of 1987), or that satisfactory arrangements have been made for the payment of all or any of such taxes which are or may become payable by that person

# SECTION 230A CONTI.....

- Section 230A (2) provides that if the owner or charterer of any ship or aircraft carrying persons from any place in the territory of India to any place outside India allows any person to whom sub-section (1) or the first proviso to sub-section (1A) applies to travel by such ship or aircraft without first satisfying himself that such person is in possession of a certificate as required by that sub-section, he shall be personally liable to pay the whole or any part of the amount of tax, if any, payable by such person as the Assessing Officer may, having regard to the circumstances of the case, determine.

# SECTION 230A CONTI.....

- Section 230A(3) provides that in respect of any sum payable by the owner or charterer of any ship or aircraft under subsection (2), the owner or charterer, as the case may be, shall be deemed to be an assessee in default for such sum, and such sum shall be recoverable from him in the manner provided in this Chapter as if it were an arrear of tax.

## SECTION 232 - RECOVERY BY SUIT OR UNDER OTHER LAW NOT AFFECTED

- Section 232 of the Act provides that the several modes of recovery specified in this Chapter shall not affect in any way—
  - a) any other law for the time being in force relating to the recovery of debts due to Government; or
  - b) the right of the Government to institute a suit for the recovery of the arrears due from the assessee; and it shall be lawful for the Assessing Officer or the Government, as the case may be, to have recourse to any such law or suit, notwithstanding that the tax due is being recovered from the assessee by any mode specified in this Chapter.

# CIRCULARS AND INSTRUCTIONS

- There is a good case for stay of demand where heavy additions are made, subject to conditions to protect the Revenue.  
*Circular no. 530 dated 6th March 1989 [176 ITR (St.) 240]*
- Assessing Officer should deem an assessee as not being in default i) if the demand in dispute has arisen because assessing officer had adopted an interpretation of law in respect of which, there exists conflicting decisions of one or more High Courts or, the High Court of jurisdiction has adopted a contrary interpretation but the Department has not accepted that judgment, and, ii) the demand in dispute relates to issue that have been decided in favour of the assessee in an earlier order by an appellate authority or Court in assessee's own case.  
*Circular No. 589 dated 16th January 1991 [187 ITR (St.) 79].*

- where the income determined on assessment is 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 was no lapse on the part of the assessee. 96 (F.No.1/6/69-ITCC), dated 21st August, 1969.
- Instruction no.1914 dated 02.12.1993 of C.B.D.T. holds the field at present
- PRESS RELEASE, DATED 3-3-2016 for payment of 15% of demand till the disposal of appeal by Ld. CIT(A)
- OFFICE MEMORANDUM [F.NO.404/72/93-ITCC], DATED 31-7-2017 revising payment of 20% of demand till the disposal of appeal by Ld. CIT(A).

# CASE LAWS

- Where assessed income is twice or more than the returned income, power to stay recovery of tax in dispute pendency of appeal before CIT(A) ought to be exercised on the grounds of financial hardship. *Mrs. R. Mani Goyal vs. CIT [1996] 217 ITR 641 (All.)*
- Stay to be grants in case of high pitched assessment. *Soul vs. DCIT [2010] 323 ITR 305 (Delhi)*



**THANK** you!