

## **Stay of demand – certain relevant material**

### **A. CIT(A)'s power to grant stay:**

1. CIT(A) to dispose of stay application as its Jurisdiction to deal with application for stay order is inherent. [**GERA Realty Estates v. CIT(A) Bom. HC**]
2. Commissioner has no jurisdiction to pass an order on application for stay of order impugned in appeal pending before Commissioner (Appeals), and, therefore, impugned order of Commissioner was to be set aside with a direction to forward application in question to appellate authority for decision making. [**Devaraj Pande v. ITO [2013] 39 taxmann.com 1 (Karnataka)**]
3. Coercive action should not be taken against assessee for recovery of dues till decision of Commissioner (Appeals) on assessee's stay application. [**Sanjay Kumar Sahu v. ITO [2013] 40 taxmann.com 242 (Madhya Pradesh)** and **Haresh Ravji Majithiya v. ACIT [2014] 43 taxmann.com 129 (Bombay)**]

### **B. Factors to consider for stay application:**

Question of irreparable loss not only consideration while dealing with application for stay of demand. If this were so, every assessee with means of deposit would be denied a right to seek stay of demand irrespective of merits of his case. This is insupportable either on principle or on authority. [**Coca-Cola India (P.) Ltd. v. Assistant Registrar representing Income Tax Appellate Tribunal [2014] 43 taxmann.com 250 (Bombay)**]

### **C. Earlier year's orders in favour of assessee:**

1. On an application being filed by the assessee in this behalf, the Assessing Officer will exercise his discretion under section 220(6) of the Act (subject to such conditions as he may think fit to impose) so as to treat the assessee as not being in default in respect of the amount in dispute in the appeal in the following situations :
  - (i) the demand in dispute has arisen because the Assessing Officer had adopted an interpretation of law in respect of which, there exist 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, or
  - (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. 530, dated 6-3-1989.]
2. Where demand in dispute relates to an issue which has been decided in favour of

**assessee, stay against demand of tax should be granted. [ICICI Prudential Life Insurance Co. Ltd. v. CIT [2014] 47 taxmann.com 258 (Bombay) & Kalapet Primary Agricultural Co-Op. Credit Society Ltd. v. ITO [2016] 72 taxmann.com 166 (Madras)]**

The above circular also explained in:

*Madhu Silica (P.) Ltd. v. CIT* 1996 Tax L.R. 521 (Guj.)

*Gujarat State Fertilizers & Chemicals Ltd. v. Dy. CIT*[1997] [226 ITR 270](#)/ [98 Taxman 100](#) (Guj.)

*Bhubaneswar Stock Exchange v. Union of India*[2004] [137 Taxman 318](#) (Ori.),