NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPT No. 116 of 2016

1. M/s Vandana Vidhyut Ltd. Through : Director Vinod Agrawal (Aged 56 Yrs), Vandana Bhawan, M.G. Road, P.S. Moudha Para, Tah. & Distt. Raipur (Chhattisgarh) PIN : 492001

---- Petitioner

Versus

1. Principal Commissioner Of Income-Tax-1 Central Revenue Building, Civil Lines, Raipur, P. S. Civil Lines, Tah & Distt. Raipur (Chhattisgarh) PIN : 492001
2. Commissioner Of Income-Tax (Appeals)-1, Central Revenue Building, Civil Lines, Raipur, P.S. Civil Lines, Tah. & Distt. Raipur (Chhattisgarh) PIN : 492001
3. Deputy Commissioner Of Income Tax-1 (1), Central Revenue Building, Civil Lines, Raipur, P. S. Civil Lines, Tah & Distt. Raipur (Chhattisgarh) PIN : 492001

---- Respondent

For Petitioner	Shri M.K. Sinha, Advocate
For Respondents	Ms. Naushina Ali, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

19/10/2016

1. By this petition, the petitioner has assailed the demand notice issued by the respondent No.3 on the ground that

the appeal preferred before the respondent No.2 against the assessment order is pending consideration, therefore, the respondent No.3 should not have issued the demand notice.

2. At this stage, Ms. Naushina Ali, learned standing counsel appearing for the respondents, would submit that the Central Board of Direct Taxes ('the CBDT' in short) has issued a circular on 3-3-2016 for revised guidelines for stay of demand at the first appeal stage, therefore, if the petitioner moves an application for grant of stay before the Assessment Officer the same shall be considered in accordance with the circular dated 3-3-2016 issued by the CBDT.

3. The Circular dated 3-3-2016 issued by the CBDT is reproduced hereunder for ready reference :

> New Delhi, 3rd March, 2016
>
> Subject : Issue of Revised Guidelines for stay of demand at the First Appeal Stage – regarding
>
> With a view to streamline the process

of grant of stay of demand when the case of the taxpayer is pending before Commissioner (Appeals) and to standardize the quantum of lump-sum payment required to be made by the assessee as a pre-condition for stay of demand disputed, the Central Board of Direct Taxes has issued fresh guidelines to the field authorities of the Income Tax Department.

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.

3. This decision of the Board is expected to provide significant relief to the taxpayers in matters relating to grant of stay and recovery of demand by reducing arbitrariness in the disposal of stay petitions where the tax demand is contested at the First Appellate stage.

The Office Memorandum dated 29.02.2016 issued in this regard is available on the website of the Department www.incometaxindia.gov.in.

4. It appears, the Assessment Officer has been empowered to consider the prayer for grant of stay of demand notice or recovery of the disputed amount of tax assessed against the assessee on payment of 15% of the disputed demand. If the assessee is still aggrieved, he has been granted liberty to approach the jurisdictional administrative Principal Commissioner or Commissioner for a review of the decision of the Assessing Officer. Thus, there appears sufficient safeguard for the assessee to seek stay of recovery of the

disputed amount before the Assessment Officer or before the Principal Commissioner or Commissioner by way of review.

5. For the foregoing, the writ petition is disposed of granting liberty to the petitioner to move an application for stay before the Assessment Officer within a period of 15 days from today. The Assessment Officer shall consider and decide the application for stay within an outer limit of four (4) weeks from the date of submission of application by the petitioner.

6. It is expected that the appellate authority shall also decide the pending appeal of the petitioner within an outer limit of eight (8) weeks from today.

Sd/-

Judge
Prashant Kumar Mishra

Gowri