

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-25675-2016

DATE OF DECISION: 03 .05.2017

M/S PUNJAB INSTITUTE OF MEDICAL SCIENCES ... Petitioner

V.

**DEPUTY COMMISSIONER OF INCOME TAX (EXEMPTIONS) AND
ORS.**

... Respondents

**CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL**

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Alok Mittal, Advocate and
Mr. Abhishek Sanghi, Advocate
for the petitioner.

Mr. Denesh Goyal, Advocate
for the respondents.

ANUPINDER SINGH GREWAL, J.

The petitioner has impugned order dated 25.11.2016 (Annexure P-1) whereby respondent No.2 has declined to stay the recovery of demand for assessment year 2013-14 during the pendency of the appeal as well as the demand notice dated 29.11.2016 (Annexure P-14).

2. The petitioner institute is a Society established by Government of Punjab on 07.07.1994 and registered under the Societies Registration Act, 1860 on 10.10.1994. It was granted registration under Section 12AA of the Income Tax Act (hereinafter referred to as 'the Act') on 01.11.2000 by the Commissioner of Income Tax (for short 'CIT'), Chandigarh. The Society is said to have been set up with the object of providing education, training, research and related infrastructure in various branches of health sciences and working for

the advancement of scientific knowledge aimed at enhancing the quality of patient care. It has been filing income tax returns and claiming exemption of its entire income under Section 11 of the Act. The registration of the petitioner under Section 12AA was cancelled by the CIT by order dated 24.10.2013 (Annexure P-3). The petitioner preferred appeal thereagainst and the Income Tax Appellate Tribunal, Amritsar allowed the same on 29.09.2015. This order is stated to have attained finality.

For the assessment year 2006-07, the total demand of ₹ 20,77,10,765/- on account of tax, penalty and interest had been raised by the Department whereagainst appeals ITA Nos.271 and 274 of 2014 preferred by the petitioner, are pending adjudication before this Court. After the cancellation of the registration of the petitioner under Section 12AA of the Act, the assessments of the petitioner for the assessment year 2007-08 to 2010-11 were re-opened and total demand of ₹ 72,19,07,560/- was raised. The appeals are stated to be pending before the CIT (Appeal). For the assessment year 2013-14, a demand of ₹ 65,13,78,090/- was raised and the appeal preferred thereagainst by the petitioner is pending before the respondent No.2. The respondents issued letter dated 03.02.2016 asking the petitioner to deposit the outstanding demand failing which recovery proceedings were to be initiated. The petitioner was also put on notice by the respondents letter dated 14.03.2016 for an outstanding amount for the assessment years 2006-07 to 2010-11 which was replied by the petitioner on 23.03.2016 (Annexure P-9 Colly.). The matter is stated to be pending before the CIT (Exemptions). Thereafter, assessment for the assessment year 2013-14 was also framed by the letter dated 30.03.2016 and further demand was created. The respondents sought the payment of outstanding amount vide order dated 04.05.2016 (Annexure P-12). The

petitioner is stated to have preferred appeal against the additional demand for the assessment year 2013-14 which is pending before the CIT. In the meantime, the petitioner preferred application for stay of the demand of ₹ 65,13,78,090/- for the assessment year 2013-14. This application was dismissed by the impugned order dated 25.11.2016 (Annexure P-1) by referring to office memorandum issued by Central Board of Direct Taxes (hereinafter referred to as 'CBDT') on 29.02.2016 modifying the Instructions No.1914 dated 21.03.1996 for deposit of at least 15% of the demand for the stay of the order till the disposal of the appeal. On 12.12.2016 it was directed by this Court that no coercive steps be taken against the petitioner.

3. Learned counsel for the petitioner has contended that the impugned order refusing to stay the demand during the pendency of the appeal has been passed arbitrarily and without application of mind and, therefore, deserves to be set aside. He further contended that the petitioner institute has been set up and is maintained by the Government for promoting the health and well being of the public. It has a good prima facie case for setting aside the raised demand and the appeal before the CIT is likely to succeed as the very basis of the demand that is the cancellation of registration granted under Section 12AA to the petitioner institute has already been set aside. In support of his submission, he has relied upon the judgment of the Bombay High Court in the case of ***Kec International Ltd. Versus B.R. Balakrishnan and others*** reported as **(2001) 251 ITR 158**. Per contra, the learned counsel appearing for the respondents has contended that this Court while exercising writ jurisdiction should not entertain petitions seeking stay of recovery of demand. He has also contended that in other cases pertaining to the different assessment years, the petitioner had deposited 15% of the amount and hence stay was granted in its favour. The

petitioner has not deposited any amount towards demand for the assessment year 2013-14 and therefore, in terms of office memorandum dated 29.02.2016 issued by the CBDT, the demand could not be stayed without the deposit of 15%. In support of his submissions, he has relied upon the judgment of the Supreme Court in the case of ***Assistant Collector of Central Excise, Chandan Nagar v. Dunlop India Ltd., and others*** reported as ***(1985) 154 ITR 172 (SC)***, the Division Bench of this Court in the case of ***Kanav Khanna v. Commissioner of Income-Tax and Others*** reported as ***(2014) 366 ITR 386 (P&H)*** and Madhya Pradesh High Court in the case of ***Air Transport Co. (Regd.) v. Income Tax Appellate Tribunal and others*** reported as ***1994 (207) ITR 487 (MP)***.

4. At the outset we deem it appropriate to reproduce the relevant paragraphs of office memorandum dated 29.02.2016 (Annexure P-16) issued by the CBDT wherein Instructions No.1914 dated 21.03.1996 providing guidelines for stay of demand at the appellate stage have been modified.

“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.

(C) 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.

(D) The assessing officer shall dispose of a stay petition within 2 weeks of filing of the petition. If a reference has been made to Pr. CIT/CIT under para 4 (B) above or a review petition has been filed by the assessee under para 4 (C) above, the same shall also be disposed of by the Pr. CIT/CIT within 2 weeks of the assessing

officer making such reference or the assessee filing such review, as the case may be.

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

(i) require an undertaking from the assessee that he will cooperate in the early disposal of appeal failing which the stay order will be cancelled;

(ii) reserve the right to review the order passed after expiry of reasonable period (say 6 months) or if the assessee has not cooperated in the early disposal of appeal, or where a subsequent pronouncement by a higher appellate authority or court alters the above situations;

(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.”

5. From the reading of the modified guidelines, it is clear that in normal circumstances, the appellate authority would grant stay of demand during the pendency of the appeal upon payment of 15%. It has been envisaged in 4 (B) that there could be situations where an amount in excess of 15% of the demand would be required to be paid before staying the demand as well as eventualities wherein deposit of amount less than 15% of the demand would be warranted. Certain situations have been set out by way of illustration wherein amounts in excess and less than 15% of the demand could be accepted for staying the demand during the pendency of the appeal. They are of course illustrative and not exhaustive.

6. In the case of ***Kec International Ltd. Versus B.R. Balakrishnan and others*** (supra), the parameters for deciding the stay applications during the

pendency of the appeal before the appellate authority have been set out as under:-

“6. At the outset, it may be mentioned that the impugned order is passed by respondent No.2 on the administrative side. It does not give any reason. However, it is important to bear in mind that in this case even the Assessing Officer has not given any reasons for rejecting the stay application. As a result of the impugned order, a garnishee notice has been issued under section 226 (3) to the Central Bank of India, J.B. Nagar Branch, Andheri (East), Mumbai. About 500 workers have not been paid salary because of the garnishee notice. This is the consequence of an order being passed without giving any reasons. Hence, we intend to lay down certain parameters which are required to be followed by the authorities in cases where a stay application is made by an assessee pending appeal to the first appellate authority.

Parameters:

- (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.*
- (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.

7. The above parameters are not exhaustive. They are only recommendatory in nature.”

7. We are in agreement with these parameters and are of the considered view that the assessing/appellate authorities in the States of Punjab, Haryana and the Union Territory of Chandigarh should also follow these guidelines while deciding cases for stay of demand during the pendency of the appeal.

8. In the instant case, a bare perusal of the impugned order reveals that no reasons whatsoever have been mentioned while rejecting the case of the petitioner for stay of demand during the pendency of the appeal. It is enjoined upon the Appellate Authority to set out the reasons in support of the order passed. Giving reasons is one of the fundamentals of sound administration of justice. It is necessary to disclose the reasons which would indicate application of mind on the part of the authority and the aggrieved party would know as to why the decision has gone against it. It may not be necessary to set out reasons in detail but reasons at least in brief have to be stated by the Adjudicatory Authority.

9. Ordinarily, we would have remanded the matter back to the Appellate Authority for a fresh decision but having heard the learned counsel for the parties at some length, we are inclined to finally decide the matter in relation to stay of pre-deposit during the pendency of the appeal.

10. It is important to note that the petitioner institute has been set up and is maintained by the State Government. The object of the petitioner institute is advancement of scientific knowledge aimed at enhancing the quality of patient care. The case of the petitioner against the assessment for the year 2011-12 has already been decided in its favour and it is stated to be entitled to refund of ₹ 5.87 crores.

Furthermore, the setting aside by the Income Tax Appellate Tribunal (hereinafter referred to as 'ITAT') vide order dated 29.09.2015 (Annexure P-3 Colly.) of withdrawal of the registration of the petitioner institute under Section 12AA will have a bearing on the demand raised against the petitioner as well as the outcome of the appeal before the CIT. It deserves to be noticed that against the total demand of ₹ 171.14 crores raised from the petitioner an amount of ₹ 72.39 crores has already been recovered/received by the respondents. In the impugned order, the demand pertaining to assessment years 2006-07 to 2010-11 has already been stayed as the petitioner has deposited an amount of 15%. It is also not a case where the petitioner institute has been a wilful defaulter and it would be difficult to recover the amount in case, appeal is decided against it. The petitioner has also been able to make out a prima facie case. We are, therefore, of the view that the case of the petitioner falls in exceptional circumstances which would warrant stay of demand without any pre-deposit during pendency of appeal.

11. The judgments relied upon by the learned counsel for the respondents are distinguishable on facts and not applicable to the instant case. In the case of *Assistant Collector of Central Excise, Chandan Nagar v. Dunlop India Ltd., and others* (supra), it has not been laid out as an absolute proposition that writ court should not grant stay. It has been held that normally the High Court shall not grant stay which could be granted in exceptional circumstances. We have already spelt out the exceptional circumstances which warrant interfering with the impugned order.

12. The judgment in the case of *Kanav Khanna v. Commissioner of Income-Tax and Others* (supra) is clearly distinguishable as it pertains to an assessee who had claimed exemption from capital gains tax on the ground that acquired land was agricultural seeking stay of demand during pendency of appeal. It has been noted therein that the agricultural income for the land in question before the acquisition was shown as nil in the income tax return. It was in such circumstances that the Division Bench of this Court had declined to interfere with the order rejecting application for stay of demand during the pendency of the appeal.

13. In the case of *Air Transport Co. (Regd.) v. Income Tax Appellate Tribunal and others* (supra), it was held that grant of stay of recovery of demand is essentially a discretionary matter and invoking extraordinary jurisdiction of the High Court under Article 226/227 of the Constitution of India in such matters is neither proper nor desirable. We have already noticed the judgment of the Supreme Court in the case of *Assistant Collector of Central Excise, Chandan Nagar v. Dunlop India Ltd., and others* (supra), wherein, it has been held that in exceptional circumstances, the writ Court can grant stay of the demand during the pendency of the appeal.

14. For these reasons, we are of the view that the petitioner has been able to set out a case for stay of demand during the pendency of the appeal. We hasten to add that nothing whatsoever observed in this order shall be construed as an expression on merits of the case. The observations made by us are only for the purpose of deciding whether the petitioner has a case for stay of demand during the pendency of the appeal before the CIT.

15. In the result, the petition is allowed and the impugned order dated 25.11.2016 (Annexure P-1) is set aside. There shall be stay of demand during the pendency of the appeal before the CIT. We also direct the Chief Commissioners of Income Tax in the States of Punjab, Haryana and the Union Territory of Chandigarh to bring the parameters laid down in the case of ***Kec International Ltd. Versus B.R. Balakrishnan and others*** (supra) to the notice of assessing/appellate authorities and henceforth, cases pertaining to stay of demand during the pendency of appeal should be decided accordingly.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(ANUPINDER SINGH GREWAL)
JUDGE

03.05.2017

SwarnjitS

Whether speaking/reasoned	Yes
Whether reportable	Yes