

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPT No. 74 of 2018**

Vimal Kumar Agrawal, S/o Shri Shrawan Agrawal, aged about 30 years, R/o
C/o Anant Rice Industries, Aarang Raipur, Chhattisgarh ---- **Petitioner**

Versus

1. Principal Commissioner of Income Tax – 1, Central Revenue Building, Civil Lines, Raipur (C.G.)
2. Commissioner of Income Tax (Appeals- 1), Central Revenue Building, Civil Lines, Raipur (C.G.)
3. Income Tax Officer – 1(2), Central Revenue Building, Civil Lines, Raipur (C.G.) ---- **Respondents**

WPT No. 75 of 2018

Vivek Kumar Agrawal, S/o Shri Shrawan Agrawal, aged about 33 years, R/o
C/o Anant Rice Industries, Aarang Raipur, Chhattisgarh. ---- **Petitioner**

Versus

1. Principal Commissioner of Income Tax – 1, Central Revenue Building, Civil Lines, Raipur (C.G.)
2. Commissioner of Income Tax (Appeals- 1), Central Revenue Building, Civil Lines, Raipur (C.G.)
3. Income Tax Officer – 1(2), Central Revenue Building, Civil Lines, Raipur (C.G.) ---- **Respondents**

WPT No. 76 of 2018

Smt. Suruchi Agrawal, W/o Shri Vinay Agrawal, aged about 35 years, R/o
C/o Anant Rice Industries, Aarang Raipur, Chhattisgarh. ---- **Petitioner**

Versus

1. Principal Commissioner of Income Tax – 1, Central Revenue Building, Civil Lines, Raipur (C.G.)
2. Commissioner of Income Tax (Appeals- 1), Central Revenue Building, Civil Lines, Raipur (C.G.)
3. Income Tax Officer – 1(2), Central Revenue Building, Civil Lines, Raipur (C.G.) ---- **Respondents**

And

WPT No. 77 of 2018

Asha Devi Agrawal, W/o Shri Shrawan Agrawal, aged about 58 years, R/o C/o Anant Rice Industries, Aarang Raipur, Chhattisgarh.

---- Petitioner

Versus

1. Principal Commissioner of Income Tax – 1, Central Revenue Building, Civil Lines, Raipur (C.G.)
 2. Commissioner of Income Tax (Appeals- 1), Central Revenue Building, Civil Lines, Raipur (C.G.)
 3. Income Tax Officer – 1(2), Central Revenue Building, Civil Lines, Raipur (C.G.)
- Respondents**

For Petitioners	:	Mr. Syed Ishhadil Ali and Mr. Romir S. Goyal, Advocates.
For Respondents	:	Mrs. Naushina Afrin Ali, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

23/04/18

1. Since common question of law and fact is involved in these writ petitions, they are heard together and are being disposed of by this common order.
2. The applications filed by the petitioners for stay of recovery of disputed demand has been rejected by respondent No. 3 by order dated 15.01.2018 (Annexure- P/1). Against the said rejection, revision / review petitions were preferred by the petitioners but they have been rejected by respondent No. 1 by order dated 23.03.2018 (Annexure – P/2) without assigning any reason and without passing any reasoned and speaking order, aggrieved against which these writ petitions have been preferred by the petitioners.

2. Learned counsel appearing for the petitioners would submit that 20% of the disputed amount has already been deposited and, therefore, the impugned orders passed are unsustainable and bad in law and are liable to be set aside.

3. On the other hand, Mrs. Naushina Afrin Ali, learned counsel appearing for the respondents – revenue, would oppose the submissions made by learned counsel for the petitioners and would support the orders impugned.

4. I have heard learned counsel for the parties, perused the impugned orders and also went through the records with utmost circumspection.

5. The Assigning Officer has rejected the applications for stay simply stating that the request of the balance demand cannot be accepted at present and the said applications have been rejected without assigning any reason. This Court in the matter of **M/s Aarti Sponge & Power Ltd. v. The Assistant Commissioner of Income Tax & Others**¹, decided on 10.04.2018 indicated the procedure to be followed by the Assigning Officer as under :-

“18. In my opinion, the said question is no longer *res integra* and it has been well settled by a decision of the Bombay High Court in the matter of **KEC International Ltd. v. B.R. Balakrishnan and others**² in which S.H. Kapadia, J, as then His Lordship was speaking for the Bombay High Court, while considering the similar issue has laid down the following guidelines: -

“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

1 WPT Nos. 59/2018 & 60/2018

2 2001 SCC OnLine Bom 1229

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.”

19. The aforesaid guidelines have been followed later-on again by the Bombay High Court in the matter of **UTI Mutual Fund v. Income Tax Officer 19(3)(2) and others**³ in which Dr. D.Y.

3 2012 SCC OnLine Bom 390

Chandrachud, J (as then His Lordship was) while following the decision rendered in **KEC International Ltd.** (supra) again held some more guidelines as under: -

“These are, we may say so with respect, sage observations which must be borne in mind by the assessing authorities. Consistent with the parameters which were laid down by the Division Bench in KEC International and the observations in the judgment in *Coca Cola*⁴, we direct that the following guidelines should be borne in mind for effecting recovery :

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 of 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;
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 Income Tax Officer 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

4 Coca Cola India P. Ltd. v. Addl. CIT, (2006) 285 ITR 419

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.”

6. Reverting to the facts of the present case, it appears that Assigning Officer has not adopted the correct procedure in deciding the stay applications of the petitioners and has not followed the guidelines as stated by Bombay High Court in **KEC International Ltd.** (supra) and in **UTI Mutual Fund** (supra) and also the decision rendered by this Court in **M/s Aarti Sponge & Power Ltd.** (supra).

7. In view of aforesaid discussion, the impugned orders dated 15.01.2018 (Annexure – P/1) and 23.03.2018 (Annexure – P/2) are hereby set aside and the matter is remitted to the Assigning Officer to consider the stay applications afresh in light of the guidelines as stated by the Bombay High Court and followed by this Court in **M/s Aarti Sponge & Power Ltd.** (supra) and pass a reasoned and speaking order within two weeks from the date of receipt of certified copy of this order after hearing the parties in light of the observations made for deciding the applications for grant of stay of the disputed demand.

8. Also, till the decision of the stay applications, no coercive steps shall be taken against the petitioners.

9. With the aforesaid observations, the writ petitions are disposed of. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge