

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 59 OF 2019

JIK Industries Ltd.

...Petitioner

vs

The Deputy Commissioner of Income-tax – 2(2)(1)
& Ors.

...Respondents

Mr.Nitesh Joshi I/b. Atul Jasani for Petitioner.

Mr.P.C. Chhotaray for Respondents.

**CORAM : AKIL KURESHI &
S.C.GUPTE, JJ.**

DATE : 8 FEBRUARY 2019

P.C. :

This petition is filed challenging orders dated 22 February 2018, 6 March 2018 and 30 November 2018 passed by the revenue authorities refusing to grant unconditional stay against recoveries in favour of the Petitioner arising out of assessments of the earlier years.

2 Brief facts are as under :

The Petitioner is a company registered under the Companies Act and is engaged in the manufacture of crystal and artistic glass. The Assessing Officer has passed scrutiny assessment orders for the Assessment Years 2001-02, 2002-03 and Assessment Years 2009-10, 2010-11 and 2011-12. Against the assessment orders for the Assessment Years 2001-02 and 2002-03, the Petitioner has filed the revision petitions under Section 264 of the Income-tax Act, 1961 ('Act' for short) before the Commissioner of Income-Tax. This was done in the year 2007. Against the orders of

assessment for Assessment Years 2009-10, 2010-11 and 2011-12, the Petitioner has filed appeals before the Commissioner (Appeals). The tax demand arising out of these assessment years would be close to Rs.94 crores. All this while, the Petitioner had not deposited any tax pursuant to the assessment orders, primarily because the Petitioner company was before BIFR and the period of protection against coercive recoveries lasted upto 31 December 2017.

3 Now that, post 31 December 2017, the Petitioner does not enjoy any such stay against recoveries, the department initiated recovery procedure. The Petitioner first approached the Tax Recovery Officer seeking stay of the demands pending appellate and revisional proceedings. The Tax Recovery Officer insisted that the Petitioner must deposit 50% of the tax demand to avoid recovery of the rest. The Petitioner thereupon applied to the Principal Commissioner of Income-tax, who passed an order on 6 March 2018 insisting that the Petitioner must pay 20% of the tax demand to enjoy stay against the recovery. The Petitioner thereupon approached Chief Commissioner of Income-tax, who passed an order dated 30 November 2018 reiterating the same demand as that of the Principal Commissioner. The Petitioner has thereupon filed this petition.

4 Learned Counsel for the Petitioner contended that the revision petitions, which are filed in the year 2007, remained pending for years together without any fault of the Petitioner. The authorities in the impugned orders have now taken a stand that upon efflux of one year from the date of filing of the petitions, the same would not survive. The reference appears to be under Sub-Section (6) of Section 264 of the Act. He

submitted that the statute does not provide for academic dismissal or abatement of the revisional proceedings. He further stated that the appeals were filed by the Petitioner on 22 April 2013. The Commissioner (Appeals) had called for remand report on 6 November 2013 which was also made by the Assessing Officer on 12 November 2014. Recently the Commissioner had heard the appeals in part on 6 February 2019 and has now fixed further hearing on 13 February 2019. In that view of the matter, Counsel submitted that recoveries be stayed till final disposal of the appeals by the Commissioner. Counsel submitted that for the Assessment Years 2006-07 and 2008-09, the appeals of the Petitioner are already allowed by the Appellate Commissioner. Issues being similar, the Petitioner would get similar relief in the present appeals also. Counsel further submitted even on merits the Petitioner has arguable case. Several addition and disallowances made by the Assessing Officer are highly vulnerable.

5 On the other hand, learned Counsel Mr.Chhotaray opposed the petition contending that -

(i) As per the instructions of the CBDT, pending appeals, the assessee has to deposit 20% of the tax. The authorities have gone by such standards and therefore, made no error;

(ii) The Petitioner has not paid any tax for years together though the tax demand is huge;

(iii) The Appellate Commissioner cannot be expected to

decide the appeals within short time since the records are bulky;

(iv) The Assessing Officer has discussed the evidence on record in detail and come to conclusions for making additions in the assessments, which are sound.

6 With respect to the stand of the authorities that the revision petitions stood disposed of upon efflux of time, we do not find any such justification flowing from the statutory provision. Section 264 of the Act pertains to the revision of the other orders. Under Sub-section (1) of Section 264, assessee can approach the Commissioner for revision of the orders passed by the authorities subordinate to him by making an application within the time prescribed. Sub-section (6) of Section 264 provides that on an application by an assessee for revision made on or after 1 October 1998, an order shall be passed within one year from the end of the financial year in which such an application is made by the assessee for revision. Explanation to Sub-section (6) of Section 264 provides the manner of computing such period of limitation of one year. Nevertheless, there is no further consequence of the Commissioner not being able to pass an order on the revision petition within the time prescribed in Sub-Section (6) of Section 264. In absence of such specific statutory provision, dismissal or abatement of the revision petition cannot be inferred. Any other view, would be wholly unjust to litigant, who may file a revision petition and does not contribute in any manner for delay in disposal of revision petition, would be told that because the Commissioner could not dispose of the revision petition within one year, his petition stands dismissed or abated.

We may recall, when the legislature had introduced time limits for completing settlement proceedings by the Settlement Commissioner and had also provided for abatement of such proceedings if not completed in such time, this court had read down the provisions as to exclude from abatement such cases where the delay was not attributable to the assessee. Reference can be made to the judgment of Bombay High Court which was upheld by the Supreme Court in the case of **vs. Union of India vs. Star Television News Ltd.**¹

7 We, therefore, do not accept the stand of the Respondents that revision petitions do not survive. These revision petitions were filed way back in 2007. Counsel for the Petitioner had stated before us that the Petitioner had not asked for any adjournment in such revision petitions. Hearing of these revision petitions is thus not delayed due to the assessee. Several years later, we would not permit the department to recover the taxes arising out of the orders which are subject matter of such revision petitions.

8 Coming to the Assessment Years 2008-09, 2009-10, 2010-11 and 2011-12, we notice that the appeals were filed way back in the year 2013. The Commissioner had called for remand report which was also provided by the Assessing Officer in November 2014. The appeals were taken up for hearing on 6 February 2019. Further hearing is kept on 13 February 2019.

9 Despite such developments, we cannot foist a rigid time-frame

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on the Appellate Commissioner for disposing of such appeals. The assessment orders are quite bulky. The Appellate Commissioner would, therefore, have to examine all aspects of facts and law arising out of such proceedings. Without ascertaining the workload and other responsibilities on him, we would not direct a time-frame for disposal of appeals. The question for providing an interim formula pending such appeals, therefore, arises.

10 We will not accept the submission of Mr.Chhotaray that in face of the instructions of the CBDT, this court cannot reduce the requirement of depositing 20% of tax pending appeals. Firstly, these instructions themselves recognise exceptions and areas where the demand can be reduced by the revenue authorities; secondly, the instructions of CBDT to the revenue authorities aim to bringing about uniformity in an administrative action and cannot govern the discretionary powers of the High Court in the writ jurisdiction.

11 We, therefore, cursorily looked at the nature of additions, nature of materials collected by the Assessing Officer and the ground of challenge by the assessee. It would *prima facie* appear that the assessee Petitioner would have arguable points against many of the additions made by the Assessing Officer. The nature of additions concern the finding of bogus purchases and inflated premium and share application money besides others.

12 In totality of facts and circumstances, therefore, the Petitioner would deposit 5% of the principal tax demand arising out the assessment

orders for the Assessment Years 2009-10, 2010-11 and 2011-12. This may be done within a period of four weeks from today. Till four weeks from today, there shall be no further coercive recovery against the Petitioner. If the Petitioner deposits the amount as directed, such stay shall continue till final disposal of the appeals by the Commissioner. Subject to the Petitioner co-operating, the Commissioner may attempt to dispose of the appeals expeditiously and preferably within three months from today.

(S.C. GUPTE, J.)

(AKIL KURESHI, J.)