



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.04.2021

Pronounced on : 08.04.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)No.5550 of 2020

and

WMP(MD)Nos.4853, 4854 & 4855 of 2020

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M/s.Queen Agencies,
Rep.by its Managing Director

... Petitioner

Vs.

1.The Assistant Commissioner of
Income Tax (Circle-1),
Income Tax Office,
Ground and First Floor,
Sekkalai Street, Karaikudi - 630 002.

2.Canara Bank,
Rep.by its Manager,
No.12 A, Mohammed Sadak Center,
Opp.to Government Hospital,
GH Road, Ramanathapuram - 623 501.

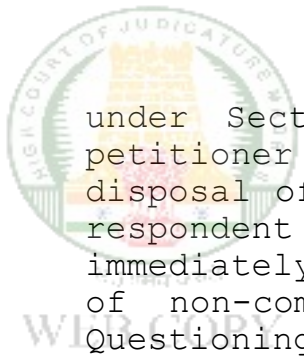
...Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ Certiorari, to call for the records of the impugned demand notice in PAN : AAAFQ1319G in DIN & Letter No.ITBA/COM/F/17/2019-20/1024797229(1) dated 06.02.2020 from the files of the first respondent herein, quash the same.

For Petitioner : Mrs.Aparna Nandakumar
For Respondents : Mrs.S.Srimathy for R1
Mr.C.Karthik for R2

ORDER

The petitioner is one of the major distributors of ITC products in Ramanathapuram District. The petitioner is a partnership firm and is an assessee on the file of the first respondent. Survey was conducted under Section 133 A of the Income Tax Act, 1961 on 05.12.2017 and based on the same, the petitioner's assessment for the assessment years 2015-16 and 2016-17 were sought to be re-opened. According to the petitioner, after giving a quietus to the issue, notice was issued for the second time under Section 143(2) of the Act on 20.09.2018. Adverse orders were passed on 29.12.2018. Questioning the same, the petitioner has filed an appeal before the appellate authority, namely, the Commissioner of Income Tax (Appeals), Madurai. Since recovery proceedings were initiated, the petitioner submitted an application before the first respondent



under Section 220(6) of the Income Tax Act, 1961 so that the petitioner may not be treated as an assessee in default till the disposal of the appeal filed by the appellate authority. The first respondent directed the petitioner to pay 20% of the demand immediately for stay and informed the petitioner that in the event of non-compliance, necessary follow up action will be taken. Questioning the communication dated 06.02.2020, this writ petition came to be filed.

2.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. Her foremost contention is that the first respondent had erred in not taking into account the Office Memorandum bearing F.No.1/6/69/-ITCC, dated 21.08.1969. Relying on the decision of the Madras High Court reported in **[2019] 413 ITR 390 (Mad) (Kannammal vs. Income Tax Officer, Ward 1(1), Tirupur)**, she contended that the parameters laid down for consideration of a stay application have also been totally ignored. She also contended that the impugned order is vulnerable in view of its non-speaking nature.

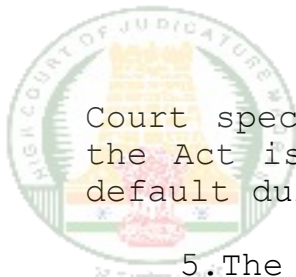
3.The learned standing counsel for the first respondent would submit that the impugned order is in conformity with the latest circular issued by the Central Board of Direct Taxes vide Office Memorandum (F.No.404/72/93-ITCC), dated 31.07.2017 r/w. O.M No.404/72/93-ITCC dated 29.02.2016. Since certain substantial questions were raised, I requested Shri.N.Dilipkumar, the learned standing counsel also to assist this Court.

4.I carefully considered the rival contentions and went through the materials on record. The petitioner challenges the order passed by the Assessing Officer under Section 220(6) of the Income Tax Act, 1961. The said provision reads as under :

"When tax payable and when assessee deemed in default...

220.(6)Where an assessee has presented an appeal under section 246 or section 246A the Assessing Officer may, in his discretion and subject to such conditions as he may think fit to impose in the circumstances of the case, treat the assessee as not being in default in respect of the amount in dispute in the appeal, even though the time for payment has expired, as long as such appeal remains undisposed of."

This provision came up for consideration before the Hon'ble Supreme Court in the decision reported in **AIR 1969 SC 430 (The Income Tax Officer, Cannanore vs. M.K. Mohammed Kunhi)**. Though the decision is cited as an authority for the proposition that the appellate tribunal must be held to have the power to grant stay as incidental or ancillary to its appellate jurisdiction, the Hon'ble Supreme



Court specifically observed that the power under Section 220(6) of the Act is power of stay by treating the assessee as not being in default during the pendency of appeal.

5. The question for consideration is how this power is to be exercised by the Assessing Officer. The Board has issued Circulars from time to time. Instruction No.95 dated 21.08.1969 is the earliest circular issued for guiding the discretion of the Assessing Officer. It reads as follows :

"SECTION 220 OF THE INCOME - TAX ACT, 1961 - COLLECTION AND RECOVERY OF TAX - WHEN TAX PAYABLE AND WHEN ASSESSEE DEEMED IN DEFAULT - INCOME DETERMINED ON ASSESSMENT WAS SUBSTANTIALLY HIGHER THAN RETURNED INCOME - WHETHER COLLECTION OF TAX IN DISPUTE IS TO BE HELD IN ABEYANCE TILL DECISION ON APPEAL

INSTRUCTION : NO.95 [F.NO.1/6/69-ITCC], DATED 21-8-1969

1. One of the points that came up for consideration in the 8th Meeting of the Informal Consultative Committee was that income-tax assessments were often arbitrarily pitched at higher figures and that the collection of disputed demand as a result thereof was also not stayed in spite of the specific provision in the matter in s. 220(6) of the IT Act, 1961.

2. The then Deputy Prime Minister had observed as under:

"..... Where the income determined on assessment was substantially higher than the returned income, say twice the latter amount or more, the collection of the tax in dispute should be held in abeyance till the decision on the appeal provided there were no lapses on the part of the assessee."

3. The Board desire that the above observations may be brought to the notice of all the Income-tax Officers working under you and the powers of stay of recovery in such cases up to the stage of first appeal may be exercised by the Inspecting Assistant Commissioner/Commissioner of Income-tax."

There was a modification of the same vide Instruction No.1914 dated 02.12.1993. It reads as follows :

"SECTION 220 OF THE INCOME TAX ACT, 1961 - COLLECTION AND RECOVERY OF TAX WHEN TAX PAYABLE AND WHEN ASSESSEE DEEMED IN DEFAULT - RECOVERY OF OUTSTANDING TAX DEMANDS

INSTRUCTION NO.1914, DATED 02.12.1993

COLLECTION AND RECOVERY :

1. The Board has felt the need for a comprehensive instruction on the subject of recovery of tax demand in order to streamline recovery procedures. This

instruction is accordingly being issued in supersession



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of all earlier instructions on the subject and reiterates the existing Circulars on the subject.

2. The Board is of the view that, as a matter of principle, every demand should be recovered as soon as it becomes due. Demand may be kept in abeyance for valid reasons only in accordance with the guidelines given below:

A. RESPONSIBILITY:

i. It shall be the responsibility of the Assessing Officer and the TRO to collect every demand that has been raised, except the following:

(a) Demand which has not fallen due;

(b) Demand which has been stayed by a Court or ITAT or Settlement Commission;

(c) Demand for which a proper proposal for write off has been submitted;

(d) Demand stayed in accordance with paras B & C below.

ii. Where demand in respect of which a Recovery Certificate has been issued or a statement has been drawn, the primary responsibility for the collection of tax shall rest with the TRO.

iii. It would be the responsibility of the supervisory authorities to ensure that the Assessing Officers and the TROs take all such measures as are necessary to collect the demand. It must be understood that mere issue of a show cause notice with no follow-up is not to be regarded as adequate effort to recover taxes.

B. STAY PETITIONS :

i. Stay petitions filed with the Assessing Officers must be disposed of within two weeks of the filing of petition by the tax-payer. The assessee must be intimated of the decision without delay.

ii. Where stay petitions are made to the authorities higher than the Assessing Officer (DC/CIT/CC), it is the responsibility of the higher authorities to dispose of the petitions without any delay, and in any event within two weeks of the receipt of the petition. Such a decision should be communicated to the assessee and the Assessing Officer immediately.

iii. The decision in the matter of stay of demand should normally be taken by Assessing Officer/TRO and his immediate superior. A higher superior authority should interfere with the decision of the AO/TRO only in exceptional circumstances; e.g., where the assessment order appears to be unreasonably high-pitched or where genuine hardship is likely to be caused to the assessee. The higher authorities should discourage the assessee from filing review petitions

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manner to gain time for withholding payment of taxes.

C. GUIDELINES FOR STAYING DEMAND:

i. A demand will be stayed only if there are valid reasons for doing so. Mere filing an appeal against the assessment order will not be a sufficient reason to stay the recovery of demand. A few illustrative situations where stay could be granted are:

(a) If the demand in dispute relates to issues that have been decided in assessee's favour by an appellate authority or court earlier ; or

(b) if 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 (not of the High Court under whose jurisdiction the Assessing Officer is working);

(c) if the High Court having jurisdiction has adopted a contrary interpretation but the Department has not accepted that judgment.

It is clarified that in these situations also, stay may be granted only in respect of the amount attributable to such disputed points. Further, where it is subsequently found that the assessee has not co-operated in the early disposal of appeal or where a subsequent pronouncement by a higher appellate authority or court alters the above situation, the stay order may be reviewed and modified. The above illustrations are, of course, not exhaustive.

ii. In granting stay, the Assessing Officer may impose such conditions as he may think fit. Thus he may,

(a) require the assessee to offer suitable security to safeguard the interest of revenue;

(b) require the assessee to pay towards the disputed taxes a reasonable amount in lump sum or in instalments;

(c) require an undertaking from the assessee that he will co-operate in the early disposal of appeal failing which the stay order will be cancelled.

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

(e) reserve a right to adjust refunds arising, if any, against the demand.

iii. Payment by instalments may be liberally allowed so as to collect the entire demand within a reasonable period not exceeding 18 months.



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iv. Since the phrase "stay of demand" does not occur in section 220(6) of the Income-tax Act, the Assessing Officer should always use in any order passed under section 220(6) [or under section 220(3) or section 220(7)], the expression that occurs in the section viz., that he agrees to treat the assessee as not being default in respect of the amount specified, subject to such conditions as he deems fit to impose.

v. While considering an application under section 220(6), the Assessing Officer should consider all relevant factors having a bearing on the demand raised and communicate his decision in the form of a speaking order.

D. Miscellaneous:

i. Even where recovery of demand has been stayed, the Assessing Officer will continue to review the situation to ensure that the conditions imposed are fulfilled by the assessee failing which the stay order would need to be withdrawn.

ii. Where the assessee seeks stay of demand from the Tribunal, it should be strongly opposed. If the assessee presses his application, the CIT should direct the departmental representative to request that the appeal be posted within a month so that Tribunal's order on the appeal can be known within two months.

iii. Appeal effects will have to be given within 2 weeks from the receipt of the appellate order. Similarly, rectification application should be decided within 2 weeks of the receipt thereof, instances where there is undue delay in giving effect to appellate orders, or in deciding rectification applications, should be dealt with very strictly by the CCITs/CITs.

3. The Board desires that appropriate action is taken in the matter of recovery in accordance with the above procedure. The Assessing Officer or the TRO, as the case may be, and his immediate superior officer shall be held responsible for ensuring compliance with these instructions.

4. This procedure would apply mutatis mutandis to demands created under other direct taxes enactments also."

The said instructions were however modified by Office Memorandum (F.No.404/72/93-ITCC), dated 29.02.2016 & 31.07.2017. They read as

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F.No.404/72/93-ITCC
Government of India
Ministry of Finance
Central Board of Direct Taxes (CBDT)

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New Delhi, Dated: 29th February, 2016

Office Memorandum

Sub: Partial modification of Instruction No. 1914 dated 21.03.1996 to provide for guidelines for stay of demand at the first appeal stage.

Instruction No. 1914 dated 21.03.1996 contains guidelines issued by the Board regarding procedure to be followed for recovery of outstanding demand, including procedure for grant of stay of demand.

2. In part 'C' of the Instruction, it has been prescribed that a demand will be stayed only if there are valid reasons for doing so and that mere filing of an appeal against the assessment order will not be a sufficient reason to stay the recovery of demand. It has been further prescribed that while granting stay, the field officers may require the assessee to offer a suitable security (bank guarantee, etc.) and/ or require the assessee to pay a reasonable amount in lump sum or in instalments.

3. It has been reported that the field authorities often insist on payment of a very high proportion of the disputed demand before granting stay of the balance demand. This often results in hardship for the taxpayers seeking stay of demand.

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.

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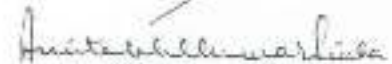
(C) In a case where stay of demand is granted by the assessing officer on payment of 15% of the disputed demand and the assessee is still aggrieved, he may approach the jurisdictional administrative Pr. CIT/ CIT for a review of the decision of the assessing officer.

(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. These instructions/ guidelines may be immediately brought to the notice of all officers working in your jurisdiction for proper compliance.


(A.K. Sirha) 29/2/16
Director (ITCC)

All Principal Chief Commissioners/ Principal Directors General of Income Tax/ Chief Commissioners/ Directors General of Income Tax.

Copy to:

1. Chairperson and all Members of CBDT.
2. All Joint Secretaries and Commissioners in CBDT.
3. Pr. DGIT (Systems), Pr. DGIT (NADE) and Pr. DGIT (Admin.).
4. Additional Directors General (Recovery) and (PR, PP&OL).
5. Web Managers of irsofficersonline.gov.in and incometaxindia.gov.in for placing on the respective portal.
6. Office of Comptroller & Auditor General of India (30 copies).



F.NO.404/72/93-ITCC
(FTS:284146)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, 31st July, 2017

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OFFICE MEMORANDUM

Subject: Partial modification of Instruction No. 1914 dated 21.3.1996 to provide for guidelines for stay of demand at the first appeal stage.

Reference : Board's O.M. of even number dated 29.2.2016.

Instruction No. 1914 dated 21.3.1996 contains guidelines issued by the Board regarding procedure to be followed for recovery of outstanding demand, including procedure for grant of stay of demand.

Vide O.M. NO.404/72/93-ITCC dated 29.2.2016, revised guidelines were issued in partial modification of Instruction No. 1914, wherein, inter alia, vide para 4 (A) it had been laid down that 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) there under. Similar references to the standard rate of 15% have also been made in succeeding paragraphs therein.

The matter has been reviewed by the Board in the light of feedback received from field authorities. In view of the Board's efforts to contain over pitched assessments through several measures resulting in fairer and more reasonable assessment orders, the standard rate of 15% of the disputed demand is found to be on the lower side. Accordingly, it has been decided that the standard rate prescribed in O.M. dated 29.2.2016 be revised to 20% of the disputed demand, where the demand is contested before CIT(A). Thus, all references to 15% of the disputed demand in the aforesaid O.M. dated 29.2.2016 hereby stand modified to 20% of the disputed demand. Other guidelines contained in the O.M. dated 29.2.2016 shall remain unchanged.

These modifications may be immediately brought to the notice of all officers working in your jurisdiction for proper compliance.

(Signature)
31/7/17
(A.K. Sinha)
Director (ITCC)
23092939

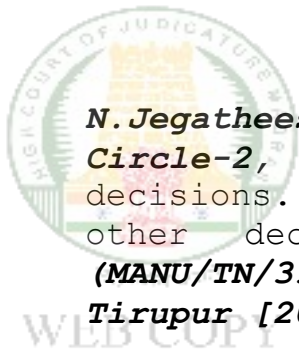
All Pr. Chief Commissioners/ Pr. Directors General of Income Tax/ Chief Commissioners/ Directors General of Income Tax

Copy to:

1. Chairman and all Members of CBDT.
2. All Joint Secretaries and Commissioners in CBDT.
3. Pr. DGIT(Systems), Pr. DGIT(NADT) and Pr. DGIT(Admin.).
4. Additional Directors General (Recovery) and (PR, P&P).
5. Web Managers of irsOfficersonline.gov.in and incometaxindia.gov.in for placing on the respective portals.
6. Office of Comptroller & Auditor General of India (30 copies).

6. The learned counsel for the petitioner took me through the decisions of the Delhi High Court reported in **[2008] 307 ITR 103 (Delhi) (Valvoline Cummins Limited vs. Deputy Commissioner of Income Tax and Ors, [2010] 323 ITR 305 (Delhi) (Soul vs. Deputy Commissioner of Income Tax) & Taneja Developers & Infrastructure Ltd. vs. Asst. Commissioner of Income Tax & Ors.)** and **[2010] 324 ITR 247 (Delhi)**, for the proposition that failure to consider the petition in the light of the CBDT Instruction No. 95, dated 21.08.1969, would render the order passed under Section 220(6) of the Act bad in law. She pointed out that a learned Judge of this Court in

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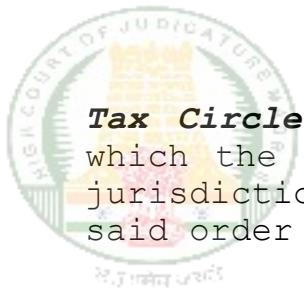
N.Jegatheesan vs. Deputy Commissioner of Income Tax, Non Corporate Circle-2, (2016) 4 MLJ 479, has also followed the aforesaid decisions. This 1969 circular has also been referred to in a few other decisions, namely, **Kalaignar TV Pvt. Ltd. v. ACIT (MANU/TN/3920/2018)** and **Kannammal vs. Income Tax Officer, Ward 1(1), Tirupur [2019] 413 ITR 390 (Mad)**.

7.The learned standing counsel point out that vide Letter bearing F.No.404/10/2009-ITCC dated 01.12.2009, it has been specifically made clear that Instruction No.95 dated 21.08.1969 no longer exists. It must also be noted that in none of the decisions referred to by the learned counsel for the petitioner, attention of the learned Judges was drawn to Letter F.No.404/10/2009-ITCC dated 01.12.2009. Interestingly, in Jegatheesan's case, in Paragraph 15, the learned Judge has observed that contrasting claims have been made as regards the existence of Instruction No.95. However, no finding was given. If the Circular dated 01.12.2009 had been brought to the notice of the learned Judge, it would have been held that Instruction No.95 had ceased to exist long ago. Therefore, I hold that failure to refer Instruction No.95 dated 21.08.1969 cannot be said to have vitiated the impugned order.

8.Though in **Paulsons Litho Works vs. ITO (1994 76 Taxman 294/208 ITR 676 (Mad)** and in **Cavinkare Private Limited vs. Commissioner of Income Tax (Appeals)-18, Chennai and Ors, (2018) 93 Taxmann.com 14 (Mad)**, it has been specifically observed that the petition filed before the assessing officer under Section 220(6) of the Act cannot be treated as a stay petition in the normal sense, as held by the Hon'ble Supreme Court in **The Income Tax Officer, Cannanore vs. M.K. Mohammed Kunhi (AIR 1969 SC 430)**, the assessing officer while passing an order certainly exercises his power to stay the recovery of dues by not treating the assessee in default. That is why, in **Kannammal's** case, the learned Judge (Dr.Justice Anita Sumanth) held as follows :

"7.The parameters to be taken into account in considering the grant of stay of disputed demand are well settled-the existence of a prima facie case, financial stringency and the balance of convenience. 'Financial stringency' would include within its ambit the question of 'irreparable injury' and 'undue hardship' as well. It is only upon an application of the three factors as aforesaid that the assessing officer can exercise discretion for the grant or rejection, wholly or in part, of a request for stay of disputed demand."

9.I may also add that the Division Bench of the Bombay High Court in the decision reported in **2019 SCC OnLine Bom 8430 (General Insurance Corporation of India vs. Assistant Commissioner of Income**



Tax Circle 3(1)(2) and Others) has also laid down the principles which the assessing officer must bear in mind while exercising his jurisdiction under Section 220(6) of the Act. Paragraph No.10 of the said order reads as follows :

"10. Before dealing with the rival submissions it would be useful to set out the parameters to be borne in mind while disposing of stay application as laid down by this Court. We refer to the following extract of the decision of this Court in *Mumbai Metropolitan Region Development Authority v. Deputy Director of Income Tax* (WP(L) No. 2348 of 2014) rendered on 29 October 2014 as under:—

"11. We have today, disposed of another Petition bearing No. 2542 of 2014 filed by the Slum Rehabilitation Authority and set out the parameters in deciding stay application as laid down by this Court in *KEC International Limited v. B.R. Balakrishnan* 251 ITR 158; *UTI Mutual Funds v. ITO* 345 ITR 71 and *UTI Mutual Fund v. ITO* in W.P.(L) No. 523 of 2013 rendered on 6th March 2013 which can for the purposes of disposing an application of stay can be summarized as under:

(a) The order on stay application must briefly set out the issue and the submission of the assessee/applicant in support of the stay;

(b) In cases where the assessed income under the impugned order far exceeds returned income so as to make the demand arbitrary or the issue arising for consideration stands concluded by a decision of a higher forum or where the order appealed against is in breach of Natural Justice or the view taken in the order being appealed against is contrary to what has been held in the preceding previous years (even if issue pending before higher forum) without there being a material change in facts or law, stay should normally be granted;

(c) If not, whether looking to the questions involved in appeal, keeping in view the likelihood of success in appeal what part of the demand the whole (in case issue covered against the applicant by a decision of higher forum) or part of it and must be justified by short reasons in the order disposing of the stay application;

(c) Lack of financial hardship would not be a sole ground to direct deposit/payment of the demands if the assessee/applicant has a strong arguable case on merits;

(d) In cases where the assessee/applicant relies upon financial difficulties, the authority concerned should briefly indicate whether the assessee is financially



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sound and viable to deposit the amount or the apprehension of the revenue of non recovery later. Thus warranting deposit. This of course, if the case is not otherwise sustainable on merits;

(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) In exercising the powers of stay, the Authority should always bear in mind that as a quasi judicial authority it is 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 assessing officer has made an assessment, he must objectively decide the application for stay considering that an appeal lies against his order; the application for stay must be considered from all its facets and the order should be passed, balancing the interest of the assessee with the protection of the Revenue.

The above guidelines are only illustrative and the authority concerned would have to have exercise his discretion in matters of stay on the facts of the case before him. Keeping in view of the above broad parameters we shall now examine whether the authorities have properly exercised their jurisdiction."

10.As rightly pointed out by the learned counsel for the petitioner, Letter bearing F.No.404/10/2009-ITCC dated 01.12.2009 issued by the Board even while making it clear that the 1969 circular has ceased to exist emphasized that Instruction No.1914 dated 02.12.1993 holds the field. Clause 2(C)(v) of Instruction No.1914 states that while considering an application under Section 220(6) of the Act, the assessing officer should consider all relevant factors having a bearing on the demand raised and communicate his decision in the form of a speaking order. The learned counsel for the petitioner pointed out that the impugned order is not at all in conformity with the aforesaid requirement.

11.To buttress her contention, the learned counsel for the petitioner placed reliance on the decision of the Hon'ble Division Bench of the Delhi High Court reported in **[2018] 303 CTR (Del) 650 (L.G.Electronics India (P) Ltd. v. Principal Commissioner of Income Tax and Ors)**. The Hon'ble Division Bench in the said decision observed as follows :

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"6.The impugned order clearly makes no reference to the central issue in the pending appeal or the grievance of the petitioner regarding the order passed by the AO. The impugned order in short is without reasons and is therefore unsustainable in law.

7.For the above reasons, the impugned order is set aside and a direction is issued that the petitioner's application will once again be heard by the Principal CIT on merits and without reference to the OM dt. 31st July, 2017, which, on the face of it, appears to curtail his discretion. The Principal CIT will dispose of the application with a reasoned order not later than two weeks from the date of receipt of this order."

12.The learned counsel on either side bring it to my notice that the decision of the Delhi High Court was put to challenge before the Hon'ble Supreme Court in **(2018) 18 SCC 447 (Principal Commissioner of Income Tax vs. LG Electronics India Private Limited)**. Based on the submission of the learned Additional Solicitor General, the Hon'ble Supreme Court clarified that in all cases arising under 220(6) of the Act, it will be open to the authorities on the facts of individual cases, to grant deposit orders of a lesser amount than 20% pending appeal. This was laid down by the Hon'ble Supreme Court since it was submitted that the administrative circular will not operate as a fetter on the Commissioner since he is a quasi-judicial authority. Since the Assessing Officer is exercising quasi-judicial power by virtue of Section 220(6) of the Act, the implication of the clarification of the legal position by the Hon'ble Supreme Court is that the assessing officer can grant deposit orders of a lesser amount than 20% pending appeal without making reference to the administrative Pr.CIT/CIT. Reference of course has to be made if he is of the view that deposit order of a higher amount than 20% pending appeal is warranted.

13.The order impugned in this writ petition is liable to be set aside as it is absolutely non-speaking. It is true that as pointed out by the learned standing counsel, the stay petition filed by the petitioner is equally bald and bereft of details. But as observed in Kannammal's case, the assessing officer ought to be pro-active. The statutory provision will come into play only if an appeal has been filed before the appellate authority. The case of the assessee would definitely be projected in the appeal memorandum. Therefore, in the light of the stand taken in the appeal memorandum, the Assessing Officer can pass order by applying the trinity principles.

14.It is needless to say that the petition under Section 220(6) of the Act will have to be filed only before the assessing officer after filing the statutory appeal. The learned standing counsel claim that at present the assesseees are indiscriminately filing the



stay petitions. They move the appellate authority, the assessing officer and also the Principal Commissioner of Income Tax simultaneously. The Principal Commissioner of Income Tax is only the reviewing authority. It is only when the assessing officer makes a reference or if the assessee is aggrieved by the order passed by the assessing officer, by virtue of Circular dated 29.02.2016, the Principal Commissioner of Income Tax will get the jurisdiction to exercise his power under Section 220(6) of the Act and not otherwise. In other words, he cannot assume the jurisdiction in the first instance. The assessee must also ensure that the petition filed under Section 220(6) of the Act contain all the relevant particulars so that the assessing officer can pass an appropriate order by bearing in mind the trinity principles. The order passed by the assessing officer will hold good and will have to give away as and when the appellate authority passes an order on the stay petition filed by the assessee/appellant.

15. In the light of the aforesaid discussion, the order impugned in the writ petition is set aside and the matter is remitted to the file of the assessing officer to pass orders afresh in accordance with law. The petitioner is at liberty to file a supplementary petition containing additional particulars and contentions. The assessing officer is obliged to consider all the contentions that may be raised by the petitioner while passing order under Section 220(6) of the Act. All the contentions of the petitioner are left open. The writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(T & P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skm

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Assistant Commissioner of Income Tax (Circle-1),
Income Tax Office, Ground and First Floor,
Sekkalai Street, Karaikudi - 630 002.

order made in

WP(MD) No.5550 of 2020 and

WMP(MD) Nos.4853, 4854 & 4855 of 2020

08.04.2021

na(CO)

TR(17.05.2021) 14P 2C

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