



Global Business Tax Alert

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AO must examine the trinity factors and pass the speaking order for the stay application filed by the petitioner

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Facts of the case

- The Assessee had filed her return of income stating taxable income Rs.6,23,770/- and claimed an exemption of Rs 10,19,74,341/-. The Assessing Officer ['AO'] had denied the exemption and brought the complete amount of Rs. 10,26,01,710/- to tax, which was several times in excess of the income returned.
- Since, this was a 'high pitched assessment', the assessee sought a complete stay of recovery of demand. Thereby, the assessee filed an application for stay of recovery of demand u/s 220(6) of the Act before the AO.
- The application for grant of stay was filed on the sole ground that the assessee had preferred an appeal against the order of assessment which is pending before the CIT(A). The AO disposed the stay petition and demanded the disputed amount immediately. Aggrieved, the assessee filed a writ petition before Madras High Court.

Issues under consideration

Whether no recovery should be effected of a disputed demand where the determination of tax in an assessment is substantially higher than the returned income?

Ruling of the High Court

- The HC stated that the parameters to be taken into account in considering the grant of stay of disputed demand were well settled namely- 'the existence of a prima facie case', 'financial stringency' and 'the balance of convenience'.
- The HC also cited that 'Financial stringency' would include within its ambit the question of 'irreparable injury' and 'undue hardship' as well.
- The HC stated that the circulars and instructions were in the nature of guidelines issued to assist the assessing authorities in the matter of grant of stay, and could not substitute or override the basic tenets to be followed in the consideration and disposal of stay petitions.
- The existence of a prima facie case as provided in the circulars themselves, the 'financial stringency faced by an assessee and the balance of convenience in the matter constitute the 'trinity' and are indispensable in consideration of a stay petition by the authority.
- The HC also observed that the Board while calling for the assessee to remit 20 percent of the disputed demand, had granted ample discretion to the authority to either increase or decrease the quantum demanded, based on the three vital factors as discussed above to be taken into consideration.
- The HC ruled that in the present case, the AO had merely rejected the stay petition by way of a non-speaking order. Also HC stated that the Assessing Officer is

required to consider all relevant factors for grant of stay and pass a speaking order.

- The HC set aside the AO's order and directed him to a fresh pass order on the stay application filed by the petitioner after hearing the petitioner.

Comments

- The issue with respect to the stay of demand during the pendency of the appeal before the CIT(A) has been a subject matter of debate before the courts/ tribunal. The AOs have tried to use their powers (collection and recovery) through coercive means. The AOs are using the Office memorandum prescribing payment of 20 percent of the disputed tax demand, when an appeal is filed before the CIT(A) without considering the merits of the case.
- This is a welcome ruling by the Madras High Court that reinforces the principles that the circulars and instructions are in the nature of guidelines issued to assist the AOs in the matter of grant of stay, and cannot substitute or override the basic tenets to be followed in the consideration and disposal of stay petitions.

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