

STAY OF DEMAND UNDER INCOME TAX ACT



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Introduction:

1. Demand Notice u/s 156: On completion of assessment, a demand notice is served for additional demand raised in the assessment. It is sometimes seen that huge demands are created against the assessee by framing high pitched assessments due to difference in opinion on interpretation of law or interpretation of facts or due to the fact that AO is not satisfied with the explanations offered by the assessee. Where any sum is determined to be payable by the assessee or by the deductor or collector u/s 143(1) or 200A(1) or 206CB(1), the intimation under those sections shall be deemed to be a notice of demand for the purposes of this section.

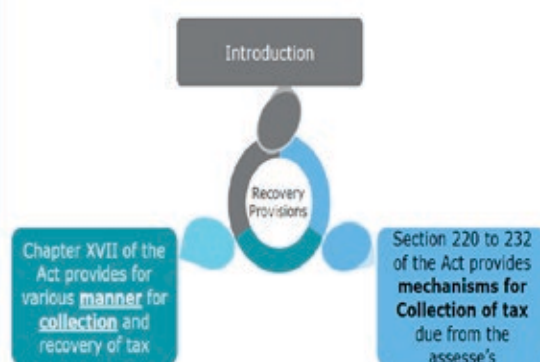
2. Time limit for payment of tax: The assessee should make the payment of amount demanded within 30 days of service of notice [Sec. 220(1)] Where the Assessing Officer has any reason to believe that it will be detrimental to revenue if the full period of 30 days is allowed, then he may with the previous approval of the Joint Commissioner direct that the sum specified in the notice of demand shall be paid within such time as may be specified by him in the notice.

Interest on delay in payment: If the payment is not made within 30 days (or time allowed in the notice), interest shall be payable @ 1% for every month (or part thereof) of the delay [Sec. 220(2)] An assessee in default shall be liable to a penalty of an amount not exceeding the amount of tax in arrears. [Sec. 221(1)]

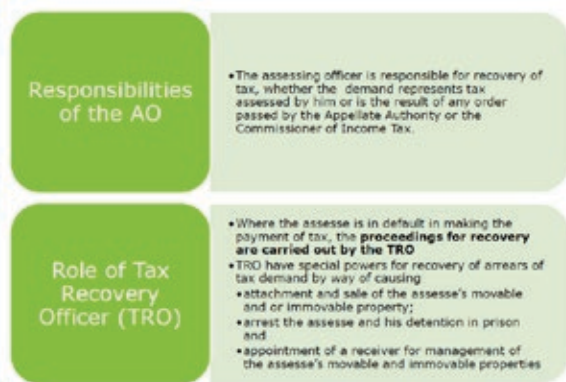
3. Extension of time limit: On an application made by the assessee before the expiry of due date, the Assessing Officer may extend the time for payment or allow payment by installments, subject to such conditions as he may think fit to impose in the circumstances of the case. Interest on delay in payment: If the payment is not made within 30 days (or time allowed in the notice), interest shall be payable @ 1% for every month (or part thereof) of the delay [Sec. 220(2)]

Note: Where interest is charged u/s 201(1A) on the amount of tax specified in the intimation issued u/s 200A(1) for any period, then, no interest shall be charged under this section on the same amount for the same period. Similarly, where interest is charged u/s 206C(7) on the amount of tax specified in the intimation issued u/s 206CB(1) for any period, then, no interest shall be charged under this section on the same amount for the same period.

Relevant Provisions



Responsibilities of Revenue Authorities



4. Petition for Stay of Demand:

The assessee may file an appeal against the demand as per order of income tax department and can also consequently apply for stay of such disputed tax demand since right to request for stay of demand in question is incidental to the right of appeal. Section 220(6) of the act provides that, where an assessee has presented an appeal under section 246 before Commissioner of Income Tax (Appeal) or section 246A before Income Tax Appellate Tribunal, 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 off.

Thus assessee may apply for stay of tax demand u/s 220(6) to the Assessing Officer and may request that he may not be treated as assessee in default. It should be noted here that accepting the request of an assessee u/s 220(6) is within the discretionary power of the Assessing Officer which cannot be exercised arbitrarily but has to be exercised judicially and reasonably while exercising such discretionary power he is always treated as quasi-judicial authority. But before exercising such discretion in favour of the assessee he is empowered to impose such conditions as he may think fit to impose in the circumstances of the case.

5. What should be done for stay of disputed demand:

As stated above, the assessee may file an appeal before CIT(Appeal) against any order of AO and consequent demand there on. After filing such appeal against any order and consequent demand there on, he should file a stay petition to the AO for stay of such demand and request him as not to treat him as assessee in default. The petition u/s 220(6) should be prepared by covering the following points.

- The petition should state the prima facie merits of the appeal which lies much upon the strong grounds of appeal.
- The financial position / hardship involved in the recovery of the disputed demand should be clearly and precisely stated. The petition should state why and how the balance of convenience is in favour of the stay, e.g. bad effect on the liquidity position of the business etc,
- Proof of appeal filed along with copies of grounds of appeal as well as statement of facts should be accompanied with the stay petition to show the prima facie merits of the appeal.
- The petition should be submitted within 30 days of

receipt of demand notice.

Stay of realization cannot be granted simply because an appeal has been preferred- Gouri Shankar Awasthi v. ITO 78 ITR 784 (Cal.)

6. AO should exercise the discretionary power judicially:

The AO has been vested with discretionary power u/s 220(6) which is not arbitrary power but a power coupled with a responsibility and the concerned officer should take all the circumstances into account and all the considerations that could be urged or are urged by the assessee as to why he should not be treated as not being in default and then make such order as is appropriate to the facts of case. So a request for the exercise of the power u/s 220(6) cannot be merely summarily rejected on the basis that the power is there with the officer but that he is not bound to exercise it.

7. Reasons for dismissing an application for stay should be stated by AO:

The AO cannot simply reject the stay application filed by assessee without giving any reason for the same., AO must pass a speaking order while dismissing stay application. As the exercise of discretion by AO u/s 220(6) is quasi-judicial function and he has to exercise his power fairly and reasonably and not arbitrarily or capriciously. So the AO should give reasons for dismissing an application made by an assessee for involving his discretion and should also hear the assessee. (Ref the decisions in case of M/S Seth Gopaldas Paliwal v. WTO [1983] 139 ITR 900 (MP). Teletube Electronics Ltd. V CIT [1998] 230 ITR 705, 707 (Del.); Chesebrough Pond's Inc v A.A.C. (C.T), [1973] 32 STC 464 (Mad.)

8. Assessee cannot be treated in default until stay application is disposed off:

It should be noted also that until application for stay of demand is disposed off by a speaking order assessee cannot be considered as assessee in default. Moreover demand remains stayed until the disposal of the application for stay. "Where an application for stay of demand in pending for disposal u/s 220(6), the demand should be stayed until the application is considered and an order is passed"-Sat Pal v ITAT 317 (P&H); Bongaigaon Refinery and Petro Chemicals Ltd. V. CIT 256 ITR 698 (Gau.); Debasish Moulik v. DCIT 231 ITR 737 (Cal.).

9. Stay should be granted if grounds of appeal are not frivolous:

Normally, once the officer is satisfied that an appeal has been filed (and the grounds are not frivolous), he has to treat the assessee as not in default to the extent of the portion of tax disputed in the appeal. Though section

220(6) does not indicate in what cases denial of discretion shall be justified, the fact that the assessee is financially sound and is in a position to pay is not in itself a ground for refusing to exercise the discretion in granting the stay- R.P. David v. Ag. ITO [1972] 86 ITR 699 (Mad.).

10. Penalty u/s 221 cannot be imposed before disposing off of the stay petition:

As noted earlier till the time stay application is disposed off by the AO, the demand remains stayed and hence assessee is not considered in default. Thus until the time stay application is being disposed off, no penalty u/s 221 can be imposed for non-payment of demand because assessee will not be considered as assessee in default till the disposing off of stay application.

In CIT v. DLF Universal Ltd. [2008] 297 ITR 342 (Del.), the Delhi High Court held that Assessing Officer should have decided the stay applications filed by the assessee before levy of penalty u/s 221. In this case High Court held that the assessing officer should have decided the stay applications filed by the assessee before taking any steps prejudicial to the interests of the assessee.

11. Instructions of CBDT in regard to stay of demand:

Instructions of CBDT on the subject of stay of demand can be started with the Instruction No. 96 dated 21.08.1969 (referred to in the judgments by the courts). The aforesaid instruction was issued by CBDT on the basis of assurance given by the then Deputy Prime Minister in 8th meeting of the Informal Consultative Committee that in the cases where income on assessment determined was substantially higher than the returned income, the collection of the tax in dispute should be kept in abeyance till the decision on the appeals, provided there was no lapse on the part of the assesses. So the intent that in a case where high pitched assessment has been made the demand should be kept in abeyance till the decision on the appeal. Subsequent to above Instruction the department felt that the aforesaid Instruction was not in the interest of the department from the point of view of collection of demand and, therefore, vide subsequent Circulars / Instructions CBDT issued clarifications in such a manner that full stay is not granted to assesses.

CBDT vide Instruction No. 1914 dated 02.12.1993, superseded the Instruction dated 21.08.1969 in the name of streamlining recovery procedure. The aforesaid Instructions, in fact, started with the words that "The Board is of the view that, as a matter of principle, every demand should be recovered as soon as it becomes due." For granting stay very limited situations were provided such as issue has been decided in assessee's favour by an Appellate Authority earlier or the Assessing Officer has adopted an interpretation of law in respect of which

conflicting decisions of High Courts are there. It was further provided that even in such cases the Assessing Officer will impose the conditions such as giving a suitable security by the assessee, making reasonable part payment and also adjustment of refunds due to the assessee.

Further CBDT vide clarification dated 01.12.2009, reiterated that Instruction No. 96 dated 21.8.1969 which was superseded vide Instruction No. 1914 dated 02.12.1993. It was also stated therein that decision of the Board had been approved by the Finance Minister. In the aforesaid clarification reference was also made to numbers of instructions / clarifications issued from time to time between 1969 to 1980 and the Instructions dated 02.12.1993. It was also stated therein that "the magnitude of addition to income returned cannot be the sole determinative in this regard". Accordingly, the department has been insisting for part payment of demand in all the cases irrespective of the quantum and the merits of the case.

In order to provide relief to the assesses during pendency of appeal before CIT(A), Instructions dated 29.02.2016 were issued wherein it was provided as a general rule that in the cases where 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 disputed demand. The Assessing Officer was also given a discretion to direct for payment of higher or lower amount in deserving cases with the approval of Pr. Commissioner / Commissioner. It was also provided in the circular that in case the assessee is not satisfied with the decision of the Assessing Officer for making payment of 15% of the disputed demand, he can approach the Pr. Commissioner / Commissioner for review of the decision.

These Instructions were, however, revised after a short period vide Instructions dated 31.07.2017. It was stated that rate of 15% was found to be on the lower side which revised to 20% of demand. The aforesaid Instructions dated 31.07.2017 are in force at present. In the light of aforesaid Instructions the Assessing Officers are insisting on payment of 20% of the demand in all the cases irrespective of the merits of the case or quantum of the demand. In case assessee is not able to comply with the direction of making payment of 20%, coercive measures are being taken as stated hereinabove.

This Circular provides that the AO may exercise his discretion u/s 220(6) and treat the assessee as not being in default in regard to demand payable in the following circumstances:

(a) The demand in dispute has arisen because the AO has adopted an interpretation of law on which there are conflicting decisions from the High Courts or the

jurisdictional High Court has adopted an interpretation, which has not been accepted by the I-T department.

(b) The demand in dispute relates to issues that have been decided in favour of the assessee in the past.

In respect of cases, which are not covered by (a) and (b), the AO has been advised to take into account all the relevant factors and communicate his decision to the assessee by a speaking order. It was said in this circular that while exercising discretion under this provision, the financial capacity of the assessee to pay the demand would not be relevant.

12. Stay of demand proceedings before Income-tax Appellate Tribunal

The Income Tax Appellate Tribunal may on an application made by the assessee and after considering the merits of the application, pass an order of stay in any proceedings relating to an appeal filed under section 253(1). If the ITAT is not able to dispose off the appeal under first proviso, the stay can be extended up to 365 days subject to the condition that appeal shall be disposed within the extended period. If for any reason, ITAT is not able to dispose off the appeal within 365 days, the order of the stay shall stand vacated even if the delay in disposing the appeal is not attributable to the assessee.

13. ITAT may grant stay subject to deposits not less than 20% of the amount. Section 254(2A) [effect from 01.04.2020]

The first proviso to Section 254 (2A) of the Act, provides that the ITAT may, grant stay under the first proviso subject to the condition that the assessee deposits not less than twenty per cent of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnish security of equal amount in respect thereof in any proceedings against the order of the Commissioner of Income-tax (Appeal).

14. Total stay granted by ITAT cannot exceed 365 days: Section 254(2A) [effect from 01.04.2020]

Second proviso to section 254(2A) provides that no extension of stay shall be granted by ITAT, where such appeal is not so disposed of which the said period of stay as specified in the order of stay. However, on an application made by the assessee, a further stay can be granted, if the delay in not disposing of the appeal is not attributable to the assessee and the assessee has deposited not less than twenty per cent of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnish security of equal amount in respect thereof.

The aggregate of the period of stay originally allowed and the period of stay so extended shall not exceed 365

days and the Appellate Tribunal shall dispose of the appeal within the period or periods of stay so extended or allowed.

15. Provisions under Section 254(2A):

(2A) In every appeal, the Appellate Tribunal, where it is possible, may hear and decide such appeal within a period of four years from the end of the financial year in which such appeal is filed under sub-section (1) or sub-section (2) of section 253:

Provided that the Appellate Tribunal may, after considering the merits of the application made by the assessee, pass an order of stay in any proceedings relating to an appeal filed under sub-section (1) of section 253, for a period not exceeding one hundred and eighty days from the date of such order subject to the condition that the assessee deposits not less than twenty per cent. of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnishes security of equal amount in respect thereof and the Appellate Tribunal shall dispose of the appeal within the said period of stay specified in that order:

Provided further that no extension of stay shall be granted by the Appellate Tribunal, where such appeal is not so disposed of within the said period of stay as specified in the order of stay, unless the assessee makes an application and has complied with the condition referred to in the first proviso and the Appellate Tribunal is satisfied that the delay in disposing of the appeal is not attributable to the assessee, so however, that the aggregate of the period of stay originally allowed and the period of stay so extended shall not exceed three hundred and sixty-five days and the Appellate Tribunal shall dispose of the appeal within the period or periods of stay so extended or allowed:

Provided also that if such appeal is not so disposed of within the period allowed under the first proviso or the period or periods extended or allowed under the second proviso, which shall not, in any case, exceed three hundred and sixty-five days, the order of stay shall stand vacated after the expiry of such period or periods, even if the delay in disposing of the appeal is not attributable to the assessee.

16. Powers of Tribunal to grant stay of demand

Assessee can approach to stay the recovery only when a valid appeal is pending before the Tribunal.

17. Fee for application for stay of demand [Section 253(7)]

An application for stay of demand shall be accompanied by a fee of five hundred rupees.

18. Procedure for Stay Petition- Rule 35A of the Income

-tax (Appellate Tribunal) Rules 1963

Rule 35A of the Income-tax Appellate Tribunal Rules prescribes the procedure for filing the Stay Petition. As per this rule, any assessee filing an appeal under taxation Laws, before the Income Tax Appellate Tribunal may prefer stay application in the following manner.

19.Procedure for filing and disposal of stay petition [Rule 35A Income-Tax (Appellate Tribunal) Rules, 1963]

(1) (a) Every application for stay of recovery of demand of tax, interest, penalty, fine, estate duty or any other sum shall be presented in triplicate by the applicant in person, or by his duly authorised agent, or sent by registered post to the Registrar or the Assistant Registrar, as the case may be, at the headquarters of a Bench or Benches having jurisdiction to hear the appeals in respect of which the stay application arises.

(b) Separate applications shall be filed for stay of recovery of demands under different enactments.

(2) Every application shall be neatly typed on one side of the paper and shall be in English and shall set forth concisely the following :-

(i) short facts regarding the demand of the tax, interest, penalty, fine, estate duty or any other sum, recovery of which is sought to be stayed ;

(ii) the result of the appeal filed before the Appellate Assistant Commissioner, if any;

(iii) the exact amount of tax, interest, penalty, fine, estate duty or any other sum demanded, as the case may be, and the amount undisputed therefrom and the amount outstanding ;

(iv) the date of filing the appeal before the Tribunal and its number, if known;

(v) whether any application for stay was made to the revenue authorities concerned, and if so the result thereof (copies of correspondence, if any, with the revenue authorities to be attached);

(vi) reasons in brief for seeking stay ;

(vii) whether the applicant is prepared to offer security, and if so, in what form ;

(viii) prayers to be mentioned clearly and concisely (stating exact amount sought to be stayed);

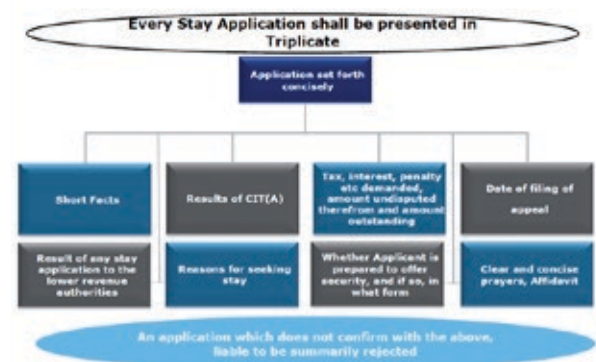
(ix) the contents of the application shall be supported by an affidavit sworn by the applicant or his duly authorised agent ;

(3) An application which does not conform with the above requirement is liable to be summarily rejected.]

20.Documents to be Annexed while filing stay petition before Hon'ble ITAT

- Covering Letter
- Index of Documents Attached
- Stay Application
- Correspondences before lower authorities
- Documents highlighting financial difficulties if any
- Duly notarized affidavit on Stamp paper of Rs. 100
- Challan of Rs. 500
- Letter of Authority on stamp paper

Procedure for stay petition – Rule 35A of the ITAT Rules 1963



21.Legal Judgments:

Hon'ble Supreme Court in case of **Aeltemesh Rein vs. Union of India, AIR 1988 SC 1768** has stated that every discretionary power vested even in the executive should be exercised in a just, reasonable and fair way.

Coming specifically to the discretionary power conferred by section 220(6) on the Assessing officer, courts have held that such discretion is coupled with duty and if does not exercise it when the occasion called for it or if he exercises it in such a manner that it is not exercise of discretion at all, he can be compelled to discharge his duties. [Ref: **Ladhuram Tapuria's case (1951) 20 ITR 51(Cal); Aluminium Corporation of India's case (1959) 37 ITR 267 (Cal) and Vetcha Sreeramamurthy's case (1956) 30 ITR 252 (A.P.)]**

CBDT has issued Instructions and Circulars from time to time to guide the Assessing Officers in respect of the exercise of discretion under section 220(6). In Circular No. 530 dated 6.3.1989 CBDT stated some situations when the discretion will be exercised but specifically stated that the Assessing Officer will not look into the financial capacity of the assessee to pay the demand.

On the basis of representations received by the CBDT

against this particular clause of circular, a new Circular, being no. 589 dated 16.1.91 was issued substituting this particular clause by a new clause stating that while considering the situation for treating the assessee to be not in default, the Assessing officer would consider all relevant factors having a bearing on the demand and communicate his decision to the assessee in the form of speaking order.

Further, there was an Instruction no. 96 dated 21.8.1969 which was beneficial to the assessee inasmuch as it stated that where the income determined on assessment was substantially higher than the returned income say, twice the latter amount or more, the collection of tax in dispute should be held in abeyance upto the stage of first appeal.

The aforesaid Instruction was relied upon to grant relief to the assessee in **Vakram bhai Punjabhai Palkhiwala vs. S.M. Ajbani (1990) 182 ITR 413 (Guj.)** and recently also in **Maharana Shri Bhagwat Singhji of Mewar vs. ITAT (1997) 223 ITR 192 (Raj.)**

However, the Calcutta High Court in **Dunlop India Ltd. vs. ACIT (1990) 183 ITR 528 (Cal.)** refused to take cognizance of the aforementioned Instruction because the counsel for the Revenue placed before the court a fresh Instruction, being no. 1362, which was issued in supersession of all the earlier instructions on the issue. The single Bench of the Calcutta High Court in the aforementioned case rejected the writ petition of the assessee for staying the Demand.

Some important highlights of the aforesaid Instruction No. 1362 is available in the judgement of the Division Bench, passed on an appeal filed by the assessee against the Single Bench Judgement (supra), as reported in **Dunlop India Ltd. vs. ACIT (1990) 183 ITR 532 (Cal.)**. The said Instruction states that in granting the stay, the Assessing officer may impose conditions like offer of security to safeguard the interests of the Revenue, payment towards the disputed taxes a reasonable amount in lumpsum or in instalments and requiring an undertaking from the assessee that he will cooperate in early disposal of the appeal failing which the stay order will be cancelled.

Further, it gave direction to the A.O. to look into, inter alia, the following aspects in exercising the discretion-

- (a) Whether the points in dispute relate to facts.
- (b) Whether they arise from different interpretations of law.
- (c) Whether the additions have been made as a result of detailed investigation.
- (d) Whether the disputed addition to income has been assessed elsewhere by way of protective assessment and the tax thereon has been paid by such person.

But the Instruction No. 1362 specifically provides that the magnitude of the additions to the income returned cannot be the sole determinant in this regard. (in contrast to Instruction No. 96 (supra)). Each disputed addition will need to be considered to arrive at the quantum of tax that may need to be stayed. However, it states that the discretion exercised should be the discretion of a reasonable man. Recently, CBDT has issued Instruction No. 1914 on the above subject and it is stated therein that this Instruction is issued in supersession of all earlier Instructions but it reiterates the existing circulars on the subject.

Remedy where discretion is not exercised judiciously: Where the Assessing Officer refuses to exercise his discretion or exercises it in a capricious or arbitrary manner or by taking into consideration irrelevant or extraneous considerations, the option before an assessee is to file a writ petition under Article 226 before the jurisdictional High Court.

In **Dunlop India Ltd. vs. ACIT 183 ITR 532**, the Division Bench of the Calcutta High Court found that while using discretion for the purposes of section 220(6), the office concerned had not appropriately dealt with or taken into consideration all the relevant factors which were necessary to be dealt with and considered. The Court, therefore, sent back the matter to the officer concerned for reconsideration and for giving due and proper reasons.

However, in **India Foils Ltd. vs. IAC (1990) 186 ITR 429 (Cal.)** the Calcutta High Court dismissed the writ petition because application for stay of tax was rejected by the A.O. by giving proper reasons and there was no perversity in the order. It may, however be noted that High Court, as a rule, in proceedings under Article 226, does not grant any stay of recovery of tax except under very exceptional circumstances.

CIT(A)'s power to grant stay:

Though the statute has not conferred specific power to grant stay to the Commissioner of Income Tax (Appeals), courts have held that in view of the propositions laid down by the

Supreme Court in **ITO vs. M.K. Mohammed Kunhi (1969) 71 ITR 815**, the first appellate authority has power to grant stay, which is incidental and ancillary to its appellate jurisdiction.

Some of the important judicial pronouncements in this regard are as follows-

- (a) For invoking the power of CIT(A) to grant stay of demand, it is not necessary that the assessee should first approach the Assessing Officer under section 220(6) or that the A.O. should reject the assessee's prayer for

stay. **Tin Mfg. Co. of India vs. CIT (1995) 212 ITR 451 (All.) Bongaigon Refinery & Petrochemicals Ltd. vs. CIT(1999) 239 ITR 871 (Gauhati)**

(b) The recovery proceedings initiated against the assessee shall remain stayed till the disposal of stay petition filed by him. **Pradeep Ratanshi vs. Asst. CIT (1996) 221 ITR 502 (Ker.)**

(c) Mere filing/ pendency of an appeal does not constitute an automatic stay. **Paulsons Litho Works vs. ITO (1994) 208 ITR 676 (Mad.)**

ITAT's power to grant stay:

Like in CIT(A)'s case, no specific power has been conferred upon the Income Tax Appellate Tribunal to grant stay of recovery proceedings but the Apex Court in case of **ITO vs. M.K. Mohammed Kunhi (1969) 71 ITR 815**, case has held that section 254 confers powers of the widest amplitude upon the Appellate Tribunal and by implication it has power to pass orders for staying recovery proceedings pending an appeal before it. But Tribunal should grant stay only when a strong prima facie case is made out and not in a routine way.

Procedure: Procedure for filing stay petition before the ITAT has been laid down by Rule 35A of the Appellate Tribunal Rules. Every application of stay is to be presented in triplicate to the Registrar/ Asst. Registrar of the Tribunal and should be accompanied by a fee of Rs. 500/- . As per Rule 35A(2), every application for stay shall set forth concisely the following-

- (i) short facts regarding the demand of the tax, interest, penalty, fine, estate duty or any other sum, recovery of which is sought to be stayed.
- (ii) the result of the appeal filed before the CIT(A), if any;
- (iii) the exact amount of tax, interest, penalty, fine, estate duty or any other sum demanded, as the case may be, and the amount undisputed therefrom and the amount outstanding;
- (iv) the date of filing the appeal before the Tribunal and its number, if known;
- (v) whether any application for stay was made to the revenue authorities concerned, and if so the result thereof (copies of correspondence, if any, with the revenue authorities to be attached);
- (vi) reasons in brief for seeking stay;
- (vii) whether the applicant is prepared to offer security, and if so, in what form;
- (viii) prayers to be mentioned clearly and concisely stating exact amount sought to be stayed;

(ix) the contents of the application shall be supported by an affidavit sworn by the applicant or his duly authorised agent;

Other aspects:

In case of **Soul v. Dy. CIT(2008) 220 CTR (Del) 211**, the Delhi High Court found that the assessment was 'high-pitched' - 74 times of returned income. The Court therefore observed that demand raised needs to be stayed in view of the CBDT's circular no. 96 dated 21st August, 1961 and Instruction No. 1914 dated 2nd December, 1993. Hence garnishee order passed under Section 226(3) was ordered to be kept in abeyance by the HIGH COURT.

In the case of **M/s Valvoline Cummins Ltd. v. CIT and Ors. (2008) 217 CTR (Del) 292** had granted an absolute stay of demand because the assessment made was eight times of the returned income saying that a perusal of Para2 of the CBDT instruction No. 96, dated 21st Aug., 1969 would show that where the income determined is substantially higher than the returned income, that is, twice the latter amount or more, then the collection of tax in dispute should be held in abeyance till the decision on the appeal is taken. In this case, the assessment is almost 8 times the returned income. Clearly, Instruction No. 96, dt. 21st Aug., 1969 would be applicable to the facts of the case. Under the circumstances, the assessee would, in normal course, be entitled to an absolute stay of the demand on the basis of the above instruction.

The Delhi High Court has considered the issue relating to stay of disputed demands once again in **Taneja Developers and Infrastructure Ltd. v. Asstt. CIT (Del) (2009) 222 CTR (Del) 521** and has decided that assessment at a figure 350 times the returned income is unreasonably high-pitched. Hence recovery needs to be stayed in view of CBDT Instruction No. 96 dated 21st August, 1969. The Courts have held that it is wrong to assume that the exercise of discretion is only a naked arbitrary power to reject the application for stay of recovery of disputed amount of tax pending the appeal. The statute has conferred upon the Assessing Officer the power to grant stay, and it is his duty to examine and scrutinize the grounds on which the stay is asked for. The foregoing discussion clearly brings out the gravity of the situation and the chaos and the confusion that is prevailing in the matter of decision making on stay applications. A consolidated view should be taken of the existing Instructions/Circulars on the subject of stay of demand and a master circular on the subject should be issued by the CBDT covering all relevant aspects indicating the actions to be taken where deviation is made from such guidelines without justification.

In the case of **LG Electronics** that the administrative Circular (31/07/2017) will not operate as a fetter on the

Commissioner since it is a quasi-judicial authority and rejected the SLP of PCIT to go ahead with the lesser 20% deposit. In the case LG Electronics then approached the Delhi High Court. In an order on 8 August 2017, the HC set aside the order passed by the PCIT and directed the PCIT to hear the matter again without referring to the 31 July 2017 circular. The PCIT, however, decided to approach the Supreme Court. In its judgement, the apex court (**CIVIL APPEAL NO. 6850 OF 2018**) clarified that irrespective of the OMs from CBDT, the tax authorities, depending on facts of individual cases, can grant deposit orders for an amount less than 20% of the tax demand.

In the case of **Mrs. Kannammal vs Income Tax Officer , Ward 1(1) Tirupur WP No. 3849 of 2019 and WMP No 4278 of 2019** , the Hon'ble High Court has described the stay circulars in detail and ordered the AO to pass on the

speaking order on the merits of the case after considering all the circulars in the matter .

Pradeep Ratanshi vs. Asst. CIT (1996) 221 ITR 502 (Ker.)(c) The stay of demands clearly shows that the two circulars are only in addition to Instruction No 96 and not in supersession of what has been approved by the 'Informal Consultative Committee of Parliament' and the then deputy Prime Minister/finance minister. That instruction is still valid and has not been withdrawn so far. Hence, where income assessed is twice the income returned or more, the demand attributable to such high-pitched assessments, on applications made by the assessee, has to be stayed until the disposal of appeals by the CIT (A). The recovery proceedings initiated against the assessee shall remain stayed till the disposal of stay petition filed by him.