**Clarity on stay by the Hon'ble Income Tax Appellate Tribunal (ITAT)**

The existingprovisions of the first proviso to sub-section (2A) of section 254 of the Act, inter alia, provides that the Hon'ble ITAT may, after considering the merits of the application The existing made by the assessee pass an order of stay for a maximum period of 180 days in any proceedings against the order of the Commissioner of Income-tax (Appeal). Second proviso to the said sub-section prescribes that where the appeal is not so disposed of, the Hon'ble ITAT on being satisfied that the delay is not attributable to the assessee, extend the stay for a further period subject to the restriction that the aggregate of the periods originally allowed and the period so extended shall not, in any case, exceed 365 days and the Hon'ble ITAT shall dispose of the appeal within the period or periods of stay so extended or allowed.

The third proviso of the said sub-section also provides 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 365 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.

Now it is proposed to provide that Hon'ble 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.

It is also proposed to substitute second proviso to provide that no extension of stay shall be granted by Hon'ble ITAT, where such appeal is not so disposed of within 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 assess 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 total stay granted by Hon'ble ITAT cannot exceed 365 days. This amendment will take effect from 1st April, 2020.

**Q. Whether the Tribunal has power to stay the recovery of demand?**

Ans. Yes, the Tribunal and every appellate authority has inherent power to stay the recovery. The assessee can file a Stay Petition before the Tribunal to stay the recovery proceedings when the appeal is pending before the Tribunal. An appellate authority has the inherent power to stay recovery of demand, which is in dispute before it. The Supreme Court in **ITO v. M. K. Kunhi (1969) 71 ITR 815 (SC): TC 8R. 460** held that the power to grant stay is incidental or ancillary to its appellate jurisdiction and it could well be said that when section 254 confers appellate jurisdiction, it impliedly grants the power of adding all such acts, or employing such means as are and essentially necessary to its execution and that the statutory power carries with it the duty in proper cases to make such orders for staying proceeding as will prevent the appeal if successful from being rendered nugatory.

Rule 35A prescribes the procedure for filing and disposal of stay petition. In the light of the said rule, it is desirable that every application should be neatly typed on one side of the sheet of paper, should be in English and should state concisely the required information. The application should be accompanied by the required documents and correspondence and should be supported by an affidavit from the applicant or his duly authorized agent.

An application which does not conform with the above requirements is liable to be summarily rejected. Earlier no Tribunal fee was required to be deposited while making a stay application. A fee has been prescribed at ₹ 500 with effect from 1st October, 1998. One single stay petition for tax outstanding for more than one year is possible.

The Central Board of Direct Taxes has issued instructions which state that the recovery proceedings may be stayed where the income determined on assessment is substantially greater than the returned income CBDT Instruction No. 96 [F. No. 1-6-69-ITCC), dated 21st August, 1969 [165 ITR 650 (Ker.) in the case of **N. Rajan Nair v. ITO (1987)**. Recovery proceedings may be stayed where the income determined on assessment is substantially greater than the returned income**- Mrs. R. Mani Goyal v. CIT (1996) 217 ITR 641 (All).** Where the income determined on assessment is more than twice the income returned, collection of tax should be stayed during appeal **Maharana Shri Bhagwat Singhji of Mewar v. ITAT (1997) 223 ITR 192 (Raj.).** Tribunal cannot refuse stay on the ground that CIT has already granted conditional stay - **Ashok Kumar Aggarwal v. ITAT (1997) 226 ITR 490 (Del.).** The Central Board of Direct Taxes has issued a Circular in which it has laid down the guidelines for the Assessing Officer to exercise his discretion under section 220(6) of the Income-tax Act, 1961, to treat the assessee as not being in default in respect of the amounts disputed in First Appeal pending before Dy. CIT (AVCIT(A) where the dispute is about interpretation of law or where the issue is decided in favour of the assessee in an earlier order (Circular No. 530 dated 6-3-1989 176 ITR (St) 240 and Circular No. 589 dated 16-1-1991, 187 ITR (St.) 79.]

The Tribunal has implied powers of staying recovery proceedings during the pendency of appeal –**Shiva Shakthi Rubber and Chemical Works v. ITAT(1995)213 ITR 299 (AIL). KEC International Ltd. v. B. R. Balakrishnan (2001) 251 ITR 158 (Bom.)**. The Tribunal can stay recovery proceedings when the reference is pending before the High Court. Thus, where an assessee has not succeeded in appeal before the Hon'ble Tribunal and reference in pending before the High Court and if the assessee can establish that he is not in a position to make the payment of disputed tax, the Tribunal can stay the recovery proceedings until the disposal of reference by the High Court **CIT v. Bansi Dhar & Sons (1986) 157 ITR 665 (SC).** Now, in case of an appeal under section 260A of the Act before the High Court, the High Court alone can grant stay, not the Tribunal**.** In **Endeavour Investments Ltd. v. Dy. CIT (1999) 70 ITD 17 (Chennai) (TM)**, it has been held that in matters where stay of tax has been granted, it is a judicial practice to treat those appeals as priority appeals because otherwise the granting of stay has no meaning Further, even if the assessee does not comply with the conditions of the stay, the appeal would continue to have the status of priority appeal.

**Q. Whether separate stay petitions should be filed seeking stay of recovery of demand for different assessment years?**

Ans. In **Wipro Ltd. v. ITO (2003) 86 ITD 407 (Bang.),** the Tribunal held that, separate stay petitions should be filed seeking stay of recovery of different assessment years. However, in **Chirangjilal S. Gaonkar v. WTO (2000) 66 ITJ (Mum.) 728**, it has been held that a single application can be filed.

**Q. Under what circumstances can the Tribunal stay recovery?**

Ans. (i) If there is a prima facie case in favour of the assessee; (ii) the assessee's financial position does not permit payment of the demand; (ii) the balance of convenience is in favour of the assessee, and (iv) demand is well secured with no loss to the revenue. Principles laid down in Order 39, Rules 1 & 2 of the Code of Civil Procedure will apply. **Maharana Shri Bhagwat Singhji of Mewar u. ITAT (1997) 223 ITR 192 (Raj.) JCT Ltd. v. ITAT (2002) 258 ITR 291 (Delhi).** The Hon'ble Bombay High Court **in KEC International Ltd. v. B. R. Balakrishna & Others (2001) 251 ITR 158 (Bom.),** have laid down various parameters for the stay of recovery.

Q**. Whether the Tribunal has the power to stay the assessment proceedings?**

Ans. Yes, If the appeal before the Tribunal against order of the Commissioner under Section 263 is pending and the Assessing Officer is proposing to pass an order in pursuance of the order under section 263, the Tribunal can stay the assessment proceedings on consideration of the facts. There are instructions of the President to take up such appeals on priority basis and dispose them off expeditiously to avoid multiplicity of proceedings**. ITO v. Khalid Khan (1977) 110 ITR 79 (AP), Puranmal v. ITO (1975) 98 ITR 39 (Pat.), Ritz Ltd. v. Vyas (1990) 185 ITR 311 (Bom).**

**Q. When the stay application is pending for hearing, can the Tax Department recover the tax in dispute?**

Ans. In the case of **RPG Enterprises Ltd. v. Dy. CIT (2001) 251 ITR (AT) 20 (30)(Bom.**) recover the tax in dispute? the Tribunal observed: "We are living in a democratic set up and the tax-payers deserve to be respected for their contribution in the National Development. Public servants are expected to discharge their functions dutifully but not unreasonably. The officersare supposed to work diligently but not harassingly. It is absolutely necessary for the Department of Revenue to gain public trust and confidence by acting judiciously and avoiding undue harassment. We appreciate the scheme of rewarding honest and diligent officers of the Department but also feel that there is a necessity of identifying overzealous officers harassing the tax-payers by misusing their powers." The Tribunal held that the Assessing Officer is precluded from taking coercive action for the recovery of the disputed demand until the expiry of the period of limitation allowed for filing of appeal against the decision of the first appellate authority and also during the pendency of stay application before any revenue authority or the Tribunal The Tribunal also held that, the Commissioner is required to give an opportunity and pass speaking order. **IAC v. Modern Electronics (1989) 31 ITD 299 (Hyd.), Choudhary Construction Company v. Commissioner Commercial Taxes Department and Others (2002) 127 STC 47 (R), CIT u. Usha Prestressed & Allied Industries (1996) 131 CTR 551 (Guj.).**

**Q. Whether the Tribunal can direct the Department to give back the money recovered when stay application is pending for disposal?**

Ans. In **Western Agencies (Mad.) v. ITO CIT (2003) 86 ITD 462 (Mad.),** the Tribunal has held that, the Tribunal can exercise powers of a Civil Court and pass an order by way mandatory direction to the Department to return amounts recovered forcibly during pendency of stay petition and Income Tax appeal.

**Q. Whether a stay application can be filed before the Tribunal when appeal is pending before CIT(A)?**

Ans. For filing a stay petition before the Tribunal, a valid appeal should be pending before the Tribunal. Therefore when the appeal is pending before the CIT (A), the Tribunal cannot entertain the stay application However, stay application can be filed before the CIT (A) who has inherent power to grant stay of demand in suitable cases. **Gajanana Agencies v. ITO (1994) 210 ITR 865 (Ker.), Prem Prakash Tripathi** **U. CIT (1994) 208 ITR 461 (All),** **Paulsons Litho Works u. ITO (1994) 208 ITR** **676 (Ker.), Lalit Khanna v. Controller of Estate Duty (1994) 207 ITR 955 (AIL),** **Tin Manufacturing Co. of India v. CIT (1995) 212 ITR 451 (All.).**

**Q. Whether the Tribunal has power to pass interim order to stay the recovery without hearing the other side on a holiday?**

Ans. In exceptional cases, the Tribunal can stay the recovery even without hearing the other side. However, normally the Tribunal fixes the stay application and makes an order after hearing both the mides In **Bulk India Transport Co. v. CIT (2004) 266 ITR 144 (All),** Court held that, the Tribunal has power to grant interim relief.

**Q. If an appeal has not been disposed of in 6 months, what is the remedy?**

Ans. If an appeal has not been heard or the order has not been passed, the assessee may move an application for extension of stay. Normally the Tribunal passes such order extending the stay, if the delay is not on the part of the applicant. Centre for **Women's Development Studies v. Dy. Director of Income Tax (2002) 257 ITR (AT) 60 (Delhi)**.

**Q. Whether section 254 (2A) is retrospective?**

Ans. No. These provisions are prospective in nature and operative on the stay order granted by the Tribunal on and from 1-6-2001. Orders made earlier remain unaffected and remain operative after 6 months and till disposal of the appeal **A.P. State Civil Supplies Corpn. Ltd. v. Dy. CIT (2002) 83 ITD 398 (Hyd.)**.

**Q. Whether tax recovery can be made protective?**

Ans. **In Jagannath Bawri v. CIT (1998) 234 ITR 464 (471) (Gau.),** the Court held that, when assessment is made on protective basis, the recovery cannot be made on protective basis.

**Q.When rectification application is pending, whether Department can recover the tax in dispute?**

Ans. In **Sultan Leather Finishers Put. Ltd. v. AelT (1991) 191 ITR 179 (All.),** it has been held that no recovery proceedings are possible during pendency of rectification application under section 154.

**Q. What is the recent trend in matters of stay of recovery?**

Ans. During the last few years, it has been observed that some of the Benches of the Appellate Tribunal are slow, rigid and too technical in granting stay of demand Sometimes, it is insisted that the administrative remedy, (including refusal from the Commissioner of Income Tax) be exhausted. Stay petitions are not fixed immediately. It is desirable that the stay petition is fixed within a week from date of its filing, in heard within a fortnight from the date of presentation and order is dictated in open Court immediately after hearing. It needs to be expeditiously disposed of. When stay is granted, appeal also deserves to be expeditiously disposed of.

Two provisos have been inserted in section 254(2A) of the Act by the Finance Act, 2001 with effect from 1st June, 2001. The object is to avoid allowing demand of tax remaining irrecoverable for a long period owing to appeals not being heard by the Appellate Tribunal after stay is granted. Section 25-4(2A) of the Act provides that an appeal be decided within a period of 4 years from the end of the financial year in which such appeal is filed. These provisions provide that when the Appellate Tribunal passes an order granting stay of recovery of tax pending in appeal before it, the Tribunal should hear such appeal within a period of 180 days from the date of the order granting stay, failing which the stay granted would stand vacated on the expiry of that period. Such automatic vacation of stay is unjustified. Many a times adjournments are sought by the Department and/or because required records or papers documents are not produced on time, so as to enable the Appellate Tribunal to decide the appeal within specified period. Sometimes where only one Bench is functioning, one of the Members may not be posted or may be on leave for a longer period and the Division Bench may not function for part of the period or longer period. Appeals against special assessment for the block period and search assessments generally involve substantial tax demands and highly disputable issues, and may take a longer time for judicious disposal. The two provisos inserted deserve to be deleted.

**Q.What is the duty of the Tribunal on a stay petition?**

Ans. It is appropriate and essential the tribunal should post hearing immediately, hear both the sides and dictate the order in open Court reasons to follow.The stay operates immediately on pronouncement. Copy of order should be issued on the same day. The order should be speaking and judicious after considering all the aspects of the matter. The remedy against such order is by way of Writ under Article 226/227 of the Constitution before the Hon'ble High Court. Discretion should be exercised according to the rules of reason and justice and law, not arbitrary, vague or fanciful. **Todarmal Safarishmal Lashkar CIT (1979) 118 ITR 759 (MP). Thangaraj (S10 State of Tamil Nada (1989) 175 ITR 425 (Mad), Security & Detective Bureau Ltd. & ACIT (1993) 44 ITD 452 (Mad), Lalit Khanna & Controller of Estate Duty (1994) 207 ITR 955 (All.)**

**Q. Many times the Tribunal passes orders stating that if the assessee applies for adjournment, the stay will be vacated. Whether such an order be passed?**

Ans. It is advisable not to make such observations in the order granting stay of disputed demand. Such an order may not be legal. There may be events when the appellant may have to seek any adjournment for reasons beyond its control. The Bench has the discretion to decide whether to grant further stay or not when the appeal is fixed for hearing and an adjournment is sought.

**Q. Whether Tribunal has power to grant extension of stay of recovery beyond six months?**

Ans. Tribunal has power to grant a further stay on expiry of six months of earlier stay if the facts and circumstances so demand. **Centre for Women's Development Studies. Dy. Director of Income Tax (2002) 257 ITR (AT) 60 (Delhi).**

**Collection and Recovery of Tax-Other Methods**

**Payment of tax and defaults by the assessee [Section 220]**

Any tax, interest, penalty, fine or any other sum specified in a notice of demand (other than those relating to advance payment of taxes) issued under section 156 must be paid within such time (not being less than seven days) as has been specified in the notice by the Assessing Officer with the prior approval of the inspecting Assistant Commissioner under the proviso to sub-section (1) of section 220. The Assessing Officer in authorised to extend the time for payment or allow the payment of tax to be made in installments on receipt of an application from the assessee. Where an assessee, who has been granted permission to pay the tax in installments defaults in payment of any of the installments he will be deemed to be in default in respect of the whole of the amount then outstanding including the other installments which have not fallen due. An assessee, who fails to pay the tax within the time afore mentioned, is deemed to be in default. In the event interest at the rate of 1% for every month or part of the month after the expiry of 30 days from the date of service of notice to the date of payment of the tax calculated in the manner provided in Rules 118 and 119 of the Income-tax Rules, 1962, shall also be payable in addition to the amount of any penalty for non-payment which may be imposed by the Income-tax Officer.

**Deduction, Collection and Recovery of Tax**

If the default continues, the Assessing Officer may start recovery proceeding under sections 222 to 228 read with the Second Schedule and the Income-tax (Certificate Proceedings) Rules, 1962 except in cases () where the assessee cannot be treated as being in default or (1) where the notice of demand was not duly served. However, where the assessee has filed an appeal under section 246 or 246A against the order of demand made by the Assessing Officer, he shall not deemed to be in default in respect of the amount in dispute so long as the appeal is not disposed of. If an assessee has been taxed in respect of his foreign income arising in a country the laws of which restrict or prohibit the remittance of money into India, he should not be treated as being in default in respect of the tax which is due on the income which, by reason of such prohibition or restrictions, cannot be and has not been brought into India. For this purpose the income of the assessee must be deemed to have been brought into India if it has been utilised or could have been utilised for the of any expenditure actually incurred by the assesse outside India or if the income, whether capitalised or not has been brought into India in any form.

Any Income-tax payable by a person on the amount of income voluntarily declared by him, which is outstanding for payment shall be deemed to be the tax due from the declarant on the date next following the expiry of the period allowed to him for payment and the same will be recoverable as arrears under the provisions of the Act.

Section 220(2A) empowers the Chief Commissioner or the Commissioner to reduce or waive any interest payable under section 220(2) if he is satisfied that:

1. payment of such amount would cause genuine hardship to the assessee .
2. default in the payment of the amount on which interest was made payable under the said sub-section was due to circumstances beyond the control of the assessee.
3. The assessee has co-operated in any enquiry relating to the assessement or any proceeding for the recovery of any amount due from him.

**Recovery proceedings and Assessee in default**

Recovery proceedings under the Act can be started against a person only when he is in default or deemed to be in default in making payment of taxes. It is interesting to note that the definition of the term "assessee" itself, which is given in section 2(7) of the Act, starts with the sentence Assessee means a person by whom any tax or other sum of money in payable under this Act and also includes. In fact by adding clause (c) to that definition, it is specifically made clear that every person who is deemed to be assessee in default under any provisions of the Act will also be regarded as an assessee for the purpose of Income Tax Act. The main section dealing with assessee in default is section 220(4) according to which, if the amount of tax specified as payable under a notice of demand U/s 156 served on any assessee, is not paid within the time as mentioned in the said notice of demand, then such assessee in regarded as assessee in default.

The assessee who is in default or is deemed to be in default in making payment of taxes may make an application, requesting the Assessing Officer not to treat him as the assesse in default in respect of the amount in dispute in the appeal preferred by the assessee. The Assessing Officer may in his discretion and with or without imposing any condition pass an order, not treating the assessee as an assessee in default in respect of such disputed amount till the appeal is pending. Section 220 to 232 of the Income-tax Act deals with collection and recovery of taxes.

It may be noted that mere filing of an appeal does not suo motu stay the proceedings of recovery of the tax in demand. Therefore, it is necessary that as soon as an order raising the demand is received, assessee must make an application to stay and keep the demand in abeyance.

While filing Stay application before the Assessing Officer, the assessee will have to give the brief facts, as under

1. The assessment history of the assessee,

2. His conduct and co-operation in relation to the department.

3.Points raised in the appeal.

4.The chances of recovery in case the appeal is dismissed, and

5. The hardship that would be caused to the assessee by persistent demand of the tax by the department.

If an assessee's application u/s, 220(6) is not replied by the Assessing Officer, even though the same was filed in time, the assessee can always contend before the Tax Recovery Officer that before taking any action against the assessee, his application for stay of demand should be disposed of The Tax Recovery Officer can also consider the Assessee's applications u/a 225(1) and grant time for the payment of any tax till the disposal of the Assessee's appeal by the First Appellate Authority.

In the event of Assessing Officer rejecting assessee's application u/s. 220(6) of the Income-tax Act the assessee can prefer an application to the Commissioner of Income-tax under whose jurisdiction assessee's case falls for staying the demand of tax in dispute till the hearing and final disposal of the assessee's appeal by the Commissioner of Income-tax (Appeal).

If the Commissioner fails to discharge his duty, the assessee may file a Writ Petition under Article 226 of the Constitution of India. However, when an appeal is pending before the Hon'ble Tribunal, the Assessee can file a Stay Petition before the Hon'ble Tribunal to stay the Recovery proceedings. The Central Board of Direct taxes in its circular No. 530 dated 6-3-1989 (176 ITR 240) (statute) has laid down the guidelines for the Assessing Officer to exercise his jurisdiction the u/s 220(6) of the Act when the assessee has preferred an appeal.

The discretionary power conferred by Section 220 (6) upon the Assessing Officer in Officer coupled with a duty and if he does not exercise it when the occasion calls for it or if he exercise it in such a manner that it is no exercise of discretion at all, he can be compelled to discharge Officer his duty by the court **[Ladhuram Taparia v. B. K. Bagch 20 ITR 51, (Cal.))** Protective recovery of tax is not permissible even though protective assessment can be validly made. **(Sunil Kumar t. CIT, 139 ITR 880 (Bom.)]**

**Representative assessee**

Where the assessee dies before the issue of the certificate, unless his legal representatives are served with a notice of demand under Section 156 and they fail to comply with that notice within 30 days from the date of receipt of the notice, they cannot be said to be assessee in default and consequently no recovery proceedings can be taken against them. (**Satya Pal Verman u. ITO, 106 ITR 540 All; Bai Chandanben Jivanial v. I. D. Joshi, Collector, 74 ITR 448, Guj.)**

A recovery certificate issued or drawn up by Tax Recovery Officer against a person who is already dead, is a nullity. The certificate must be against a defaulter who is alive. **(Isha Beevl v. TRO, 80 ITR 82, Ker. On appal 101 1TR 449, SC)** If an assessee in default dies before the issue of a certificate in his name, proceedings under Section 159 of the Act are necessary to bring on record the name or names of the legal representative or representatives.

**Filing of claims**

If any part of the property of an applicant is illegally or unjustifiably attached, an objection under rule 11(1) of the Second Schedule to the Act may be filed by him before the Tax Recovery Officer who has got the jurisdiction to adjudicate upon it. Rule 58(a) of the Order XXI of C.P.C. provides that the claim should be preferred before the property so attached is sold.

Where a claim or objection is made under rule 11 against attachment of a property in execution of a recovery certificate, it is the bounden duty of the Tax Recovery Officer to first dispose of the objection and then to proceed further. Investigation of a claim properly filed is essential. Even if the property to which the claim or objection applies has been advertised for sale, the Tax Recovery Officer ordering the sale may postpone it, pending such investigation.

Where a claim or an objection preferred under rule 11(1) of the Second Schedule is rejected a dismissed, the party against whom an order rejecting or dismissing the claim or objection is made may institute a suit, under rule 11(6), in a Civil Court to establish the right which be claims to the property. In **Sawai Singhai v. Union of India (AIR) 1966 SC 1968**), the Supreme Court observed that the suit brought under Order 21, rule 63 (corresponding to rule 11(6) of the Second Schedule), concerns not only with the question of possession but also with the question of title.

The Hon'ble A. P**. High Court in ITO v. Khalid Mehdi Khan (Minor) 110 ITR 79**, has taken the view that the Tribunal can not only stay the recovery proceedings but can also stay the proceedings before the Assessing Officer. Therefore, in a case where order under Section 263 is passed and if the appeal is pending before Tribunal and in the meantime, if the Assessing Officer starts the assessment proceedings then in such circumstances, the assessee can file stay petition before the Tribunal and the Tribunal can stay the proceedings before the Assessing Officer.

The Hon'ble Supreme Court in **CIT v. Bansi Dhar & Sons 157 ITR 665** has taken the view that the Tribunal can also stay the proceedings when the reference is pending before the High Court. Therefore, in cases where the assessee has lost before the Tribunal and the reference is pending before the High Court and if the assessee is in a position to establish that he is not in a position to make the payment of tax in dispute, in such circumstances, the Tribunal can stay the proceedings till the disposal of the reference by the High Court.

It may be noted here that, before filing the stay petition, it is necessary that the assessee should approach the Commissioner to stay the recovery proceedings. When Commissioner says he will not or cannot stay the recovery proceedings, then only the Tribunal will exercise their power, In case the Commissioner grants instalment facility but the assessee shows his inability to make payment in instalment and the commissioner rejects the stay application then the power of Tribunal can be invoked for stay. It may be further noted that the Assessee must also who is show that he has no liquidity to pay the tax in dispute and if stay is not granted, great hardship will be caused to the Assesses.

The Finance (No. 2) Act, 1998 with effect from 1-10-1998 inserted sub-section (7) in section 253 prescribing for the first time a fee of five hundred rupees whenever an Income Tax Appellate Tribunal Rules, prescribes the procedure for filing the Stay Petition. application for stay of demand has to be filed before the Appellate Tribunal Rule 35A of the Appellate Tribunal may prefer stay application in the following manner.

1. 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/Deputy 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.
2. Where the application for stay relates to demands, though for more than one assessment year but under only a single statutory enactment, then a single stay application would be sufficient in respect of the demands for which the stay is sought However, separate applications shall be filed for stay of recovery of demands under different enactments
3. The application for stay should, as far as possible, be filed in the form as per specimen as at Appendix X.

2. Every application shall be neatly typed on one side of the paper and shall be in English and shall setforth concisely the following-

1. Summary of facts regarding the demand of the tax, interest, penalty, fine, Estate Duty or any other sum, the recovery of which is sought to be stayed;
2. The result of the appeal filed before the Commissioner (Appeals) or the Deputy Commissioner (Appeals), if any;
3. The exact amount of the tax, interest, penalty, fine, Estate Duty or any other sum demanded, as the case may be, and the amount undisputed there from and the amount outstanding;
4. The date of filing of the appeal before the Tribunal and its number, if known;
5. 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);
6. Reasons in brief for seeking the stay;
7. Whether the applicant is prepared to offer any security in respect of the demand of tax in dispute and if so, in what form;
8. Prayer to be mentioned clearly and concisely (stating exact amount sought to be stayed);
9. The contents of the application shall be supported by an affidavit sworn by the applicant or his duly authorised agent, (Specimen application is enclosed).

**SPECIMEN**

**Example 1**

**A SPECIMEN STAY PETITION**

**XYZ Ltd. vs. Deputy Commissioner of Income Tax**

INDEX

1. Stay application Appendix –X
2. Affidavit in support
3. Exhibits

(a) Copy of stay application filed before Assessing Officer

(b) Copy of letter rejecting the stay application passed by Assessing Officer

(c) Copy of stay application filed before Commissioner

(d) Copy of letter rejecting the stay application passed by Commissioner

(e) Copy of the acknowledgment of appeal filed before the Tribunal.

**APPENDIX-X**

(Specimen Form of Stay Application)

IN THE INCOME TAX APPELLATE TRIBUNAL

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_BENCH

STAY APPLICATION No\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ OF \_\_\_\_\_\_\_\_\_

IN THE CASE OF\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

FOR THE ASSESSMENT YEAR(S)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

UNDER THE \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ACT, \_\_\_\_\_\_\_\_\_\_\_\_

FOR STAY OF RECOVERY OF TAX

1. Name and address of the applicant :
2. Act under which the demand is raised :

(ie. Income-tax etc. for which stay application is moved) :

3. Assessment year(s) involved :

4. Date of filing of appeal before the Tribunal and its number, if known :

5.From the demand give break up :

Tax :

Interest :

Penalty :

Fine :

Others :

6. (a) Amount already paid :

(b) Amount outstanding :

(c) Amount which is not disputed out of (b) :

7. (a) Details of application for stay made to the revenue authorities:

1. A.O. 2. C.LT

(b) Result

8. \*Reasons for seeking stay : Annexure ‘A’

(a) Whether the applicant is prepared to offer security :

(b) If yes, in what form :

9. Prayer stating exact amount sought to be stayed :

10. If stay is sought in relation to a matter Pending in reference

before the High Court give full particulars of RA. No. and date etc. :

Date: signature of applicant

\*Separate sheet may be used if space is not sufficient (See Annexure A)

Note:

1. The application shall be made in triplicate and shall be neatly typed on one side of the paper with copies of all the relevant document including demand notice, copies of correspondence with the Revenue Authorities for stay of demand and copies of the letter refusing stay of demand.

2.The content of the application shall be supported by affidavit duly sworn in by the applicant or marked Exhibits his authorised agent.

3. The application shall be presented by the applicant in person or by his authorised agent or sent by registered post to the Bench of the Tribunal where appeal was filed or which has got jurisdiction to hear the appeal.

**ANNEXURE ‘A’**

**BEFORE THE INCOME TAX APPELLATE TRIBUNAL BOMBAY**

Stay Application No.of 2011

X Ltd., Jaipur Petitioner

Versus

Deputy Commissioner of Income tax, Asst. Range, IV (A), Jaipur Respondent

**The Humble Application of The Petitioner above Named Most Respectfully Sheweth**

1. The Petitioner is a company engaged in the business of house building activities for CIDCO, PWD etc. The relevant Assessment Year is 1996-97 (ending on 31.3.1996).

The Petitioner Company filed the return of income on 29.7.1996 showing income of Rs. 2,00,000. The Petitioner had maintained regular books of account and shown the profit as per the books of account maintained by them. The Petitioner further states that for earlier years also, the books of account maintained by the Petitioner has been accepted by the Assessing Officer. The Deputy Commissioner of Income-tax, Asst. Range rejected the book results of the Petitioner and estimated the income of the Petitioner at 10% of the gross receipts and assessed the income of the Petitioner at Rs. 10,00,000 (Hereto marked Exhibit 'A' is the copy of the order passed by the Deputy Commissioner of Income-tax.)

2.Being aggrieved by the order of the Deputy Commissioner of Income-tax, the Petitioner filed an appeal before the Commissioner of Income-tax (Appeals). The Commissioner of Income-tax (Appeals), reduced the income estimated by the Deputy Commissioner of Income tax to 5% of the gross receipts and confirmed the balance addition made by the Deputy Commissioner of Income-tax, though in the earlier years net profit shown by the Petitioner at 3% was accepted by the Income tax authorities. [Hereto marked Exhibit 'B' is the copy of the order passed by the CIT (A)].

3.Being aggrieved by the order of the Commissioner of Income-tax (Appeals), the Petitioner filed an appeal before the Tribunal on 1.4 1999 and the same is pending.

4.The Petitioner submits that the estimate of income confirmed by the Commissioner of Income-tax (Appeals) was not correct. In the past also the book results of the Petitioner was accepted by the Income-tax authorities.

5.The Petitioner states that though the appeal is pending before the Tribunal, the Deputy Commissioner of Income-tax started the recovery proceedings against the Petitioner. The Petitioner vide their letter dated 1.4.1999 requested the Assessing Officer to keep the demand in abeyance till the decision of the Hon'ble Tribunal However, the Assessing Officer vide his letter rejected the petition of the Petitioner and refused to keep the demand in abeyance, till the decision of the Hon'ble Tribunal.

6. Thereafter, the Petitioners vide their letter dated 16.4.1999 requested the Commissioner of Income-tax to keep the demand of tax in abeyance till the decision of the Hon'ble Tribunal However, the Hon'ble Commissioner vide his letter dated 20.4.1999 rejected the application of the Petitioner to keep the demand in abeyance till the decision of the Hon'ble Tribunal. Hereto marked Exhibits C D E and F are the correspondence with the tax authorities.

7. The Petitioner further states that they are not having bank balance or liquidity to make the payment of tax in dispute and if the department proceeds further to recover the tax in dispute, great hardship will be caused to the Petitioner and the business of the Petitioner may be ruined. The Petitioner is also enclosing herewith the latest balance sheet of the company, to show that, there is no sufficient bank balance (Hereto marked exhibit 'G' is the copy of Balance Sheet).

8. The petitioner further states that they are prepared to offer the assets of the Company as security for satisfaction of the department.

9. The Petitioner, therefore, prays:

a) That the Recovery Proceedings initiated against the Petitioner may be stayed till ( the disposal of appeal by the Hon'ble Tribunal

b) The Deputy Commissioner of Income-tax, or the Commissioner of Income-tax their subordinates or their successors may be restrained from taking any etion an regards recovery of tax, interest and penalty levied or leviable for the relev assessment year.

c) The hearing of the Appeal may be expedited.

d) Any other relief which the Hon'ble members may deem fit and proper in the nature and circumstances of the case may be granted.

I, Rakesh of XYZ Ltd., state that whatever is stated here in above in the Stay Petition is true to the best of my knowledge and information.

Dated this For X Ltd.

7th day of April, 2012 at Bombay Director

**AFFIDAVIT**

I, Rakesh, Director of XYZ Ltd. having office at Andheri (West) Bombay-400.058, have to the state as under:

We have filed the return of income of the Company showing income of 2,00,000.

2 The Deputy Commissioner of Income-tax assessed the income of the company at10,00,000.

3. In appeal, the Commissioner of Income-tax (Appeals) partly reduced the additions made by the Deputy Commissioner of Income-tax.

Being aggrieved by the order of the Commissioner of Income Tax (Appeals), we havefiled an appeal to the Tribunal and the same is pending.

We feel that we have a fair chance of succeeding in appeal before the Tribunal.

6. We have no liquidity or bank balance to make the payment of tax in dispute.

I say that whatever is stated here in above and in the Stay Petition is true to the best of my knowledge and believe the same to be true.

Solemnly affirmed at Bombay on the

7th day of April, 2012.

Identified by me Director

Advocate, BEFORE ME.