

HC reduced pre-despite of tax demand to 7.5% as AO had made additions on dispute issue

Summary – The High Court of Gujarat in a recent case of Ashokbhai Jagubhai Kheni, (the Assessee) held that Requirement of depositing disputed tax dues to enable assessee to enjoy stay, pending appeals before Commissioner (Appeals), was to be reduced to 7.5 per cent from 15 per cent as additions made by Assessing Officer would be arguable and several oppositions of assessee to such additions, going by material that Assessing Officer had taken into consideration, could not be discarded out of hand

Facts

- During search and seizure operation carried out in case of third party, various documents, papers, harddisks and pendrives were seized. On the basis of such material, the department built a case of non-disclosure of income by the assessee in course of several land deals in and around the city of Surat. There were huge tax demands against the assessee by the Assessing Officer by his assessment order dated 28-6-2016. The total principal tax demand for all three assessment years came to Rs.30 crores.
- The assessee first approached the Assessing Officer and requested for stay of such demand pending appeals that he had filed before the Commissioner (Appeals). The Assessing Officer required the assessee to deposit 15 per cent of the disputed tax demand, upon which, the recovery of the remaining amount would be stayed.
- Not satisfied, the assessee approached the Principal Commissioner of Income-tax, who by the impugned order, refused to grant any further relief to the assessee.
- On petition before the High Court:

Held

- The issue of granting stay pending appeals is governed principally by the two circulars issued by CBDT. First circular was issued way back on 2-2-1993 being instruction No.1914. The circular contained guidelines for staying the demand pending appeal. It was stated that the demand would be stayed if there are valid reasons for doing so and mere filing of appeal against the order of assessment would not be sufficient reason to stay the recovery of demand. The instructions issued under office memorandum dated 29-2-2016 are not in supersession of the instruction No.1914 dated 2-2-1993 but are in partial modification thereof. The preamble of these instructions provide that in order to streamline the process of grant of stay of standardization of quantum of lump sum payment to be made as a pre-condition for stay of demand of dispute before the Commissioner (Appeals), such modified guidelines were being issued.
- This circular thus lays down 15 per cent of the disputed demand to be deposited for stay, by way of a general condition. The circular does not prohibit or envisage that there can be no deviation from

this standard formula. In other words, it is inbuilt in the circular itself to either decrease or even increase the percentage of the disputed tax demand to be deposited for an assessee to enjoy stay pending appeal. The circular provides the guidelines to enable the Assessing Officers and Commissioners to exercise such discretionary powers more uniformly.

- From perusal of the impugned order passed by the Principal Commissioner. It is not found that even he has understood the contents of the two circulars issued by the CBDT as leaving no option, no discretion to him to deviate this standard formula of 15 per cent of the disputed tax dues to be deposited. He has examined the issues at hand and refused to exercise any further discretion to reduce the demand below 15 per cent of the disputed tax dues.
- Ordinarily, the Court would be slow in interfering with such discretionary exercise of powers by the Commissioner. However, in the instant case, the total tax demand is quite high. The issues are at the first appellate stage. Even 15 per cent of the disputed tax dues would run into several crores of rupees. Since the issues are pending before the Commissioner (Appeals), no observations were being made, even of *prima facie* nature which may have the propensity of influencing the mind of the Commissioner (Appeals) who would eventually decide such appeals. However, guardedly, it is opined that some of the additions made by the Assessing Officer would be arguable. At the same time, several of the oppositions of the assessee to such additions also, going by the material that the Assessing Officer has taken into consideration, cannot be discarded out of hand. Considering such facts and circumstances, the requirement of depositing the disputed tax dues to enable the assessee to enjoy stay pending appeals before the Commissioner is reduced to 7.5 per cent. This would however be on a further condition that he shall offer immovable security for the remaining 7.5 per cent to the satisfaction of the assessing authority. The order passed by the Principal Commissioner stands modified accordingly. The assessee shall file an affidavit before the registry whether he would abide by these conditions and undertake to fulfil them within the time permitted.
- It is clarified that either if the assessee does not file any such affidavit, or in such affidavit declares that he does not wish to be bound by such conditions or having in such affidavit agreed to fulfil the conditions, fails to do so within the time permitted, the relief granted under this order would stand automatically withdrawn and the impugned order of the Principal Commissioner would revive.
- Petition is disposed of accordingly.