

# No requirement to “pre-deposit” 15% of the demand before consideration of stay application by TO

May 07, 2017

## In brief

The Gujarat High Court (HC) in a recent judgement<sup>1</sup> has held that there was no requirement to “pre-deposit” 15% of the demand before filing a stay application or before consideration of stay application by Tax Officer (TO). This was as per the Office Memorandum F. No. 404/72/93-ITCC dated 29 February, 2016 issued by the Central Board of Direct Taxes (CBDT) (modified instruction).

## In detail

### Facts

- The taxpayer<sup>1</sup> filed his Return of Income and on assessment a demand notice was issued to the taxpayer.
- Aggrieved, the taxpayer filed an appeal before the learned Commissioner of Income-tax (Appeal) [CIT(A)], and also approached the TO with an application under section 220(6) of the Income-tax Act, 1961 (the Act) to keep the demand in abeyance till the disposal of the appeal by the CIT(A).
- The TO rejected the stay application of the taxpayer mainly on the ground that “at the time of submitting the stay application”, the taxpayer had not deposited

15% of the demand as “pre-deposit”.

- Aggrieved, the taxpayer filed an application with the Principal Commissioner of Income-tax (Pr. CIT), requesting to keep the demand in abeyance till the disposal of the appeal by the CIT(A). The Pr. CIT also rejected the stay application and asked the taxpayer to pay entire outstanding demand, failing which the TO was free to take suitable action as per the law.
- Aggrieved by the orders of the TO and Pr. CIT, the taxpayer filed a Special Civil application before the Gujarat HC.

### Issue before the HC

Whether there was a requirement to deposit 15% of the demand payable, in case

where the taxpayer had filed an appeal before the CIT(A), before filing a stay application or before consideration of stay application by TO, as per the modified instruction read with the earlier CBDT instruction no. 1914 dated 21 March, 1996 (earlier instruction).

### Taxpayer’s contention

- The taxpayer argued that when a taxpayer submits an application for stay of the demand until disposal of the first appeal, the TO has three options as per the modified instructions:
  - (i) The TO could grant stay of demand till disposal of first appeal on payment of 15% of the disputed demand, in accordance with clause 4(A) of the modified instruction;

<sup>1</sup> Special Civil application No. 5679 of 2017

- (ii) If the TO was of the opinion that the nature of addition resulting in the disputed demand was such that the payment of a lump sum amount higher than 15% of the demand was warranted, the TO was required to refer the matter to the administrative Pr. CIT / CIT, in accordance with clause 4(B)(a) of the modified instruction;
- (iii) If the TO was of the view that the nature of addition resulting in the disputed demand was such that payment of a lump sum amount lower than 15% of the demand was warranted, the TO was required to refer the matter to the administrative Pr. CIT/ CIT, in accordance with clause 4(B)(b).
- The taxpayer therefore contended that non-consideration of the stay application, on the ground that the taxpayer had not deposited 15% of the disputed demand before he submitted the stay application was contrary to the modified instructions.

### ***Revenue's contentions***

- The modified instructions required a taxpayer to deposit 15% of the disputed demand before the stay application s submitted or before the stay application was considered by TO.
- TO was required to refer the matter to the administrative Pr. CIT only in case the TO was of the view that the nature of addition resulting in the disputed demand was such that payment of a lump sum amount lower than 15% of the disputed demand was warranted.

### ***HC's judgment***

- The HC analysed the modified instructions and based on clause 4 observed as under:
  - As a general rule, on receipt of a stay application, TO should have passed appropriate order and grant stay of disputed demand till disposal of first appeal on payment of 15% of the disputed demand.
  - The TO shall refer the matter to the Pr. CIT / CIT for decision on the quantum of demand that should have been paid by

the taxpayer in case the TO was of the opinion that a higher or lower percentage of the demand is payable. The HC further observed that, considering the modified instructions as a whole, there was no requirement of "pre-deposit" of 15% of the disputed demand and the interpretation by the TO was absolutely based on misinterpretation and/ or misreading of the modified instructions.

- In light of the above observations, the HC quashed the orders passed by the TO denying the stay of the demand and remanded the matter back to the TO for consideration of the stay application filed by the taxpayer in accordance with law and on merits, and in light of the modified instructions.

### ***The takeaways***

This judgement from the HC helps interpret the modified CBDT instructions.

### ***Let's talk***

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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