

# What's New

## Tax News Alert



August 2018

### ***SC clarifies that Commissioner is not bound by administrative circulars issued by the CBDT - can grant stay of demand on payment of an amount less than 20%***

#### ***In Brief***

Recently, the Supreme Court (SC)<sup>1</sup> has held that the office memorandum (OM)<sup>2</sup> issued by the Central Board of Direct Taxes (CBDT), pertaining to the stay on disputed demand, will not bind the Commissioner in performing its quasi-judicial functions. It will be open to the tax authorities in matters pending at the first appeal stage to decide the stay amount, depending on the merits of individual cases, which can be even lesser than 20% of the disputed tax demand.

#### ***In detail***

##### ***Background***

- The CBDT had issued instructions<sup>3</sup> in 1993, prescribing guidelines regarding the procedure to be followed for recovery of outstanding demand, including the procedure for grant of stay of demand. In the said instruction, no threshold was provided regarding the stay amount to be deposited by a taxpayer in relation to the appeal filed before the Commissioner of Income-tax (Appeals) (CIT (A)). Thus, it was left open to the tax authorities to decide the stay amount, depending on the facts of each case.
- Subsequently, the CBDT, in 2016, vide OM<sup>4</sup> provided a minimum threshold of 15% of the disputed tax demand to be deposited by taxpayers in relation to the stay proceedings. This amount was revised to 20% in 2017. It is to be noted that the tax authorities can enhance or reduce this limit in specific cases, after obtaining approval from seniors, as per the procedure laid down in the OM.

##### ***Facts (Delhi High Court ruling)<sup>5</sup>***

- The tax officer (TO) levied penalty under section 271(1)(c) of the Income-tax Act, 1961 and directed the taxpayer to deposit the amount of tax demand.
- The taxpayer aggrieved by the above order, filed appeal with the CIT (A). The taxpayer also filed application before the TO for seeking stay of the impugned demand.
- The TO directed the taxpayer to pay 15% of the impugned tax demand.
- Aggrieved by the same, the taxpayer went before the Principal Commissioner of Income-tax (PCIT). The PCIT in view of the OM dated July 31, 2017, directed the taxpayer to pay 20% of the impugned demand.
- The taxpayer filed writ petition before the Delhi High Court against the order of the PCIT.
- The Delhi High Court held that the order of the PCIT is without any reasons and is therefore unsustainable in law.
- The Delhi High Court set aside the order of PCIT and issued directions that the taxpayer's application will be heard again by the PCIT on merits and without reference to the OM dated July 31, 2017.
- Aggrieved by the order of the Delhi High Court, the revenue has filed appeal before the SC.

##### ***Issue***

Whether the tax authorities can grant stay of demand on payment of an amount lesser than 20% of the disputed tax demand in view of the OM dated July 31, 2017 issued by CBDT?

##### ***SC Ruling***

- The SC clarified that the Commissioners have wide powers as a quasi-judicial authority to grant stay of demand on payment of stay amount lesser than 20% of the disputed tax demand.
- The SC clarified that the administrative circular issued by the CBDT will not fetter the Commissioner in carrying out its quasi-judicial functions.

- Accordingly held that the Commissioners can grant stay on payment of an amount lesser than 20% depending upon the facts of individual cases.

### ***The takeaways***

- This is a welcome ruling, as it will provide relief to a genuine taxpayer suffering financial hardship.
- Through this ruling, the tax authorities cannot take recourse to the OM and demand minimum of 20% of the disputed demand for granting all the stay matters. The tax authorities have to analyse the merits of each individual case and depending on the facts, can grant stay at a lesser amount.

<sup>1</sup> Civil Appeal No. 6850 of 2018

<sup>2</sup> Office Memorandum dated 31 July, 2017

<sup>3</sup> Instruction No. 1914 dated 02 February, 1993

<sup>4</sup> Office Memorandum dated 29 February, 2016

<sup>5</sup> TS-6751-HC-2017 (Delhi) – Orange Taxsutra

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