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**Application for stay cannot be treated as meaningless formalities and should be objectively and dispassionately disposed off at an early stage**

## **In brief**

Recently, in the case of Society of the Franciscan (Hospitaller) Sisters<sup>1</sup> (the assessee), the Bombay High Court (HC) held that applications for stay cannot be treated as meaningless formalities. Authorities have to apply their mind in an objective and dispassionate manner to the merits of an application for stay.

## **Facts**

- The assessee is a public trust registered under the Bombay Public Trusts Act, 1950 that runs educational institutions all over India as well as homes for the elderly, hostels for small children and health centres for the poor and needy.
- On 14 July 1975, the assessee was granted a registration under section 12A of the Income-tax Act, 1961 (the Act). On 6 September 1986, an amendment was made to the objects clause wherein a reference was incorporated to the rendering of services primarily for Catholics and in consonance with Catholic principles.

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<sup>1</sup> Society of the Franciscan (Hospitaller) Sisters v. DDIT (Exemptions) [TS-102-HC-2013(BOM)]

- The assessee's registration under section 12A of the Act was not withdrawn from 1986 till 2008 and a certificate under section 80G of the Act was granted from time to time. Between 1975 and 2010, the petitioner was also allowed an exemption under section 11 of the Act including upon scrutiny assessments which were made after taking note of the amendment in the objects clause.
- The orders for assessment years (AYs) 2004-05 and 2006-07 under section 143(7) read with section 147 were passed withdrawing the exemption which had been granted earlier. Further, for AY 2009-10, exemption under section 11 was denied in order under section 143(3) on the ground that the objects clause had been amended. Simultaneously, a notice was issued for the withdrawal of the registration under section 12AA of the Act.
- Aggrieved by the aforesaid orders, the assessee appealed before the Commissioner of Income-tax (Appeals) (CIT(A)) disputing the order for AYs 2004-05, 2006-07 and 2009-10 which are pending.
- The Deputy Director of Income-tax (Exemptions) (DDIT) issued a communication for recovery of demands for AYs 2004-05 and 2006-07. The assessee requested that the demands be kept in abeyance pending the disposal of the appeal. The assessee also filed written submissions for AYs 2004-05, 2006-07 and 2009-10 before the CIT(A).
- The assessee again received a notice for the recovery of outstanding demands for AYs 2004-05, 2006-07 and 2009-10. The assessee replied seeking an opportunity of being heard in the event that the recovery of the demands was sought to be enforced. No opportunity of hearing was given to the assessee.
- Two notices were issued by the DDIT to the Branch Manager of Bank of India under section 226(3) of the Act calling upon the bank to pay all amounts held by the bank in the savings bank accounts of the assessee as well as amounts

due under fixed deposit receipts towards the demands raised on the assessee. The branch manager was informed that he must not contact the assessee till the payment is made to the income tax department.

- Copies of both notices were received by the assessee after the monies were withdrawn.

### **Issue before the High Court**

- Whether the DDIT was justified in issuing a notice under section 226(3) of the Act, thereby attaching the bank accounts including fixed deposit during the pendency of stay applications before CIT(A) ?

### **Assessee's contentions**

- The applications for stay of demand for AYs 2004-05, 2006-07 and 2009-10 are pending before the CIT(A).
- The assessee had specifically sought a hearing, to demonstrate that notwithstanding the change in the objects clause, every institution is open to all communities irrespective of religious affiliation, which has been denied.
- Section 226(3) requires that a copy of the notice should be forwarded to the assessee. However, a copy of the notice was received after the monies had been withdrawn leaving no recourse to the assessee. Further, even the branch manager of the bank was informed not to contact the assessee.

### Revenue's contentions

- The action under section 226(3) of the Act was followed in accordance with the law having regard to the fact that the demands were outstanding for AYs 2004-05, 2006-07 and 2009-10.

### HC ruling

- The manner in which the recourse was taken to section 226(3) of the Act shows that the provision was observed more in its breach than in compliance. The action which was pursued was completely high-handed and arbitrary.
- The appeals filed by the assessee are pending before the CIT(A). Also, the assessee filed applications for stay and sought an opportunity of being heard. In such cases, the decision to proceed hastily with the enforcement of the recovery of the demand without disposing the application for stay was not justified.
- The applications for stay cannot be treated by the assessing officers or appellate authorities as meaningless formalities. Quasi judicial authorities have to apply their mind in an objective and dispassionate manner to the merits of each application for stay.
- The applications for stay must be disposed at an early date. The appellate authorities must set down reasonable time schedules for the disposal of stay applications.

- From the amount of INR 47.6 million collected an amount of INR 10 million was repatriated back to the assessee.

### PwC comments

The observations of the HC in relation to disposing off a stay application early would be useful to assessees facing coercive measures from the tax department. Interestingly, despite the observations and comments, the HC allowed the tax department to retain most of the amounts collected in a coercive manner, until the decision of the CIT(A). The assessees in their own interest should follow up for an early disposal of a stay application, rather than assuming no action can be taken during the pendency of an 'overdue' application for stay.

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