



## CBDT issues revised guidelines for stay of demand at the CIT(A) stage

### Background

Section 220(6) of the Income-tax Act, 1961 (the Act) provides that where the taxpayer has presented an appeal before the Commissioner of Income-tax (Appeals) [CIT(A)] under Section 246 of the Act, the Assessing Officer (AO) may, in his/her discretion, treat the taxpayer as not being a defaulter with respect to the amount in dispute in the appeal even though the time for the payment has expired, as long as the appeal is still pending for review.

The Central Board of Direct Taxes (CBDT) issued Instruction No.1914<sup>1</sup>, containing guidelines regarding the procedure to be followed for the recovery of outstanding demands, including procedures for the grant of the stay of demand. Demand will be stayed only if there are valid reasons for doing so and that mere filing of an appeal against the assessment order will not be a sufficient reason to stay the recovery of demand. While granting a stay, the field officers may require the taxpayer to offer a suitable security (bank guarantee, etc.) and/or require the taxpayer to pay a reasonable amount in a lump-sum or in instalments.

The tax authorities often insist on the payment of a very high proportion of the disputed demand before granting a stay of the demand. This often results in hardships for the taxpayers seeking a stay of demand. In order to streamline the process

of a grant of stay and standardise the quantum of lump sum payment required to be made by the taxpayer as a pre-condition for the stay of demand disputed before CIT(A), the CBDT has now issued revised guidelines<sup>2</sup>.

### CBDT's modified guidelines

The revised guidelines issued by the CBDT partially modify Instruction No.1914 as follows:

- In cases where the outstanding demand is disputed before the CIT(A), the AO shall grant a stay of demand till the disposal of the first appeal, on payment of 15 per cent of the disputed demand, unless the case falls within the following categories:
  - Cases where the AO is of the view that the nature of additions resulting in the disputed demand is such that the payment of a lump sum amount higher than 15 per cent is warranted (e.g. in a case where addition on the same issue has been confirmed by appellate authorities in earlier years or the decision of the Supreme Court or jurisdictional High Court is in favour of tax department or addition is based on credible evidence collected in a search or survey operation, etc.) or

<sup>1</sup> Instruction No.1914, dated 21 March 1996

<sup>2</sup> CBDT (Office Memorandum) F No. 404/72/93-ITCC, dated 29 February 2016

- Cases where the AO is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount lower than 15 per cent is warranted (e.g. in a case where addition on the same issue has been deleted by appellate authorities in earlier years or the decision of the Supreme Court or jurisdictional High Court is in favour of the taxpayer, etc), the AO shall refer the matter to the Principal Commissioner of Income Tax (Pr. CIT)/Commissioner of Income Tax (CIT), who after considering all relevant facts shall decide the quantum/proportion of demand to be paid by the taxpayer as the lump sum payment for granting a stay of the balance demand.
- In cases where the stay of demand is granted by the AO on payment of 15 per cent of the disputed demand and the taxpayer is still aggrieved, he may approach the jurisdictional Pr. CIT/CIT for a review of the decision of the AO.
- The AO shall dispose of a stay petition within two weeks of the filing of the petition. If a reference has been made to Pr. CIT/ CIT or a review petition has been filed by the taxpayer, the same shall also be disposed of by the Pr. CIT/ CIT within two weeks of the AO making such a reference or the taxpayer filing such a review.
- In granting stay, the AO may impose following conditions:
  - The AO requires an undertaking from the taxpayer that he/she will co-operate in the early disposal of the appeal failing which the stay order will be cancelled.
  - The AO reserves the right to review the order passed after the expiry of a reasonable period (say six months) or if the taxpayer has not cooperated in the early disposal of an appeal, or where a subsequent pronouncement by a higher appellate authority or court alters the above situations.
  - The AO reserves the right to adjust refunds arising, if any, against the demand, to the extent of the amount required for granting a stay and subject to the provisions of Section 245 of the Act.

## Our comments

As a taxpayer-friendly measure, the Finance Minister while introducing the Finance Bill 2016 in the Lok Sabha mentioned that the tax department is also issuing instructions making it mandatory for the AO to grant a stay of demand once the taxpayer pays 15 per cent of the disputed demand, while the appeal is pending before the CIT(A). In line with this statement, the CBDT has issued these guidelines, which can provide relief to taxpayers while applying for a stay of demand at the CIT(A) stage. The guidelines also provide specific timelines to dispose of the application for the stay of demand and the related review petition.



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