

Guide to obtain stay on Outstanding Income Tax Demand

Every tax practitioner has to face stay of Income Tax Demands wherever he is not able to meet the AO's expectation (pun intended). It is important to have the figures of returned income and assessed income to really make out a better case.

1. An Application for a stay on tax demand must be moved within **30 days of the service of the order** to remain compliant with Section 221.

2. The application should be in complete detail with the following:

- Returned Income
- Assessed Income
- The disputed additions
- How your case is similar to the cited judgments in the application?; and
- How payment will jeopardize the business due to financial constraints etc.

3. The AO's generally pass a short order rejecting the stay application which is unjustified, and then move on to the Addl. CIT and then CIT. In case not accepted you can take it up with CIT(A) who has the powers to grant a stay as an appellate authority.

4. In case the Assessment has been framed at more than twice the income you can take the cover of the **Delhi HC decision in the case of Valvoline Cummins and Soul** which have confirmed the CBDT Circular that no recovery shall be made in such cases till the disposal of the 1st appeal. It can also be mentioned in the stay application.

Some other judgments may also be helpful while drafting a stay application, are given below:

1. Instruction no. 96 of 1969 dated 21.08.1969
2. Circular No. 589 - Imp
3. 220 CTR 211 (Del) - Soul - Very Important as it also discusses Valvoline
4. Valvoline Cummins - Delhi HC decision
5. Delhi HC Decision in case of **Subhash Chander Sehgal vs Deputy Commissioner Of Income Tax (216 CTR 139) [2008]**
6. Delhi HC Decision in case of **JCT Ltd. vs ITAT (258 ITR 291) [2002]**
7. **Taneja Developers and Infrastructure Ltd. Vs. ACIT, Delhi** and Ors in W.P.(C).No.6956 of 2009, (2009) 222 CTR (Del) 521

8. Gauhati High Court in case of - **Bongaigaon Refinery And Petro vs. CIT**(256 ITR 698) [2002]
9. ITAT Mumbai's decision in case of - **RPG Enterprises Ltd. vs Dy. CIT**
10. Allahabad High Court in case of - **Sultan Leather Finishers Pvt. vs. ACIT** 191 ITR 179 [1999] - wherein it was decided that no recovery of demand will be made till Application u/s 154 is not disposed off.
11. Order of the AO should be speaking order in case of **B R Balakrishnan** 119 Taxman 974 (Bom.)
12. Order in case of Maruti Udyog Ltd.

5. Additionally, it is also suggested to:

(A) Move an application for early fixation of appeal with copy to CCIT and CIT

(B) Keep your bank balance low and keep an alternate bank account ready and operational

(C) Keep Bank Manager in a good humour as:

- He should inform you of attachment and permit you to withdraw the available amounts before attachment
- In case of OD limits - he can write back to the AO that attachment is not possible as the limits have been granted to conduct business and not payment of taxes – this will give you a couple of days to make adjustments.

6. If possible apply for a rectification u/s 154 for as long as the rectification application is pending no recovery can be made (see 191 ITR 179)

7. I also bring to your notice the following directions of the CBDT:

CBDT Inst. 987. Prevention of unrealistic over-assessments

1. Reference is invited to the **Board's Instruction No.376 [F.No.277/2/70-IT(J)]**, dated the 1st February 1972 and the earlier instruction cited therein.

2. Instances continue to come to the notice of the board about unrealistic over-assessments made by assessing officer under various direct tax Acts. This causes unnecessary hardship to the assesseees and tarnishes the image of the Department; there is avoidable litigation and recovery problems arise in respect of the consequential insupportable and exaggerated tax demands.

3. The board would like therefore to impress once again upon the commissioners that they should **advise the assessing officers in their charge to eschew unjustified over-**

assessments. The **Assessments have to be made in the reasonable and fair manner** after considering all the relevant circumstances of the case. Even where an assessment has to be made ex parte, the information available should be reasonably weighed and a proper estimate made in the exercise of best judgments in the circumstances. There should be no tendency to frame assessments even in such cases mechanically on past basis if there is evidence to the contrary e.g., the business of the concern has become defunct or is in clearly adverse circumstance.

4. If unjustified over-assessments are avoided, this will inter alia curtail the feature of exaggerated demands which unnecessarily inflate our arrears figures.

5. These instructions may be brought to the notice of all officers in the charge and a very careful watch kept over their compliances. The erring officials should be properly advised and where necessary pulled up.[F.No.246/27/73-A & PAC dated the 27th July 1973 from C.B.D.T].

Source courtesy:caclubindia.com