Delhi High Court
Ashok Kumar Aggarwal vs Income-Tax Appellate Tribunal & ... on 22 April, 1997
Equivalent citations: 1997 226 ITR 490 Delhi
Bench: D Jain, Y .Sabharwal
JUDGMENT Rule D.B.

1. Since a short point is involved, we have heard learned counsel for the parties and now we proceed to decide the matter.

2. Briefly the facts are these. By order dt. 31st October, 1996, passed under s. 158BC(c) of the IT Act, 1961, by the Asstt. CIT, the undisclosed income of the petitioner was determined at Rs. 13,13,49,778. On 9th November, 1996, an appeal was preferred by the petitioner before the Tribunal against the order dt. 31st October, 1996. The petitioner had also filed an application for stay of recovery of the disputed demand before the Asstt. CIT and another application for stay of the recovery proceedings was filed before the CIT. The CIT by order dt. 3rd March, 1997, has granted stay of the demand till 28th February, 1998, or disposal of the first appeal before Tribunal, whichever is earlier, subject to the condition that the petitioner should pay 10 per cent. of the demand immediately. The petitioner has also filed an application for stay of recovery proceedings before the Tribunal. That application has been dismissed by the impugned order dt. 3rd April, 1997.

3. The main contention of learned counsel for the petitioner is that the Tribunal has not applied its independent mind for considering and deciding the said application which has been dismissed simply on the ground that the CIT has already granted stay of the demand in terms of order dt. 3rd March, 1997. A perusal of the impugned order shows that the contention of the Departmental Representative before the Tribunal, opposing the stay application, was that the stay application before the Tribunal merited rejection because the order had already been made by the CIT. That contention seems to have been accepted by the Tribunal since the Tribunal has stated in the impugned order that "considering the fact that the CIT has already granted stay of the demand, as referred to above, the stay petition has no force and the same merits rejection". The power to consider and grant or refuse an application for stay in the first appeal before the Tribunal is an independent power which vests in the Tribunal. The Tribunal in law cannot decline to exercise the said power and refuse the examination of the application of stay on merits on the ground that the CIT has already granted stay of the demand. It is not a case where the CIT has granted blanket stay in favour of the petitioner. The stay was subject to the petitioner depositing ten per cent. of the demand which worked out to approximately Rs. 78.8 lakhs. It seems that the contention of the petitioner before the Tribunal was that he is entitled to a complete stay of the demand since he has a good prima facie case and the balance of convenience is also in his favour.

4. Mr. Aggarwal places reliance on decision of the Madras High Court in Sri Balaji Trading Co. vs. Dy. CTO (1989) 72 STC 417 (Mad) : (1989) 175 ITR 428 (Mad) to show the aspects required to be considered by the appellate authority at the time of passing an order on stay application. Reliance is also placed by learned counsel on the decision of the Allahabad High Court in Mrs. R. Mani Goyal vs. CIT , in support of the contention that financial hardship is required to be considered at the time of deciding the stay application. It is, however, not necessary in the present petition to lay down the

aspects required to be kept in view while deciding the stay application by the appellate authority for the reason that the appellate authority has not independently decided the application and has rejected the stay petition merely on the ground of an order having been made by the CIT. In our view, the appellate authority is required to independently decide the application on its own merits. Thus it would be open for Mr. Aggarwal to cite the aforesaid decisions or any other decision on the subject before the Tribunal at the time of making submissions on the stay application.

5. For the aforesaid reasons we make the rule absolute and set aside the impugned order dt. 3rd April, 1997, and direct the Tribunal to decide the stay application of the petitioner afresh in the light of observations made hereinbefore. As far as possible the stay application shall be decided within one month from the date of this order and till the decision of the stay application by the Tribunal, no coercive steps shall be taken to recover the impugned demand from the petitioner.