

IN THE MATTER OF BASUKINATH SHIV MANDIR NYAS SAMITY
BASUKINATH TEMPLE, BASUKINATH,
DUMKA- 814101 (JHARKHAND)
PAN :- AACTB3742N

To,
The Exemption Ward,
Dhanbad

Date:- 21.04.2025

SUB : Reply to Recovery Proceedings

DIN : ITBA/RCV/F/17/2025-26/1075606642(1) dated 11.04.2025

DIN : ITBA/RCV/F/17/2025-26/1075606916(1) dated 11.04.2025

DIN : ITBA/RCV/F/17/2025-26/1075606744(1) dated 11.04.2025

A.Y. 2016-17

AY 2019-20

Dear Sir,

We are receipt of the aforesaid notice and noted the contents therein.

- 1) That we had preferred an appeal before the CIT(A) against the impugned assessment order and penalty orders for the AY 2016-17 & 2019-20. Copy of Acks of Form 35 is attached.
- 2) That it is expected that we will get full relief as serious law point is involved.
- 3) In this connection, we would like to draw your kind attention towards the following case laws:-

ARCIL Retail Loan Portfolio 001-D-Trust vs. PCIT [2019] 264 TAXMAN 61 (Bom)(HC).

Held: "The assessee was a Trust. It was engaged in acquiring non-performing assets from Banks and recovering the dues from defaulters. The assessee made an application for stay pursuant to the assessment order which was rejected. Thereafter, the assessee approached the PCIT who accepted that the issues arising in the assessment order were identical to the issues in the case of another

assessee where the CIT(A) had ordered in favour of the assessee therein. The Court held that there is no reason why the benefit of stay should not be given if the facts are similar in the case of this assessee also. Thus, the Court ordered that there will be an unconditional stay till disposal of the appeal before the CIT(A) and if the order of the CIT(A) is reversed by the Tribunal, it would be open for the PCIT to make a fresh demand after giving a reasonable opportunity of being heard. If the assessee is intentionally delaying the disposal of the appeals, it would be open for the Department to apply for recalling the order."

- 4) In the case of **Coca Cola India Private Limited A ... vs The Addl. Commissioner Of Income-Tax ... on 19 October, 2005** held as under:-

Held: *"Before parting, we would like to record our total dissatisfaction regarding the manner in which the authorities below have proceeded to enforce the demand totally ignoring the parameters laid down by this Court in the case of KEC International (supra) while disposing off the stay applications. Moreover, attaching the bank accounts of the petitioner even before communicating the order passed on the stay application is totally high-handed. We hope that the Revenue shall ensure that in future such instances do not occur again. Otherwise, the Court will have no option but to take appropriate action in accordance with law."*

(Copy of judgment is attached)

- 5) Further in the case of **KEC International Ltd. vs B.R. Balakrishnan And Ors. on 29 March, 2001**, certain parameters are to be followed while considering the stay application of an assessee as under:-

Held: *"We intend to lay down certain parameters which are required to be followed by the authorities in cases where a stay application is made by an assessee pending appeal to the first appellate authority."*

6. Parameters :

(a) While considering the stay application, the authority concerned will at least briefly set out the case of the assessee.

(b) In cases where the assessed income under the impugned order far exceeds returned income, the authority will consider whether the assessee has made out a case for unconditional stay. If not, whether looking to the questions involved in appeal, a part of the amount should be ordered to be deposited for which purpose, some short prima facie reasons could be given by the authority in its order.

(c) In cases where the assessee relies upon financial difficulties, the authority concerned can briefly indicate whether the assessee is financially sound and viable to deposit the amount if the authority wants the assessee to so deposit.

(d) The authority concerned will also examine whether the time to prefer an appeal has expired. Generally, coercive measures may not be adopted during the period provided by the statute to go in appeal. However, if the authority concerned comes to the conclusion that the assessee is likely to defeat the demand, it may take recourse to coercive action for which brief reasons may be indicated in the order.

(e) We clarify that if the authority concerned complies with the above parameters while passing orders on the stay application, then the authorities on the administrative side of the Department like respondent No. 2 herein need not once again give reasoned order."

6) Further held in UTI Mutual Fund vs. ITO [2012] 345ITR71(Bom)(HC).

"The Court held that rejecting stay applications without hearing the assessee, considering submissions and indicating at least brief reasons is impermissible. The attachment on the bank account was also to be lifted."

7) Further held in Milestone Real Estate Fund vs. ACIT [2019] 263 TAXMAN 523 (Bom) (HC).

"The assessee was a trust. The assessment under section 143(3) was made denying the claim of exemption to the petitioner under section 10(23FB) of the Act. An appeal was filed before the CIT(A) and a stay application was filed before the AO. The petitioner averred that the issue of exemption under section 10(23FB) of the Act has been decided for AY 2013-2014 by the ITAT and by the CIT(A) for AY 2014-2015 in the petitioner's own case. However, the stay application was rejected and

the petitioner approached the Pr.CIT. In the meantime, the AO withdrew an amount of 29.25 crores from the petitioner's bank account. Also, the AO proposed to adjust the refund for AY 2012-2013 and AY 2014-2015 with the demand for AY 2016-2017. The Pr.CIT disposed of the stay application by recording that the demand for AY 2015-2016 and AY 2016-2017 will be set off against the refund due for AY 2012-2013 – AY 2014-2015 and the balance demand will be stayed pending disposal of the appeal. The AO then issued a notice/intimation proposing adjustment of refunds. The Court held that no brief reasons were provided as to why stay of demand was to be rejected. The fact that the issue as to the eligibility of exemption under section 10(23FB) has been concluded in the assessee's own case would warrant an unconditional stay."

8) Further held in **Maharashtra Industrial Development Corporation[Writ Petition (L) No. 635 of 2016 dated 16.3.2016(Bom.)](HC)**, as under:-

Held: *"the assessee was engaged in developing industrial infrastructure and allotted industrial plots on account of lease premium. This premium was taken to the assessee's balance sheet as deposits. For the first time in AY 2011-2012 the AO subjected the deposits to tax. The ITAT restored the matter to the AO for de-novo consideration. An appeal was filed to the CIT(A) and a stay application was filed relying on the decision of the ITAT restoring the matter to the AO and the decision of CIDCO being in favour of the assessee. The application was rejected without advertent to the assessee's submissions. The Court restored the matter to the AO for de-novo consideration of the stay application. The judgment of the Court itself notes that the assessee was subjected to tax for the first time since 1962(inception). That the assessee had been carrying deposits to its balance sheet since inception. Therefore, the principle enunciated in UTI Mutual Funds would surely assist the assessee that if the AO adopts a contrary view than what is held in preceding previous years without there being a material change in facts or law, that would be relevant in deciding the application for stay. If the Court adverted to this principle, probably it would have granted stay of demand in the matter without restoring it for de-novo consideration."*

- 9) In **Mansukhlal Amritlal Modi vs. ITO [W.P(L) 873 of 2020 dated 19.3.20(Bom.) (HC)]** held as under:-

Held: "The petitioner-assessee was subjected to an order of assessment on the issue of disclosure of sale of agricultural land owned by the petitioner alongwith two co-owners and was subjected to tax under section 69-A of the Act. The two co-owners were assessed on a protective basis. The appeal of the co-owners before the CIT(A) had been allowed. The Petitioner appealed to the CIT(A) and filed an application of stay before the AO. The AO dismissed the application by order dated 31.1.20 and stated that if the petitioner does not pay 20% of the demand on or before 4.2.20, the bank account of the petitioner will be attached. The Petitioner-assessee claimed that the order was received by him on 7.2.20. The petitioner also stated that the entire amount has been withdrawn from the bank account. In the meantime, the petitioner had approached the PCIT who also dismissed the stay application and ordered 20% of the amount to be paid. The Court quashed the orders of the AO and PCIT and lifted the attachment of the bank account. The Court held that there was complete non-application of mind by the AO and the PCIT's order was also not justified. The AO was directed to re-consider the stay application.

- 10) In **General Insurance Corporation of India vs. ACIT[W.P No. 2271 of 2019 dated 14.10.2019(Bom.)](HC)** held as under:-

Held: "The assessee was a Government of India undertaking. The relevant AY was 2017-2018. An order of assessment was passed against the petitioner on various issues raising a demand of Rs. 3,601 crores. The AO allowed the stay of demand pursuant to the petitioner making the stay application on the condition that it deposits 20% of the demand. The Petitioner approached the PCIT who made a chart showing the demand to be paid issue wise on as many as 7 items. The petitioner agreed that in so far as items 3,4,7 are concerned, the petitioner would deposit 20% of the demand.

On issue 1, the Court noted that the Mumbai and Kolkata benches of the Tribunal had decided in favour of the petitioner. However, the Chennai bench has taken an opposite view, and hence it is per-incuriam. Also, that the CBDT Circular No. 530dt. 6th March, 1989

[(1989) has held that if there are conflicting judgments of the High Courts stay must be granted. That this can be extended to the Tribunals also. Therefore, unconditional stay is warranted."

It is hereby respectfully prayed kindly stay the recovery proceedings till the disposal of appeal.

For such act of kindness the petitioner shall ever pray.

Thanking you,

Yours faithfully,



(D N Dokania)

A/R

Mb. No.:- 94311 58508

Enclo:- As above