IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 19804 of 2021
With
R/SPECIAL CIVIL APPLICATION NO. 19808 of 2021
With
R/SPECIAL CIVIL APPLICATION NO. 19815 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J.B.PARDIWALA **Sd/-**

and
HONOURABLE MS. JUSTICE NISHA M. THAKORE **Sd/-**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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HARSH DIPAK SHAH
Versus
UNION OF INDIA

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Appearance:
MR ABHISHEK M MEHTA(3469) for the Petitioner(s) No. 1
.... for the Respondent(s) No. 3
..... for the Respondent(s) No. 2,4
DS AFF.NOT FILED (N)(11) for the Respondent(s) No. 1
M R BHATT & CO.(5953) for the Respondent(s) No. 2,3,4
NOTICE NOT RECD BACK(3) for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE J.B.PARDIWALA**
and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 04/01/2022

COMMON ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1. Since the issues raised in all the captioned writ applications are interrelated and the parties are also the same, those were taken up for hearing analogously and are being disposed of by this common judgment and order.

2. *"Governments are not run on mere bank guarantees. We notice that very often, some courts act as if furnishing bank guarantee would meet the ends of justice. No Governmental business or for that matter no business of any kind can be run on mere bank guarantees. Liquid cash is necessary for the running of a Government as indeed any other enterprise. We consider that where matters of public revenue are concerned, it is of utmost importance to realize that interim orders are not to be granted merely because a prima facie case has been shown. More is required. The balance of convenience must be clearly in favour of the making of an interim order and there should not be the slightest indication of a likelihood of prejudice to the public interest"*. (Assistant Collector of Central Excise vs. Dunlop India Ltd. & Ors., 1985 (1) SCC 260)

3. The aforesaid are the observations of the Supreme Court relating to the tendency of the courts to grant

interim orders with great potential for public mischief for the mere asking. Such tendency was deprecated by the Supreme Court almost four decades back.

4. Having regard to the subject matter of the captioned writ applications, the Revenue wants us to keep the aforesaid observations of the Supreme Court in mind.

5. For the sake of convenience, the Special Civil Application No.19804 of 2021 is treated as the lead matter.

6. By this writ application under Article 226 of the Constitution of India, the writ applicant-assessee has prayed for the following reliefs;

> *"(A) Your Lordship may be pleased to issue a writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, order or direction quashing and setting aside the impugned order dated 8.12.2021 and 15.12.2021 passed by the respondent No.2 and to grant waiver of pre-deposit in the facts of the present case.*
>
> *(B) Your Lordship may be pleased to issue a writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, order or direction quashing and setting aside the impugned demand notices all dated 30.09.2021 for the years 2010-11 to 2020-21.*
>
> *(C) Your Lordships may be pleased to issue a writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, order or direction directing the Respondent No.2 to consider the*

request of the petitioner and not to insist on any pre-deposit for considering the stay of the recovery of the amount which is subject matter of appeal before the Respondent No.3.

(D) Pending hearing and final disposal of this petition, Your Lordships may be pleased to stay the operation and execution of the impugned order dated 8.12.2021 and 15.12.2021 passed by the Respondent No.2 and the demand notices all dated 30.09.2021 and to grant waiver of pre-deposit in the facts of the present case.

(E) Pending hearing and final disposal of this petition, Your Lordships may be pleased to direct the respondents including the Respondent No.2 or the other respondent authorities under the IT Act to refrain from taking any coercive action including any action under the Provisions of the IT Act against the petitioner, pending the appeals preferred before the Respondent No.3 or in respect of the assessment orders passed by the Respondent No.4 against the petitioner.

(F) Your Lordships may be pleased to grant ad-interim relief in terms of Para-11 (C) and 11(D).

(G) Your Lordships may be pleased to issue a writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, order or direction directing the Respondent No.2 to grant early hearing with respect to the pending appeals of the present petitioner without insisting for complying with the requirement of pre-deposit.

(H) Any other further relief/s as may deem fit in the facts of the case may also be granted."

7. The facts, giving rise to this litigation, may be summarized as under;

7.1 The writ applicant is one of the directors of the entities following under the Avani Group of Companies. The said group of companies operates from Vadodara and is engaged in the business of land and properties.

7.2 A search was conducted under Section 132 of the Income Tax Act, 1961 (for short "the Act, 1961") on 23.01.2020 by the respondent No.4. The said search ultimately led to issue of a notice to the writ applicant herein under Section 153(A) of the Act, 1961 dated 09.12.2020 calling upon the writ applicant to furnish the return of income for the A.Y.2014-15 to 2019-2020.

7.3 The record reveals that separate notices were also issued under Section 153(A) of the Act by the respondent No.4 dated 09.12.2021 calling upon the writ applicant to furnish the return of income for the A.Y.2010-11 to 2013-14. For the A.Y.2020-21, notice came to be issued to the writ applicant by the respondent No.4 under Section 143(2) of the Act dated 17.06.2021. The respondent No.4, thereafter, issued questionnaire under Section 142(1) of the Act for all the aforesaid assessment years, i.e. 2010-11 to 2020-21. The respondent No.4, thereafter, proceeded to issue consolidated show-cause notices dated 23.09.2021 and 26.09.2021 respectively to the writ applicant calling upon the writ applicant to show-cause as to why the income should not be assessed by addition of the amount stated in the show-cause notice. The writ applicant responded to such show-cause notice by filing

his reply dated 27.09.2021.

7.4 The respondent No.4 proceeded to assess the income of the writ applicant by way of separate assessment orders dated 30.11.2021 for the A.Y.2010-11 to 2020-21 under Section 153(A) read with Section 143(3) of the Act followed by the notice of demand dated 30.09.2021 issued under Section 156 of the Act. The assessment orders passed by the respondent No.4 for A.Y.2010-11 to 2020-2021 came to be challenged by the writ applicant by filing appeals before the Commissioner of Income Tax (Appeals) under Section 246 of the Act.

7.5 The chart indicating the total demand raised and the 20% of the total demand as pre-deposit in all the three captioned writ applications is as under;

S.C.A. No.19804 of 2021

TOTAL DEMAND RAISED	*20% OF THE TOTAL DEMAND AS PRE-DEPOSIT FOR GRANT OF STAY AGAINST RECOVERY.*
Rs.373,20,42,319/- *(Rs. Three Hundred Seventy Three Crores Twenty Lakhs Forty Two Thousand Three Hundred & Nineteen Only)*	*Rs.74,64,08,464/-* *(Rupees Seventy Four Crores Sixty Four Lakhs Eight Thousand Four Hundred & Sixty Four Only)*

S.C.A. No.19815 of 2021

TOTAL DEMAND RAISED	*20% OF THE TOTAL DEMAND AS PRE-DEPOSIT FOR GRANT OF STAY AGAINST RECOVERY.*
Rs.14,81,66,768/- *(Rs. Fourteen Crores Eighty One Lakhs Sixty Six Thousand Seven Hundred & Sixty Six Only)*	*Rs.2,98,33,353/-* *(Rupees Two Crores Ninety Six Lakhs Thirty Three Thousand Three Hundred & Fifty Three Only)*

S.C.A. 19808 of 202

TOTAL DEMAND RAISED	*20% OF THE TOTAL DEMAND AS PRE-DEPOSIT FOR GRANT OF STAY AGAINST RECOVERY.*
Rs.14,75,62,603/- *(Rs. Fourteen Crores Seventy Five Lakhs Sixty Two Thousand Six Hundred & Three Only)*	*Rs.2,95,12,520/-* *(Rupees Two Crores Ninety Five Lakhs Twelve Thousand Five Hundred & Twenty Only)*

7.6 The writ applicant also preferred separate stay applications before the respondent No.4 with a prayer to stay the demand as raised for the assessment years under consideration.

7.7 The first order passed by the Principal Commissioner, IT (Central) Surat dated 08.12.2021 reads thus;

To, *Harsh Dipak Shah* *11/12, Charotar Society, Old Padra Road* *Vadodara, Gujarat* *India*	

PAN: ASGPS8965A	*Dated: 08.12.2021*	*DIN & Letter No: ITBA/COM/F/17/2021-22/1037618617(1)*

Sir / Madam/M/s,
Subject: Online service of orders-Letter

Sub:-Hearing on application of stay against recovery of demand raised u/s.153A r.w.s. 143(3) & 143(3) of the Act in your case for A.Y.2010-11 to A.Y.2020-2021 till the disposal of the 1st appeal-Reg.

Ref: Assessee letter dated 08.11.2021 received in this office on 10.11.2021.

Please refer to the above

2. In connection to above captioned subject, it is seen from the perusal of your letter dated 08.11.2021 that stay of demand has been sought on the ground that an appeal has been filed before CIT(A) against the Assessment Order passed in your case u/s. 153A r.w.s. 143(3) & 143(3) of the I.T.Act, 1961 (to be read as 'Act') pertaining to A.Y.2010-11 to A.Y.2020-2021 and a decision on the appeal is expected soon for the relevant assessment years. The aforesaid Assessment Order has resulted in raising demand in your case as tabulated below;

Sr. No.	Order under section of I.T.Act, 1961	A.Y.	Dt. of order	Assessed Income (In Rs.)	Demand Raised (in Rs.)
1.	153A r.w.s.143(3)	2010-11	30.09.2021	32756550	26424810
2.	153A r.w.s. 143(3)	2011-12	30.09.2021	180252060	139387164
3.	153A r.w.s.143(3)	2012-13	30.09.2021	56353980	25290654

4.	153A r.w.s.143(3)	2013-14	30.09.2021	276756870	186990485
5.	153A r.w.s.143(3)	2014-15	30.09.2021	222850340	133940038
6.	153A r.w.s.143(3)	2015-16	30.09.2021	356006740	227276710
7.	153A r.w.s.143(3)	2016-17	30.09.2021	507497030	279814290
8.	153A r.w.s.143(3)	2017-18	30.09.2021	1321171640	1568798260
9.	153A r.w.s.143(3)	2018-19	30.09.2021	412807900	436268606
10.	153A r.w.s.143(3)	2019-20	30.09.2021	409375481	421328404
11.	143(3)	2020-21	30.09.2021	306307820	286522898
			Total	4082136411	3732042319

Further, the stay of demand has been sought by you in your case against the demand raised in above mentioned assessment years which is considered as high pitch assessment by you.

3. Stay petitions of the assessee have to be considered as per the Instruction No.1914 F. No.404/72/93 ITCC dated 21.03.1996 and further modified with Instruction No.1914 dated 31.03.2017 as it overrides all other instructions and circulars on the subject. As per the Instruction No.1914 issued by CBDT on the matter, the stay cannot be allowed on the ground that appeal has been filed in the matter. Relevant portion of the instruction is quoted below:-

"C. GUIDELINES FOR STAYING DEMAND:

1. A demand will be stayed only if there are valid reasons for doing so. Mere filing an appeal against the assessment order will not be sufficient reason to stay the recovery of demand. A few illustrative situation where stay could be granted are:-

i) if the demand in dispute relates to issues that have been decided in assessee's favour by an appellate authority or court earlier; or

ii) If the demand in dispute has arisen because the

Assessing Officer had adopted an interpretation of law in respect of which there exist conflicting decisions of one or more High Courts (not of the High Court under jurisdiction the Assessing Officer is working), or

iii) If the high Court having jurisdiction has adopted a contrary interpretation but the Department has not accepted that judgment."

4. After studying the facts of your case, it is seen that your case does not fall in any of the above categories. Assessment order passed in your case by the Assessing Officer (A.O.) for the year under consideration was after granting sufficient opportunities during the assessment proceedings and the A.O. after duly perusing and verifying the submissions made by you with details available on record and proper appreciation of details provided as well in view of relevant provisions of the Act had passed the Assessment Order. Hence, demand cannot be stayed specially in view of the fact that this instruction has been issued in supersession of all instruction of the subject. Though the demand is disputed but mere filing of 1st appeal before the CIT (A) cannot be valid reason for granting stay.

5. However, following the principle of natural justice, I am directed to give you an opportunity to be heard that why your stay application should not be rejected as you have not paid 20% of the above mentioned raised demand in view of the Board Instruction No.1914 dated 21.03.1996 & 31.07.2017. Further, it can be considered that you may be granted installments to pay 20% of the raised demand with detailed as under:-

Sr. No.	Order under section of I.T.Act, 1961	A.Y.	Dt. of order	Demand Raised (in Rs.)	Demand amount to be paid for each relevant assessment years being 20% of the raised

					demand scheduled below.
1.	153A r.w.s.143(3)	2010-11	30.09.2021	26424810	10% by 31.12.2021 and remaining 10% in 3 monthly equal installments starting from 15.01.2022, 15.02.2022 and 15.03.2022
2.	153A r.w.s. 143(3)	2011-12	30.09.2021	139387164	
3.	153A r.w.s.143(3)	2012-13	30.09.2021	25290654	
4.	153A r.w.s.143(3)	2013-14	30.09.2021	186990485	
5.	153A r.w.s.143(3)	2014-15	30.09.2021	133940038	
6.	153A r.w.s.143(3)	2015-16	30.09.2021	227276710	
7.	153A r.w.s.143(3)	2016-17	30.09.2021	279814290	
8.	153A r.w.s.143(3)	2017-18	30.09.2021	1568798260	
9.	153A r.w.s.143(3)	2018-19	30.09.2021	436268606	
10.	153A r.w.s.143(3)	2019-20	30.09.2021	421328404	
11.	143(3)	2020-21	30.09.2021	286522898	
			Total	3732042319	

If you follow the schedule payment as mentioned in above table then no action will be taken to recover the remaining demand till the end of the financial year or receipt of decision of CIT(A) whichever is earlier.

6. In this regard, I am directed to request you to submit your compliance in accordance of the details asked in para 5 above on or before 15.12.2021 by 11:30 AM, failing which your stay petition dated 08.11.2021 shall be rejected."

7.8 Thus, the writ applicant was asked to adhere to the scheduled payment as contained in Para-5 aforesaid. The writ applicant was also asked to submit his compliance of the above scheduled payment on or before 15.12.2021, failing which, the stay application would stand rejected. To the aforesaid, the writ applicant filed his reply dated 15.12.2021 stating as under;

"To,
The Principal Commissioner of Income Tax (Central Circle),
5th Floor,
Aayakar Bhavan,
Majura Gate, Surat,

Respected Sir,
Sub: Submission in connection with compliance to application for stay against recovery of demand raised u/s. 153A r.w.s. 143(3) & 143(3) of the Act for A.Y.2010-11 to A.Y.2020-2021.

Ref: ITBA/COM/F/17/2021-22/1037618617(1) dt. 08.12.2021.

PAN: ASGPS8965A

High pitch assessment was framed u/s. 153A r.w.s.143(3) of the Act on 30.09.2021 by the Deputy Commissioner of Income Tax, Central Circle-2, Vadodara in case of the assessee raising an astronomical demand of Rs.373,20,42,319/- in various years (A.Y.2010-11 to A.Y. 2020-21)

In order to get stay of recovery of demand, the assessee has filed a petition before assessing officer on 11.10.2021, however, without considering the facts and circumstances , he has rejected the request of the assessee to grant stay against recovery of demand vide his letter dated 02.11.2021 and has directed the assessee to pay 20% of demand, i.e, Rs.74,64,08,464/- immediately.

The assessee has further requested your honour to grant stay of demand until disposal of an appeal vide letter dt. 08.11.2021, however, your honour also has directed to the assessee to deposit 10% of total demand before 31.12.2021 and remaining 10% of demand before 15.03.2022, in equal monthly installment (Summary break up is as under)

Total Demand	20% of total demand	Direction to deposit tax on or before			
		31.12.2021	15.01.2021	15.02.2021	15.03.2021
373,20,42,319	74,64,08,464	37,32,04,232	12,44,01,411	12,44,01,411	12,44,01,411

Sir, first of all, it is mentioned that the assessing officer has framed the assessment without in-depth verification of the whole case. The impugned assessment order and demand is not only harsh but is also without due consideration to the facts of the case including the financial hardships being caused to the assessee and the fact that the said astronomical figure of Rs.74,64,08,464/- being 20% of the total demand of Rs.373,20,42,319/- is very difficult to deposit for the assessee on account of following reasons:

1. High Pitched Assessment:-

As already mentioned above, the AO has framed high pitched assessment in arbitrary manner and biased mind without considering the submissions/explanation and justification of the assessee. The action of the AO seems to be unreasonable and no any adverse action should be taken against the assessee for recovery of demand. Therefore, the assessee once again urges your honour to please keep the recovery of demand in abeyance till disposal of an appeal before first appellate authority.

2. Only Source of Income of Avani Petrochem Pvt. Ltd.

The assessee is a director of Avani Petrochem Pvt. Ltd and the only source of income of the assessee is Avani Petrochem Pvt. Ltd. The approx. turnover of Avani Petrochem Pvt. Ltd for F.Y.2020-21 is of Rs.125 Crore and therefore, it is apparent that income assessed for A.Y.2010-11 to A.Y.2020-21 to the tune of Rs.408 Crore, which his 4 times higher than the

aggregate turnover, seems to be unrealistic and unreasonable.

3. Stereo-type order

Looking at the whole assessment, it seems that the assessing officer has passed stereo-type order with outright rejection of the stand of the assessee which is absolutely illegitimate.

4. Adverse impact on financial affairs on account of COVID-19

Due to COVID-19 pandemic, the financial affairs of the business are adversely affected across the globe. The assessee has also faced countless barriers during last 2 years. The assessee is trying to come out from it, however, recovery proceedings may again affect the assessee very badly.

Sir, in brief, it is practically very difficult for the assessee to pay huge demand as directed by your honour vide letter dated 08.12.2021. Even the installments granted by your honour are huge in quantum.

In view of the above, the assessee requests your to grant stay against recovery of outstanding demand considering the high pitched assessment made in case of the assessee. Further, the assessee also requests your honour to direct the AO not to take any coercive actions against the assessee for recovery of demand, till the disposal of the appeal. Once the appeal is disposed off, the assessee would discharge his obligations, if any, arising on account of disposal, in favour of the department.

We shall be grateful if the stay against the demand is granted.

Thanking You,

Yours Faithfully,"

7.9 Thus, the writ applicant prayed for waiver of 20% of the pre-deposit essentially on four grounds (i) high pitched assessment (ii) only source of income through Avani Petrochem Pvt. Ltd. (iii) stereo type order passed by the Principal Commissioner and (iv) adverse effect on the financial affairs due to the Covid-19 pandemic.

7.10 We take notice of the fact that the total demand raised is to the tune of Rs.373,20,42,319/-. 20% of the said amount towards pre-deposit comes to Rs.74,64,08,464/-.

7.11 The aforesaid reply of the writ applicant dated 15.12.2021 did not find favour with the respondent No.2 herein and vide order dated 17.12.2021 disposed of the stay application. The order dated 17.12.2021 reads thus;

To, *Harsh Dipak Shah* *11/12, Charotar Society, Old Padra Road* *Vadodara, Gujarat* *India*	

PAN: ASGPS8965A	*Dated: 17.12.2021*	*DIN & Letter No: ITBA/COM/F/17/2021-22/1037913180(1)*

Sir / Madam/M/s,

Subject: Online service of orders-Letter

Sub:-Your application of stay against recovery of demand raised u/s.153A r.w.s. 143(3) & 143(3) of the Act in your case for A.Y.2010-11 to A.Y.2020-21 till the disposal of the 1st appeal-Reg.

Ref:-(i) Reply of assessee submitted to 15.12.2021.

(ii) This office letter dated 08.12.2021 issued for hearing on stay petition.

(iii) Assessee's stay application dated 08.11.2021 received in this office on 10.11.2021.

Please refer to the above

In regard to the above captioned subject, you have submitted reply to this office on 15.12.2021 in response to the letter issued to you dated 08.12.2021 for the necessary compliance called for on your stay petition dated 08.11.2021 which was scheduled for hearing on 15.12.2021 in this office at 12:30 PM. Vide the letter dated 08.12.2021 you were requested to pay the 20% of the outstanding demand in your case in easy installments in order to grant stay from the recovery of balance outstanding demand in accordance with the Board's Instruction No.1914 F.No.404/72/93 ITCC dated 21.03.1996 and further modified with Instruction No.1914 dated 31.03.2017. However, you have shown your disagreement to pay the 20% of the demand raised in your case quoting the reasons discussed below:-

(i) High Pitched Assessment:-Assessee has taken the contention that during the assessment proceeding for the year under consideration, the DCIT, Central Circle-2, Vadodara (AO) had made high pitched assessment in arbitrary manner and biased mind without considering the submissions/explanation and justification of the assessee.

(ii) Only source of income of M/s. Avani Petrochem

Pvt. Ltd.- Assessee has taken the contention that the assessee is the Director of M/s. Avani Petrochem Pvt. Ltd which is the only source of income. The turnover of the company for F.Y.2020-21 was Rs.125 Crore and therefore, it is apparent that income assessed for A.Y.2010-11 to A.Y.2020-21 to the tune of Rs.408 Crore which is 4 times higher than the aggregate turnover seems to be unrealistic and unreasonable.

(iii) Stereo-type Order:- Assessee has taken the contention that the AO has passed stero-type orders without outright rejection of the stand of the assessee which is absolutely illegitimate.

(iv) Adverse impact on financial affairs on account of COVID-19:- Assessee has taken the contention that due to Covid-19 pandemic, the financial affairs of the business are adversely affected across the globe and recovery proceedings may again affect the assessee adversely.

3. in respect of reasons quoted in above para 2(i), 2(ii) & 2(iii), it is stated that same are not applicable as they are merely pertaining to the matter discussed during the assessment proceedings. Assessment order passed in your case by the AO for the year under consideration was after granting sufficient opportunities during the assessment proceedings and the AO after duly perusing and verifying the submissions made by you with details available on record and proper appreciation of details provided as well in view of relevant provision of the Act has passed the Assessment Order.

Further, the reason quoted in para 2(iv) above cannot be accepted as the Government has introduced various facilities to the business men in order to overcome the pandemic effect on financial status. Further, in para-(ii) above you yourself have admitted that the turnover of the company is above 100 crores in last financial year of 2020-21 which clearly indicates that the business of your company

is in progressive mode. It is also pertinent to mention that only claim of financial crunch has been made without any evidence submitted in support of such claim.

4. As discussed vide this office letter dated 08.12.2021 issued to you, it is to bring to your notice again that your case does not fall in any of the categories discussed below:-

"C. GUIDELINES FOR STAYING DEMAND:

1. A demand will be stayed only if there are valid reasons for doing so. Mere filing an appeal against the assessment order will not be sufficient reason to stay the recovery of demand. A few illustrative situation where stay could be granted are:-

i) if the demand in dispute relates to issues that have been decided in assessee's favour by an appellate authority or court earlier; or

ii) If the demand in dispute has arisen because the Assessing Officer had adopted an interpretation of law in respect of which there exist conflicting decisions of one or more High Courts (not of the High Court under jurisdiction the Assessing Officer is working), or

iii) If the high Court having jurisdiction has adopted a contrary interpretation but the Department has not accepted that judgment."

5. Hence, demand cannot be stayed especially in view of the fact that this instruction has been issued in supersession of all instruction of the subject. Though the demand is disputed but mere filing of 1st appeal before the CIT(A) cannot be a valid reason for granting stay. Therefore, your request to grant stay on the entire amount of outstanding demand in your case for the relevant years under consideration is not found to be valid in nature.

6. In view of above reasons, your stay petition dated 08.11.2021 cannot be accepted, further you are requested to pay 20% of the outstanding demand in order to avail stay on the remaining amount as per the instruction No.1914 F. No.404/72/93-ITCC dated 31.07.2017. However, you are still with the option to pay the 20% of the outstanding demand in your case as detailed below:-

Sr. No	*Order under section of I.T.Act, 1961*	*A.Y.*	*Dt. of order*	*Demand Raised (in Rs.)*	*Demand amount to be paid for each relevant assessment years being 20% of the raised demand scheduled below.*
1.	*153A r.w.s.143(3)*	*2010-11*	*30.09.2021*	*26424810*	*10% by 31.12.2021 and remaining 10% in 3 monthly equal installments starting from 15.01.2022, 15.02.2022 and 15.03.2022*
2.	*153A r.w.s. 143(3)*	*2011-12*	*30.09.2021*	*139387164*	
3.	*153A r.w.s.143(3)*	*2012-13*	*30.09.2021*	*25290654*	
4.	*153A r.w.s.143(3)*	*2013-14*	*30.09.2021*	*186990485*	
5.	*153A r.w.s.143(3)*	*2014-15*	*30.09.2021*	*133940038*	
6.	*153A r.w.s.143(3)*	*2015-16*	*30.09.2021*	*227276710*	
7.	*153A r.w.s.143(3)*	*2016-17*	*30.09.2021*	*279814290*	
8.	*153A r.w.s.143(3)*	*2017-18*	*30.09.2021*	*1568798260*	
9.	*153A r.w.s.143(3)*	*2018-19*	*30.09.2021*	*436268606*	
10.	*153A r.w.s.143(3)*	*2019-20*	*30.09.2021*	*421328404*	
11.	*143(3)*	*2020-21*	*30.09.2021*	*286522898*	
			Total	*3732042319*	

6.1 If you follow the schedule payment as mentioned in above table then no action will be taken to recover the remaining demand till the end of the financial year or receipt of decision of CIT(A) whichever is earlier.

6.2 If no compliance of tax payment is received from you as scheduled above, then you would be treated as assessee deemed to be in default and the AO would be within his rights to make all possible recovery proceedings as per I.T. Act 1961 against you to collect the outstanding demand.

6.3 Your stay application is accordingly disposed off.

Charanjeet Singh Gulati
PCIT (Central), Surat

Copy to:-

1. The Addl. CIT, Central Range, Vadodara for monitoring the payment of demand.

2. The DCIT, CC-2, Vadodara for recovery proceeding if payment schedule of demand is not followed.

Charanjeet Singh Gulati
PCIT (Central), Surat"

7.12 Being dissatisfied with the aforesaid, the writ applicant is here before this Court with the present writ application.

Submissions on behalf of the writ applicant:-

8. Mr. Tushar Hemani, the learned counsel appearing for the writ applicant vehemently submitted that the two impugned orders dated 8.12.2021 and 17.12.2021 respectively are erroneous in law as those could be said to have been passed mechanically without any proper

application of mind. He would submit that 20% of the assessed amount comes to Rs.74,64,08,464/- and to insist such payment is as good as dismissing the appeal without any adjudication. In other words, the submissions of Mr. Hemani is that the respondent No.2, while considering grant of stay could not have mechanically directed deposit of 20% of the amount in question, more particularly, when the amount constituting 20% by itself is an astronomical figure.

9. Mr. Hemani laid much emphasis on the fact that the case on hand is one of high pitched assessment. It is approximately 100 times of the returned income and in view of this fact alone, the writ applicant is entitled to a stay of the notices towards recovery.

10. Mr. Hemani would submit that the tendency of making high pitched assessments by the Assessing Officers is not something unknown and quite often it has caused serious prejudice to the assessee leading to a serious miscarriage of justice. At times, such high pitched assessments by the Assessing Officers may even result into insolvency or closure of the business if such power was to be exercised only in a pro-revenue manner.

11. Mr. Hemani would submit that the parameters which should be kept in mind while considering the grant of stay of disputed demand are (i) the existence of a prima facie case (ii) financial stringency and (iii) balance of

convenience. He would submit that the financial stringency would include within its ambit the question of “irreparable injury” and “undue hardship” as well. It is only upon an application of the three factors as aforesaid that the Assessing Officer can exercise discretion for the grant or rejection, wholly or in part of a request for stay of the disputed demand.

12. Mr. Hemani submitted that the respondent No.2 is guided by the CBDT circulars/instructions issued time to time. Such circulars and instructions are in the nature of guidelines and are issued to assist the Assessing Authority in the matter of grant of stay and cannot substitute or override the basic tenets to be followed in the consideration and disposal of the stay applications. Mr. Hemani invited the attention of this Court to Para-4 of the impugned order dated 17.12.2021, wherein the respondent No.2 has referred and relied upon an office letter dated 08.12.2021 providing guidelines for staying the demand. The argument of Mr. Hemani is that the respondent No.2 has looked into only one such letter for being guided as regards the stay of demand. He would argue that the error on the part of the respondent No.2 is writ large as reflected in para-5 of the impugned order wherein it is stated that the office letter dated 08.12.2021 supersedes all earlier instructions issued by the CBDT on the subject. This, according to Mr. Hemani, is something erroneous.

13. Mr. Hemani took us through the various circulars and notifications on the subject. He invited our attention first to the Instruction No.96 dated 21.08.1969. Thereafter, he took us through the Instruction No.1914 dated 02.12.1993 followed by the office memorandum dated 29.02.2016 and 31.07.2017 respectively and also the Circular No.14 (XL-35) of 1995 dated 11.04.1995. Mr. Hemani would submit that to ignore all the aforesaid circulars and notifications and stick only to one office order dated 08.12.2021 was a big mistake on the part of the respondent No.2.

14. Mr. Hemani brought to our notice that the assessment order has been challenged before the Commissioner of Appeals essentially on the following grounds;

> *"(i) The respondent department. i.e., neither Investigating Wing nor Respondent No.4 have taken statement of person Shri Ashwin Shah who was maintaining all the records (rough pages/notings/documents) and said Shri Ashwin Shah has also filed an affidavit clearly mentioning all the notings and workings to be mere rough scribblings with no authenticity and the same cannot be taken to be the basis for income additions.*
>
> *(ii) Investigation wring has submitted its report to the Respondent No.4 before one and half year, however, the Respondent No.4 could not conduct any independent inquiry (Cross examination of parties) during the whole assessment proceedings which clearly shows that assessment has been framed merely on the basis of assumptions, conjecture and*

surmises.

(iii) The respondent No.4 has issued show-cause notice to the petitioner on 23.09.2021, i.e, merely one week before 30.09.2021 (time barring date for completion of assessment) which shows that the petitioner was deliberately not given any time or sufficient/reasonable time or opportunity to justify the transactions or furnish requisite explanation.

(iv) On perusal of the notices issued u/s. 142(1), it is evident that the Respondent No.4 has not called for the details in respect of various transactions, however, all of those transactions were covered in show cause notice and the petitioner was asked to furnish explanation which again clearly shows breach of principles of natural justice.

(v) On perusal of the assessment orders, it can be verified that the Respondent No.12 has added several transactions are such which were added at one place and the addition for the same transaction was made at other. This has caused duplication of additions and ultimately the respondent No.4 has conducted high pitched assessment.

(vi) The assessment for all the assessment years (from A.Y.2010-11 to A.Y.2018-19) have been concluded by the assessing officer after in depth scrutiny and the assessing officer did not comment adversely anywhere in the assessment order regarding transactions. Still, the Respondent No.4 has concluded the post search assessment covering all the transactions for which assessments u/s.143(3) were completed in earlier period and that too without any basis and or justification.

(vii) That the respondent No.4 has made replication/ duplication leading to dual addition in several transactions which has led to the assessment going more than 100 times the returned income. The recovery sought to be made by way of the

assessment orders is nothing but inflated transactions which have no basis in law.

(viii) That the petitioner has negative income/losses and a copy of the unaudited/provisional profit and loss and balance sheet showing loss to the extent of Rs.4 Crores up till 31.03.2021 is annexed hereto and marked as Annexure-K.

(ix) That the entire conclusion had been drawn by the respondent No.4 on the basis of material seized from the one Ashwinbhai which was in the form of a diary wherein rough notes were maintained. The said Ashwinbhai Shah also filed an affidavit with the respondent No.4 stating that the said rough scribbles had no connection with the actual transactions. Such being the situation, the respondent No.4 did not even bother to take the statement of said Ashwinbhai Shah nor put him for cross examination during the entire proceedings. Solely on the basis of unsubstantiated notes which has led to the huge additions in the assessment order making the said assessment orders high pitched. Annexed hereto and marked as Annexure-L is a copy of the affidavit filed by Shri Ashwinbhai Shah and his wife Chhayaben Ashwinbhai Shah."

15. Mr. Hemani, in support of his aforesaid submissions, has placed reliance on the following case laws;

Sr. No.	List of Judgments	Citations
1.	The Abraham Memorial Education Trust vs. The Deputy Commissioner of Income Tax, Bengaluru	MANU/KA/1124/2019
2.	Soul vs. Deputy Commissioner of Income Tax	(2008) 220 CTR (Del.) 211
3.	Flipkart India Pvt. Ltd. vs. Assistant Commissioner of Income Tax	(2017) 295 CTR (Kar.) 149
4.	Taneja Developers & Infrastructure Ltd. vs. Asst. Commissioner of Income Tax	MANU/DE/0352/2009
5.	Bhupendra Murji Shah vs. Deputy	MANU/TN/3920/2018

	Commissioner of Income Tax	
6.	Kalaignar Tv Pvt. Ltd. vs. Assistant Commissioner of Income Tax	MANU/TN/3920/2018
7.	Vodafone M-Pesa Ltd. vs. Principal Commi. Of Income Tax	MANU/MH/2302/2018
8.	Aarti Sponge and Power Ltd. vs. Assistant Commi. Of Income Tax (Chhattisgarh High Court)	Writ Petition No.59/2018 (judgment dt. 10.04.2018)
9.	Vimalkumar Agarwal & Ors. vs. Principal Commi. Of Income Tax	MANU/CG/0119/2018
10.	KEC International Ltd. vs. B.R. Balkrishnan & Ors.	MANU/MH/0496/2001
11.	J.R. Tantia Charitable Trust vs. Deputy Commi. of Income Tax	(2011) 245 CTR (Raj.) 162
12.	Valvoline Cummins Ltd. vs. Deputy Commi. Of Income Tax	(2008) 217 CTR (Del.) 292
13.	N. Jegatheesan vs. Deputy Commi. Of Income Tax	(2015) 64 Taxmann.com 339 (Madras)

16. In such circumstances, referred to above, Mr. Hemani prays that there being merit in his writ application, the same may be allowed and the precondition of deposit of 20% of the total demand may be waived or stayed till the final disposal of the appeal which has been filed by the writ applicant before the Commissioner of Appeals under Section 251 of the Act.

Submissions on behalf of the Revenue:-

17. On the other hand, Mr. M.R. Bhatt, the learned senior counsel appearing for the Revenue has vehemently opposed this writ application submitting that no error, not to speak of any error of law, could be said to have been

committed by the respondent No.2 in declining to waive 20% of the pre-deposit amount in exercise of his discretion under Section 220(6) of the Act.

18. Mr. Bhatt would submit that the respondent No.2 could be said to have passed the impugned order of grant of conditional stay by keeping in mind all the relevant considerations and once such an order is passed in exercise of his discretionary power, this Court, in exercise of its writ jurisdiction, should be loath to interfere with the same. Mr. Bhatt would argue that the CBDT Instructions No.95 dated 21.08.1969, on which, reliance is placed on behalf of the writ applicant is no more in force as the same stood superseded by the Instruction No.1914 dated 28.07.2020. Mr. Bhatt laid much emphasis on the fact that pursuant to the search operations, the assessments were carried out which resulted into substantial tax demands. This is one major factor which Mr. Bhatt wants this Court to keep in mind vis-a-vis the argument of the writ applicant as regards the high pitched assessment. To put it succinctly, the argument of Mr. Bhatt is that just because the amount of the returned income assessed is huge, that by itself, will not be sufficient to say that it is a case of high pitched assessment. If during the search operations, cogent and convincing material is collected pointing out towards the dubious role played by the assessee as also the various doubtful financial transactions, at times the amount towards the returned

income that may be determined may be huge, but that by itself, would not make it a case of high pitched assessment.

19. Mr. Bhatt further submitted that the powers analogous to Section 220(6) of the Act are also with the First Appellate Authority, namely, the CIT (Appeals). In other words, the powers to grant stay can be implied as inherent power of the First Appellate Authority, namely, the CIT (Appeals). Mr. Bhatt would submit that the writ applicant may not press this writ application with liberty to file appropriate application before the First Appellate Authority, namely, CIT (Appeals) and pray for an appropriate relief so far as the recovery of the demand is concerned pending the final disposal of the appeal filed by the writ applicant.

20. Mr. Bhatt, in support of his aforesaid submissions, has placed reliance on the following case laws;

(i) ***Karmvir Builders vs. Principal Commissioner of Income Tax (Central)***, (2020) 113 taxmann.com 139 (SC);

(ii) ***Sporting Pastime India Ltd. vs. Assistant Registrar, Chennai***, (2020) 122 taxmann.com 44 (Madras);

(iii) ***Gorlas Infrastructure (P.) Ltd. vs. Principal***

Commissioner of Income Tax, (2021) 130 taxmann.com 378 (Telangana);

21. In such circumstances, referred to above, Mr. Bhatt prays that there being no merit in the present writ application, the same may be rejected.

ANALYSIS

22. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the writ applicant is entitled to any relief as prayed for in the present writ application.

23. Section 220 lays down the procedure for collection and recovery of the tax. Section 220 falls in Chapter-XVII.

24. Sub-section (3) of Section 220 reads thus;

> *"(3) Without prejudice to the provisions contained in sub- section (2), on an application made by the assessee before the expiry of the due date under sub- section (1), the Assessing Officer may extend the time for payment or allow payment by installments, subject to such conditions as he may think fit to impose in the circumstances of the case."*

25. Sub-section (4) of Section 220 reads thus;

> "*(4) If the amount is not paid within the time limit under sub- section (1) or extended under sub-*

section (3), as the case may be, at the place and to the person mentioned in the said notice the assessee shall be deemed to be in default."

26. The plain reading of sub-section (4) as above would indicate that if the amount is not paid within the time limit under sub-section (1) or within the extended time limit under sub-section (3), as the case may be, the assessee would be deemed to be in default. A legal fiction of being deemed to be in default has been provided in the statute.

27. Sub-section (6) of Section 220 reads thus;

"(6) Where an assessee has presented an appeal under section 246, [the Assessing] Officer may, in his discretion, and subject to such conditions as he may think fit to impose in the circumstances of the case, treat the assessee as not being in default in respect of the amount in dispute in the appeal, even though the time for payment has expired, as long as such appeal remains undisposed of."

28. The plain reading of the above sub-section would indicate that if the assessee has presented an appeal against the final order of assessment under Section 246 of the Act, it would be within the discretion of the Assessing Officer subject to such conditions that he may deem fit to impose in the circumstances of the case, treat the assessee as not being in default in respect of the amount in dispute in the appeal so long as the appeal remains undisposed of. What is discernible from the aforesaid is that once the final order of assessment has passed, determining the liability of the assessee to pay a particular

amount and such amount is not paid within the time limit as prescribed under sub-section (1) to Section 220 or during the extended time period under sub-section (3) as the case may be, then the assessee, because of the deeming fiction, would be deemed to be in default. Therefore, even if the assessee prefers an appeal challenging the assessment order before the Commissioner of Appeals as the First Appellate Authority, he would still be treated as an assessee deemed to be in default because mere filing of an appeal would not automatically lead to stay of the demand as raised in the assessment order. It is in such circumstances that the assessee has to make a request before the authority concerned for appropriate relief for grant of stay against such demand pending the final disposal of the appeal. This relief which the assessee seeks is within the discretion of the authority. In other words, the authority may grant such stay conditionally or unconditionally or may even decline to grant any stay. However, the exercise of such discretion has to be in a judicious manner. Such exercise of discretion cannot be in a arbitrary or mechanical manner.

29. The aforesaid leads us to consider what parameters should be kept in mind by the authority concerned while considering the request of the assessee for stay of the demand. For the time being, we put aside all the instructions and circulars issued by the CBDT over a

period of time. Undoubtedly, all such instructions and circulars are in the form of guidelines which the authority concerned is supposed to keep in mind. Such instructions/ circulars are issued to ensure that there is no arbitrary exercise of power by the authority concerned or in a given case, the authority may not act prejudicial to the interest of the Revenue. However, when it comes to grant of a discretionary relief like stay of demand, it is but obvious that the four basic parameters need to be kept in mind (i) prima facie case (ii) balance of convenience (iii) irreparable injury that may be caused to the assessee which cannot be compensated in terms of money and (iv) whether the assessee has come before the authority with clean hands.

30. The power under Clause (6) of Section 220 is indeed a discretionary power. However, it is one coupled with a duty to be exercised judiciously and reasonably (as every power should be), based on relevant grounds. It should not be exercised arbitrarily or capriciously or based on matters extraneous or irrelevant. The Income-tax Officer should apply his mind to the facts and circumstances of the case relevant to the exercise of the discretion, in all its aspects. He has also to remember that he is not the final arbiter of the disputes involved but only the first amongst the statutory authorities. Questions of fact and of law are open for decision before the two appellate authorities, both of whom possess plenary powers. In exercising his

power, the Income-tax Officer should not act as a mere tax-gatherer but as a quasi-judicial authority vested with the power of mitigating hardship to the assessee. The Income-tax Officer should divorce himself from his position as the authority who made the assessment and consider the matter in all its facets, from the point of view of the assessee without at the same time sacrificing the interests of the Revenue. Says Viswanatha Sastri J. in Vetcha Sreemmamurthy v. ITO [1956] 30 ITR 252 (AP) (at pages 268 and 269):

> "*The Legislature has, however, chosen to entrust the discretion to them. Being to some extent in the position of judges in their own cause and invested with a wide discretion under Section 45 of the Act, the responsibility for taking an impartial and objective view is all the greater. If the circumstances exist under which it was contemplated that the power of granting a stay should be exercised, the Income-tax Officer cannot decline to exercise that power on the ground that it was left to his discretion. In such a case, the Legislature is presumed to have intended not to grant an absolute, uncontrolled or arbitrary discretion to the Officer but to impose upon him the duty of considering the facts and circumstances of the particular case and then coming to an honest judgment as to whether the case calls for the exercise of that power.*"

31. Being a matter of discretion, it is not possible to strait-jacket or lay down the principles on which the discretion is to be exercised. The question as to what are the matters relevant and what should go into the making of the decision by the Income-tax Officer in such

circumstances has been explained by D. N, Sinha J. (in the context of the corresponding provisions of the Wealth-tax Act) in Aluminium Corporation of India Ltd. v. C. Balakrishnan [1959] 37 ITR 267 (Cal). The learned Judge states (at pages 269 and 270):

> "*A judicial exercise of discretion involves a consideration of the facts and circumstances of the case in all its aspects. The difficulties involved in the issues raised in the case and the prospects of the appeal being successful is one such aspect. The position and economic circumstances of the assessee is another. If the officer feels that the stay would put the realisation of the amount in jeopardy, that would be a cogent factor to be taken into consideration. The amount involved is also a relevant factor. If it is a heavy amount, it should be presumed that immediate payment, pending an appeal in which there may be a reasonable chance of success, would constitute a hardship. The Wealth-tax Act has just come into operation. If any point is involved which requires an authoritative decision, that is to say, a precedent, that is a point in favour of granting a stay. Quick realisation of tax may be an administrative expediency, but by itself it constitutes no ground for refusing a stay. While determining such an application, the authority exercising discretion should not act in the role of a mere tax-gatherer.*"

32. In the case on hand, unfortunately, the respondent No.2 has not considered anything and has just mechanically declined to grant relief as prayed for by the writ applicant. When the writ applicant pointed out to the respondent No.2 that the case on hand is one of high pitched assessment, the same came to be dismissed by

the respondent No.2 by merely saying that the issue has been discussed threadbare during the assessment proceedings. In other words, the finding recorded by the respondent No.2 is that the assessment order came to be passed by the Assessing Officer after granting sufficient opportunities and after due consideration of all the relevant aspects of the matter and, therefore, the issue of high pitched assessment need not be considered. The findings recorded in para-3 of the order dated 17.12.2021 are not appealing to us at all. The matter has not been considered by the respondent No.2 in its proper perspective. Many times in the over zealousness to protect the interest of the Revenue, the authorities render their discretionary orders susceptible to the complaint that those have been passed without any application of mind. We fail to understand what is so magical in the figure of 20%. To balance the equities, the authority may even consider directing the assessee to make a deposit of 5% or 10% of the assessed amount as the circumstances may demand as a pre-deposit. The “High Pitched Assessment” means where the income determined and assessment was substantially higher than the returned income. For example, twice the returned income or more.

33. In the aforesaid context, we may look into the decision of the Madras High Court in the case of ***N. Jegatheesan vs. Deputy Commissioner of Income Tax, Non Corporate Circule-2,*** reported in (2016) 388 ITR 410 (Mad.), wherein the Court observed in Para-14 as

under;

> *"High Pitched Assessment? means where the income determined and assessment was substantially higher than the returned income, say twice the later amount or more, the collection of the tax in dispute should be kept in abeyance till the decision on the appeal provided there were no lapses on the part of the assessee. In the instant case, the assessment in question in the pending appeal before the Commissioner of Income Tax (Appeals) is a High Pitched Assessment, because the petitioner has submitted his return for the accounting period, that is 01.04.2011 to 31.03.2012 for the assessment year 2012-2013 as Rs.4,91,680/- including agricultural income of Rs.45,00,000/-. But, the respondent having formed adverse opinion, as set out in the assessment order dated 31.3.2015, negativing agricultural income, made additions to the tune of Rs.55,00,000/-. Thereby, adding admitted income of Rs.4,91,680/- with addition of Rs.55,00,000/-, the respondent arbitrarily without providing opportunity of cross-examination contrary to the powers invested on him under the fiscal statute, arrived total income as Rs.59,91,680/-. Thereby, the respondent determined income on assessment substantially higher than the returned income of Rs.4,91,680/-, by way of 14 times, made assessment arriving total income of Rs.59,91,680/-. Therefore, the assessment made by the respondent is a High Pitched Assessment."*

34. In context with the high pitched assessment, we may also refer to a decision of the Delhi High Court in the case of ***Soul vs. Deputy Commissioner of Income Tax***, reported in (2010) 323 ITR 305 (Delhi), wherein a Division Bench of the High Court observed in Para-9 as under;

"Having considered the arguments advanced by the learned Counsel for the parties, we are of the view that although Instruction No. 1914 of 1993 specifically states that it is in super-session of all earlier instructions, the position obtaining after the decision of this Court in Valvoline Cummins Ltd. (supra) is not altered at all. This is so because para No. 2(A) which speaks of responsibility specifically indicates that it shall be the responsibility of the AO and the TRO to collect every demand that has been raised "except the following", which includes "(d) demand stayed in accordance with the paras B and C below". Para B relates to stay petitions. As extracted above, Sub-clause (iii) of para B clearly indicates that a higher/superior authority could interfere with the decision of the AO/TRO only in exceptional circumstances. The exceptional circumstances have been indicated as - "where the assessment order appears to be unreasonably high pitched or where genuine hardship is likely to be caused to the assessee". The very question as to what would constitute the assessment order as being reasonably high pitched in consideration under the said Instruction No. 96 and, there, it has been noted by way of illustration that assessment at twice the amount of the returned income would amount to being substantially higher or high pitched. In the case before this Court in Valvoline Cummins Ltd. (supra) the assessees income was about eight (8) times the returned income. This Court was of the view that was high pitched. In the present case, the assessed income is approximately 74 times the returned income and obviously, this would fall within the expression "unreasonably high pitched".

35. We may also look into a Division Bench decision of the Delhi High Court in the case of ***Valvoline Cummins Limited vs. Deputy Commissioner of Income Tax & Ors***., reported in (2008) 307 ITR 103 (Delhi), wherein

Justice Madan B. Lokur, as His Lordship than was, in identical set of facts, observed as under;

> *"39. Learned Counsel for the assessed also took us to the merits of the assessment order with a view to show that prima facie the demand was unreasonable in as much as the assessed was not given a proper hearing before the assessment order was framed. We are not inclined to delve into this issue because that is a matter which has to be decided by the CIT (A) but we may note (for the purposes of only deciding this writ petition) that there is substance in the contention of the assessed that the assessment order is extremely harsh.*
>
> *40. It may be recalled that the returned income of the assessed was Rs. 7.25 crores, but the assessed income is Rs. 58.68 crores, which is almost 8 times the returned income. In this regard, learned Counsel has drawn our attention to Instruction No. 96 dated 21st August, 1969 issued by the CBDT, which deals with the framing of an assessment which is substantially higher than the returned income. The relevant portion of the Instruction reads as follows:*
>
> > *1222. Income determined on assessment was substantially higher than returned income Whether collection of tax in dispute is to be held in abeyance till decision on appeal*
> >
> > *1. One of the points that came up for consideration in the 8th meeting of the Informal Consultative Committee was that income-tax assessments were arbitrarily pitched at high figures and that the collection of disputed demands as a result thereof was also not stayed in spite of the specific provision in the matter in Section 220(6).*
> >
> > *2. The then Deputy Prime Minister had observed as under:*

...where the income determined on assessment was substantially higher than the returned income, say, twice the latter amount or more, the collection of the tax in dispute should be held in abeyance till the decision on the appeals, provided there were no lapse on the part of the assessed.

3. The Board desire that the above observations may be brought to the notice of all the Income-tax Officers working under you and the powers of stay of recovery in such cases up to the stage of first appeal may be exercised by the Inspecting Assistant Commissioner/Commissioner of Income-tax.

41. A perusal of paragraph 2 of the aforesaid extract would show that where the income determined is substantially higher than the returned income, that is, twice the latter amount or more, then the collection of tax in dispute should be held in abeyance till the decision on the appeal is taken. In this case, as we have noted above, the assessment is almost 8 times the returned income. Clearly, the above extract from Instruction No. 96 dated 21st August, 1969 would be applicable to the facts of the case.

42. Learned Counsel for the assessed has drawn our attention to several decisions of various High Courts which have interpreted the aforesaid Instruction in the way that we have read it. Some of these decisions are N. Rajan Nair v. Income Tax Officer and Anr. , Mrs. R. Mani Goyal v. Commissioner of Income Tax and Anr. and I.V.R. Construction Ltd. v. Assistant Commissioner of Income Tax and Anr. .

43. Under the circumstances, we are of the view that the assessed would, in normal course, be entitled to an absolute stay of the demand on the basis of the above Instruction."

36. The Madras High Court, in the case of ***Mrs. Kannammal vs. Income-tax Officer-Ward-1(1), Tripura***, reported in (2019) 103 taxmann.com 364 (Madras) had the occasion to look into all the instructions/ circulars issued by the CBDT over a period of time and considering those, held as under;

> *"7. The parameters to be taken into account in considering the grant of stay of disputed demand are well settled – the existence of a prima facie case, financial stringency and the balance of convenience. 'Financial stringency' would include within its ambit the question of 'irreparable injury' and 'undue hardship' as well. It is only upon an application of the three factors as aforesaid that the assessing officer can exercise discretion for the grant or rejection, wholly or in part, of a request for stay of disputed demand.*
>
> *8. In addition, periodic Instructions/Circulars in regard to the manner of adjudication of stay petitions are issued by the Central Board of Direct Taxes (CBDT) for the guidance of the Departmental authorities. The one oft-quoted by the assessee is Office Memorandum F.No.1/6/69/-ITCC, dated 21.08.1969 that states as follows:*
>
> > *'1. One of the points that came up for consideration in the 8th Meeting of the Informal Consultative Committee was that income-tax assessments were often arbitrarily pitched at higher figures and that the collection of disputed demand as a result thereof was also not stayed in spite of the specific provision in the matter in s. 220(6) of the IT Act, 1961.*
> >
> > *2. The then Deputy Prime Minister had observed*

as under :

".....Where the income determined on assessment was substantially higher than the returned income, say twice the latter amount or more, the collection of the tax in dispute should be held in abeyance till the decision on the appeal provided there were no lapses on the part of the assessees."

3. The Board desire that the above observations may be brought to the notice of all the Income-tax Officers working under you and the powers of stay of recovery in such cases up to the stage of first appeal may be http://www.judis.nic.in exercised by the Inspecting Assistant Commissioner/Commissioner of Income-tax.'

9. Thereafter, Instruction No.1914 was issued by the CBDT on 21.03.1996 and states as follows:

1. Recovery of outstanding tax demands [Instruction No. 1914 F. No. 404/72/93 ITCC dated 2-12-1993 from CBDT] The Board has felt the need for a comprehensive instruction on the subject of recovery of tax demand in order to streamline recovery procedures. This instruction is accordingly being issued in supersession of all earlier instructions on the subject and reiterates the existing Circulars on the subject.

2. The Board is of the view that, as a matter of principle, every demand should be recovered as soon as it becomes due. Demand may be kept in abeyance for valid reasons only in accordance with the guidelines given below :

A. Responsibility:

i. It shall be the responsibility of the Assessing Officer and the TRO to collect every demand that has been raised, except the following: (a)

Demand which has not fallen due;(b) Demand which has been stayed by a Court or ITAT or Settlement Commission;(c) Demand for which a proper proposal for write-off has been submitted;(d) Demand stayed in accordance with paras B & C below.

ii. Where demand in respect of which a recovery certificate has been issued or a statement has been drawn, the primary responsibility for the collection of tax shall rest with the TRO. iii. It would be the responsibility of the supervisory authorities to ensure that the Assessing Officers and the TROs take all such measures as are necessary to collect the demand. It must be understood that mere issue of a show cause notice with no follow- up is not to be regarded as adequate effort to recover taxes. B. Stay Petitions:

i. Stay petitions filed with the Assessing Officers must be disposed of within two weeks of the filing of petition by the tax- payer. The assessee must be intimated of the decision without delay.

ii. Where stay petitions are made to the authorities higher than the Assessing Officer (DC/CIT/CC), it is the responsibility of the higher authorities to dispose of the petitions without any delay, and in any event within two weeks of the receipt of the petition. Such a decision should be communicated to the assessee and the Assessing Officer immediately.

iii. The decision in the matter of stay of demand should normally be taken by Assessing Officer/TRO and his immediate superior. A higher superior authority should interfere with the decision of the AO/TRO only in exceptional circumstances; e.g., where the assessment order appears to be unreasonably high-pitched or http://www.judis.nic.in where genuine

hardship is likely to be caused to the assessee. The higher authorities should discourage the assessee from filing review petitions before them as a matter of routine or in a frivolous manner to gain time for withholding payment of taxes.

C. Guidelines for staying demand:

i. A demand will be stayed only if there are valid reasons for doing so. Mere filing an appeal against the assessment order will not be a sufficient reason to stay the recovery of demand. A few illustrative situations where stay could be granted are: It is clarified that in these situations also, stay may be granted only in respect of the amount attributable to such disputed points. Further where it is subsequently found that the assessee has not co-operated in the early disposal of appeal or where a subsequent pronouncement by a higher appellate authority or court alters the above situation, the stay order may be reviewed and modified. The above illustrations are, of course, not exhaustive.

ii. In granting stay, the Assessing Officer may impose such conditions as he may think fit. Thus he may — a. require the assessee to offer suitable security to safeguard the interest of revenue; b. require the assessee to pay towards the disputed taxes a reasonable amount in lump sum or in instalments; c. require an undertaking from the assessee that he will co-operate in the early disposal of appeal failing which the stay order will be cancelled. d. reserve the right to review the order passed after expiry of a reasonable period, say up to 6 months, or if the assessee has not co-operated in the early disposal of appeal, or where a subsequent pronouncement by a higher appellate authority or court alters the above situations; e. reserve a right to adjust refunds arising, if any, against the demand.

iii. Payment by instalments may be liberally allowed

so as to collect the entire demand within a reasonable period not exceeding 18 months.

iv. Since the phrase "stay of demand" does not occur in section 220(6) of the Income-tax Act, the Assessing Officer should always use in any order passed under section 220(6) [or under section 220(3) or section 220(7)], the expression that occurs in the section viz., that he agrees to treat the assessee as not being default in respect of the amount specified, subject to such conditions as he deems fit to impose.

v. While considering an application under section 220(6), the Assessing Officer should consider all relevant factors having a bearing on the demand raised and communicate his decision in the form of a speaking order.

D. Miscellaneous:

i. Even where recovery of demand has been stayed, the Assessing Officer will continue to review the situation to ensure that the conditions imposed are fulfilled by the assessee failing which the stay order would need to be withdrawn.

ii. Where the assessee seeks stay of demand from the Tribunal, it should be strongly opposed. If the assessee presses his application, the CIT should direct the departmental representative to request that the appeal be posted within a month so that Tribunal's order on the appeal can be known within two months.

iii. Appeal effects will have to be given within 2 weeks from the receipt of the appellate order. Similarly, rectification application should be decided within 2 weeks of the receipt t hereof. Instances where there is undue delay in giving effect to appellate orders, or in deciding rectification applications, should be dealt with very strictly by the CCITs/CITs.

3. The Board desires that appropriate action is taken in the matter of recovery in accordance with the above procedure. The Assessing Officer or the TRO, as the case may be, and his immediate superior officer shall be held responsible for ensuring compliance with these instructions.

4. This procedure would apply mutatis mutandis to demands created under other Direct Taxes enactments also.'

10. Instruction 1914 was partially modified by Office Memorandum dated 29.02.2016 taking into account the fact that Assessing Officers insisted on payment of significant portions of the disputed demand prior to grant of stay resulting in extreme hardship for tax payers. Thus, in order to streamline the grant of stay and standardize the procedure, modified guidelines were issued which are as follows:

'*.....*

(A) In a case where the outstanding demand is disputed before CIT (A), the assessing officer shall grant stay of demand till disposal of first appeal on payment of 15% of the disputed demand, unless the case falls in the category discussed in pars (B) hereunder.

(B) In a situation where,

(a) the assessing officer is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount higher than 15% 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 Revenue or addition is based on credible evidence collected in a search or survey operation, etc.) or,

(b) the assessing officer 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% 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 assessee, etc.), the assessing officer shall refer the matter to the administrative Pr. CIT/ CIT, who after considering all relevant facts shall decide the quantum/ proportion of demand to be paid by the assessee as lump sum payment for granting a stay of the balance demand.'

11. Instruction 1914 was further modified by Office Memorandum bearing number F.No.404/72/93 – ITCC dated 31.07 2017 as follows:

'*OFFICE MEMORANDUM F. No. 404/72/93-ITCC dated 31.07.2017 Subject: Partial modification of Instruction No. 1914 dated 21.3.1996 to provide for guidelines for stay of demand at the first appeal stage. Reference: Board's O.M. of even number dated 29.2.2016 Instruction No. 1914 dated 21.3.1996 contains guidelines issued by the Board regarding procedure to be followed for recovery of outstanding demand, including procedure for grant of stay of demand.*

Vide O.M. N0.404/72/93-ITCC dated 29.2.2016 revised guidelines were issued in partial modification of instruction No 1914, wherein, inter alia, vide para 4(A) it had been laid down that in a case where the outstanding demand is disputed before CIT(A), the Assessing Officer shall grant stay of demand till disposal of first appeal on payment of 15% of the disputed demand unless the case falls in the category discussed in para (B) thereunder. Similar references to the standard rate of 15% have also been made in succeeding paragraphs therein.

2. The matter has been reviewed by the Board in the light of feedback received from field authorities. In view of the Board's efforts to contain over pitched assessments through several measures resulting in fairer and more reasonable assessment orders, the standard rate of 15% of the disputed demand is found to be on the lower side. Accordingly. it has been decided that the standard rate prescribed in O.M. dated 29.2.2016 be revised to 20% of the disputed demand, where the demand is contested before CIT(A). Thus all references to 15% of the disputed demand in the aforesaid O.M dated 29.2.2016 hereby stand modified to 20% of the disputed demand. Other guidelines contained in the O.M. dated 29.2.2016 shall remain unchanged.

These modifications may be immediately brought to the notice of all officers working in your jurisdiction for proper compliance.'

12. The Circulars and Instructions as extracted above are in the nature of guidelines issued to assist the assessing authorities in the matter of grant of stay and cannot substitute or override the basic tenets to be followed in the consideration and disposal of stay petitions. The existence of a prima facie case for which some illustrations have been provided in the Circulars themselves, the financial stringency faced by an assessee and the balance of convenience in the matter constitute the 'trinity', so to say, and are indispensable in consideration of a stay petition by the authority. The Board has, while stating generally that the assessee shall be called upon to remit 20% of the disputed demand, granted ample discretion to the authority to either increase or decrease the quantum demanded based on the three vital factors to be taken into consideration.

13. In the present case, the assessing officer has merely rejected the petition by way of a non-speaking order reading as follows:

'Kindly refer to the above. This is to inform you that mere filing of appeal against the said order is not a ground for stay of the demand. Hence your request for stay of demand is rejected and you are requested to pay the demand immediately. Notice u/s.221(1) of the Income Tax Act, 1961 is enclosed herewith.'

14. The disposal of the request for stay by the petitioner leaves much to be desired. I am of the categoric view that the Assessing Officer ought to have taken note of the conditions precedent for the grant of stay as well as the Circulars issued by the CBDT and passed a speaking order. Of course the petition seeking stay filed by the petitioner is itself cryptic. However, as noted by the Supreme Court in the case of Commissioner of Income tax vs Mahindra Mills, ((2008) 296 ITR 85 (Mad)) in the context of grant of depreciation, the Circular of the Central Board of Revenue (No. 14 (SL- 35) of 1955 dated April 11, 1955) requires the officers of the department 'to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs. .... Although, therefore, the responsibility for claiming refunds and reliefs rests with the assessees on whom it is imposed by law, officers should draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or other.....'. Thus, notwithstanding that the assessee may not have specifically invoked the three parameters for the grant of stay, it is incumbent upon the assessing officer to examine the existence of a prima facie case as well as call upon the assessee to demonstrate financial stringency, if any and arrive at the balance of convenience in the matter."

37. The following is discernible from the above referred judgment of the Madras High Court;

(a) The Board has, while stating generally that the assessee shall be called upon to remit 20% of the disputed demand, granted ample discretion to the authority to either increase or decrease the quantum demanded based on the three vital factors to be taken into consideration, i.e. prima facie case, balance of convenience and irreparable injury.

(b) Notwithstanding that the assessee may not have specifically invoked the three parameters, referred to above, for the grant of stay, it is incumbent upon the assessing officer to examine the existence of a prima facie case as well as call upon the assessee to demonstrate financial stringency, if any, and arrive at the balance of convenience.

38. The principles relating to the exercise of discretion by an authority are expounded in various decisions of the Supreme Court. We may refer to few decisions.

39. In the case of ***Sant Raj and Anr. v. O.P. Singla and Anr.***: *(1985) 2 SCC 349,* the Supreme Court dealt with the matter as regards the discretion of the Labour Court to award compensation in lieu of reinstatement and observed as under;

> *"4.....Whenever, it is said that something has to be done within the discretion of the authority then that something has to be done according to the rules of*

reason and justice and not according to private opinion, according to law and not humor. It is to be not arbitrary, vague and fanciful but legal and regular and it must be exercised within the limit to which an honest man to the discharge of his office ought to find himself.....Discretion means sound discretion guided by law. It must be governed by rule, not by humor, it must not be arbitrary, vague and fanciful....." (emphasis in bold supplied)"

40. In the case of ***Reliance Airport Developers (P) Ltd. v. Airports Authority of India and Ors***. *(2006) 10 SCC 1*, the Supreme Court, with reference to various pronouncements pertaining to the legal connotations of 'discretion' and governing principles for exercise of discretion observed, inter alia, as under: -

"30. Discretion, in general, is the discernment of what is right and proper. It denotes knowledge and prudence, that discernment which enables a person to judge critically of what is correct and proper united with caution; nice discernment, and judgment directed by circumspection: deliberate judgment; soundness of judgment; a science or understanding to discern between falsity and truth, between wrong and right, between shadow and substance, between equity and colourable glosses and pretences, and not to do according to the will and private affections of persons."

41. In the case of ***U.P. State Road Transport Corporation and Anr. v. Mohd. Ismail and Ors.***: *(1991) 3 SCC 239*, while dealing with the case of non-exercise of discretion by the authority, the Supreme Court expounded on the contours of discretion as also on limitations on the powers of the Courts when the matter is

of the discretion of the competent authority, in the following terms: -

> *"12. The High Court was equally in error in directing the Corporation to offer alternative job to drivers who are found to be medically unfit before dispensing with their services. The court cannot dictate the decision of the statutory authority that ought to be made in the exercise of discretion in a given case. The court cannot direct the statutory authority to exercise the discretion in a particular manner not expressly required by law. The court could only command the statutory authority by a writ of mandamus to perform its duty by exercising the discretion according to law. Whether alternative job is to be offered or not is a matter left to the discretion of the competent authority of the Corporation and the Corporation has to exercise the discretion in individual cases. The court cannot command the Corporation to exercise discretion in a particular manner and in favour of a particular person. That would be beyond the jurisdiction of the court.*
>
> *13. In the instant case, the Corporation has denied itself the discretion to offer an alternative job which the regulation requires it to exercise in individual cases of retrenchment. ……It may be stated that the statutory discretion cannot be fettered by selfcreated rules or policy. Although it is open to an authority to which discretion has been entrusted to lay down the norms or rules to regulate exercise of discretion it cannot, however, deny itself the discretion which the statute requires it to exercise in individual cases. ……*
>
> *xxx xxx xxx*
>
> *"15…….Every discretion conferred by statute on a holder of public office must be exercised in furtherance of accomplishment of purpose of the*

power. The purpose of discretionary decision making under Regulation 17(3) was intended to rehabilitate the disabled drivers to the extent possible and within the abovesaid constraints. The Corporation therefore, cannot act mechanically. The discretion should not be exercised according to whim, caprice or ritual. The discretion should be exercised reasonably and rationally. It should be exercised faithfully and impartially. There should be proper value judgment with fairness and equity....."

(emphasis in bold supplied)

42. *In the case of* **Assistant Commissioner (CT) LTU, Kakinada and Ors. v. Glaxo Smith Kline Consumer Health Care Limited**, 2020 SCC OnLine SC 440, the Supreme Court expounded on the principles that the Constitutional Courts, even in exercise of their wide jurisdictions, cannot disregard the substantive provisions of statute while observing, inter alia, as under: -

"12. Indubitably, the powers of the High Court under Article 226 of the Constitution are wide, but certainly not wider than the plenary powers bestowed on this Court under Article 142 of the Constitution. Article 142 is a conglomeration and repository of the entire judicial powers under the Constitution, to do complete justice to the parties.

Even while exercising that power, this Court is required to bear in mind the legislative intent and not to render the statutory provision otiose."

43. Thus, when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; and has to be based on the relevant considerations. The exercise of discretion is

essentially the discernment of what is right and proper; and such discernment is the critical and cautious judgment of what is correct and proper by differentiating between shadow and substance as also between equity and pretence. A holder of public office, when exercising discretion conferred by the statute, has to ensure that such exercise is in furtherance of accomplishment of the purpose underlying conferment of such power. The requirements of reasonableness, rationality, impartiality, fairness and equity are inherent in any exercise of discretion; such an exercise can never be according to the private opinion.

44. It is hardly of any debate that discretion has to be exercised judiciously and, for that matter, all the facts and all the relevant surrounding factors as also the implication of exercise of discretion either way have to be properly weighed and a balanced decision is required to be taken.

45. The mandate of Parliament in sub-section (6) seems to be that the lower Assessing Officer should abide by and being bound by the decision of the appellate authority, should normally wait for the fate of such appeal filed by the assessee. Therefore, his discretion of not treating the assessee in default, conferred under sub-section (6) should ordinarily be exercised in favour of assessee, unless the overriding and overwhelming reasons are there to reject the application of the assessee under Section 220(6) of the Act. The application under Section 220(6) of

the Act cannot normally be rejected merely describing it to be against the interest of Revenue if recovery is not made, if tax demanded is twice or more of the declared tax liability. The very purpose of filing of appeal, which provides an effective remedy to the assessee is likely to be frustrated, if such a discretion was always to be exercised in favour of revenue rather than assessee.

46. We are of the view that the authorities should keep in mind the following parameters while deciding a stay application preferred by an assessee pending appeal to the First Appellate Authority. These are the parameters as laid down by the Bombay High Court in the case of ***Kec International Ltd. vs. B.R. Balakrishnan,*** (2001) 251 ITR 158/119 Taxman 974;

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 the 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.

47. Before we close this matter, we deem fit to draw the attention of one and all to the following observations made by the Supreme Court in the case of ***The Income Tax Officer, III Mangalore vs. M. Damodar Bhat,*** reported in AIR 1969 SC 408.

> *"We proceed to consider the next question arising in this appeal, viz., whether the High Court was right in taking the view that the Income Tax OffiCer did not properly exercise the statutory discretion in issuing the impugned notice with regard to the first item, viz., tax for the assessment year 1960-61 amounting to]Rs. 7,056.15. It was argued on behalf of the respondent that there was an appeal pending with the Appellate Assistant Commissioner against the order of assessment and therefore it was incumbent upon the Income Tax Officer to exercise the statutory discretion properly under s. 220 (6) of the new Act in treating the assessee as being in default. The finding of the High Court is that the Income Tax Officer "was*

not shown to have applied his mind to any of the facts relevant to the proper exercise of his discretion". In our opinion, the finding of the High Court cannot be upheld, because the respondent has not alleged in his writ petition any specific particulars in support of his, case that the Income Tax Officer has exercised his discretion in an arbitrary manner. In paragraph 12(b) of the writ petition the respondent had merely said that "the order of the Income Tax Officer made under s. 220 was arbitrary and capricious". No other particulars were given by the respondent in his writ petition to show in what way the order was arbitrary or capricious. In the counter- affidavit the allegations of the respondent have been denied in this respect. We are of opinion that in the absence of specific particulars by the respondent in his writ petition it is not open to the High Court to go into the question whether the Income Tax Officer has arbitrarily exercised his discretion. In the result we hold that the respondent is unable to substantiate his case that the impugned notice is in any way defective with regard to item no. 1 i.e., tax for the assessment year 1960-61 amounting to Rs. 7,056.15."

48. Thus, what is sought to be conveyed by the Supreme Court is that the writ applicant, in the memorandum of his writ application, must furnish specific particulars in support of his case that the Income-tax Officer has exercised his discretion in arbitrary manner. It is just not sufficient to make an averment in the memorandum of the writ application that "the order of the Income-tax Officer made under Section 220 is arbitrary and capricious". In the absence of specific particulars by the writ applicant in his writ application, the High Court should not go into the question whether the Income Tax Officer has arbitrarily exercised his discretion.

49. For the foregoing reasons, the Special Civil Application No.19804 of 2021 deserves to be allowed and the same is, accordingly, allowed. Consequently, the impugned orders passed by the respondent No.2 are set aside and the respondent No.2 is directed to consider the application filed by the writ applicant under Sections 220(3) and 220(6) respectively of the I.T. Act afresh in conformity with all the CBDT instructions and the parameters laid as above by providing an opportunity of being heard to the writ applicant and pass orders in accordance with law preferably within a period of two weeks from the date of the receipt of the writ of this order.

50. So far as the other two connected writ applications are concerned, we decline to interfere having regard to the quantum of the amount involved in both the matters. However, we leave it open for the writ applicants of both the said writ applications to file an appropriate application seeking appropriate relief before the First Appellate Authority, i.e, the CIT (Appeals). We are saying so because such powers to grant stay can be implied as inherent power of the First Appellate Authority. The powers of the Appellate Authorities are indisputably concurrent and co-extensive with that of the Assessing Authority but wider and superior in nature. Section 251 of the Act clearly stipulates that in disposing of an appeal, the CIT (Appeals) can confirm, reduce, enhance or annul the assessment. Section 251 (1) (c) of the Act further provides that in other

cases, he may pass such orders in appeal as he thinks fit. These words harmoniously read, definitely mean that powers of appellate authorities under the Act are wide enough. Such powers could not be intended to be drained out or rendered meaningless, if the power to grant stay against the recovery of disputed demand is to be taken away from the first appellate authority. Such implied, necessary and inherent power must necessarily be read into these provisions conferring the powers upon the appellate authority to modify the impugned assessment order in any manner. In specific terms, the first appellate authority can even enhance the taxable income, while he has the power to reduce or completely set at naught the assessment. The words "as he thinks fit" in Section 251 (1) (C) are not redundant, as no such redundancy can be attributed to the Parliament. Therefore, mere absence of words "power to grant stay" in Section 251 of the Act cannot mean that such powers are specifically excluded from the jurisdiction of the first appellate authority. [See Maheshwari Agro Industries vs. Union of India, (2012) taxmann.com 68 (Raj.)]

51. With the aforesaid, all the three writ applications stand disposed of.

(J. B. PARDIWALA, J)

(NISHA M. THAKORE,J)

Vahid