Stay of Demand under the Income-tax Act, 1961 – Legal Framework, Administrative Instructions, and Judicial Precedents

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Introduction

Stay of tax demand under the Income-tax Act, 1961 serves as an important safeguard for taxpayers challenging disputed assessments. It ensures that recovery proceedings do not cause undue hardship while an appeal is pending. Over time, this area has seen significant development through statutory provisions, CBDT instructions, and judicial rulings, shaping a more balanced approach between revenue collection and taxpayer rights.

1. Statutory Framework under Section 220

Under **Section 220(1)** of the Income-tax Act, 1961 ("the Act"), a taxpayer is required to pay the amount specified in a notice of demand issued under **Section 156** within 30 days from the date of service of such notice.

As per **Section 220(3)**, the Assessing Officer (AO) may, at his discretion, extend the time for payment or permit payment in instalments, subject to such conditions as may be deemed fit.

Further, **Section 220(6)** provides a critical safeguard for taxpayers by enabling the AO, in cases where an appeal has been filed under **Section 246 or 246A**, to treat the assessee as **not being in default** in respect of the amount in dispute, even though the time for payment has expired, as long as the appeal remains pending. However, this discretion must be exercised judiciously and based on reasonable considerations.

Although Section 220(6) provides a safeguard, its discretionary nature often led to varied application by AOs, who would frequently demand substantial or full payment of the disputed demand, even in cases of high-pitched assessments or financial hardship.

2. Consequences of Default under Section 220

When an assessee fails to comply with the demand notice within the prescribed time and is not granted a stay, the assessee becomes "**assessee in default**" under the provisions of Section 220(4). This leads to the following consequences:

i. **Interest under Section 220(2):**

   Simple interest at **1% per month** is payable on the unpaid demand from the end of the 30-day period until the date of actual payment. This interest may be **waived or reduced** by the Chief Commissioner or Commissioner under certain conditions.

ii. **Penalty under Section 221:**

Penalty not exceeding the amount in arrears can be imposed, subject to the condition that the assessee cannot establish that the default occurred for good and sufficient reasons.

iii. **Recovery under Section 179:**

In the case of private limited companies, tax arrears may be recovered from the directors, provided the department establishes gross neglect, misfeasance, or breach of duty by such directors.

iv. **Other Recovery Measures:**

These may include attachment of bank accounts, property, garnishee proceedings, and in rare cases, prosecution.

3. Evolution of CBDT Instructions on Stay of Demand

3.1 Instruction No. 96 dated 21.08.1969

This instruction was issued based on assurances made by the then Deputy Prime Minister during the 8th meeting of the Informal Consultative Committee. It provided that in cases where assessments are **substantially higher than the returned income**, collection should be **kept in abeyance** until disposal of appeal, unless there is a lapse by the assessee. This reflected an intention to protect taxpayers from hardship due to **"high-pitched" assessments**.

3.2 Instruction No. 1914 dated 02.12.1993

This instruction **superseded Instruction No. 96 of 1969** and laid down a more procedural framework for recovery and stay matters. Key provisions include:

- Stay to be granted only where appropriate; **mere filing of appeal not sufficient**.
- AOs/TROs to resolve stay petitions within **two weeks**.
- Superior authorities may interfere only in **exceptional cases**, such as:
    - High-pitched assessments.
    - Genuine hardship.

Illustrative scenarios for stay:

- Past appellate decisions in the assessee's favor.
- Conflicting interpretations across High Courts.
- Jurisdictional High Court rulings not accepted by Revenue.

Further, the Instruction provides that some conditions may be attached to the Staying of Demand, such as:

i. require the assessee to offer **suitable security to safeguard the interest of revenue**,

ii. require the assessee to pay towards the disputed taxes a reasonable amount in lump sum or in instalments not exceeding 18 months etc.

Though this Instruction provided for allowing Stay of Demand with or without conditions, no percentage of deposit was prescribed to grant Stay of Demand. This resulted in AO and TRO demanding very high amount of disputed demand to grant Stay of Demand.

3.3 Clarification dated 01.12.2009

Clarified that **Instruction No. 1914 overrides Instruction No. 96**, and that the **quantum of addition alone** is not a valid ground for stay. This led to a practice of demanding **substantial pre-deposits**, irrespective of the quantum and the merits of the case.

3.4 Instruction dated 29.02.2016

To address hardship during appellate proceedings, CBDT introduced **a uniform guideline**:

- **Stay to be granted on payment of 15% (modified on 31.07.2017 to increase Pre-deposit to 20%)** of the disputed demand.
- AO can direct higher or lower deposit based on merits with prior **approval of CIT/PCIT**.
- **Assessee dissatisfied** with AO's decision may approach higher authority.

Notably, para 4(B)(b) provides that **lesser deposit** may be accepted in cases such as:

- Same issue already decided in assessee's favor.
- Jurisdictional High Court or Supreme Court judgment supports assessee.

Since, the instructions prescribed for instances where lower deposit may be warranted, the AO, CIT or PCIT used to stick to only those scenarios to grant Stay of Demand on lower payment and in other cases, the department has been insisting for substantial payment of demand irrespective of the quantum and the merits of the case.

4. Judicial Precedents on Stay of Demand

<u>4.1 Principles to follow for considering Staying of Recovery of Demand Application</u>

In **Ravi Gupta v. Commissioner of Sales Tax, Civil Appeal No. 1965 of 2009, the Hon'ble Supreme Court** outlined three factors for considering a stay application: (i) **prima facie case**, (ii) **balance of convenience**, and (iii) **irreparable loss**. If the Tax Demand appears unsustainable, stay should be granted. The Apex Court

stressed on the principle that though discretion is available in matters of Stay of Demand, the same has to be exercised judicially.

4.2 Stay of Demand on mere filling of Appeal

In the case of **Gouri Shankar Awasthi v. ITO (1978) 78 ITR 784 (Calcutta High Court)**, it was held that **stay of realisation cannot be granted simply because an appeal has been preferred**.

4.3 Stay of Demand on Financial Hardship or High-pitched Assessment cases

In the case **Mrs. R. Mani Goyal Vs. CIT, Civil Misc. Writ Petition No. 860 of 1995**, it was noted by the Hon'ble **Allahabad High Court** that "*it is opposed to principles of good conscience and fair play that the disputed amount of tax is sought to be recovered even though the appeal is pending. It adds to the **hardship of the appellant** in such circumstances, in which he is unable to deposit the amount during recovery proceedings.*" Further, it was noted that the Assessee should be given **full opportunity of being heard** before disposing the Stay of Demand Application and **stayed the recovery till the disposal of Appeal** pending before the Commissioner (Appeals). Order was pronounced on 27-Jul-1995.

Further, in the case of **Flipkart India (P.) Ltd. Vs. ACIT, Writ Petition Nos. 1339 - 1342 OF 2017 (T-IT), Karnataka High Court**, it was held that the factors which were directed to be kept in mind both by the Assessing Officer and by the higher superior authority contained in Instruction No.2B(iii) of Circular No.1914 of 1993, still continue to exist. The said part of Circular No.1914 has been left untouched by the Circular dated 29-2-2016. Accordingly, both the Assessing Officer, and the Principal Commissioner, are required to examine whether the assessment is "**unreasonably high-pitched**", or whether the demand for depositing 15 per cent of the disputed demand amount "would lead to a **genuine hardship** being caused to the assessee" or not?

Further, in the case of **Soul Vs. DCIT, WP(C) No. 5665 of 2008 and CM NO. 10823 of 2008, Hon'ble Delhi High Court** examined the CBDT Instruction no. 96 issued in 1969 and Instruction No. 1914 of 1993 and observed that if the assessed income is twice or more of returned income then it can be said as high-pitched assessment.

In the case of **N. Jegatheesan v. Dy. CIT [2015] 64 taxmann.com 339/[2016] 237 Taxman 490/388 ITR 410, Madras High Court**, it was observed that

- High Pitched Assessment means where the income determined and assessment was substantially higher than the returned income, say twice the latter 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.
- It is incorrect to state that CBDT Instruction No. 1914, dated 02.12.1993 supersedes all previous instructions although instruction No. 1914 specifically states that it is in supersession of earlier instructions; this position standing in light of judgment in the case of Valvoline Cummins Ltd. Vs.

Dy. CIT [2008] 307 ITR 103/171 Taxman 241 (Delhi) will remain unaltered. This is so because, the CBDT Instruction No. 96, dated 21.08.1969 was issued with the consent of the informal consultative committee meeting held on 13th May, 1969 formed under the business rules of the Parliament, which even now holds the field.

Further, in the case of **Harsh Dipak Shah Vs. Union of India, R/special Civil Application Nos. 19804, 19808 and 19815 of 2021, Gujarat High Court,** it was held that 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**. Accordingly, the department was directed to allow Stay of Demand on lower Pre-deposit of 5% or 10%.

4.4 Speaking Order

In the case of **Subhash Chander Seghal – Vs – DCIT, 173 Taxman 412 (Delhi), Lalit Wadhwa Versus Commissioner of Income-Tax, (2013) 082 DTR 0130 (P&H) and Flipkart India (P.) Ltd. Vs. ACIT, Write Petition Nos. 1339 - 1342 OF 2017 (T-IT), Karnataka High Court**, it was held that the assessing officer should pass a reasoned and speaking order if he rejects the application of stay of demand. In a consistent basis, the courts have held that the order rejecting the Stay Application has to be a speaking order i.e. it should be properly reasoned considering the facts of the case.

4.5 Whether payment of 20% is Pre-condition to grant Stay of Recovery of Demand

In the case of **Dr. B.L. Kapur Memorial Hospital Vs. CIT(TDS), W.P.(C) NOS. 16287 & 16288 OF 2022**, **Delhi High Court**, it was held that the requirement of payment of twenty per cent of disputed tax demand is **not a pre-requisite** for putting in abeyance recovery of demand pending first appeal in all cases. The said **pre-condition of deposit of twenty per cent of the demand can be relaxed in appropriate cases.**

Further in the case of **LG Electronics India (P.) Ltd Vs. PCIT, Civil Appeal No. 6850 of 2018, Hon'ble Supreme Court** held that it would be open to revenue authorities, on facts of individual cases, to grant deposit orders of a lesser amount than 20 per cent, while appeal is pending.

4.6 Adjustment of refunds more than 20% of disputed demand

Often taxpayers have certain refunds pertaining to other years that are due to them from the tax authorities. A question arises whether entire refund amount may be adjusted by the tax authorities against outstanding Tax Demand or only 20% of the disputed tax demand can be adjusted against the refund when an appeal is pending before CIT(A). In this regard, the Hon'ble **Gujarat High Court in Neo Structo Construction v. ACIT, [TS-5202-HC-2023(GUJARAT)-O]** held that only 20% of the disputed Tax Demand can be adjusted against refund receivable. The Court in this case directed tax department to refund the excess amount adjusted (i.e., refund adjusted beyond 20% of Tax Demand).

4.7 Notice under Section 245 required for making adjustment of refund against outstanding demand

In the case of **Jet Privilege (P.) Ltd. Vs. DCIT, Writ Petition No. 40 of 2021, Bombay High Court**, it was held that the department had not followed the mandatory prior requirement of intimation under Section 245 of the Act and accordingly, the adjustment of refund against outstanding demand was wholly illegal and the department was clearly in error in not refunding the amount.

4.8 Powers of CIT Appeals to grant Stay of Demand

Further, in the case of **Maheshwari Agro Industries Vs. Union of India, S. B. Civil Writ Petition No. 1264 of 2011, Rajasthan High Court** and **Debasish Moulik vs DCIT (1998) 231 ITR 737, Calcutta High Court,** it was held that Commissioner (Appeals) has inherent power to grant stay against recovery of disputed demand of tax while seized of appeal filed before him under section 246 or246A.

4.9 Powers of ITAT to grant Stay of Demand

In the case of **ITO v. M.K. Mohammed Kunhi [TS-5-SC-1968-O]**, the **Hon'ble Supreme Court** held that the authority to grant a stay on Tax Demand was an **inherent power vested with ITAT**, and that there **need not be a specific statutory provision for the same**. However, after the amendment to section 254(2A) vide Finance Act 2020, a stay on disputed Tax Demand can be granted by ITAT provided the taxpayer deposits at least 20% of such demand or furnishes security of equal amount. While third proviso to Section 254(2A) also provided that, such stay order is valid only until maximum 365 days and the order of stay stands vacated after the expiry of 365 days even if delay in disposing of appeal is not attributable to the taxpayer, **Hon'ble Supreme Court** in the case of **DCIT v Pepsi Foods Ltd [2021] 433 ITR 295 (SC)** held this provision to be arbitrary and discriminatory. Accordingly, Hon'ble Supreme Court held this provision to be violative of Article 14 of the Constitution of India and ruled that stay can be vacated after the expiry of 365 days period provided delay in disposing of the appeal is attributable to the taxpayer.

Conclusion

The framework for granting stay of tax demand under the Income-tax Act, 1961, has evolved significantly through legislative provisions, CBDT instructions, and judicial interpretations. While the law empowers tax authorities to enforce recovery, a consistent principle emerging from both administrative and judicial guidance is that such power must be exercised **judiciously, transparently, and in consideration of the assessee's circumstances**.

Key takeaways include:

- Stay of tax demand should be considered based on three factors: **(i)** prima facie case, **(ii)** balance of convenience, and **(iii)** irreparable harm. If the demand appears unsustainable, stay should be granted. Discretion must be exercised **judicially**.

- The **20% pre-deposit rule is not an absolute requirement** and may be relaxed in appropriate cases, especially involving **high-pitched assessments or financial hardship**.
- Authorities are expected to pass **reasoned, speaking orders** when disposing of stay applications, upholding principles of natural justice.
- **Refund adjustments** must follow due process, including mandatory notice under Section 245 and must not exceed prescribed limits.
- Both **CIT(A)** and **ITAT** are empowered to grant stay, further reinforcing the principle that tax recovery should not unduly burden assessees pending final adjudication.

In essence, while tax compliance remains paramount, **the right to fair appeal and relief from premature recovery** must be protected to maintain the integrity and equity of the tax administration system.

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Sources:

Ruling of Courts & Tribunals,

CBDT Instructions and

Provisions of the Income-tax Act 1961