

CIT(A) has inherent power to grant stay on demand if appeal is pending before him, says ITAT

Summary – The Delhi ITAT in a recent case of Employees' Provident Fund Organization., (the Assessee) held that Commissioner (Appeals) has inherent power to stay demand, when appeal is pending for disposal before him

Facts

- The assessee i.e. the Employees' Provident Fund Organization was set up under the Employees Provident Fund and Miscellaneous Provisions Act, 1952.
- The Deputy Commissioner (TDS), Noida passed an order dated 31-3-2014 under section 201(1) holding the assessee in default for not deducting the tax at source on payments made on account of settlement on withdrawal accumulated balance under rules 9, 10 of Part A of Schedule IV of the Act, 1961.
- The assessee filed appeal before the Commissioner (Appeals), Noida, and during the pendency of the same, assessee moved stay applications before the Commissioner (Appeals) praying for stay of the demand.
- The Commissioner (Appeals) disposed of the stay application directing the assessee to file the stay petition before the Assessing Officer.
- On appeal to Tribunal with a prayer that the stay of demand in question should be granted.

Held

Whether appeals were maintainable?

- It is trite law that no appeal is maintainable before the appellate forum unless the statute specifically provides for it. Section 253 provides for the kinds of order appealable before the Tribunal.
- Clause (a) of sub-section (1) of section 253 provides that order passed by the Commissioner (Appeals) under section 250 is appealable before the Income-tax Appellate Tribunal. Therefore, it is to be examined whether the impugned order is passed under section 250 or not. The provisions of Income-tax Act do not expressly provide the power of stay with the Commissioner (Appeals). However, the several High Courts following the ratio laid down by the Apex Court in the case of *ITO v. M.K. Mohammad Kunhi* [1969] 71 ITR 815 (SC) has held that the Commissioner (Appeals) has inherent power to stay the demand when the appeal is pending for disposal before him.
- Therefore, now the law is well settled that the Commissioner (Appeals) has power to grant stay. In exercise of this power, the Commissioner (Appeals) has passed the impugned order obviously, under the provisions of section 250, since there is no other provision of the Act under which Commissioner (Appeals) can pass the order. It is well settled that the order need not be an order of Civil Court

alone, it can be of any other statutory authority. The term 'order' has not been defined under the provisions of the Act. It is judicially understood that the word 'order' as a noun, has been held equivalent to or synonymous with 'decision'. Therefore, having held that the Commissioner (Appeals) has passed the order under section 250, the appeal is clearly maintainable under clause (a) of sub-section (1) of section 253.

Whether petitioner had a prima facie case for grant of stay of demand in its favour ?

- The appellant organization is only acting as custodian of employees' funds and on mere perusal of IVth Schedule of the Act, it seems that the provision of IVth Schedule may not be applicable to the Provident Fund Organization which are set up under the Provident Fund Act. Admittedly, the assessee organization is set up under the provisions of Provident Fund Act. Therefore, the order passed by Dy. CIT (TDS), Noida, is under serious challenge. Keeping in view the interest of the employees as well as the spirit of CBDT Circulars and Instructions, the stay of demand was to be granted till the disposal of the appeals before the Commissioner (Appeals).