

Attachment order had be lifted when ITAT deleted all tax demand and revenue didn't apply for stay

Summary – The Chennai ITAT in a recent case of Shangkalpam Industries (P.) Ltd., (the Assessee) held that where in case of assessee, order of attachment of immovable properties was passed in order to recover tax demand, since pursuant to Tribunal's order in appellate proceedings, tax demand was reduced to nil and, revenue did not file an appeal for staying of said order of Tribunal, impugned order of attachment of properties was to be set aside

Facts

- In the course of appellate proceedings, the Tribunal passed an order that addition made in case of the assessee under section 68 was not warranted and, in case no other tax demand was pending against assessee, order passed by revenue authorities attaching assets belonging to assessee could be lifted.
- The assessee filed instant petition seeking rectification of Tribunal's order on ground that since issue was decided in favour of assessee, the Tribunal should have directed the revenue to lift the attachment as the demand was erased.
- The revenue resisted assessee's application raising a plea that it had not accepted the decision of the Tribunal and had appealed against the same before the High Court.

Held

- Section 222(1) mandates the Tax Recovery Officer to draw a statement in the prescribed form specifying the amount of arrears due from the assessee termed as 'certificate'. Pursuant to which he shall proceed to recover the demand in accordance with the rules laid down in the 2nd Schedule which includes attachment and sale of immovable property. Section 225 (2) and (3) also mandate the Tax Recovery Officer to amend the certificate, if the outstanding demand is reduced in the appeal proceedings or cancel the same if the demand is reduced to *nil* and the case reaching finality.
- From the above it is clear that the attachment of immovable property is a subsequent and distinct action of the revenue pursuant to drawing of the 'certificate'. Therefore, the revenue is vested with a discretionary power to attach the immovable property/properties for recovery of the demand. Now the question arises whether the revenue can enforce its discretionary power for attaching the immovable property of the assessee when there is no demand as the result of any appellate proceedings.
- Attachment of an immovable property brings immense hardship to the assessee and restrains the assessee from enjoying the property wholly. The revenue cannot exercise its discretionary power to attach the property when there is no demand against the assessee or the demand is meager

compared to the value of the immovable properties of the assessee by virtue of any appellate order and when other means of recovery are available to the revenue.

- Having regard to the provisions of sections 222(1) and 225(2) and (3) of the Act, it is apparent that the Tax Recovery Officer is bound to amend the 'certificate' / or cancel the same when the demand is reduced to *nil* by virtue of any appellate orders including the order of the Commissioner (Appeals) leave apart the order of the Tribunal. In this case, the TRO has failed to do so by citing flimsy reasons that the demand subsists for about 15 lacks and thereby withholding the immovable properties of the assessee worth several crores.
- As on date when there is no demand or the demand is considerably reduced by virtue of the order of the Tribunal, the revenue is bound to amend the 'Certificate' and orders with respect to attachment of immovable properties accordingly. If the order of the Tribunal is not given effect in letter and spirit, there is no purpose for such an order and it will merely amount to waste paper.
- It is pertinent to mention at this juncture that neither the order of the Tribunal was stayed by the jurisdictional High Court nor an appeal before the High Court was filed by the revenue for staying of the order of the Tribunal.
- Considering the facts and circumstances of the case, in the interest of justice, the appropriate revenue authorities are directed to pass all the consequential orders relevant to the order passed by the Tribunal and the Commissioner (Appeals) for the subsequent assessment year which includes lifting of the attachment of the immovable property as well, when there is no existing demand or the assessee had furnished sufficient security to cover the existing demand pursuant to the appellate orders.