

Stay application filed before CIT(A) stood disposed of once hearing on appeal was concluded

Summary – The High Court of Bombay in a recent case of Saibaba Sansthan Trust (Shirdi), (the Assessee) held that Once hearing on appeal is concluded then stay application becomes infructuous as appeal itself would stand disposed of by an appropriate order of Commissioner (Appeals)

Facts

- The assessee had filed an appeal to the Commissioner (Appeals) against the order of Deputy Commissioner (Exemption). Besides, it had also filed an application for stay on said order.
- Thereafter, the assessee received a communication from the Commissioner (Appeals) that the hearing of the appeal would be fixed on 20-3-2018. The assessee attended the hearing and made submission and at the conclusion of hearing, an order sheet was also signed, indicating that the hearing of the appeal was completed. In spite of the aforesaid conclusion of the hearing of the appeal, the Commissioner (Appeal) sought to hear the assessee on its stay application leading to the order directing a conditional stay on certain amounts being paid to the revenue.
- The primary grievance of the assessee was that the CIT (A) after having finally heard, the assessee on the merits of its appeal, instead of disposing of the appeal, sought to set the clock back and pass an order on the stay application. The aforesaid action on the part of the CIT(A) was without any basis in law, particularly, in the absence of any statutory requirement under the Act, of the tax demanded being paid/per- deposited before the appeal can be entertained/considered on merits.

Held

- In terms of section 246A, any person aggrieved by an order passed in regular assessment proceedings under section 143(3) is entitled to challenge it before the Commissioner (Appeals). This challenge in appeal is not circumscribed by any requirement to pre-deposit and/or paying the amounts demanded, as a consequence of the order. Therefore, the Commissioner (Appeals) is obliged to entertain and dispose of the appeal before him on merits without any regard to the fact that the amounts demanded have been paid/deposited or not paid/deposited by the assessee before him.
- There is no power bestowed upon the Commissioner (Appeals) under the Act to stay the demand arising consequent to the order in appeal before him. In fact the power to stay such a demand has been bestowed upon the Assessing officer under section 220(6) by not treating the assessee-in-default where an appeal is awaiting final disposal before the Commissioner (Appeals) on such conditions as the facts and circumstances of the case may warrant. Nevertheless, the Commissioner (Appeals) as an appellate authority, has inherent powers of an Appellate Authority to do all things necessary to make the appellate powers effective. This would include a power to stay the effect of the order impugned before the appellate authority till the disposal of the appeal before it. This

power is only in aid of the power to hear and dispose of the appeal by the Appellate Authority. This necessity of exercising inherent power of staying the order challenged before the appellate authority comes to an end, when the assessee has been heard finally on merits of its appeal, as now the appeal itself can be disposed of finally.

- The assessee had filed an appeal to the Commissioner (Appeals) from the order of Deputy Commissioner (Exemption). Besides the assessee had also filed an application for stay of the said order to the Commissioner (Appeals) seeking the exercise of its inherent powers, as the order was contrary to the binding decisions of the Tribunal. On 14-3-2018, assessee received a communication from the Office of Commissioner (Appeals) that the hearing of the appeal is fixed on 20-3-2018 at 11.30 a.m. The assessee attended the hearing and made submission and at the conclusion of hearing, an order sheet was also signed, indicating that the hearing of the appeal was completed. In spite of the aforesaid conclusion of the hearing of the appeal, the Commissioner (Appeals) sought to hear the assessee on its stay application leading to the order dated 23-3-2018 directing a conditional stay on certain amounts being paid to the revenue.
- Once the hearing on the appeal is concluded then the stay application becomes infructuous as the appeal itself would stand disposed of by an appropriate order of the Commissioner (Appeals). The submission on behalf of the revenue that mere commencement of final hearing of the appeal by the Commissioner (Appeals) will not prevent him from taking up the stay application and passing an order thereon is in the present facts without merit. This is particularly so as on consideration of the appeal, the Commissioner (Appeals) was of the view that the disposal of the appeal would take some time and, therefore, in the meantime, grant of unconditional stay would not be justified, then, it would find mention in the order dated 23-3-2018 on the stay application. The order dated 23-3-2018 does not indicate why the disposal of appeal would take time. No factual data is called for from the Assessing Officer to dispose of the appeal and the furnishing of such factual data may take some time. In this case the order dated 23-5-2018 directs a conditional stay of the order dated 31-12-2017 only on the ground that, *prima facie*, the case laws relied upon do not support the assessee's case completely. Thus, in the present facts it is only the case of application of law and no factual investigation is felt necessary by the Commissioner (Appeals) which would justify his taking up the stay application for hearing after having concluded the hearing on the merits of the assessee's appeal.
- It appears that the entire exercise of taking up stay application, even after the appeal was heard, was only done so as to collect some revenue before 31-3-2018. Therefore, this appears to be a blatant attempt to retrace his steps by the Commissioner (Appeals) only to collect revenue before 31-3-2018. In fact, even if an order is passed on the appeal by the Commissioner (Appeals) finding the submission of the assessee not acceptable, either wholly or partly, it would result in the demand being sustained wholly or in part, which could then be collected in accordance with law. But the entire exercise, here, appears to be only to assist the revenue to collect some amount of taxes prior to 31-3-2018. This is certainly not expected of an Appellate Authority such as the Commissioner

(Appeals) who adjudicates disputes between the Revenue and the assessee on a regular basis. The Commissioner (Appeals) must not only be fair but appear to be so, in a country governed by Rule of law. In the absence of the above, the alternative remedy provided under the Act would be illusory.

- In the above view, the order dated 23-3-2018 was to be set aside.