

Stay application cannot be decided by Assessing Officer by imposing conditions: Delhi HC

Summary – The High Court of Delhi in a recent case of Turner General Entertainment Networks India (P.) Ltd., (the Assessee) held that when an application for stay of demand is filed before Assessing Officer the Stay application cannot be decided by Assessing Officer by imposing conditions.

Facts

- The assessee filed a petition contending that while considering its request for stay of demand the Assessing Officer (AO) had put a condition for deposit of 20 per cent of the demand as a precondition before consideration of the stay application.

Held

- Instruction No. 1914, dated 2-12-1993 issued by the Central Board of Direct Taxes (as amended by CBDT Office Memorandum dated 29-2-2016 [F. No. 4040/72/93-ITCC]) outlined the broad principles, which the Assessing Officers and other authorities have to keep in mind while considering the applications for stay of demand.
- It is clear from the same that the tax authorities have to apply their mind to decide an application for stay of demand. However, this does not mean that the AO has to impose a condition that pending consideration of the application for stay of demand, certain minimum amount has to be deposited.
- The AO has to apply his/her mind to the application for stay of demand and pass appropriate orders having regard to the circulars and memorandum and AO could not impose a precondition as was done in the order.
- Hence the ITAT set aside the impugned order.