

Outstanding demand for granting stay to include Advance tax & TDS deposited by assessee

Summary – The High Court of Bombay in a recent case of Keva Fragrances (P.) Ltd., (the Assessee) held that Outstanding demand for granting stay should include Advance tax & TDS deposited by assessee

Facts

- The petitioner claimed a refund of the advance tax and tax deducted at source in its ITR.
- The Assessing Officer upon scrutiny of ITR passed order of assessment and gave rise to certain demand which included tax and interest.
- The petitioner filed appeal against the said assessment order and also filed an application before the Assessing Officer requesting to keep the recovery of tax arising out of the assessment order in abeyance, till its appeal was disposed of.
- The Assessing Officer passed an order providing that if the petitioner deposited 20 per cent of the outstanding demand, remaining recovery would be stayed pending appeal.
- On appeal, Principal Commissioner also rejected petitioner's request.
- On writ:

Held

- The ITAT held that the petitioner had already deposited advance tax of Rs. 11 crores and TDS of Rs. 7.06 lakhs by the time of filing of the return. The petitioner has deposited further sum of Rs. 1 crore with the tax department. The order passed by the Commissioner does not take into account the sum of Rs. 11.08 crores. Accordingly, whatever direction is to be issued for depositing the tax pending appeal, the amount deposited towards advance tax and TDS must be taken into consideration.