

CIT(A) has power to decide stay application and can't direct assessee to file the application before AO

Summary – The High Court of Kerala in a recent case of Kallettumkara Service Co-operative Bank Ltd., (the Assessee) held that CIT(A) has power to decide stay application and can't direct assessee to file the application before AO

Facts

- The assessment was completed by the Assessing Officer raising demand after which the assessee filed petition before Commissioner (Appeals) under section 251 for stay of demand. The Commissioner (Appeals) disposed of same directing the assessee to file stay application before the Assessing Officer after observing that no stay petitions have been filed before the Assessing Officer.
- Instant writ petition filed by the assessee stating that order of the Commissioner (Appeals) as illegal and the same amounted to refusing to exercise the jurisdiction conferred on the Commissioner (Appeals) under section 251(1)(c).

Held

- The Commissioner (Appeals), instead of exercising the discretion and power independently available to him disposed of the stay applications without much deliberation.
- Hence, the common order is set aside. The matter is remitted to the Commissioner (Appeals) for consideration and disposal of stay petitions.