

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

AFR  
Court No.32

Civil Misc. Writ Petition No. 1065 of 2009

**Smita Agrawal (Ind) .....Petitioner**

**Versus**

**Commissioner of Income Tax,  
Kanpur & others .....Respondents**

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**Hon'ble S. Rafat Alam, J.  
Hon'ble Sudhir Agarwal, J.**

On the oral prayer learned counsel for the petitioner is permitted to implead Central Board of Direct Taxes as respondent no.4 in the array of the parties to the writ petition.

Heard Sri Shubham Agarwal, learned counsel for the petitioner and Sri Govind Saran, learned Standing Counsel for the respondents.

The petitioner submitted that against the assessment he has filed an appeal before the Commissioner of Income Tax (Appeals), Kanpur, i.e., respondent no. 3 along with a stay application in January, 2009 but no order on his stay application has been passed by the Appellate Authority till date and in the meantime the respondent no. 2 is proceeding to recover the amount of penalty, which has been imposed as

a result of assessment, which is in appeal pending before the respondent no. 2. He submitted that either the appeal itself ought to have been decided by the Appellate Authority or in any case her stay application ought to have been disposed of and till then no recovery should have been made from her.

Sri Govind Saran, learned Standing Counsel for the respondents, however, submitted that on mere asking the appellate authority cannot grant ad interim order unless it is found that there is a prima facie case and balance of convenience and the public interest is also considered. He placed reliance on the Apex Court decision in Assistant Collector of Central Excise Chandan Nagar Vs. Dunlop India Limited and others, 1985 (154) ITR 172. He further submits that the Court generally refrain from granting interim stay as a matter of public convenience in the matter of indirect taxes. Relying on the Apex Court decision in Empire Industries Ltd. and another Vs. Union of India and others, 1986 (162) ITR 846, he submitted that there is no provision empowering the Commissioner of Income Tax (Appeals) (hereinafter referred to as CIT(A) ) to grant any interim order in the appeal.

Sri Shubham Agarwal, learned counsel for the petitioner replied that there is power of stay possessed by the CIT(A) and placed reliance on the Apex Court's decision in ITO Vs. M.K.Mohammed Kunhi, (1969) 71 ITR 815(SC) and a Division Bench of this Court in Prem Prakash Tripathi Vs. Commissioner of Income Tax and others, 1994(208)ITR 461. He also submits that it is not proper for the appellate authority to sit tight over the stay application but he is obliged to pass order in accordance with law within a reasonable time failing which a mandamus can be issued by this Court compelling him to discharge his duties expeditiously. In support of the contention he placed reliance on Hon'ble Single Judge's judgments of this Court in M/s Shivangi Steels Pvt. Ltd., Agra Vs. Assistant Commissioner, Income Tax and another, 2003 U.P.T.C. 814 and Tin

Manufacturing Company of India Versus CIT and others, 1995 (212) ITR 451.

There is no quarrel with the proposition advanced by the learned counsel for the revenue that on mere asking an interim order should not be passed. We are also aware that in the matter involving public revenue the Court should be slow in passing interim order unless it is found that such an interim order is in the interest of justice. However, the two propositions have no application in the case in hand for the simple reason that the CIT(A) in this case has not passed any order whatsoever though the appeal was preferred by the petitioner as long back as on 19.1.2009 and since more than two and half months have passed but the CIT(A) has not passed any order whatsoever. The grievance of the petitioner is not that the CIT(A) has not passed order in his favour but what he contended is that the CIT(A) has completely failed in discharge of its statutory obligation of passing some order on the stay application filed by the petitioner. It is the total inaction on the part of the CIT(A) which has made the petitioner to invoke extraordinary jurisdiction of this Court by filing this writ petition. In our view, this inaction on the part of the CIT(A) cannot be appreciated but has to be condemned in the strongest words. We are well aware, and have no reason to doubt that while considering stay application the authority concerned would exercise his power judiciously and after applying its mind to various aspects of the matter should pass order but that would not confer jurisdiction upon the authority concerned to sit tight and choose not to pass any order whatsoever on the stay application. So far as the power of stay of CIT(A) is concerned, in our view, the law laid down by the Apex Court in the case of ITO Vs. M.K.Mohammed Kunhi (supra) and a Division Bench of this Court in Prem Prakash Tripathi Vs. Commissioner of Income Tax and others (supra), clinches the issue in favour of the proposition advanced by the petitioner. We have no manner of doubt that the stay application is maintainable and CIT(A) do possess power to pass an interim order which he has to

consider judiciously in accordance with law. We, therefore, dispose of the writ petition with the direction to the Appellate Authority concerned to hear the stay application and dispose of the same within a period of 15 days from this date. However, it is expected that no coercive action will be taken against the petitioner meanwhile.

Before parting we may observe herein that off late, we have experienced a flood of such writ petitions, where the petitioner having filed appeal along with the stay application before the authority concerned have waited for some time but the appellate authority has failed to pass any order whatsoever on the stay application and in the meantime the assessing authority had proceeded to make recovery which causes in filing of a number of writ petitions before this Court. This can be avoided by the authorities concerned showing more concern to their duties and by disposing of such stay applications expeditiously and in any case within a reasonable time. For inaction of the authorities, this Court is being flooded with avoidable litigation which is causing more harm to public at large who is awaiting for dispensation of justice within a reasonable time from the highest Constitutional Court in the State. This Court is already burdened with lacs of cases awaiting their turn for disposal. The constraint in which this Court is functioning is being added by this inaction of the authorities and is causing delay in disposal of huge number of cases. We do not propose to make this order an occasion to illustrate the various reasons for delay but we will be failing in our duty if we refrain from showing our concern to such callousness on the part of the revenue authorities in sitting tight over the stay application compelling the assessee to run to the High Court by filing writ petition simply to get an order for expeditious disposal of the application for interim order. If they have some justification for not deciding the stay application for some time, it would be in the fitness of things that in such cases, the assessing authority, if it has received the information that the assessee has approached the appellate authority by filing

appeal along with the stay application which is pending, must await the recovery till the decision is taken by the appellate authority on such stay application. We, therefore, direct the Central Board of Direct Taxes, New Delhi to look into this aspect of the matter and, if necessary, to issue a circular to all the appellate authorities directing them to dispose of stay applications expeditiously and so long the stay application is not disposed of the Assessing Officer must be slow or reluctant in initiating recovery process. Let a copy of this order be supplied to the Chairman, Central Board of Direct Taxes, New Delhi for information and necessary action.

The writ petition is disposed of finally with the aforesaid direction. No order as to costs.

Dated:8.4.2009

SKM.