

Tata Trusts Income Tax Case Raises The Question Of ‘Pay Before Stay’

A pertinent question has arisen in the Tata Trusts income tax case—one that will impact all taxpayers defending their positions before ITATs across the country. A larger bench, to be constituted by the president of the Income Tax Appellate Tribunal, will soon decide whether it is mandatory for a taxpayer to deposit 20% tax or interest before an appeal can be admitted.

The Income Tax Department had raised a Rs 99-crore tax demand on Tata Education and Development Trust—a body registered for charitable activities. The demand was raised on grounds that the trust had no requisite approvals from the CBDT for claiming exemption from tax on the income remitted by it to foreign educational bodies. This demand was challenged by the trust before Mumbai ITAT.

But the tax department insisted that the trust must deposit 20% tax before proceeding with the appeal in accordance with a recent amendment in the Income Tax Act. The amendment referred to was introduced in Budget 2020 via an amendment to Section 254 of the Income Tax Act. It requires taxpayers to deposit or furnish a security for at least 20% of disputed tax or interest before an appeal is admitted or a stay is granted by the ITAT. A stay can be granted by the tribunal only if this deposit is made, and that too only for 180 days. In a way, this provision gave a legal backing to the tax department’s heavily-litigated July 2017 circular that had laid down this 20% deposit threshold before a stay can be granted.

Prior to the amendment, an assessee could file an appeal or seek a stay on ongoing proceedings without the requirement to deposit such amounts. Also, so far, ITATs have used their inherent powers to extend the stay beyond the earlier mandated 365 days. Counsel for the Tata Trust argued that the amendment, which mandates the 20% deposit, is only ‘directory’ and not mandatory in nature. The tax department countered this by stating that the amendment is mandatory and an assessee must make a pre-deposit before seeking a stay.

Questionable Pay Up Or Shut Up Policy

The amendment, introduced via Finance Act, 2020, drew wide criticism from experts. In February, in an interview to BloombergQuint, BMR Legal’s Mukesh Butani had said the two changes—20% demand and duration of stay—had cumulatively made the Tribunal "absolutely redundant". Considering the magnitude of this issue, the tribunal has referred the stay application to the ITAT president and to be heard by a larger bench.

“We are of the considered view that these issues are of vital importance to all the stakeholders all over the country, and in our considered understanding, on such important pan India issues of far reaching consequence, it is desirable to have the benefit of arguments from stakeholders in different part of the country.” —Mumbai ITAT

A large number of taxpayers will be eagerly awaiting the decision and relief from the special bench on the applicability of mandatory 20% payment due to the long pendency of appeals and average time taken by ITAT in disposal of cases, Rakesh Nangia, managing partner at Nangia & Co. LLP, said.

The fundamental object of a judicial system is to ensure that the cause of justice is served in an effective and efficient manner, Zerick Dastur, founder of Zerick Dastur Advocates and Solicitors, said. It's to that end, he said, courts and tribunals have inherent powers.

Courts and tribunals are vested with discretion which is exercised on the basis of settled legal principles. Any fetter on this discretion, particularly in cases where an appellant establishes a strong prima facie case and where the balance of convenience is in his favor, may cause suffering to an appellant in genuine cases for no fault of his own. Zerick Dastur, Founder, Zerick Dastur Advocates and Solicitors

The ITAT will have to rely on the precedents set by the apex court and different high courts on this issue, senior advocate Beni Chatterji said.

He pointed to the Supreme Court's ruling in Mohammed Kunhi's case where it was held that ITAT is authorised to pass necessary orders to meet the ends of justice and where a prima facie case is made out for this relief.

"...Tribunal will consider whether to stay the recovery proceedings and on what conditions and the stay will be granted in most deserving and appropriate cases where the tribunal is satisfied that the entire purpose of the appeal will be frustrated or rendered nugatory by allowing the recovery proceedings to continue during the pendency of the appeal."—Supreme Court, Mohammed Kunhi Case

The Kunhi ruling was in 1968. Thirty-nine years later, an amendment in the Finance Act, 2007, that sought to curtail ITAT's power to extend the stay beyond 365 days, was read down by the Bombay High Court. The power to grant stay or interim relief being inherent or incidental is not defeated by the amendment, the high court had said.

The Tata Trust case will be heard next by the ITAT on July 6. Until then, the trust has been granted an interim stay on the notices and has been directed to furnish a "non-encashment undertaking" to the extent of the disputed amount.

(bloombergquint.com)