

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SH. G.C. GUPTA, VICE PRESIDENT  
AND  
SH. INTURI RAMA RAO, ACCOUNTANT MEMBER.**

I.T.A Nos. 1766 to 1768/Del/2015  
Assessment Years-2011-12 to 2013-14  
And  
S.A. Nos. 242 to 244/Del/2015  
(In I.T.A Nos. 1766 to 1768/Del/2015)  
(Assessment Years-2011-12 to 2013-14)

Employeesø Provident Fund  
Organization, Sector 24, Noida  
(PAN:AAATE3890L)  
(Applicant)

Vs.

Addl. CIT (T.D.S),  
Ghaziabad.

(Respondent)

Assessee by : S/sh. Pankaj Garg, Milind Garg, Gaurav Garg, Advocates.  
Department by : Sh. Sanjay Prasad, CIT DR

Date of hearing: 07.04.2015  
Date of pronouncement: 10.04.2015

**ORDER**

**PER BENCH:**

The assessee i.e. the Employeesø Provident Fund Organization has filed the present appeals impugning the order of learned CIT(A), Noida, dated 20<sup>th</sup> March, 2015, rejecting the stay petitions.

2. The brief facts leading to the present appeal are as follows:

2.1 The assessee i.e. the Employees' Provident Fund Organization was set up under the Employees Provident Fund and Miscellaneous Provisions Act, 1952.

2.2 The learned Deputy Commissioner of Income Tax (TDS), Noida passed an order dated 31<sup>st</sup> March, 2014 under Section 201(1) of Income Tax Act, 1961 (for short 'the Act') holding the assessee in default for not deducting the tax at source on payments made on account of settlement on withdrawal accumulated balance under Rule 9, 10 of part A of Schedule IV of the I.T. Act, 1961. The assessee is held to be in default u/s 201(1) of the I.T. Act, 1961 and the total liability u/s 201(1) is Rs. 337,009,802/-, Rs. 208,717,439/- and Rs. 78,135,967/- in respect of F.Y. 2010-11, 2011-12 and 2012-13, relevant to Assessment Years 2011-12, 2012-13 and 2013-14 respectively. Further, the liability of interest u/s 201(1A) is worked out to Rs. 145,225,049/-, Rs. 66,062,332/- and Rs. 15,636,476 on the above mentioned amounts of Income Tax in respect of F.Y. 2010-11, 2011-12 and 2012-13, relevant to the assessment years 2011-12, 2012-13 and 2013-14 respectively.

3. Aggrieved by the order, an appeal was filed before the learned CIT(A), Noida, and the same is pending disposal. Meanwhile, the assessee moved stay applications before the learned CIT(A) praying for stay of the demand in question under the circumstances mentioned therein. The learned CIT(A) disposed of the stay application directing the assessee to file the stay petition before the Assessing Officer vide F. No. ADDL. CIT(TDS)/GZB/Misc./2014-

15, dated 19.03.2015. Aggrieved by this order, the present appeals were filed before this Tribunal in Form no. 36 after depositing the requisite fees praying, inter alia, that the stay of demand in question should be granted.

4. Before dealing with the merits of the appeal, it is fit and proper to adjudicate whether these appeals are maintainable at all. Therefore, we deal with this preliminary issue.

5. It is trite law that no appeal is maintainable before the appellate forum unless the statute specifically provides for it. Section 253 of the Act provides that for the kinds of order appealable before this Income Tax Appellate Tribunal. The Provisions of Section 253 reads as under:

***“Section 253:-***

*(1) Any assessee aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order*

*(a) an order passed by a Deputy Commissioner (Appeals)] [before the 1st day of October, 1998] or, as the case may be, a Commissioner (Appeals)] under section 154, section 250, section 271, section 271A or section 272A ; or*

*(b) an order passed by an Assessing Officer under clause (c) of section 158BC, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, after the 30th day of June, 1995, but before the 1st day of January, 1997 ; or*

*[(ba) an order passed by an Assessing Officer under sub-section (1) of section 115VZC.]*

*(c) [an order passed by a Commissioner [under section 12AA or under clause (vi) of sub-section (5) of section 80G] or under section 263 [or under section 271]] or under section 272A or an order passed by him under section 154 amending his order under section 263 or an order passed by a Chief Commissioner or a Director General or a [Director under section 272A; or]*

*[(d) an order passed by an Assessing Officer under sub-section (3) of section 143 or section 147 [or section 153A or section 153C] in pursuance of the directions of the Dispute Resolution Panel or an order passed under Section 154 in respect of such order;]*

*(e) an order passed by an Assessing Officer under sub-section (3) of section 143 or section 147 or section 153A or section 153C with the approval of the Commissioner as referred to in sub-section (12) of the section 144BA or an order passed under section 154 or section 155 in respect of such order.”*

6. Clause (a) of sub-section (1) of Section 253 provides that order passed by the Commissioner of Income Tax(Appeals) under Section 250 of the Act is appealable before the Income Tax Appellate Tribunal. Therefore, we are now required to examine whether the impugned order is passed under Section 250 of the Act or not. The provisions of Income Tax Act do not expressly provide the power of stay with the Commissioner of Income Tax (Appeals). However, the several Honøble High Courts following the ratio laid down by the Honøble Apex Court in the case of *ITO Vs. M.K. Mohammad Kunhi, 71 ITR 815 (SC)* has held that the Commissioner of Income Tax (Appeals) has inherent power to stay the demand when the appeal is pending for disposal before him. Regarding this, few other decisions are as follows:

1. *Debasish Moulik Vs. DCIT, (1998) 231 ITR 737 (Cal.);*
2. *Maheshwari Agro Industries Vs. Union of India & Ors, (2012) 246 CTR 113 (Raj.)*
3. *Prem Prakash Tripathi Vs. Commissioner of Income Tax & Ors, (1994) 208 ITR 461 (All) : (1994) 121 CTR (All) 77;*
4. *Smita Agrawal (HUF) Vs. Commissioner of Income-tax , (2009) 26 DTR (All) 333: (2010) 230 CTR (All) 173: (2010) 321 ITR 491 (All);*
5. *Valvoline Cummins Ltd. Vs. Deputy Commissioner of Income-tax & Ors., (2008) 217 CTR (Del) 292: (2008) 8 DTR (Del) 145: (2008) 307 ITR 103 (Delhi);*
6. *Maharana Shri Bhagwat Singhji of Mewar (Late His Highness) Vs. Income-Tax Appellate Tribunal, Jaipur Bench, Jaipur , (1996) 133 CTR (Raj.) 97: (1997) 223 ITR 192 (Raj.).*

7. Therefore, now the law is well settled that the first appellate authority i.e. Commissioner of Income Tax (Appeals) has power to grant stay. In exercise of this power, learned Commissioner of Income Tax (Appeals) has passed the impugned order obviously, under the provisions of Section 250 of the Act since there is no other provision of the Act under which Commissioner of Income Tax (Appeals) can pass the order. It is well settled that the order need not be an order of civil court alone, it can be of any other statutory authority [C.G. Ghanshamdas v. Collector of Madras, AIR 1987 SC 180, (1986) 4 SCC 305, (1986) 2 APLJ (SC) 25]. The term 'order' has not been defined under the provisions of Income-tax Act, 1961. It is judicially understood that the word 'order' as a noun, has been held equivalent to or synonymous with 'decision'. Therefore, having held that the Commissioner of Income Tax (Appeals) has passed the order under Section 250 of the Act, in our considered opinion, the

appeal is clearly maintainable under clause (a) of sub-section (1) of Section 253 of the Act.

8. Having held that the appeal is maintainable, we shall now deal with the merits of the case.

9. The learned Authorized Representative had argued that the appellant has strong prima facie case, inasmuch as, the provisions of Rules 8 and 9 of Part I of Schedule IV of the Act are not applicable to statutory fund created under the provisions of P.F. Act. He further submitted that the assessee organization is set up only to cater the needs of several employees of private organizations. If the stay is not granted, the interest of several employees shall be adversely affected.

10. On the other hand, learned Department Representation vehemently opposed the stay and submitted that the assessee should approach the Assessing Officer for stay.

11. After considering the rival submission, we are of the view that the appellant organization is only acting as custodian of employees' funds and on mere perusal of IVth Schedule of the Act, it seems that the provision of IVth Schedule may not be applicable to the Provident Fund Organization which are set up under the Provident Fund Act. Admittedly, the assessee organization is set up under the provisions of Provident Fund Act. Therefore, the order passed by Dy. Commissioner of Income Tax (TDS), Noide, is under serious challenge. Keeping in view the interest of the employees as well as the spirit of CBDT

Circulars and Instructions, we deem it fit case to grant the stay of demand till the disposal of the appeals before CIT(Appeals).

**S.A. Nos. 242 to 244/Del/2015 (In I.T.A Nos. 1766 to 1768/Del/2015)**

1. Since we have granted full stay of demand vide our order passed in I.T.A Nos. 1766 to 1768/Del/2015, hence all the stay petitions are dismissed in limine as infructuous.

The order is pronounced in the open Court on 10<sup>th</sup> April, 2015

Sd/-

**(G.C. GUPTA)**

**VICE PRESIDENT**

Dated: 10<sup>th</sup> April, 2015

Rk/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(INTURI RAMA RAO)**

**ACCOUNTANT MEMBER**

**ASSISTANT REGISTRAR**