

POWERS OF ASSESSING OFFICER UNDER SECTION 220(6) OF INCOME TAX ACT, 1961 – STAY OF DEMAND – A DETAILED ANALYSIS

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1. Introduction

Every time an assessment order is issued under sections 143(3), 147, or 271(1)(c), the assessing officer also raises a notice of demand under section 156. Typically, this demand notice must be paid within 30 days after delivery or receipt. Assessee becomes assessee in default if they don't pay the demand within the stipulated time.

Then, in accordance with section 220(2), the assessee must pay simple interest at the rate of 1% for each month or portion of a month that is included in the period that starts on the day that follows the conclusion of the time period specified in the demand notice and ends on the day that the demand is paid. Penalties under Section 271 may also apply to this default. If the demand amount, interest, and any applicable penalties are not paid within the allotted period, the AO may use coercive measures to recoup the funds, including attaching the assessee's bank account.

A demand notice for any further demands made during the assessment is served when it is finished. Large demands are occasionally made against the assessee by framing very critical assessments because there is disagreement over how the law or the facts should be interpreted, or because the AO is not satisfied with the assessee's responses. For the purposes of this section, any amount that is decided to be payable by the assessee, the deductor, or the collector under sections 143(1), 200A (1), or 206CB(1) will be considered as a notice of demand in the notification under those sections.

The author discusses the powers of the assessing authority in this article while staying demand and the vested rights as per Section 220 (6) of the Income Tax Act, 1961.

2. Section 220 of the Income Tax Act, 1961

220. Tax due dates and assessee's presumed default.

(1) Subject to an exception for advance tax, any sum specified as payable in a notice of demand under section 156 must be paid within [thirty days] [Act 4 of 1988, Section 85, substitutes "thirty-five days" (effective 1.4.1989).] of the notice's delivery at the specified location and to the designated recipient:

With the proviso that, in the event that the [Assessing Officer] [Substituted by Act 4 of 1988, Section 2, for "Income-tax Officer" (w.e.f. 1.4.1988).] has reasonable grounds to suspect that granting the full duration of [thirty days] [Substituted by Act 4 of 1988, Section 85, for "thirty-five days" (w.e.f. 1.4.1989).] aforesaid will be detrimental to revenue, he may, with prior approval of the [Joint Commissioner] [Substituted by Act 21 of 1998, Section 3, for "Deputy Commissioner" (w.e.f. 1.10.1998).], order that the amount specified in the notice of demand be paid within the time frame, as may be specified by him in the notice of demand.

- (2) The assessee shall pay simple interest at [[one percent]] if the amount mentioned in any notice of demand under section 156 is not paid within the time frame imposed by sub-section (1). [Replaced with "fifteen percent per annum from the day commencing after the end of the period mentioned in sub-Section (1)" (w.e.f. 1.4.1989) by Act 4 of 1988, Section 85]. [for each month or portion of a month included in the term beginning on the day that follows the conclusion of the time frame specified in sub-section (1)] [Replaced with "fifteen percent per annum from the day commencing after the end of the period mentioned in sub-Section (1)" (w.e.f. 1.4.1989) by Act 4 of 1988, Section 85]. and concluding on the day that the payment is made:

As a consequence of an order under section 154, section 155, section 250, section 254, section 260, section 262, or section 264, it is provided that Act 13 of 1963, Section 14 (effective 1.4.1962), inserted. [Or a Settlement Commission order issued pursuant to section 245-D's subsection (4)] [Inserted by Section 85 of Act 4 of 1988, effective 1.4.1989]. If the amount for which interest was due under this section was lowered, the interest rate will also be lowered and any excess interest paid will be reimbursed. Act 13 of 1963, Section 14 (effective 1.4.1962), inserted.

- (2B) No interest shall be charged under sub-section (2) on the same amount for the same period if interest is charged under sub-section (1A) of section 201 on the amount of tax specified in the intimation issued under sub-section (1) of section 200A, regardless of what is stated in sub-section (2).
- (2C) [Despite sub-section (2)'s provisions, no interest shall be assessed under sub-section (2) on the same amount for the same period if interest is assessed under sub-section (7) of section 206C on the tax amount mentioned in the notification provided under sub-section (1) of section 206CB.] [Inserted on 14.5.2015 by Finance Act, 2015 (No. 20 of 2015)]

- (3) Without affecting the provisions of sub-section (2), the [Assessing Officer] [Replaced by Act 4 of 1988, Section 2, for "Income-tax Officer" (w.e.f. 1.4.1988).] may, upon an application made by the assessee before the expiration of the due date under sub-section (1), extend the period for payment or permit payment by instalments, subject to any restrictions he may deem appropriate in the particular circumstances.
- (4) The assessee will be considered in default if the amount is not paid to the person and at the place specified in the notice within the time frame specified in sub-section (1) or extended under sub-section (3), as applicable.
- (5) When an assessee fails to pay any one of the allowed instalments within the time frame specified by sub-section (3), the assessee is in default for the entire amount that is outstanding. The remaining instalment or instalments are considered to have been due on the same date as the instalment that is in default.
- (6) In the event that an assessee files an appeal pursuant to section 246 [or section 246-A] [Inserted by Act 10 of 2000, Section 62 (effective 1.6.2000).] For the duration of the appeal, even after the deadline for payment has passed, the [Assessing Officer] [Replaced by Act 4 of 1988, Section 2, for "Income-tax Officer" (w.e.f. 1.4.1988).] may, at his discretion, treat the assessee as not being in default with regard to the amount in dispute in the appeal, subject to any conditions he may think appropriate to impose in the circumstances of the case.
- (7) In cases where an assessee has been assessed for income that originated outside of India in a nation where remittance of funds to India is prohibited or restricted by law, the [Assessing Officer] [Replaced by Act 4 of 1988, Section 2, for "Income-tax Officer" (effective 1.4.1988).] should not consider the assessee to be in default with regard to the portion of the tax that is owed with regard to the portion of his income that is prohibited or restricted from being brought into India. This should be the case for as long as the prohibition or restriction remains in place.

Explanation: - Income will be considered to have been brought into India for the purposes of this section if it has been used or could have been used for any expenses that the assessee has actually incurred outside of India, or if income of any kind, whether capitalised or not, has been brought into India.

3. Why Stay Required?

The assessee may file a CIT (Appeals) if they believe the order has wronged them. However, one thing to remember is that filing an appeal alone does not mean that the case will remain

overly demanding. Section 220(1A) makes it very apparent that the demand is valid up until the last appellate authority decides how to handle the appeal. This viewpoint is also supported by Instruction No. 1914 F. No. 404/72/93 ITCC, dated 2-12-1993 CBDT, part C, which specifies that the recovery of a demand will only be stayed if there are good grounds to do so; an appeal against the assessment order alone will not be enough.

Therefore, in addition to filing a CIT (A), the assessee should also request the jurisdictional AO to authorize a petition for a stay on demand. This right is granted to the assessee under section 220(6), which gives the AO the discretionary authority to issue a stay order. This STAY order prevents the assessee from going into default until the CIT(A) has resolved the appeal.

4. How to get Stay and its procedures

A petition under Section 220(6) may be filed by the assessee with his jurisdictional AO, requesting that the demand be gently halted until the CIT(A) has had a chance to consider it. But wait, before you file the petition 20% of the contested demand is requested from the assessee in the CBDT OM circular dated July 31, 2017. According to the circular, this 20% may also change if the Supreme Court or a jurisdictional high court rules in favour of the department or assessee, as applicable, or if the same issue has been upheld by appellate authorities in previous years, if Pr.CIT/CIT has given its prior approval. Within two weeks of the petition's filing, the assessing officer must decide how to proceed with the stay.

Nevertheless, if the AO rejects the petition, the assessee may file a request for reconsideration with the Jurisdictional CIT. As the administrative head of the specific charge over which the assessee has jurisdiction, the CIT can grant a stay. Additionally, a very welcome Supreme Court ruling in "**LG ELECTRONICS**" from August 2018 makes it clear that CBDT circulars cannot interfere with Pr.CIT/CIT's ability to perform quasi-judicial duties. It also holds that, depending on the circumstances of the case, the commissioner may grant a stay on payment of an amount less than 20%.

One issue must be made very clear: if the CIT(A) rejects the assessee's appeal, interest under section 220(2) must be paid even during the stay order period, during which other actions will take place and the demand is not enforceable. This opinion is expressed in the Delhi High Court decision "**Girnar Investment Ltd. Vs. The Commissioner of Income Tax**," dated January 5, 2012. The income tax site displays an outstanding tax as soon as demand notice u/s 156 is raised. The income tax portal is where the stay order must be filed; if it is not, CPC Bangalore may assess interest under section 220(2).

As previously mentioned, the assessee has the option to appeal any AO order and any ensuing demand by filing an appeal with the CIT (Appeal). He should file an appeal with the AO to overturn any order and accompanying demand, and he should ask that the demand be stayed so that he is not considered an assessee in default. The following points should be covered in the petition u/s 220(6).

The petition ought to outline the appeal's initial merits, which are based primarily on compelling evidence.

- The accurate and unambiguous statement of the financial situation and suffering associated with the recovery of the contested demand is necessary. The petition should explain why and how the convenience factor favors the stay, including any negative effects on the company's cash position, among other reasons.
- To demonstrate the appeal's prima facie merits, the stay petition should be filed with proof of appeal filed, copies of the reasons of appeal, and a description of facts.

5. Powers & Duties of Assessing Officer

According to section 220(6), the AO has discretionary authority. This authority is not capricious; rather, it comes with responsibility. The concerned officer must weigh all relevant factors, including any arguments made by the assessee or those that could be made on his behalf, before deciding what order is most appropriate given the circumstances. Therefore, it is not sufficient to simply refuse a request for the exercise of authority under Section 220(6) on the grounds that the official has the authority but is not required to use it.

When dismissing a stay application, the AO must issue a speaking order rather than just rejecting the assessee's plea without providing a reason. Due to the quasijudicial nature of AO's discretionary power under Section 220(6), he must use it properly and rationally, not arbitrarily or capriciously. In order to avoid abusing his discretion, the AO must both hear an assessee's application and provide justification for its denial. Please refer to the rulings in ***M/S Seth Gopaldas Paliwal v. WTO [1983] 139 ITR 900 (MP)***. In 1998, ***Teletube Electronics Ltd. V CIT [230 ITR 705, 707 (Del.)***; in 1973, ***32 STC 464 (Mad.)***; and in ***Chesebrough Pond's Inc. v. A.A.C. (C.T.)***

6 Assessee cannot be considered in default until the application for a stay is resolved.

Additionally, it should be mentioned that the assessee cannot be regarded as in default until the speaking order has resolved the application for a stay of demand. Additionally, the demand is suspended until the stay application is resolved. "Demands should be stayed until the application is reviewed and an order is passed where a stay of demand application is pending for disposal under sec 220(6)."- **Sat Pal v. ITAT 317 (P&H); Debasish Moulik v. DCIT 231 ITR 737 (Cal.); Bongaigaon Refinery and Petro Chemicals Ltd. V. CIT 256 ITR 698 (Gau.).**

Furthermore, the powers granted by Section 220(6) are discretionary powers that are not only subject to duty but also require that they be used in a just and reasonable manner when necessary. This means that the powers granted by Section 220() must be used for the intended purpose. [**Wood Polymer Limited, (1977) 109 ITR 177, 184-5(GUJ)**], **In Re: Bengal Hotel(s) Private Limited In Re.** He may be forced to carry out his responsibilities if he fails to use discretionary authority when it is needed or if he uses it in a way that does not constitute using discretion at all. **E Krishnappa Nachiar v. Dy CTO (1963) 14 STC 162 (Mad) and Kundan Lal Behari Lal v. CWT (1975) 98 ITR 359 (All)**

7. Instructions given by CBDT

Instruction No. 96 - The CBDT issued the first set of instructions in 1969. This instruction was intended to maintain the demand that had been raised by the intense evaluation. The Instruction No. 96, dated August 21, 1969, made it clear that, in cases where the income found on assessment was significantly higher than the income returned—that is, twice the returned amount or more—the collection of the tax in question should be suspended until the outcome of the appeals, provided the assessee had not lapsed. The Board wished for all Income-Tax Officers to be made aware of the observations, and that they be granted the authority to halt recovery in such circumstances until the initial stage of an appeal.

The department was clearly instructed to give a stay of demand in the cases of **MAHESHWARI AGRO INDUSTRIES vs. UNION OF INDIA & ORS 346 ITR 375 (RAJ-HC)**, where there was a high-pitched assessment.

Instruction No. 1362 - On October 15, 1980, the CBDT issued Instruction Number 1362, superseding all previous Instructions. It was an instruction that went into great length about the subject, and in paragraph four of that instruction, there was a clear reference to the proposition stated in instruction number 96.

In ***Dunlop India Ltd. vs. ACIT (1990) 183 ITR 528 (Cal.)***, the Calcutta High Court declined to consider Instruction No. 96 because the Revenue's attorney presented the court with a new Instruction, No. 1362, superseding all previous instructions on the matter. The assessee's writ petition for a stay of the demand was denied by the Calcutta High Court's single bench in the case.

It is evident that the ruling made by Dunlop India Ltd. (above) is not infallible. Following this ruling, the Supreme Court and several High Courts have rendered decisions that have considered and distinguished the Dunlop India Ltd. ruling (previous). ***M/s. Benara Valves v. CCE 2006 (13) SCC 347 and Monotosh Saha v. Special Director 2008 (12) SCC 359*** are worth mentioning. According to the ruling in *M/s. Benara Valves* (above), decisions made by Dunlop India Ltd. are frequently interpreted incorrectly to mean that a stay will never be granted.

Instructions No.1914 - It is evident that Instruction number 1362, dated 15/10/1980, superseded all previous Instructions on the topic and contained the essence of the assurance as stated in Instruction number 96, dated 21.08.1969. Following the supersession of all previous instructions on the subject, Instruction No. 1914 [F.No. 404/72/93/ITCC] dtd. 02.12.1993 was issued. The Instruction covers both legitimate hardship circumstances and unreasonably high-pitched assessment orders.

8. Whether penalty U/s.221 can be imposed before disposing off the stay petition

As previously said, the demand is stayed until the time stay application is rejected by the AO; as a result, the assessee is not regarded as in default. Because the assessee won't be regarded as in default until the stay application is disposed of, no penalty under Section 221 may be applied for nonpayment of demand until that point.

The Delhi High Court ruled in ***CIT v. DLF Universal Ltd. [2008] 297 ITR 342 (Del.)*** that the Assessing Officer had to decide about the stay requests made by the assessee prior to the imposition of penalties under section 221. The High Court ruled in this case that the assessing officer ought to have resolved the assessee's stay requests before acting in a way that would have harmed the assessee's interests.

Additionally, it should be mentioned that the assessee cannot be regarded as in default until the speaking order has resolved the application for a stay of demand. Furthermore, demand is halted until the stay application is resolved. "The demand should be stayed until the application is reviewed and an order is passed where a stay of demand application is pending

for disposal under § 220(6)."- **Sat Pal v. ITAT 317 (P&H); Debasish Moulik v. DCIT 231 ITR 737 (Cal.); Bongaigaon Refinery and Petro Chemicals Ltd. V. CIT 256 ITR 698 (Gau.)**

The Assessing Officer may be forced to carry out his duties if he exercises the discretionary power granted to him by section 220(6) in a way that does not constitute an exercise of discretion at all, or if he does not exercise it when the situation calls for it. **[See cases of Aluminum Corporation of India (1959) 37 ITR 267 (Cal), Ladhuram Tapuria (1951) 20 ITR 51 (Cal), and Vetcha Sreeramamurthy (1956) 30 ITR 252 (A.P.)]**

9. Stay Before CIT

The assessing officer typically declines requests for stays. In this case, the assessee may request a stay from the CIT. The CIT has authority over the AO according to section 118. The following was decided in **RPG Enterprises Ltd. v. DCIT (2002), 74 TTJ 391 (Mum.)**:

Therefore, the Commissioner, in his official capacity, has the authority to order a stay of the contested demand while the Tribunal is considering an appeal. The Commissioner has administrative responsibility over the TROs operating under his jurisdiction in accordance with Section 118. Therefore, it is implied that the Commissioner has the authority to order the TRO to prolong the deadline for making the disputed demand payment. Therefore, if the AO rejects the stay petition, the CIT may award a stay of demand.

CIT may amend under Section 264 in opposition to any directive made by the AO. The case of **Daya Shankar v TRO (1985), 48 CTR 134 (All.)** established that in situations when the AO rejects a stay application, the assessee may petition under section 264 for a stay of demand. The assessee was given the opportunity to apply to the CIT after the Writ petition contesting the judgment of refusal to stay was dismissed on this basis.

10. Stay before CIT(A)

When an appeal is pending before CIT (A), the stay may also be requested. Section 251 implicitly grants the authority to conduct all acts required for its execution, hence the CIT (A) has the authority to order a stay of recovery proceedings. It should be underlined that all such powers that are necessary to grant such justice are included in the ability to grant justice. One can access the innate power of Stay. I'm quoting the decisions below that establish that CIT (A) has the authority to grant a stay:

- (a) **CIT vs Duncan Stratton & Co. Ltd. (1983) 140 ITR 1025 (Bom.)**
- (b) **Debasish Moulik vs DCIT (1998) 231 ITR 737 (Cal.)**
- (c) **Keshav Cashew Co. 210 ITR 1014 (Ker.)**

11. Stay before ITAT

If the appeal is ongoing before ITAT, there are provisions for a stay of demand under Section 254(2A) r/w Section 253(7). Additionally, Rule 35A of the ITAT Rules outlines the process for submitting a stay petition.

In the 1969 case of **ITO vs. Mohammed Kunhi (MK) 71 ITR 815(SC)**, the Supreme Court deliberated about the Tribunal's authority to halt demand recovery. The ITAT "may pass any order as it thinks fit," according to the ruling. These terms are sufficiently broad to indicate that the ITAT has the authority to grant a stay. Furthermore, every appellate authority has the intrinsic authority to guarantee that justice is administered and does not become pointless.

12. Stay before High Court

The assessee may prefer a Writ to the High Court if the AO declines to grant a stay. It was cautioned in **K.C. Joy v. TRO (1993) 112 CTR 270 (Ker.)** that a Writ would only lie if a demand was made, and the stay of demand was denied. In other circumstances, the Writ would be untimely. Most of the time, the stay petition is denied by the evaluating officials. The CBDT should allow the stay petition to be appealed or send the assessing officer a circular stating that the assessor may grant the assessee a stay if there is merit.

13. Judicial Interpretation

The Hon'ble Supreme Court ruled in **Aeltemesh Rein v. Union of India, AIR 1988 SC 1768**, that all discretionary powers, including those granted to the executive branch, must be used in a just, reasonable, and equitable manner.

The Division Bench of the Calcutta High Court determined in **Dunlop India Ltd. vs. ACIT 183 ITR 532** that the office in question had not properly dealt with or taken into consideration all the relevant factors that were necessary to be dealt with and considered while using discretion for the purposes of section 220(6).

Just because an appeal has been filed in **Gouri Shankar Awasthi v. ITO (1978) 78 ITR 784 (Cal.)**, does not mean that a stay of realization can be granted. Therefore, the assessee ought to explain why he is delaying his demand.

The case of **Mrs. Mani Goyal V/s CIT and Anr. (1996) 217 ITR 641 (All-HC)** established that "...the fact that the contested tax amount is being sought to be recovered while the appeal is pending is contrary to the principles of good conscience and fair play." It makes the appellant's situation much more difficult in certain situations.

Generally, the officer must accept the assessee as not in default for tax contested in the appeal if he is satisfied that an appeal has been filed (and the grounds are not frivolous). The assessee's financial soundness and ability to pay is not, by itself, a reason to refuse to use the discretion in granting the stay, even if section 220(6) does not specify the circumstances in which a refusal of discretion shall be justified as held in **R.P. David v. - Ag. ITO [1972] 86 ITR 699 (Mad.)**

A fair hearing regarding the assessee's application for a stay of demand should be granted by the assessing officer. **ITO v. Pawan Kumar (1998) 146 CTR 152 (P & H)**.

If the evaluating officer denies the application of a stay of demand, he should also issue a clear and well-reasoned order. The assessee ought to explain why he is withholding his demand. In order to support his request for a stay of demand, he should address the grounds of appeal in detail. In **Lalit Wadhwa v Commissioner of Income-Tax, (2013) 082 DTR 0130 (P&H)**, it was decided that the decision issued under section 220(6) of the Income Tax Act ought to be a spoken order. As a result, the Hon'ble High Court invalidated the assessment officer's order under section 220(6). The following cases have seen similar rulings made.

- (a) Subhash Chander Seghal – Vs – DCIT, 173 Taxman 412 (Delhi)**
- (b) Viswanatha Sastri v ITO (1956) 30 ITR 252 (A.P.)**
- (c) Seth Gopaldas Paliwal v. WTO [1983] 139 ITR 900 (MP)**
- (d) Teletube Electronics Ltd. CIT [1998] 230 ITR 705, 707 (Del.)**

The assessee will not be considered in default until the stay application has been resolved. It should be remembered that the assessee cannot be deemed to be in default until the application for a stay of demand is resolved by a spoken order. Additionally, demand is suspended until the stay application is resolved. "Demand should be stayed until the application is considered and an order is passed where an application for stay of demand is

pending for disposal u/s 220(6)” – **Sat Pal v. ITAT 317 (P&H); Bongaigaon Refinery and Petro Chemicals Ltd. V. CIT 256 ITR 698 (Gau.); Debasish Moulik v. DCIT 231 ITR 737 (Cal.)**.

14. Conclusion

When it comes to issuing a stay of demand, the income tax authorities must be proactive. Nonetheless, the Income Tax Authorities typically have a decided policy to deny stay petitions, either wholly or partially, despite CBDT circulars and numerous high court rulings. When handling cases involving stays of demand, the Court is likewise not taking a practical stance. Assessors who fall prey to high pitch evaluations and who eventually receive favorable rulings from appellate authority endure an excessive amount of hardship while their appeals are pending. Threats of a high-pitched assessment or demands resulting from one are used by the income tax authorities at all levels to maintain pressure on the assessors. If the finance minister doesn't take this seriously, it will be very difficult for real assessors to operate.