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Tax talk
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Taxpayers can seek stay on proceedings

JEAN-BAPTISTE Colbert said, "The art of taxation consists in so plucking the goose as to obtain the largest amount of feathers with the least amount of hissing."

When it comes to recovery of taxes through coercive steps, the taxman can get to the skin. The amount demanded is payable within 30 days of service of the notice of demand.

If the payment is not made within this period, the taxpayer would be in default. The tax officer may then proceed for recovery of taxes by invoking coercive measures.

The statute provides power to the tax officer to stay the demand or grant installments with conditions, where an appeal is preferred before the first appellate authority. In case the tax officer refuses a stay, approach the next higher authority/commissioner of income tax for a stay.

The commissioner of income tax (appeals) may be approached to grant stay where appeal is pending his decision, invoking his inherent powers. As per law, the taxpayer has the right to seek a stay from the tribunal when an appeal is pending before it.

However, taxpayers must keep some basic principles in mind for seeking a stay. The taxpayer must depict a *prima facie* strong case and chances of success in the appeal. The balance of convenience should be in favour implying no prejudice caused to the revenue. Irreparable loss and undue hardship to the taxpayer be indicated. In case the taxpayer faces a financial difficulty, in that case a lack of capacity to pay should be shown. However, sound financial condition is not a ground for rejection of a stay.

A high-pitched assessment where the assessed income far exceeds the returned income is a ground for seeking an unconditional stay. Coercive measures may not be adopted during the period provided by law to go in appeal. Where an interpretation issue is involved or the issue is already decided by precedent, the demand should be stayed. The income tax department has issued instructions and circulars for tax officers to exercise discretion in stay matters judiciously.

Recent precedents allow taxpayer to approach the tribunal without awaiting a rejection from the tax officer and exhausting remedies before the lower authorities. There are precedents to the effect that the revenue is precluded from recovering taxes during the pendency of the stay application before any revenue authority or tribunal.

The tribunal should hear an appeal within 180 days from the date of the order granting stay and further stay on expiry of six months is possible. Recently, the special bench of the tribunal granted the tribunal the power to extend a stay beyond 365 days if the delay is not attributable to the taxpayer. The courts have time and again stressed that tax officers be judicious rather than overzealous in recovery proceedings.

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