



## TAX FLASH NEWS

### The Bombay High Court stays demand of tax till the CIT(A) disposes of the appeal

#### Background

Recently, the Bombay High Court (the High Court) in the case of Maharashtra Airport Development Co. Ltd.<sup>1</sup> (the taxpayer) dealt with the application of stay on demand of tax. The taxpayer had received the grant from the State Government. The Assessing Officer (AO) treated the grant as revenue in nature. The High Court observed that in the earlier years the taxpayer had been receiving funds from the State Government as grants for the acquisition of land. At no point of time, the tax department had considered it as revenue in nature. The Commissioner of Income-tax (CIT) did not give the taxpayer any opportunity to explain the nature of receipt and utilisation of the funds before disposal of the application for stay of demand of tax. All such factors indicated that due consideration had not been given while rejecting the stay application.

The High Court observed that where a strong *prima facie* case has been made out by the taxpayer, the requirement of pre-deposit of tax demand would by itself be a matter of hardship.

In the present case, the tax department was directed not to adopt any coercive proceedings till such time as the CIT(Appeal) [CIT(A)] disposes of the taxpayer's appeal. However, as the hearing had already commenced, the CIT(A) was directed to dispose of the appeal as expeditiously as possible.

#### Facts of the case

- The taxpayer had received a grant of INR400 million from the State of Maharashtra under the State Government resolution dated 9 August 2007.

- These funds were made available to the taxpayer for the purpose of acquisition of land to carry out project for development of airports and the Special Economic Zones (SEZs) within Maharashtra.
- The AO passed the assessment order for the relevant year, treating the receipts as revenue in nature and demanded the tax.
- The taxpayer had, in terms of Section 220(6) of the Act, sought a stay of demand of tax consequent to the assessment order pending for the disposal of its appeal before the CIT(A).
- The AO had granted a stay of the demand to the extent of 50 per cent of the tax payable till the disposal of the taxpayer's appeal before the CIT(A).
- Aggrieved with the said stay order, the taxpayer carried the matter to the CIT, which had refused to stay the demand on the ground that the deposit of the amounts would cause no financial hardship to the taxpayer. Out of total amount received, a part was only utilised to acquire the land. Thus, the same cannot be treated as capital receipts.
- Therefore, the taxpayer had filed a writ petition before the High Court.

#### Facts of the case

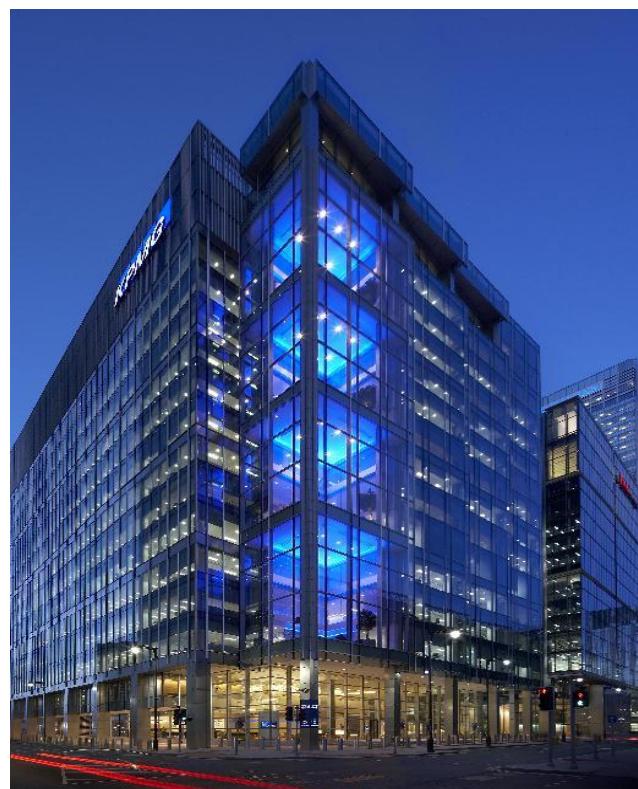
- The rejection of the application for stay, on the ground that no financial difficulty is caused by the deposit, is contrary to the decision of the High Court in the case of UTI Mutual Fund<sup>2</sup>, wherein the High Court had observed that where a strong *prima facie* case has been made out in its favour by the taxpayer, the requirement of pre-deposit would by itself be a matter of hardship.

<sup>1</sup> Maharashtra Airport Development Co. Ltd. v. DCIT [Writ Petition No.1471 of 2015] (Bom)

<sup>2</sup> UTI Mutual Fund v. ITO [Writ Petition No.523 of 2013] (Bom)

- The Bombay High Court in the case of Mumbai Metropolitan Region Development Authority<sup>3</sup> had held that financial hardship is a factor which may have some bearing, if the authorities concerned are not convinced on a strong *prima facie* case in favour of the applicant.
  - A strong *prima facie* case would be where the issue is covered by the decision of a superior forum or by a consistent practice to the contrary being followed by the tax department in the case of taxpayer in the earlier years.
  - The taxpayer pointed out that in the earlier years commencing from Assessment Year 2005-06, the taxpayer had been receiving funds from the State Government as grants for the acquisition of land. At no point of time, the tax department had considered it as revenue in nature.
  - The taxpayer filed a statement indicating that out of the INR1.55 billion received, commencing from the financial year 2004-05 upto 2007-08, an amount of INR1.53 billion had been utilised for acquisition of land. The CIT did not at any point of time, before disposal of the application, give the taxpayer any chance to explain regarding the receipt and utilisation of the funds.
  - The assessment order being appealed against does not rely upon the aforesaid fact of receipt and utilisation of funds. Therefore, the taxpayer had no occasion to point out these figures on its own. All the aforesaid factors would indicate that due consideration has not been received at the hands of the CIT.
  - The CIT(A) has already commenced the hearing of the taxpayer's appeal filed from the assessment order. In view of the fact that the CIT(A) is seized of the matter and hearing it, it would be appropriate that in the peculiar facts of the present case, the tax department does not adopt any coercive proceedings till such time as the CIT(A) disposes of the taxpayer's appeal arising out of such assessment order and for the period of two weeks thereafter.
  - However, as the hearing has already commenced, the CIT(A) is being directed to dispose of the appeal as expeditiously as possible, preferably on or before the 15 December 2015.
- Authority has to set out the taxpayer's case briefly.
  - Authority should consider whether the taxpayer has made out a case for unconditional stay; if not, whether a part of the amount should be ordered to be deposited, for which reasons should be given.
  - Authority should indicate whether the taxpayer is financially sound and viable to deposit the amount.
  - Generally, coercive measures may not be adopted during the period provided by the statute for filing an appeal unless the taxpayer was likely to defeat the demand.

The High Court in the present case has held that the CIT did not give the taxpayer any opportunity to explain the nature of receipt and utilisation of the funds before disposal of the application for stay of demand of tax. Due consideration had not been given while rejecting the stay application. The High Court directed the tax department not to adopt any coercive proceedings till such time as the CIT(A) disposes of the taxpayer's appeal. However, as the hearing had already commenced, the CIT(A) was directed to dispose of the appeal as expeditiously as possible. Further, it was observed that where a strong *prima facie* case has been made out by the taxpayer, the requirement of pre-deposit of tax demand would by itself be a matter of hardship.



## Our comments

The High Court in the case of KEC International Ltd.<sup>4</sup>, laid down the following key parameters to be followed by tax authorities while disposing of the stay applications:

<sup>3</sup> Mumbai Metropolitan Region Development Authority v. DDIT [Writ Petition No.2348 of 2014 dated 29 October 2014] (Bom)

<sup>4</sup> KEC International Ltd. v. B.R. Balakrishnan [2001] 251 ITR 158 (Bom)

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