

## Exercise of discretion to grant stay on IT demand cannot be arbitrary: HC

### **Harsh Dipak Shah vs. UOI (Civil Application No.: 19804 of 2021)**

The AO had made high pitched assessment of Rs 373 crores. Assessee filed an appeal against the assessment order and applied for a stay on the demand. However, the assessee was asked to deposit 20% of the demand and the stay was rejected.

Hon Gujarat HC while concluding that the exercise of discretion to grant stay cannot be arbitrary and that 20% pre- deposit is not mandatory made some important observations as under:

1. Section 226 provides discretion to the tax authorities by which they may grant stay conditionally or unconditionally or may even decline to grant any stay. However, this discretion has to be in a judicious manner and cannot be in an arbitrary or mechanical manner.
2. The AO should apply his mind to the facts and circumstances of the case relevant to the exercise of the discretion, in all its aspects. AO has to remember that he is not the final arbiter of the disputes involved but only the first amongst the statutory authorities.
3. AO should not act as a mere tax-gatherer but as a quasi-judicial authority vested with the power of mitigating hardship to the assessee.
4. The AO should divorce himself from his position as the authority who made the assessment and consider the matter in all its facets, from the point of view of the assessee at the same time without sacrificing the interests of the Revenue.

5. The tax authorities should not get over zealousness to protect the interest of the revenue. There is nothing magical in the figure of 20%; to balance the equities the tax authorities may even grant stay the recovery on deposit of 5% or 10% as the circumstance may demand as pre-deposit in case of high pitched assessment such as this case.

6. Authorities need to keep in mind the following: (i)Prima facie case; (ii) balance of convenience; (iii) irreparable injury that may be caused to the assessee which cannot be compensated in terms of money; (iv) whether the assessee has come before the authority with clean hands.

7. Even if the assessee may not have specifically invoked these parameters, it is incumbent upon the AO to examine the existence of a prima facie case as well as call upon the assessee to demonstrate financial stringency, if any, and arrive at the balance of convenience.

8. The requirements of reasonableness, rationality, impartiality, fairness and equity are inherent in any exercise of discretion; such an exercise can never be according to the private opinion.

9. In this case the tax authorities have not considered anything and have mechanically declined to grant stay which is impermissible.