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Dated:

To,
The Income Tax Department,
Delhi,

| | |
|---|---|
| In the matter of: | Mrs. ABC |
| PAN: | AAAAAAA |
| Assessment Year: | 2017-18 |
| Assessment Order: | ITBA/AST/S/143(3)/2019-20/1023371373(1) |
| Demand Notice: | ITBA/AST/S/156/2019-20/1023371500(1) |
| NFAC Order: | ITBA/NFAC/S/250/2022-23/1049275764(1) |

**SUBJECT: AN APPLICATION FOR STAY OF DEMAND (AY 2017-18)**

Respected Sir,

1. In the case of captioned Assessee, an Assessment was framed on date _____ under section 143(3) of the Income Tax Act, 1961 ("the Act"), by the learned Income Tax Officer Ward _____ Delhi, determining the income of the Applicant at Rs._____ as against the returned income of Rs._____. It would be seen that assessed income is more than 1451 times of the returned income, as such this is a case of exceptionally high-pitched Assessment. It is submitted that on account of aforesaid high-pitched

Assessment, a humongous demand of Rs._____ has been raised against the Assessee, which includes a sum of Rs. _____ as interest u/s 234B, 234C and 234D of the Act. It is respectfully submitted that at present, additions made in the order of Assessment, is pending for consideration before the Hon'ble Tribunal vide ITA No. _____. Copy of the acknowledgement of filing of the appeal before the Hon'ble Tribunal is being submitted ***(Refer "Annexure-A").***

2. By way of this petition, the Assessee is seeking to invoke the discretionary jurisdiction of your honour to grant an interim relief in respect of the recovery of the humongous demand of Rs._____ and prays that no coercive steps be taken till the disposal of the appeal by the Hon'ble Tribunal, for the reasons stated hereunder:

3. **At the outset, it is submitted that it would be seen from the aforesaid facts that** the Assessee has filed its return declaring an income of Rs._____, however, learned Assessing Officer has framed a high pitched Assessment wherein a huge addition of Rs._____ was made which is exceptionally higher to the returned income. It is submitted that the **Instruction no. 96 [F no. 1-6-96 (ITCC)] read with instruction 1916 of 2003** issued by the Central Board of Direct Taxes, provides that where the income determined on Assessment was substantially higher than the returned income, twice the latter amount of more, the collection of the tax in dispute should be held in abeyance till the decision of the Appeals. Hence, the case of the Assessee is squarely covered by the said circular which has been affirmed by the jurisdictional High Court on the case of ***Soul vs. DCIT (220 CTR 211)***. The above CBDT instruction No. 96 [F. No. 21-8-69 (ITCC)] was taken cognizance by the **Hon'ble Allahabad High Court** in the case of **Mrs. R Mani Goyal vs. CIT (217 ITR 641**) wherein it was observed as follows:

> "*During the pendency of the appeal, it is really a case of great hardship to the Appellant, if the assessed liability of income-tax of Rs. 33,04,450 is sought to be recovered. Learned counsel for the Appellant has invited attention to the circular of the Central Board of Direct Taxes bearing No. 334 (F. No. 400/3/81-ITCO) (sic) dated 3-4-1982, which reads as follows:*
>
> *" 1. One of the points that came up for consideration in the 8th meeting of the Informal Consultative Committee was that income-tax assessments were arbitrarily pitched at high figures and that the collection of disputed demands as a result thereof was also not*

*stayed in spite of the specific provision in the matter in section 220(6).*

*2. The then Deputy Prime Minister had observed as under:*

*.... where the income determined on assessment was substantially higher than the returned income, say, twice the latter amount or more, the collection of the tax in dispute should be held in abeyance till the decision on the appeals, provided there were no lapse on the part of the Appellant.*

*3. The Board desires that the above observations may be brought to the notice of all the Income-tax Officers working under you and the powers of stay of recovery in such cases up to the stage of first appeal may be exercised by the Inspecting Assistant Commissioner/Commissioner of Income-tax.*

*This circular is also in consonance with the spirit of the provisions contained in sub-section (6) of section 220 of the Income-tax Act.*

*According to learned counsel for the Appellant, this circular of the Central Board of Direct Taxes becomes applicable to the facts of the present case, as mentioned in paragraph 2 of the writ petition. The Appellant had submitted a return of income declaring total income of Rs. 11,710. The Deputy Commissioner of Income-tax, Special Range, Ghaziabad, did not accept the return and enhanced the income by making several additions and determined the tax at Rs. 33,04,450, i.e., more than several times of the return. In such a situation, the Appellant cannot be treated to be in default and recovery proceedings before the disposal of the appeal will have to be kept in abeyance. The circular of the Board has desired the Recovery Officers to keep such recoveries in abeyance until disposal of the appeal by the appellate authority. This circular of the Central Board of Direct Taxes was also brought to the notice through an affidavit, the Appellant before the Commissioner (Appeals) at Muzaffarnagar, but no reference in the impugned order of rejection of the stay has been made. Moreover, it is opposed to the principles of good conscience and fair play that the disputed amount of tax is sought to be recovered even though the appeal is pending. It adds to the hardship of the Appellant in such circumstances, in which he is unable to deposit the amount during recovery proceedings. Therefore, it is highly desirable in the interest of justice that if the assessing authority or the appellate authority are not in a mood to stay recovery proceedings, even contrary to the circular of the Central Board of Direct Taxes, then they must dispose of the appeal without further delay and without taking any coercive action against the Appellant. For the purposes of disposal of this writ petition, it would be sufficient to say that in case the appeal is expeditiously disposed of**, the recovery proceedings should not be pursued till disposal of the appeal***".

3.1 Reliance is also placed upon the following decisions of the Hon'ble Delhi High Court wherein the Hon'ble High Court have held that where the assessed income is substantially more than the returned income, then the Assessee is entitled for unconditional grant of stay of demand.

i. **Charu Home Products (P.) Ltd. vs. Commissioner of Income-tax [2015] 53 taxmann.com 103 (Delhi)**
ii. **Valvoline Cummins Ltd. vs. DCIT and Others (217 CTR 292) (Del)**
iii. **Taneja Developers & Infrastructure Ltd. *v.* Assistant Commissioner of Income-tax [2010] 324 ITR 247 (Delhi)**
iv. **Soul vs. DCIT [2010] 323 ITR 305 (Delhi)**

4. Besides the aforesaid preliminary submissions, the Assessee most respectfully seeks to submit that learned Assessing Officer in the order of Assessment has observed that both the purchases and sales shown by Assessee are bogus and therefore it was held by him that the entire purchase will be treated as bogus and corresponding credit shall be treated as unexplained credit u/s 68 of the Income Tax Act, 1961. It is submitted that aforesaid findings on the basis of which whole of the purchases has been treated as unexplained is perverse and contrary to the facts and Assessee seeks to demonstrate hereinbelow that such findings are incorrect and hence the addition made is unsustainable in law.

**4.1** It is imperative to mention that, **the Assessee is a _____ year old innocent lady and is a senior citizen.** The learned Assessing Officer in the order of Assessment has infact has doubted the legitimacy of business transactions, failing to appreciate that both the debtors and creditors have duly confirmed the transactions of sale and purchase, via a written confirmation substantiating the reliability of dealings made in the regular course of business. We are annexing the confirmations along with signed ledgers of the said parties for your perusal. ***(Refer "Annexure-2")***

**4.2** Furthermore, the Ld. Assessing Officer had alleged that, the registered offices of few parties under consideration were non-existent at the time of physical inspection. It is relevant to mention that, the department conducted inspection at an incorrect location and entirely ignored the updated address particulars of the said parties.

**4.3** We are making a point-wise submission to the observations made by the Ld. Assessing Officer within the impugned Assessment order:

| S. No. | Party | *Assessing Officer's Observation* | Our Response |
|---|---|---|---|
| **1.** | _____ | _____ | The entity has changed its official address. Therefore, it is requested to serve a notice on the latest address of the party under consideration for ascertaining the authenticity of the entity.<br><br>**Updated Address:**<br><br>_____ |
| **2.** | _____ | _____- | The verification was conducted on a wrong address. The entity has duly mentioned its updated |

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| | | | address within an invoice issued to the Assessee.<br><br>Moreover, a copy of the said invoice had already been submitted to the Ld. Assessing Officer.<br><br>The Department may verify the address and re-examine the authenticity of the party in question.<br><br>**Updated Address:**<br>_____ |
| **3.** | _____ | _____. | The Ld. Assessing Officer itself admitted that the shop is owned by _____.<br><br>However, Mr. _____ discontinued the business due to low profit margins. |

| | | | |
|---|---|---|---|
| **4.** | _____ | *No such Co. exist at the address*<br>_____ | The proprietor of the said entity departed to the heavenly abode, consequently the entity discontinued its operations.<br><br>Hence, the Assessee could only submit the confirmations to establish authenticity of transactions. |
| **5.** | _____ | _____ | The invoice issued by the party in question clearly revealed two office addresses.<br><br>However, the verification was only conducted at a single premise and thereby the Ld. Assessing Officer pre-concluded the genuinity of the entity.<br><br>**Updated Address:**<br>_____ |

**4.4** We would like to draw your attention towards the fact that, previously i.e. before the A.Y. 2017-18, the Assessee was only engaged in the wholesale business of unstitched fabrics. However, during the year under consideration, the Assessee also initiated dealings in the domain of raw sugar, regrettably the Assessee was not able to generate adequate returns through the said sugar business and consequently the Assessee was

compelled to wrap-up the aforesaid business after the A.Y. 2017-18 itself. We would like to submit the market rate of sugar on the commodity exchange NCDEX of sugar commodity for your reference, evidencing the downfall in the sugar industry in the F.Y. 2016-17. Moreover, we are submitting a comparative summary of NCDEX of sugar with purchase and sale price of the Assessee to evidence that, the Assessee booked sale and purchase in tangent to the prices prevailing in the market. ***(Refer Annexure-3).***

**4.5** It is significant to state that, with effect from July 1st 2017, the implementation of **GST @ 5% upon raw sugar,** made a negative impact on the sugar industry. Kindly note that, due to the aforesaid reason, several business players operating within the said industry were compelled to exit, as it was an extremely difficult task to generate sufficient profits, subsequent to the said GST implications.

**4.6** It is further submitted that, the entire sugar industry witnessed a downfall in the market, during the relevant financial year due to numerous reasons i.e. (i) climate change, (ii) moisture due to rainfall or (iii) forces of demand and supply. Such factors adversely affected the profit of other companies operating within the same industry. We have garnered the information of such companies like M/s _____ and M/s _____ through the MCA (Ministry of Corporate Affairs) portal during the year under consideration and submitting herewith the comparative statement of the same for better clarity of the market situation and the profitability in the F.Y. 2016-17. ***(Refer Annexure- 4)***

**4.7** In accordance to the impugned Assessment Order, the Ld. Assessing Officer disclosed an imprecise stock summary within the impugned Assessment Order, hereby it is relevant to mention that, the Ld. Assessing Officer prepared an incomplete stock report solely on the basis of the limited particulars and thereby calculated a negative stock-in-hand by himself. The Ld. Assessing Officer simply concluded the stock summary by the virtue of sales and purchases. However, ignored the other relevant parameters for instances the sales are inclusive of certain costs alongwith the earned profits. Therefore, for ascertaining the actual position of the Assessee, we have duly enclosed the Stock Register ***(Refer Annexure-5)***

**4.8** It is humbly submitted that, the Ld. Assessing Officer had baselessly stated, the parties involved in the present case, do not operate in the domain of sugar industry. However, the Ld. Assessing Officer failed to consider the Form(s) MGT-14, submitted to the MCA (Ministry of Corporate Affairs) by the aforesaid entities, reflecting an insertion in their business module. ***(Refer Annexure-6)***

4.9 It would thus be seen that in this case, a high-pitched Assessment has been made against the Assessee without appreciating the factual substratum of the case. It is submitted that neither the seller nor the purchasers has ever denied the transactions, and on the contrary they have confirmed the transaction of sale and purchase.

**4.10** Furthermore, we are annexing the submissions made in response to notices served to the Assessee to CIT(A) and Ld. Assessing Officer for your kind perusal. ***(Refer Annexure- 7)***

**4.11** It would thus be seen that the assessee has strong prima facie case as such, demand raised on account of the impugned addition made is unsustainable in law as such, any demand raised on account of impugned addition would not survive.

5 **Balance of convenience is in favour of the Assesse:** From the perusal of the facts of the instant case, it would be seen that there exists a prima facie case since the addition made in the order of Assessment is unsustainable in law. The Assessee further submits that the balance of convenience is also in its favour and that the demand should be stayed in its entirely on this account as well. The observations of the Hon'ble Jurisdictional Delhi High Court in the case of **Asian Hotels vs. MCD reported in 171 ITR 116** deserve special mention in this regard:

> "Coming to the question of balance of convenience, it need be observed that once a prima facie case is established to exist in favour of the plaintiff, the balance of convenience would ordinarily lie in the grant of an ad interim injunction rather than in the refusal thereof, otherwise the chances are that the substantial mischief, damage and injury that are likely to be done to the plaintiff if the injunction is refused would be much more than what is likely to be caused if the injunction is granted and more so when a sufficient part of the demand of the defendants

> have already been got paid under various orders of the courts to the defendants by the plaintiff. Where the plaintiff has established a prima facie case and the balance of convenience is in favour of grant of an ad interim injunction, it would follow that non-grant of ad interim injunction would cause irreparable injury to the plaintiff. Irreparable injury would not mean an injury which cannot possibly be repaired but an injury which would be material by itself. Here is a case in which a demand of more than three crores of rupees has been raised against the plaintiff and if the plaintiff is obliged to pay the entire sum which incidentally includes the demands for not only the current year but for previous years also for which the assessment had already been finalised and part whereof has even been paid under orders of the courts, it would certainly cause unnecessary hardship upon the plaintiff which by itself would be sufficient injury."

6 **Financial Hardship:** It is submitted that Assessee has no financial resources to pay such a huge demand, and infact the Assessee has no financial resources even to pay 20% as required under the OM dated 31st July, 2017. Further, in the case of **Coca-Cola India (P.) Ltd. *v.* Assistant Registrar representing Income Tax Appellate Tribunal reported in [2014] 364 ITR 567 (Bombay) it** has been held that question of irreparable loss is not the only consideration while dealing with an application for stay. If this were so, every Assessee with the means of deposit would be denied the right to seek a stay irrespective of the merits of his case.

6.1 It is submitted that under Section 220(6) of the Act your goodself is fully empowered to keep full demand in abeyance till the decision of appeal and not to treat the assessee in default in respect of the amount of demand, which is disputed in appeal. In this regard we may also invite your kind attention to instructions of CBDT No. 1914 dated 02.12.1993. Vide the aforesaid instructions, CBDT has laid down guidelines for stay of demand. As para C(i) it is provided that demand may be stayed for valid reasons. Further, vide para C(v) it has been stated that while considering the application u/s 220(6), the Assessing Officer should consider all relevant factors having a bearing on the demand raised and communicate his decision in the form of a speaking order. Accordingly, as per aforesaid instructions of CBDT your goodself may be pleased to consider facts of the case and take a decision in the light thereof.

6.2 In this regard reference can also be made to subsequent instructions dated 29.02.2016 and 31.07.2017. Vide aforesaid instructions CBDT had provided for payment of 15% and 20% of demand respectively. It has, however, been stated that the Assessing Officer is empowered to decide a lower amount also considering the facts of the case. The issue whether payment of 20% is necessarily to be demanded as per instructions of CBDT dated 31.07.2017 had also come up for consideration before Hon'ble High Court of Delhi in the case of **LG Electronic Pvt. Ltd. WP(C) No. 6778/2017** decision dated 08.08.2017, wherein it was held as under:

> "7. The impugned order clearly makes no reference to the central issue in the pending appeal or the grievance of the Petitioner regarding the order passed by the AO. The impugned order in short is without reasons and is therefore unsustainable in law.
>
> 8. For the above reasons, the impugned order is set aside and a direction is issued that the Petitioner's application will once again be heard by the PCIT on merits and without reference to the OM dated 31st July, 2017, which, on the face of it, appears to curtail his discretion. The PCIT will dispose of the application with a reasoned order not later than two weeks from the date of receipt of this order."

6.3 Against the aforesaid judgement of Hon'ble High Court of Delhi the department preferred an Appeal before Supreme Court. The Hon'ble Supreme Court also held dismissing the Appeal of the department that the authorities have to take a decision on the facts of each case. The Hon'ble Supreme Court while deciding the appeal titled as per **Commissioner of Income Tax v. LG Electronic Pvt. Ltd. Civil Appeal No. 6850 of 2018** judgement dated 20.07.2018 held as under:-

> "Having heard Shri Vikramjit Banerjee, Learned ASG appearing on behalf of the appellant, and giving credence to the fact that he has argued before us that the administrative Circular will not operate as a fetter on the Commissioner since it is a quasi judicial authority, we only need to clarify that in all cases like the present, it will be open to the authorities, on the facts of individual cases, to grant deposit orders of a lesser amount than 20%, pending appeal."

6.4 The issue had also come up before the Hon'ble Bombay High Court in the case of **Bhupendra Murji Shah v. Deputy Commissioner of Income Tax Writ Petition No. 2157 of 2018 judgement dated 11.09.2018** and the Hon'ble Bombay High Court observed as under in regard to instructions of CBDT.

> "We are not concerned here with the Circular of the Central Board of Direct Taxes. We are not concerned here also with the power conferred in the Assessing Officer of collection and recovery by coercive means. All that we are worried about is the understanding of this Deputy Commissioner of a demand, which is pending or an amount, which is due and payable as tax. If that demand is under dispute and is subject to the appellate proceedings, then, the right of appeal vested in the petitioner/assessee by virtue of the Statute should not be rendered illusory and nugatory. That right can very well be defeated by such communication form the Revenue/Department as is impugned before us. That would mean that if the amount as directed by the impugned communication being not brought in, the petitioner may not have an opportunity to even argue his Appeal on merits or that Appeal will become infructuous, if the demand is enforced and executed during its pendency. In that event, the right to seek protection against collection and recovery pending Appeal by making an application for stay would also be defeated and frustrated. Such can never be the mandate of law.
>
> 6. In the circumstances, we dispose both these petitions with directions that the Appellate Authority shall conclude the hearing of the Appeals as expeditiously as possible and during pendency of these Appeal, the petitioner/appellant shall not be called upon to make payment of any sum, much less to the extent of 20% under the Assessment Order/Confirmed Demand or claim to be outstanding by the Revenue."

6.5 Infact, the jurisdictional High Court in the case of **Dabur India Ltd. v. Commissioner of Income-tax (TDS) reported in [2023] 291 Taxman 3 (Delhi)** has reiterated its earlier view when it held that requirement of payment of twenty per cent of demand is not a pre- condition for putting in abeyance recovery of demand in all cases and said pre- condition can be relaxed in appropriate cases.

7. We would like to draw your attention that instant case is the case of high pitched Assessment and hence is amenable to the CBDT instruction **F. NO. 225/101/2021-ITA-II, DATED 23-4-2022** related to high pitch assessment. To bolster our request, we are presenting judicial precedents from taxing jurisprudence.

**RECENT JUDGEMENTS FOR STAY OF UNREASONABLY HIGH-PITCHED DEMAND**

A. The **Hon'ble High Court of Delhi**, New Delhi on **23-03-2022**, in the case of Tata Teleservices Limited v/s Commissioner of Income Tax (Appeals) held that …….

> *"5. Having heard learned counsel for the parties and having perused the two Office Memorandums, in question, this Court is of the view that the requirement of payment of twenty percent of disputed tax demand is not a pre-requisite for putting in abeyance recovery of demand pending first appeal in all cases. The said pre-condition of deposit of twenty percent of the demand can be relaxed in appropriate cases. Even the Office Memorandum dated 29th February, 2016 gives instances like where addition on the same issue has been deleted by the appellate authorities in earlier years or where the decision of the Supreme Court or jurisdictional High Court is in favour of the assessee.*
>
> *6. In fact the Supreme Court in the case of* ***PCIT vs. M/s LG Electronics India Pvt. Ltd. (2018) 18 SCC 447*** *has held that tax authorities are eligible to grant stay on deposit of amounts lesser than twenty percent of the disputed demand in the facts and circumstances of a case. The relevant portion of the said judgment is reproduced hereunder:*
> *'Having heard Shri Vikramjit Banerjee, learned ASG appearing on behalf of the appellant and giving credence to the fact that he has argued before us that the administrative Circular will not operate as a fetter on the Commissioner since it is a quasi-judicial authority, we only need to clarify that in all cases like the present,* ***it will be open to the authorities, on the facts of individual case, to grant deposit orders of a lesser amount that 20%****, pending appeal.'*
>
> *7. In the present case, the impugned orders are non-reasoned orders. Neither the Assessing Officer nor the CIT have considered three basic principles i.e. the prima facie case, balance of convenience and irreparable injury while deciding the stay applications.*
>
> *8. Consequently, the impugned orders and notices are set aside and the matter is remanded back to the Commissioner of Income Tax for fresh adjudication in the application for stay. However, before deciding the*

*stay application, the Commissioner of Income Tax shall grant a personal hearing to the authorised representative of the Petitioner. For this purpose, list the matter before the Commissioner of Income Tax on 18th April, 2022.*

*9. It is clarified that till the stay application filed by the petitioner is not decided, no coercive action shall be taken by the respondents against the Petitioner in pursuance to the demand arising out of the order dated 08th December, 2021."*

B. The **Hon'ble High Court of Gujurat**, on 04-01-2022, in the case of Harsh Dipak Shah v/s Union of India, Held that ……

*"In the instant case, the Principal Commissioner has not considered anything and has just mechanically declined to grant relief as prayed for by the writ applicant. When the writ applicant pointed out to the Principal Commissioner that the case on hand is one of high-pitched assessment, the same came to be dismissed by merely saying that the issue has been discussed threadbare during the assessment proceedings. In other words, the finding recorded by the Principal Commissioner is that the assessment order came to be passed by the Assessing Officer after granting sufficient opportunities and after due consideration of all the relevant aspects of the matter and, therefore, the issue of high-pitched assessment need not be considered. The matter has not been considered by the Principal Commissioner in its proper perspective. Many times in the over zealousness to protect the interest of the revenue, the authorities render their discretionary orders susceptible to the complaint that those have been passed without any application of mind. To balance the equities, the revenue may even consider directing the assessee to make a deposit of 5 per cent or 10 per cent of the assessed amount as the circumstances may demand as a pre-deposit. The 'high pitched assessment' means where the income determined and assessment was substantially higher than the returned income. For example, twice the returned income or more.*

*When it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; and has to be based on the relevant considerations. The exercise of discretion is essentially the discernment of what is right and proper; and such discernment is the critical and cautious judgment of what is correct and proper by differentiating between shadow and substance as also between equity and pretence. A holder of public office, when exercising discretion conferred by the statute, has to ensure that such exercise is in furtherance of accomplishment of the purpose underlying conferment of such power. 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.*

*The mandate of Parliament in sub-section (6) seems to be that the lower Assessing Officer should abide by and being bound by the decision of the appellate authority, should normally wait for the fate of such appeal filed by the assessee. Therefore, his discretion of not treating the assessee-in-default, conferred under subsection (6) should ordinarily be exercised in favour of assessee, unless the overriding and overwhelming reasons are there to reject the application of the assessee under section 220(6). The application under section 220(6) cannot normally be rejected merely describing it to be against the interest of revenue if recovery is not made, if tax demanded is twice or more of the declared tax liability. The very purpose of filing of appeal, which provides an effective remedy to the assessee is likely to be frustrated, if such a discretion was always to be exercised in favour of revenue rather than assessee.*

*Consequently, the impugned orders passed by the Principal Commissioner are set aside and the Principal Commissioner is directed to consider the application filed by the writ applicant under section 220(3) and 220(6) respectively afresh in conformity with all the CBDT Instructions and the parameters laid as above by providing an opportunity of being heard to the writ applicant and pass orders in accordance with law preferably within a period of two weeks from the date of the receipt of the writ of this order."*

C. The **Hon'ble High Court of Telangana**, Hyderabad on **22-04-2022,** in the case of APR Jewellers Private Limited v/s CIT(A), Hyderabad held that……

*"10. Supreme Court in **Principal Commissioner of Income Tax vs. L.G. Electronics India Private Ltd.**, observed that an administrative circular would not operate as a factor on the Commissioner since it is a quasi-judicial authority. Clarifying further, Supreme Court held that it would be open to the authority on the facts of individual cases to grant deposit orders of a lesser amount than 20% pending appeal.*

*11. Needless to say, 1st respondent as the appellate authority exercises quasi-judicial powers. Power to consider prayer for stay is incidental and ancillary to the power to hear appeals. As a quasi-judicial authority, Commissioner (Appeals) is not bound by the administrative circulars issued by CBDT. He has to apply his own independent mind in the facts and circumstances of each case.*

*12. Considering the above, the impugned order dated 04.03.2022 is hereby set aside. The matter is remanded back to the 1st respondent for a fresh decision on the prayer for stay of the petitioner in accordance with law after complying with the principles of natural justice. This shall be done within a period of four (04) weeks from the date of receipt*

*of a copy of this order. Till such time, demand pursuant to the assessment order dated 21.12.2019 shall remain stayed."*

It is imperative to note that, the assessed income is significantly higher than the returned income. Thus, in view of the foregoing facts, CBDT Instructions and Judicial Pronouncements, we request your goodself to hold the aforesaid demand in abeyance till the disposal of the appeal by Hon'ble ITAT.

**Prayer:**

In view of the aforesaid, it is submitted that since in the instant case, addition made by the learned Assessing Officer is untenable and against the aforesaid addition, Assessee has preferred an Appeal which is still pending as such, it is prayed that demand so raised may kindly be kept in abeyance till the disposal of the appeal and oblige.

Thanking You in Anticipation

Authorised Signatory

**Annexures:**

| **Annexures** | **Particulars** | **Pages** |
|---|---|---|
| 1 | Acknowledgement of Form 36 | |
| 2 | Sale & Purchase Confirmations along with signed & stamped ledgers | |
| 3 | Sugar price index and News highlights regarding downfall in sugar industry in F.Y. 2016-17 | |
| 4 | Comparative Profitability Statement with similar companies | |
| 5 | Stock Register for the F.Y. 2016-17 | |
| 6 | Copy of filed MGT- 14 of Parties for change in Object Clause | |

| | | |
|---|---|---|
| 7 | Copy of notices and submissions filed to CIT(A) & Ld. Assessing Officer | |

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