



No recovery proceedings can be initiated when matter in pending before CIT(A)

The Gujarat High Court has restrained the income tax department from initiating recovery proceedings during pendency of appeals before Commissioner of Income Tax (Appeals) (CIT(A)), where more 5.81 lakh appeal are pending before the CIT(A)s' with an average of 1310 appeal per CIT(A).

Case Name: Om Vision Infraspace Private Limited Versus Income Tax Officer, Ward 3(1)(4) & Ors

Appeal No: R/Special Civil Application No. 6953 Of 2020

Dated: 15.10.2024.

(The decision of the HC is enclosed with this blog)

Facts of the case

The ground before the Hon'ble Gujarat HC was that CIT(A) are not disposing the pending Appeals on one hand and the recovery proceedings are initiated by the respondent-Income Tax Department for the outstanding demand.

The Revenue filed the affidavit that the following no. of appeal all pending before the CIT(A), i.e.,

Category	Pending appeals as on 26.09.2024	Allocation to CIT (A)	Appeal before each CIT(A) – Approx
Faceless CIT (A)	3,90,878	279	1401
Non-Faceless CIT (A)	80,170	64	1252
JCIT(A)	1,09,140	100	1091
Total	5,80,188	443	1310

It was submitted that with regard to remedial measures suggested by Central Board of Direct Taxes for reduction of the backlog of the pending appeals, the CBDT has issued the guidelines for the priority/out of turn disposal on 19.03.2024 and 100 JCIT (Appeals) are appointed in the year 2023 and as per Section 345MA of the Income-Tax Act, 1961, e-Dispute Resolution Scheme, 2022 is notified and under Finance Act, 2024, new measures have been introduced and Vivad se Vishwas Scheme, 2024 is

Income-tax/Recovery proceedings

also introduced by Finance Act, 2024 and Commissioner (Appeals) have been empowered to set aside the ex-parte assessment orders. no data is given with regard to average life of the pending appeal as, such data is stated to be not readily available with National Faceless Appeal Centre (NFAC).

No measure has been mentioned that how the pending appeals with the CIT (Appeals) which is around 1400 cases per Faceless CIT (Appeals) shall be heard and within what time span such appeals shall be disposed of by the concerned CIT (Appeals). No measures are mentioned with regard to bunching of similar appeals or repeated issues for different succeeding years in appeals, covered matters etc. which would speedily dispose of such appeals by CIT (Appeals).

Proceedings before HC and verdict

The Hon'ble HC asked the respondent to file the data with regard to the average life of the appeal as well as the remedial measures to dispose of the appeals pending before the CIT (Appeals) and time bound programme for disposal of backlog of 5,80,188 pending appeals as on 26.09.2024, but no such details were provided.

The Hon'ble HC held that if the respondents are not interested in resolution of the issue of pendency of the Appeals the manner in which it ought to have been resolved by classifying the Appeals as per the issues concerning the recurring issues, covered issues, etc., we are of the opinion that no recovery should be made from the assesseees during the pendency of the Appeals. Therefore, in all these petitions, there shall be no recovery of any outstanding dues from the petitioners whose Appeals are pending during pendency of these petitions

Conclusion

The Hon'ble HC opined that,

- (i) No recovery should be made from the assesseees during the pendency of the Appeals
- (ii) The respondents are not interested in resolution of the issue of pendency of the Appeals the manner in which it ought to have been resolved

The decision of the HC shows the ignorant behaviour of the department regarding the pendency of the appeals and insensitivity towards the grievances of the taxpayers.

The moot question is that whether the verdict of the Hon'ble HC will apply to other appeals which are pending before the CIT(A) India-wide. The author understands that even though it will not be applicable in its form, however, it has a great persuasive value.

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 6953 of 2020

With

R/SPECIAL CIVIL APPLICATION NO. 2692 of 2024

With

R/SPECIAL CIVIL APPLICATION NO. 6725 of 2024

With

R/SPECIAL CIVIL APPLICATION NO. 16617 of 2023

With

R/SPECIAL CIVIL APPLICATION NO. 14309 of 2024

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OM VISION INFRASPACE PRIVATE LIMITED

Versus

INCOME TAX OFFICER, WARD 3(1)(4) & ORS.

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Appearance:

MS VAIBHAVI K PARIKH(3238) for the Petitioner(s) No. 1

DS AFF.NOT FILED (N) for the Respondent(s) No. 3,4,5

MRS KALPANA K RAVAL(1046) for the Respondent(s) No. 1,2

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CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and

HONOURABLE MR.JUSTICE D.N.RAY

Date : 15/10/2024

COMMON ORAL ORDER

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned advocate Ms.Vaibhavi K. Parikh, learned advocate Mr.Ashutosh S. Dave and learned advocate Mr.Dhinal A. Shah for the respective petitioners and learned Senior Standing Counsel Mr.Karan Sanghani for learned advocate Mrs.Kalpana K. Raval and learned

Senior Standing Counsel Mr.Varun K. Patel for the respective respondents.

2. All these matters are pending before this Court on the ground that the Commissioner of Income Tax (Appeals) are not disposing the pending Appeals on one hand and the recovery proceedings are initiated by the respondent-Income Tax Department for the outstanding demand.

3. This Court passed the following order on 17.09.2024 :

"1. Heard learned Senior Advocate Mr. Tushar Hemani for learned advocate Ms. Vaibhai Parikh for the petitioner and learned Senior Standing Counsel Mr. Karan Sanghani for the respondent.

2. Learned Senior Advocate Mr. Hemani submitted that the appeal filed by the petitioner before the CIT(Appeals) is

pending for more than four years and the same is not being heard. It was further submitted that though the petitioner is protected by this Court by permitting the petitioner to operate the bank account as per order dated 26.03.2020, till this date, no further progress has been made with regard to hearing of the appeal by the CIT(Appeals).

3. Learned Senior Advocate Mr. Hemani further submitted that there are more than five lakhs appeals pending across the country to be heard by the CIT(Appeals) in the faceless regime.

4. On the other hand, learned Senior Standing Counsel Mr. Sangani, submitted upon instructions from Commissioner of Income Tax [NaFAC] that the efforts are being made by the respondent-Department to hear the appeals expeditiously. However, it is not disputed by learned Senior Standing Counsel Sangani that in

the month of February,2024, more than three lakhs appeals were pending.

5. Be that as it may, we take a serious note of the pendency of the appeals before the CIT (Appeals) for more than three years. It would be in the interest of all to join the following respondents to resolve the issues of pendency of appeals which has clogged the system.

*(i) The Chairman,
Central Board of Direct Tax,
Department of Revenue North Block,
New Delhi-110001.*

*(ii) The Finance Secretary,
Ministry of Finance,
North Block, New Delhi-110001*

*(iii) Principal of Chief Commissioner
of Income Tax
(NaFAC),
National Faceless Appeal Centre, Delhi,
Through, Delhi, Situated at North*

*Block,
New Delhi-110001*

6. The respondents are requested to file their response/affidavit on the following:

i) Pendency of appeals before the Commissioner of Income Tax (Appeals).

ii) The average life of the appeal.

iii) How many total appeals are allocated to each Commissioner of Appeals on average basis.

iv) If there is any inordinate delay, such as noticed in the instant case, what are the remedial measures that may be suggested by the Central Board of Direct Taxes.

7. Issue Notice to the newly added respondents returnable on 1st October, 2024.

Direct service through email is permitted"

4. Thereafter, on 01.10.2024, the following order was passed :

"1. Learned Senior Standing Counsel Mr. Karan Sanghani has tendered affidavit-in-reply on behalf of respondent Nos.3 to 5 in response to the order dated 17.09.2024. The same is ordered to be taken on record.

2. On perusal of the affidavit-in-reply filed on behalf of respondent Nos.3 to 5, it reveals that the total appeals pending before the appellate authority as on 26.09.2024 are as under:

Category	Pending appeals as on 26.09.2024
Faceless CIT (A)	3,90,878
Non-Faceless CIT (A)	80,170
JCIT(A)	1,09,140
Total	5,80,188

3. However, it is not stated in the affidavit with regard to the allocation of the above appeals between 279 Commissioner of Income Tax (Appeals) who are working in a faceless manner and 64 CIT(A) who are working as in a

Non-faceless manner and 100 JCIT (Appeals) who are allotted the appeals where appeals of disputed demand is less than 10 lakh and the appeals arising out of the order passed under Section 154 by the CPS.

4. In the affidavit, no data is given with regard to average life of the pending appeal as, such data is stated to be not readily available with National Faceless Appeal Centre (NFAC). Let the same may be submitted before the next date of hearing.

5. With regard to the issue of allotment of the appeals to each Commissioner of Appeals on average basis, it is stated as under:

"6. With reference to the total appeals allocated to each Commissioner of Appeals on average basis, it is humbly submitted that the total number of CIT(A) faceless and nonfaceless are 279 and 64

respectively and total number of pending appeals as on 26.09.2024 is 4,71,048. the average pendency with faceless CIT(A) is around 1400 cases as on 26.09.2024 and it is around 1252 with non-faceless CIT(A)."

6. With regard to remedial measures suggested by Central Board of Direct Taxes for reduction of the backlog of the pending appeals, it is stated that the CBDT has issued the guidelines for the priority/out of turn disposal on 19.03.2024 and 100 JCIT (Appeals) are appointed in the year 2023 and as per Section 345MA of the Income-Tax Act, 1961, e-Dispute Resolution Scheme, 2022 is notified and under Finance Act, 2024, new measures have been introduced and Vivad se Vishwas Scheme, 2024 is also introduced by Finance Act, 2024 and Commissioner (Appeals) have been empowered to set aside the ex-parte assessment orders.

7. Except the above remedial measure,

no other measures are stated in the affidavit with regard to as to how the pending appeals with the CIT (Appeals) which is around 1400 cases per Faceless CIT (Appeals) shall be heard and within what time span such appeals shall be disposed of by the concerned CIT (Appeals). No measures are mentioned with regard to bunching of similar appeals or repeated issues for different succeeding years in appeals, covered matters etc. which would speedily dispose of such appeals by CIT (Appeals).

8. Be that as it may. In the facts of the case by order dated 26.03.2020, the petitioner is already protected by restraining the respondent from taking any coercive action.

9. In view of the above observations, let there be a fresh additional affidavit-in-reply be filed by respondent Nos.3 to 5 before the next date of hearing as placing on record

the data with regard to the average life of the appeal as well as the remedial measures to dispose of the appeals pending before the CIT (Appeals) and time bound programme for disposal of backlog of 5,80,188 pending appeals as on 26.09.2024.

10. Stand over to 15.10.2024. To be listed on Top of the Board."

5. Pursuant to the aforesaid both the orders, the respondent Nos.3 to 5 have tendered the affidavits-in-reply. On perusal of the affidavits-in-reply filed on both the occasions, it appears that respondent Nos.3 to 5 instead of addressing the issue of pendency of the Appeals pending before the CIT (Appeals) has tried to justify the proceedings undertaken by the CIT (Appeals) for the disposal. We are at pain to note that in spite of giving specific directions in paragraph

No.9 of the order dated 01.10.2024, the respondent Nos.3 to 5 have ignored the same and repeated what is stated in the earlier affidavit with an addition only reference to annual Central Action Plan 2024-25 and Vivad se Vishwash Scheme, 2024 for issue of pendency of more than 5,80,000 Appeals before the CIT (Appeals).

6. Be that as it may, if the respondents are not interested in resolution of the issue of pendency of the Appeals the manner in which it ought to have been resolved by classifying the Appeals as per the issues concerning the recurring issues, covered issues, etc., we are of the opinion that no recovery should be made from the assesseees during the pendency of the Appeals. Therefore, in all these petitions, there shall be no recovery of any outstanding dues from the petitioners whose Appeals are

pending during pendency of these petitions.

7. Issue **Rule.**

(BHARGAV D. KARIA, J)

(D.N.RAY,J)

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