

**[2026] 182 taxmann.com 199 (Jammu & Kashmir and Ladakh)[30-12-2025]**

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**INCOME TAX : Appellate Tribunal has jurisdiction to stay operation of an order appealed against, even in absence of any subsisting tax demand**

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**[2026] 182 taxmann.com 199 (Jammu & Kashmir and Ladakh)**

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH**

**J & K Yateem Foundation**

**v.**

**Income Tax Appellate Tribunal\***

SINDHU SHARMA AND SHAHZAD AZEEM, JJ.

WP(C) NO. 2118 OF 2025

CM NO. 5604 OF 2025<sup>†</sup>

DECEMBER 30, 2025

**Section 254 of the Income-tax Act, 1961 - Appellate Tribunal - Powers of (Stay) - Whether Tribunal in exercise of its powers under section 254 possesses incidental and ancillary powers to pass such interim orders as may be necessary to protect efficacy of appellate remedy - Held, yes - Whether Tribunal is competent to grant stay where continuation thereof during pendency of appeal would render appeal nugatory and while exercising such power, Tribunal must be satisfied that a strong *prima facie* case is made out and that refusal to grant interim relief would frustrate very purpose of appeal, while ensuring that appeal itself is disposed of expeditiously - Held, yes - Whether therefore, Tribunal cannot decline to entertain stay application predominantly on premise that no tax demand has arisen and that it lacks jurisdiction to stay operation of order passed by Commissioner - Held, yes [Paras 10 and 11] [Matter remanded]**

**FACTS**

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- The assessee-society was granted registration under section 12A(1)(ac)(i). The said registration came to be cancelled by the Commissioner (Exemptions).
- On appeal, the assessee filed a stay application along with the appeal, seeking, *inter alia*, stay of the operation of the cancellation order during pendency of the appeal.
- The Tribunal dismissed the application for stay on the grounds that there was no outstanding tax demand against the assessee and that, in the absence of any subsisting tax demand as on date of consideration, the Tribunal had no jurisdiction to stay the operation of the order passed by the Commissioner.
- On writ :

**HELD**

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- The primary question that arises for consideration is whether the Income-tax Appellate Tribunal has jurisdiction to stay the operation of an order appealed against, even in the absence of any subsisting tax demand. [Para 6]
- The power of the Tribunal to grant stay as an incidence of its appellate jurisdiction is no longer *res integra*.

In *M.K. Mohammed Kunhi v. Income-tax Officer*[1966] 59 ITR 171, the Kerala High Court examined the power of the Tribunal to stay the order appealed against, albeit in the context of stay of demand at a time when such power was not expressly provided for under the Act. The Court held that even in the absence of an express statutory provision, an appellate authority possesses the power to stay proceedings pending appeal, such power being incidental or ancillary to the effective exercise of its appellate jurisdiction. [Para 7]

- The decision of the Kerala High Court was affirmed by the Supreme Court in *ITO v. M. K. Mohammed Kunhi* [1969] 71 ITR 815 (SC) wherein it was held that the conferment of appellate jurisdiction under section 254 necessarily carries with it the power to pass such interim orders as may be required to prevent the appeal, if successful, from being rendered nugatory. [Para 8]
- In *CIT v. Income Tax Appellate Tribunal* [2013] 31 taxmann.com 369/216 Taxman 14, the Delhi High Court reaffirmed the position of law regarding the powers of the Tribunal. [Para 9]
- In *Asstt. CIT v. GE India Industrial (P.) Ltd.* [2014] 46 taxmann.com 374/[2013] 358 ITR 410/[2014] 224 Taxman 140, the Gujarat High Court reiterated that the Tribunal in exercise of its powers under section 254 possesses incidental and ancillary powers to pass such interim orders as may be necessary to protect the efficacy of the appellate remedy. The Court held that the Tribunal is competent to grant stay where continuation thereof during pendency of the appeal would render the appeal nugatory. It was further observed that while exercising such power, the Tribunal must be satisfied that a strong *prima facie* case is made out and that refusal to grant interim relief would frustrate the very purpose of the appeal, while ensuring that the appeal itself is disposed of expeditiously. [Para 10]
- In the instant case, the Tribunal has declined to entertain the stay application predominantly on the premise that no tax demand has arisen and that it lacks jurisdiction to stay the operation of the order passed by the Commissioner. Such a view is clearly contrary to the settled legal position governing the scope of powers of the Appellate Tribunal under section 254. Therefore, the finding recorded by the Tribunal that it has no jurisdiction to stay the operation of the order appealed against is legally unsustainable. [Para 11]
- In view of the aforesaid facts and circumstances, the impugned order passed by the Tribunal is set aside. The matter is remitted to the Tribunal to consider and decide the stay application afresh, in accordance with law, should the petitioner so desire, during the pendency of the appeal. [Para 12]

## **CASE REVIEW**

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*M.K. Mohammed Kunhi v. ITO* [1966] 59 ITR 171 (Kerala) (para 7), *ITO v. M. K. Mohammed Kunhi* [1969] 71 ITR 815 (SC) (para 8), *CIT v. Income Tax Appellate Tribunal* [2013] 31 taxmann.com 369/216 Taxman 14 (Delhi) (para 9) and *Asstt. CIT v. GE India Industrial (P.) Ltd.* [2014] 46 taxmann.com 374/[2013] 358 ITR 410/[2014] 224 Taxman 140 (Gujarat) (para 10) - followed.

*J & K YATEEM FOUNDATION v. CIT* [SA No. 3(Asr)2025 in I.T.A. No. 56/Asr/2025, dated 24-4-2025] (para 12) set aside

## **CASES REFERRED TO**

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*J & K YATEEM FOUNDATION v. CIT* [SA No. 3(Asr) of 2025, dated 24-4-2025] (para 2), *M.K. Mohammed Kunhi v. ITO* [1966] 59 ITR 171 (Kerala) (para 7), *ITO v. M. K. Mohammed Kunhi* [1969] 71 ITR 815 (SC) (para 8), *CIT v. Income Tax Appellate Tribunal* [2013] 31 taxmann.com 369/216 Taxman 14 (Delhi) (para 9) and *Asstt. CIT v. GE India Industrial (P.) Ltd.* [2014] 46 taxmann.com 374/[2013] 358 ITR 410/[2014] 224 Taxman 140 (Gujarat) (para 10).

**Z.A. Qureshi and Robinder Singh, Adv. for the Appellant. Umar Rashid Wani, Adv. for the Respondent.**

## **JUDGMENT**

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**Sindhu Sharma, J.-** The petitioner claims to be a society known as "J&K Yateem Foundation", registered under the Societies Registration Act *vide* Registration No. 3758-S of 2001 dated 12.10.2001. The petitioner was granted registration under section 12A(1)(ac)(i) of the Income-tax Act, 1961 (hereinafter referred to as

'the Act') on 12.10.2021. The said registration came to be cancelled by the Commissioner of Income-tax (Exemptions), Chandigarh, *vide* order dated 19.01.2024, purportedly in exercise of powers under section 12AB(4)(ii) of the Act.

2. Aggrieved by the order of cancellation, the petitioner preferred an appeal before the Income-tax Appellate Tribunal, Amritsar Bench, registered as I.T.A. No. 56/Asr/2025. A stay application being *J & K YATEEM FOUNDATION v. CIT* [SA No. 3(Asr)2025, dated 24-4-2025] was filed along with the appeal, seeking, *inter alia*, stay of the operation of the cancellation order during pendency of the appeal.

3. The Tribunal, *vide* order dated 24.04.2025, dismissed the application for stay on the grounds that there was no outstanding tax demand against the petitioner and that, in the absence of any subsisting tax demand as on date of consideration, the Tribunal had no jurisdiction to stay the operation of the order passed by the Commissioner.

4. The contention of the petitioner is that the Tribunal has erred in holding that it lacks jurisdiction to stay the operation of the order appealed against, which, according to the petitioner, is contrary to the scheme of sections 253 and 254 of the Income-tax Act, 1961. Consequently, the petitioner seeks directions to the Tribunal to decide SA No. 3/Asr/2025 arising out of I.T.A. No. 56/Asr/2025 afresh, along with appropriate interim relief.

5. We have heard learned counsel for the parties.

6. The primary question that arises for consideration is whether the Income-tax Appellate Tribunal has jurisdiction to stay the operation of an order appealed against, even in the absence of any subsisting tax demand.

7. The power of the Income-tax Appellate Tribunal to grant stay as an incidence of its appellate jurisdiction is no longer res integra. In "*M.K. Mohammed Kunhi v. Income-tax Officer*", [1966] 59 ITR 171 (Kerala), the Kerala High Court examined the power of the Tribunal to stay the order appealed against, albeit in the context of stay of demand at a time when such power was not expressly provided for under the Act. The Court held that even in the absence of an express statutory provision, an appellate authority possesses the power to stay proceedings pending appeal, such power being incidental or ancillary to the effective exercise of its appellate jurisdiction. The Court observed as under:

"We think that the petitioner is entitled to succeed on the first ground, and that it is unnecessary to consider the validity of the second ground. That the power to stay is a necessary corollary and is incidental to the appellate power has been ruled by Rajagopala Ayyangar J., as a judge of the Madras High Court, in *Swarnambikai Motor Service v. Wahita Motor Service* W. Ps. Nos. 427 and 438 of 1956. The short report of the case sets out the relevant passage as follows:

"It is no doubt true that there is a distinction between courts in the strict sense and Tribunals, judicial or quasi-judicial; and the generally accepted principle of inherent powers of courts are not applicable as such to the Tribunals. Whatever may be the position as regards purely administrative Tribunals, as regards quasi-judicial Tribunals dealing with the rights of parties even though they might be created by specific statutes, they would have all those powers, which are incidental and ancillary or which follow as necessary implication to the exercise of the powers expressly conferred upon them. Otherwise, the jurisdiction conferred upon them could not be effectually exercised and in most cases may become illusory and ineffective."

8. The decision of the Kerala High Court was affirmed by the Hon'ble Supreme Court in *Income-tax Officer v. M. K. Mohammed Kunhi* [1969] 71 ITR 815 (SC)/AIR 1969 SC 430, wherein it was held that the conferment of appellate jurisdiction under section 254 of the Act necessarily carries with it the power to pass such interim orders as may be required to prevent the appeal, if successful, from being rendered nugatory. The Hon'ble Court observed:

"It could well be said that when section 254 confers appellate jurisdiction, it impliedly grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution and that the statutory power carries with it the duty in proper cases to make such orders for staying proceeding as will prevent the appeal if successful from being rendered nugatory."

9. In "*Commissioner of Income-tax v. Income-tax Appellate Tribunal*" [2013] 31 taxmann.com 369/216 Taxman 14 (Delhi) /WP (C) No. 4684/2010, decided on 03.08.2012, the Delhi High Court reaffirmed the

position of law regarding the powers of the Tribunal and held as under:

"21. So far as the order of the Tribunal passed on 21.05.2010 is concerned, it is well settled by the judgment of the Supreme court in *ITO v. M.K. Mohammed Kunhi* [1969] 71 ITR 815 that the Tribunal, while exercising its appellate powers under the Income Tax Act has also the power to ensure that the fruits of success are not rendered futile or nugatory and for this purpose it is empowered, to pass appropriate orders including orders of stay. In *ITO v. Khalid Mehdi Khan* [1977] 110 ITR 79 the Andhra Pradesh High Court, applying the rule laid down in *M.K. Mohammed Kunhi (supra)*, stayed the assessment proceedings pending before the Assessing Officer consequent to the directions of the CIT given in orders passed under Section 263 of the Act. The stay order passed by the Tribunal on 21.05.2010 is, therefore, supported by ample authority. It is part of the exercise of the appellate power of the Tribunal under Section 254 (1). The object of the order is twofold: the first is to prevent multiplicity of proceedings and harassment to the assessee, with the possibility of the proceedings before the Assessing Officer becoming meaningless if ultimately the order passed by the CIT is found to be invalid on grounds of jurisdiction or on merits and, second, to ensure that the fruits of success in the appeals are not rendered meaningless or nugatory. It has not been shown before us by the petitioner as to what error was committed by the Tribunal in passing the stay orders, nor was it argued that the Tribunal did not exercise its discretion on the basis of settled parameters for granting stay of proceedings.

22. For the above reasons we dismiss the writ petition. All interim orders are vacated. It will be open to the Tribunal to proceed with the hearing of the appeals. It is desirable that the appeals are disposed of as expeditiously as possible (and in any case within three months from today). In the circumstances, there will be no order as to costs."

**10.** *In Assistant Commissioner of Income-tax v. GE India Industrial (P.) Ltd.* [2014] 46 taxmann.com 374/[2013] 358 ITR 410/[2014] 224 Taxman 140 (Gujarat)/Special Civil Application No. 6851 of 2013, the Gujarat High Court reiterated that the Income-tax Appellate Tribunal, in exercise of its powers under section 254 of the Income-tax Act, possesses incidental and ancillary powers to pass such interim orders as may be necessary to protect the efficacy of the appellate remedy. The Court held that the Tribunal is competent to grant stay where continuation thereof during pendency of the appeal would render the appeal nugatory. It was further observed that while exercising such power, the Tribunal must be satisfied that a strong *prima facie* case is made out and that refusal to grant interim relief would frustrate the very purpose of the appeal, while ensuring that the appeal itself is disposed of expeditiously. The court held as under:

"5.4 In the present case, as stated hereinabove, and with a view to avoid multiplicity of proceedings and harassment to the assessee and considering section 275(1)(a) of the Income-tax Act, when the Commissioner of Income-tax (Appeals) will get further six months time to dispose of the penalty proceedings from the end of the month in which the order of Tribunal is received by the Commissioner/Chief Commissioner, when the Tribunal has stayed the penalty proceedings during the pendency of the appeal before it, it cannot be said that the Tribunal has exceeded in its jurisdiction and/or the said order is illegal and/or perverse which calls for interference of this court in exercise of powers under articles 226/227 of the Constitution of India.

6. In view of the above and for the reasons stated above, it is held that the Income-tax Appellate Tribunal in exercise of the powers under section 254 of the Income-tax Act would have jurisdiction and/or power of doing all such acts, or employing such means, as are essentially necessary to its execution and that the statutory power carries with it the duty in proper cases to make such orders for staying proceedings (inclusive of penalty proceedings) as will prevent the appeal if successful from being rendered nugatory and the Appellate Tribunal has the power to grant stay as incidental or ancillary to its appellate jurisdiction. However, while exercising such power of stay, the Tribunal has to be satisfied that there is a strong *prima facie* case made out and the Tribunal is satisfied that the entire purpose of appeal would be frustrated or rendered nugatory by allowing the recovery proceedings/penalty proceedings to continue, during pendency of the appeal. It is also observed that in a case where the Appellate Tribunal grants the stay either of recovery and/or stay of penalty proceedings, the Appellate Tribunal shall see to it that the appeal before it is decided and disposed of finally at the earliest and preferably within a period of three months so that the appellant-assessee may not take undue advantage by delaying the appeal proceedings."

**11.** In the present case, the Tribunal has declined to entertain the stay application predominantly on the premise that no tax demand has arisen and that it lacks jurisdiction to stay the operation of the order passed by the Commissioner. Such a view is clearly contrary to the settled legal position governing the scope of powers

of the Appellate Tribunal under section 254 of the Act. We are, therefore, of the considered opinion that the finding recorded by the Tribunal that it has no jurisdiction to stay the operation of the order appealed against is legally unsustainable.

**12.** In view of the aforesaid facts and circumstances, the impugned order dated 24.04.2025 passed by the Income-tax Appellate Tribunal, Amritsar Bench, in SA No. 3/Asr/2025 is set aside. The matter is remitted to the Income-tax Appellate Tribunal to consider and decide the stay application afresh, in accordance with law, should the petitioner so desire, during the pendency of the appeal.

**13.** It is clarified that we have not examined the merits of the stay application or the appeal, and all issues are left open to be considered by the Tribunal independently.

**14.** The writ petition is disposed of accordingly.

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\*Matter remanded.

†Arising out of *order of ITAT in J & K YATEEM FOUNDATION v. CIT* [SA No. 3(Asr)2025 in I.T.A. No. 56/Asr/2025, dated 24-4-2025]