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**SooperKanoon Citation :** [sooperkanoon.com/614648](http://sooperkanoon.com/614648)

**Court :** Punjab and Haryana

**Decided On :** Aug-27-1991

**Reported in :** [1992]196ITR326(P& H)

**Judge :** A.L. Bahri and; H.S. Bedi, JJ.

**Acts :** [Income Tax Act, 1961](#) - Sections 220(1) and 220(3); [Constitution of India](#) - Article 226

**Appeal No. :** Civil Writ Petition No. 6823 of 1991

**Appellant :** Kuku Rice Mills and ors.

**Respondent :** Assessing Authority-cum-income-tax Authority and anr.

**Advocate for Def. :** A.K. Mittal, Adv.

**Advocate for Pet/Ap. :** Ram Lal Gupta, Adv.

**Judgement :**

1. The only question involved in this writ petition is as to whether, while considering the application purported to have been filed under Section 220(3) of the Income-tax Act, 1961, the Income-tax Officer was required to give an opportunity of hearing to the assessee before declining to grant the relief asked

for.

2. M/s. Kuku Rice Mills, petitioner No. 1, filed the return under the Income-tax Act for the assessment year 1988-89. The Income-tax Officer acting under Section 143(3) of the Act raised additional demand of Rs. 3,13,486. The firm was not satisfied with this order and filed an appeal before the Commissioner of Income-tax (Appeals). The Commissioner, vide annexure P-I, reduced the additional demand to Rs. 1,02,617. Although the demand was met by the firm, still not satisfied, a further appeal was filed before the Income-tax Appellate Tribunal which is stated to be pending.

3. Petitioners Nos. 2 to 6, who are partners of the firm, were burdened with additional demand on the basis of the order of the Commissioner aforesaid, proportionately, while rectifying the demand earlier raised. It was in these proceedings that the partners approached the Income-tax Officer for staying the recovery of the additional demand made as appeal of the petitioner-firm was pending before the Tribunal. The Income-tax Officer rejected those applications by passing the orders, annexures P-7 to P-9, which are being challenged in the present writ petition.

4. The contention of counsel for the petitioner is that these impugned orders were passed without affording an opportunity of hearing to the petitioners and, secondly, these are not supported by reasons as these are not speaking orders. As far as the first point is concerned, there is force in the contention of counsel for the petitioners. No doubt, if the relief is to be granted to the assessee, the authorities under the Income-tax Act may accept the return filed or pass an appropriate order granting the relief, but when such relief asked for is to be denied, the principle of natural justice would require an opportunity of hearing to be given to them. In the present case, without hearing the petitioners, the impugned orders were passed mentioning that it was difficult for the Income-tax Officer to allow stay for the payment of demand raised, as the demand was being raised under Section 154 of the Act after the decision of the appeal by the Commissioner of Income-tax (Appeals).

5. Learned counsel for the Department has argued that such applications were not maintainable as these were asking for a blanket stay of the recovery of the amount due and these applicants were not, in fact, praying for extension of time under Section 220(3) of the Income-tax Act. It may be noticed that wrong provisions of the statute mentioned in the application or non-mentioning of the same will not be per se a ground to deny the relief asked for. The substance of the application is to be taken into consideration to see if relief under any of the provisions of the statute could be granted. The petitioner's claim, in substance, was for the extension of time of 35 days allowed under Sub-section (1) of Section 220 of the Act. Though asked for stay of the recovery till the decision of the appeal of the firm by the Income-tax Appellate Tribunal, such a blanket stay could not be granted, as has been mentioned by the Income-tax Officer in the impugned orders. However, it is left to the Income-tax Officer to be satisfied if opportunity of hearing be given to allow extension of time for a limited period.

6. For the reasons stated above, the impugned orders, annexures P-7 to P-9, are quashed leaving the Income-tax Officer to decide the applications by affording an opportunity of hearing to the petitioners by passing a speaking order. The petitioners are directed to appear before the Income-tax Officer on September 9, 1991. There will be no order as to costs.

7. With the directions aforesaid, the writ petitions stand disposed of.

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