



## The Chamber of Tax Consultants

Mumbai | Delhi

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March 19, 2019

To,

**Mr. Sanjeev Sharma**

**Commissioner of Income Tax, APA-2,**

**Delhi 110001.**

Respected Sir,

### **Re: Tax Litigation Management**

1. The Chamber of Tax Consultants (CTC), Mumbai was established in 1926. CTC is one of the oldest (about 92 years) voluntary non-profit making organizations in Mumbai formed with the object of educating and updating its members on Tax and other Laws. It has a robust membership strength of about 4000 professionals, comprising Advocates, Chartered Accountants and Tax Practitioners. The Chamber also has created a niche with the Government and other regulatory agencies, where representations by the Chamber are received with all seriousness.
2. We sincerely appreciate the effort of the CBDT in setting up a committee to examine suggestions to reduce litigation and ensure a time bound finalization of disputes. We are confident that an appropriate mix of amendment in legislation and proper monitoring will help to reduce and ease the direct tax litigation process in the country.
3. Based on the feedback received from our members, we would like to present our suggestions as under:

### **Issues at Assessment level**

1. We strongly believe that a litigation process starts from the assessment stage. Therefore, for any measure on reduction of income tax litigation, this stage is of the primary importance. Ultimately, and in the long term, success or failure of any drive to reduce income tax litigation would primarily depend upon the quality of assessment proceeding as well as the assessment orders. Therefore, the first aim should be to have strong quality oriented [and not necessarily only revenue oriented] assessment mechanism, which will go in a long way in reduction of income tax litigation.
2. While one may appreciate the view point of the Department that the revenue aspect cannot be lost sight of, we strongly believe that what should be the base philosophy should be not to collect maximum revenue in all possibility manners but to collect just revenue in a fair and judicious manner, the philosophy based on Constitution of India. It is now very well – settled legal position that an Assessing Officer acts as a quasi – judicial authority while framing the assessment and, consequently, all legal principles, including the principles of natural justice, that are applicable to an adjudicating authority get also attracted while framing the assessment under the Act. We believe that if the assessments are made in just, transparent and impartial manner, that alone would generate far greater revenue, apart from tremendously increasing the faith, the respect and the compliance culture in the minds of the tax payers. We come across many cases where the additions are made in a very casual, cryptic and callous manner; sometimes even the Assessing Officers admitting weakness of the same and expressing their helplessness but, at the same time, giving confidence to the assessee that this addition would be deleted at the appellate stage. This is how in many cases tax litigations start. We are prepared to present a few of such sample cases to just drive home this point.
3. Therefore, we suggest that the targets / incentives for the Assessing Officers should not only be on the basis of the amount of the tax assessed but on the quality of the assessment orders framed. This should be supplemented with a robust supervisory / monitoring mechanism.
4. The Officers must be sensitized to ensure that orders passed by them are in accordance with the law and are in line with judicial principles and precedents, and are not merely driven by revenue considerations. An improvement in the quality of orders passed by Officers would greatly enable the easing of the litigation process.

5. The current mechanism of **Grievance Committee** comprising local CITs needs to work more effectively. Better guidelines are needed to ensure that high-pitched assessments that are made casually and cryptically without regard to the factual and legal aspects and / or without following due process of law are avoided and, if made, remedial measures are taken in a time bound manner.
6. The position of **Ombudsmen** needs to be reinstated and, in fact, needs to be strengthened, in its scope as well as in its effective implementation. We understand that the Ombudsmen appointed under other statutory mechanism have proved to be the effective in resolving minor issues very quickly and efficiently.

### **Before the CIT (Appeals)**

1. What has been discussed above applies, with a greater force, to the functioning of CIT (Appeals) as well. There is a need to **sensitizes CIT (Appeals)** that they are appellate authorities and not merely extension of the Assessing Officer. Therefore, they need to function in a more judicious manner rather than as revenue enhancers. While we do agree with the need to monitor the work performed by them on the basis of the parameters such as speed of disposing of the appeals, quality of orders passed, etc., we strongly feel that incentivizing them to enhance assessments or strengthen orders of Assessing Officers should not be the case. This is not only against the very basic principle governing position of an appellate authority but, can also be a cause for totally avoidable litigations.
2. Filing of appeals has been made electronic. The system of CIT (A) insisting on **physical filing** of the same papers must be discouraged by a specific order.
3. A system of **taking up matters sequentially and expeditiously** needs to be put in place. There is an inordinate delay in hearing matters. The system of taking up a case needs to be monitored or specific instructions to be issued – with any departure made from the rules being explained by an Appellate Authority. The system of digitally numbering appeals filed needs to be relooked at and made publicly known.
4. An Appellant can be given an option to indicate, at the time of filing appeal, whether the appeal is covered or not, accompanied by a submission and the relevant rulings. If a CIT (A) deems proper to adjudicate the appeal in favour of the Appellant on the basis of the submissions so made by the appellant, the Appellant can be informed accordingly

and a hearing can be dispensed with. Only if the matter is likely to be dismissed or partly allowed must a hearing be held.

In fact, similar option / facility can be given to the Appellant to exercise at any stage of appellate hearing.

A proper guideline can be evolved to dispose of such appeals, including earmarking a particular date of a week to dispose of such appeals.

#### 5. **Remand Reports**

Many times the requests for Remand Report are not responded by the A.O. within the time specified in the remand order. Sometime, ultimately, the appellate orders are passed without remand reports. This is also is a hurdle in tax litigation mechanism.. Sometimes, due to paucity of time or otherwise, remand reports do not contain any fresh verification in terms of the direction in the remand orders but merely reiterate the contentions of the A.O. in the assessment order. This frustrates the very purpose of remand report and which also may weakened the Department's case. A system must be in place to strictly monitor remand cases, to ensure that quality remand reports are prepared in the time bound manner.

6. A system of **monitoring the time taken to pass an order** is a must. It is observed that after the appeals are heard, the orders are not passed for months.
7. **Orders giving effect** to the orders of higher authorities are inordinately delayed. Some system of monitoring this by a higher Authority is needed. The Appellant can be asked to file a calculation in a prescribed format which would show the income after giving effect and the tax payable or refund position arising therefrom. This will help in speeding up the process.
8. **Vacancies and Additional Charges** with CIT (A) is a practice that may be avoided. It results in hearings being fixed and matters heard but no orders being passed for long periods.

#### **Issues at the ITAT level**

There are various administrative issues with the functioning of the ITAT which can be taken up before the Hon'ble President / Hon'ble Members of the ITAT. However, issues that may be looked into by the CBDT are as under:

1. **Covered cases** - a separate mechanism can be provided for covered cases. These must be disposed on a priority basis, with the time frame being 3 to 6 months. The form can provide for mentioning a matter as covered and additional details in prescribed form can be filed. Marked matters can be taken up on specific Fridays – and if an Appellant can demonstrate that the matter is covered without any detailed arguments, then the matter can be disposed.
2. **Issues involving similar appeals by various litigants** – e.g. bogus purchase, penny stocks, 14A – these issues need a uniform approach being taken. The CBDT can identify such issues and seek to appoint a Special Bench by bunching all such appeals, with the option to the other litigants to join as interveners. This will definitely lead to avoidance of multiple litigations across India and will also ensure quality adjudication.
3. **Setting aside of a matter** for rehearing at a lower level should be resorted to only in extreme circumstances. This will ensure that litigants do not waste years and come back to the same forum after few years with respect to the same litigation. In cases requiring limited re-evaluation of facts, the Members may be encouraged to call for Remand report from the concerned Assessing Officer within a time bound manner and basis. Alternatively, the setting aside should be with clear instruction and / or on specific issues only.

### **Issues related to Prosecution**

1. While we understand the need to initiate prosecution as a mechanism to encourage compliance, we suggest that the same should be initiated only in deserving cases, in contrast with the present practice of initiating prosecution even in small / marginal cases. Technical faults be clearly excluded from the same. More clear instructions may be issued for the same. Now that the message by the Department regarding fear of prosecution is well conveyed, having created the desired effect, a one – time amnesty scheme for marginal defaults can be thought of.

### **Broad Measures**

1. We believe that if the Department adopts the practice, as prevalent in some other countries, to come out with its own manual / interpretation on the provisions of the Income – tax Act, this will bring clarity and certainty on many aspects and, most

importantly, will bring standardization and uniformity in the approach of Assessing Officers and CIT (Appeals) on such specific issues. This alone will go in a long way to reduce the income tax litigations. Further, on some of the issues, the Department can periodically come out with appropriate circular / instruction / notification / clarification reflecting its stand on various High Courts and Supreme Court judgments, whether they are accepted in principle by the Department. This also will reduce unnecessary litigation as many time it is observed that the counsel for the Department, be at Tribunal or at High Court, are not even aware whether the Department has accepted the specific position or not. The above measure will not only reduce the income tax litigation but, in fact, will make available greater time and focus of the revenue officers to go for quality assessments / appeals.

2. Please appreciate that our above recommendations will, in fact, help the Department in generating larger revenue. For example, it is a common knowledge that many times, when assessments / appeals are set aside due to the same having not passed in proper or judicious manner, by the time the matters are taken up in the second round, the initiate momentum as well as evidences are lost / dilute become less effective, resulting deletion of such addition in second round of litigation. If only the original orders are passed in judicious manner, including observing principles of natural justice, no assessee would be able to approach higher appellate authority with a plea to set aside such order and thereby saving one more round of litigation. This is only one example but the long term positive effect for the revenue can be envisaged on the basis of many other examples.

### **Digitization**

The need to further digitize the litigation process is a must. All documents related to litigation ought to be filed online as scans so that at subsequent levels issues like files not being traceable do not arise and the same scan that was filed at stage 1 can be used years later when the matter reaches completion. Towards this, the forms need to be suitably modified so as to be more standardised and Appellate authorities and their administrative staff need to be trained into evaluating such filings and sorting appeals into categories.

We would be pleased to explain the above suggestions in more detail, if required, as well as in assisting task force that is set up towards the same.

We pledge our full support to CBDT in its drive for a better system of litigation management in the country.

Sincerely yours,

For **THE CHAMBER OF TAX CONSULTANTS**

Sd/-

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