



The Chamber of Tax Consultants

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7th August 2018

To,
Shri Hasmukh Adhia
Hon'ble Finance Secretary,
Central Board of Direct Taxes (CBDT)
North Block,
Delhi 110001.

Respected Sir,

Ref: Para (3) of the 'Action Items' dealing with 'Incentive for quality orders' under Part A- 'Targets for CIT(Appeals)' of Chapter III dealing with Litigation Management of the Central Action Plan 2018-19.

1. The Chamber of Tax Consultants (CTC), Mumbai was established in 1926. CTC is one of the oldest (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 of Advocates, Chartered Accountants, Company Secretaries and Tax Practitioners.
2. We understand that every year CBDT comes out with a Central Action Plan, the primary purpose of which is to codify the vision and mission of the Income-tax Department for a particular financial year and to highlight all the current priorities in a holistic manner. We also understand that targets and action plans for various internal departments and various departmental authorities are set out in such Central Action Plan.
3. CTC has obtained a copy of **Central Action Plan for Financial Year 2018-19**

4. from the source '<https://taxguru.in/income-tax/achievement-objectives-goals-central-action-plan-201819.html>'. A copy of the said document is also available on the website <http://www.itgoawbunit.org/cfcbdt.php>, which we understand is the website of the Income tax Gazetted Officers Association – West Bengal Unit. Further, a mention about the said document is also found in a news article on the website of Economic Times at '<https://economictimes.indiatimes.com/news/economy/policy/cbd-t-asks-taxman-to-dispose-appeals-of-over-rs-50-cr-by-year-end/articleshow/65090302.cms>'. In the said article it has been mentioned that "The Central Action Plan (CAP) for 2018-19 acts as the policy action vision document for the Income Tax Department and is unveiled by the CBDT annually." Further, reference of the said document is also found in news articles of other reputed newspapers like Business Standard and Financial Express.

5. In the said action plan, we refer to **Para (3)** of the Action Items dealing with '**Incentive for quality orders**' under Part A- '**Target for CIT(Appeals)**' of **Chapter III dealing with Litigation Management**. The same is reproduced hereunder for easy perusal:

“(3) Incentive for quality orders:

(i) With a view to encourage quality work by CITs(A), **additional credit of 2 units shall be allowed for each quality appellate order passed**. The CIT (A) may claim such credit by reporting such orders in their monthly DO letter to the CCIT concerned. Quality cases would include cases where-

(a) enhancement has been made,

(b) order has been strengthened, in the opinion of the CCIT, or

(c) penalty u/s 271(1)I has been levied by the CIT(A).

(ii) The concerned CCIT shall examine any such appellate orders referred to him by the CIT(A), decide whether any of the cases reported deserve the additional credit and convey the same through a DO letter to the CIT(A), which can be relied upon while claiming the credit at the year end.”

6. From the above action item, it can be discerned that the Commissioner of Income-tax (Appeals) [CIT(A)] shall be given additional credit of 2 units for each quality order and such quality cases would include cases where enhancement has been made by the CIT(A) or where the order under appeal has been strengthened by the CIT(A). To put it simply, incentives are proposed to be provided to CIT(A) for either enhancing the assessment or for strengthening the order of lower authority. **Further, such incentive is highlighted in bold in the Action Plan.**
7. This, in our opinion, amounts to interference in the work of CIT(A), a quasi-judicial authority, which is likely to create prejudice and bias in the approach of such quasi-judicial authority while exercising appellate functions. The same is highlighted in the ensuing paragraphs.
8. Firstly, it would be pertinent to note that Chapter XX-A of the Income-tax Act, 1961 ('the Act') deals with the appeals to CIT(A). An assessee can file an appeal against the order of the assessing officer before the CIT (Appeals). Section 251 deals with the power of CIT(A) wherein clause (a) of sub-section (1) of section 251 empowers the CIT(A) to either confirm, reduce, enhance or annul the assessment.
9. The Courts, including the Hon'ble Apex Court, have in many cases held that CIT(A) is a quasi-judicial authority. As late as on 20 July, 2018, the Hon'ble Supreme Court in case of **PCIT vs. LG Electronics India Pvt. Ltd.(Civil Appeal No. 6850 of 2018)** has held that "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". Thus, the Courts have repeatedly recognized the fact that the CIT(A) is a quasi-judicial authority.
10. Also, the Apex Court has time and again dealt with the powers and duties of a quasi-judicial authority and has time and again held that there can be no

interference of any superior authority in the judicial work of a quasi-judicial authority. We would like to draw the attention of the Board to some of the important rulings of the Apex Courts as enumerated hereunder and a brief summary of the findings of the Court is given in the Annexure attached to the present application:

- a. **Sirpur Paper Mill Ltd. vs. Commissioner of Wealth Tax [(1970) 77 ITR 6 (SC)].**
- b. **CIT vs. Simon Carves Ltd. [(1976) 105 ITR 212(SC)]**
- c. **Manek Lal vs. Dr. Prem Chand (1957) SCR 575**
- d. **CIT vs. Greenworld Corporation [(2009) 314 ITR 81 (SC)]**
- e. **R.S. Joshi vs. Ajit Mills Ltd. & Anr. etc. [1977 CTR 0354 (SC)]**

11. From the above referred judgments, it can be deduced that the Courts have repeatedly held that the tax authorities have quasi-judicial role and in discharge of such role they must adopt an impartial, objective and unbiased approach. No superior authority can interfere, whether directly or indirectly, in the judicial function of such quasi-judicial authorities. In fact, the Courts have even held the assessing officers to be a quasi-judicial authorities.

12. Further, even the Act recognizes the same fact. Reference is made to section 119 of the Act which is reproduced hereunder for easy perusal:

“119. (1) The Board may, from time to time, issue such orders, instructions and directions to other income-tax authorities as it may deem fit for the proper administration of this Act, and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board :

Provided that no such orders, instructions or directions shall be issued—

- (a) so as to require any income-tax authority to make a particular assessment or to dispose of a particular case in a particular manner; or

(b) so as to interfere with the discretion of the Commissioner (Appeals) in the exercise of his appellate functions.”

Section 119 empowers CBDT to issue orders, instructions or directions to other IT Authorities for proper administration of the act and such orders, instructions or directions are binding on all. However, the proviso to section 119(1), in no uncertain terms, provides that no such order, instruction or directions shall be issued so as to interfere with the discretion of the CIT(A) in exercise of his appellate function. Thus, even the Legislature prescribes that the Board cannot interfere in the appellate functions of the CIT(A). The relevant portion of the action plan dealing with CIT(A) as mentioned in para 4 above, stands in the face of the said proviso to section 119(1) and runs the risk of being constitutionally invalid.

13. We perceive that the said portion of the Action plan would certainly prejudice the mind of the CIT(A) while exercising their appellate functions. Our apprehensions are reproduced hereunder:

- a. The CIT(A), in order to earn more credit units, instead of adjudicating the appeal before him/ her in a fair and unbiased manner, would be more interested in strengthening the order of the lower authority. Thus, in such a scenario, the dismissal of appeals of the assesseees is a foregone conclusion, as, to strengthen the order of the lower authority, the CIT(A) would have to necessarily dismiss the appeals filed before him. This clearly amounts to interference with the judicial work of the CIT(A).
- b. To earn more credit units, CIT(A) would indulge in making fishing and roving enquiries to make enhancement of income. Of course, the power of CIT(A) includes power of enhancement, however, nonetheless the said power has to be exercised in a judicial, fair and unbiased manner. There has to be a difference between the first appellate proceedings and the assessment proceedings. There would be no end to the
- c.

assessment proceedings if this power of enhancement is not exercised in a fair and unbiased manner but in a wholesale manner.

14. The CIT(A) have the power to confirm or enhance the assessment. It is their duty to do so even without extra credit points being made available to them. The Action plan however has highlighted in bold about the availability of extra credit units to the CIT(A) in case of quality orders. Further, such additional credit of 2 units is even more than the basic units available in 5 category of cases out of 7 (please see Table 4 on page 13 of the Action Plan). The fact that the availability of additional credit is highlighted in bold and the quantum of extra credit units also speaks about the motive or intention of the Action Plan.

15. It is known that the CIT(A) fall directly within the jurisdiction of Chief Commissioner of Income-tax (CCIT). The CCIT is responsible for evaluating the performance of the CIT(A). This itself make the institution of CIT(A) prone to bias and prejudice and this itself make the institution of CIT(A) stand at the peril of being termed 'not independent'. However, it is expected that the CCIT do not interfere in the judicial work of the CIT(A). It is important to note that CIT(A) are sitting in chair of a judge to adjudicate the dispute between the assessee and the Income-tax Department. The CIT(A) itself are a part of such Income-tax Department, however, while exercising the role of CIT(A) they must put behind their affiliation with the Department and adopt a judicious approach. It is expected that CIT(A), though a part of the Income-tax Department, do not adopt a revenue friendly approach with the motive of exaction of maximum revenue, on the contrary they must conduct themselves in a quasi-judicial and independent manner without bias, prejudice.

16. We recognize that the CCIT may wish to evaluate the performance of the CIT(A) for administrative reasons – however the parameters for evaluation should not be based on number of cases where the appeals of the assessee are dismissed or number of cases where the order of the lower authorities has been strengthened or number of cases where enhancement has been made.

This will be unfair to the taxpayers who are statutorily bound to approach the CIT(A) for redressal of their grievances, being the first appellate authority.

- 17. In light of the above discussion, we request your learned self to kindly drop with immediate effect Para (3) of the 'Action Items' dealing with 'Incentive for quality orders' under Part A- 'Targets for CIT(Appeals)' of Chapter III dealing with Litigation Management of the Central Action Plan 2018-19.**

We request your learned self to kindly consider the above issue on a priority basis. We look forward to your kind intervention and taking up our request for kind consideration.

Thanking you,

Sincerely,

For The Chamber of Tax Consultants

Sd/-

**Hinesh R. Doshi
President**

Sd/-

**Mahendra B. Sanghvi
Chairman
Law & Representation Committee**

Sd/-

**Apurva R. Shah
Co-Chairman**

Encl:

Annexure "A" containing extract from relevant judgments

CC:

1. The Hon'ble Finance Minister
2. Office of the Hon'ble Prime Minister.
3. The Hon'ble Law Minister