

Income Tax Ombudsman Guidelines 2010

Income-tax Ombudsman Guidelines 2010

The Guidelines are introduced with the objective of enabling the resolution of complaints relating to public grievances against the Income Tax Department and to facilitate the satisfaction or settlement of such complaints.

CHAPTER I

PRELIMINARY

1. Short title, commencement, extent and application

I. These Guidelines shall be known as the Income Tax Ombudsman Guidelines, 2010.

II. They shall come into force from 1st May 2010.

2. Definitions

I. 'authorized representative' means a person duly appointed and authorized by a complainant to act on his behalf and represent him in the proceedings under these guidelines for consideration of his complaint.

II. 'award' means an award passed by the Ombudsman in accordance with these Guidelines.

III. 'complaint' means a representation in writing or through electronic means containing an administrative grievance alleging deficiency in the working of the Income-tax Department as mentioned in clause 9 of the Guidelines.

IV. 'guidelines' means The Income Tax Ombudsman Guidelines, 2010.

V. 'income tax authority complained against' means the junior-most Income Tax officer not below the rank of an Income Tax Officer who has given the cause of grievance to the complainant. If the grievance has been caused by an official lower in rank than

an Income Tax Officer, then this term shall mean the officer in the rank of an Income Tax Officer who is in-charge of such official.

VI. 'Ombudsman' means any person appointed under Clause 3 of the Guidelines.

CHAPTER II

ESTABLISHMENT OF THE OFFICE OF INCOME TAX OMBUDSMAN

3. Appointment and Tenure

I. On the recommendations of a Committee consisting of the Secretary, Department of Revenue in the Ministry of Finance, the Chairman, Central Board of Direct Taxes and the Member (Personnel), Central Board of Direct Taxes (CBDT), the Central Government may appoint one or more persons as Ombudsman.

II. The Ombudsman selected shall be a person who has held a post in the Government of India in the HAG scale of pay of Rs.67,000-79,000/-(pre-revised pay scale of Rs.22,400-525-24,500) on regular basis for at least one year and shall preferably be a resident of the city where he/she is proposed to be appointed. He/she shall be a serving officer (as on the last date for receipt of applications) preferably of the Indian Revenue Service (Income Tax). If a suitable officer from that service is not available, officers of equivalent grade of any other Group 'A' service of the Central Government may be appointed. When appointed as Ombudsman, the officer, if he/she is still in service under the Government of India, shall seek retirement from Government service, before entering upon the office as an Ombudsman.

III. The Ombudsman shall be independent of the jurisdiction of the Income tax department.

IV. The Ombudsman shall be appointed for a tenure of 2 years extendable by one year or till the incumbent attains the age of 63 years, whichever is earlier based on performance appraisal. There shall be no reappointment. Performance appraisal shall be made by the Committee constituted in clause 3.1.

4. Remuneration

The Ombudsman shall be allowed pay and allowances as applicable to a Central Government Officer in the HAG+ pay scale of Rs. 75,500-80,000. Any pension to which he/she is entitled from the Central Government / State Government shall be deducted from his/her salary in the post of Income Tax Ombudsman.

5. Territorial Jurisdiction

The Central Government shall specify the territorial jurisdiction of each Ombudsman.

6. Location of offices The offices of Income Tax Ombudsman shall initially be located at New Delhi, Mumbai, Chennai, Kolkata, Bangalore, Hyderabad, Ahmedabad, Pune, Lucknow, Bhopal and Kochi. The Government may notify additional locations and appoint an Ombudsman for each location.

7. Secretariat

Each Ombudsman shall be provided with a secretariat staff consisting of a Private Secretary, UDC and a Peon by the Central Board of Direct Taxes.

CHAPTER III

8. Powers and Duties

I. The Ombudsman shall have the powers to –

(a) receive complaints from taxpayers on any matters specified in clause 9;

(b) consider such complaints and facilitate their satisfaction or settlement by agreement, through conciliation and mediation between the Income Tax Department and the aggrieved parties or by passing an 'award' in accordance with the Guidelines;

(c) require the Income Tax Authority complained against or any other related Income Tax Authority to provide any information or furnish certified copies of any document relating to the subject matter of the complaint which is or is alleged to be in its possession; provided that in the event of failure of such authority to

comply with the requisition without any sufficient cause, the Ombudsman may, if he deems fit, draw the inference that the information, if provided or copies if furnished, would be unfavourable to the concerned Income Tax Authority;

(d) suggest remedial measures for redressal of grievances; and

(e) report his findings to the Secretary, Department of Revenue, GOI and the Chairman CBDT for appropriate action against erring officials;

II. The Ombudsman shall have the following duties:

(a) to exercise general powers of superintendence and control over his office and be responsible for the conduct of business in his office;

(b) to maintain confidentiality of any information or document coming into his knowledge or possession in the course of discharging his duties and not disclose such information or document to any person except with the consent of the person furnishing such information or document; provided that nothing in this clause shall prevent the Ombudsman from disclosing information or documents furnished by a party in a complaint to the other party or parties, to the extent considered by him to be reasonably required to comply with the principles of natural justice and fair play in the proceedings;

(c) to protect individual taxpayer's rights and reduce taxpayers' burden;

(d) to identify issues that increase the compliance burden or create problems for taxpayers, and to bring those issues to the attention of the CBDT and the Ministry of Finance;

(e) to send a monthly report to the Chairman CBDT and Secretary, Department of Revenue in the Ministry of

Finance recommending appropriate action. The report shall specially highlight cases where action needs to be taken against erring Income Tax authorities for their failure to redress the grievance. The report will be accompanied with primary evidence needed to initiate action against the delinquent persons;

(f) to furnish a report every year containing a general review of activities of the office of the Ombudsman during the preceding financial year to the Secretary, Department of Revenue, Ministry of Finance and the Chairman, CBDT along with such other information as may be considered necessary by him. In the annual report, the Ombudsman, on the basis of grievances handled by him, will review the quality of the working of the Income-tax Department and make recommendations to improve the tax administration; and

(g) to compile a list of 'awards' passed by it between April and March of each financial year in respect of every Income Tax Authority Complained Against, by name, and report it to the controlling Chief Commissioners of the officers concerned and the Chairman, Central Board of Direct Taxes before the end of April so that this information can be reflected in the Annual Confidential Reports of the officers concerned.

CHAPTER IV

PROCEDURE FOR REDRESSAL OF GRIEVANCES

9. Grounds on which complaint shall be filed:-

I. A complaint on any one or more of the following grounds alleging deficiency in the working of the Income-tax Department may be filed with the Ombudsman:

(a) delay in issue of refunds beyond time limits prescribed by law or under the relevant instructions issued from time to time by the Central Board of Direct Taxes;

(b) sending of envelopes without refund vouchers in cases of refund;

(c) non adherence to the principle of 'First Come First Served' in sending refunds;

(d) non acknowledgement of letters or documents sent to the department;

(e) non up-dating of demand and other registers leading to harassment of assesseees;

(f) lack of transparency in identifying cases for scrutiny and non communication of reasons for selecting the case for scrutiny;

(g) delay in disposing cases of interest waiver;

(h) delay in disposal of rectification applications;

(i) delay in giving effect to the appellate orders;

(j) delay in release of seized books of account and assets, after the proceedings under the Income-tax Act in respect of the years for which the books of account or other documents are relevant are completed;

(k) delay in allotment of permanent account number (PAN);

(l) non credit of tax paid, including tax deducted at source;

(m) non adherence to prescribed working hours by Income Tax officials;

(n) unwarranted rude behaviour of Income Tax officials with assesseees;

(o) any other matter relating to violation of the administrative instructions and circulars issued by the Central Board of Direct Taxes in relation to Income-tax administration.

II. Central Board of Direct Taxes may include any other ground on which a complaint may be filed with the Ombudsman.

10. Procedure for filing the complaint

I Any person, who has a grievance against the Income-tax Department, may, himself or through his authorized representative, make a complaint against the Income-tax official in writing to the Ombudsman.

II (a) The complaint shall be duly signed by the complainant and his authorised representative, if any, and shall state clearly the name and address of the complainant, the name of the office and official of the Income-tax Department against whom the complaint is made, the facts giving rise to the complaint supported by documents, if any, relied on by the complainant and the relief sought from the Ombudsman;

(b) A complaint made through electronic means shall also be accepted by the Ombudsman and a print out of such complaint shall be taken on the record of the Ombudsman.

(c) A printout of the complaint made through electronic means shall be signed by the complainant at the earliest possible opportunity before the Ombudsman takes steps for conciliation or settlement.

(d) The signed printout shall be deemed to be the complaint and it shall relate back to the date on which the complaint was made through electronic means.

III No complaint to the Ombudsman shall lie unless:-

(a) the complainant had, before making a complaint to the Ombudsman, made a written representation to the Income Tax

authority superior to the one complained against and either such authority had rejected the complaint or the complainant had not received any reply within a period of one month after such authority had received his representation or the complainant is not satisfied with the reply given to him by such authority;

(b) the complaint is made not later than one year after the complainant has received the reply of the department to his representation or, in case, where no reply is received, not later than one year and one month after the representation to the Income Tax Authority.

(c) the complaint is not in respect of the same subject matter which was settled through the Office of the Ombudsman in any previous proceedings whether or not received from the same complainant or along with any one or more complainants or any one or more of the parties concerned with the subject matter; and

(d) the complaint is not frivolous or vexatious in nature.

IV No complaint shall be made to the Income-tax Ombudsman on an issue which has been or is the subject matter of any proceeding in an appeal, revision, reference or writ before any Income-tax Authority or Appellate Authority or Tribunal or Court.

11. Proceedings to be summary in nature

The Ombudsman shall not be bound by any legal rules of evidence and may follow such procedure that appears to him to be fair and proper. The proceedings before the Ombudsman shall be summary in nature.

12. Settlement of complaints by agreement

I As soon as it may be practicable so to do, the Ombudsman shall cause a notice of the receipt of any complaint along with a copy of the complaint to be sent to the Income Tax Authority Complained Against and endeavour to promote a settlement of the complaint by

agreement between the complainant and such authority through conciliation or mediation;

II For the purpose of promoting a settlement of the complaint, the Ombudsman may follow such procedure as he may consider appropriate.

13. Award by the Ombudsman

I If a complaint is not settled by agreement within a period of one month from the date of receipt of the complaint or such further period as the Ombudsman may consider necessary, he may pass an award after affording the parties reasonable opportunity to present their case. He shall be guided by the evidence placed before him by the parties, the principles of Income Tax law and practice, directions, instructions and guidelines issued by the Central Board of Direct Taxes or the Central Government from time to time and such other factors which in his opinion are necessary in the interest of justice.

II The 'award' passed under sub-clause (1) above shall be a speaking order consisting of the following components:

a) Directions to the concerned Income Tax Authority such as performance of its obligations like expediting delayed matters, giving reasons for decisions and issuing apology to complainants etc., except a direction affecting the quantum of tax assessment or imposition of penalties under the Income Tax Act.

b) A token compensation amount not exceeding Rs. 1000/- (Rs. One Thousand only) for the loss suffered by the complainant.

c) Designation of the Income Tax officer to whom the letter of acceptance of the award is to be communicated as detailed in clause 13.4.

III A copy of the 'award' shall be sent to the complainant and the Income Tax Authority complained against.

IV The 'award' shall be binding on the Income Tax Department and on the complainant provided that an award shall not be binding on the Income Tax Department unless the complainant furnishes to it, within a period of 15 days from the date of receipt of a copy of the award, a letter of acceptance of the award in full and final settlement of his complaint. If the complainant does not accept the Award passed by the Ombudsman or fails to furnish his letter of acceptance within the said period of 15 days or within such time, not exceeding a period of 15 days that may be granted by the Ombudsman, the award shall lapse and be of no effect.

V Any token compensation given as a part of the award shall be paid by the Income Tax Department out of the budget allocated under the head 'Office Expenses' of the office of the Income Tax Authority complained against. Such payments shall take priority over any other expenditure from this allocation.

VI The Income Tax Authority complained against shall, within one month from the date of the award, comply with the award and intimate compliance to the Ombudsman.

CHAPTER V

MISCELLANEOUS

14 Removal of difficulties

If any difficulty arises in giving effect to the provisions of these Guidelines, the Central Government may make such provisions not inconsistent with the Income tax Act or the Guidelines as it appears to it to be necessary or expedient for removing the difficulty.