



REPORT

The Committee to Study the Appellate Orders to Examine the Filing of Appeals by the Income Tax Department before Various Forums

2014

COMPOSITION OF THE COMMITTEE

Name	Designation	
❖ Ms. Rani Singh Nair	Chief Commissioner of Income tax	Chairperson
❖ Ms. Uma Singh	Commissioner of Income tax	Member
❖ Shri Rakesh Goyal	Commissioner of Income tax	Member
❖ Shri D K Mishra	Commissioner of Income tax	Member
❖ Shri Rajib Hota	Commissioner of Income tax	Member
❖ Shri D S Kalyan	Commissioner of Income tax	Member Secretary
❖ Ms. Susie B. Varghese	Commissioner of Income tax	Co-opted Member
❖ Shri Sabihur Rehman	Commissioner of Income tax	Co-opted Member

MANDATE

“To appraise the efficacy of existing dispute resolution forums of CsIT(A) & ITAT and to suggest steps to reduce litigation before these forums.”

INTRODUCTION

“This is too difficult for a mathematician. It takes a philosopher. The hardest thing in the world to understand is the income tax”

-Albert Einstein

The levy of Income Tax leads to litigation in all countries. India, in recent years, is experiencing a major problem of tax disputes. This involves high volumes of litigation challenging tax assessments. The large number of tax litigations leads to over burdening of the judiciary and consequential delay in resolving these disputes.

For the tax payer, it adds to the cost of compliance and could also become a barrier to compliance. Tax litigations add stress to budgetary collections. Protracted tax litigation can also be a deterrent in creating a favorable economic climate, both by way of litigation costs and uncertainty created regarding the incidence of tax. A backlog of tax cases signals difficulties in doing business which drives away investment.

As per the statistics available with the Income Tax Department, the disputed demand for the last three (3) financial years with Appellate Authorities at different levels relating to Direct Taxes are:-

Disputed Demand Pending (Rs. in crores)

Appellate Authority	As on 31st March, 2012	As on 31st March, 2013	As on 31st March, 2014
CIT (Appeals)	2,42,182	2,59,556	2,87,444
ITAT	1,24,167	1,25,927	*1,40,697
High Court/ Supreme Court	39,047	25,641	*36,705
Total	4,05,396	4,11,124	4,64,846

* upto December, 2013

(Fig.1)

Thus at least Rs.4.64 lakh Crores in Direct Taxes are locked up in appeals at different levels in FY 2013-14.

The need for reducing litigation cannot be over emphasized. Complexities in tax law administration are a natural outcome wherever various social and economic goals are sought to be achieved through Direct Tax provisions and its administration. However, it is the duty of the tax administration to assist the taxpayer in meeting his tax obligations by imparting clarity and certainty to the tax provisions.

In recent past, the Courts have also adversely commented on the frivolous litigation by the Department. Hon'ble Bombay High Court recently held in the matter of CIT (Central) v/s Sairang Developers and Promoters Pvt. Ltd. (ITA No. 2603/2011 dated 28.04.2014):

“The tendency not to accept any adverse verdict on facts results in frivolous Appeals being filed in this court. That causes huge loss to the public exchequer and results in wastage of precious judicial time of this court. All this ought to have been discouraged long time back. The High Court has not adopted a strict approach and that has possibly encouraged the revenue in filing Appeals to challenge essentially findings of fact and with regard to the matters which should stand concluded at the level of authorities. The officers should realize that the authorities like Commissioner of Income Tax (Appeals) and the ITAT are envisaged as appellate and possibly final fact finding authorities and at least the tribunal is last in the hierarchy. The fact finding therefore, if demonstratively perverse or palpably erroneous and as would amount to unsettling the settled position in law alone should be questioned by filing Appeals to this Court. However, a routine exercise and by people who do not wish to take any responsibility, resulting in number of appeals being filed and pending. This benefits no one and rather defeats larger public interest. The Revenue collection and equally the participation of the assessee in the exercise undertaken by the authorities to assess their income, therefore is affected adversely. None takes a position or decision because of pendency of matters and for a long time.”

Over the past few years, many countries have acknowledged that excessive litigation is a barrier to economic development. Revenue locked in tax litigations not only reduces budgetary collections, but tax litigations over burden the courts. Consequently, alternate modes of dispute resolution for faster, efficient and cost effective settlement of disputes have been explored by many countries.

The *Australian Tax Office (ATO)* believes that resolving disputes cost effectively does not mean making compromises. It means securing the right tax liability consistent with the laws, fairly and even-handedly across all taxpayers, in a way that minimizes unnecessary costs.

The *Netherlands Tax and Customs Administration* has adopted the horizontal monitoring of cases. Awareness of the growing criticism of the Department and acknowledgment of the negative relationship between the taxpayer and the tax Department led to an increase in administrative cost and the compliance burden. Horizontal monitoring was a pilot project to build trust between the department and the taxpayer and has contributed to make the Netherlands an attractive destination for multinationals by reducing the administrative burden and fostering a good fiscal climate.

In *USA, Fast Track Settlement (FTS)* offers taxpayers a way to resolve audit issues during the examination process, within 120 days, as a general rule. It is available for certain LMSB (Large and Mid-Size Business) and SB/SE (Small Business/Self Employed) taxpayers, as well as to other IRS Operating Division taxpayers on a case-by-case basis for factual and legal issues. This process reduces the time by at least two years. The process is advised when it appears that the taxpayer may not agree with the issues raised during the examination process.

In step with the best global practices, India too has initiated steps to reduce litigation and has introduced a Non-Adversarial tax regime. The formation of this Committee is one of the initiatives in this regard. The mandate of this Committee constituted by the CBDT (refer Ann.1) was to study actual data as per the Terms of Reference and suggest ways of reducing litigation. The terms of reference of the Committee were as under:-

- a. *To carry out detailed analysis of the appellate orders and assessment orders, on various aspects as suggested in Para 7 of CBDT Office Memorandum dated 17th July, 2014 and recommend steps to reduce litigation before the CIT(A).*
- b. *To study the efficacy of existing system of filing appeals to the ITAT by the Department and suggest steps to reduce litigation before the ITAT after analyzing various aspects as mentioned in Para 7.*
- c. *To study the appellate orders of 4 CCIT charges where the second appeal was not filed as the tax effect was less than the prescribed limit for filing appeal in ITAT, but were not acceptable by the administrative Commissioners of Income Tax on merit.*

The suggestions contained in this Report are based upon:

- i) **Analysis of actual data collected by the Committee**
- ii) **Interaction with the officers of the Income Tax Department**
- iii) **Study of the Global Best Practices**

The Committee (based on consultations with officers) observed that lack of trust within the Department and also vis-à-vis the taxpayers is a significant contributor to litigation. There is a need to build trust within the Department. Administrative process needs to be aligned to achieve this objective. The Department has also initiated the process of a Non-adversarial tax regime. However, it was felt that apart from e-enabling of tax services, there is a need to engage with the taxpayer and resolve his tax problems before they reach the litigation stage.

The Committee suggests that **2015** may be declared as the **“Year of Dispute Resolution.”**

EXECUTIVE SUMMARY

The Committee suggests **that 2015 may be declared as the “Year of Dispute Resolution.”**

- The Department should commit its resources to the disposal of pending appeals. Simultaneously, the Department should bring about process improvement to re-engineer the functioning of the Department and introduce global best practices like ADR and early referrals as a part of its strategy for dispute management.

National Centre of Excellence: Tax Research Centre:

The ease of doing business index is influenced by the frequent changes in tax laws, the multitude of administrative instructions and varied interpretation of legal provisions by Courts and Tribunals. This affects the investment climate of a country. To keep pace with the changing environment on account of such changes and the impact on the business sentiments and revenue collections due to interconnection between different economies of the world, continuous and quality research is considered to be an imperative and establishment of a *think tank* would meet that need. The committee therefore suggests that :

- The proposed DTRTI at Delhi can be converted to a National Centre of Excellence and be named Central Institute for Direct Tax Research and Analysis (CITRA) for conducting research in tax policy and tax administration.
- This institution could undertake collection of data for empirical research. Such research in respect of issues pertaining to taxation, as also for reliable forecasting of revenue collection and factors affecting litigation etc. would assist in the formulation of tax policy in India.

Rule of Consistency in Interpretation of IT Act:

- The absence of a Departmental view on legal issues leads to litigation. This also undermines the confidence of the taxpayers in the tax administration and increases the cost of compliance. Increasing litigation in tax matters adversely impacts upon the country’s economic development and investment climate.
- The Committee felt that there should be early identification of areas of contention and prioritization in formulating a departmental view.
- A National Portal for taking the views of both tax payers and assessing officers to identify the areas of dispute should be developed.
- Central Technical Committee (CTC) could be made a permanent office and tasked with the responsibility of assisting CBDT in the formulation of a Departmental view on contentious issues.
- Circulars incorporating Departmental view on contentious issues could be brought out on a *real time* basis before the issue has escalated into litigation.

- The accounting standards should be notified at the earliest.
- The CTC could also be responsible for the purpose of imparting suitable guidance on accounting standards on a reference from the Assessing Officer or the taxpayer.
- Regional centres of Domain Knowledge on Collection and Recovery, Transfer Pricing, International Taxation etc. could be established in the DTRTIs.
- Annual Conference of CsIT (A) and CsIT (DRs) should be held for identifying issues and forming a Departmental view.
- The process of formulating any new provision/amendment should be transparent and participative. Stakeholder interaction would contribute to transparency and the acceptability of the proposed changes in the law.

Alternate Dispute Resolution

Based on the global model of Early Referral systems and Alternate Dispute Resolution, the Committee felt that some of the initiatives can be considered for implementation. The Income Tax Department could initiate a pilot programme to see whether such initiatives would help in reducing litigation and improving taxpayer satisfaction. ADR could also be considered for collection of unpaid tax liability :

- System of Pre-filing Agreements : A unit may be set up which may look into issues which are referred to it by the taxpayers before filing their tax returns. These would be issues where the taxpayer is not clear about the Department's stand on the taxability of the issue or the law on the issue is not well defined.
- The decision would be based on extant law and CBDT instructions. If the decision is agreeable to the taxpayer, an agreement may be reached and the return of income tax is filed accordingly. This issue would then not be open for scrutiny during assessment.
- Alternate Tax Dispute Resolution during Assessment: Processes may be devised for resolution of disputes for every stage of the life-cycle of an assessment. During the assessment when the dispute has been identified, ADR may be initiated prior to finalization of the assessment.
- The CIT (A), Jt./Addl. CIT, AO and Taxpayer may consider the merits of the dispute. After considering the rival view points, the CIT (A) may mediate between the AO and the taxpayer. Once agreement is reached, a formal order would be passed which would be binding on both parties. The taxpayer will have the right to opt out of ADR.

Reducing Litigation

- Appeal to ITAT should not be filed in a mechanical manner. The order of CsIT (A) pertaining to factual issues should be accepted except on the grounds of perversity. The CsIT would have to substantiate the ground of perversity.

- The CsIT should be made accountable for filing frivolous appeals which are neither supported by legal precedents nor based on perversity of facts.
- Standard Operating Procedures should be devised to reduce the litigations arising out of audit objections.
- A provision akin to Sec. 158A of the I.T. Act can be inserted to enable the Department to request for avoiding repetitive appeals during the pendency of the issue before the higher Appellate Authorities.
- Necessary powers may be given to a panel of CsIT under section 273A of the Act for compounding cases, where taxpayers are ready to go for settlement after finalization of the assessment orders.
- The Authority for Advance Rulings on domestic taxation issues could be enlarged to have four more Benches in different parts of the country.
- The CsIT (DR) should be provided research assistance in the form of interns who would be law graduates.

Strengthening the Institution of CIT (A):

- The CIT (A) is the first stage in dispute resolution. There is a need to re-engineer the business processes at the level of CIT (A) in order to reduce litigation and improve the quality of decision making.
- The office of the CsIT (A) should be strengthened by providing proper infrastructure and adequate manpower to streamline the regular monitoring, posting and disposal of Appeals.
- All the appeals could be received centrally and processed simultaneously to check for defects through a Central Registry.
- The allocation of appeals may be done by the Pr. CCsIT/CCsIT to ensure an even distribution of work amongst the CsIT (A).
- There should be provision to upload orders of CsIT (A) in AST module/ITBA. The CsIT (A) should be given the role to view orders of any CsIT (A) in the country. This will be in conformity with the National Judicial Reference System, which is under implementation.
- To improve efficiency and ensure timely issue of Notices, Reports and compliance from both the taxpayers and the AOs, the office of the CsIT (A) should be made e-enabled.
- The CsIT (A) should be authorised to accept submission made by the tax payer through duly authenticated electronic media.
- One of the major grounds raised by the Department in Appeals before ITAT is violation of Rule 46A. The CsIT (A) will be obliged to give a draft finding on that issue to the AO who will respond within a specified period. In case of non-compliance, the Assessing Officer would normally not be allowed to

raise the plea of violation of Rule 46A before the ITAT. In such cases, appeals could be filed before the ITAT only on the basis of merits of the case.

- Bunching of Appeals should be undertaken with a view to bringing about uniformity in the decisions taken by the CIT (A), in respect of repetitive or common issues. This would ensure uniformity in decision making.
- A Bench of CsIT (A) in line with the present practice in the ITAT/High Court can be constituted to adjudicate on complex legal issues of regional/national importance or complex cases of a large Business group.
- Power to Grant Stay by CIT(A) is often a disputed issue. The CBDT needs to take a decision whether the CIT (A) is to be empowered to grant stay of demand. In such cases, stay can be granted conditionally on the taxpayer depositing a certain percentage of the disputed demand. However, CIT (A) would be required to necessarily dispose of such Appeals within a prescribed period.
- Presently, there is no time limit fixed for disposal by CIT (A) of cases which are set-aside by the ITAT/High Court. Appropriate Instructions may be considered or a procedure prescribed requiring the AO to maintain a separate record for the purpose and follow up the matter for decision by the CsIT (A).
- Disposal of Non-High Demand Appeals can get delayed. Presently, it is the high demand appeals that are regularly being monitored. It is suggested that once there is proper administrative support for the CsIT (A) as suggested, a statutory time limit for disposal of non-high demand Appeals can be considered.
- The format of filing appeal before the CIT(A) in Form no.35, before ITAT in Form No.36 and orders of AO and CIT(A) can be modified to be made more comprehensive.

Strengthening the Assessment Mechanism :

- The assessment order is the first stage in any dispute between the taxpayer and the tax department. Consequently, the quality and the transparent procedures adopted while framing assessments would be essential in any dispute resolution strategy.
- Preliminary verification of AIR/CIB information prior to the issue of Notice u/s143(2) of the Act will ensure that cases where the information is verifiable, scrutiny u/s 143(3) of the Act may not be initiated.
- In the cases selected for regular Scrutiny u/s 143(3) of the Act, issue of first questionnaire within 60 days of issue of notice u/s 143(2) notice should be made mandatory.
- In limited Scrutiny cases based on AIR information etc, investigations on any other issue should be taken up only with the due approval of the Supervisory Officer and the Assessment Order must be passed after obtaining the approval of the Supervisory Officer.
- It should be made mandatory for the A.O to issue a “Pre-Assessment Notice” or Show Cause Notice

(SCN) in respect of any proposed addition or discrepancy found during the course of Assessment proceedings, prior to the finalization of the Assessment Order.

- It should be made mandatory for the A.O to take approval of his Supervisory Officer before completing the Assessment in cases with additions above a certain quantum.
- A mechanism can also be considered, wherein for proposed additions above an aggregate amount, the draft order would be sent to the taxpayer who may appear before Jt.CIT/Addl.CIT u/s 144A for adjudication.
- Pre-assessment appeal mediation could be considered in respect of dispute over facts. At the draft order stage, the taxpayer could be given an option to move the ADR or Mediation on issues raised in the draft order. The CIT (A), Jt.CIT/Addl. CIT, AO and the taxpayer can resolve the issues, especially in respect of dispute over facts. Once an agreement is reached regarding the disputed issues, CIT (A) would pass an order which would be mandatory for both AO and the taxpayer. Thereafter the assessment order would be passed. This would ensure no further litigation and also ensure quicker resolution of disputes and collection of taxes.
- Standard Operating Procedures (SOP) need to be drawn for estimated disallowances or disallowances for personal use of vehicle, telephone, travelling, addition for household expenses, disallowance for cash or un-vouched expense etc.
- It should be made mandatory for the AO to estimate Gross Profit/Net Profit only after issue of a show- cause notice for invoking section 145 of the Act and after providing a reasonable opportunity of being heard to the taxpayer.
- Trade and industry data needs to be analyzed and applied in cases of abnormal financial results. The CBDT should publish such data annually to assist the field authorities.
- Sophisticated Computer software based Investigation System should also be introduced (like the 'Connect' system of HMRC in the UK). This would ensure real-time monitoring of financial transactions.
- In cases of survey under section 133A of the Act conducted to unearth real-time tax evasion, the assessments may be finalized within a specified time on priority.
- It is also proposed to include a "Summary Sheet" of additions and disallowances along with the Assessment Order. This would ensure that common mistakes and lacunae detected in inspections / audit/appeal are minimized.
- A checklist of common errors (leading to litigation/Audit objections) to be avoided in Assessment should be periodically updated and be made available to each AO to avoid repetition of such mistakes.
- The selection of cases for Scrutiny should be on a real time basis. The process of Assessment should be made contemporaneous. Selection of cases for scrutiny should be done within 90-120 days of the filing of the tax return.

- Scrutiny selection should be restricted to issue based/information based selection.
- Before the initiation of selection of cases for Scrutiny for each financial year, the Department should publish the list of issues on which it is contesting the decision of higher Appellate authorities/High Court i.e. issues on which the additions would continue to be made, subject to the finalization of the appeals filed by the Department.
- Optimum Manpower Utilization of manpower is required. The inspectors of Income Tax may be given the specified statutory responsibilities.
- Enhancing the Human Resource Capabilities at the functional level is necessary. There is need to focus on training of the cadre of the Income Tax officers & Inspectors as these functionaries are at the cutting edge of the Department.
- To improve the quality of assessments, there is a need to equip the assessing officers with Information Technology, Investigation and Audit Tools.
- The system of imposition of penalties needs to be re-examined. Detailed instructions should be issued by the CBDT with regard to the imposition of penalty under various provisions of the Act. As an alternative to penalty, levy of a cess in respect of specified defaults may be considered.

Regulation of tax Advice:

- It is time for the tax professionals and the tax department to work together in the interest of management of tax risk. There is a need to extend financial sector reforms to cover the quality of tax advice as part of the efforts towards consumer protection.

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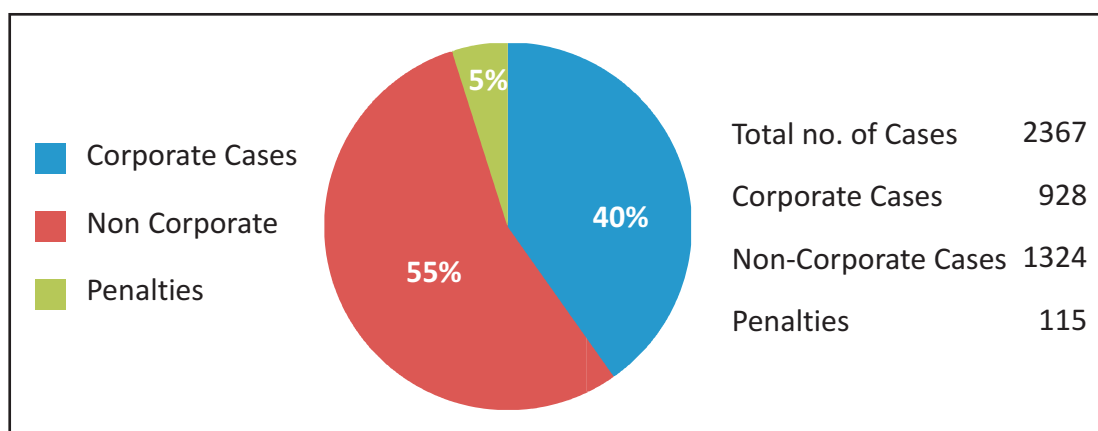
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Chapter-1

DATA ANALYSIS

A : METHODOLOGY ADOPTED FOR STUDY

The Committee, selected the Assessment orders, Appellate orders and Scrutiny reports for the appeals filed in the ITAT relating to 2252 orders from the specified ITAT benches as per the Terms of Reference. The Committee also selected 115 Penalty Orders. In total, 2367 orders were collected by the Committee for analysis as per Fig.2 below:

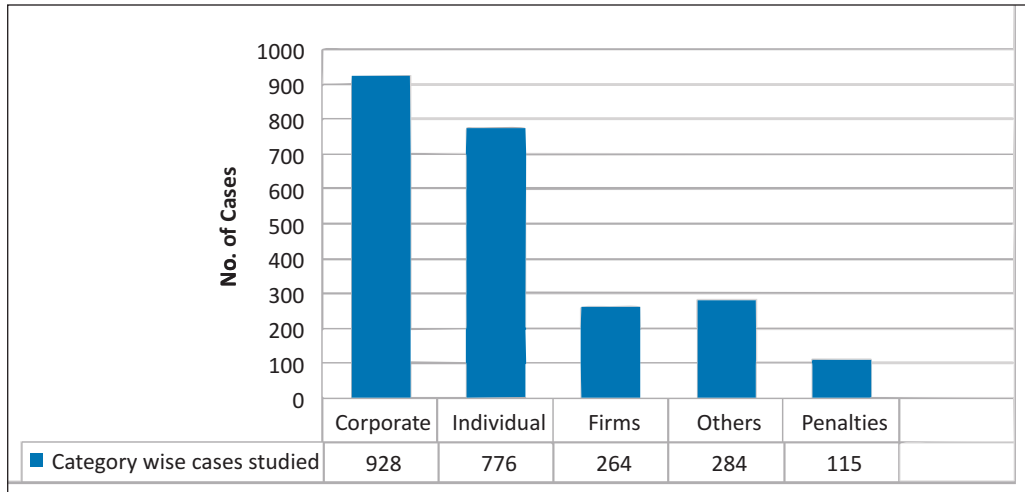


(Fig.2)

In accordance with the terms of reference as prescribed by the CBDT, the Committee proceeded to select orders for analysis as follows :

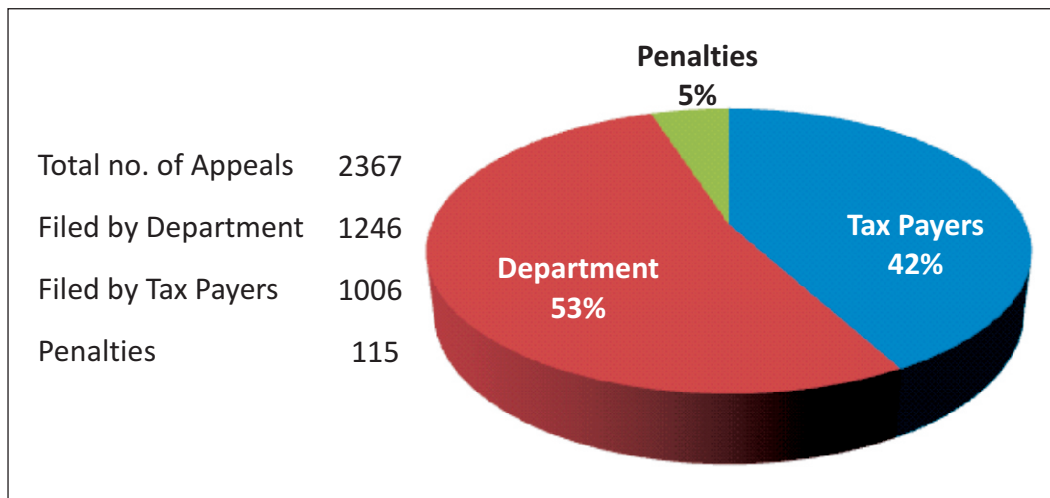
- Sample was drawn from orders passed by ITAT during the months of June, September, December and March of F.Y. 2013-14.
- Approximately 200 cases each were selected for study from 8 major cities viz.-Delhi, Mumbai, Kolkata, Chennai, Hyderabad, Pune, Ahmedabad &, Bengaluru.
- Approximately 150 cases each were selected for study from each of the following stations: Chandigarh, Jaipur, Indore and Kochi.
- As far as possible, orders in cases of corporate and non-corporate taxpayers were selected in equal numbers, particularly in Metro charges, whereas in non-metro charges, sample of non-corporate taxpayers was larger.

Based on these criteria, the Committee thus selected a wide range of assessment and appellate orders. The category-wise selection was as per Fig.3.



(Fig.3)

Considering that the number of appeals filed by the Department before the ITAT was much larger than appeals filed by the taxpayers, 1246 appeals filed by the Department and 1006 appeals filed by the taxpayers were selected for study. In addition, a further 115 penalty orders were selected for analysis. The break-up of appeals filed in the ITAT benches by the Department and the Taxpayers selected for analysis were as per Fig.4 below:



(Fig.4)

B : ANALYSIS OF DATA: ASSESSMENT ORDERS

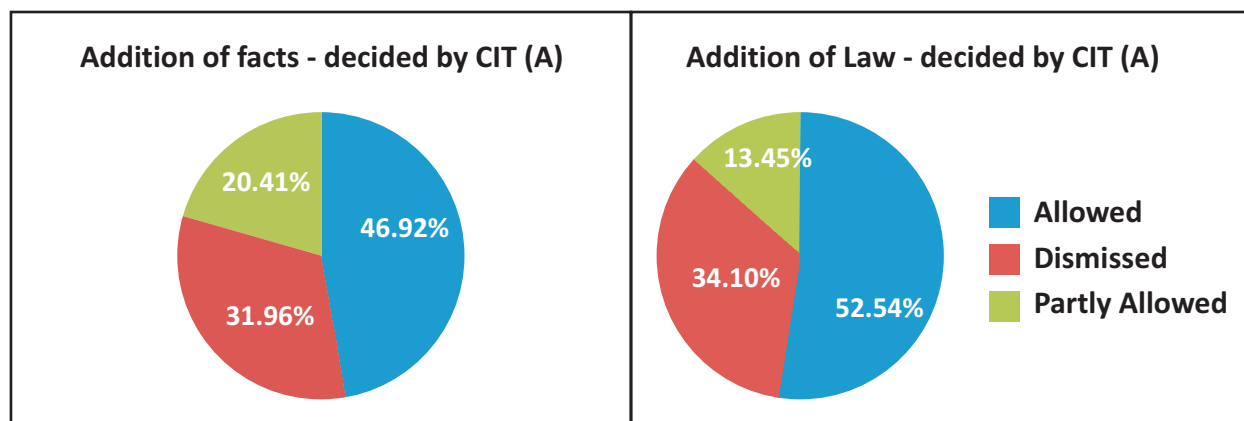
The analysis of data collected by the Committee confirmed that the process of Scrutiny Assessment had neither been as effective as envisaged nor had it been successful in tackling tax evasion. On the contrary, the present system of assessment had given rise to protracted litigation which has had a negative impact on the image of Tax Administration in India.

2. Observations based on Data Analysis: The Study revealed that the Assessment Orders are, by and large, restricted to issues relating to certain technical or legal disallowances. For example:

- Disallowance of proportionate expenses towards income exempt u/s 14A of the Act by applying Rule 8D,
- Disallowance of actual expenses incurred on which tax had not been deducted e.g. u/s 40(a)(ia) of the Act,
- Disallowances under sections 40A, 41(1) and u/s 43B of the Act,
- Adhoc and estimated disallowance of various expenses,
- Estimated disallowance from Puja expenses, travelling, telephone expenses etc. on the grounds that they are not in the nature of business expenditure without identifying specific instances of wrong claims,
- Taxation of disclosed Capital Gains as Business income,
- Application of Explanation to Section 73 of the Act,
- Disallowance of claim of depreciation,
- Taxation of Subsidies received under various Incentive schemes,
- Disallowance of Exemptions etc

A large number of such additions have been held by the Appellate authorities to be based on insufficient or misconstrued facts, contrary to judicial pronouncements or even settled position of law. Most of these disallowances have been deleted or substantially reduced in first Appeal itself.

Out of the total cases analyzed by the Committee, only in 32% of cases, additions were confirmed by the CIT (A). In 48% of cases, appeals were allowed by the CIT (A) in favour of the taxpayers and in 20% of cases, the appeals were “Partly Allowed”. The Committee also analyzed the additions made on facts & the additions made on legal issues. The analysis of the decisions of CsIT (A) on these two aspects emerged as per Fig. 5 & 6.

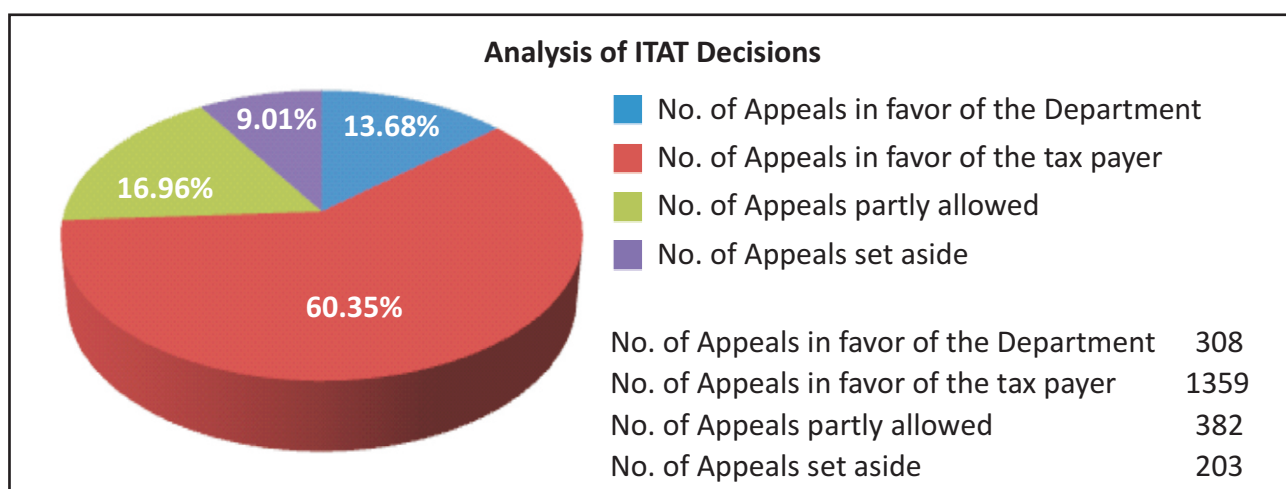


(Fig.5)

(Fig.6)

Analysis as per Fig. 5 & Fig. 6 shows that in cases of additions on facts, only 31.96% were upheld by CIT(A) whereas this figure was 34.01% in cases of additions made on legal issues. Thus a majority of additions were deleted at the first appellate stage itself.

Further only 13.68% appeals out of the total appeals filed before the ITAT, were decided in favour of the Department as against 60.35% appeals decided in favour of the taxpayers. In fact, out of 2252 appeals selected, only 308 appeals were in favour of the Department and 1359 appeals were in favour of tax payer as per Fig. 7 . In addition, 9% appeals were set aside to the lower authorities for re-examination of the issues involved.



(Fig.7)

From the analysis of the additions made in the assessment orders, the Committee observed that in more than 95% cases, due opportunity has been provided by the AO and in 80% cases, the AO has passed a speaking and reasoned order.

However, the Committee also observed that in 19.41% cases, the A.O had not passed a speaking or reasoned order and thus prima-facie, such orders would not be defensible at the stage of first Appeal itself. Further, in 13.61% cases the taxpayers' contentions had not been incorporated in the Assessment Orders.

The Committee felt that such orders give rise to substantial litigation and subsequent correspondence between the AO and the CIT (A) in the form of Remand Reports. It was observed that a major grievance of the taxpayer, at the first Appellate stage itself, is that sufficient opportunity to submit evidences or explanations on a particular issue has not been given at the Assessment stage or such submissions have not been considered by the AO while making additions

Therefore, the Committee believed that the Assessment procedures need to be revamped. The Assessment Orders require to be strengthened to reduce litigation and improve the success rate of the additions made by the A.O. The Committee, based on the analysis of data and the interaction with the officers, tried to collate the shortcomings in the present system of assessment.

The Committee analyzed the quality of the Assessment orders being framed in terms of (1) whether due opportunity was given to the taxpayer, (2) whether the taxpayer's contentions were incorporated and (3) whether the assessment order was based on a proper marshalling of facts and the law. The results of the analysis were as per Fig. 8 below:

S.No.	Parameters	Yes (%)	No (%)
1	Due opportunity provided to the tax payer by the AO	95.67	4.33
2	Facts and issues properly marshaled by the AO	83.74	16.26
3	Tax payer's contention incorporated	86.39	13.61
4	Speaking and reasoned order passed on facts and law	80.59	19.41

(Fig.8)

The Committee, thereafter selected the cases for analysis where mandatory supervision was a pre-requisite such as search cases, survey cases etc. In total, 525 cases were analyzed as per Fig.9 below:

S.No.	Guidance provided by supervisory authority	No.	%
1	Section 144A	28	5.33
2	Approval of search cases	295	56.19
3	Survey case	57	10.86
4	Monitoring case	61	11.62
5	Under Central Action Plan (CAP)	48	9.14
6	Transfer Pricing cases	36	6.86
	Total	525	

(Fig.9)

The success rate in ITAT in mandatory supervision cases was also analyzed to verify whether the mandatory supervision cases had a higher success rate in appeals.

The outcome of the additions made in the cases of mandatory supervision were analyzed vis-à-vis the ITAT's decisions in normal assessment cases where mandatory supervision was not a requirement as per Fig. 10. The break-up of the appellate decisions with respect to different income slabs was also tabulated.:

Sl. No	Returned Income Group (Rs.)	Mandatory Supervision Case	No. of appeals			
			Decided in favour of department	Decided in favour of tax payer	Partly Allowed	Set Aside
1.	0-50 lac	Section 144A	3	10	8	1
		Approval of search cases	48	97	61	24
		Survey case	5	30	6	5
		Monitoring case	13	22	9	3
		Under central action plan	6	28	2	0
		Transfer pricing cases	3	4	3	2
2.	50 lac – 1 Cr	Section 144A	0	1	0	1
		Approval of search cases	2	11	8	0
		Survey case	0	2	0	1
		Monitoring case	0	5	1	2
		Under central action plan	1	4	0	0
		Transfer pricing cases	0	0	0	0
3.	1 Cr – 10 Cr	Section 144A	1	1	0	0
		Approval of search cases	4	20	5	3
		Survey case	3	5	0	0
		Monitoring case	0	1	0	1
		Under central action plan	0	3	1	0
		Transfer pricing cases	0	7	4	0
4.	10 Cr – 100 Cr	Section 144A	0	0	0	0
		Approval of search cases	1	1	2	0
		Survey case	0	0	0	0
		Monitoring case	1	0	0	0
		Under central action plan	0	2	1	0
		Transfer pricing cases	0	0	4	2
5.	100 Cr and Above	Section 144A	0	0	0	0
		Approval of search cases	0	0	0	0
		Survey case	0	0	0	0
		Monitoring case	0	0	0	0
		Under central action plan	0	0	0	0
		Transfer pricing cases	0	1	2	0

(Fig.10)

Thereafter, the Committee examined the success rate of the mandatory supervision cases in percentage terms as per Fig.11.

Sl. No.	Returned Income Group (Rs.)	No. of appeals			
		Decided in favour of Department	Decided in favour of Tax payer	Partly Allowed	Set Aside
1.	0 – 50 lakhs	78	192	89	35
2.	50 lakhs – 1 Cr	3	23	9	4
3.	1 Cr – 10 Cr	8	37	10	4
4.	10 Cr – 100 Cr	2	3	7	2
5.	100 Cr and above	–	1	2	–
6.	Total	91	256	117	45
7.	Total in %age	18%	50%	23%	9%

(Fig.11)

As can be observed from the analysis, the decisions of ITAT in favour of the Department were from the Returned Income Group of less than Rs.50 Lakhs. It was also observed that 9% of the mandatory supervision cases were set aside. In these cases too, the majority pertain to cases where returned income is up to Rs.50 Lakhs.

The Committee thereafter analysed the outcome of appeals in the cases supervised mandatorily vis-à-vis normal assessment orders. This analysis was done to gauge the quality of supervision and the sustainability of the additions made. The comparison of ITAT decision in cases of mandatory supervision cases vis-a-vis non-supervised cases is as per Fig. 12 below:

Sl.No.	ITAT Decision	All Cases	Mandatory Supervision Cases
1.	No. of Appeals in favour of Department	14%	18%
2.	No. of Appeals in favour of Tax payer	60%	50%
3.	No. of appeals partly allowed	17%	23%
4.	No. of appeals set aside	9%	9%

(Fig.12)

It is seen from the above study that the guidance by supervisory authorities in assessment cases has increased the success rate of Departmental appeals in ITAT, from 14% to 18%. The study results proved that proper supervision by the senior authority in the administrative hierarchy improved the quality of assessments. However an increase of only 4% was disappointing. This finding emphasised the need for improving the quality of supervision in the Department by the supervisory authorities.

The Committee observed during the analysis of data that the quality of assessment orders had been impacted due to shortcomings in the functioning of the assessing officers. The Committee observed that to transform into a modern tax administration and increase revenue collection in a non adversarial manner, there was an urgent need to identify these shortcomings and implement corrective measures immediately. The drawbacks to delivery of service standards were identified as under:

1. Inadequate Human Resource Capabilities

For the Assessment Orders to be sustainable and to ensure levy of legitimate taxes, the first and the basic requirement is the capacity, expertise, training and knowledge of the Assessing Officer. The A.O is required to analyze bank transactions and other complex business transactions of a taxpayer which may involve multiple businesses, cross border transactions, accounts and financial transactions maintained on electronic media, Web and even Cloud based storage. Ideally:

- The A.O needs to have investigative skills, IT inputs, knowledge of Law and Judicial pronouncements.
- The AO needs to have the support of a team of officers with different specialisations and skill sets to assist in the assessments.

However as per the present system:

- The A.O is solely responsible for the entire enquiry, verifications, investigation and judicial analysis, with minimum assistance and limited supervision.
- The A.Os in the Department mostly consist of Income Tax Officers as normally 5 out of 6 A.Os in an Assessment Range are ITOs.
- The ITOs are not directly recruited, but promoted mostly from the lower Cadre of Inspectors. The Inspectors themselves do not carry out any statutory functions despite being designated as an *"Income Tax Authority"* u/s 116 of the Income Tax Act and thus have no prior direct exposure or training for Assessment work.
- The AO on promotion are therefore mostly ill equipped and inadequately trained to comprehend complexities of financial transactions of modern business and by and large possess poor IT skills.

2. Lack of Reference Data and Investigative Tools

- The AO has limited access to judicial reference software developed by private companies for reference to judicial pronouncements of different courts . No financial investigation tools to examine the computerised books of account are available in the Department.
- No industry or trade specific information or Data is available with the A.O, for assistance in quantifying the profits of a taxpayer depending on industry specific information.
- The AO has no access to databases maintained by Government Agencies or Departments regarding financial transactions of companies.

3. Inadequacies in Scrutiny Selection

- The procedure of selection of cases for scrutiny has also resulted in poor quality of Assessment Orders and lack of sustainable additions.
- The system of selection through CASS has not delivered the desired results and some cases are repeatedly selected through CASS,
- Although CASS selection is algorithm based, it is nevertheless predictable and has failed to identify cases of tax evasion.
- CASS does not have region specific modus operandi to pick up potential cases of tax evasion.
- CASS is based on Annual Information filed with the Department. Selection of cases based on 360° profiling of a taxpayer to detect high risk cases is negligible.

4. Technical Shortcomings

- The study revealed that the Assessments are finalised on the basis of the Annual Accounts and Audit Reports filed along with the Return of Income.
- In most cases, only statutory or technical disallowances are made in the Assessment order,
- The AO rarely carries out a detailed examination of the books of account, bills and vouchers,
- Routine and estimated disallowances from telephone, car and travelling expense etc are the norm.
- Disallowances of cash expenses incurred through vouchers are being made regularly.
- Technical or legal disallowances from expenses are commonly made i.e u/s 40A(3), 40(a)(ia).

5. Administrative & Systemic Issues

- Lack of objective evaluation in posting of AOs. Seniority is normally the dominant factor in posting officers.

-
- Technical ability, suitability for the assignment and inputs or comments in APARs are not taken into account while posting of AOs.
 - The Annual transfer posting stretches over several months resulting in uncertainty and lack of focus in Assessment work.
 - This delays the investigation required for sustainable additions and impacts the quality of the Assessment orders leading to faulty Assessments and increased litigation.
 - The Assessment work often gets postponed to the end of the financial year. Consequently investigations are left incomplete and Assessments are framed in haste. This delay is attributable to both the taxpayer & the AO.
 - The responsibility assigned to Addl./JCIT as Supervisory Officers of the A.O is not accompanied by requisite administrative powers.
 - In some charges, the direct Supervisory Officers do not have the administrative powers of transferring an AO even on administrative grounds of non-performance.

C : ANALYSIS OF DATA- APPELLATE ORDERS

The Committee also analyzed the quality of orders of CIT (A) in terms of whether due opportunity had been given in respect of additional evidence and calling of Remand Reports before passing the appeal orders. It also analyzed whether the Appeal Order was based on proper points of reference, marshalling of facts and legal position, as well as whether the relief allowed had been quantified by the CIT (A) in respect of each ground of appeal.

From the data represented in the Fig. 13 below, it was observed that, in only 28% of the cases, the Remand report was called for on specific points by the CIT (A). A majority of the appeals filed in the ITAT challenge the findings of the CIT (A) in respect of the findings pertaining to admitting of additional evidence. Therefore, the practices of seeking remand report without identifying the specific points need to be addressed as they result in unnecessary correspondence with the Assessing Officers, delay in disposal of Appeals and further litigation.

Sl.No.	Parameter	Yes	No
1	Due opportunity given viz. additional evidence, remand etc.	62.80%	37.20%
2	Remand report called for on specific points	28.03%	71.97%

(Fig.13)

The analysis in Fig.13 emphasized that the CsIT (A) had also contributed to increased litigation as in 72% of cases remand report was not called on specific points. Such appeals would not incorporate the salient points of the AO's objections & would invariably result in the filing of second appeal in ITAT. Similarly, the finding that CsIT (A) have not given due opportunity to AOs in 37% of the cases was disturbing and requires focus on the quality of the order of CsIT (A).

The data analysis also indicated that a large number of Assessment Orders were being dismissed in first Appeal in respect of additions made on facts. This is evident from the Fig.14 below:-

	Allowed	Dismissed	Partly allowed
Additions on facts	46.92%	31.96%	20.41%
Additions on law	52.54%	34.01%	13.45%

(Fig.14)

From this analysis, it was clear that in 46.92% of cases, appeals were allowed in respect of additions made on facts by the CIT (A). This indicated that the assessing officer failed to appreciate the facts or did

not consider the correct facts of the case before making disallowances . This finding emphasizes the need for focus on better appreciation of facts at the assessment stage itself to reduce disputes based on facts. Necessary due diligence by the AOs would be a significant contributor in reduction of tax disputes

It is also evident from Fig.15 that in more than 19% cases, the CIT (A) were not quantifying the relief granted in respect of the various grounds of appeal in their appellate orders. The Committee felt that this was not desirable and clear-cut quantification should be incorporated in the orders.

Sl.No.	Parameter	Yes	No
1	Whether point of reference have been properly brought about in the appellate order	88.87%	11.13%
2	Whether the rival submissions have been analysed, based on marshalling of facts & legal position	89.03%	10.97%
3	Whether the case laws relied upon by the CIT(A) / distinguished by CIT(A) have been properly discussed	93.03%	6.97%
4	Whether CIT (A) has specifically quantified the relief given on each issue in the appellate order	80.85%	19.15%

(Fig.15)

The Committee observed that CsIT (A) are senior officers of the Department and there was high expectation from them in terms of standards of delivery, equity and expertise. The finding that in 11% of the cases, the points of reference had not been properly discussed and in 11% of the cases the rival submission had neither been analyzed nor the decisions were based on proper marshalling of Facts & Law, was not justifiable. The Committee ,therefore, felt that there was need to examine the functioning of the CsIT (A) towards imparting professionalism to the process of decision making, while introducing improvements in the process of filing appeals.

As per the CBDT's statistics, in Fig 16, there were 2,38,568 appeals pending for disposal as on 30th Sept, 2014. The disposal of appeals in the first half of Financial Year 2014-15 was only 36,068. The pendency versus the pace of disposal indicated that a taxpayer could not expect a quick resolution of the disputes.

These statistics emphasized that efforts were required to be initiated for faster disposal of appeals, improving the quality of assessment orders, engaging with individuals & small taxpayers to resolve disputes through mediation or alternate dispute resolution (ADR) etc. These measures would improve taxpayer satisfaction and free the CsIT (A) to concentrate on larger issues.

The Committee was of the view that such high pendency of tax litigations was one of the reasons which had adversely impacted upon the image of the Department. The acknowledgement by the CBDT that there was need to reduce litigation was a step in the right direction :

1	Financial year	2014-15								
2	For the month of	September, 2014								
3	CCIT/DGIT (Inv.)	All India								
4	CIT (A) Charge	All India								
5		B-1A	B-1B	B-2	B-3	B-4A	B-4B	Total	SC	ITPC
6	Workload of Appeals									
6.1	Opening Balance of Pending Appeals as on 1st April	11411	30995	103489	67174	0	0	213069	14931	969
6.2	New Appeals instituted upto end of the month	0	0	0	0	24358	37510	61868	5864	382
6.3	Appeals transferred in/ transferred out (net) upto the end of the month	78	-99	-162	-100	-16	-2	-301	46	98
6.4	Total workload upto the end of the month (6.1+6.2+6.3)	11489	30896	103327	67074	24342	37508	274636	20841	1449
7	Target of Disposal for the month	890	432	842	679	9	8	2860	0	0
8	Disposal during the month	466	2024	2742	1874	217	49	7372	438	57
9	Progressive target of Disposal upto end of the month	3529	2096	4699	3073	22	27	13446	28	0
10	Progressive Disposal upto end of the month	2477	8235	16581	8071	529	175	36068	2515	253
11	Pendency of Appeals at the end of the month	9012	22661	86746	59003	23813	37333	238568	18326	1196
12	Amount Disputed in Appeals (Rs. in Lakh)									
12.1	Total Amount disputed in all Appeals at the beginning of the month (Rs in Lakh)	10789916	12809695	673815	322931	13527082	247235	38370674	1441603	2345384
12.2	Total amount disputed in all appeals at the end of the month (Rs in Lakh)	10721977	12334783	667660	317398	13499063	271059	37811940	1751360	838374
13	Nature of disposal of Appeals									
13.1	Partly Confirmed/partly allowed	263	975	895	544	103	20	2800	189	33
13.2	Fully Confirmed/appeals dismissed	112	587	1040	661	51	15	2466	143	17
13.3	Fully Allowed	86	456	802	666	63	14	2087	106	7
13.4	Others	5	6	5	3	0	0	19	0	0
13.5	Total Disposal (13.1+13.2+13.3+13.4 = 8)	466	2024	2742	1874	217	49	7372	438	57

(Fig.16)

The Committee tried to analyze the reasons for the increase in litigation in the Department. In its interaction with the officers , the Committee was repeatedly made aware of the trust deficit amongst the officers discharging assessment and appellate functions. The various stakeholders viz. AO, Jt./Addl. CIT, CIT

and CIT (A) are often in adversarial roles. The CIT (A) often hold that there is a lack of objectivity and transparency in the Assessments framed while the administrative CIT has a tendency to mechanically file Appeals before the Tribunals on the premise that there is perversity in the order of CIT (A). This adversarial role playing by CIT & CIT (A) leads to increase in litigation.

The Committee also observed the risk averse behavior of officers in taking administrative decisions. The Committee felt that there was an urgent need to bring in objectivity in decision making by formulating Standard Operating Procedures which would obviate individual discretions and distortions in the process of decision making.

In addition, the Committee observed various additional short comings which were responsible for delays in dispute resolution as under :

(i) Lack of Trust in the Taxpayer

There is a lack of trust vis-à-vis the taxpayer. The credibility of the books of account, audit reports etc. is often questioned in absence of notification of accounting standards.

(ii) Lack of Strategy for Dispute Management

There is no strategy for the management of litigation and the final settlement of disputes in a time bound manner. There is no policy of the Department to contain litigation prior to assessment stage except through advance rulings and advance pricing agreements.

(iii) Lack of functional specialization

The Appellate work is being performed by the officers irrespective of whether they have the functional specialization and requisite training for the assignment.

(iv) Performance v/s. Targets

The targets given to CIT (Appeals) are only in terms of the number of cases to be decided in a year without taking into account the complexities of issues involved or quality of the order.

(v) Ineffective Reviews

The review of orders passed by CIT (A) does not result in quality analysis. The review should be used as a learning tool for improving the quality of decision making.

(vi) Lack of accountability

The Central Action Plan for CIT (A) lays stress on disposal of appeals only. The quality of decisions delivered by CIT (A) is not made a parameter of appraisal of his performance. There is overemphasis on liquidation of pendency and on achieving numerical targets. There is no accountability with respect to the quality of decision making.

(vii) No time limits for disposal

There is no time limit specified for the CIT (A) to adjudicate pending appeals. Consequently some appeals are not disposed off for several years adding to tax payer's grievances.

D : ANALYSIS OF DATA-CASES INVOLVING LOW TAX EFFECT

The Committee during the course of its study was also asked by CBDT to study the appellate orders of 4 CCIT charges where the tax effect was less than the prescribed limit for filing appeal in ITAT, but where, these decisions were not acceptable by the Administrative CsIT on merit. For the F.Y. 2013-14 the cases identified for analysis involved a tax effect of less than 3 lacs.

The result of the study is tabulated in Fig. 17 below.

Study of Order of CIT (A) with tax effect less than Rs.3 lacs

	CCIT-I, Ahmedabad	CCIT-I, Delhi	CCIT-VII, Delhi	CCIT-II, Hyderabad	Total	In %age terms
Total no. of Orders	440	44	345	101	930	100
Acceptable on merits	185	12	160	73	430	46
Not on merits acceptable	247	32	185	28	492	53
Application u/s. 154 filed before CIT(A)	8	–	–	–	8	1

(Fig. 17)

The study revealed that in 53% of the cases (out of the total 930 cases selected for study) the order of CIT (Appeals) was not acceptable on merits by the respective CsIT. Due to the strategy of reducing litigation through imposing monetary limits, there were many issues which needed further arbitration. The Committee also observed that such appeals could be considered for alternate dispute resolution.

The Committee also was of the view that such points of disagreement between CIT (A) and CIT could be resolved especially on issues pertaining to facts. The suggestions by the Committee in this regard are as follows:

- (i) Monthly Report of cases where the decision of CIT (A) is not acceptable on merits along with detailed reasoning should be sent by the CsIT to the CCsIT.
- (ii) CCsIT may have discussions with the CsIT (A) regarding these points of differences especially relating to additions on facts.

-
- (iii) CsIT should impress upon the Assessing officers the drawbacks/lacunae in the assessment orders which have impacted the decision at the appellate stage.

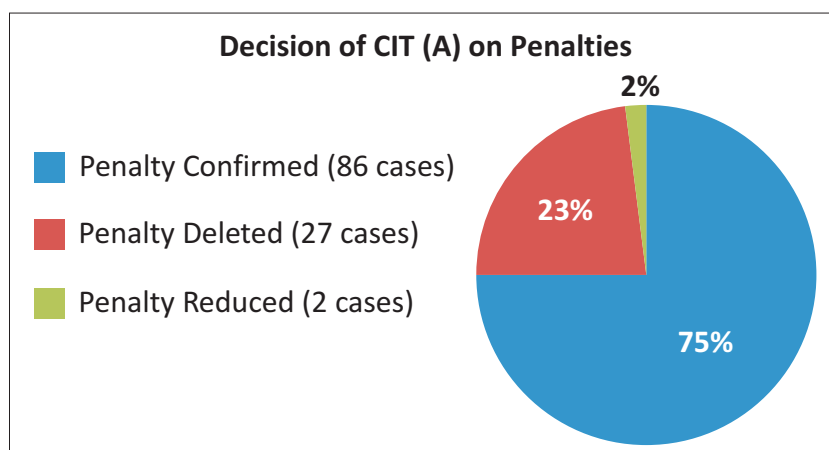
The committee observed that as per fig.17, the administrative CsIT did not find the decisions of CsIT(A) acceptable on merits in 53% of the cases. Therefore, the committee felt that it would be a better option to bring certainty in administration of tax laws through the process of having a uniform Departmental view.

E : ANALYSIS OF DATA- PENALTY ORDERS

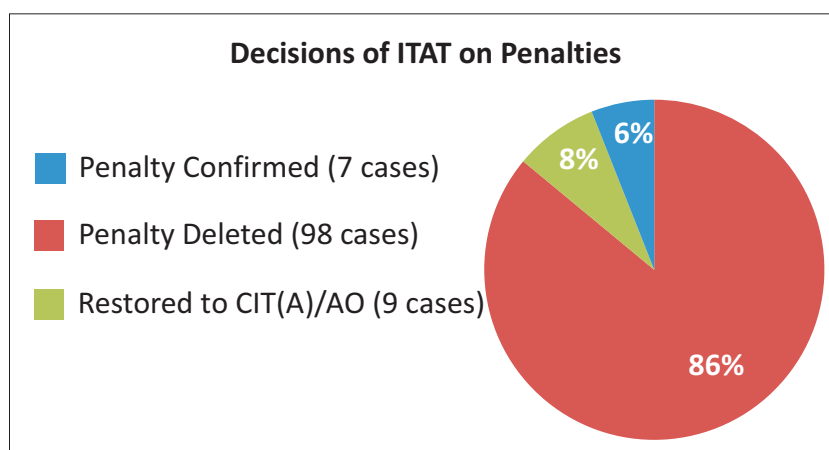
To study the success rate of Penalty Orders at various appellate stages viz CIT (A) and ITAT, a study was conducted by the Committee in 115 cases. Sample of these cases were taken from 4 cities viz Ahmadabad, Bengaluru, Mumbai and New Delhi.

It was observed in the study that 75% of the penalty orders were confirmed by the CIT (Appeals) as per Fig.18.

This analysis revealed that wherever the additions were confirmed by the CIT (A), the penalty order was also invariably confirmed. This position however changed at the stage of the ITAT, where only 6% of the penalty orders were confirmed as per Fig.19. This finding emphasized that the process of levying penalty does not impart any tangible benefits to the Department while adversely impacting on the image of the Department.



(Fig.18)



(Fig.19)

The Committee observed that the process of levying of penalty also contributes to litigation. The taxpayer agitates the addition in the assessment order also due to the apprehension of the levy of penalty and thereafter prosecution. For the Department too, the process of levying of penalty does not really contribute to revenues while adding to increased litigation.

The Committee's recommendations are as follows:

- (i) The system of provisions and imposition of Penalties needs a relook especially in view of the low success rate of the penalty orders.

-
- (ii) A lowering of the rates for Penalty may be examined.
 - (iii) The possibility of delinking 'confirmation of Penalty' from launching of prosecution also needs to be examined.
 - (iv) Penalty should not be levied by the A.O routinely especially u/s 271(1)(c).
 - (v) Detailed instructions should be issued by the CBDT with regards to the imposition of penalty under various sections.
 - (vi) As an alternative to penalty, levy of a cess in respect of specified defaults could be examined by the CBDT.

F : ANALYSIS OF DATA- ITAT ORDERS

With a view to streamlining the process of filing appeals to ITAT, under Section 253 of ITAT, Standard Operating Procedure have been issued by CBDT vide Instruction No. 08 of 2011 dated 11.08.2011. At Para 5(i) of the Instruction, it has been stated that the CsIT shall ensure that appeals to the ITAT are filed only where there is a proper justification & orders of CIT (A) on factual issues should be accepted unless the findings are perverse.

In the study conducted with regard to the procedures followed while filing appeals before the ITAT by the Department, the Committee observed that:

- (a) In more than 30% of the cases, the appeals were filed mechanically without appreciation of the maintainability of the issue involved.
- (b) In only 67% cases, the appeals were filed on sound grounds after examining merits of each order based on fact & law.
- (c) In 15% of the cases, all the points in the prescribed Proforma given vide Instruction No. 08 of 2011 have not been properly examined.

These statistics as per Fig.20 emphasized the need for introspection by the CsIT in the discharge of their responsibilities. The Committee felt that the role of CIT was pivotal in reducing litigation. The Committee also observed that CBDT Instructions to accept the findings of the CIT(A) on facts was not adhered to strictly by the CsIT.

Sl.No.	Parameters	Yes (%)	No (%)
1.	No. of appeals filed mechanically by applying the monetary limits	30.71	69.29
2.	No. of appeals filed on sound grounds after examining merits of each order based on fact & law	67.46	32.54
3.	No. of authorizations where all the points in the prescribed proforma given vide instruction no. 8 of 2011 dt. 11/08/2011 have been properly looked into	84.83	15.17

(Fig.20)

The Committee also analyzed whether the grounds of Appeal were properly framed in the appeal memo drafted. The analysis showed that in more than 15% cases, grounds of appeals were not appropriately framed as per Fig.21. Consequently the Departmental position was adversely impacted as appropriate framing of the grounds of appeal would have resulted in a better success rate.

Authorisation by CIT for filing appeal with the ITAT – Analysis

Sl.No.	Parameters	% age	% age
1	No. of cases in which grounds of appeals have been appropriately framed	84.57	15.43
2	No. of cases in which appeal was filed in time	94.75	5.25

(Fig. 21)

The Committee also undertook studies of ITAT orders with respect to the reason for reversing/sustaining the decision of the CIT (A). The findings were as per Fig.22 below:

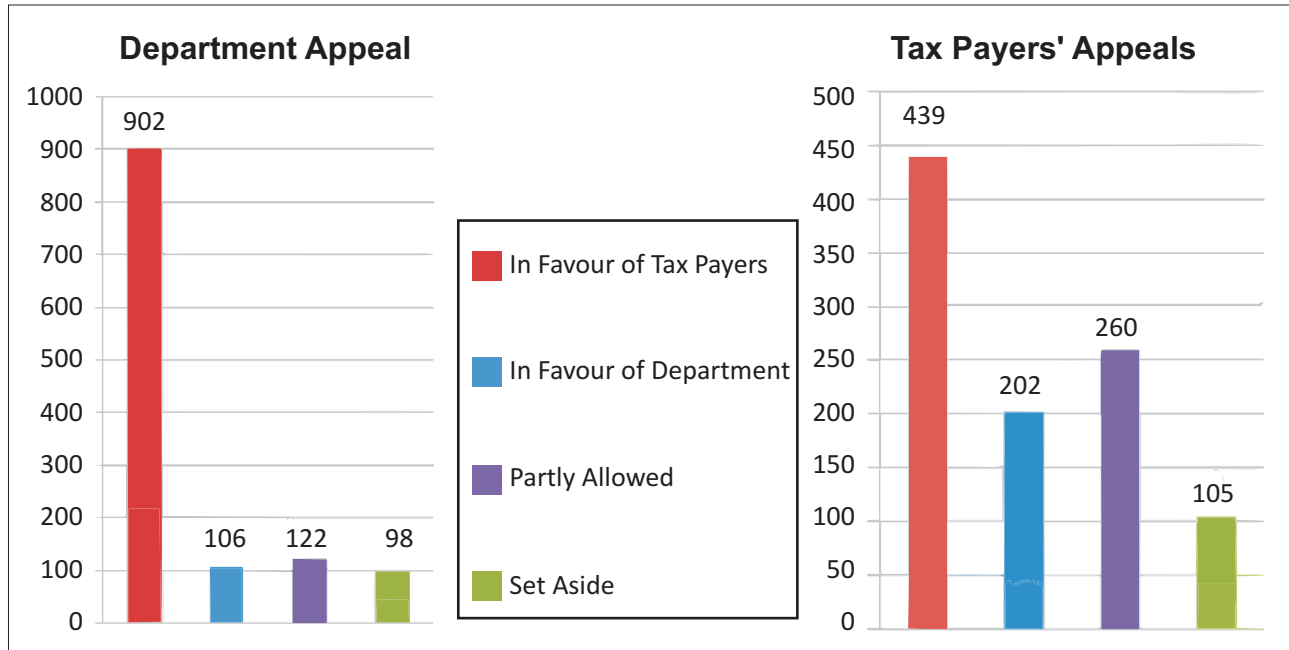
ITAT Orders – Reasons for reversing / sustaining order of CIT (A)

Reasons	%
No reasons to interfere with CIT(A)s order	15.29
No reasons given for reversing CIT(A)s order	1.90
Relief given relying on Supreme Court judgment	4.16
Relief given relying on High Court judgment	12.60
Relief given relying on ITATs decision	19.02
Relief given relying on facts	47.03

(Fig. 22)

The Committee observed that while in 15.29%+1.90% i.e. 17% of cases, ITAT supported the decision of the CIT (A), the Department had not accepted the decision of CIT (A). This emphasized that second appeals were filed mechanically by the CsIT to the ITAT. The Committee further observed that in 47% of the cases, issues related to facts. In the opinion of the Committee, litigation on factual issues should be only in rare cases where perversity in the order of CIT (A) can be established. The Committee felt that in these 17%+47% i.e. 64% of the cases, the Department could have avoided litigation if necessary due diligence had been taken prior to filing of appeal to the ITAT.

The Committee also examined the success rate of the Department's appeal vis-à-vis appeals filed by the taxpayer as per Fig. 23. It was observed that the Department's success rate in ITAT was extremely low. Therefore, there was need to improve the quality of representation by the CIT (DR) as also to equip the office of CIT (DR) with legal assistants as discussed subsequently in the report.



(Fig.23)

As per Department's statistics, the pendency of appeals and disputed demand is shown as per Fig. 24. Considering the success rate of the Department's appeal in the ITAT, it was felt that such aggressive litigation neither adds to the image of the department nor does it augment tax revenues. The large number of tax disputes also results in delays in disposal. Consequently, it leads to a regime of tax uncertainty and creates barriers to compliance of the tax laws.

The Statistics contained in Fig. 24 present an alarming picture of the tax demand disputed in the courts. The quantum of disputed demand impacts upon the image of the Department as an efficient tax administration. It adds a burden upon the judiciary and adds a strain upon the resources of the courts. For the taxpayer, it adds to the cost of compliance and creates an adversarial tax regime. In the end, excessive litigation adds to the cost of doing business and therefore, drives away investment from the country.

The Committee felt that 2015 should be declared as the Year of Dispute Resolution . The Department should commit its resources to the disposal of pending appeals. Simultaneously, the Department should bring about process improvement to re-engineer the functioning of the Department and introduce global best practices like ADR and early referrals in dispute management.

Appeals pending in ITAT, High Court & Supreme Court and demand disputed in these cases

	Appeals/Writs & others matters	Quarterly report of Appeal/Writs & other matters for Quarter ended June, 2014					
		by the Department			by the Assessee		
		ITAT	HC	SC	ITAT	HG	SC
1	Pendency as on 01.04.2014						
(a)	Less than one year	10104	6741	929	3419	1042	160
(b)	One to two years	8853	8703	1489	3573	1322	175
(c)	Two to five years	5568	8561	1626	1635	1471	243
(d)	Five to ten years	1600	4035	728	492	737	103
(e)	More than ten years	534	919	258	139	480	120
(f)	Total Pendency (a+b+c+d+e)	26659	28959	5030	9258	5052	801
2	Pending the beginning of the quarter	26659	28959	5030	9258	5052	801
3	Instituted during quarter	3831	1551	150	1862	339	26
4	Total Workload (2+3)	30490	30510	5180	11120	5391	827
5	Disposal during the quarter						
(a)	Decided in favour of the Department	598	213	38	318	59	11
(b)	Decided against the Department	1813	695	73	747	88	4
(c)	Set Aside	198	83	0	142	16	1
(d)	Partially allowed	402	41	12	186	3	3
(e)	Others	149	93	16	45	32	0
(f)	Total Disposal (a+b+c+d+e)	3160	1125	139	1438	198	19
6	Age wise analysis of disposal						
(a)	Less than one year	768	206	17	424	78	2
(b)	One to two years	1086	262	27	407	35	12
(c)	Two to five years	963	340	47	511	34	4
(d)	Five to ten years	279	250	24	71	38	1
(e)	More than ten years	64	67	24	25	13	0
(f)	Total Disposal (a+b+c+d+e)	3160	1125	139	1438	198	19
7	Pendency at the end of the quarter	27330	29385	5041	9682	5193	808
8	Out of item 7, Demand under stay						
(a)	No. of cases	747	4637	148	199	395	18
(b)	Amount involved (Rs. in Lakh)	216391	126385	6449	84528	131409	11836
9	Amount disputed (Rs. in Lakh)						
(a)	Amount disputed (total workload (item 4) (Rs. in Lakh)	5940686	3586271	321542	10216234	185624	81843
(b)	Amount disposed during the quarter (Rs. in Lakh)	803716	85838	7071	21114	5042	18207
(c)	Balance amounted disputed upto the end of quarter (a-b) (Rs. in Lakh)	5136970	3500433	314472	10195119	180582	63635

(Fig. 24)

Chapter-2

RECOMMENDATIONS

A : STRENGTHENING THE ASSESSMENT MECHANISM

The assessment order is the first stage in any dispute between the taxpayer and the tax department. Consequently, the quality and the transparent procedures adopted while framing assessments would be essential in any dispute resolution strategy.

To achieve these objectives, the suggested measures are :

1. Revamping of Procedures:-

- i) Preliminary verification of AIR/CIB information prior to the issue of Notice u/s 143(2) of the Act will ensure that cases where the information is verifiable, scrutiny u/s 143(3) of the Act may not be initiated.
- ii) In the cases selected for regular Scrutiny u/s 143(3) of the Act, issue of first questionnaire within 60 days of issue of notice u/s 143(2) notice should be made mandatory.
- iii) In limited Scrutiny cases based on AIR information etc, investigations on any other issue which in the opinion of the AO needs further verification or investigation, should be taken up only with the due approval of the Supervisory Officer. In addition, the Assessment Order on these issues must not be passed without obtaining the approval of the Supervisory Officer.
- iv) It should be made mandatory for the A.O to issue a “Pre-Assessment Notice” or Show Cause Notice (SCN) in respect of any proposed addition or discrepancy found during the course of Assessment proceedings, prior to the finalization of the Assessment Order.

(NB: This concept of issue of Show Cause before an “Adjudication Order” is passed, is there in The Customs Act, 1962 (Section 124) and Foreign Exchange Management Act, 1999 (Section 13 & 16 read with Rule 4 of the Foreign Exchange Management (Adjudication Proceedings and Appeals) Rules 2000).

2. Supervisory approval:

- i) It should be made mandatory for the A.O to take approval of his Supervisory Officer (through the mechanism of an Internal Correspondence Folder) before completing the Assessment in cases with additions above a certain quantum. For example additions of over Rs.50 lacs or tax effect of Rs.15 lacs may be considered.
- ii) A mechanism can also be considered, wherein for proposed additions above an aggregate amount of Rs.5 crores, the draft order would be sent to the taxpayer who may appear before Jt.CIT/Addl.CIT u/s

144A for adjudication. In such cases, Addl. CIT/Jt. CIT, would convey their directions which would be compiled with by the AO before issue of final assessment order.

3. Pre-assessment appeal mediation:

At the draft order stage, the taxpayer can also be given an option to move the ADR or Mediation on issues raised in the draft order. The CIT (A), Jt.CIT/Addl. CIT, AO and the taxpayer can resolve the issues, especially in respect of dispute over facts. Once an agreement is reached regarding the disputed issues, CIT (A) would pass an order which would be mandatory for both AO and the taxpayer. Thereafter the assessment order would be passed. This would ensure no further litigation and also ensure quicker resolution of disputes and collection of taxes.

4. Administrative Control:

It was observed by the Committee that there is no provision for statutory supervision of Assessment work other than in certain specific situations like Search Assessments, Transfer Pricing etc. The Committee felt that there was a need for the following administrative measures to be implemented to improve quality in Assessments :-

- i) Administrative monitoring of Assessment proceedings through ICF, for example at the stage of issue of first questionnaire, examination of books of account and the final stage of SCN or Pre-Assessment notice etc.
- ii) Manual Selection of cases should be done only with the approval of the Principal Commissioner/Commissioner of Income Tax.
- iii) Such Scrutiny cases need monitoring by the officer approving the manual selection and also approval by the Addl/Jt.CIT to enhance quality of Assessments. The Chief Commissioner should also be administratively informed of the outcome of such manual selection cases.

The provisions of section 144A and Section 153 of the Income Tax Act, 1961 would need to be suitably amended to enable the above recommendations. The aforementioned procedure would ensure three things, one that the taxpayer gets sufficient opportunity to submit his explanation and documentary evidences to support his claim at the Assessment stage itself, secondly, it gives the A.O enough time to carry out further verifications and bring on record enough materials to substantiate any addition he intends to make to the taxpayer's Income and thirdly, it would ensure that the issues are properly identified, thoroughly investigated under supervisory control at various stages of Assessment proceedings to prevent frivolous additions.

5. Technical Improvements -

- i) Instruction may be issued to AO that routine disallowances on estimate basis should not be done except where direct evidence is gathered by the A.O. after examination of such expenses. Standard Operating Procedures (SOP) need to be drawn for estimated disallowances or disallowances for personal use of vehicle, telephone, travelling, addition for household expenses, disallowance for cash or un-vouched expense etc.

- ii) It should be made mandatory for the AO to estimate Gross Profit/Net Profit only after issue of a show- cause notice for invoking section 145 of the Act and after providing a reasonable opportunity of being heard to the taxpayer.
- iii) Trade and industry data needs to be analyzed and applied in cases of abnormal financial results. The CBDT should publish such data annually to assist the field authorities.
- iv) Sophisticated Computer software based Investigation System should also be introduced (like the '*Connect*' system of HMRC in the UK). This would ensure real-time monitoring of financial transactions.
- v) In cases of survey under section 133A of the Act conducted to unearth real-time tax evasion, the assessments may be finalized within a specified time on priority.
- vi) It is also proposed to include a "Summary Sheet" of additions and disallowances along with the Assessment Order. This would ensure that common mistakes and lacunae detected in inspections / audit/appeal are minimized.
- vii) A checklist of common errors (leading to litigation/Audit objections) to be avoided in Assessment should be periodically updated and be made available to each AO to avoid repetition of such mistakes.

6. Improvement in Scrutiny Selection Process -

- i) Prior to selection of cases for Scrutiny, inputs on local variations or modus operandi being adopted to evade tax should be factored. The Committee felt that Economic Intelligence needs to be strengthened to act as an input for selection of cases for scrutiny.
- ii) The selection of cases for Scrutiny should be on a real time basis. The entire process of filing of return of income, selection of the case for scrutiny, and finalization of assessment stretches over several years. Thereafter, litigation takes several more years. By the time the issues reach finality, years have passed and collection of taxes becomes difficult.
- iii) The process of Assessment should be made contemporaneous. Selection of cases for scrutiny should be done within 90-120 days of the filing of the tax return.
- iv) Scrutiny selection should be restricted to issue based/information based selection.
- v) The number of cases selected per AO for Scrutiny should be rationalized and there should be uniform distribution of cases across AOs to ensure balanced distribution of work.

Redistribution of Scrutiny cases already pending, amongst the additional officers available after implementation of restructuring of the Department should be done to ensure that backlog of cases is cleared.
- vi) Before the initiation of selection of cases for Scrutiny for each financial year, the Department should publish the list of issues available in the public domain on which it is contesting the decision of higher

Appellate authorities/High Court/Supreme Court i.e. issues on which the additions would continue to be made, subject to the finalization of the appeals filed by the Department.

7. Optimum Manpower Utilization

At present no statutory functions in the Scrutiny Assessment process is discharged by the Inspectors of Income-Tax (ITI) under the Income Tax Act, or under any administrative orders. The Committee recommends that in order to enhance the manpower utilization for Assessment work, the Inspectors should be assigned some statutory functions and made responsible for the same. Some suggested functions are-

- a. *The drafting and issue (with A.O.s approval) of “Preliminary Questionnaire” to the taxpayer under his signature.*
- b. *Preliminary verification of the books of account on the basis of an approved checklist with the Report to be submitted under the Inspector’s signature.*
- c. *Verification of TDS Certificates by issue of Notice to the Deductee in cases of TDS mismatch.*
- d. *Gathering of third party information and verification after due approval of the Assessing Officer.*

The Committee was of the opinion that this would assist in training of the Inspectors for future role as assessing officers.

8. Enhancing the Human Resource Capabilities

There is need to focus on training of the cadre of the Income Tax officers & Inspectors as these functionaries are at the cutting edge of the Department.

A. Focus on Training of AOs and ITIs–

- i) The newly promoted ITOs, prior to their deployment in the field, should be provided compulsory and intensive training at the DTRTLs.
- ii) The training should be of at least three (3) months duration, including one module devised specifically on Income Tax Law and jurisprudence and a second module for development of the IT skills and the e-enabled initiatives of the Directorate of Systems.
- iii) The training should also include a short course at National Academy of Direct Taxes on General Provisions of Law including relevant sections of CPC, Evidence Act and Companies Law by an outside faculty from any National Law Institute.
- iv) Prior to being deployed for assessment duties, newly promoted ITOs should be attached for training with a DCIT Circle or with JCIT Special Range for a period of not less than one month. Such mentors can play a pivotal role in guiding these officers for assessment duties.

B. Examinations–

- i) All In-service training modules should have an evaluation content to ensure proper dissemination of knowledge content.
- ii) The Ministerial staff and ITO's examination pattern needs to be revamped and aligned with the functional expectations of knowledge and service delivery standards.
- iii) The evaluation content should be revised and examination should be conducted on the lines of CAT or other All India examinations with an online objective type examination.
- iv) The feasibility of engaging an outside Agency to conduct such online examination may also be considered.

C. Provision of Information Technology, Investigation and Audit Tools-

- i) The A.O should have access to the National Judicial Reference System of the Department which is being developed, and to one of the new Internet based reference system like ITR/Taxman on a standalone Computer/ Laptop. A well equipped library in all CCIT charges for books/reference system like ITR/Taxation/Legal & Judicial reference system, direct online access to NADT/DTRTI's resources should be made available.
- ii) Online digitalization of all publications of the Department/Various Reports of Committees in e-book format and uploading of the same for easy accessibility of the progressive knowledge base.
- iii) Modern tools of investigation in the form of software based Audit tools and Financial Investigative tools (for analyzing financial data) need to be provided.
- iv) Access to ROC, SEBI and other Regulatory Agency databases should be made available.
- v) Access to industry database offered by CMIE or FICCI should also be made available.
- vi) All the information relating to a taxpayer available in the internal Database of the Department (including 360° Profiling), should be made available directly to the AO through the Department's Network, in cases selected for Scrutiny Assessment.

D. Systemic changes in the format of Asst. Order–

To impress on the assessing officers the importance of making additions based on sound and legal basis, systemic changes in the format of Assessment Order incorporating various aspects of proposed changes are discussed in Annexure-2 including the summary sheet provided therein.

B : STRENGTHENING OF THE INSTITUTION OF CIT(A)

The CIT (A) is the first stage in dispute resolution. However the heavy pendency of cases at the level of CIT (A) is one of the reasons for taxpayer grievances. It was also observed that though both work within the same Department, there is a trust deficit between the CIT and CIT (A).

The CIT (A) also functions without required manpower support in the form of ITOs, ITI etc. The Committee felt that there was need to re-engineer the business process at the level of CIT (A) in order to reduce litigation and improve the quality of decision making.

The Committee recommends that improvements could be made in the following fronts :

(i) **Infrastructural Requirements :**

The Office of the CIT(A) should be strengthened by providing proper infrastructure. Adequate manpower can be provided with the posting of ITO, Private Secretary, Stenographer, Inspector, A.O/Office Superintendent and Notice Server. This will streamline the regular monitoring, posting and disposal of Appeals.

- a) A Registry in the office of the CIT (A)/ Central Registry (in multi CIT(A) stations) on the lines of the ITAT registry needs to be set up. The Registry could be headed by a Gazetted Officer, to ensure proper receipt, verification, record and fixation of appeals. In the Central Registry, all the Appeals could be received centrally and processed simultaneously to check for defects.
- b) Alternatively, creation of a separate wing for appellate work without allocating territorial or A.O wise jurisdiction to the CsIT(A) can be considered. There should be effective manpower for investigating and providing assistance to the Commissioners in the appellate work. Assistance with respect to provisions of the latest case laws on various issues, verification of evidence, remand report and admission of additional evidence etc. would improve the functioning of the CIT(A). The allocation of appeals may be done by the Pr. CCIT/CCIT to ensure even distribution of work amongst the CsIT (A).
- c) The CIT (A) should be authorised to accept submission made by the tax payer through duly authenticated electronic media.

(ii) **Appropriate Software :**

The software for the office of CIT(A) developed at Hyderabad and approved by the CBDT should be mandatorily introduced in all CIT(A) offices. This would streamline the records, improve efficiency and timely issue of Notices, Reports and compliance from both the taxpayers as well as the A.Os and above all make the office of CIT (Appeals) e-enabled.

It is necessary to ensure that the CIT(A) is updated with the latest decisions and also be made aware of the settled positions of law with respect to important matters/provisions of the Act. It is suggested that:-

- (a) The publication "*Case laws in favour of Department*" which lists out reported decisions of the Supreme Court, the High Courts and the ITAT favorable to the Department should be periodically updated.
- (b) Unreported decisions of the ITAT in favour of the Department are published in "*Digest of Tribunal decisions*" (DTD). This publication should be updated periodically.
- (c) There should be provision to upload orders of CIT (A) in AST module/ITBA and the CIT(A) should be given power to view orders of any CIT(A) in the country. This would enable the CIT (A) to know the outcome in the issues in the earlier year(s) as well as the stand taken by the other CIT(Appeals) on similar issues. This will be in conformity with the Judicial Reference System, which is under process.

(iii) Process of Appeal: Filing of Additional Evidence:

- (a) One of the major grounds raised by the Department in Appeals before ITAT is violation of Rule 46A. After CIT (A) has taken a decision on the admission of additional evidence, the ITO attached to his office, with the help of ITIs can cause verification(s) on such additional evidence submitted by the taxpayer. This will be similar to the powers conferred upon the DIT in Settlement Commission.
- (b) In case, that additional evidence or other evidences submitted at the appeal stage to proposed to be admitted, the CIT(A) will be obliged to give a draft finding on that issue to the A.O who will respond within a specified period. In case of non-compliance, the Assessing Officer would normally not be allowed to raise the plea of violation of Rule 46A before the ITAT. In such cases, appeals could be filed before the ITAT only on the basis of merits of the case.

(iv) Bunching of Appeals and Constitution of a Bench of CsIT (A):

- (a) With a view to bringing about uniformity in the decisions taken by the CIT (A), it is proposed that repetitive or common issues could be bunched with a designated CIT(A). This would ensure uniformity in decision making.
- (b) In line with the present practice in the ITAT/High Court, a panel of 3 CsIT (A) with requisite expertise can be constituted to adjudicate on complex legal issues of regional importance or complex cases of a large Business group. This power could be delegated to the Principal Chief Commissioner of each region.

(v) Power to Grant Stay:

- (a) The CBDT needs to take a decision whether the CIT (A) is to be empowered to grant stay of demand.
- (b) In such cases, stay can be granted conditionally on the taxpayer depositing a certain

percentage of the disputed demand. However, CIT (A) would be obliged to necessarily dispose of such Appeals within a prescribed period.

(vi) Set-aside matters:

- (a) Presently, there is no time limit fixed for disposal by CIT (A) of cases which are set-aside by the ITAT/High Court. At present no formal record is being maintained by the office of the CIT(A) to keep track of such cases; especially in cases decided against the taxpayer.
- (b) Appropriate Instructions may be considered or a procedure prescribed requiring the A.O to maintain separate record and follow up the matter for decision by the CIT (A). It would be incumbent on the AO to get the Appeal fixed within a prescribed time.

(vii) Disposal of Non-High Demand Appeals:

Presently, it is the high demand appeals that are regularly being monitored. In order to ensure that justice is dispensed uniformly, it is suggested that once there is proper administrative support for the CIT (A) as suggested, a statutory time limit for disposal of non-high demand Appeals can be considered. This will take care of the grievance of many small tax payers.

(viii) Systemic changes in the format of form No. 35:

While it is required of a tax payer, while filing the first appeal to provide the statement of facts (SOF) along with the memorandum of appeal and grounds of Appeal etc., at present SOFs are rarely filed at all or even if filed, are not complete. The insertion of SOF and such other suggestive changes in the form no. 35 have been discussed in detail in Annexure-2. The suggested form no. 35 is also appended to this report as Annexure-4.

(ix) Standardization of the order of CIT (A):

All the orders of the CIT (A) could be standardized. The CIT (Appeals) may be required to take up each ground of appeal separately. The submissions of the taxpayer and the reasoning of AO should not be reproduced verbatim in the order as was observed in the analysis of data collected by the committee. The CIT(Appeals) may be required to marshal the facts and arrive at a decision after due appreciation of facts and legal points involved.

A suggestive summary sheet of decisions of CIT (A) in ITNS-55 is prescribed as follows:

Summary Sheet of Appellate Decision

Amount of Addition by AO(Rs)	Section under which addition made	Ground No.	Whether additional evidence filed	Whether remand report on the issue called for	Amount of Relief	Brief reasons for the Full/ partial Relief			
						Facts	Laws	Both factual and legal	others

C : REDUCING LITIGATION BEFORE THE ITAT

The Committee felt that the filing appeals mechanically to the ITAT by the CIT needs to be discouraged. The CIT should be made accountable for filing frivolous appeals which are neither supported by legal precedents as also are not based on perversity of facts.

Simultaneously, the representation before the ITAT needs improvement. The CIT(DR) would benefit from the assistance in the form of law graduates working as research assistants.

The Committee suggested that in order to reduce litigation especially with respect to filing of appeals in the ITAT, introduction of global best practices would be beneficial to both the department and the taxpayer.

The various measures that the committee recommends are:

(a) Provision for avoiding repetitive appeals by Department

Section 158 A of IT Act is a provision meant for the tax payer to avoid repetitive appeals on the same issue pending before higher courts. A similar provision can be inserted in the Act to enable the Department to request for avoiding repetitive appeals during the pendency of the issue before the higher Appellate Authorities. In the case of lower monetary limit, the Department cannot file Appeal against such order before higher Appellate authorities, even though the matter may be in Appeal before the High Court or Supreme Court. Whether the Appeal is repetitive or not should be decided by the Appellate Authority on application by the department to keep the proceeding in abeyance.

(b) Appeal against decision of the CIT(A) on factual issues

Various judicial forums have been critical with the manner of filing Appeals by the Department. In the case of CIT Vs. Sairang Developers & Promoters Ltd. in ITA No. 2603/2011 dated 28.04.2014 by the Bombay High Court had highlighted the issue of frivolous appeals. The Courts have been reiterating the need for eliminating/not filing frivolous appeals and have also insisted on strict abidance to the Judicial orders and maintaining consistency. .

Extant Instruction exists in this regard and have been reiterated from time to time by the CBDT. Some of these include Instruction No.1894 dated 16.06.1992, 1921 dated 23.01.1995, and Instructions regarding standard operating procedure on filing of appeals to the ITAT u/s 253 and related matters in inst. No. 08/2011 (*F. No. 279/Misc./M-43/2011-ITJ dated 11.08.2011*).

Notwithstanding the fact that the Department has issued several instructions to the effect that grounds in orders of CIT (A) decided on “facts” should be appealed against only on the grounds of perversity, it is seldom followed. More often than not, appeal is filed in a mechanical manner without appreciating the facts and evidence on record.

Strict adherence to CBDT instructions should be made mandatory. The CIT may be required to file data to CCIT regarding the second appeals authorized on facts.

(c) Appeals emanating from Audit Objections

To remedy the situation of filing repetitive appeals arising out of audit objections and consequent re-opening of cases, the decision to file or not to file a reference before the High Court or the Supreme Court needs to be revisited.

Standard Operating Procedures (SOP) should be devised to reduce the litigations arising out of audit objections which have a low rate of success in courts.

(d) Drafting of Grounds of Appeal

The extant instruction requires the Range Head to personally draft the grounds of Appeals while processing the case for second appeal. This instruction may be enforced strictly as the success rate in ITAT is often adversely impacted by poorly drafted grounds of appeal.

(e) Systemic changes in existing format for filing appeals:

Systemic changes in form no. 36 etc. incorporating various aspects of proposed changes like filing of SOF, bunching provisions and admissibility of appeal etc. are discussed in detail in Annexure-2. The model format is given in Annexure-5 and 6.

(f) Option for Settlement

At present, a petition before Settlement Commission can be moved only when the assessment proceedings is pending before an assessing officer. However, it is seen that in some cases subsequent to the Assessment Order, taxpayers are ready to go for settlement.

To cover such cases, as an alternative, necessary powers may be given to a panel of CsIT under section 273A of the Act for compounding such cases, and reducing or waiving penalty and even prosecution proceedings. In such cases, a minimum penalty and statutory interest could be imposed by the Compounding Committee in addition to the demand payable. This can be treated as an Alternate Dispute Resolution mechanism. Since the Assessment order is already passed and issue quantified, there will be no need for taxpayer to go to Settlement Commission.

(g) Facility for Advance Ruling (Domestic)

The Authority for Advance Rulings considers domestic taxation issues also. It is suggested that this system can be enlarged to have four more Benches in different parts of the country so that more tax payers can avail of the benefit of the system. This would significantly reduce litigation.

(h) Improving the Functioning of Departmental Representative

To better equip the CIT(DR) to represent before the ITAT, the Committee suggested the following measures :

- i) Concept of “Research Assistant – Legal” as followed in TRAI may be introduced for recruits of Law Colleges on a fixed stipend basis to assist the D.Rs.

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- ii) Engaging Special Counsel for cases involving complex issues
 - iii) Regular training & Seminars for DRs & CIT (A) should be organized on tax law, court craft and jurisprudence on a regular basis.
 - iv) Assistance to DRs by AOs- It should be made compulsory for the AO to
 - Brief the DR on the case
 - Provide paper book
 - Copy of Scrutiny Report

The Committee also felt that the road ahead for the department was to align its processes in respect of global best practices. The single most significant contributor to litigation was complexity in the interpretation of the law and an absence of a Departmental view on various legal issues.

The Committee felt that the need for the rule of consistency could not be over emphasized. Hence, the Committee undertook the study of global best practices to identify the measures being undertaken by other countries to reduce litigation.

The Committee also felt that there was need to resolve issues at an early stage. This would result in cost effective resolution of disagreements before they metamorphosed into disputes. To achieve this objective, the Committee studied the alternate dispute resolution in several countries and suggested their adaptation in the Indian context.

Chapter-3

ROAD AHEAD

A : ALTERNATE DISPUTE RESOLUTION

1. Most countries which have advanced tax systems have provisions for Alternate Tax Dispute Resolution (ADR). These apply from the pre-filing stage to the stage where an audit case has been finalized. The endeavour is to offer a chance to settle the dispute at every step in the life-cycle of a tax dispute and hence reduce litigation at every step. ADR has proven to be an effective method of resolving disputes in a quick and efficient way.
2. An important objective of every tax administration should be to resolve tax differences at the lowest level without sacrificing the interest of revenue. It is very important for tax administration to engage early with taxpayers to arrive at a position so that disputes do not arise or are less likely to arise. Real time resolution of tax issues at an early stage can be a major factor in preventing issues escalating into litigation.

The committee visited the web pages of the Tax Administrations of USA, UK, and Australia to understand the changes which have been introduced in these Tax Administrations as a means of reducing litigation through engagement with the taxpayer. It was observed as under:

USA

(a) Resolving issues at Pre-filing stage

In most advanced countries, there are options available for taxpayers to have an early redressal of their queries even before filing of tax returns. Some of these are:

- i. The IRS in the USA have a Pre-filing Agreement Programme. Pre-Filing Agreements allow a taxpayer to request examination of specific issues involving factual questions and well-settled principles of law before the return is filed. If the taxpayer and the IRS are able to resolve the selected issues prior to the filing of the return, there is provision whereby the taxpayer and the IRS finalize their resolution by executing a Pre-Filing Agreement (PFA).
- ii. This program is intended to reduce taxpayer burden that would normally be encountered during the actual examination process.
- iii. This is essentially available for large taxpayers who have complex tax issues. The programme is called Compliance Assurance Process (CAP). Under CAP, participating taxpayers work collaboratively with an IRS team to identify and resolve potential tax issues before the tax return is filed each year. With the major potential tax issues largely settled before filing, taxpayers are generally subject to shorter and narrower post-filing examinations.
- iv. The programme includes two components: A pre-CAP program that provides interested taxpayers with a clear roadmap of the steps required for gaining entry into CAP; and a CAP

maintenance program intended for taxpayers who have been in CAP, have fewer complex issues, and have established a track record of working cooperatively and transparently with the IRS.

Benefits of the Pre-filing Agreement programme

The PFA Program has expected benefits for both the taxpayer and the IRS as detailed below:

- Records and people are readily available, reducing data gathering and examination time
- Fosters a cooperative relationship to resolve potentially contentious issues
- The Pre-filing issue examination is faster than the post-filing process
- Post-filing examination cycle time is reduced
- Improves resource allocation and post-filing timeframes as significant issue(s) has already been examined
- Compliance burden and costs are reduced
- As an additional benefit for the taxpayer, the PFA will create certainty for financial accounting purposes

Typical timeframe for a Pre-Filing Agreement

Pre-Filing and Technical Guidance	Application, Screening and Acceptance	Planning 1 week	Fact Finding 20 weeks	Resolution 1 week	Closing Agreement 2 weeks	Administra- tive Review
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(Other countries like the UK and Canada have Advance Pricing arrangements for Transfer Pricing issues.)

(b) During Audit (Scrutiny)

The IRS in the US have several Alternate Dispute resolution processes for settling disputes when an audit examination is underway. These are:

(i) Early Referral to Appeals

The IRS in the US have a system for early referral to Appeals once the Audit (scrutiny) has commenced. Early referral is a process to resolve cases more expeditiously through the District (i.e. Assessing Officer) and Appeals working simultaneously. This is an opportunity for referral to appeals when examination of a tax case (akin to scrutiny in Indian tax system) is underway. Early referral is available for Large Taxpayers and International issues, for Small Businesses and Self Employed taxpayers and for Tax exempt and Government entities.

Process Description:

- Taxpayer requests early referral to Appeals of developed unagreed issue in an open audit
- Taxpayer and Team Manager agree that the issue should be referred early
- Remaining issues are not expected to be completed before Appeals resolve early referral issue
- Certain issues excluded
- Closing Agreements executed, if agreement is reached
- If agreement is not reached, taxpayer may request mediation or will be issued a statutory notice of deficiency

(ii) Fast Track Settlement (FTS)

Apart from option for early referral, the IRS in the US offers another opportunity to taxpayers to settle the dispute during the pendency of an examination (scrutiny). This is called Fast Track Settlement, which offers taxpayers an opportunity to resolve tax disputes at the earliest possible stage in the examination process. Once the taxpayer's application is accepted, the goal is resolution within 60 days.

With FTS, a trained mediator from the IRS Office of Appeals is assigned to help the taxpayer and the IRS reach an agreement on the disputed issue(s). The taxpayer retains full control over every decision he/she makes during the FTS process. In addition to using mediation techniques to facilitate settlement discussions, the Appeals mediator may offer settlement proposals and use Appeals' settlement authority, if needed, to resolve the dispute. Either the taxpayer or the IRS may agree to or deny the Appeals mediator's settlement proposal.

This is available to Large Tax-payers and International taxpayers, Small Business/Self-Employed and Tax exempt and Government entities.

UK

(a) Alternate Dispute Resolution

HM Revenue & Customs (HMRC) offers a service where a taxpayer can apply for Alternative Dispute Resolution (ADR) when an impasse has been reached on a case. ADR is an informal process of resolving disputes through the introduction of a neutral and impartial HMRC third party facilitator.

ADR offers a different way of resolving tax disputes. A third person from HMRC (called a 'facilitator'), who has not been involved in the dispute before, works with the parties to the dispute to try to broker an agreement. The essence of ADR is that another party is brought in, with the agreement of both parties, either to determine the dispute (arbitration) or to facilitate bilateral agreement (either as an expert through non-binding neutral evaluation, or through mediation).

The benefits of such an approach have been shown to be that it is both cheaper and quicker than going to Court. ADR is available both during the assessment and after an appealable tax decision or assessment has been made by HMRC. Either party to a dispute can suggest ADR may be an appropriate method of resolving the dispute.

ADR cannot guarantee resolution of the dispute but by the end of the process, whether or not the dispute is resolved, the taxpayer will have clarity on the outstanding issues.

(b) ADR for Small and Medium Enterprises and Individuals

ADR seeks to provide Small and Medium Enterprise (SME) and Individual customers with a quick and fair way of resolving tax disputes.

ADR involves an independent person from HMRC (called a ‘facilitator’), who has not been involved in the dispute before. The facilitator will work with both the parties and broker an agreement between them. ADR is available to SME and Individual customers where a tax issue is in dispute, whether or not an appealable tax decision or assessment has been made by HMRC.

ADR covers both VAT and direct taxes disputes, and entering into the ADR process will not affect the customer’s existing review and appeal rights. ADR is open to all customers nationwide whose tax affairs are handled by HMRC’s Local Compliance SME and Local Compliance Individuals and Public Bodies business units.

AUSTRALIA

Dispute Management Plan

As part of their strategy for Resolving Disputes, ADR is listed as one of the priorities for the Australian Tax administration in the current financial year.

Australia Tax Office (ATO) publishes Dispute Management Plan (DMP) every year. DMP lists ATO’s commitment, as part of their strategy for Resolving Disputes in the current financial year:

“Early engagement and direct negotiation are our primary means of avoiding, minimizing and resolving disputes. Dispute resolution approaches should be considered at every stage, including:

- in a debt dispute related to the recovery of your unpaid tax liability, by explaining the nature of the dispute as soon as it arises
- in a large business income tax dispute, by providing an independent review of the audit position
- in an employment dispute.”

Recommendations for the Indian Tax System

Based on the global model of early referral systems and Alternate Dispute Resolution, the Committee felt that some of the initiatives can be considered for implementation. The Income Tax Department could initiate a pilot programme to see whether such initiatives would help in reducing litigation and improving taxpayer satisfaction. ADR could also be considered for collection of unpaid tax liability :

i. System of Pre-filing Agreements

A unit may be set up which may look into issues which are referred to it by the taxpayers before filing their tax returns. These would be issues where the taxpayer is not clear about the Department's stand on the taxability of the issue or the law on the issue is not well defined.

The issue could be specific to a taxpayer or it may be a general issue which is affecting several taxpayers.

Once the issue is referred to this Unit, the Unit may examine the issue for its admissibility. Once the issue is admitted the Unit may have discussions with the taxpayer. The decision would be based on extant law and CBDT instructions. If the decision is agreeable to the taxpayer, an agreement may be reached and the return of income tax is filed accordingly. This issue would then not be open for scrutiny during assessment.

ii. Alternate Tax Dispute Resolution during Assessment

Based on the success of ADR in many countries, in India too various processes for Alternate Tax Dispute Resolution may be devised. Processes may be devised for resolution of disputes for every stage of the life-cycle of an assessment. During the assessment when the dispute has been identified, ADR may be initiated prior to finalization of the assessment.

The CIT (A), Jt./Addl. CIT, AO and Taxpayer may consider the merits of the dispute. After considering the rival view points, the CIT (A) may mediate between the AO and the taxpayer. Once agreement is reached, a formal order would be passed which would be binding on both parties. The taxpayer will have the right to opt out of ADR :

i. Coordinated Alternate Dispute Resolution

Where one taxpayer has opted for alternate tax dispute resolution and an agreement has been reached between the tax authorities and the taxpayer, other taxpayers with identical issues may be advised to opt for similar dispute resolution mechanism in order to avoid protracted litigation.

ii. Mistakes Apparent from Records and Administrative Mistakes

The committee felt that such mistakes should not result in litigation. Such errors could be resolved within the Department itself and would help reduce litigation at the level of CIT(Appeals) and ITAT. The committee felt that the following mistakes could easily be resolved at the level of the Administrative CIT:

- Decisions that are not likely to be upheld by the courts, since they are not in accordance with the applicable laws and Board's Instruction
- Inadvertent errors and TDS mismatch cases.

The application of ADR would give the tax administration the opportunity to reconsider the case. In such cases, appeals should not be required, as the tax administration should be ready to recognize its own mistakes. A system should be available to taxpayers, affording them the opportunity to request for the correction of such mistakes, within the deadlines provided for by the statute. Thus, the scope of Section 154 should be widened.

CONCLUSION

Since appeals are either based on extant law/instructions, mistakes or factual issues, ADR would provide an excellent means of grievance redressal at no cost to the taxpayer and within specified deadlines. For the tax department also it would provide benefits in terms of higher taxpayer satisfaction and faster resolution of the smaller disputes.

The most important aspect which has been noted from the best practices followed by other countries is the detailing of process. The IRS of US, Australia, UK, Netherlands have published a fairly detailed document indicating the policies, perspectives and the process to be followed while implementing the mechanisms of ADR being followed by them. The LSS of UK, the HM guide of Netherlands and the detailed notes about each process (Revenue Procedure Note) issued by US are worth emulating. It shows that a detailed standard operating procedure (SOP) is a key requirement in putting a useful dispute resolution mechanism in place. It not only gives confidence to the taxpayer but it also gives the proper direction to the officers implementing the scheme and reduces the scope of discretion.

In all these alternative dispute resolution methods, the Revenue never foregoes any amount which is due as per the law but simultaneously Revenue does not support an incorrect interpretation. In most countries, the resolution is also subject to external audit to ensure no compromise of tax foregone.

B : THE RULE OF CONSISTENCY: UNIFORMITY IN INTERPRETATION OF IT ACT

Uniformity of interpretation of the extant provisions of a tax law can hardly be over emphasized considering the fact that inconsistency impairs the quality of legislation and undermines the confidence of the taxpayers in the tax administration. Increasing litigation in tax matters adversely impacts upon the country's economic development and investment climate.

It is needless to point out that lack of uniformity in the judgments of various benches of the Tribunal, between different high courts adds substantially to the ambiguity and uncertainty in understanding the provisions of the Act. In turn, this multiplies and compounds the litigation before various judicial fora, till the law is settled by the Apex court or uniformity is brought in by legislative amendments.

Interpretation of law and answering Substantial question of law (SQL) is the prerogative of the High Courts / Supreme Court. It is a matter of concern that Department by its own non-uniform approaches and varied interpretations by different officers adds to the complexities in law and uncertainties in tax collection. It is the legitimate expectation of a tax payer that the Department should formulate a uniform view on contentious tax issues. The Department view should be available in the public domain to enable the taxpayer to arrange his affairs accordingly.

The Courts have also reiterated consistency to be a sound principle to be adopted in tax administration. The Revenue is permitted to depart from an earlier view only on *good and valid ground, OR fresh facts OR fresh circumstances* to warrant a deviation.

The Supreme Court itself has reiterated that it is expected of the Revenue not to unsettle issues which have reached finality, particularly in the absence of any material change justifying the Department to take a different view. Without a just cause Revenue should not file the appeal in one case while deciding not to file appeal in another case. Similarly Revenue ought not to challenge a view taken by the High Court in another case and accepted by Revenue. (Pl see *Bharat Sanchar Nigam Ltd. v. Union of India*, (2006) 282 ITR 273 (SC)/(2006 (3) SCC 1)/ CIT V. *Narendra Doshi (Appeal)* Civil No. 2053 of 2000 etc.)

It is true that the decision not to file appeal in a case may be governed by several factors like- (a) revenue effect in the case may be small, (b) the case may be weak on merits, (c) it may be a case of revenue neutrality, (d) these may be isolated cases etc .

Considering these, the exceptions were brought out by the larger bench of Supreme Court of India in *C.K. Gangadharan & Anr vs CIT* (Civil Appeal 6 No. 5210-5216 of 2002) delivered on 21 July, 2008) which held that merely because in some cases the Revenue has not preferred appeal that does not operate as a

bar for the Revenue to prefer an appeal in another case where there is just cause for doing so or it is in public interest to do so or for a pronouncement by the higher court when divergent views are expressed by the Tribunals or the High Courts. This was reiterated by the SC in *CIT vs J K Charitable Trust (Civil Appeal No.. 2092 of 2006 on 7-11-2008)* where the Court held:

*While merely because in some cases revenue has not preferred an appeal that does not operate as a bar for the revenue to prefer an appeal in another case where there is just cause for doing so or it is in public interest to do so or for a pronouncement by the higher court when divergent views are expressed by the different High Courts, this is **NOT SO** in a case where the fact situation in all the assessment years is the same. Where the fact situation is the same, the revenue cannot prefer an appeal if they have not done so in the other cases.*

The courts have reiterated time and again the principle of consistency. Indeed in a larger bench decision of SC in the latest case of *CIT vs Excel industries* on 18.10.13, the Court observed after referring to the earlier judgments in *Radhasoami Satsang* and *Parshuram Pottery* that:

Secondly, as noted by the Tribunal, a consistent view has been taken in favour of the assessee on the questions raised..... Consequently, there is no reason for us to take a different view unless there are very convincing reasons, none of which have been pointed out by the learned counsel for the Revenue.

Moreover, there are several justifiable reasons for adhering to the Rule of Consistency viz:

- (a) Theory of legitimate expectation
- (b) Avoiding discrimination
- (c) Finality and certainty
- (d) Ensuring Stability.

Initiatives to Promote Consistency: CTC/RTC

The judicial pronouncements reiterating the rule of consistency made it imperative for the Department to have a uniform and all India view on often litigated issues or issues involving high stakes.

With a view to provide clarity on contentious legal issues, promote consistency of approach on a given issue and reduce litigation, it was decided to set up the institutional mechanism to formulate 'Departmental View' on contentious legal issues. The CTC (Central Technical Committee) & RTC (Regional Technical Committee) were brought into place by a *CBDT OM [F.NO. 279/M-61/2012-ITJ]*, dated 28-8-2012 which is based on the following principles.

Lack of clarity amongst officers on contentious issues results in inconsistent approach on same issue, spinning off of litigation and weakening the departmental stand before the judicial fora.

The Central Technical Committee (CTC) was tasked to consider contentious issues within Department taking into account various aspects and divergent opinions on the issue and advise the CBDT to take a “Departmental View” and if approved by the Board, a circular u/s 119 of the Act was to be issued by the ITJ division of the Board.

(As per the Instruction, where any High Court decides an issue contrary to the Departmental View, the same should not be operative in the area falling under the jurisdiction of that HC. However the CCIT concerned should immediately bring the judgment to the notice of the CTC. The CTC should examine the said judgment on priority to advise appropriate action to the CBDT.)

The issues relate to cases involving (a) conflicting interpretations of a provision by ITAT /High Court / AAR (b) interpretation of a provision by ITAT /High Court / AAR not in conformity to the legislative intent; (c) substantial revenue implications or has wide ramifications; (d) large scale litigations.

Although a number of circulars have been issued in this area, the Committee feels that the structure and dynamics of the CTC/RTC should be redefined and it be made a permanent body to be entrusted with the work of bringing consistency to the tax laws and their interpretation.

C : INITIATIVES TO IMPART CLARITY AND CONSISTENCY IN INTERPRETATION OF LAW

The Committee also made a study of the global practices adopted by the advance tax administrations of other countries. The committee observed that apart from other best practices like **Annual compliance arrangements (ACA)** of Australia, **Pre-filing agreements of USA** and **Pre-filing Enhanced relationship programme** of the Netherlands, **Expedited Review Opinion Programme** of France, the advanced tax administrations have also adopted consistency and clarity in interpretation as a strategy for minimization disputes.

In **United States**, the frequently disputed or burdensome tax issues that affect a large number of taxpayers are sought to be resolved by issuing of **Guidance notes under the Industry Issue Resolution (IIR) programme**. The US IRS for this purpose selects its suggestions from taxpayers, representatives and industry associations. For each issue selected, a resolution team is formed from the litigation as well as the Treasury i.e. the Ministry of Finance.

In **UK's Her Majesty's Revenue and Customs (HMRC)** and **Australian Tax Office (ATO)** provides for a dedicated organizational setup for management of disputes who undertake various proactive measures to ensure that avoidable disputes are not generated and very few matters pertaining to important and complex issues escalate to litigation. They also have **Standard Operating Procedures (SOP)** which are published and available to the taxpayers for their benefit.

In **United Kingdom** the **HMRC** publishes detailed tax manuals projecting the **Departmental views** on almost every aspect of taxation including the GAAR. The tax manuals are meant for use by the HMRC officers are published and used by the public and referred to by the Courts too.

In **Australia**, the **ATO** adopts the **precedential view approach** to resolve disputes in cases which require decision-making involving interpretation. A precedential ATO view is the ATO's documented view (*i.e. written interpretation of the department*) about the application of any of the law administered by the Commissioner in relation to a particular interpretative issue. The requirement for tax officers to search for and apply ATO views ensures that ATO decisions on interpretative issues are accurate and consistent. Such precedential ATO views are set out in publicly issued rulings and draft rulings / ATO interpretative decisions/ decision impact statements (DIS). When making decisions about interpretative issues, such as those that arise in requests for private rulings, the officer must search for, identify and apply relevant precedential ATO views or escalate the issue. If there is no relevant precedential ATO view, the department must create one. Further the taxpayers who rely on ATO publications (*except those labelled as non-binding*) who make a genuine mistake by relying on that publication (that appear relevant to their circumstances) and, are normally protected from *false or misleading statement penalty* and interest charges.

An interpretative issue is one that arises because :

- (a) The meaning of the words of the legislation is not clearly evident from a plain reading of the legislation*
- (b) There is more than one possible interpretation of the legislation,*
- (c) An interpretation based on the ordinary meaning of the legislation produces a result that is obviously absurd or unreasonable and does not promote the purpose of the legislation.*

(For example, the ATO issued an ATO view dealing with applicability of capital gains to bonus shares.

The decision impact statements (DIS) are issued within 8 weeks of the pronouncement of the final decision and inform the taxpayers with increased certainty. These Impact statements provided the gist of the ruling followed by the ATO's viewpoint. One typical example is ATO's view on International Transfer pricing marketing Intangibles issued in January, 2014 as to how the tax office will determine an appropriate reward for marketing activities performed by an enterprise using trademarks or trade names it does not own.)

In **New Zealand, the Inland Revenue** provides binding rulings when a reference is made to it by the taxpayers. Such rulings however, come in the form of :

- (a) Public rulings** (*applicable to a large base of taxpayers and interpretation of tax law*),
- (b) Private rulings** (similar to AAR in India),
- (c) Product rulings** (*in the context of consumers of a particular product and arrangement entered into by numerous taxpayers on similar terms*),
- (d) Status rulings** (*for those who vouch for continuity of stand taken by them as a result of private/public rulings prior to amendment of the law.*

The Commissioner of Inland Revenue also issues **interpretation guidelines and interpretation statements** that set out her position on the matters dealt within them. Further they bring out **Operational Statements** that sets out the Commissioner's view of the law in respect of the matter discussed which are intended to be a preliminary view in the absence of a public binding ruling or an interpretation statement on the subject.

The **Canadian Revenue Authority (CRA)** issues **Advance income tax rulings** (binding on CRA) and **Technical interpretations** (Non binding but advisory) on any income tax issue that arises. It also issues **Interpretation bulletins** which can generally be relied upon as reflecting the CRA's interpretation of the law to be applied on a consistent basis by its officers. It also publishes a newsletter called **Income Tax Technical News (ITTN)** on an ad hoc basis but meant for quick dissemination of new or revised interpretation and carry the same force as interpretation bulletins. Such interpretation of the Department in the form of such instruments is often given weight by the Canadian courts in making its decisions and thus provides consistency.

Based on the study of the working procedures and initiatives which are being introduced by several Tax Administrations, the committee suggested changes in the structure and working procedures as under:

(i) Real Time Resolution of Tax Issues

CBDT brings out circulars on interpretation of many provisions to introduce certainty in tax laws. The Committee felt that these circulars could be brought out on a more *real time* basis. At present there is a time lag as circulars follow the litigation.

(ii) Creation of a Permanent Office

The institution of CTC/RTC needs to be designated as a permanent office which work towards achieving certainty in tax administration by would bring consistency in legal interpretation. Some of the function of CTC/RTC would be:

- **Augmenting the resources for reference:**

The judgments of the Tribunal and the High Court discuss the reasons why the bench of ITAT/HC sitting in judgment is differing from the view of another bench/ HC while answering the question of law. These are clearly issues on which there are conflicting opinions at various stages of judicial hierarchy. In such cases there is a need to formulate a concrete Departmental view.

- **Notifying the Accounting Standards etc:**

Similarly the **different accounting methods** adopted by the taxpayers and /or treatment according to the existing business practices lead to differential treatment of various expenses or income, adding to litigation. Such issues/practices have to be clearly identified to remove uncertainty as to its treatment in the hands of the assessing officer.

Under the provisions of sec 145(2), the Central Government (*read CBDT*) may from time to time notify accounting standards to be followed by any class of taxpayers or in respect of any class of income. A committee set up by CBDT has made intensive studies in this area and the **draft Tax Accounting Standards (TAS)** recommended by the committee constituted for the purpose has dealt with the following 14 important issues which , if and when adopted, will have a significant impact on computation of income chargeable to tax :

1. *Disclosure of Accounting Policies*
2. *Valuation of Inventories*
3. *Events Occurring After the Previous Year*
4. *Prior Period Items*
5. *Construction Contracts*
6. *Revenue Recognition*
7. *Accounting for Tangible Fixed Assets*
8. *The Effects of Changes in Foreign Exchange Rates*

9. *Government Grants*
10. *Securities*
11. *Borrowing Costs*
12. *Leases*
13. *Intangible Assets*
14. *Provisions, Contingent Liabilities and Contingent Assets*

It is essential that the standard accounting practices in these areas are notified at the earliest. CTC/RTC could also undertake review of the accounting standards on a reference from the Assessing Officer or the taxpayer.

(iii) Redefining of Existing Strategies adopted:

The Committee observed that reopening of cases u/s 147 and revision u/s 263, attributable to the Audit objection raised also contributed to litigation. The ultimate success rate in such reopened assessments based on such difference of opinion is not encouraging. The committee felt that standard operating procedure need to be devised with respect to Audit Objection and the consequential litigation.

(iv) Developing Region wise Expertise:

The Committee also felt that Centers of Expertise/ domain knowledge on Collection and Recovery, Transfer Pricing, International Taxation etc should be created to undertake tax related study and research. Such centers would submit research papers on annual basis for use in policy formulation and law making. DTRTIs could be identified for specific specialization with input from RTC.

Conferences on important litigious issues at Regional and National level for forming an effective and practical Departmental view should be held annually. The CIT(A)/CIT (DR) should be able to escalate issues to the CTC for resolution.

The process of formulating any new provision/amendment should be transparent and participative. Stakeholder interaction would contribute to transparency and the acceptability of the proposed changes in the law. The CTC should be engaged in dialogue with stakeholders in an attempt to achieve this objective.

(v) National Portal:

This Committee is of the opinion that the Department may develop a National Portal for taking the views of both tax payers and assessing officers to identify the issues and areas of conflict between :

- (1) *The taxpayer vis-à-vis the Department*
- (2) *The Departmental circulars and the Judicial pronouncements*
- (3) *Different CCIT charges of the Department taking different stand on the same issue etc.*

The CTC should arrive at a uniform view on the issue within a stipulated time and place it in the public domain.

It is felt that such an interactive portal at a national level will create an immediate and effective situs for the CTC for formulating quicker and more comprehensive Departmental view. An officer should be able to transmit his views directly to the RTC/CTC without routing it through his supervisory authority to expedite the process of resolution.

(vi) Time bound disposal:

There should be time bound disposal of the proposals taken up by the CTC to ensure speedy and quick formulation of the Departmental view and to arrest further litigation at the earliest. The CTC/RTC should be expected to give a decision within a deadline of 120 days.

(vii) Knowledge Base:

The information available with the L & C division of the CBDT should be made available to the CTC and made part of the *referral note* of the CTC to identify the legislative intent of a particular provision which might not have been reflected clearly in the explanatory memorandum at the time of introducing the change in the Act and is thereby giving rise to variance in interpretations of the provisions.

The Committee based on the analysis of the data and interaction with the officers compiled a list of contentious issues as under:

List of Contentious Issues as identified by the Committee

Interpretational :

- a) Interpreting a tax treaty: Literal / Liberal / purposive
- b) Meaning and scope of term PE
- c) Prevalence of IT Act over other enactments

Procedural :

- a) Reopening u/s 147, 263 etc and related issues
- b) Limitation issues for Penalty / Assessment including search cases
- c) Service of notice (ii) Form of notice-e.g. whether notice u/s. 143(2) is necessary in the form or a questionnaire can be treated as notice
- d) Cross examination – opportunity for
- e) Retraction of statement

Jurisdictional :

- a) Power of CIT / DIT to revise an under u/s. 263 vis-a-vis the enquiry made by AO

- b) Power of AO to rectify / reopen assessments
- c) Power to approve – who is authorized
- d) Territorial Jurisdiction of an AO
- e) Power of CIT(A) to remand and power to enhance assessment
- f) Valuation of assets / properties – AO's power and power of DVO
- g) Penalty on agreed additions / surrender of an amount by tax payer
- h) Relative power of AO and CIT in assessment of a trust
- i) Rejection of books and power to estimate
- j) Power to assess u/s. 153C etc. And scope of assessment

Issue Based : International Taxation and Transfer Pricing:

- a) Taxation of royalties and retrospective clarification to royalty
- b) Taxation of cross border software licensing transactions
- c) Withholding tax on reimbursement expenses
- d) Indirect transfers
- e) Rates for LTCG tax for non-residents
- f) Arm's Length pricing for issue, transfer and buy back of shares between India Arm of MNEs and their foreign affiliates
- g) TP Adjustment in respect of marketing intangibles
- h) Technical fee or royalty

Others:

- A. Deductions and exemptions
 - i. Derived from / attributable to
 - ii. Definition of Turnover, profits of the business in 80HHC / 10A / 10B etc.
 - iii. Deduction u/s 80P
 - iv. Whether it is a case of new industrial undertaking
 - v. Whether it is a case of manufacture / industrial undertaking
- B. Taxability of Gifts from abroad / NREs
- C. Taxability of bogus Agriculture Income – Whether an agricultural income etc.

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- D. Share transactions – whether trading or capital in nature.
 - E. Cash Credit – burden of proof
 - F. Expenditure – capital or revenue / Burden of proof
 - G. Disallowance u/s 43B, bad debts
 - H. Cash payments and disallowances
 - I. Disallowances u/s 40(a)(ia), 14A, 36(i)(iii)
 - J. Change of head-income from business or House property / Capital Gains or Business
 - K. Assessment of trust – method of assessment – double depreciation – definition of charitable activity
 - L. Depreciation & Block depreciation – rate of – Role of frequent amendments
 - M. Deferred revenue expenditure
 - N. Principle of Mutuality
 - O. Corporate Taxation – Piercing the Corporate veil, Merger and Demerger, computation of book profits
 - P. TDS – whether a contract – whether technical fee or royalty or salary etc.

The Committee acknowledges that this is not an exhaustive list. However, it felt that process could be initiated to bring clarity upon these specified issues identified. It is suggested that CTC could work towards resolution of these contentious issues immediately.

D : STRENGTHENING THE KNOWLEDGE BASE: THE NATIONAL JUDICIAL REFERENCE SYSTEM

Under the present system in place, the decision to file or not to file an appeal by the Department is taken in a chain of decision-making process encompassing several levels of the hierarchy within the organizational set-up of the Department namely the AO, the Range head (Additional CIT/JCIT), CIT and CCIT etc. upto the level of the High Court. The Law Ministry is consulted in case an SLP to the Supreme Court is contemplated. This decision-making process is currently managed through a manual workflow system on paper-based files.

The subsequent monitoring of the appeals filed in various courts is done at various levels of hierarchy namely the CIT/CIT (Judicial)/ Directorate of L & R/CBDT using manual registers of pending appeals. The CBDT has also issued instructions from time to time for maintenance of different judicial folders at the level of CIT and CCIT etc. The office of CIT (Judicial) at the zonal level as also the Directorates and the CBDT rely upon the manually consolidated information available from various field offices for litigation management.

The decision making process to file or not to file an appeal, necessitates a careful appraisal by the concerned authorities of the facts involved in the case and a review of the extant legal position contained in Act/circulars/instructions/AADT agreements on the subject and various orders/judgments of the courts. The preparation of the Central Scrutiny Report (CSR) containing the primary notes of the authorities and the decision of the higher authorities to file or not to file an appeal is presently done with the help of :

- (a) *The website of the income tax Department or the available information on various circulars notifications*
- (b) *The publications of the Income Tax Department and CDs made available by the Department.*
- (c) *Monthly journals on income tax matters.*
- (d) *Data available in various websites or otherwise in the Internet space.*
- (e) *Software Programs- with online database or CDs and IT applications facilitated with search capabilities and other features available by the vendor's portal.*
- (f) *Websites of the ITAT High Court and the Supreme Court etc,*

The manual process currently in vogue is undoubtedly weak considering the large number and the geographical expanse of tax officials involved in various stages of tax litigation and the inherent difficulty to have the information available readily.

Moreover the basic litigation record is with the AO and the data transmitted in the flow-system loses its granularity with each passing stage, till it reaches CBDT for an appeal before the SC.

Another constraint is the slow dissemination of information on decisions favorable to the Department which are neither published in private journals / website/ software. Lack of proper awareness of different judicial pronouncements leads to inconsistent decision making, resulting in litigation.

If data is available, filing of appeals on issues already settled can be avoided, bunching of appeals based on similar issues can be done for faster disposal and identifying provisions prone to litigation can be made easier. It would enable analysis of trends in outcomes, identification of training needs on specific issues and an understanding of the judicial process better in terms of its strength and shortcomings.

The department to achieve efficiency in tax litigation needs to create a centralized, indexed and searchable repository, where information pertaining to decisions are accessible to all officers of the Department. If integrated with PAN of a tax payer as the basic search criterion, the entire litigation history of a taxpayer would be available. The repository would have suitable metadata; with cross referencing with items and must have intelligent search capabilities to identify issues for improved decision-making.

Integrating the issues of conflict and the formation of a judicious Departmental view:

The Committee observes that the proposed National Judicial Reference System (“NJRS”) is a well attempted and meaningful project for creating a data base of all the Direct tax appeals pending at the ITATs, High Courts and the Supreme Court of India.

As per the project document, the idea behind launching the project “NJRS” is to create a data base not only of the appeals pending before the aforesaid forums, but also on the common area of litigation. The project is also intended to provide a common platform to the field formations to access the latest judgments of the High Courts and Supreme Court favouring the Income Tax Department. Thus, the project would help the officers of the Department who are tasked with the responsibility of making assessment, deciding appeals and taking decisions in respect of filing appeals to the High Courts and Supreme Court.

In this proposed system the repository based on metadata fetched from ITAT/HC/SC registry(with extended arms of help by the judiciary to grant access to their websites), associated with scanned documents involving data like the relevant section of the act, issues involved, Status of appeal and creation of head note and catchwords and with a special emphasis on issues and questions of law with content management and robust search engine would help in clubbing of cases similarly placed and identifying cases with similar questions of law besides identifying issues and questions involving large scale litigation i.e. conflicting issues on which the formulation of a Departmental view will reduce litigation to a great extent.

The committee felt that not only the NJRS but a Litigation Management System for appeals before CsIT(A) in the line of NJRS may be put in place at the earliest and converged with the proposed NJRS to make it more comprehensive and content rich.

E : CREATING A NATIONAL CENTRE OF EXCELLENCE: CENTRAL INSTITUTE OF TAX RESEARCH & ANALYSIS (CITRA)

The need for continuous research in the highly technical and evolving area of taxation can hardly be denied. The frequent changes in tax laws, multitude of administrative instructions and varied interpretation of legal provisions by the benches of the Tax tribunal, territorial High Courts and the Supreme Court of India create complications for the taxpayers and tax administrators alike.

In the global context, there is interconnection and interdependence between different economies. The policies of one country are not immune from the policy of the other. It is thus essential to have an integrated outlook of the world economy and understanding of the tax laws and policies of other nations in order to be competitive as an investment destination.

Thus while the taxpayers find compliance to the tax laws complex and cumbersome due to lack of uniformity in the Departmental position, the tax administrators themselves find it difficult to keep abreast with the latest changes and update their knowledge. All stakeholders benefit from clarity and certainty in tax laws.

At present the Income Tax Department does not have any Resource Centre to provide facilities to the officers in conducting research in tax related subjects and contribute to their professional development. There is no institutional mechanism that facilitates collection of tax related data for an authentic empirical research to provide support and insights into the impact of tax related policy measures, study of factors that affect tax collection, enable reliable forecasting of revenue collection and help policymakers choose between options in a more informed manner. There is no forum to collect and analyse tax administration practices across the globe with a view to have better tax compliance and reduce tax administration costs, provide the best possible tax related services to the taxpayers and create an environment of mutual trust and respect between tax administrators and the taxpayers.

This underscores the need for having a Resource Centre equipped with a state of the art library and computer centre; facilities for hosting conferences, seminars and trainings along with requisite infrastructure. The Committee constituted by the CBDT for utilisation of one percent incremental revenue also had suggested setting up of a Revenue Services Research Institute (RSRI) to house a National Research Centre to facilitate research, learning management and knowledge management, an audio-video studio for video casting, conference rooms and sports complex, a well developed library and computer rooms etc for conducting research on tax related subjects and contribute to professional development and to act as a

Primary Research Centre for Learning and Knowledge Management for Income Tax Department to be organized, operated and coordinated under the aegis of the DGIT(Admn).

The Committee further observes that though there exists a post of DIT (Research) in the Directorate of Legal & Research (L & R) of CBDT, the post has neither been held on a regular basis nor the domain and jurisdiction of the DIT (Research) has been defined. It therefore feels that the immediate priority is to extend the research function of Directorate of L & R. The Committee therefore suggests that at the national level, there should be a full -time DGIT(Research) and the two functions of Legal and Research be separated to give a much needed thrust to the research which is a key component of stable tax administration.

Moreover in the context of the foregoing, the Committee is of the opinion that with robust growth of Tax Revenues in a taxpayer friendly environment with greater role for the Department in nation-building, it is time that a “*think tank*” is established for research in taxation.

The objectives of the proposed Centre would be to :

- a) Provide online learning management system and knowledge management system;
- b) Undertake and sponsor study of taxation system and allied subjects;
- c) Interact and establish network with International Taxation and Fiscal Research and Training Institutes;
- d) Organize and maintain library and information services to facilitate study of tax administration at world level and spread information in respect of the same;
- e) Print and publish journals, periodicals and the manuals and fiscal and tax statutes to provide the members inputs on latest development in tax administration and laws;
- f) Arrange and conduct conferences, seminars, symposiums, talks, lectures and other means of dispensing knowledge and skill to meet the needs and challenges of modern-day tax administration in an environment of integration, cooperation and general and professional welfare.

The Committee is of the opinion that as a step in this direction, the proposed RTI at Delhi can be converted to a **National Centre of Excellence** in the line of National Council of Applied Economic Research (NCAER) or Department of Economic analysis and Policy (DEAP) of RBI and may be named **Central Institute for Direct Tax Research and Analysis (CITRA) to be headed by the DGIT(Research)**. Officers with aptitude for research may be posted to the Centre to develop in house expertise in tax laws. The officers can also be encouraged to avail of Fellowship and Study leave to join this Centre. The Centre could also accept research fellows from outside the Department on payment of fees.

The Centre could be affiliated with IIM, Bengaluru to provide advanced programmes in different aspects of Tax Laws. In addition a permanent chair of Direct tax at any top Academic/ Research Institute like Indian Institute of management (IIM)/ Delhi University (DU)/Delhi School of Economics (DSE) may also be created to usher in fresh thinking and ideas for improving the tax environment in the changing world by conducting research on the lines of the Oxford University Centre for Business Taxation.

F : REGULATION OF TAX ADVICE

Role of Tax Advisors

Tax advisors are integral to a well-functioning tax system. Tax advisors also play a critical role in the interpretation of tax legislation and regulations. Needless to mention, the quality of tax advice plays a pivotal role in tax litigation.

A taxpayer's assessment of tax risk depends upon the quality and correctness of the tax advice received. Therefore, as part of financial sector reforms, consumer protection envisages regulation of the quality of tax advice imparted. Simultaneously, there is a growing awareness amongst tax professionals to work with government agencies to bring clarity and stability. There is acknowledgment of the need for self regulation in view of the shortcomings as brought out in a study on *Tax Practitioners and Ethics* by Irish and UK academics in a paper published in the *Journal of Business Ethics* in 2013, wherein it is revealed that the general Tax practitioners are less likely to apply moral reasoning than members of the general public.

Global Practices

The study of the Practices in different countries on **Regulation of Tax Practitioners** and its variants reveals that the extent of regulation of the tax profession differs substantially from country to country- from **Full regulation** (as followed in Austria, China, Germany, and Japan), to **Partial Regulation**(as in United States) and to **No regulation** (which most countries including Belgium, Italy, Portugal, Spain, and the United Kingdom follow).

In the **US model**, which has a well-developed regulatory framework, there is no monopoly for tax advice or return preparation, but there is a restriction on certain representational activity to licensed practitioners and members of other regulated professions as contained in the Registered Tax Return Preparer Regulations.

The **Office of Professional Responsibility** was created in USA to administer the laws and regulations governing the practice of attorneys, certified Public accounts, enrolled agents, enrolled actuaries and appraisers to represent taxpayers before the Department of Treasury and the Internal Revenue Services. Its mission is to foster excellence in tax professionals by setting, communicating and enforcing standards of competence, integrity and conduct, improve the services to taxpayers, increase confidence in tax system and greater tax compliance . These standards are embodied in the Treasury Department's Circular 230. Thus the tax professionals practicing before the IRS are governed by Treasury **Department Circular 230** and are subject to discipline by the **Office of Professional Responsibility (OPR)**.

In **UK**, the Chartered Institute of Taxation developed the concept of ***working together*** in a partnership between HMRC and the main professional taxation and accountancy bodies to improve all areas of HMRC operations for the benefit of HMRC, agents and their clients. It provides a forum to raise operational issues or problems that have been identified by HMRC and/or the professional bodies.

Australia has a robust tradition of prudential regulation of various financial activities. There are several institutions that are engaged in **financial regulation** as below:

- a. Financial Reporting Council (FRC) provides the broad oversight of process for setting accounting standards;
- b. Standard Business Reporting (SBR) is a multi-agency initiative that will simplify business to government reporting;
- c. Australian Accounting Standards Board makes accounting standards for the private, public and not-for-profit sectors and participation in the formulation of international accounting standards under the broad oversight by the FRC;
- d. Australian Transaction Reports and Analysis Centre – Australia’s anti-money laundering and counter-terrorism financing regulator and financial intelligence unit oversees compliance by a range of financial service providers and provides financial information to Australian law enforcement and revenue agencies.

In addition, in **Australia**, the self-assessment tax regime was introduced between 1986-90 and meant that taxpayers placed greater reliance on tax practitioners. By 2012, 70 % of individual tax returns and 90% in case of business tax returns were filed by tax practitioners. Recognising the importance of consumer confidence in tax practitioners, in 2009, the Commonwealth Parliament passed the Tax Agent Services Act 2009 (the TAS Act) to establish a new national regulatory regime for tax practitioners. The Act established the **Tax Practitioners Board**, an independent statutory authority responsible for the general administration of the TAS Act. The objective of the new regime is to provide consumer protection and assurance that practitioners are meeting appropriate standards of competence and professional and ethical conduct. The regime applies to a broad range of service providers has a Code of Professional Conduct to govern tax practitioners; has provided for the imposition of administrative sanctions and replaced criminal penalties for certain misconduct by practitioners and unregistered entities with civil penalties and injunctions.

Present Policy in India

In India self-regulation and oversight is an integral part of the Bar Council of India and the Institute of Chartered Accountants of India guidelines :

(a) Standards of Professional Conduct and Etiquette in the Advocates Act:

The Bar Council of India under section 49(1)(c) of the Advocates Act, 1961 has made detailed rules which without much detailing can be gauged from the Preamble which reads:

An advocate shall, at all times, conduct himself in a manner befitting his status as an officer of the court, a privileged member of the community; and a gentleman, bearing in mind that what may be lawful and a moral for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity may still be improper for an advocate. Without prejudice to the generality of the foregoing obligation, an advocate shall fearlessly uphold the interests of his client, and in his conduct conform to the rules hereinafter mentioned both in letter and in spirit.

The guidelines of conduct also provide that:

An advocate shall use his best efforts to restrain and prevent his client from resorting to sharp or unfair practices or from doing anything in relation to the court, opposing counsel or parties which the Advocate himself ought not to do. An advocate shall refuse to represent the client who persists in such improper conduct. He shall not consider himself a mere mouth- piece of the client. That an advocate shall not do anything whereby he abuses or takes advantage of the confidence reposed in him by his client. That an advocate shall not adjust fee payable to him by his client against his own personal liability to the client, which liability does not arise in the course of his employment as an advocate.

(b) Institute of Chartered Accountants of India (ICAI) Guidelines:

Under the ICAI guidelines, if the auditor is of the opinion that the information disclosed in the balance sheet of the company is not showing the correct financial position of the company, he should disclose further information in the report. Under section 133 of the Companies Act, the Central government may prescribe accounting standards in addition to those recommended by the ICAI.

There are several restrictions imposed on the auditing profession by different circulars issued by the ICAI from time to time. For example, a cost auditor should not be the internal auditor of the company during the period of cost audit. Similarly statutory auditor cannot be the internal auditor in order to maintain independence and objectivity of his report under section 227. The statutory auditor also cannot undertake writing of books of account as the latter is likely to place difficulties in the matter of free expression of his professional opinion. In the best tradition of the profession, a statutory auditor should refrain from accepting the appointment when having a relationship with a managing or whole time director. Similarly the signing of the report has to be in the name of the firm but be signed by the auditor in his individual name and must disclose the identity of the signatory.

But the scope and depth of checking the entries in the books for the verification of the statement of a company depends to a larger extent on the auditor himself for taking into account the conditions of the record in the books, existence of the system of internal control and the management. When the books of account do not contain a complete record of the transactions, he must report the fact to the shareholders.

(C) Income Tax Act:

Even Sec 288 of the IT Act regulates the Appearance by the Representative but this regulation is only with respect to appearance before the tribunals and prescribes debarment by CCIT/CIT (with a provision of appeal to CBDT) for misconduct by legal practitioners/ accountants and persons other than those.

Thus the Indian way of regulations as prevalent today is more of advisory nature. The Committee felt that to reduce litigation, the tax professionals have to work together with the tax department.

Recommendations by the Committee

1. Audited Accounts and Returns:

It is suggested that the statement of returned income should be filed only by the person who audits it. The management as well as the auditor must certify the authenticity of the audit report/statement of income and its preparation in accordance with law. It should be mandatory that the Chartered Accountant who audits the books of account of a tax payer should also prepare and file the tax audit reports.

2. Preparation of Tax Returns :

Countries with a system of licensed tax professionals typically stipulate that only persons who are licensed as return preparers may prepare a return for fee etc. In India also, the person uploading the e-return should be responsible for its correctness, as per requirements of compliance and reporting under the IT Act.

3. Privileged Communications:

It is imperative that in a country like India the practitioner may be required by professional standards of practice to advise the client to inform the tax authorities of tax fraud/money laundering detected during audit. If the client refuses to do so, then the practitioner may be required to cease representing the client. If the tax practitioner continues to represent the client, the action would make the practitioner a party to the tax fraud/money laundering.

Conclusion

It is time for the tax professionals and the tax department to work together in the interest of management of tax risk. There is need to extend financial sector reforms to cover the quality of tax advice as part of the efforts towards consumer protection. Through self regulation, oversight bodies can ensure prudential regulation of the tax advice.

The objectives should be to provide consumer protection and assurance that practitioners meet appropriate standards of competence and professional and ethical conduct in an atmosphere of working together between the Department and all the stakeholders.

ACKNOWLEDGEMENTS

The Committee acknowledges the contribution to its study of global best practices to the information contained in the websites of the Tax Administration of USA, UK, Australia, Canada, New Zealand, France as also the websites of the International Monetary Fund, OECD, www.icas.org.uk, Tax Law Design and Drafting (volume 1; International Monetary Fund: 1996; Victor Thuronyi, ed.) Chapter 5. Regulation of Tax Professionals) 2. The Regulations of Tax Practitioners by the Tax Practitioners Board (<http://www.ato.gov.au/Publications/Audit-Reports/2012-2013>) 3. Tax Practitioners and Ethics by Karen Wensley (<https://www.cpacanada.ca/en/connecting-and-news>) 4. Financial Regulation (Australia.gov.au) (<http://www.gov.au/australia.au/topics/economy-money-and>) 5. Working Together (<http://www.tax.org.uk/tax-policy/working-together>) 6. Office of Professional Responsibility Subgroup Report (<http://www.irs.gov/Tax-Professional/OFFICE-OF-PROFESSIONAL...>).

The Committee accepts responsibility for any mistakes in the interpretation of the global best practices.

The Committee also acknowledges the contribution of the NJRS working papers to its study on 'Strengthening of Knowledge base'. It also acknowledges the contribution of DRs in its suggestion of schematic changes in the various forms for filing appeals etc.

The Committee acknowledges the contributions of all the co-opted members in the 12 stations who have analyzed the data collated and have helped the Committee to complete its report in record time. The co-operation and commitment of these officers has been a critical input in the writing of this report.

The Committee also acknowledges the assistance provided by the officers in researching the global best practices which have formed a part of the suggestions for moving towards a regime of minimal litigation.

The Committee also acknowledges the logistical support provided by Pr. DGIT(Admn.), New Delhi and CIT(Judicial), Delhi in the holding of meetings and preparation of this report.

ANNEXURES

ANNEXURE-1

TERMS OF REFERENCE

F.No. 279/Misc./M-84/2014-(ITJ)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi the 17th July, 2014

Office Memorandum

Subject: Committee to study the appellate orders to examine the filing of appeals by the Department before various forums – Reg.

It has been decided to constitute a Committee to appraise the efficacy of existing dispute resolution forums of CsIT(A) & ITAT and to suggest steps to reduce litigation before these forums. The composition of the Committee is as follows:

Sl.No	Name	Designation	
1.	Ms. Rani S Nair	Chief Commissioner of Income tax-II, Ahmedabad	Chairperson
2.	Ms. Uma Singh	CIT(J), Mumbai	Member
3.	Shri Rakesh Goyal	CIT-XXI, Kolkata	Member
4.	Shri D K Mishra	CIT (J), Delhi	Member
5.	Shri Rajib Hota	CIT(TDS), Chennai	Member
6.	Shri D S Kalyan	CIT(ITAT)-V, Ahmedabad,	Member Secretary

1.2 The Chairperson may appoint an officer as Member Secretary. The Committee may co-opt other members as it deems fit to have proper representation, co-ordination and feedback from ITAT at non-metro stations.

2. The Committee shall submit its report within 8 weeks from the date of its constitution.

- 3.** The terms of reference of the committee will be as follows :
- (i) To carry out detailed analysis of appellate orders and assessment orders, on various aspects as suggested in Para 7 and recommend steps to reduce litigation before the CIT(A).
 - (ii) To study the efficacy of existing system of filing appeals to the ITAT by the Department and suggest steps to reduce litigation before the ITAT after analyzing various aspects as mentioned in Para 7.
- 4.** The Committee should examine the assessment orders, appellate orders and scrutiny report for the appeal to the ITAT related to orders selected as per guidelines mentioned in Para 5 below and give its recommendations for different income groups as defined in Para 6 separately for corporate and non-corporate assessees.
- 5.** Guidelines to select orders:
- (i) Sample should be drawn from the orders passed by the ITAT during the month of June, September, December and March of the FY 2013-14.
 - (ii) (a) Approximately 200 orders should be selected for study from each of the following 8 major cities: Delhi, Mumbai, Kolkata, Chennai, Hyderabad, Pune, Ahmedabad and Bangalore.
(b) Approximately 150 orders should be selected for study from each of the following stations: Chandigarh, Jaipur, Indore, Lucknow and Kochi.
 - (iii) As far as possible, orders in cases of corporate and non-corporate assessees should be selected in equal numbers, particularly in Metro charges whereas in non-metro, sample of non-corporate assessees may be larger. It must also be ensured that some orders in search cases are in select basket.
 - (iv) As number of appeals filed by the Department before ITAT is much larger than appeals filed by the assessee, the order in appeals filed by the Department and by the assessee may be selected in the ratio of 2:1.
- 6.** Analysis should be done and conclusions be drawn separately by categorising assessment orders in various income groups (returned income) as under:
- < 25 Lakh
 - 25 Lakh to 1 Crore
 - 1 Crore to 10 Crore
 - 10 Crore and above
- 7.** Within the overall terms of reference, an analysis on the following aspects should be conducted, along with any other that the Committee deems fit:
- (i) Assessment Orders: Nature of additions made in general, guidance of supervisory authorities, sustainability of additions in appeal, quality of addition made and average tax effect of additions made in each category at Para 6 above.

-
- (ii) Orders of CIT (A): Whether relief allowed is based on proper marshalling of facts and legal position. The decisions are also to be analysed in the light of the order of the ITAT.
 - (iii)
 - (a) Authorization by CIT: The filing of second appeal is to be examined as to whether the same is filed mechanically by applying the monetary limits or on sound grounds after examining the merits of each order.
 - (b) The Committee should ascertain from the orders of each CIT (A) received during the FY 2013-14 by each administrative CIT under the jurisdiction of CCIT-I & CCIT-VIII Delhi, CCIT-I Ahmedabad, CCIT-II Hyderabad the percentage of appeals filed by the Department in ITAT where the tax effect exceeds monetary limits.
 - (iv) The success rate of appeals filed by the Department/Assessee before the ITAT to be analysed.
 - (v) The Committee must also take inputs on relevant issues from DRs in the stations mentioned in Para 5.
- 8.** The Headquarters of the Committee will be in Delhi.

ANNEXURE-2

SUGGESTED CHANGES IN THE EXISTING FORMATS

In order to impress on the assessing officers the importance of making addition based on sound factual and legal basis, the following change in the format of assessment order may help to identify the sections under which the additions are made source of information etc. The AO would have to incorporate the sections of the IT Act and the legal precedents upon which additions were made.

Summary sheet of the additions made as a part of the assessment order is suggested as under:

Sections under which additions made	Source of Information, if any (Search/ Survey/AIR/ Third party/ Return & related Documents like Audit report &/ or Books of account etc)	Whether the addition is based on estimation	Amount added (Rs)	Brief reasons for the addition			
				Factual	Legal	Both factual and legal	others

Form No. 35 etc.

Normally in the appeal before the CIT(A), a tax payer has to provide the memorandum of appeal, the statement of facts (SOF) and Ground of Appeal in duplicate, apart from copy of order appealed and notice of demand in original, if any.

Thus appeals without the SOF are generally not required to be taken up for hearing so long as these defects are not removed. But at present SOFs are rarely filed at all or are not complete.

In the column “*Statement of facts*”, apart from indicating the matters such as the nature of the business or profession, the state of account books, etc; the appellant should mention the relevant facts in brief separately for each of the grounds which are subject matter of appeal.

The purpose of the statement of facts (**SOF**) is to bring the parties to definite issues thereby avoiding delay in disposal of the case. The purpose of the SOF is to highlight certain relevant and vital bare facts which are being disputed.

The taxpayers file paper books/ papers which may contain additional evidences. Most CIT(A) routinely send these papers to the AO without ascertaining whether these contain additional evidences. It is suggested that the appellant should file a **Synopsis of the Arguments**(as is the practice during the arguments before the ITAT) and a **checklist of the page number of the paper book /documents specifically referred to** for buttressing the arguments. A **certificate** should also be made by the appellant that all the papers in the paper book has been filed before the AO.

In form No.35 there should be a **declaration** that the papers submitted before the CIT(A) has already been submitted before the AO. There should be a column as to **whether there is any factual inconsistency or error in the order of the assessing officer and if so, specific instances should be highlighted in statement of facts.**

It is suggested that in the form No.35, a column should be inserted, **“whether additional evidences are being produced by the appellant? A similar column may be added in ITNS form also by which the issue of additional evidence will get adequate attention of CIT(A) and the AO.**

The CIT(A) should not decide cases where there is a delay in filing of appeal without an application for condonation. Hence to take care of this aspect, a column like **“Date of service of the order under challenge”** needs to be added.

Under the law it is mandatory for the appellant to pay tax liability admitted in the return of income. A column may be inserted as' under to take care of the basic legal requirement:

“Tax on income returned..... whether it is paid: Yes/No/partly”

Form No. 36 & 36B

In form no. 35 there is a specific requirement for the appellant to file SOF. But there is no such requirement to file SOF in the context of the appeals to be filed before the tribunal either as first appeal (from orders u/s. 12A, 263 & 264 etc.) or as second appeal (from the orders of CIT (Appeals). Thus existing form No. 36 is deficient to that extent.

Further it is suggested that in order to facilitate bunching/clubbing of the appeals for quicker and uniform disposal, the following column, similar to the one in form no.35 may be inserted.

Where an appeal in relation to another assessment year is pending in the case of the appellant with ITAT give the details as to the :

- (a) ITAT bench with whom the appeal is pending and the Appeal No, if any
- (b) assessment year in connection with which the appeal has been preferred
- (c) CIT/DIT passing the order appealed against

-
- (d) Section and subsection of the Act, under which the CIT/DIT passed the order appealed against and the date of such order.

If the appellant or respondent is in appeal before the HC or SC /any other forum like ITSC/AAR etc for any other year on matter similar to the ground/issue in appeal, the details thereof like appeal no. etc.

Similarly **copy of the demand notice** should be filed alongwith the appeal memo to the ITAT to decide the admissibility of the appeal.

It is also suggested that the existing form no. 36 should be modified to meet the specific needs of litigation which is carried before the Tribunal in the first appeal. A suggested Form No. 36B is enclosed as Annexure-6.

ANNEXURE-3

ITNS-55

In the office of the Commissioner of Income Tax (Appeals)

Appeal No.:

Appellate order passed under section..... Of the IT Act 1961 on:

Instituted on..... from the order of the..... served on appellant on.....

01. Name and address of the appellant:
02. PAN No. Of the appellant
03. Assessment year:
04. Income returned:
05. (a) Tax on income returned:
(b) whether it is paid: yes/No/partly paid:
06. Income assessed:
07. Demand raised and assessed income:
08. Date of service of the order under appeal:
09. Section under which order under appeal was passed:
10. Dates of hearing:
11. Date of Service of notice on AO:
12. Whether any remand was made to AO:
13. Date of receipt of the remand report:
14. Whether any additional evidence has been produced by the Appellant: Yes/No:
15. Present for the appellant:
16. Present for the Department:

ANNEXURE-4

SUGGESTED FORM NO. 35

(See rule 45)

Appeal to the Commissioner of Income-tax (Appeals)

Designation of the Commissioner of Income-tax (Appeals)

No.of

Name and address of the appellant

Permanent Account Number

Assessment year, in connection with which the appeal is preferred

Assessing officer/valuation officer passing the order appealed against

Section and subsection of the income tax act 1961 under which the assessing officer/valuation officer passed the order appealed against and the date of such order

Where the appeal relates to any tax deducted at source under section 195(1) the date of payment of tax

When the appeal relates to any assessment and penalty the date of service of the relevant notice of demand

In any other case, the date of service of the intimation of the order appealed against Section in clause of the income tax act 1961 under which the appeal is preferred

Where a return has been filed by the appellant for the assessment year in connection with which the appeal is preferred, whether tax due on the income returned has been paid in full(if the answer is in the affirmative, give details of the date of payment and amount paid)

Section and clause of the Income Tax Act, 1961, under which the appeal is preferred

Where no return has been filed by the appellant for the assessment year in connection with which the appeal is preferred, whether an amount equal to the amount of advance tax payable by him during the financial year immediately preceding such assessment year has been paid (If the answer is in the affirmative, the details of date of payment and amount paid)

Relief claimed in appeal

Whether any additional evidence is being produced by the appellant

Where an appeal in relation to another assessment year is pending in the case of the appellant with Commissioner (appeals) give the details as to the-

- (a) Commissioner of Income Tax (Appeals) with whom the appeal is pending
- (b) assessment year in connection with which the appeal has been preferred
- (c) assessing officer passing the order appealed against
- (d) section and subsection of the act, under which the assessing officer passed the order appealed against and the date of such order.

Address in which notices may be sent to the appellant

.....
(Signed)
Appellant

STATEMENT OF FACTS

(With a Synopsis of the Arguments and a checklist of the page number of the paper book /documents specifically referred to)

Suggestive guideline for SOF to be prepared by the appellant.:

Outline of the facts relied on

Set out the facts on which you intend to rely to challenge the addition.

Outline of the documentary evidence relied on

Set out the documentary evidence that you would intend to rely on .

State the type and date of the document (if known) and any other unique identifying factor.

Outline of the issues arising

State the factual and legal questions arising from the additions contested , including the application of the laws the addition is based on. State the relevant sections of the Act, if possible.

You may raise several issues about one addition.

The propositions of law relied on

List the propositions of law (provisions/case laws) you consider against the additions.

(A proposition of law is a statement about the application or interpretation of the law. It may be based on statutes or case law, or other opinion. Propositions of law may also include a statement on the application or interpretation of law that has not been considered by the courts before.)

Wherever possible, you should state the authority for the proposition of law relied on, for example, the particular case it is drawn from.

GROUPS OF APPEAL

Form of verification

I,....., the appellant, do hereby declare that what is stated above is true to the best of my information and belief. It is also certified that all the papers in the paper book were also filed before the Assessing Officer.

Place.....

.....
(signature)

Date.....

.....

Status of the Appellant

Notes:

1. The form of appeal, grounds of appeal and the form of verification appended thereto shall be signed by a person in accordance with the provisions of rule 45(2).
2. The memorandum of appeal, statement of facts in the grounds of appeal must in duplicate and should be accompanied by a copy of the order appealed against and the notice of demand in original, if.
3. Delete the inappropriate words.
4. These particulars will be filled in the office of the Commissioner (Appeals).
5. Not to be filled in if the appeal relates to tax deducted under section 195 (1)
6. If the space provided herein is insufficient, separate enclosures may be used for the purpose.
7. If appeals are pending relation to more than one assessment year, separate particulars in respect of each assessment year may be given.
8. The memorandum of appeal shall be accompanied by a fee of:
 - (a) where the total income of the assessee as computed by the assessing officer in the case to which the appeal relates is one hundred thousand rupees or less, two hundred and fifty rupees.
 - (b) where the total income of the assessee, computed as aforesaid, to which the appeal relates to is more than one hundred thousand rupees but not more than two hundred thousand rupees, five hundred rupees.
 - (c) where the total income of the assessee, computed as aforesaid, in the case with appeal relates is more than two hundred thousand rupees, one thousand rupee.
9. The fee should be credited in a branch of the authorised bank or a branch of the State bank of India or a branch of the Reserve bank of India after obtaining a challan sent to the Commissioner of Income- tax (Appeals).

ANNEXURE-5

SUGGESTED FORM NO. 36

[See rule 47(1)]

Form of Appeal to the Income Tax Appellate Tribunal..... Bench

Appeal No.....of.....

Appellant.....versus.....Respondent

The state in which the assessment order was made	
Section under which the order appealed against was passed	
Assessment year in connection with which the appeal is preferred	
Permanent account number of the assessee	
Total income declared by the assessee for the assessment year referred to above	
Total income, if any, as computed by the AO for the Assessment year referred to above	
The Assessing Officer passing the original order	
Section of the Income-tax Act, 1961, under which the order was passed	
The Deputy Commissioner (Appeals) in respect of orders passed before the 1st day of October, 1998/Commissioner (Appeals) passing the order under section 154/250/271/271A/272A	
The Deputy Commissioner or the Deputy Director in respect of orders passed before the 1st day of October, 1998, or the Joint Commissioner or the Joint Director passing the order under section 154/272A/274(2)	
The Chief Commissioner or Director General or Director or Commissioner, passing the order under section 154(2)/250/263/271/271A/272A	
The Assessing officer in whose jurisdiction the appellant falls	

Date of Communication of the order under appeal	
Relief claimed in appeal	
Address to which the notice may be sent to the respondent	
Address to which the notice may be sent to the appellant	
Where an appeal in relation to another assessment year is pending in the case of the appellant with ITAT give the details as to the- (a) ITAT bench with whom the appeal is pending and the Appeal No, if any (b) assessment year in connection with which the appeal has been preferred (c) CIT/DIT passing the order appealed against (d) section and subsection of the Act, under which the CIT/DIT passed the order appealed against and the date of such order.	
If the appellant or respondent is in appeal before the HC or SC /any other forum like ITSC/AAR etc for any other year on matter similar to the ground/issue in appeal, the details thereof like appeal no.etc	

‡ GROUNDS OF APPEAL

Signed
(Authorized representative, if any)

Signed
(Appellant)

VERIFICATION

I, _____ the appellant, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today the _____ day of _____

Signed

Notes :

- The memorandum of appeal must be in triplicate and should be accompanied by two copies (at least one of which should be a certified copy) of the order appealed against, two copies of the relevant order of the Assessing Officer, two copies of the grounds of appeal before the first appellate authority, two copies of the statement of facts, if any, filed before the said appellate authority, **copy of original notice of demand** and also :-
(a) in the case of an appeal against an order levying penalty, two copies of the relevant assessment order;

-
- (b) in the case of an appeal against an order under section 143(3) read with section 144A, two copies of the directions of the Deputy Commissioner under section 144A;
 - (c) in the case of an appeal against an order under section 143(3) read with section 144B, two copies of the draft assessment order and two copies of the directions of the Deputy commissioners under section 144B;
 - (d) in the case of an appeal against an order under section 143(3) read with section 147, two copies of the original assessment order, if any.

ANNEXURE-6

SUGGESTED FORM NO. 36 B

(see Rule 47)

Form of Appeal to the Income Tax Appellate Tribunal..... Bench

Appeal No.....of.....

Appellant.....versus.....Respondent

The state in which the order appealed against was made	
Section under which the order appealed against was passed	
Assessment year in connection with which the appeal is preferred	
Permanent account number of the assessee	
Total income declared by the assessee for the assessment year referred to above	
Total income, if any, as computed by the AO for the Assessment year referred to above	
If the appellant is a trust or institution; mention the date of registration and the section of the Income Tax Act, 1961 under which it is registered	
The Commissioner of Income tax/Director of Income Tax whose order is under appeal and the Section of the Act under which the said order was passed	
Section of the Act under which the AO passed the order which is/was sought to be revised by the Commissioner/Director of Income Tax	
The Assessing officer in whose jurisdiction the appellant falls	
Date of Communication of the order under appeal	
Relief claimed in appeal	
Address to which the notice may be sent to the respondent	
Address to which the notice may be sent to the appellant	



Where an appeal in relation to another assessment year is pending in the case of the appellant with ITAT give the details as to the- (a) ITAT bench with whom the appeal is pending and the Appeal No, if any (b) assessment year in connection with which the appeal has been preferred (c) CIT/DIT passing the order appealed against (e) section and subsection of the Act, under which the CIT/DIT passed the order appealed against and the date of such order.	
If the appellant or respondent is in appeal before the HC or SC /any other forum like ITSC/AAR etc for any other year on matter similar to the ground/issue in appeal, the details thereof like appeal no.etc	

GROUND OF APPEAL

Signed
(Authorised Representative, if any)

Signed
(Appellant)

Signed
(Authorised representative, if any)

Signed
(Appellant)

VERIFICATION

I, _____ the appellant, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today the _____ day of _____

Signed

Notes :

The memorandum of appeal must be in triplicate and should be accompanied by two copies (at least one of which should be a certified copy) of the order appealed against, two copies of the relevant order of the Assessing Officer, if any.



ABBREVIATIONS

CBDT	Central Board of Direct Taxes
CCIT	Chief Commissioner of Income Tax
DGIT	Director General of Income Tax
SC	Supreme Court
HC	High Court
ITAT	Income Tax Appellate Tribunal
L&R	Legal and Research
CIT	Commissioner of Income Tax
CIT(A)	Commissioner of Income Tax (Appeals)
ADDL. CIT	Additional Commissioner of Income Tax
JCIT/JT.CIT	Joint Commissioner of Income Tax
DCIT/ACIT	Deputy/Assistant Commissioner of Income Tax
AO	Assessing Officer
DR	Departmental Representative
ITO	Income Tax Officer
ITI	Income Tax Inspector
SEBI	Security and Exchange Board of India
CMIE	Centre for Monitoring Indian Economy
FICCI	Federation of Indian Chamber of Commerce & Industries
ADR	Alternate Dispute Resolution
VAT	Value Added Tax
TDS	Tax Deducted at Source
CTC	Central Technical Committee
RTC	Regional Technical Committee
PE	Permanent Establishment
ROC	Registrar of Companies
NADT	National Academy of Direct Taxes
DTRTI	Direct Taxes Regional Training Institute
NJRS	National Judicial Reference System
ITR	Income Tax Reports
PAN	Permanent Account Number
SOP	Standard Operating Procedure