

TAX BULLETIN

The Chamber of Tax Consultants (Bombay High Court)

**(Validity of CBDT circular incentivising CIT(A) to
pass orders in a particular manner)**

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Bombay High Court Ruling: The CBDT is empowered to lay down broad guidelines for disposal of appeals by CIT(A). However, it cannot offer ‘incentives’ to CIT(A) for making enhancement and levying penalty. Such policy transgresses the exercise of quasi-judicial powers of the CIT(A) and is wholly impermissible and invalid under section 119 of the Act.

The Chamber of Tax Consultants, Mahendra Sanghvi vs.

The Central Board of Direct Taxes, Union of India

[Writ Petition No. 3343 of 2018]

Alongwith

Civil Appellate Jurisdiction [Public Interest Litigation No.144 of 2018]

Facts of the case:

- The Writ Petition was filed by the Chamber of Tax Consultants and its office bearers (CTC or the petitioner), challenging a portion of ‘Central Action Plan’ (the plan) prepared by the Central Board of Direct Taxes (CBDT or the respondent) for the financial year 2018-2019.
- The plan contained various provisions made by CBDT setting out the targets of tax collection, as also the disposal of cases by income tax authorities and for awarding points for such disposals.
- CTC raised two objections against the plan as under:
 - The first objection was in respect of time line set and the directions to the Commissioner of Income-tax (Appeals) [CIT(A)] for deciding appeals within such time.
 - The second objection was with respect to allocation of units for the disposal of what was referred to as ‘quality orders’.
- A Public Interest Litigation (PIL) was also filed, challenging the same plan. The challenge however was confined to that portion of the plan, where the CIT(A) were to be given higher weightage for disposal of appeals by quality orders.

Relevant Chapters of the Plan:

- Chapter I of the plan set out targets for tax collection. It contained goals for major head wise direct tax collection for the financial year 2018-19. Such targets were broken up region wise, keeping in view revenue potential of the region.

- Chapter III of the plan pertained to litigation management. The Petitioners challenged the flows from the said chapter. In order to achieve certain disposal targets of appeals pending before the CIT(A), the CBDT had made detailed provisions for expeditious disposal of such appeals.
- Part 3 of Chapter III pertained to incentives for quality orders and provided that an additional credit of 2 units shall be allowed for each quality appellate order passed. The term quality cases or quality orders was also defined in the said part so as to include cases in which enhancement was made to the income of the assessee, the order was strengthened in the opinion of the Chief Commissioner of Income-tax, or a penalty was levied by the CIT(A).

Contentions of the Petitioner:

- Any directives from the CBDT to the CIT(A) to dispose of the appeals expeditiously, has a possibility of miscarriage of justice, as the assessee may not get full opportunity of hearing if the CIT(A) is under pressure to decide the appeals within a time frame.
- Section 250(6A) of the Income-tax Act, 1961 (the Act) does not lay down a rigid time frame for disposal of an appeal. Under the impugned circular, the CBDT has:
 - shortened the time for disposal of the appeal and;
 - laid down a rigid time frame to decide the appeal which is wholly impermissible
- Further, the prescription of higher weightage for disposal of cases through quality orders, is wholly impermissible. This has the possibility of consciously or subconsciously influencing the mind of the income tax authority about the ultimate outcome of the appeal. Such directives have the scope of influencing the outcome of appeal on merits.
- There can be no additional weightage to the orders, based on the contents or the subject matter. The directives issued by the CBDT transgress the exercise of quasi-judicial functions by the statutory appellate authorities, which is impermissible. Reference was made to section 119 of the Act and reliance was placed on the following decisions:
 - P.K. Ghosh, IAS & Anr. vs. J .G. Rajput, [(1995) 6 SCC 744]
 - Dedicated Health Care Services TPA (India) Pvt. Ltd. and others, vs. ACIT and others, [(2010) 324 ITR 345 (Bom)]

- It was further submitted that the policy of the Government which transgresses the statutory limits, should be struck down.

Contentions of the Respondent:

- The targets for tax collection and disposal of income-tax appeals, would have no effect on a fair hearing that the assessee must get from the CIT(A) and such targets and parameters are well within the scope of CBDT's powers. The CBDT also lays down targets for tax collection, like any other organization.
- In order to judge the quantitative output of the CIT(A), certain disposal norms are set. No directives have been issued to dispose of any number or kind of appeals within a rigid time frame, if the same cannot be done having regard to the interest of justice.
- With respect to the issue on quality orders, the Counsel for the respondent pointed out that, the CBDT has reconsidered the issue and decided not to implement the same henceforth. With respect to the orders already passed, in any case, no harm or damage would be done to the Petitioners or any of the assesses in allowing such provisions to be effected.

Key observations and the decision of the Hon'ble Bombay High Court (HC):

The directions given for deciding the appeals by CIT(A) within a set time line

- For any organization, the setting of goals and targets is neither impermissible nor unknown. Only because certain targets for tax collection are set out, would not render the policy arbitrary or unreasonable. In the context of the disposal norms to be met by the CIT(A) also, it is permissible for any organization to set out certain output norms to judge the output performance of the person concerned.
- In absence of any such norms, it may be extremely difficult to judge the quantitative performance of a person concerned. The CBDT is empowered to lay down broad guidelines for disposal of appeals by CIT(A).
- The Court does not have the wherewithal to test such norms on the basis of reasonableness. When an expert body like CBDT sets out disposal norms for the CIT(A) to achieve, it has the necessary expertise and wherewithal after taking into consideration all relevant factors to

come to a proper conclusion in this respect. The Court would not substitute its wisdom for that of the CBDT, duly aided and advised by the experts in the field.

- The disposal norms provide different units for disposal of the appeals depending on; the age and the valuation.
- Such guidelines do not in any manner breach the reasonableness or can be stated to be arbitrary or illegal. The guidelines are for general directives and prescriptions to; on one hand enable the revenue to collect taxes which are otherwise due, and on the other hand to assess the work output of the CIT(A), which in any organization is of considerable importance.
- The guidelines do not have undertone of giving priority to the issues which concern the revenue more than the assessee.
- If the CBDT also recognizes that appeals involving high tax effect are most likely to be more voluminous, involving complex legal disputes, the prescription of higher units for disposal of such cases, can neither be stated to be arbitrary nor unreasonable, nor can be seen as restricting the discretion of the CIT(A).
- The guidelines issued by the CBDT in the plan, are not contrary to section 250(6A) of the Act. The CBDT has only laid down broad guidelines for disposal of appeals category wise.
- There is neither a firm directive that certain class or kinds of appeals must be decided before a particular date, nor there is any negative implication of a particular CIT(A) not being able to do so. Therefore, the guidelines of the CBDT in this respect must be seen as directory and not mandatory.
- Thus, the HC upheld this part of the plan.

Allocating additional credit units to CIT(A) for the disposal of ‘quality orders’

- When the CBDT guidelines provide greater weightage for disposal of an appeal by the CIT(A) in a particular manner, clause (a) of the proviso to section 119(1), would surely be breached. The said proviso clearly provides that no orders, instructions or directions shall be issued under section 119, so as to require any income tax authority to make a particular assessment or to dispose of a particular case in a particular manner.

- The CBDT cannot offer 'incentives' to CIT(A) for making enhancement and levying penalty. Such policy transgresses the exercise of quasi-judicial powers and is wholly impermissible and invalid under section 119 of the Act.
- This has the propensity to influence the CIT(A) and they will be tempted to pass an order in a particular manner so as to achieve a greater target of disposal.
- Any attempt to tempt an income-tax authority, though in the guidelines referred to as incentives for disposal of an appeal in a particular manner, would not stand the test of law.
- The HC observed that the CBDT has now decided to withdraw the guidelines for the coming years, that is, fiscal year 2019-20.
- Thus, HC set aside the Action Plan of the CBDT on the subject of giving incentive to CIT(A) for passing quality orders.

Our Comments:

The CBDT circular was completely against the ethos of equity, as it created a conflict in the dispensation of justice by the appellate authority, which clearly transgresses the statutory limits of section 119(1).

The Hon'ble Bombay High Court has emphatically laid down the law that, the CBDT cannot interfere in the quasi-judicial discretion and functions of the income-tax authority in any manner.

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