DISCUSSION PAPER ON DIRECT TAXES FOR A MORE ROBUST TAX LAW AND EFFICIENT TAX ADMINISTRATION WHICH WILL HELP IN BRINGING ACCOUNTABILITY AND STABILITY

1. **Supreme Court Benches in four Zones or e-bench of Supreme Court can be an effective alternative for having four regional benches of Apex Court. e-Bench of Apex Court will help render speedy justice to the litigants thereby saving huge cost incurred on travelling back and forth to New Delhi.**

The All India Federation of Tax Practitioners (the "Federation") has been making representations to the Government of India from time to time to constitute four Benches of Apex Court in different regions. Even the Parliament Committee, relying on Article 130 of the Constitution which reads as under " **The Supreme Court shall sit in Delhi or in such other place or places , as the Chief Justice of India, may with the approval of the President, from time to time , appoint"** had asked the Union Government to persuade the Supreme Court to set up its benches in three distant regions (Times of India, Friday, 26-May-2000). Sir, Hon'ble Dr. Manmohan Singh, then Leader of Opposition (Rajya Sabha) in his letter dated 22-10-2002 has also endorsed the view in favour of establishment of Benches of Supreme Court. (Copy is enclosed)

The Bar Council of Maharashtra & Goa *vide* letter dated 11/4/2000 also endorsed the view of the Federation. However, a full Bench of the Apex Court was not in favour of having benches of Supreme Court in different regions. We desire that the Government to take up this issue once again with the Apex Court.

A common man of our country cannot even think of approaching the Apex Court for justice as it is beyond his reach. Shri Ashok H.

Desai, Sr. Advocate and Former Attorney General of India in his speech stated that every adjournment in Supreme Court costs the litigant a minimum of about 1 lakh rupees. If this is the minimum cost for an adjournment, one can imagine how expensive it would be for the citizens to approach the Supreme Court for justice. It may be desirable to have four benches of the Supreme Court in different parts of our country.

In case this proposal, though beneficial to the large masses in the country, is not found viable for any reason, one of the alternatives could be to have an e-bench of the Supreme Court. The hearing of the matter before the Apex Court can be done by linking various High courts and affording facilities for arguing the matter before the Apex Court from the respective High Courts. An e-bench of the Supreme Court can take up the matters state wise e.g. One day could be for matters of Mumbai, one day could be matter from Chennai or other places etc. Initially, an option may be given to the parties to hear the matters through e-Bench or regular Bench.

The Income-tax Appellate Tribunal has started the e-Court at Mumbai through which the matters of Nagpur are heard by members sitting in Mumbai at Mumbai Bench. The experience is very satisfactory and both the tax payers and the Department have found the functioning of this bench satisfactory. The e-Bench of Supreme Court may initially be started with SLP relating to direct and indirect tax matters. As per the concept, the litigants will be given an option to '**opt in**' or '**opt out**'. If in case the litigants desire not to be heard by the e-Bench of the Apex Court, he may have an option to opt out. This option would be given to him even at the time of hearing of matter by the e-Bench of the Apex Court. One Court of Bombay High Court may be converted in to an E-Court.

2. Mobile Courts.

It is also worth considering if we can develop the concept of Mobile Courts, in a specially designed vehicle with facility of e-Library, to try small and petty cases in distant and remote places in the country. This will help avoid delay in justice delivery system. This will also help save on additional costs to maintain the court premises.

In case the concept of Mobile courts is not found viable, e-courts can be established at various places.The Government need not spend any amount for building courts or infrastructure, the court can be held in schools after school hours, or in charitable institutions or even municipal offices. The e-Court can be held in Panchayat buildings of villages.

3. Mechanism for effective consultation before legislation is introduced.

In the state of Maharashtra, for instance, before introduction of new legislation, consultations used to be held with various state bar associations. Such a practice in respect of all central tax laws would help bring in stability and transparency in tax laws. Proper and timely consultations may also help avoid subsequent challenges to the vires of the legislation.

4. Increase in age limit of judges from 62 to 65 years.

The Parliament has constituted a committee headed by Smt. Jayanti Natrajan as Chairperson for considering the increase in age limit of Judges of High Courts from 62 to 65. The Committee observed as under:-

"*Taking into account the justifications given by the secretary, Department of Justice, and the statement of objects and reasons appended to the bill, the committee supports the proposal for*

increase in the retirement age of judges of the High Courts from sixty two years to sixty five years and to be par with the retirement age of the judges of the Supreme Court. The Committee also acknowledges that the Bill has been brought forth in pursuance of the recommendation made by the Committee in its earlier reports"

Though the committee has made the above recommendation on 7th December, 2010, till date no progress has been achieved in the matter. It is desirable that an appropriate decision may be taken at the earliest in this issue. We are of the considered opinion that increase in age limit will help to reduce the pendency of cases.

5. Allocation of separate fund for modernisation of Judiciary in the Finance Bill.

There must be separate allocation of fund for the judiciary in each budget. Procedure for disbursement of funds to the judiciary must be simplified. It is worth considering that Finance Ministry may make it a point to meet the concerned Officials of the judiciary and discuss with them the amount required for modernisation and allocate the required funds to the judiciary.

6. Mechanism to be put in place in respective Ministries to discuss and take action on suggestions made by the Apex Court, High Courts and other Judicial authorities.

It has been observed that various High Courts make several recommendations to Ministries in the Government of India to look into certain matters and take appropriate measures. However, there is no mechanism to find out whether the issue was brought to the notice of Ministry concerned and what action has been taken. It is therefore, advisable to put up such suggestions on their website for public domain and after considering the various suggestions, appropriate action can be taken. This will bring transparency in functioning of the ministry and will also bring accountability.

7. Tax litigation in India - Vision and roadmap towards speedy justice - Measures to reduce tax litigation.

7.1 Background of tax litigation in India

The only two sources of tax litigation in the High Courts are appeals against orders of the various Tribunals constituted under different tax legislations and writ petitions filed under Article 226 of the Constitution of India. Statistics show that approximately 80% of the orders of the Tribunals are accepted by the tax-payers and the Department. Out of the matters reaching High Courts, roughly 70% are filed by the Department. The appeals that are finally admitted by the High Courts on substantial questions of law are merely 20% of the total number of appeals filed in High Courts and the remaining 80% of the appeals are dismissed at the stage of admission itself on the grounds that no substantial question of law arises.

As on 1-6-2014, there are only 94, 648 appeals which are pending before the Income-tax Appellate Tribunal (the "Tribunal") before its 63 Benches (AIFTP Journal-June 2014 P.58). At some of the places, the matters are heard within six months of filing of an appeal. Mumbai and Pune together account for a total pendency of only 28,451 appeals. In Mumbai, at present the matters are heard within one year of filing the appeal and the date is given on the date of filing itself and matters are heard on the date of hearing.

In contrast to the present scenario, in the year 1998-99, the total pendency of tax appeals before the Tribunal was 3,00,597. It took six to seven years for the Tribunal to hear the appeal and almost 10 to 15 years for the High Court to hear the matter. Shri N. A. Palkhivala in his article "*The Maddening Instability of Income Tax Law*" (Income Tax Review – August-Sept, 1996, Pg. 57) writes as under:-

"*A telling example of the total absence of a sense of time in our tax administration is afforded by Supreme Court's decision rendered last November in the case of Sutlej Cotton Mills Ltd. vs. CIT (1990) 2 SCALE 931. It was a case under Business Profits Tax, 1947. The accounting period was 1946-47. The amount involved was paltry sum of a few lakhs of rupees. The High Court's order was rendered in 1965. The Supreme Court sent the matter back to the Income Tax Appellate Tribunal to re-hear the appeal 44 years after the close of the accounting period. Is there any other civilized country where a tax payer would not know the quantum of his liability for 44 years?*"

Though we have made considerable progress in reducing the pendency of tax appeals before the Tribunal, as regards the pendency of appeals in High Courts and the Supreme Court, a lot still needs to be done in order to bring finality to tax disputes between the tax payers and the Department within a reasonable time.

In spite of the long drawn litigation process, unfortunately, even today, there is no mechanism in the tax administration to find out whether effect to the orders of the Supreme Court or the High Courts is given if the matter is decided in favour of the Department.

7.2 In order to bring down the tax litigation in our country, a multi-pronged approach needs to be adopted. The following steps may help in bringing down tax litigation:

1. Tax reforms;
2. Issues relating to tax policy;
3. Amendments to the tax law; and
4. Aid of technology and innovation.

7.2.1 **Tax Reforms**

a) Accountability in Tax Administration

Due to lack of accountability on the part of Assessing Officers, it is common to find additions being made for name sake knowing well that they may not withstand judicial scrutiny.

In order to keep a check on such frivolous additions, Dr. Raja J. Chelliah, in his report [(1992) 197 ITR 177 (St) (257) Para 5.9] suggested that ways must be found to hold the Assessing Officers accountable for kinds of assessments they make. He suggested as follows:

> "*The Assessing Officers should be made accountable for their actions by being blamed for raising demands which are not upheld by a reasonable figure, say 50 percent, the officer should be given a black mark and reprimanded. On the other hand an Assessing Officer should be protected and defended if he has observed instructions of the Board and followed the Court rulings even though audit might raise objections about his actions.*"

It is very unfortunate that the Government has accepted most of the recommendations of Dr. Raja Chelliah which are favourable to the Department and has not implemented any of the recommendations which are favourable to the assessee. Even the proposed Direct Taxes Code - 2010, does not contain any provision on accountability on the part of the tax administration. Bringing in accountability in the tax administration is the first step in reducing avoidable litigation and would benefit the honest tax payers of the country. The Officers of the Department file appeals out of fear of being questioned by their superiors upon non-filing and due to fear of audit and investigation. They always desire to play safe so that

when High Court rejects an appeal, they may not be questioned later. It may be appreciated that now an appeal under section 260A can be filed only on substantial question of law. Therefore, it is desired that there has to be a panel of lawyers who represent the tax matters before High Court who can study the order passed by the Tribunal and suggest whether appeal ought to be filed or not. In the panel even services of retired judicial members of the ITAT may be requisitioned. If this process is adopted, very few cases of department will come for hearing for admission.

b) Appeals where the tax effect is less than 10 Lakhs

As per the Instruction No. 3/2001, F. No 279/Misc.142 /2007 dt. 9 Feb., 2011 [(2011) 332 ITR (St)1], the Department cannot file an appeal before the High Court where the tax in dispute is less than Rs. 10 lakhs and issues are not recurring in nature. However, there are references/appeals which are filed earlier wherein the tax in dispute is less than Rs. 10 lakhs. Different High Courts have taken different views as to the applicability of the circulars to pending matters. It is desired that a circular be issued stating that the said circular is applicable to all pending references and appeals. This will save substantial money of the Government and the precious time of the Courts. One may have to understand the legal formalities to be complied with while giving effect to the orders passed under reference by High Courts and the Supreme Court. As per the old provision (S. 260 Reference jurisdiction), for giving effect to the order of the High Courts and Supreme Court, the matter has to be sent back to the Tribunal to pass such orders as are necessary to dispose of the cases in conformably to such judgment. After the order of the Tribunal, the Assessing Officer gives effect. There is no time limit prescribed under the Act. At present there is no mechanism wherein one can find out whether orders of High Courts or of the Supreme Court has been given effect to or not. It has been

observed that most of the cases, the department is not able to give effect to the order of High Courts or Apex Court because of non-availability of files, change of address, death, etc. It is therefore, suggested that by withdrawing the old references where tax effect is less than Rs. 10 lakhs will help reduce the pending tax litigation. Department can concentrate only on significant cases where the tax involved is huge. Section 268A which was inserted by Finance Act, 2008, w.e.f. 1-4-1999, reads as under:-

> "*Notwithstanding that no appeal or application for reference has been filed by an Income–tax authority pursuant to the orders or instructions or directions issued under sub section (1), it shall not be lawful for an assessee, being a party in any appeal or reference, to contend that the income–tax authority has acquiesced in the decision on the disputed issue by not filing an appeal or application for reference in any case.*"

Therefore, withdrawing old references where the tax effect is less will not preclude the Department in contesting the other matters where the tax involved is large.It may be worth appreciating that the Government may be spending more on litigation of old matters where in revenue collection if at all they succeed will be very negligible.

c) Monitoring tax appeals

Though the Department is the single biggest litigant in the higher judiciary across India, the Income-tax Department does not have a centralized wing to effectively monitor its appeals from the stage of inception till its final disposal. It is advisable for the Department to have an independent National Tax Litigation Cell to monitor the tax appeals before various High Courts and Apex Court.

d) Acceptance of orders of High Courts

In earlier days, whenever the Department would accept a decision of a particular High Court on interpretation of law, the Central Board of Direct taxes used to issue a circular stating that interpretation has been accepted.Such practice is discontinued now. If this process is adopted and instructions /circular are published, the litigation will be reduced considerably.

e) Permanent Tax Bench in various High Courts

In all High Courts, there has to be one Tax Bench to decide the issues relating to direct and indirect tax matters. The Tax Bench to function throughout the year till the matters registered before six months are disposed off. Looking to the pendency, if possible, more than one Tax Bench be constituted. Tax Bench consisting of Hon'ble Judges having vast experience on Tax Laws be preferred.

f) Pendency of tax matters before various High Courts and Apex Court

Pendency can be divided in to four parts (a) old references (b) Tax appeals admitted and pending for final hearing (c) appeals pending for admission (d) Writ petitions admitted and pending for final disposal.

Old references: With the help of the tax Bar, a list may be prepared of the issues involved in various references and grouping can be done. In many of these references, the issues may have been decided either in favour of or against the Department. Grouping can be done issue wise and section wise. If the taxpayer and the Department co-operate, all old references can be disposed off within a year. Few matters can be kept on the "warned list" well in advance, wherein, the taxpayer and the Department may be requested to file a brief note on propositions. It will be filed and

circulated to other side. The Court can decide the issue on a time frame basis.

Tax appeals: A list may be prepared of the issues involved in various appeals and grouping can be done. If common issues are involved and matters are pending before various High Courts and Apex Court, the Department may request the Apex Court to take up one matter for hearing out of turn hearing and once a particular issue is decided, all pending matters before various Courts can be disposed off according to the decision of the Apex Court. The Department can prepare one central list of all the matters pending before various courts issue wise and section wise and may publish the same on their web site.Preparing the list of pending cases in taxation matters for the Department may not be difficult because in such matters, the Department is either a petitioner or a respondent and they get a copy of the petition as soon as the appeal is filed.

New appeals: With the help of technology, as soon as the appeal is numbered, if the pendency of appeal can show the issues involved and relevant section of the Income-tax Act, one can find out by visiting the site of various High Courts, which are the issues pending before various High Courts. This will help the taxpayers, the Department as well as the Courts to dispose of matters in a timely manner.

Income-tax Appellate Tribunal gets the information every month about the number of appeals filed in various Benches of Tribunals across the Country and the appeals disposed off. It may be desirable that by coordinating with various High Courts, one can develop the system that every month how many tax appeals are filed, how many are admitted, how many are disposed off and which issues are pending. This will help to prepare the National tax

litigation policy and reduce the tax litigation in various High Courts and the Apex Court.

g) Research in taxation

In India, research in taxation law and procedure is not given due importance. There must be continued research on taxation subjects by research team comprising all stake holders *viz.* tax officials, members of the Judiciary, industry representatives and professional organizations. Research papers may be presented to the legislative department of the CBDT. The CBDT, after examining the research paper, may present its view before the public for debate and an amendment be introduced only after a good debate and with a general consensus. It is worth considering that instead of amending the Act every year, the law may be amended once in five years which will bring stability in tax law.

It is also advisable that a city like Mumbai should also have a well-equipped library to assist the counsels who represent matters before the Court, and there has to be continuous research to monitor the tax litigation before various Courts and Tribunal.

7.2.2 Issues relating to tax policy

a) Retrospective amendments

Introduction of retrospective amendments to reverse the judgments of Apex Court, High Courts and Tribunals only shakes the confidence of investors and the tax payer community at large. Frequent amendments with retrospective effect make the tax laws more complicated. It will not be possible to give any advice based on High Court or Apex Court decisions. As a matter of policy, there should not be any amendment in law to overrule judgments which have been decided in favour of the taxpayer. If the Government considers that the intention of the Legislature may not have been correctly interpreted by the Courts, then laws may be amended

prospectively and if at all any law has to be amended retrospectively, the same must not result in taking away any reliefs. This will help to gain the confidence of the taxpayers and growth of industry.

b) Setting up of special courts to deal with prosecution in relation to Direct and Indirect taxes.

Under the present system, it takes more than 20 years to decide prosecution matters relating to Direct Taxes. Hence, the deterrent provisions fail to achieve the desired object due to delay in disposal of cases by the lower courts. Income-tax being a specialized subject may be heard by a special court of two judges, similar to the Tribunal and thereafter appeal may lie to the High Court. It is for consideration whether the jurisdiction to deal with prosecution matters relating to the respective taxes can be delegated to the Tribunal, prosecution relating to Central Excise and Customs To CESTAT and prosecution relating to VAT and Central Sales tax to Sales Tax Tribunal. A Bench of two judicial members may be constituted to hear the prosecution matters. Appeal against the said orders of the Tribunal may be provided to the High Court. Government need not create separate infrastructure for setting up of the Courts. Present set up of the various Tribunals may be sufficient to handle the prosecution matters. This will help in speedy disposal of matters.

7.2.3 Amendments to the tax law

a) Appeals to the Tribunal

One of the suggestions made by professional organizations is that all the orders must be made appealable. This will save time and amount spent only in deciding whether an order is appealable or not. There are a number of orders of the Commissioners of Income-tax against which no appeal can be filed. E.g. orders under section

264, 273A, waiver of interest charged under sections 234A, 234B, and 234C, orders under section 179, denial of approval u/s.10(23C) and other approvals by Chief Commissioner, etc. The only remedy available to the taxpayer is to approach the High Court in its writ jurisdiction. A simple amendment in the Income-tax Act may be made stating that all orders of the Chief Commissioner, Commissioner and Commissioner (Appeals) are appealable to the Tribunal. This would save substantial time of the higher judiciary and the taxpayers would get the speedy justice from the Tribunal.

b) Direct appeal to the Supreme Court to attain finality on important issues.

Section 257 of the Income-tax Act provided for direct reference to Supreme Court under old provision of reference. No such provision is incorporated after the insertion of section 260A. The Income-tax Appellate Tribunal refers the matters to special bench when there is a conflicting decisions of various Benches. In the meantime one of the High Courts may have taken a contrary view. In such a case the decision of High Court will be binding. Though the Income–tax is a all India statute, the Tribunal sitting in a particular State is bound by the decision of respective High Court of the particular State. This brings uncertainty in tax law. To avoid all these controversies the Tribunal may be given power to refer the matter to Supreme Court either of its own, or an application made by the assesse or department. If this process is followed there will be certainty in tax law which will also help to reduce the pendency of cases before various High Courts and finality may be attained on some of the important issues within a reasonable time.

c) S. 158A: Special provisions for avoiding repetitive appeals - Chapter XIV-A:

As per section 158A, when a question of law arises in the assessment which is pending before the Assessing Officer or the first appellate authority is identical with the one pending before the High Court or the Supreme Court in the assessee's own case for some other year, the assessee can file a declaration in Form No. 8 read with Rule 16 with such authority to the effect that if the final decision in such identical case is applied to the pending case, the assessee shall not raise the impugned question of law in the pending case before any authority / Court. On being satisfied that the question of law in both the cases is indeed identical, such question of law in the pending case is decided in accordance with the final decision of the High Court or the Supreme Court, as the case may be. The law may be suitable amended to enable even the Revenue to make an application under this provision. This will reduce the paper work and would save substantial amount for the Revenue.

7.2.4 Aid of technology and innovation

a) Use of technology in tax administration

Use of technology in tax litigation can help to reduce the time involved in litigation. The CBDT can get information from all Zones specifying what type of litigation is filed before various High Courts. Unlike in Civil matters, the Department is always a petitioner or a respondent. Information can be obtained as soon as an appeal is filed before a High Court. Whenever the common issues are involved the grouping of matters can be done. The Hon'ble Bombay High Court in last three years has disposed-off a large number of matters by grouping them together. If the issue involved affects a large number of appeals, the CBDT may request the Apex Court to decide the matter out of turn which in turn will help reduce the pendency in all the Courts.

7.2.5 **Conclusion**

Finality in taxation within a reasonable time is very essential. If the tax matters are finalized within one year of filling of appeal there will be certainty and stability which will also help the industry to take appropriate decisions. By use of technology and better tax litigation management by various High Courts and the Apex Court, one can achieve the desired object which will help the Nation.

8. Income tax Appellate Tribunal which is considered as Mother Tribunal of all other Tribunal deserves better support from the Government

8.1 Allocation of funds

The ITAT has Benches in more than 26 centres which require a budget of more than Rs. 10 crores every year. However, it seems that the sanctioned amount was only half of it. If sufficient funds are not provided within a reasonable time, the entire ITAT administration may soon collapse. At many places, the Tax Bars have made petitions for regular benches to be set up. However, lack of funds is a major constraint in this, which in turn, has affected the speedy disposal of appeals. It is desired that the Honourable Law Minster visit the headquarters at Mumbai to discuss these issues with all stakeholders and take remedial measures. Only when he himself inspects the conditions of the Tribunal, he may be able to appreciate the deteriorating conditions.

8.2 Appointment of President

In the 72 years of its existence, it is for the first time since 3-6-2010 that the Tribunal has been functioning, headed by officiating President. The ITAT has witnessed three Officiating Presidents in the last four years. An officiating President may have certain fetters on his administrative powers as compared to a regular President. The

ITAT Bar Association has strongly recommended that a permanent President of the ITAT may be appointed from amongst the Vice-Presidents of the ITAT at the earliest.

8.3 Promotion of Senior Vice Presidents and Vice Presidents.

It is very unfortunate that the Government has not initiated the process of appointment of Senior Vice President and Vice Presidents. The matters pertaining to these offices which are pending before the Apex Court may became infructuous due to the retirement of Vice Presidents and Members. It is desired that the Government moves an application before the Apex Court to get a clarification so that the uncertainty over their appointment could be settled.

8.4 Increase in age limit of members

The then Hon'ble Law Minster, Mr. H. R. Bhardwaj, while addressing the members conference at Mumbai on 4th November, 2006 stated that the Government will increase the age limit of all members from the present 62 to 65.

A similar representation has also been made by the AIFTP for High Court judges. Very recently, in a PIL filed by the Sales Tax Tribunal Bar Association, the Hon'ble Bombay High Court directed that the Government should consider increasing the age limit of all the members. It is in the interest of this institution if the age limit of members is increased from the present 62 to 65. We are of the opinion that the knowledge and experience of a judge / member is an intangible asset for the nation and it should be used for justice delivery efficaciously.

8.5 Concept of e-Tribunal

Concept of the e-Court of the ITAT may be tried with other smaller places too. It is desired that the Hon'ble Law Minister visit the ITAT Mumbai and watch the proceedings of the e-Court. This concept of e-Court can even be extended for setting up e-Benches of the Supreme Court linking with various High Courts.

8.6 Institutionalisation of the process of elevation of Members to the High Court

Till now, very few members of the ITAT have been elevated to the High Courts. This process should be institutionalised which will help in bringing in transparency. It is desired that the all the High Courts must have a permanent tax bench and one of the judicial members of unimpeachable integrity could be elevated from the ITAT. Members of the ITAT due to their specialised knowledge and experience in tax and business accounts would be able to understand and decide the issues better. This will also attract many young bright lawyers to join the Bench.

8.7 Liberalisation of process of appointment of staff

The process of appointing staff at ground level may be given to the President and collegiums. They can select the local people from within the area of the bench which may help the institution.

8.8 Use of technology for better administration of justice

It may be noted that 65% of the appeals before the ITAT are by the Department. To start with, the process of e-filing can be started with the departmental appeals which may later be made optional for the assessees as well. Eventually, this will help in achieving a paperless Tribunal which will add to its efficiency and speed.

8.9 Appointment of members of the Tribunal and Custom Excise and Service Tax Appellate Tribunal only for five years [The Tribunals

Appellate Tribunal and other Authorities (Conditions of Service) Bill, 2014 which was introduced in Rajya Sabha on the 11th February 2014]

Clause 4 of the said bill restricts the tenure of the Chairman and every appointment of Members of the Tribunal for a period of five years. He is eligible for reappointment only for one more term. Clause 8 of the Bill prohibits the Chairman or the Member from appearing or pleading before the Tribunal. The objection is mainly clause 4 of the Bill. If the bill becomes an Act, the consequences for the revenue tribunals are far-reaching. Some of them are:

a) Independence of Tribunal will be diluted. In taxation matters Government is always either respondent or petitioner. When Members have to decide the revenue matters if the decision is against the Government he may fear that he might not be considered for reappointment.

b) Young professionals may not come forward to join the institution due to uncertainty in reappointment.

We therefore, suggest that clause 4 may not be made applicable to the Revenue Tribunals.

8.10: Vigilance committee headed by a Supreme Court or High Court judge to monitor and take action against honourable members, if corruption charges, prima facie seem to be not without merit.

Sanctioned strength of the members of the Income tax Appellate Tribunal is 126. Honourable members are posted in different places of the country. There has to be zero tolerance against corruption in the functioning of the Judiciary. It has been observed in the past that when charges of corruption is made, the member concerned is transferred from one place to another. ITAT Bar Association Mumbai has passed a resolution and also made an appeal to the Honourable President that when such charges is made by the Bar Associations,

immediate enquiry should be held and if no evidence of wrongdoing is found, the Bar should be informed of such enquiry and its results. If the charge is proved to be correct then necessary action may be taken. It is desired that there has to be an independent committee headed by the Supreme Court Judge or High Court Judge to continuously monitor such charges.

8.11. Code of ethics.

The Federation has suggested a code of ethics to be followed by the Honourable members of the ITAT(www.itatonline.org letter dt 20-06-2008 by Then President of the ITAT to honourable members) and a code of ethics to be followed by the professionals who appear before the Income tax Appellate Tribunal .(www.itatonline.org-Standards of Professional conduct and Etiquette for ITAT Bar Members dt. 9th June 2008) It is worth considering, whether the said code of ethics can be part of the Income-tax (Appellate Tribunal) Rules, 1963. Having it as part of the Rules will usher in more transparency.

9. Transparency in appointment of Members of Settlement Commission and appointment of professionals as Members of the Settlement Commission

At present, the appointment of members of the Settlement Commission is done through interviews. It is arbitrary as against the appointment of members of the ITAT where there is greater transparency. Interview is taken by senior most judge of Supreme Court, law secretary member of law commission or additional Solicitor General and the President of the ITAT. We suggest that the procedure laid down for appointment of members of ITAT may be followed for appointment of members of Settlement Commission. The Income-tax Act provides that a person who is a man of integrity

and knowledge, can be appointed as member of Settlement Commission. However, in more than 45 years, only 130 members have been appointed as members of the Settlement Commission.Also, the Government has not appointed a single professional as its member. An ideal bench of the Settlement Commission should comprise one member from the department, one from the profession of law and one from the profession of accountancy. If the scope of Settlement Commission is enhanced by suitable amendment in the law, procedure and by bringing in accountability, it will help the Government to recover the tax within reasonable time and achieve finality in tax assessment.

10. Authority for Advance Rulings may be brought under the Ministry of Law and Justice - More benches may be constituted and scope of applications be broadened - Members of ITAT may be appointed as members of Authority for Advance Rulings

The Authority for Advance Rulings has to decide very intricate issues of DTAA and International Taxation. By their experience and knowledge, Members of ITAT are most competent to be appointed as members of the AAR. However, as on today the technical members are appointed from revenue department. Members of the ITAT may be considered for being appointed as members of the AAR. It is also desired that the benches of the AAR may be constituted at various regions. It is also worth considering “Can the AAR be brought under the Ministry of Law and Justice” , whereas at present it functions under the Control of Ministry of Finance. Similarly the Central Excise and Customs and Service tax Tribunal may also be brought under the Ministry of Law and Justice.

One of the very important provisions introduced in the Maharashtra Value Added Act, 2005 is Section 55 (3) where in the President of

the Tribunal may constitute a Bench consisting of three members of the Tribunal , a senior Practioner entitled to appear before the Tribunal to be nominated by the President and an Officer of Sales tax Department not below the rank of Joint Commissioner to be nominated by the Commissioner. After hearing the applicant, the Bench shall pronounce its advance ruling on the questions specified in the application. If the members of the Bench are divided, then the decision shall be the decision of the majority. The pronouncement of the advance ruling shall in so far as it may be, made by the said Bench with in four months of the receipt of the application by the Tribunal. As per Section 56(4), The advance ruling shall be binding unless there is change of law on the basis of which the advance ruling has been pronounced and accordingly no such question shall be entertained in any proceedings by any authority appointed or constituted under this Act , save as provided in section 27(Appeal to High Court). Section 55(6) says that Advance Ruling under this section shall not be sought on any question which can be posed under section 56. We are of the opinion that if such provisions in State VAT Act and in the Income tax Act 1961 for residents this can certainly reduce litigation. We are of the opinion that the ITAT is more competent to decide the issues relating to Advance rulings, and therefore, it is suggested that in respect of residents, the powers of the AAR may be given to the ITAT. Provisions can be suitably amended in the Income–tax Act, 1961 after getting the suggestions from various stake holders and associations.

11. National Tax Tribunal Act, 2004

The National Tax Tribunal Bill, 2004 was introduced in the Lok Sabha on 6-12-2004. The said Act was challenged and the matter is now pending before the Apex Court. It is desired that the said Bill be withdrawn. We have represented before the Committee that the

proposed National Tax Tribunal will not achieve the desired objective. A designated tax bench at all the High Courts to deal with taxation matters would serve better purpose. In Mumbai, three Benches of the High Court deal with matters relating to direct and indirect taxes. It may be desirable to increase the strength of judges in various High Courts and request the Chief justice of respective High Court to constitute a separate tax Bench. As on 1-6-2014, total pendency of appeal before the ITAT is only 94648.(AIFTP-Journal-June P.56)It is worth appreciating that 80% of orders of the Tribunal are accepted by the assesses and the Department. Only 20% appeals are filed before the High Court, out of which 70% are by Department. Now appeal can be filed only on substantial question of law. Last month Tribunal disposed 2279 appeals .One can assume that total disposal of appeals by the Tribunal in a year will be 30,000 .Only 6000 appeals will be filed in various High Courts(ie 20%) of which 80% are dismissed at the admission itself ie.4800 appeals. One may realise that not more than 1200 appeals in a year may be admitted and will have to be decided by various High Courts for final hearing. With this background one may have to decide do we still need National Tax Tribunal.?

12. Issues in Direct Tax Law

12.1 Direct taxes code may not achieve the desired results.

We are of the considered opinion that the proposed Direct Taxes Code may not achieve the desired object of simplification of Direct Taxes law by shifting the provisions from main sections to definition clauses and schedules. Law is being settled because of Judgments of Apex Court and various amendments in the law being from time to time. We therefore, suggest it would be more appropriate to maintain the basic structures of the current Act and make amendments which are essential. The renumbering of various

sections will lead to more complexity rather than making the law simple. What needed here is shifting of mindset of tax officials from tax collection to tax service.In a document prepared by Bombay Chartered Accountants' Society for presentation to the Task Force on Direct Taxes, it is stated as follows:

"*Even if a harsh and complex law is administered in fair manner with a human touch, the common tax-payer does not feel the pinch of harsh or complex law*.

If a simple law is administered in a harsh manner and without human touch, common tax payer feels the pinch of it.

The goodwill of any tax administration is judged from the accountability of the administrators to the tax payers"

Major grievances of the assesses are:-

1) Refunds are not granted in a timely manner
2) Interest on refunds is not granted or erroneously computed
3) Rectification is not carried out
4) Effect to orders of higher authorities is not given
5) Credit for TDS is not given
6) Recovery proceedings are initiated without following due process of law

If the above issues are taken care of, tax payer friendly atmosphere will be built in tax administration.

12.2 We are also suggesting some specific amendments may be desired.

12.2.1 Various monitory limits for tax audit, payments by cheques, re-payments for loans/deposits etc. be suitably enhanced as the present limit is too small with growth in economy and inflation

12.2.2 If addition more than Rs.50,000/- is to be made in scrutiny assessment, the Assessing Officer be mandated to serve a detailed show cause notice for filing objection after providing adequate

time. The assessment order, Appellate order and order of the Tribunal to be reasoned and speaking. Stay petition should not be rejected summarily and in a routine manner. Sufficient time should be given before 226(3) proceedings.

12.2.3 S. 14A: Expenditure in relation to income not includible in total income.

At present, maximum litigation is only due to notional disallowance by applying section 14A read with Rule 8D. In some cases, Assessing Officers even disallow expenditure which is not even debited to the P & L account. In some of the cases the disallowances are more than the amount debited in to P & L account. We are of the opinion that the Rule 8D formula requires to be amended. The CBDT may be directed to compile all the issues that has arisen due to interpretation of Rule 8D and workable solution may be found. It has affected each and every investor in the country.

12.2.4. S. 28(i): Business income or capital gains – Investor in shares

One of the major litigation in recent years is on treatment of gains on sale of shares as capital gains or business income.

12.2.5 S. 37(1): Business expenditure - Contribution to discharge Corporate Social responsibility obligations.

As per the Companies Act, 2013 it is mandatory for specified Companies to spend 2% of its average profits towards Corporate Social Responsibility. These expenses are all connected to social and charitable causes and not for any private benefit or gain. It is therefore, necessary to specify in the Act stating that any assesse who spends towards corporate Social responsibility obligations may be allowed as deduction.

12.2.6 S. 37(1): Business expenditure - Contribution to recognised political parties Contribution made to recognised political parties may be allowed as deduction subject to certain limitation. This will bring transparency and may help to reduce generation of unaccounted income.

12.2.7 S. 234E: Fees for default in furnishing the statement.

This provision desires to be deleted. Three High Courts have stayed the operation of this provision. There are sufficient compensatory and penal provisions under the Act, e.g. S. 201, 221, etc.

12.2.6 Tax deduction at source

Today, of all direct tax collections which goes in the treasury of the exchequer, tax deducted at source and advance tax payments account for 40% each, while 10% are by way of self-assessment tax aggregating to near about 90% of direct taxes are paid by way of voluntary compliance by the assessees across the country.

While even *bona fide* non-deduction attracts interest and penalty (and even disallowance of expenditure in many cases), delay in depositing deducted tax attracts interest. To add to the taxpayer woes, the Department has also started initiating prosecution for delay in depositing such tax. Unfortunately, even the compounding fees prescribed by the Board for compounding this “offence” of delay is quite onerous. Where an assessee performs an honorary task for the Government in collecting taxes, is it fair to saddle them with the prospect of facing prosecution for a default (not even worthy of being called offence) as minor as delay in depositing the tax so deducted by few days especially when these proceedings can go on for years, before being finally decided by the various judicial forums. For instance, to quote sadly, in Mumbai, cases involving

prosecution launched more than 15 years ago has not yet come for a final hearing.

All in all, it is for the CBDT and the Finance Ministry to consider this burning issue in proper perspective to find out a workable solution wherein only cases of gross delinquency attract prosecution proceedings, and especially, when minor defaults can be adequately dealt with by existing penal consequences under the Act *viz.* interest, disallowance and penalties, as the case may be, which are in any case appealable. In devising a practicable strategy for dealing with such defaults, the foremost thing that needs to be kept in mind is whether a default is *mala fide*. It cannot *ipso facto* be assumed by the Department and then leave it to the courts to give a final verdict.

To remedy the above genuine grievances, may we suggest the following:

1. A reasonable but short time limit may be prescribed for the assessment of TDS returns;
2. Where an asssessee misuses the tax collected for his own purpose, he can be penalised by charging interest and severe penalty, which would serve the ends of justice;
3. Neither should penalty be levied nor prosecution be launched for technical defaults ,
4. Compounding fee ideally to be levied for technical defaults must be rationalized to enable assessees to *suo motu* come forward and opt for it.

Furthermore, the following other measures may help in minimising the number of defaults as regards the tax deduction provisions:

1. Having a uniform rate for tax deduction for various sources of income;
2. There can be a provision for advance payment of tax to be deducted at source during the year and any excess payment may

be allowed to be adjusted in the next year. This can save substantial time otherwise spent by assessees on complying with TDS provisions;

3. When there is a dispute about the rate of tax deduction, there can be provision for advance ruling even for deduction at source in respect of payment to the resident;
4. A pass book system or ledger may be introduced on the website wherein deductions of tax at source under all the provisions be exhibited for the benefit of all concerned;
5. A concept of single return may also be introduced for reducing compliance requirements;

12.3 Streamlining the prosecution procedures

More than 90% tax is collected by way of advance tax and deduction at source. The assessees are made to deduct the tax at source on behalf of the Government. If there is few days delay in depositing the tax deducted at source, the assessee is made liable to pay interest, penalty and even liable for prosecution. In recent years, the assessees are getting notices for prosecution for delay in depositing the tax deducted at source. Is such an action justified especially when prosecution launched more than 15 years ago are still pending before the Magistrate's court? This factual scenario is quite devastating to the taxpayer, who files the return regularly, who is punished whereas those who do not file return are able to go scot-free as there is no effective mechanism to catch the tax evaders.

12.4 Presumptive taxation

To reduce the tax compliance burden of professional assessees, the scheme of the presumptive taxation may be extended to them as well, with an option to file the return under normal provision

12.5 Constitution of a committee of tax professionals and professional organizations to suggest methods for simplification of tax laws.

When the erstwhile Income-tax Act was abolished and the present Income-tax Act introduced, the Government had constituted a committee of practicing tax professionals. Eminent tax professionals with their vast experience in the field can suggest constructive methods to simplify the tax laws while maintaining the basic structure of present Income-tax Act.

12.6 Tax payers should be treated with honour and respect

Time and again, various High Courts have passed strictures against the tax administration in respect of their high-handed recovery measures. Achieving targets should not be the sole ground for recovery of tax. Officials must be made to follow the due process of law.

12.7 Culture of tax service

The approach of the tax department must be service oriented towards tax payers, tax collection being only incidental. If friendly approach is adopted and tax payer is not suspected, tax collections would definitely increase.