



All India Federation of Tax Practitioners

(An Association of Advocates, Chartered Accountants & Tax Practitioners of India)

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January 14, 2023

Hon'ble Shri Kiren Rijiju,
Hon'ble Union Minister of Law & Justice,
Government of India,
New Delhi

Hon'ble Sir,

On behalf of the All India Federation of Tax Practitioners (**AIFTP**), we thank your honour for giving us an opportunity on January 15, 2023 to discuss the necessary steps for better administration of justice by the Income Tax Appellate Tribunal [ITAT] which is considered as the Mother Tribunal of our Country.

Sir, the AIFTP was established on November 11, 1976. The main object of AIFTP is to spread education in the matters relating to tax laws, other laws and Accountancy. The AIFTP is the symbol and spirit of National Integration of tax professionals, and with active support of the members it is one of the leading National Tax professional organisations. The membership of the AIFTP comprise of Senior Advocates, Advocates, Solicitors, Chartered Accountants and Tax Practitioners who are practicing on Direct & Indirect Taxes, from all States and Union territories of the Country. The AIFTP is the only voluntary professional organisation of our country which has 144 Professional Associations as its affiliated members and more than 10,000 professionals as life members from 29 States and 4 Union Territories.

Sir, since 1941 i.e. 82 years till date, Tribunal has gained the confidence of both the tax payers and the Revenue authorities alike by rendering impartial decisions in a transparent manner. No other Tribunal in India has won such popularity and confidence of the public. This was possible due to the efforts of the earlier and present Hon'ble Presidents, Hon'ble Vice-Presidents, Hon'ble Members of the ITAT,





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proactive ITAT Bar Associations across the country and the Departmental Representatives who represent the Revenue before the ITAT.

Sir, some of the issues for consideration are as follows:

1. Pendency of appeal before National Faceless Appeals Commissioner (Appeals) [NFAC]

The pendency of appeals before the ITAT as on December 31, 2022 is 39,000 cases whereas in the year 1989 it was 3,00,597. In most of the Benches, the assessee is able to get the justice from the ITAT within six months of filing of an appeal. Sir, there are more than 5 lakhs cases are pending before the Commissioner (Appeals). The slow disposal of Appeals by NFAC have now led to a spiral effect on the working of the Income Tax Appellate Tribunal. The pendency at ITAT has reduced drastically resulting in ineffective utilization of available resources. Also, the other worry may be flooding of appeals to the ITAT if the NFAC were to dispose of all the pending appeals within a short span of time. We therefore make an appeal before your honour to use the good office of yours and impress upon the Honourable Finance Minister Mrs. Nirmala Sitharaman to take appropriate measures for quick disposal of appeals pending with the Commissioner (Appeals)/NFAC.

2. Elevation of members to High Court - Institutionalisation of the process of elevation of Members to the High Court

ITAT has good number of judicial members who deserve to be elevated to the High Court. However, the no. of judicial members being elevated is very less. Due to their specialised knowledge and experience in 'taxation' and 'commercial transactions', they would be able to understand and decide the issues which may help speedy



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disposal of matters which are pending before various High Courts. This will also attract bright lawyers to join the Income Tax Tribunal. The process of elevation may be institutionalised by the judiciary, to be more systematic and transparent in elevating the Members. There are good number of judicial members in the ITAT who used to appear regularly before the High Court. The judicial members from one particular place cannot be posted in the place where he/she was practicing, hence their orders are not challenged in the High Court where they were practicing. There is no mechanism in the collegium of the High Court to know the competent and deserving Honourable Members of the ITAT from their respective State. It is suggested that the Honourable President of the ITAT may send the names of the deserving members of the ITAT to the respective High Court, and the collegium may consider their names on merits. This will bring an institutional process of elevation of Honourable Members of the ITAT to the respective High Court.

3. Setting up of Special Courts to deal with prosecution in relation to Direct and Indirect taxes

Under the present system, for disposal of prosecution under Direct Taxes it takes more than 20 years to decide the matters.

Therefore, the deterrent provisions fail to achieve the desired object due to delay in disposal of cases by the lower courts. Income-tax being a specialised subject, prosecution cases may be heard by a Special Court of two judges, similar to the Tribunal and thereafter an appeal may lie to the High Court. It may also be considered whether the jurisdiction to deal with prosecution matters relating to the respective taxes can be delegated to the Income tax Appellate Tribunal. A Bench of two Judicial Members may be constituted to hear the prosecution matters. An appeal against the said orders of the Tribunal, before the High Court, may be provided to the aggrieved



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party. The Government need not create separate infrastructure for setting up of Courts. The present set up of the various Income tax Appellate Tribunal may be sufficient to handle prosecution matters. This will help in the speedy disposal of matters.

4. A Responsive system to be established in every Ministry to discuss and take action on suggestions made by the Hon'ble Apex Court, High Courts and other Judicial authorities

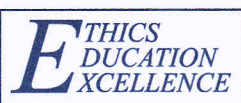
It has been observed that various High Courts make several recommendations to Ministries in the Government of India to look into certain matters and take appropriate measures. However, there is no mechanism to find out whether the issue was brought to the notice of the concerned Ministry and whether the directions have been complied with.

It is therefore advisable to put up such orders on the website of the concerned Government department in public domain and after considering the various suggestions, appropriate action can be taken. This will bring transparency and accountability and will also help the citizens to know the action taken by respective Ministry.

5. Acceptance of orders of the High Courts

In the 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 a particular interpretation of law has been accepted. Such a practice is discontinued now which causes a multiplicity of litigation.

If this process is readopted and published on regular basis on the website of the CBDT, it will bring transparency and will benefit the revenue as well as assesseees. We make an appeal before your honour to impress upon the Honourable Finance Minister Mrs. Nirmala





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Sitharaman to take appropriate measures which will help the tax payers to plan their business decisions which will help to achieve the intention of Government ultimately helping ease of doing business.

6. Monitoring Tax Appeals

Though the Department is the single largest litigant in the higher Judiciary across India, the Income-tax Department does not have a centralised wing to effectively monitor its appeals from the stage of inception until the final disposal.

It is advisable for the Department to have an independent National Tax Litigation Cell to monitor tax appeals before various High Courts and Apex Court. In tax matters, department is always either the appellant or the respondent.

With the help of technology, CBDT can find out which are the issues pending before the Apex Court, High Courts and also the Appellate Tribunal. This will help in quick disposal of matters where common issues are involved. At present there is no mechanism to find out which appeals are pending before the High Courts or the Apex Court.

7. Appointment of Assistant Additional Solicitor General – Tax in metropolitan cities.

Sir, in cities like Mumbai, Delhi etc. the High Court has several matters where the stakes are very high. Also several matters involve complex legal issues. It will be helpful for the government if any lawyer with regular practice in Income tax is appointed as Assistant ASG focussing on complex tax matters.

8. Legal Research Assistance to the ITAT.

Sir, Honourable Supreme Court appoints law Clerk to prepare a summary of fresh admission matters, to prepare a synopsis of regular





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hearing matters, sitting in the court during a hearing and taking notes of all the arguments etc. Similar procedure of appointment is also done in National Company Law Tribunals. Sir we are of the opinion that the ITAT may consider appointing few legal Research Assistance in the ITAT where the pendency of appeals are more. The legal Assistance can help the ITAT in grouping of the matters for quick disposal of matters. Sir, we are pleased to know that due to the use of technology the Honourable President of the ITAT is able to get the information from across the country as regards the number of appeals filed and number of appeals disposed. Sir, when the ITAT starts digitisation of the entire appeal process, by amending the appeal form, the ITAT may be able to find out what are the issues pending before various Benches of the Tribunal across the country. When the apex court or Jurisdictional High Court decides the issue, the appeals before the ITAT can be taken up for hearing immediately. All these can be possible if the legal Assistants are appointed in the ITAT. They can also give continuous feedback on the law and Rules of the ITAT as may be required to be amended.

9. Appointment of Members of ITAT.

The ITAT Bar Association, Mumbai and All India Federation of Tax Practitioners had opposed the appointment of Hon'ble members on a tenure basis. Functioning of the Income Tax Appellate Tribunal cannot be compared with that of the Electricity Tribunal or the Environmental Tribunal. Various Tribunals have been constituted in our country on the basis of functioning of the ITAT. The Income tax Act is the only Act which refers to 98 Central Acts and various State legislations. If one analyzes the development of the commercial laws, it is due to the interpretation of taxation laws. E.g. Hindu law, law of partnership, Transfer of Property Act, Company law etc. The Honourable Members of the ITAT should have a specialised knowledge



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and experience in 'taxation' and 'commercial transactions', and would be able to understand and decide the issues in a better manner. The tenure of four years is very short to understand the complexities of tax issues. It is suggested that considering the peculiar nature of the functioning of the ITAT, it is desired that old system of appointing the Honourable members of the ITAT may be restored. It may also be noted that when a member is appointed he / she not allowed to practice before any Benches of the Tribunal across the country.

10. Amendment relating to the functioning of ITAT.

The functioning of the ITAT cannot be compared with other Tribunals. Whenever any amendment is made which has the bearing on the functioning of the ITAT, it is desired that the Ministry of law and justice may be consulted and the amendment may be reviewed by the Ministry of law. This will help to achieve the moto of the ITAT i.e., *Nishpaksh Sulabh Satvar Nyay*

Sir, if an opportunity is given to us for personal audience we will be pleased to attend the meeting and present our views, in detail.

Thanking You

For All India Federation of Tax Practitioners

Pankaj Ghiya
National President

CC.: Honourable Prof. S. P. Singh Baghel, Honourable Minister of State for Law and Justice

Honourable Shri G. S. Pannu, President, ITAT