

Dated: - 24<sup>th</sup> day of January, 2019

To,

Sri, Piyush Goyal  
The Hon'ble Finance Minister  
Ministry of Finance,  
Government of India, North Block,  
NEW DELHI 110001

Sub: Suggestions relating to Income-tax Act and reduction of  
tax litigation.

Respected Sir,

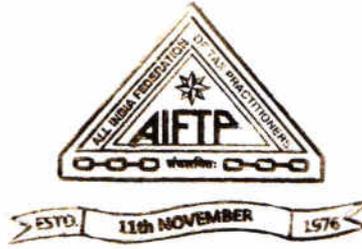
I would take this opportunity to wish you a Happy and Prosperous New Year.

All India Federation of Tax Practitioners (AIFTP) is an Apex body of Tax Practitioners of India. It has more than 7500 members across the country and 150 associations as its members. One of the main object of the AIFTP is to make representation for better administration of tax laws.

Sir, AIFTP has already sent detailed suggestions earlier. In this presentation AIFTP is restricting the suggestions only to issues relating to better tax administration, dispute resolution and appellate proceedings. Our suggestion are divided in to, three parts i.e.

- I. Conceptual;
- II. Specific;
- III. Procedural

These are discussed as under:



I. **Conceptual**

1. **Ombudsman :**

The Concept of income tax ombudsman was introduced to redress public grievances and improve tax payer service. Income tax ombudsman guidelines were issued in 2010. Though it has been around 10 years, the outcome has hardly been satisfactory. Most of the times, the chair is vacant as no appointments are made. As per the Guidelines an ombudsman should have been serving officer preferably from IRS (Income tax). According to us, ombudsman should be an independent person and could be a retired ITAT member.

The guidelines also define the "income tax authority complained against" as junior most income tax officer. Many times income tax officers act as per the directions of their seniors and hence it should include all officer below Commissioner level.

The guideline further states that ombudsman would be located at various locations. Instead of that Ombudsman can be centrally located and all applications and documents may be allowed to be filed online. The ombudsman need not necessarily be located at several places but can use technology to their advantage. This would also reduce costs.

The Guidelines further state that award shall be binding on the department only if the complainant furnishes its acceptance in full and final settlement of his complaint. This creates unnecessary burden and hardship to the complaint. It has to be binding on the department irrespective of complainant accepting or not submitting its acceptance.



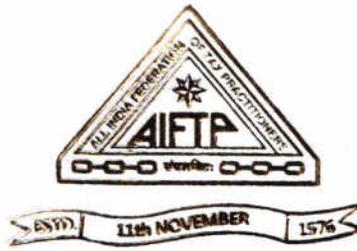
The Ombudsman has to report to Secretary, Department of Revenue, GOI and Chairman CBDT for appropriate actions against erring officials. However there is no statistics as to what actions have been taken after such reports. If not individual names, atleast quarterly statistics should be made public, which may act as a deterrent for erring officials and may reduce malpractices.

It is also seen that there are various parallel procedures which are in place simultaneously. For example there is a Grievance Redressal Mechanism, there are separate toll free numbers, there is Ombudsman system. This creates lots of confusion and hence it should be merged under one roof. There has to be uniform system across country.

**2. Settlement Commission : Transparency in appointment of Members of Settlement Commission - Professionals be appointed**

Income-tax Settlement Commission which was established in the year 1976 to expeditiously settle disputes between the assesseees and the Revenue. The Income-tax Settlement Commission (the "Commission") is one of the most high-powered commissions under Direct Tax laws. Section 245B(3) of the Income-tax Act (the "Act"), in express terms, requires the Central Government to appoint the Chairman, Vice-Chairman and its other members ***"from amongst persons of integrity and outstanding ability, having special knowledge of, and, experience, in problems relating to direct taxes and business accounts"***.

Unfortunately, at present, there is no transparency in appointment of the Members of Settlement Commission. Antithesis to this is the manner of appointment of Members of the Income-tax Appellate Tribunal (the "ITAT"). The applications for the posts of Members of the ITAT are invited from

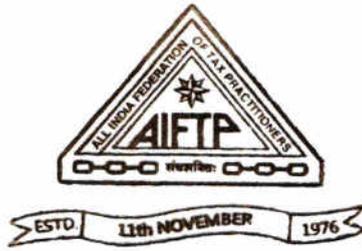


professionals and Commissioners of Income-tax who are selected by the committee headed by the senior most Judge of the Supreme Court, the Law Secretary and independent professionals and the President of the ITAT.

Dr. Vijay Kelkar's Committee recommended instituting transparent procedures for appointment of Members and Chairman of the Central Board of Direct taxes [(2012) 258 ITR (Journal) 1 (45)]. We are of the opinion that the appointment of Members of the Commission, being a quasi-judicial body, must be done in a manner as transparent as possible. It can be similar to that of the Tribunal and there is no reason to deviate from a well-established procedure. This will help gain confidence of the taxpayers in this Institution.

AIFTP conducted a survey on various issues – including the appointment of Members of the Commission – relating to tax administration, the findings of which were released at the 12<sup>th</sup> National Convention at Mumbai on 24-12-2012. (Souvenir, P. No. 149). 97% of the professionals surveyed opined that the Government should appoint at least few members from the profession. In order to achieve the desired results in settlement proceedings, it is imperative that the benches of the Commission consist of persons of diverse backgrounds. The ideal combination of a bench would be a Member each from the Department, law profession and accountancy profession. The Members should ideally have tenure of at least five years and the Chairman of at least two years, so that he/she can take important decisions relating to regulation of its procedures.

There ought to be a mechanism wherein, if it is found that a Member has compromised his integrity, he or she should be removed promptly following due process of the law. Further as per the amended Service Rules applicable



to the Members of the Customs, Excise and Service Tax Appellate Tribunal and the ITAT, a Member cannot practice before the same forum after retirement. Introduction of such a provision for the Members of the Commission would undoubtedly elevate the stature of the Institution.

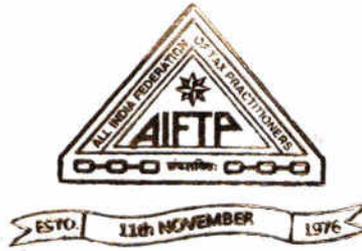
**3. Advance Ruling for taxation – scope may be extended to Residents by giving power to Income Tax Appellate Tribunal**

One of the very important provision in the Maharashtra VAT legislation is the provision for Advance Rulings on the interpretation of any provision of the Act, Rules or Notification in respect of a transaction proposed to be entered into by any registered dealer even though such question has not arisen in any proceedings. The Advance Ruling is given by the Bench consisting of three members of the Sales Tax Tribunal, i.e. Chairman, senior Practitioner nominated by the President of the Tribunal and an officer of Sales Tax Department not below the rank of Jt. Commissioner nominated by the Commissioner of Sales Tax.

If similar provision is introduced in the Income tax Act, for all residents, litigation can be substantial reduced and tax payers will know the tax liability. Federation is of the view that the Income tax Appellate Tribunal is more competent to decide the issues relating to Advance Rulings. It is therefore, suggested that in respect of residents the power and authority for advance rulings may be given to the Income tax Appellate Tribunal.

**4. Arbitration in tax matters (Lok Adalat)**

The Government may consider the proposal of constituting a committee consisting of representatives from legal and accountancy profession and from the tax department of the rank of Principal Chief Commissioner of Income-tax for arbitration in tax matters. The assessee may refer the matter



to such committee within 30 days of receipt of the order from the assessing officer and the committee should pass an order within six months from the receipt of application. The order passed by such committee may be made binding on both the parties. To begin with the matters like technical defaults, refunds, etc. may be referred for resolution. The concept of Lok Adalat may be introduced. The Government may consider the services of retired members of Tribunal. The proposal will benefit the tax payers as well as the tax department.

**5. E-bench of Supreme Court can be an effective alternative for having 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**

A common man of our country cannot even think of approaching the Apex Court for justice as it is beyond his reach. One can imagine how expensive it would be for the citizens to approach the Supreme Court for justice and thereby constitution of an e-bench of the Supreme Court is the need of the hour. The hearing of a 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 State wise matters, e.g. one day could be for matters of Mumbai, another day could be for matters from Chennai or other places, etc. Initially, an option may be given to the parties for hearing 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 at Mumbai. The experience has been 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. One Court room of the respective High Court may be converted in to an E-Court.

**6. 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 the delay in disposal of cases by the trial courts. Income-tax being a specialized subject, the prosecution cases may be heard by a special court of two judges, similar to the Tribunal, and, thereafter, an appeal may lie directly to the Jurisdictional High Court. This will help in speedy disposal of matters. In fact, speedy prosecution will have great deterrent effect.

**7. 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 only knowing well that the same 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 up held 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."*

Bringing in accountability in the tax administration is the first step in reducing avoidable litigation and would benefit honest tax payers of the country.

## **8. Return of Agricultural income**

In case where a person is claiming to be earning only exempt income say, for example, agricultural income, and, the receipt is, say, for example, above Rs. 10 lacs, he may be asked to file returns which will enable the department to find out whether the income shown is exempt income or from any other undisclosed sources.

## **9. Independent Committee to suggest amendments in Tax Laws**

An independent Committee consisting of representatives from profession, tax administration, taxpayers, judiciary, etc. ongoing basis may scrutinise suggestions received from various bodies. After examining in detail, they may suggest amendments which should be made public and debated. If this process is followed, Federation is sure 90% of litigation will be reduced automatically.

## **II. Specific**

### **1. Appeals to the Tribunal**

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 Jurisdictional 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 speedy justice from the Tribunal.

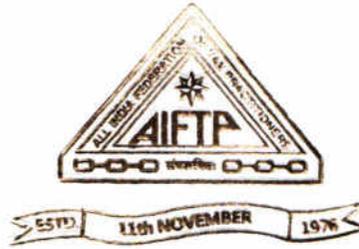
## 2. Single Member

As per section 253(3), a single member of the ITAT can decide the matter if the assessed income is up to Rs. 50 lakhs. It is seen that many times the assessed income may be more than 50 lakhs but the disputed amount is less than 50 lakhs. Hence matters should be decided on the basis of disputed amount instead of assessed income.

Further, in cases of penalties or interest, even if the amount is only Rs. 10,000/-, still it has to be decided by a division Bench. It is desired that an amendment may be made in the Act wherein, if the penalty or interest is up to Rs. 10 lakh, it may be decided by a single member of the ITAT, which will help in speedy disposal of the matters. It may also be considered that instead of "assessed income", "tax / penalty / interest in dispute", may be decided by the Single Member Bench.

For appeals relating to tax deduction at source, if the amount of subject matter in dispute is less than Rs. 2 lakhs, the same may be heard by Single Member Bench.

Sometimes even in cases where the loss assessed is more than Rs. 50 lakhs is heard by single member Bench. The law may be amended so that, when



the loss assessed is more than Rs. 50 lakhs, the matter may be referred to division Bench

**3. Direct appeal to the Supreme Court to attain finality on important issues**

Earlier Section 257 of the Income-tax Act provided for direct reference to Supreme Court, which was applicable to orders passed before 1-10 1998. No such provision is incorporated after the insertion of section 260A. The Income-tax Appellate Tribunal refers the matters to a special bench when there is a conflicting decision of a co-ordinate bench. 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 Act is an all India statute, the Tribunal sitting in a particular State is bound by the decision of respective High Court of a 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 on its own, or by an application made by the assessee or department. If this process is followed, there will be certainty in tax law which will also help to reduce pendency of cases before various High Courts and finality may be attained on some of the important issues within a reasonable time.

**4. Appealable orders S. 246A**

Every order passed by Income tax authority, i.e. Assessing Officer / tax recovery Officer, etc. which has the effect of adversely affecting an assessee in any manner may be made appealable before the Commissioner (Appeals)

**5. Time limit for passing orders by CIT(A)s**

Though there are time limits for AO to pass order, there is no time limit for appellate authorities. Hence there should be some time limit to pass orders



for CIT(A) and also there has to be time limit for sending remand report to the CIT(A). The CIT(A) may be directed to pass order within prescribed time, from conclusion of the hearing, not later than 90 days from the end of the month of the hearing. Concept for time barring can be brought at CIT(A) level stage as well. This concept is already prevailing under the DRP route and can be brought for CIT(A) route as well.

### **III. Procedural**

#### **1. Monitoring tax appeals - National tax litigation Cell**

Though the I.T. Department is the single biggest litigant in the higher judiciary across India, it appears that the Income-tax Department does not have a centralized wing to effectively monitor its appeals from the stage of inception until 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. This will help the Department in quantitative and qualitative disposal.

#### **2. Acceptance of orders of High Courts**

Earlier, 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. This practice seems to have been discontinued now. If this process is adopted and instructions /circular are published, litigations shall be reduced considerably. Hon'ble Bombay High Court in CIT v. TCL Ltd. (2016) 241 Taxman 138 (Bom.)(HC) has passed a detailed order asking the Chief Commissioner of Income tax to post details of the matters admitted before



the Bombay High Court, matters accepted by the Revenue, etc. online. Though the assurance was given by filing an affidavit, however, no action seems to have been taken by the tax administrative authorities in this regard.

**3. Mechanism to discuss and take action on suggestions made by the Apex Court, High Courts and other Judicial authorities**

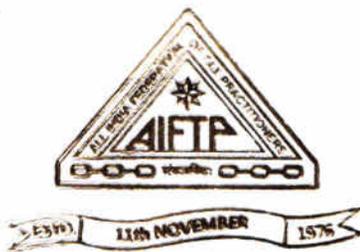
It has been observed that various High Courts make several recommendations to CBDT to look into certain matters and take appropriate measures. However, it appears, there is no mechanism to find out whether the issue is actually brought to the notice of the Ministry concerned and what action has been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

**4. Instructions and statements**

All Instructions may be made available to the public. As soon as statement of an assessee is taken in course of search and survey, a copy thereof may be made available to the deponent. In search cases, the appraisal report may also be made available to the assesses. This will bring more transparency and also accountability.

**5. Appeal effects are not given in time**

It is too difficult to get timely appeal effect, though section 153 provides for the same. It is desired that there has to be internal reporting system to monitor whether appeal effect has been given or not.



**6. Proper monitoring of rectification application**

There should be proper monitoring of all Rectification Applications filed. There should be proper reporting of the number of applications filed, disposed and pending disposal and concerned officer should be answerable for long pending rectifications.

**7. Prosecution and compounding fee**

In number of matters, notices for prosecution are issued though the matters are pending before first appellate authority and in some of the cases, even penalty appeals are pending before the Tribunal. This has resulted in unnecessary harassment to honest tax payers which may be avoided. Compounding Fee may be liberalised. The matters pending before the Courts, which are pending for more than 15 years, may be compounded by taking nominal compounding fees.

**8. Tax deduction at Source.**

At present there are more than 25 sections under which the assessee is required to deduct tax at source and file the returns. Many a times there is no clarity on various issues. It is desired that one may consider having concept of passbook and only one return for all Tax deducted at source. The assessee may deposit the amount as advance or may adjust against various taxes to be deducted. This will help to reduce the compliance provisions.

**9. Tax Benches in High Courts**

It may be noted that the pendency before ITAT is only 90000 appeals and the matters are heard within two years of filing of appeals and in some of the Benches within six months of filing of appeals. However, in some of the High Court's due to shortage of judges the tax matters are not heard within



reasonable time. In cities like Mumbai for admission, it takes around two to three years and if admitted for final hearing, it takes another 10 years. It is desired that the High Court should have a continuous and dedicated tax bench for the tax litigation. If revenue prepares the list of pending cases which are admitted and to be admitted and the questions of law involved, it may help quick disposal of pending matters before various Courts and also Apex Court. In tax matters it is the department which is always a party either as petitioner or respondent hence, it may be easy to prepare the list. Once the list is prepared, it can be published in the website which can also help the assesses as well as the department. This project can be done with the co-operation of the tax Bar of the respective State. All India Federation of Tax Practitioners, will be ready to help the tax administration, if an opportunity is given to them.

I therefore request you to kindly consider the afore-mentioned suggestions.

With sincere regards,

Yours sincerely,

Dr. Ashok Saraf  
Sr. Advocate  
National President