

Chapter VII: The Appeal Process in Income Tax Department

7.1 Introduction

In accordance with the provisions contained in chapter XX of the Income Tax Act, 1961, (Act) if an assessee is not satisfied with his assessment, he can file an appeal with the Commissioner of Income Tax (Appeals) [CIT(A)] against the order of an Assessing Officer (AO) and the AO shall comply with the directions given in the appellate order. Alternatively, the assessee or the ITD can initiate the proceedings for revision of assessment order. An appeal against the order of CIT (A) can be preferred by the assessee or the Income Tax Department (ITD) to the Income Tax Appellate Tribunal (ITAT). The order of the Appellate Tribunal can be challenged by the assessee or the ITD in the High Court. Similarly, orders of the High Court can be challenged by preferring an appeal to the Supreme Court which is the final authority.

7.2 Law and Procedures

Sections 246 to 262 of the Act deal with the provisions of Appeal before the CIT (Appeal), ITAT, High Court and Supreme Court. Besides, the appeals are governed by the latest judicial pronouncements as well as circulars/ instructions issued by the Central Board of Direct Taxes (CBDT) from time to time.

7.3 Objectives of the audit

The objectives of audit were to ascertain whether:

- a. the provisions of the Act/Rules/CBDT circulars/instructions etc. in respect of the procedure for filing, allowing, disposing and monitoring of appeals are complied with.
- b. the appellate orders are implemented accurately and without delay to avoid inconvenience to the taxpayer, blockade of revenue to Government and unnecessary payment of interest.

7.4 Audit criteria

The following sources of criteria were considered for evaluating the appeal process.

- a. Provisions of the Act/Rules
- b. CBDT Circulars/instructions
- c. Judicial pronouncements
- d. Citizen's Charter 2014 of the ITD
- e. Manual of office procedure of ITD

7.5 Audit Methodology

The audit methodology included:

- a. Selection of cases from the Demand and Collection Register, where orders giving effect to appellate orders were passed during the period of audit coverage.
- b. Carrying out Audit checks in respect of selected cases and issuance of observations by way of half margins as well as draft report to the ITD. ITD replies were suitably incorporated wherever received.
- c. Seeking replies/comments of the Ministry for audit findings (sent in July 2017) and incorporating the same as appropriate (replies received on 11 September 2017).

7.6 Audit Coverage and Sample Size

The audit covered cases of appeals which were decided by various appellate authorities viz. CIT(A), ITAT, High Court and Supreme Court during the years 2013-14 to 2015-16 and their implementation by AOs. We categorized states in 'A' and 'B' and selected the charges as follows:

Category "A" States ¹⁰⁷	Category "B" States ¹⁰⁸
2 Pr. CIT/CIT (Corporate Assesseees) including 1 Pr. CIT (Large Tax Payers Unit), 2 Pr. CIT/CIT (Central)	1 Pr. CIT/CIT (Corporate Assesseees) 1 Pr. CIT/CIT (Central)
1 Pr. CIT/CIT (non-corporate assesseees) 1 Pr. CIT/CIT (International Taxation)	1 Pr. CIT/CIT (Non-corporate assesseees) 1 Pr. CIT/CIT (Exemption)
1 Pr. CIT/CIT (Exemption) 1 Pr. CIT/CIT (TDS)	1 Pr. CIT/CIT (TDS)

Within the selected Pr. CIT/CIT, Circles selection was 100 *per cent* and that of Wards was 33 *per cent*. On the above basis, 103 Pr. CsIT consisting of 689 units, i.e. 407 Circles and 282 Wards were selected in Audit.

7.7 Non-Production of Records

From 689 units, a total of 26,465 cases were selected from Demand & Collection registers for examination. Out of 26,465 cases selected and requisitioned, 17,097 cases were produced & audited and remaining 9,368 cases were not produced. Non-production of records of those requisitioned worked out to 35.40 *per cent*. The non-production of records by the ITD of those requisitioned was 67 *per cent* in J&K, 59 *per cent* in Mumbai, 54 *per cent* in West Bengal,

¹⁰⁷ Andhra Pradesh, Delhi, Gujarat, Karnataka, Maharashtra, Tamil Nadu, Uttar Pradesh and West Bengal

¹⁰⁸ Bihar, UT-Chandigarh, Chhattisgarh, Goa, Himachal Pradesh, Jammu & Kashmir, Jharkhand, Kerala, Madhya Pradesh, North East States, Odisha, Punjab, Rajasthan and Uttrakhand,

55 per cent in Uttar Pradesh, 49 per cent in Odisha and 16 per cent in Punjab.

The Ministry replied (September 2017) that there exists instructions to produce the records to the Audit Party as and when requisitioned. However, if records could not have been produced due to any reasons, records should be produced in next cycle of Audit.

The non-production of the records has constrained Audit from checking the sample originally planned for its analysis on the subject. Production of records in next cycle will not help as the reports has already been finalized.

7.8 Sustainability of additions made by AOs and success rate of appeals of ITD

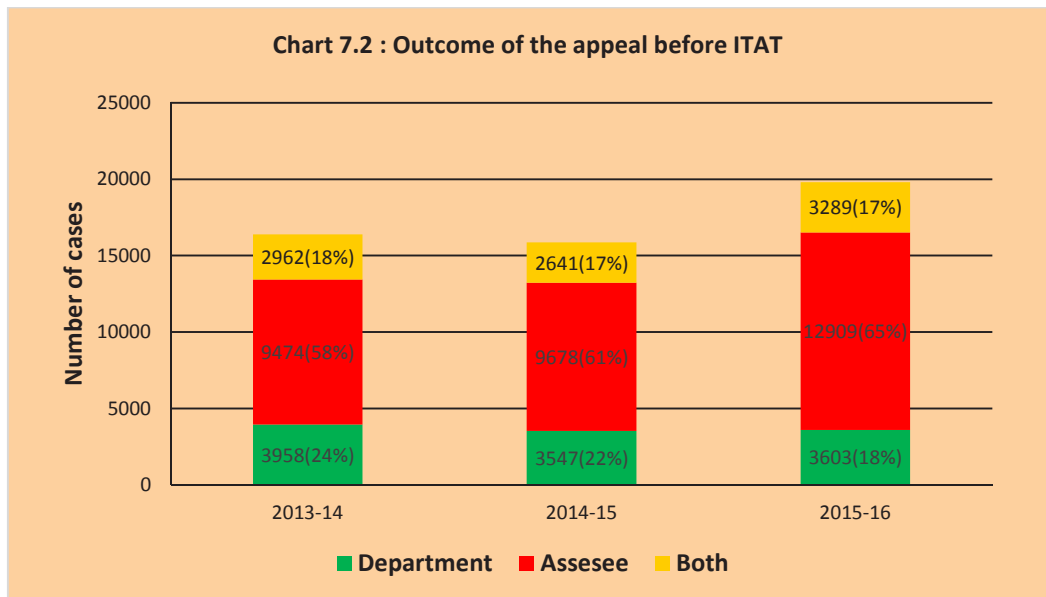
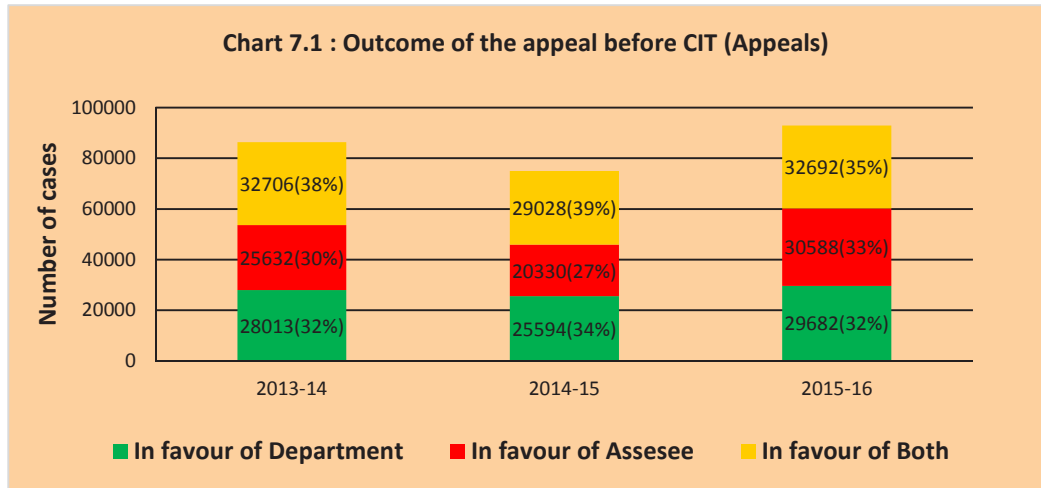
7.8.1 We examined 17,097 appeal cases produced by ITD and found irregularities in 2,203 cases involving tax effect of ₹ 549.56 crore related to non-compliance of the provisions of the Act/Rules/CBDT circulars etc. Such irregularities accounted for more than 12 per cent of total cases audited which is a significant per cent.

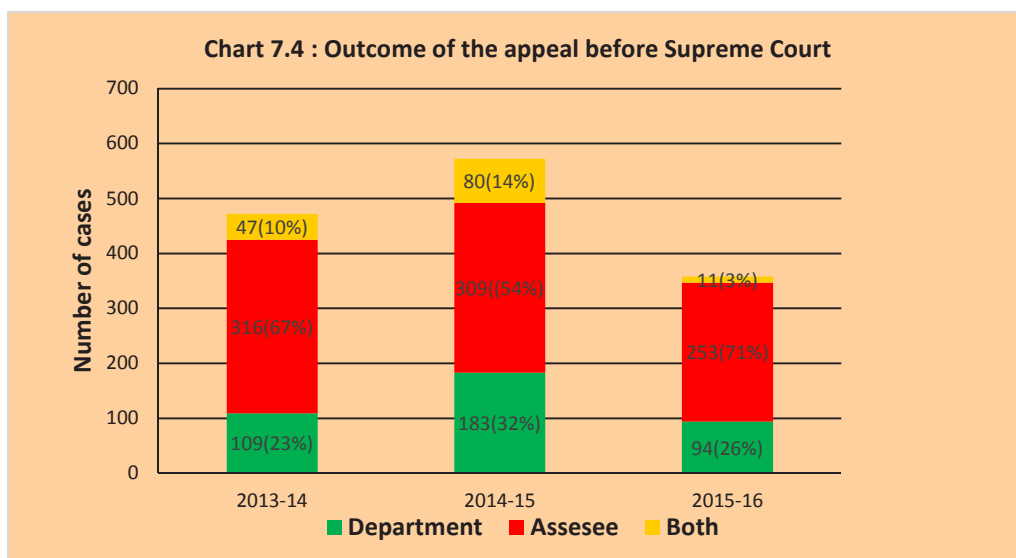
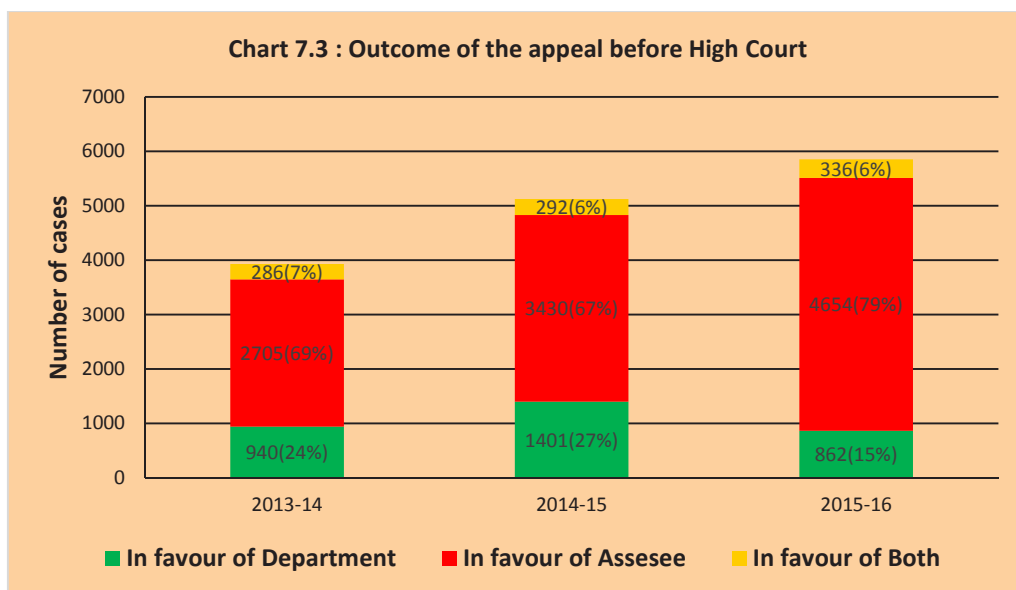
7.8.2 We carried out a study in five Pr. CsIT in Mumbai and one Pr. CIT in Pune to assess the sustainability of additions made by AOs before various appellate authorities. Out of 750 appeal cases produced to audit, we selected 318 cases in which addition to the income of the assessee was made by AOs during scrutiny assessment. The outcome of the study which is produced below showed that the sustainability of additions made by ITD before the appellate authorities was low:

- a. In 318 cases of scrutiny assessment, addition of ₹ 10,676.90 crore were made by the AOs to the income of the assessees, out of which, only ₹ 2,214.60 crore i.e. 20.74 per cent of the added amount could be sustained by the conclusion of appeal effect.
- b. In 45 cases of block assessment¹⁰⁹, addition of ₹ 801.08 crore were made by the AOs to the income of the assessees. However, after the conclusion of appeal effect, not only these additions were completely deleted but also the additional relief of ₹ 281.06 crore was granted to the assessees by the appellate authorities. Consequently, the returned income of ₹ 1,484.17 crore was decreased by ₹ 281.06 crore and the income after appeal effect was computed at ₹ 1,203.11 crore.
- c. In 134 cases, penalty of ₹ 156.69 crore was imposed against the assessees by AOs, out of which only ₹ 25.63 crore i.e. 16.36 per cent of the penal amount could be sustained after the appeal effect.

¹⁰⁹ Block assessment is an assessment of block period comprising six assessment years preceding the previous year in which the search was conducted under section 132

7.8.3 Information received from Directorate General of Income Tax (Logistics), Research & Statistics Wing revealed that the success rate achieved by the ITD was low especially in appeals at the levels of ITAT, High Court and Supreme Court during the years 2013-14 to 2015-16. Appeal cases decided in favour of the ITD, those in favour of the assessee and both (partly in favour of ITD and partly in favour of assessee) before each of the appellate authority have been depicted in the graphs given below:





7.8.4 Thus, the overall success rate in appeals achieved by the ITD was low. The success rate of the ITD deteriorated as we look at the outcome of the appeal at successively higher levels of appeal. Significant non-compliance to the provisions of the Act/Rules/Circulars in the implementation of appeal process could be one of the reasons for low sustainability of the additions made by the ITD before the appellate authorities and low success rate of the ITD before the appellate authorities.

The Ministry replied (September 2017) that following steps have already been taken in this regard:

- (i) A Central Technical Committee (CTC) and Regional Technical Committees (RTCs) have been created at the level of CBDT & Pr.CCIT Charges respectively to resolve contentious legal issues and to formulate Departmental View/Settled View.*
- (ii) An internet based litigation management system National Judicial Reference System (NJRS) is fully functional.*
- (iii) Extensive workshops by the*

Directorate of Income Tax (L&R) at various field stations and Training Institutes are organised to sensitise/train officers about improving quality of litigation.

(iv) Instructions/letters were issued from time to time by the Board for steps taken towards a non-adversarial tax regime and filing of appeals on merit criteria.

Audit is of the view that despite all the above mentioned steps taken by ITD, the compliance to the provisions of the Act, Rules/Circulars, the sustainability of additions made as well as overall success rate in appeals achieved by ITD before the appellate authorities was low, suggesting a need to improve their functioning.

7.9 Irregularities in admission of appeals, non-observance of directions of appellate authorities and other irregularities

We examined the appeal cases to see the extent of compliance with the provisions of the Act and circulars/instructions issued by the CBDT from time to time in respect of admission, condonation and escalation of appeal to the appellate authorities. We found irregularities in 187 cases due to delay in filing, non-condonation of delay, non-deposit of tax on the returned income before filing of appeal, non-escalation of the level of appeal, loss of revenue due to non-compliance of relevant provisions of the Act etc. Findings of non-compliance of the provisions of the Act are discussed in ensuing paragraphs with the illustrated cases.

7.9.1 Admission of appeals in contravention of provisions of the Act

7.9.1.1 Section 249(4)(a) of the Act provides that no appeal shall be admitted unless the assessee had paid the tax due on the returned income. We found mistakes in eight cases¹¹⁰ where the appeal had been admitted and disposed of, ignoring the precondition of payment of tax on returned income by the assessee before filing the appeal. Two such cases are illustrated below:

Charge: Pr. CIT Central, Panaji, Goa; AY: 2011-12

Assessee: M/s. Muktar Minerals Pvt. Ltd.; PAN: AAECM0510E

Assessee filed its return of income in September 2011 at ₹ 5.70 crore with payable tax of ₹ 2.08 crore thereon. AO completed the assessment¹¹¹ in March 2014 at an income of ₹ 13.70 crore with a tax demand of ₹ 6.26 crore against which assessee filed an appeal before CIT(A) in April 2014. Audit noticed that CIT(A) admitted the appeal and subsequently passed the order in July 2015 ignoring the fact that the assessee had not paid total tax due on

110 In Gujarat, West Bengal and Goa.

111 Under section 153A read with section 143(3) of the Act

returned income before filing of appeal. Thus, failure to ensure fulfilment of precondition of filing of appeal resulted in incorrect admission of appeal.

Charge: Pr. CIT – 4, Kolkata, West Bengal; AY: 2004-05

Assessee: Shilpa Creation (P) Ltd.; PAN: AAEC5267L

Assessee filed its return of income in March 2005 at ₹ 31.12 lakh with payable tax of ₹ 10.60 lakh thereon. AO completed the assessment after scrutiny in December 2006 at an income of ₹ 1.48 crore with a tax demand of ₹ 72.48 lakh against which assessee filed an appeal before CIT(A) in February 2007. Audit noticed that out of total tax of ₹ 10.60 lakh due on returned income, the assessee had paid only ₹ 4.49 lakh before filing of appeal. However, the CIT(A) admitted the appeal and subsequently passed order in July 2013 by allowing relief of ₹ 1.01 crore lakh from the total income of the assessee ignoring the fact that the assessee had not paid total tax due on returned income before filing of appeal.

7.9.1.2 Section 249(2)(c) of the Act provides that the appeal made to the CIT (Appeals) shall be presented within 30 days of the date on which intimation of the order sought to be appealed against is served. The CIT (Appeals) can condone¹¹² the delay in filing the appeal if there is sufficient cause for the same. Although he is not bound to give an opportunity of hearing in the case of belated appeals, on grounds of equity, such opportunity should be given before a belated appeal is rejected. After the hearing, if the CIT(Appeals) is of the opinion that the delay should not be condoned, he should pass an order accordingly. Where the CIT(Appeals) has condoned the delay and admitted the appeal, he should not only record the reasons for condoning the delay in the order sheet, but should had also discussed the same in the appellate order. This measure is intended to enable the ITD to decide whether the reasons recorded in the appellate order admitting the time barred appeal should be made the subject of further appeal to the ITAT. Audit noticed 71 cases¹¹³ where the assessee had delayed in filing of appeal with the CIT(A)¹¹⁴. The delay ranged between 0-6 months in 57 cases, between 6 months to one year in 12 cases and in two cases more than one year. However, the appeal was admitted without condonation of delay and no record of the reasons for condoning the delay was found in the order sheet.

The Ministry replied (September 2017) that the irregularities found on account of admission of appeals by CIT(A) ignoring the preconditions of payments of Tax, admission of appeals by CIT(A) without condonation of delay and/or non-recording the reasons for condoning the delay and dismissal of appeals due to non-compliance of directions of appellate Authorities have been noted and that

112 Paragraph 5.1 of the Manual of Office Procedure (Chapter 18, Volume II, Part A Technical)

113 69 cases in Tamil Nadu and 02 cases in West Bengal

114 CIT (Appeals)-1, 2, 16, 17, 18 and 19 of Tamil Nadu and CIT (Appeal)-13 and 21 Kolkata.

in order to sensitize the issue to the field Authorities a letter to all Pr. CCITs was being issued.

The reply of the Ministry is general in nature. The Ministry has not specifically stated what action it proposes to check non-recurrence of such irregularities.

7.9.1.3 It is prescribed¹¹⁵ that as soon as an appeal petition is received in the office of the CIT (Appeal), the same is scrutinised and the CIT (Appeal) is required to send an intimation to the concerned AO in form ITNS-51 enclosing a copy of the appeal memo. The reverse of this form requires certain data or particulars which are to be filled by the AO and returned to the CIT(A). In the order sheet, the information with reference to date of forwarding ITNS 51 to AO and date of receipt of report from AO is required to be filled up. Such entries, inter alia, include information as to whether appeal is within the limitation period and whether admitted tax payable has been paid by the appellant.

On scrutiny of appeal cases disposed of during the financial years 2013-14 to 2015-16 under the CIT(A) charges¹¹⁶ of Tamil Nadu, we noticed in 26 cases that such entries were not made in the order sheet which were essential to decide the admissibility of the appeals by the CIT (Appeals). We also noticed in 18 cases in Karnataka under Belgaum charge that the intimation memo ITNS 51 had not been returned by the AO to the CIT (A) even though the appeals were admitted and disposed of by the CIT (A).

The Ministry replied (September 2017) that the period covered in audit was prior to launch of Appeals module of ITBA and that with the operationalization and stabilization of its Appeals module, the likelihood of a delay in disposal of appeals by CIT(A) and lapses in furnishing ITNS-51 by AOs would stand eliminated.

7.9.2 Dismissal of Appeals due to non-observance of directions of appellate authorities

The appellate authority may issue directions to ITD as it thinks fit for disposal of appeal. It is obligatory for ITD to follow the directions of the appellate authority within the time schedule fixed by the authority to facilitate the admission/disposal of appeal. We noticed seven cases¹¹⁷ where the directions of the appellate authorities (High Court - 5 cases; ITAT - 4 cases) were not observed by the ITD, as a result, appeals of the ITD were dismissed by the appellate authorities. One such illustrative case is shown below:

115 Paragraph 8.3 of the Manual of Office Procedure (Chapter 18, Volume II, Part A Technical)

116 CIT (Appeals)-1, 2, 16, 17, 18 & 19 of Tamil Nadu

117 Goa and West Bengal

Charge: Pr. CIT-4 Kolkata, West Bengal; AY: 1998-99

Assessee: M/s Classic Infrastructure and Development; PAN/GIR: JCIT/SR-4/C-795/Cal

The CIT(A) deleted an addition of ₹ 6.14 crore made by AO in the scrutiny assessment (March 2001) on account of 'interest charged on the loan fund' and the ITAT also confirmed the decision of CIT(A). The High Court admitted the appeal of ITD in November 2005 and directed the ITD to serve the notice of appeal to the respondent within eight weeks. However, ITD did not serve the notice of appeal to the respondent despite repeated opportunities given by the High Court, though the matter was listed for hearing. The High Court, thereafter, dismissed the appeal citing the reason that the appellant was not interested in pursuing the appeal. Thus, non-compliance of the directions of the appellate authority by the ITD led to the dismissal of the appeal which was preferred by ITD itself in the High Court.

7.9.3 Other irregularities resulting in loss of revenue

7.9.3.1 Non-sustainability of additions by AOs

The ITD may comply with all the prescribed provisions of the Act at the time of making the additions in the income of the assessee through income escapement proceedings and revision orders under sections 147 and 263 of the Act respectively, so that these additions could sustain before the appellate authorities. The ITD may take action as per CBDT circulars and instructions etc. so as to avoid dismissal of appeals by the appellate authorities. Audit noticed irregularities in 57 cases¹¹⁸ where non-compliance of the relevant provisions of the Act, CBDT Circulars, instructions etc. by the AOs resulted in loss of revenue. One such case is illustrated below:

Charge: Pr. CIT VI, Panchkula, Haryana; AYs 2005-06 to 2009-10 & 2011-12

Assessee: Haryana Vidyut Prasaran Nigam Ltd.; PAN: AAACH9216J

CBDT vide Circular F.No.12/113/68-IT (A-II) dated 28 October 1968 had clarified that there is no need to deduct tax at source while making payment to institutions whose income is exempt under the Act.

The assessment for AYs 2005-06 to 2009-10 and 2011-12 were completed after scrutiny between December 2007 to January 2014 by making, inter alia, additions under section 40(a)(ia) for payment of interest aggregating ₹ 56.66 crore to Market Committees on account of non-deduction of TDS. Aggrieved with addition made by AO, the assessee filed appeals with CIT(A) which deleted the addition made by AO in view of the above circular. The ITD

118 Andhra Pradesh, Assam, Delhi, Gujarat, Haryana, Jammu & Kashmir, Karnataka, Maharashtra, Odisha, Tamil Nadu, and West Bengal

filed further appeal before ITAT which was also dismissed on the ground that the Market Committees being charitable institutions are not liable to tax under section 11 of the Act and hence, the provisions of deduction of tax at source were not applicable. Non-compliance of CBDT instructions resulted in avoidable escalation of appeals.

7.9.3.2 Non-compliance of instructions relating to maintenance of appeal disposal register by CIT(A)

Para 27.1 of Chapter 18 of ITD – MOP (Vol.II) prescribes the registers to be maintained by the CIT(Appeals) viz. Register of Appeals (ITNS 133) and Register of Disposals (ITNS 134) in order to have proper watch of appeal process. The ITNS 133 consists information like date of receipt of filing of the appeal, order appealed against etc. and after disposal of the appeal petition, the date of disposal/number in disposal Register (if appeal was transferred to whom) etc. whereas the disposal register consists the details like the date of appellate order, the outcome of the appeal, enhancement/reduction etc., which are essential information for monitoring the appeal process. We noticed irregularities in maintenance of Register of Appeals (ITNS 133) and Register of Disposals (ITNS 134) as discussed below:

- a. In Maharashtra, CIT(A)-13 Pune charge, Register of Disposals was not maintained at all whereas in CIT(A)-6 Pune charge, Register of Disposals had not been maintained in prescribed format. Further, in CIT(A)-1, CIT(A)-49 and CIT(A)-50 Mumbai charge, column number six “Date of last hearing” was either left blank or filled with assessment year.
- b. In Tamil Nadu, the Register of Appeals maintained in ITNS-133 did not contain the details of the date of disposal and the Register of Disposals was not maintained at all.
- c. In Kerala, four out of eight offices of CIT(A) did not maintain the Register of Appeals in proper format.

7.9.3.3 Non-maintenance/improper maintenance of Appeal Register by AO

According to para 27.2 of Income Tax Department’s Manual of Office Procedure (Chapter 18, Volume –II, Technical), AO has to maintain the Appeal Register in the prescribed form ITNS-61 to ensure scrutiny of the appellate orders, timely filing of appeals and uniform implementation of the appellate orders. We noticed in 14 states¹¹⁹ that 254 out of 332 Appeal Registers produced to audit were not maintained in the prescribed form.

The Ministry replied (September 2017) that the issues such as non-maintenance of Registers and incomplete data entry with regard to handling and disposal of

119 Andhra Pradesh, Chhattisgarh, Delhi, Gujarat, Haryana, Himachal Pradesh, Karnataka Kerala, Madhya Pradesh, Maharashtra, Odisha, Punjab, Rajasthan, Tamil Nadu,

appeals have been addressed in the Appeals module of their ITBA and would be eliminated after the entire transition from manual to system environment stabilizes.

7.9.3.4 Non-Inspection of CIT (A)'s work by the Pr. CCIT

CBDT Instruction No. 16 dated 04.11.2008 provides that an annual inspection of the office of CIT (A) would be carried out by the concerned Pr. Chief Commissioner of Income tax to examine and comment on overall functioning of the office in the light of various Government instructions in general and CBDT instructions in particular. Audit observed that, inspections in compliance with the CBDT instructions had not been carried out in the following cases.

- a. In Maharashtra, Mumbai charge, no inspection had been conducted in the office of CIT(A)-1, CIT(A)-5, CIT(A)-49, CIT(A)-50, Mumbai and CIT(A)-13, Pune during the period 2013-14 to 2015-16.
- b. In Andhra Pradesh, Hyderabad charge, inspection of CIT (A)-4 for the year 2015-16 was not conducted by Pr. CIT, Hyderabad. Inspection of CIT(A) Visakhapatnam for the years 2014-15 and 2015-16 were not carried out as no regular CCIT was posted at Visakhapatnam.
- c. In Rajasthan, CCIT Jodhpur and Udaipur charge, the details of inspection carried out and the inspection report had not been provided.
- d. In Gujarat, only four inspection of offices of CsIT(A) had been conducted by CCIT-2 Ahmadabad against the target of total 15 to be carried out during the period 2013-14 to 2015-16.
- e. In Punjab, Pr CCIT Ludhiana charge, inspection was not conducted during the period 2013-16.
- f. In Karnataka, Bengaluru charge, no inspection for FYs 2013-14 to 2014-15 had been conducted in respect of six CsIT (Appeal).
- g. In Chhatisgarh, no inspection was conducted by the Pr. CIT during the period 2013-16.
- h. In Madhya Pradesh, no inspection was conducted by the Pr. CIT during the period 2013-16.

Inspection of CIT(A) by Pr. CCIT is one of the monitoring mechanisms which is essential for strengthening the internal control of appeal process. Lack of inspection of the CIT(A)'s work by the CCIT indicates lack of monitoring on the appeal process leading to various irregularities and compliance issues such as admission of appeals by CIT(A) without fulfilling its pre-conditions, delay in issue of appellate orders, non-maintenance of appeal disposal register etc. *The Ministry replied (September 2017) that the audit observation has been noted and that in order to sensitise the issue to the field authorities a letter to all Pr. CCsIT was being issued.*

7.10 Implementation of appellate order by AOs

While giving effect to an appellate order, the AO shall comply with the directions given in the appellate order and ensure the arithmetical accuracy. The administrative Commissioner (CIT) has the responsibility to monitor the implementation of appellate orders by AOs under its charge. We noticed in 2016 cases involving tax effect of ₹ 549.56 crore where AOs committed mistakes while giving effect to appellate order or delay in implementation of appellate order leading to avoidable payment of interest and blockade of revenue. This also indicates inadequate attention and monitoring on the part of CsIT in the implementation of appellate orders by the AOs. Mistakes/ delays in giving effect to appellate orders and consequences thereof are discussed in ensuing paragraphs with the illustrated cases.

7.10.1 Mistakes in giving effect to appellate orders

We noticed mistakes in 219 cases across 15 states¹²⁰ involving tax effect of ₹ 286.44 crore while giving effect to appellate orders on account of non-consideration of the refund already issued to the assessee, short/non levy of interest, incorrect adoption of figures etc. Two such cases are illustrated below:

Charge: Pr. CIT-LTU Mumbai, Maharashtra; AY: 1997-98

Assessee: M/s Bajaj Holdings & Investments Ltd; PAN: AAACB3370K

As per section 244(A)(1) of the Act, when a refund of any amount out of advance tax paid or TDS or TCS becomes due to the assessee, the interest is payable at the rate of 0.5 *per cent* per month or part of month from 1st April of assessment year to the date of grant of refund. No interest is payable if the excess payment is less than 10 *per cent* of the tax determined on regular assessment or under section 143(1).

The AO while giving effect to CIT (Appeals) order in March 2014 processed refund amount of ₹ 9.89 crore which contained refund of ₹ 2.75 crore arising out of Advance Tax and TDS. As the refund amount of ₹ 2.75 crore was less than 10 *per cent* of tax¹²¹ determined under section 143(1), no interest was payable on the said amount. However, ITD paid interest of ₹ 2.27 crore to the assessee in contravention of the provision of the Act.

Charge: Pr.CIT VI, Delhi; AY: 2005-06

Assessee: M/s NTPC Ltd.; PAN: AAACN0255D

The AO, while giving effect to the appellate order in July 2014, omitted to give credit of prepaid taxes of ₹ 362.17 crore to the assessee. The mistake was rectified under section 154 of the Act in October 2014 on the basis of application

120 Andhra Pradesh, Maharashtra, Kerala, Gujarat, Rajasthan, West Bengal, Assam, Karnataka, Goa, Delhi, UT Chandigarh, Uttar Pradesh, Bihar, Jharkhand and Madhya Pradesh

121 ₹ 229.41 crore

filed by the assessee. Audit noticed that the ITD had to pay interest of ₹ 5.43 crore under section 244A for extra period of three months, i.e. August 2014 to October 2014 which led to additional burden on exchequer by an equal amount.

7.10.2 Delay in implementation of appellate order:

The AO is required to implement the appellate order with extraordinary promptness so as to raise fresh demands, if any, and avoid interest payable under section 244A on the refunds which are to be issued to the assessee. Considering this provision, a time limit of one month from the end of the month in which the appellate order was received in the office of the Pr. CITs/ CITs may deem to be sufficient to implement the appellate orders. Further, the Citizen's Charter 2014 of the ITD provides timeliness for giving effect to appellate /revision order within one month from the end of the month in which cause of action arises. In addition to this, Chapter 18, Vol. II of MOP, Technical of the ITD provides that immediate steps should be taken by the AO to revise the assessment in light of the appellate orders. Thus, appeal effect of the appellate orders should be given timely and correctly for taxpayers' convenience and to reduce the liability of the revenue in respect of payment of interest under section 244A. Further, if the demand is to be raised in favour of the revenue, the same should be raised at the earliest to avoid the blockade of revenue.

Audit noticed in 204 cases across 19 states¹²² that the AOs did not implement the appellate orders promptly, as a result, delay occurred in giving effect to the appellate orders, resulting in avoidable payment of interest under section 244A amounting to ₹ 258.61 crore. Four such cases are illustrated below:

Charge: Pr. CIT-2 Mumbai, Maharashtra, AY 2010-11

Assessee: Central Bank of India; PAN: AAACC2498P

The AO made an addition of ₹ 1509.83 crore while completing the assessment after scrutiny in March 2012 which was disputed by the assessee. CIT(A) passed the order in March 2014 which was received in assessment charge in April 2014. Consequent to this order, assessee made a request to the ITD in April 2014 for giving effect to the CIT (Appeals) order. The AO passed the order giving effect to the CIT(Appeal) order in March 2015 after a delay of 10 months which resulted in avoidable payment of interest of ₹ 27.16 crore under section 244A.

¹²² Maharashtra, Kerala, Tamil Nadu, Rajasthan, West Bengal, Assam, Karnataka, Goa, Andhra Pradesh, Delhi, Punjab, Haryana, Himachal Pradesh, Jammu & Kashmir, Uttar Pradesh, Bihar, Odisha, Madhya Pradesh and Uttarakhand

Charge: CIT(LTU), Chennai; AY: 2011-12

Assessee: M/s. Indian Overseas Bank; PAN: AAACI1223J

The CIT(A) passed the order in October 2013 which was received in assessment charge in November 2013. However, the AO gave the appeal effect in May 2014, i.e. after a delay of five months. Delay in giving appeal effect by the AO resulted in avoidable payment of interest under section 244A of ₹ 13.82crore¹²³ on the refund amount of ₹ 552.89 crore.

Charge: Pr. CIT (LTU) Delhi; AY: 2001-02

Assessee: M/s. Indian Railway Finance Corporation Ltd.; PAN:AAACI0681C

The AO made an addition of ₹ 142.02 crore in the assessment of the assessee and raised a demand of ₹ 16.50 crore in February 2004 which was deposited by the assessee within the stipulated time period. The CIT(A) allowed part relief to the assessee (March 2005) against which assessee went into further appeal to ITAT. The ITAT vide order dated 31 January 2011 allowed the appeal of the assessee by deleting the addition of ₹ 142.02 crore made by AO. This order was received in CITs office on 01 April 2011. On the basis of the order of ITAT, the assessee was entitled for a refund of ₹ 16.50 crore along with interest under section 244A from April 2004. However, despite assessee's repeated reminders¹²⁴, the ITD gave the appeal effect of the order of ITAT in January 2014 by issuing the refund of ₹ 26.24 crore consisting of ₹ 16.50 crore (original tax demand deposited by assessee in March 2004) and interest under section 244A amounting to ₹ 9.74 crore from April 2004 to January 2014. The ITD took 33 months¹²⁵ in implementing the ITAT's order, resulting in avoidable payment of interest of ₹ 2.64 crore.

Charge: Pr. CIT VI, Delhi; AY: 2006-07

Assessee: M/s. NTPC Sail Power Company Pvt. Ltd.; PAN:AABCN5467A

The AO made an addition of ₹ 27.16 crore in the assessment order and raised a demand of ₹ 11.50 crore against the assessee in March 2008 which was deposited by the assessee within the scheduled time period. Assessee filed the appeal before the CIT (A) in March 2008 and on the basis of the CIT(A) order date 19 July 2010, all the additions of ₹ 27.16 crore were deleted. This order of the CIT (A) was received in the office of the Pr. CIT in August 2010. As per the order of the CIT (A), the assessee was entitled for a refund of tax of ₹ 11.50 crore along with interest under section 244A from April 2008. Audit noticed that the appeal effect of this order was given in January 2014 and interest under section 244A was paid to the assessee amounting to ₹ 4.03 crore from April 2008 to January 2014. Thus, due to the delay of

123 from January 2014 to May 2014

124 On 02.06.2011, 21.10.2011, 12.10.2012, 16.01.2013, 28.06.2013 and 20.12.2013

125 May 2011 to January 2014

40 months from October 2010 to January 2014 in implementing the appellate order, ITD made an avoidable payment of interest of ₹ 2.30 crore to the assessee.

The Ministry replied (September 2017) that Board had already issued instruction No. 8 of 2011 which contains the timelines for filing appeals before ITAT and giving effect to the order of CIT(A) and that the same was again reiterated vide letter dated 7 October 2015.

Audit is of the view that despite Board's above instructions, the mistakes in giving effect to appellate orders and delay in its implementation continued. ITD's orders remain ineffective due to non-fixing of accountability for non-observance of CBDT's directives and instructions. Reiteration of orders itself is indicative that they are not serving any purpose.

7.10.3 Blockade of revenue due to non-implementation of appellate orders decided in favour of revenue.

Audit noticed in 18 cases across five states¹²⁶ where the appellate authorities gave the decision in favour of revenue, but no action was taken by the ITD to implement the appellate orders. Hence, due to inaction of the ITD, revenue of ₹ 4.52 crore remained blocked till date. One such case is illustrated below:

Charge: Pr. CIT-1, Ahmadabad, Gujarat; AY: 2001-02

Assessee: M/s. Bloom Decor Ltd; PAN: AAACB6221B

An appellate order, favouring the revenue, was passed by the High Court in December 2013 wherein the export benefit amounting to ₹ 1.79 crore was excluded for the purpose of computing deduction under section 80IA of the Act. However, the appeal effect was not given by the AO till January 2017 which resulted in blockade of revenue of ₹ 0.56 crore including interest. The ITD gave effect to High Court's order in June 2017 and raised the demand of ₹ 1.24 crore.

The Ministry replied (September 2017) that the audit observation has been noted and that in order to sensitise the issue to the field authorities a letter to all Pr. CCsIT was being issued.

7.10.4 Delay in issue of orders by the CIT(A)

Volume II para 17.1 of MOP and Board's Instruction No. 20/2003 dated 23 December 2003 stipulates that the appellate orders may be issued by the CIT(A) within 15 days from the last date of hearing. Audit noticed following irregularities in this regard:

126 Uttar Pradesh, Karnataka, Chandigarh, Gujarat and Jharkhand.

- a. In Karnataka, CIT(A)-11 central charge Bangalore, there was a delay in issue of appellate orders in 22 cases. The delay ranged between 0-3 months in 21 cases and more than one year in one case.
- b. In Maharashtra, CIT(A)-5, Mumbai charge, there was a delay in issue of appellate orders in 167 cases. The delay ranged between 0-three months in 157 cases and more than three months in 10 cases. We also noticed in CIT(A)-59, Mumbai charge, the CIT(A) had passed 413 appellate orders beyond 15 days of the last hearing. In other four charges viz CIT(A)-1, CIT(A)-49, CIT(A)-50 Mumbai and CIT(A)-6 Pune, this analysis could not be carried out in absence of proper entries in Register of Disposals.
- c. In Himachal Pradesh, there was a delay in issue of appellate orders by CIT(A) in 372 cases. The delay was less than three months.

The Ministry replied in respect of all the above cases (September 2017) that the Board's Instruction No. 20 of 2003 clearly mandates that appellate orders by CIT(A) should be issued within 15 days of the last hearing and that the observation of the audit in this regard was noted and the relevant instruction was being reiterated through a letter to all Pr. CCsIT.

7.10.5 Delay in supply of appellate orders by CIT(A)

As per Para 19.1 of Chap.18 of ITD – MOP (Vol.II), as soon as the appellate order is passed, a copy of the same should be sent by the CIT(A) to the appellant free of cost either by registered post or through a notice server, without waiting for the appellant to file an application in this regard. Copies of the appellate orders should also be sent to the CIT (in fortnightly batches) and the AO with current jurisdiction over the case and not to Officers who had jurisdiction at the time of passing of the order appealed against.

In Tamil Nadu, we noticed 601 cases where CIT(A) had delayed in supply of appellate orders resulting in late receipt of the order by the appellant/jurisdictional CIT. The delay ranged between 0-1 month in 276 cases, between 1 month to 3 months in 286 cases and in more than three months in 39 cases.

The Ministry replied (September 2017) that the period covered in Audit was prior to launch of Appeals module of ITBA and that the issues raised by Audit would be eliminated once the entire transition from manual to system environment stabilizes.

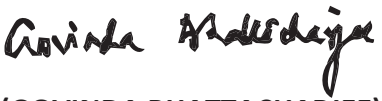
7.11 Conclusion

Audit noticed cases of admission of appeals by the CIT (Appeals) ignoring the preconditions of payment of tax by the assessee and admission of appeals without condonation of delay and/or non-recording the reasons for condoning the delay in the order sheet though there was a significant delay in filing of

appeals to CIT(A). Audit noticed dismissal of appeals due to non-compliance of the directions of the appellate authorities by the ITD. Audit also noticed cases where ITD did not follow the circulars/instructions issued by CBDT which led to dismissal of appeal and subsequently payment of interest to the assessee. Thus, ITD's orders remain ineffective due to non-fixing of accountability for non-observance of CBDT's directives and instructions. Reiteration of orders itself is indicative that they are not serving any purpose. Other irregularities relating to delay in issue of orders by the CIT(A), non/improper maintenance of appeal register by AOs, non-inspection of CIT(A)'s work by the Pr. CCIT etc. were also noticed during audit.

Regarding implementation of appellate orders, audit noticed mistakes in giving effect to the appellate orders on account of non-consideration of the refund already issued to the assessee, short/non levy of the interest etc. We found cases of delay in implementation of appellate orders which resulted in avoidable payment of interest under section 244A to the assessee. Audit also came across cases where the appellate authorities gave decisions in favour of revenue, but no action was taken by the ITD to implement the Appellate orders and revenue remained blocked.

New Delhi
Dated: 15 November 2017


(GOVINDA BHATTACHARJEE)
Director General (Direct Taxes)

Countersigned

New Delhi
Dated: 16 November 2017


(RAJIV MEHRISHI)
Comptroller and Auditor General of India

