


Attempts By CBDT To Destroy The Independence Of CIT (Appeals) (Originally posted on August 26, 2018)

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CA Paras Dawar has taken strong exception to the CBDT castigating CsIT(A) for giving relief to taxpayers “on legal grounds”. He has also condemned the CBDT’s offer of “incentives” to CsIT(A) to enhance assessments. He has argued that by dictating CIT(A)s to carry out appellate proceedings with a preconceived notion and in a prejudiced process, the CBDT has crossed the ‘lakshman rekha’ by compromising a fair and unbiased trial promised by our Constitution

Introduction

Independence of appellate authorities is the foundation for free and fair judicial process. An unbiased mind is a pre-requisite for impartial adjudication by any judicial / quasi-judicial authority. The adjudication of appeals under Income Tax Act, 1961 (‘Act’) are no different. The appellate authorities under the Act comprise of Commissioner Appeals at the first step of the appellate ladder, followed by Income Tax Appellate Tribunal, the High Court and finally the Supreme Court.

Through this article, an attempt has been made to highlight recent attempts by Central Board of Direct Taxes ('CBDT') which vitiates and gravely prejudices adjudication of justice by completely eroding independence of Commissioner-Appeal (First Appellate Authority).

Background

Section 246A of the Income Tax Act, 1961 ('Act') grants an assessee right to file an appeal before the Commissioner of Income Tax – Appeals [hereinafter referred to as 'CIT(A)'] if the assessee is aggrieved by any 'appealable orders' of lower authority. The list of such 'appealable orders' has been illustrated under sub-section (1) of section 246A of the Act.

The CIT(A) shall then fix a day and place for the hearing of the appeal and make such further inquiry as he/she deems fit. After giving opportunity of being heard to both the assessee and the assessing officer and after duly applying his / her mind, the CIT(A) shall proceed to '*confirm, reduce, enhance or annul*' the order under appeal.

The Hon'ble Supreme court in the case of **Sirpur Paper Mills Ltd. vs. The Commissioner of Wealth Tax, Hyderabad (20.04.1970 - SC) : MANU/SC/0295/1970** while adjudicating on powers conferred on Commissioner under section 25 of Wealth Tax Act, 1957 held that :

*"The power conferred by Section 25 is **not administrative it is quasi-judicial.** The expression "may make such inquiry and pass such order thereon" does not confer any absolute discretion on the Commissioner. In exercise of the power **the Commissioner must ring to bear an unbiased mind, consider impartially the objections raised by the aggrieved party, and decide the dispute according to procedure consistent with the principles of natural justice he cannot permit his judgment to be influenced by matters not disclosed to the assessee. nor by dictation of another authority.** Section 13 of the Wealth Tax Act provides that all officers and other persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Board. These instructions may control the exercise of the power of the officers of the Department in matters administrative but not quasi-judicial. The proviso to Section 13 is somewhat obscure in its import. It enacts that no orders, instructions or directions shall be given by the Board so as to interfere with the discretion of the Appellate Assistant Commissioner of Wealth Tax in the exercise of his appellate functions. **It does not, however, imply that the Board may give***

any directions or instructions to the Wealth Tax Officer or to the Commissioner in exercise of his quasi-judicial function. Such an interpretation would be plainly contrary to the scheme of the Act and the nature of the power conferred upon the authorities invested with quasi-judicial power.”

(Emphasis Supplied)

Reference is also drawn to the judgement of Hon’ble Supreme Court in the case of **Union of India (UOI) and Ors. vs. Madras Steel Re-Rollers Association (11.02.2011 – SC) : MANU/SC/0453/2011** where the Hon’ble Court held that :

“Considering the facts and circumstances of the case and relying on the aforesaid decision of this Court, we hold that the Assessing Authorities as well as the Appellate and the Revisional Authorities are creatures of the Act and they perform the functions of the quasi judicial authorities and the orders passed by them are also quasi judicial orders. Therefore, such orders are required to be passed by exercising independent mind and without impartiality and while doing so, such Authorities are required to consider various evidences made available to them.”

(Emphasis Supplied)

In light of law and judicial precedents stated hereinabove, it can be concluded that CIT(A) while adjudicating an appeal before him / her, acts as a ‘quasi-judicial authority’ and is bound to dispose off the appeal with complete impartiality and unbiased mind.

Attempts by CBDT to stifle CIT(A) from acting impartially

In last 6 months, the CBDT in the veil of administering the appellate process and managing litigation under the Act, has issued the following two instruction / policy which wholly compromise the impartiality of CIT(A) while adjudicating an appeal before him / her.

1. “Litigation Management” under Central Action Plan 2018-19

The Central Action Plan 2018-19 issued by CBDT and freely accessible on the website of ‘INCOME TAX GAZETTED OFFICERS’ ASSOCIATION (ITGOA) DELHI UNIT’ under the

link <http://itgoadelhi.org/upload/8a65fb0e52648b55d37dd2ea077e04c5118072018181918.pdf> has a special Chapter titled 'Litigation Management'. While on one hand this Chapter discusses speedy disposal of appeals pending before CIT(A)s, on the other hand this Chapter incentivises passing of 'quality orders' by CIT(A)s.

However, what is shocking and defies conscience is the definition granted by CBDT to a 'quality orders', which non-only prejudices the appellate process, but also penalises an unbiased officer in adjudication of a case on its merit. Relevant extracts from the said Chapter have been reproduced below:

“(3) Incentive for quality orders:

*(i) With a view to encourage quality work by CITs(A), **additional credit of 2 units shall be allowed for each quality appellate order passed.** The CIT (A) may claim such credit by reporting such orders in their monthly DO letter to the CCIT concerned. **Quality cases would include cases where-***

*(a) **enhancement** has been made,*

*(b) **order has been strengthened**, in the opinion of the CCIT, or*

*(c) **penalty u/s 271(1)I has been levied by the CIT(A).***

(ii) The concerned CCIT shall examine any such appellate orders referred to him by the CIT(A), decide whether any of the cases reported deserve the additional credit and convey the same through a DO letter to the CIT(A), which can be relied upon while claiming the credit at the year end.”

It is very respectfully submitted that by incentivising a 'quality order' which includes cases **enhancing / strengthening the addition** made by Assessing Officer ('AO') or **levying penalties**, the CBDT has covertly forced the CIT(A)s to pass orders favouring the revenue.

A 'quality order' is one where the adjudicating authority takes into consideration law and facts of the case, apply his / her mind to peculiarities of such case, considers precedents of higher judicial authorities and on the basis of such analysis, proceeds to issue a well-reasoned and speaking order. Where a tax

addition is warranted, 'quality order' by CIT(A) must uphold the order of assessing officer. Whereas, where a tax addition is ought to be deleted, a 'quality order' by CIT(A) must delete the said addition.

By limiting a 'quality order' to cases where CIT(A) merely enhances or strengthens the order of assessing officer, CBDT has grossly prejudiced the impartial and unbiased approach required by a CIT(A)s in adjudication of an appeal before him / her. This further infringes upon the principles of natural justice, which also constitutes a direct attack on the sacrosanct fundamental rights conferred by the Constitution of India.

2. **Instruction No. F.No. DGIT(Vig.)/HQ/SI/Appeals/2017-18/9959 dated March 8, 2018**

In an Instruction No. F.No. DGIT(Vig.)/HQ/SI/Appeals/2017-18/9959 dated March 8, 2018, the CBDT, in the garb of issuing administrative instructions for proper dispatch of appeal orders, **criticised and castigated the CIT(A)s for giving relief to assessee's on legal grounds**. The relevant extract of said instruction is reproduced below:

*"4. Many technical and legal lapses have also been noticed during vigilance inspections of CIT (Appeals). For instance in some cases the Assessing Officers made additions towards unsecured loans and/ or share application money after detailed inquiries and bringing clear facts on record that either the creditor was not traceable or had no or meagre source of income or could not produce bank account details or could not explain the source of deposits just before advancing loan. **The CsIT (Appeals) gave relief primarily on legal grounds** without considering the facts on record and without making any further inquiry in the matter. In one case, the CIT (Appeals) accepted the explanation that cash deposits in bank account which were added by the Assessing Officer as unexplained, represented the business receipts of the assessee, despite the fact that no books of accounts were maintained by the assessee for this business activity. **In some other cases, the additions were deleted in a summary manner solely on the ground that opportunity of cross examination was not given to the assessee.** The CIT (Appeals) could have given the opportunity of cross examination to the assessee rather than summarily deleting the additions in such cases since it has been held by Hon'ble Apex Court in a number of cases that the scope of power of CIT (Appeals) is coterminous with that of the Assessing Officer."*

It is pertinent to mention that CBDT in the aforementioned instruction has rebuked CIT(A)s for granting relief primarily of '*legal ground*'. It is submitted that the so called '*legal grounds*' are well reasoned and universally accepted principles enunciated by Hon'ble Supreme Court and Hon'ble High Courts in catena of judgements. One wonders that if the CBDT does not want CIT(A)s to grant relief on '*legal grounds*', whether they wish that relief be granted on '*illegal grounds*'.

By dictating CIT(A)s to carry out appellate proceedings with a preconceived notion and in a prejudiced process, CBDT has crossed the '*lakshman rekha*' by compromising a fair and unbiased trial promised by our Constitution.

Conclusion

Orders of CIT(A)s are heavily relied upon by Income Tax Appellate Tribunal ('ITAT'), which is the final fact finding authority under the Income Tax Act, 1961. Hon'ble Supreme Court and Hon'ble High Courts give due respect to the opinion of CIT(A)s while adjudicating appeals before them. Where the fairness of first appellate authority is compromised, the entire chain of justice administration would be gravely hurt.

Orders of CIT(A)s are not final. Remedy of filing appeal before ITAT lies with both the tax payers and the Income Tax Department. Where the Income Tax Department is aggrieved by an order of CIT(A), they should consider approaching the ITAT rather than issuing instructions and policies which prejudices the independence of the office of CIT(A).

In a democratic setup like India where there is a balanced distribution of powers between executive, legislature and judiciary, policies that vitiates the independence of quasi-judicial authorities have been frowned upon by the Constitutional courts. The Income Tax Department must *suo moto* take appropriate action and forthwith withdraw the aforementioned instructions / policies.

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