



LITIGATION OF THE INCOME TAX CASES

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A taxpayer goes on filing his Income tax Return declaring his annual income every year. Appropriate amount of tax and interest is paid by him along with return filed. He has to file statement of accounts such as Trading and Profit and Loss Account, Balance Sheet, Capital Accounts and other schedules relating to various transactions shown in the balance sheet. In short all his financial transactions are reflected in these returns. This includes increase or decrease in assets, investments, liabilities and receivables. These financial results incorporated in the return of income through various statements are like a mirror through which the Income tax Authorities can locate any irregularities in the financial matters. They are like sudden increase or decrease in gross profit, net profit, addition in capital account, acquisition of assets of big value sudden increase in Sundry Creditors, Bank Deposits and investments etc. Based on these irregularities one can visualize that such cases are to be taken up for scrutiny. A Tax Payer is served a notice under section 142(1) followed by a notice under section 143(2) of the Income tax Act. In this case a Tax Payer is called by the assessing officer along with all his books of accounts in support of all the financial transactions. The assessing officer has to go through the related documents and arrive at the conclusion. This is how the assessment of a Tax Payer is done. In case the assessing officer is not satisfied with the genuineness of the transaction or according to him, a tax payer could not give satisfactory explanation or evidence regarding the matter under dispute. In such cases the Assessing Officer makes an addition in the Total Income of a Tax Payer and appropriate amount of tax, interest and penalty are levied upon a Tax Payer

The above incidences are mostly invoking the question of fact. In many cases, difference of opinion based on question of law may arise between the Assessing Officer and the Tax Payer. A tax Payer applies a particular section of the Income Tax Act which is later on rejected by the Assessing Officer. There might be a difference on application of question of law or question of law is not applied by one of the Parties to the dispute or a Tax Payer is claiming benefit under Particular Section under erroneous belief and the Assessing Officer is

rejecting such benefit. This dispute regarding the question of law or even fact also leads to the addition of the income of the Assessee.

After the process of scrutiny of a case is complete the Assessing Officer passes an Order which is commonly called as the Assessment Order under Section 143(3). In this order, the Assessing Officer has to mention about the Scrutiny of a case, difference in question of law or fact which has existed in a particular case. Contention of the Assessee related to that matter and lastly the opinion of the Assessing Officer in respect thereof and reason/ reasons for not accepting the contention of the tax Payer and particulars of the Additions made in the Total income.

If a tax payer is aggrieved by the order of the Assessing Officer, he can file an appeal in the Office of the Commissioner (Appeals) of the Income Tax Department. If Commissioner (Appeal) does not accept the contention of the Assessing Officer, the Income Tax Department it can also go in Appeal against the order of the Commissioner (Appeals) before Income Tax Appellate Tribunal.

At present such appeals are filed online stating forth the various grounds on which appeal is filed. Income tax Department has appointed a number of Commissioner (Appeals) to hear and dispose of the appeals. It is said that there are more than 1000 Commissioner (Appeals) working in the country. Still there is increase in workload in their Offices. At present in Pune, it takes about a year for conducting hearing of the Appeal from the date of filing the Appeal. The appointment is given to the tax Payer i.e. Appellant for hearing his Appeal. He has to produce all the facts related to his appeal like quoting judgments of various courts in India and other points which according to the Appellant are of vital importance. Appeal is heard by the CIT (Appeal). However the Appellant submits a detailed argument in writing setting forth various Pros and Cons related to his appeal. In many appeals which are in favour of the Appellant on account of strong grounds, reasons and evidences, still the Commissioner appeals gives his decision in favour of the Income Tax Department. In some cases it is noticed that the Commissioner appeals has given his verdict in favour of the Income Tax Department by quoting facts which are in reality far away from the facts. In some other cases it is observed that the Commissioner appeal orally and unofficially suggesting the Appellant that he should prefer further appeal before the Income tax Appellant

Tribunal who will consider the matter in favour of the Appellant. Further as a part of his suggestion he explains that even if he gives his decision in favour of the Appellant the Department will go in appeal. Hence he is reluctant to give his decision in favour of the Appellant. However, there are many CIT appeals who give correct decisions without caring about the further appeal that may be filed by the Department. In all barring these other circumstances the tax payer has no other alternative than preferring further appeal before the Income Tax Appellant Tribunal.

Considering the above facts, the then Finance Minister Mr. Chidambaram in the budget of 2009 had suggested to establish a single member Tribunal to deal with all the Appeals instead of Commissioner appeals. Later on it was said that the IRS lobby did not appreciate this proposal on account of likely abolition of about 400 to 500 posts of Commissioner (Appeals). In reality it was a good decision to establish Single Member Tribunals in which the outsiders were to be appointed. The presiding Officer of such Tribunals could have been persons from Judicial Service or Senior Chartered Accountants or Tax Lawyers. On the parallel lines with the Appellant Tribunal, the appointment of Presiding Officer was possible by holding written exam and oral Interview of the interested Candidates. Further these Presiding Officers could have been promoted as the Presiding Officers of this Income Tax Appellant Tribunal. At present the orders of the Commissioner Appeals are brought under the Audit by Auditor General of India. Most surprising matter is that if the Commissioner Appeals has given decision in favour of the Department without considering the facts and grounds of Particular cases there are no adverse remarks recorded against him. On the contrary the AG Audit does not compel the CIT Appeal to change his decision in favour of the Assessee on appropriate grounds. It is said that the Central board of Direct Taxes has issued an internal circular to the Commissioner Appeals to pass the orders in favour of the Department as far as possible.

Ultimately the Assessee has no option than filing further appeal before the Income Tax Appellate Tribunal. On the other hand, the Higher Authorities of the Assessing Officer also direct him to file further Appeal against the order of CIT Appeals. It is said that Income Tax Authorities does not want to take risk by not filing the Appeal in such cases, The

Assessing Officers feel that the higher Authorities may doubt about the intention of the Assessing Officer if appeal is not filed. Hence mechanically the Appeals are filed.

In all these circumstances the number of appeals is increasing day by day. If taken seriously, no. of appeals can be reduced by passing correct orders from the CIT Appeals. In the budget of 2015, the Finance Minister Mr. Arun Jaitley had instructed the Income Tax Authorities to take appropriate steps to reduce the no. of appeals. He further directed the higher Authorities of Income tax that strict actions may be taken against those officers who are filing unwanted appeals.

The above circumstances reveal that it is really a serious matter and that right from Assessing Officers to the higher authorities a care is to be taken to see that orders passed be proper and perfect so that further litigation will not arise.

The Central Department of Income Tax headed by a Commissioner and many other Higher Officers and Assessing Officers of the Rank of Asst / Deputy Commissioners. These Department is dealing with assessment of Search Cases. It is observed that majority of the Orders passed by the Assessing Officers of this Department are challenged in Appeal and further Additions made by these Officers are either reduced or cancelled by the Appellate Authorities. The question arises here is that, Why the Assessing Officer cannot view a particular case from the angle which the Appellate Authorities view.. In simple language, the Appellate Authority has decided the Disputed Matter in a Particular manner, the Assessing Officer should apply his mind in those cases on similar lines. This is how the further litigations could be avoided. I have discussed this matter with some Assessing Officers. But they reiterated that the Assessment Orders passed by Central Circles are true and correct orders. The officers concerned were not in a position to explain why Appellate authorities deviate from their views. The worst situation is that the higher Officers of the Central Department prefer appeals before the Higher Authorities i.e. if it is Appeal order passed by CIT Appeals they file further appeal before the Income tax Appellant Tribunal. This is how they go on filing appeals before the Higher Appellate Authorities. But they tend to keep on filing appeals upto Supreme Courts. In all these circumstances a tax payer is harassed. First of all these appeals go on for no. of years i.e. 10 to 20 years from the date of passing first Assessment Order. The tax Payer gets mentally disturbed, he has to pay huge fees, to the

lawyers and his tax experts. In addition he has to pay some tax for getting stay against the recovery of demand.

This situation is ridiculous but avoidable. The Assessing Officers passing such orders which tend to promote avoidable litigations should be audited by Auditor general of India and the concerned officer is to be punished severely so that other officers should not tend to pass such orders. If a proper view is taken, one should realise the value of dealing with appeals like wastage of manpower in dealing with appeals, payment of fees to the Authorised representative, value of the loss of manpower by High Court and Supreme Court judges. It will be realised after deciding the appeals Income tax Department has sustained huge losses.