

---

## Dear FM, it is time now to get serious about Directorate of Taxpayers' Services

TIOL - COB( WEB) - 323  
DECEMBER 20, 2012

**By Shailendra Kumar, Editor**

**EVER** since the process of economic reforms was politically piloted early '90s, a lot of water has flown down the river on taxation front as well. Although a good number of tax experts may like to take a view that the tax laws intended to be simplified, have become more complicated, and tax procedures have truly become simpler more because of the speed money rather than any change in their design, the size or the responsibility-casting language used by the policy makers. Even as such a debate continues, the fact of the matter is that a good number of taxpayers' services have been introduced since then, and the life of taxpayers has indeed become less '**taxing**'

. Some of the notable services are the bank transfer of income tax refund, e-filing of personal and corporate returns along with e-TDS, e-payment of all taxes, e-viewing of TDS Credit, no-return-filing option for the salaried up to Rs 5 lakh etc. But this is not to say that no more '**wrinkles**' are required to be ironed out to make the services more polished and hassle-free for the taxpayers.

Besides improving the existing taxpayer-friendly initiatives, a lot needs to be done in the coming years. But, what calls for immediate attention is the chronic malady, afflicting both the revenue kitty as well as the kitty of taxpayers' services. And this is the chronic passion for unabashed litigation, which not only costs the Exchequer and the taxpayers equally but also chokes our judicial conduit of '**oxygen**'. On top of this, it also generates handsome '**taxing**' arrears for the Finance Minister and the Parliamentarians to split their hair on. More than Rs 3 lakh crore tax arrears, a large swathe of it being bogus, clearly points towards the need for some urgent steps, which could even partly cork the source of litigation i.e Commissionerate-level. How serious is this malady may be gauged to some extent by these two feedback inputs received from TIOL Netizens:

*1) "It is often noticed in matters reaching the Tribunal that settled issues are agitated by the Department again and again although there is a judgment/decision of the Higher Forum or even the Tribunal, which has been accepted by the Department. This causes hardship to the assessee and results in waste of Court's time as they have to reiterate their decision in many cases repeatedly. It is high time that the Government constitutes a committee to review the pending matters in the Tribunal and before the first appellate authority and take steps to withdraw the departmental appeals or to accept the assessee's stand in their appeals, wherever the higher forum has laid down the law and has been accepted by the Department. This would bring down litigation at the appellate level by at least 50%." -*

***K.S. Naveen Kumar***

*2) "If we analyse the litigations, it would be clear that many of the issues are of trivial nature and revenue neutral. Mostly Departmental Officers want to play safe and adopt ¶Let the Court decide¶ policy, bringing cases to CESTAT and to Courts. For e.g. provisions of Rule 8(3)/Sec 11AA is widely invoked even if the assessee detects errors in duty payment and pays it off along with interest voluntarily. Innumerable cases are reported for imposition of penalties though the provisions of Sec 73(3) of the Finance Act or Section 11A (2) of Central Excise Act which provides for non-issuance SCN or imposition of penalty for voluntary payment of Service Tax or Central Excise Duty along with interest. If our democratic Government chooses to safeguard the genuine interests of taxpayers and punish the Officers who make frivolous tax demands, it can boost the investment climate in India. It is a sheer shame that ease of doing business in Pakistan is far better than India ..!!" -*

***Ramaswamy***

The feedback relating to income tax cases, choking 62 Benches of ITAT or High Courts is not much different. The working *ishthyle* in both the Boards at the field level is the same. The officers have very little concern for the concept of justice leave aside the taxpayers' rights, which have come to be globally seen as a part of human rights by various Taxpayers' Associations. In this background what is that out-of-box measure which may be taken to reduce litigation and cast obligations on officers, who willy nilly go with the existing system to multiply litigation. Although the Finance Ministers have taken many measures in the past but given the present Finance Minister's propensity to attach premium to out of box ideas TIOL would like to suggest one such measure in the form of setting up a **Directorate of Taxpayers' Services (DTS)**

. Both the Revenue Boards have more than a dozen Directorate each - some of them are either dead or have almost-outlived their utilities. For instance, by doing away with the Directorate of Safeguard or Export Promotion the CBEC would not lose anything. Their works can be done by simply appointing a Commissioner attached to the Member (Customs). A similar review of the CBDT Directorates may reveal that at least two or three of them can be liquidated, and both the Boards can set up **Directorate of Taxpayers' Services** attached to them as an extended helping hand in the policy-making.

To begin with, this Taxpayers' Directorate may be saddled with the responsibility to reduce litigation at the grass-root level. Good officers with technically sound track record should be handpicked and posted in this Directorate. Then taxpayers may be notified that anybody having a difference of opinion with the taxman at the field level or having received a show cause notice, may approach this Directorate for a **LEGAL OPINION**

against a nominal fee of Rs 5000/- for demands involving less than Rs 20 lakhs; Rs 10,000/- for demands of upto Rs 1 Cr and Rs 15000/- for demands of higher amount. If the point of dispute is covered by the settled laws like SC or HCs' decisions, this Directorate should give an opinion based on the Boards' views, and if there is no view of the Board, it can be their own views but having only **PERSUASIVE VALUE**. Such opinion should not be **BINDING** on the Revenue. **But then, what purpose it may serve? How will it reduce litigation?**

Here goes the solution. When a taxpayer armed with the legal opinion of the Directorate of Taxpayers' Services goes back to the SCN issuing authority or the adjudicator at the field level, it would first be too difficult for the officers to reject the reasoned and detailed legal opinion of their own officers manning the DTS. In other words, the persuasive value of the opinion rendered by the DTS would be greater than an opinion given by any consultant or CA or a lawyer. Then, if the field officer begs to differ with the opinion given by the DTS officers, the Boards should prescribe a detailed and lengthy **FORMAT** to fill in the reasons, the authority, the case laws etc so that they could justify their difference of opinion if the same is indeed legitimate. In other words, unlike today's environment where non-sensical SCN or non-speaking orders are given, ignoring the settled laws and imposing penalty and interest, one will have to sweat it out to fill in the **FORMAT**

prescribed by the Boards and do extensive legwork. Then all such cases where the field officers have differed with the DTS opinion, should be further examined by a Centralised Committee headed by the Member (J) and other senior Board officials, who could take a fresh view on the differing legal opinions. If the Board finds the opinion of the field officers being too frivolous and litigation-oriented, a remark should be made in their APR by providing a dedicated column for the same, and such officers should be given non-sensitive posting for at least two years in the next AGT. If this Centralised Committee finds legitimate points in the views of the field officers, it may give green signal to go ahead with the litigation. For this purpose, to further filter the number of cases falling in the kitty of the centralised committee, the Board may constitute zonal committees, headed by the Zonal Members, who can have fortnightly meeting with two or three Chief Commissioners and then decide cases, which would go to the Central Committee. In case the Centralised Committee finds that the Zonal Committees have done a terrifically bad job of filtration, an entry / remark must be made in their APRs.

In case there is a **new law point**, which is found by the officers of the DTS who find no court decision on that issue, the DTS may exercise its option **not to give any opinion**

on the same, and the taxpayers may be allowed to pursue the regular course of litigation. Another question that may crop up in the mind of TIOL Netizens is that when the DTS opinion is merely going to be of persuasive value, what is the point of taking such an opinion. But the fact of the matter is that any legal opinion taken by a taxpayer even from the **best tax lawyer**

in the Supreme Court may not carry any persuasive value when the field officers are today determined to harass the taxpayer. In case of DTS opinion there would at least be some safeguards in terms of **fixing accountability for rejecting the DTS opinion**

and then follows a detailed examination drill before a field officer gets the nod of the Centralised Committee to pursue the same through the normal appellate route.

TIOL is confident that given the rising graph of litigation costs in tax matters, which enriches only the **'legal facilitator'**

and leaves the Revenue as well as the taxpayers poorer by several lakhs, the concept of Directorate of Taxpayers' Services would go a long way in filtering bogus cases at the point of their origin. Secondly, a good number of taxpayers who are not in a position to afford professional fees of the 'black coat' would find the DTS opinion as their saviour or it would at least give them the satisfaction that even if they cannot afford a protracted litigation they at least had a favourable opinion from the DTS and would never feel like **"tax chumps"**

. If this out-of-box measure is implemented, TIOL is sure it would go a long way in slashing down the number of sham cases choking the normal route of appellate fora.

Only yesterday, at the 5th Meeting of Consultative Committee discussing the agenda for **'Facilitation for Taxpayers'**

, the Union Finance Minister, Mr P Chidambaram, was advised by the Parliamentarians that facilitation centres should be opened in rural India to augment revenue; at least bank rate of interest should be paid on income tax refund; and more steps should be taken to improve the relationship with taxpayers. Having taken many of these suggestions, which are indeed vital, the FM should definitely focus on reducing litigation. And to do so, he needs to filter frivolous cases at the source-level itself. Reduced litigation would not only reduce bogus tax arrears but also set free many hands, which can be utilised for

productive work like genuine revenue collections and sound legal work in the Department. Such administrative measures would also reduce the gestation period of litigation at the CESTAT or the ITAT where today prevails a **STAY-dominated** work culture. Too many stays are being granted and then extended because of the workload, lack of adequate manpower and also too many fresh appeals being filed. It is high time Mr Chidambaram comes out with some of his out-of-box proposals to curb litigation and help safeguard the rights of the taxpayers, who are indeed tired of fighting monotonous tax battles!!