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To,
Shri Sanjeev Sharma
Commissioner of Income Tax, APA-2,
5th Floor, B Block, Civic Centre,
SP Mukherjee Marg
New Delhi
Date: 5th March, 2019

Subject: Suggestions on new direct tax law on assessment & appeals improvements in Indian Income Tax Rules

Respected Sir,

The Institute of Cost Accountants of India (ICAI) is a statutory body set up under an Act of Parliament in the year 1959. The Institute as a part of its obligation regulates the profession of Cost and Management Accountancy for the last 75 years. The Institute also pursues the vision of cost competitiveness, cost management, efficient use of resources and structured approach to cost accounting as the key drivers of the profession. The Institute, from time to time, has played a pivotal role in implementation of various tax laws and best practices by way of providing suggestions to the Govt. on various taxation matters. The Institution operates through four regional councils at Kolkata, Delhi, Mumbai and Chennai and 98 Chapters situated at important cities in the country as well as 9 Overseas Centre. It is under the administrative control of Ministry of Corporate Affairs, Government of India.

Keeping the above in mind, the Institute has made an attempt to revisit the entire Direct Tax gamut of the Country as well as the best practices followed in other countries in the world both developed and developing countries to submit some key suggestions or recommendations to make Income tax legislation/ Act more efficient and tax payer and investor friendly in regards assessment and appeals. These may be summarized as follows along with suggestions:

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1. Pendency of tax litigation

The pendency of tax matters before High Courts is alarming. Appeals filed take nearly four to five years for High Courts to come up for admission. Once admitted in High Court, it takes another ten years for them to come up for final hearing and disposal. For example, presently, the Bombay High Court is taking up the matters which were filed in the year 2015 for admission and for final hearing matters which were admitted in 2002.

It takes more than two to three years to get an order from the CIT(A) and another two years from the Appellate Tribunal.
If the matters are taken to the Apex Court, another five years may be consumed before the matter comes for hearing. Thus, in India tax litigation takes nearly 20 years to attain finality.

The Government should make serious efforts to reduce the litigation. Because, without this, whatever may be the law, the desired objects of simplifying and streamlining the tax administration and adjudication may not be achieved.

Suggestion:
Before the introduction of new tax legislation, the Government must chalk out an action plan on how to reduce the pendency of tax litigation before Apex Court, various High Courts, the Appellate Tribunal, Commissioner of Income-tax (Appeals) and Prosecution matters before various designated Magistrate Courts.
Various forums have made various suggestions from time-to-time to the Government with respect to the ways and means to reduce tax litigation. One of the suggestions was to set up an e-Bench of Supreme Court, linking of the Supreme Court to various High Courts and that SLP in tax matters can be heard by arguing the matters from respective High Courts.

2. Special Courts

Similarly hosting of various issues pending before various High Courts by CBDT on their website as directed by the Bombay High Court and Independent National tax litigation cell separate legal cell should be seriously considered and acted upon. [CIT v. TCL Ltd. (2016) 241 Taxman 138 (Bom.) (HC)]

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In Mumbai, more than 300 cases of prosecution have been launched in the year 2018. One will be surprised to know that the prosecution notice is issued for few days delay on filing of return though the taxes along with interest were paid.

Suggestion:
Setting up of special Courts to deal with prosecution in relation to direct and indirect taxes was proposed.

3. E-Assessment

E Assessment should be high handed. Various issues to be considered in E-Assessment**:**

(a) Physical Verification of stock, fixed assets should be a provision in E-Assessment and it shall be done by the local professionals i.e CMA/CA empanelled by local Commissionerate.

(b) Voluminous documents (Purchase, sale) cannot be uploaded electronically. It shall also be checked physically by the local professionals i.e CMA/CA empanelled by local commissioner ate. And may be assisted from the website of www.gst.gov.in for accuracy.

(c) Tampering and falsification of scanned documents shall be taken care off.

(d) Application given in vernacular language by the people can be an issue in E-Assessment.

Suggestion:
A panel of Tax Practitioners may be created for locating the professionals who will be helping in handling the issues at local level. Professional Institutes like ICMAI/ICAI shall facilitate the jurisdictional panel. It will add to ease of doing business. Government may set up a panel for identifying the professionals and entrust them the assignment in the nature of allotting Bank Audit / Co-operative Audit / Audit of Government Companies.

4. Compulsory processing of return u/s 143(1)

S.143(1D) should be scrapped and the erstwhile provision requiring processing of return within 1 year from the end of the financial year in which return of income is filed should be

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retained, irrespective of whether notice u/s.143(2) has been issued to the assessee or not. Further, processing of return of income u/s. 143(1) should be made mandatory for all assessees, including corporate.

Without prejudice to the above, S.143(ID) should be amended suitably allowing the A.O to process refund cases smoothly in cases where notice has been issued.

Suggestion:
S.143(1D) introduced by Finance Act, 2016 provides that an intimation can be processed until the issuance of an order u/s.143(3). This condition puts the assessee at a disadvantage, by unnecessarily extending processing of return till the date of issuance of order u/s 143(3).

5. 5.S.148 – Reasons for reopening to be sent along with notice for reopening of assessment

The government should suitably clarify, either by issuing a circular or by issuing internal instruction to AOs, that 'reasons for reopening' have to be sent along with the notice for reopening of assessment. This will simplify the reassessment proceeding procedure.

Suggestion:
S.147 empowers an AO to reopen an assessment if he has "reasons to believe" that income has escaped assessment.

The section does not have any procedural requirements, but a practice has developed and been laid down by the SC in GKN Drive Shafts' case, to be mandatorily followed while reopening assessment. Presently notice is issued u/s.148. Later, the assessee has to request for the 'reasons for reopening' from the AO.

6. S.153- time limit for completion of assessment

Time limit for completing assessment should be reduced to 15 months.

Suggestion:
Presently, the AO has 21 months, further increased by 12 months where case has been referred to TPO. Now that all filling and arithmetical processing are happening online, period of 21 months to complete assessment is too long.

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The long period of assessment is becoming a tool in the AOs' hands to harass assessees through multiple hearings. It is also a tool for unscrupulous assessees.

7. Provisions U/S 142 (2a) relating to special audit

Provisions related to special audit under S.142(2a) should be restricted to avoid undue hardship to assessee. Provisions related to special audit should be watered down, and only under exceptional circumstances, when there is clear evidence of revenue exposure due to complexity, or if the assessee's accounts are not audited under the new Companies Act, should Special Audit provisions be triggered.

Suggestion:
Scope of Sec.142(2A) (related to Special Audit) has been enlarged to enable tax authorities to initiate Special Audit even in situations where assessee has fully cooperated, and provided all information sought by the tax officer.

8. Power of AO to ask for Valuation Report u/s. 142A to be restricted to exceptional cases:

(i) The power of reference to the Valuation Officer should be available in the following manner:
   a) The power to the AO should be restricted to specific exceptional circumstances/ conditions.
   b) AO should record reasons for invoking power u/s.142A and assessee should be able to get access to these recorded reasons.
   c) AO should take prior approval of higher authority not below rank of Commissioner.

(ii) Valuation Report submitted by the Valuation Officer should be binding on AO.

(iii) Specific guidelines/ rules should be brought to define "any asset, property or investment".

Suggestion:
The scope of s.142A has been enlarged enormously vide Finance (No. 2) Act, 2014, to give blanket powers to the AO to make reference to Valuation Officer to estimate the value, including fair market value, of "any asset, property or investment" as against the earlier

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scope restricted to unexplained investments, cash credits, etc. This reference is for the purpose of "assessment or reassessment". Also, AO can resort to valuation whether or not he is satisfied about the correctness or completeness of the assessee's accounts. The

provisions also empower the AO to disregard the report from the Valuation Officer. Such blanket powers will increase the litigation and hardship to assessees and the same will also be contradictory. Hence strict principle should be followed before issuance of the valuation report by the empanelled Valuer of the department and should be under the umbrella of strict audit compliance to the independent body.

9. Compulsory processing of return u/s 143(1)

S.143(1D) should be scrapped and the erstwhile provision requiring processing of return within 1 year from the end of the financial year in which return of income is filed should be retained, irrespective of whether notice u/s.143(2) has been issued to the assessee or not. Further, processing of return of income u/s. 143(1) should be made mandatory for all assessees, including corporate.

Without prejudice to the above, S.143(ID) should be amended suitably allowing the A.O to process refund cases smoothly in cases where notice has been issued.

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10. S.148 – Reasons for reopening to be sent along with notice for reopening of assessment

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Suggestion:
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The section does not have any procedural requirements, but a practice has developed and been laid down by the SC in GKN Drive Shafts' case, to be mandatorily followed while reopening assessment. Presently notice is issued u/s.148. Later, the assessee has to request for the 'reasons for reopening' from the AO. However the addition on reopening should be restricted on the issue of reasons for reopening in addition along with other addition if the issue of reasons for reopening persist otherwise no addition should be made as the same is mandated by the different HC and Supreme Court. As subsequently no addition is usually been sustained if the addition on account of the reason of reopening does not exists.

11. Authority for Advance Rulings

It should be ensured that the time limit prescribed for passing orders should be adhered to by the AAR. Considering that the objective behind AAR is to provide faster dispute resolution mechanics, mere filing of income tax return should not debar the taxpayer in approaching the AAR

Suggestion:
The Authority for Advance Rulings (AAR) has a significant back- log of cases. Getting an advance ruling within a reasonable time has become extremely difficult.

Certain contrary recent judicial precedents (including of AAR rulings) has created ambiguity regarding maintainability of AAR in case return of income has been filed.

Thank You.

Yours Sincerely

CMA Niranjan Mishra
Chairman - Taxation Committee