

CASE-LOAD CONTROL OF TAX CASES IN INDIA

INDIA IS THE LARGEST CESSPOOL OF ALL PENDING CASES INCLUDING TAX CASES, ALWAYS GRAPPLING TO INTRODUCE CONTROL & MANAGEMENT MEASURES TO CONTROL QUANTUM OF LITIGATION & ACHIEVE THE TARGET OF TIMELY DISPOSAL OF CASES THROUGH THE HIERARCHY OF REMEDIAL FORUMS.

PENDING TAX CASES IN INDIA

FORUM	YEAR	NO. OF CASES	DISPOSAL	AVERAGE TIME FOR DISPOSAL	REVENUE STAKES INVOLVED
					INR* CR.
CIT APPEALS	2013 – 14	215174	87770	3 TO 4 YEARS	287,443 (4.28 B USD)
	2016 (EST.)	3,00,000			555,000 (8.27 B USD)
ITAT	2013 – 14	31914	21378	2 TO 3 YEARS	143,255 (2.13 B USD)
HIGH COURTS	2013 -14	31844	4010	3 TO 5 YEARS	33,128 (500 M USD)
SUPREME COURT	2013 -14	5865	847	5 TO 8 YEARS	3,202 (5 M USD)

• INDIAN NATIONAL RUPEE (INR)

CONVERTIBLE -

- INR RS.70 = 1 USD Approx
- INR Rs.75 = 1 EURO Approx

(Source - Department of Revenue Report No.3 of 2015)

INDIRECT TAX CASES PENDENCY

FORUM	AS ON OCT. 2014 NO. OF CASES	REVENUE LOCKED (INR CR)
CESTAT (EXCISE TRIBUNAL)	71752	131380 (1.9 B USD)
HIGH COURTS	15134	20045 (300 M USD)
SUPREME COURT	3490	11923 (160 M USD)

- INDIAN NATIONAL RUPEE (INR)

CONVERTIBLE -

- INR RS.70 = 1 USD Approx
- INR Rs.75 = 1 EURO Approx

(SOURCE - MINISTRY OF FINANCE, DEPTT OF REVENUE
ANNUAL REPORT 2014 – 15)

MINIUMUM TAX EFFECT LIMIT REQUIERED FOR DEPARTMENT TO FILE APPEAL

FORUM	TAX EFFECT (INR IN LACS)
ITAT (INCOME TAX TRIBUNAL)	10,00,000 OR 1 MILLION INR OR 15000 USD
HIGH COURT	20,00,000 OR 30000 USD
SUPREME COURT	25,00,000 OR 340000 USD

Source – CBDT Circular No. 21/2015 Dt.10th December 2015

MAJOR ISSUES OF TAX LITIGATION IN INDIA

- TRANSFER PRICING
- TDS OR WITHHOLDING TAX
- DEDUCTIONS & EXEMPTIONS CONDITIONS
- HIGH PITCHED ASSESSMENTS BY OVERZEALOUS AUTHORITIES
- RETROSPECTIVE LEGISLATIONS TO UNDO JUDGEMENTS
- CONFLICTING JUDGEMENTS

RATIO OF JUDGE TO TAX LITIGATION IN INCOME TAX TRIBUNAL (ITAT) INDIA

- WITH THE POPULATION OF 1.25 BILLION, ONLY 40000 CASES APPROX. ARE FILED IN ITAT EVERY YEAR BEFORE ITAT BUT WITH **100** JUDGES THERE, ITS LARGELY AN EFFECTIVE APPELLATE FORUM IN INDIA.
- THE LOW NUMBER OF CASES IS PERHAPS ON ACCOUNT OF PROPORTIONATELY LOW NUMBER OF TAX PAYERS IN INDIA, WHICH IS ONLY 5 % OF TOTAL POPULATION.
- TOTAL PENDENCY OF ITAT (INCOME TAX TRIBUNAL) OF ABOUT 90000 GETS REDUCED BY AVERAGE DISPOSAL OF 5000 CASES.

INDIRECT CASE LOAD SCENARIO

- IN **CESTAT** APPROX 60000 CASES ARE PENDING
- FROM ITAT ABOUT 30000 & FROM CESTAT ABOUT 14000 CASES ARE IN APPEAL BEFORE **HIGH COURTS**
- BEFORE **SUPREME COURT** ABOUT 5500 DIRECT TAX CASES AND ABOUT 3000 INDIRECT CASES ARE PENDING.
- IT TAKES ABOUT 12 YEARS FROM OBJECTION STAGE TO SUPREME COURT FOR A TAX LITIGATION
- NOW WITH SEPARATE COMMERCIAL DIVISIONS IN HIGH COURTS , SITUATION IS LIKELY TO IMPROVE.

SOURCE : ARTICLE OF MR.WIM WIJNEN, EX.
DIR. IATJ

FEES & PRE-PREDEPOSIT REQUIREMENTS FOR ACCESS TO JUSTICE OR RIGHT TO APPEAL

- ❖ THOUGH FEE FOR FILING APPEALS IS NOMINAL, (SAY RS. \$ 5 TO \$ 100 PER APPEAL) HOWEVER PRE-DEPOSIT REQUIREMENTS UNDER INCOME TAX LAW AND EXCISE & CUSTOMS LAWS ARE IN THE RANGE OF 5 % TO 30 % OF THE DEMAND RAISED, WHICH IS ENOUGH FILTER TO SCREEN APPEALS TO HIGHER FORUMS.
- ❖ REPRESENTATION FEE CHARGED BY CHARTERED ACCOUNTANTS & ADVOCATES IS GENERALLY HIGH MAKING IT DIFFICULT FOR SMALLER STAKES APPEALS

PREDEPOSIT IN EXCISE CUSTOM CASES

- PREDEPOSIT OF 7.5% OR 10% OF THE DEMAND RAISED BY THE AUTHORITY TO BE MADE FOR ENTERTAINING APPEAL.
- HOWEVER, THE PAYMENT MADE DURING THE COURSE OF INVESTIGATION OR AUDIT, PRIOR TO THE DATE ON WHICH APPEAL IS FILED, TO THE EXTENT OF 7.5% OR 10%, SUBJECT TO THE LIMIT OF RS. 10 CRORES, ARE TO BE CONSIDERED TO BE DEPOSIT MADE TOWARDS FULFILMENT OF STIPULATION UNDER SECTION 35F OF THE CENTRAL EXCISE ACT, 1944 OR SECTION 129E OF THE CUSTOMS ACT, 1962.

PREDEPOSIT/ STAY IN INCOME TAX CASES

- INCOME TAX PRE-DEPOSIT- CBDT CIRCULAR- ALLOWS STAY ON 15% DEPOSIT FOR APPEALS PENDING WITH CIT(A)
- THE CENTRAL BOARD OF DIRECT TAXES HAS VIDE A CIRCULAR DATED 29 FEB 2016 ALLOWED THE ASSESSING OFFICER ("AO") TO EXERCISE HIS POWER U/S 220(6) OF THE INCOME TAX ACT, 1961 ("ACT") AND STAY RECOVERY PROCEEDINGS AND THEREBY NOT TREAT THE ASSESSEE TO BE IN DEFAULT UPON PAYMENT OF 15% OF THE DISPUTED DEMAND, IF FIRST APPEAL HAS BEEN FILED BEFORE THE CIT(APPEALS).

LEGISLATIVE REFORMS

- TAX REFORMS ADVISORY COMMISSION (TRAC)
- NEW COMMERCIAL DIVISIONS IN HIGH COURTS
- ADR IN INTERNATIONAL TAXATION
- VOLUNTARY DISCLOSURE SCHEME
- FILTERS FOR APPROACHING HIGHER COURTS

EXECUTIVE INSTRUCTIONS

- CBDT CIRCULAR OF 10th December 2015
- NATIONAL LITIGATION POLICY 2013
- COMMITTEE ON DISPUTES BETWEEN GOVT. DEPARTMENTS & PUBLIC SECTOR UNDERTAKINGS.

ALTERNATIVE DISPUTE REDRESSAL FORUMS AVAILABLE

- ARBITRATION
- CONCILIATION OR MEDIATION
- SETTLEMENT BY SETTLEMENT COMMISSION
- MAP - MUTUALLY AGREED PROCEDURE IN TAX TREATIES
- COMPOUNDING OF MINOR OFFENCES

ADR IN INTERNATIONAL TAX CASES

- SETTLEMENT COMMISSION (ITSC)
- AUTHORITY FOR ADVANCE RULINGS (AAR)
- DISPUTE RESOLUTION PANEL (DRP)

RECOMMENDATIONS

- SIMPLIFICATION OF LAWS
- USE OF TECHNOLOGY
- STABLE TAX LAWS
- GLOBAL BEST PRACTICES TO BE ADOPTED
- TIMELINES TO BE HONORED
- DEPARTMENT WEBSITES
- COORDINATED AUDITS
- PUBLIC DOMAIN DATABASE FOR TRANSFER PRICING
- PRE ASSESSMENT CONSULTATIONS