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## Opinion | Can taxpayers expect fair appeal process?

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Last Published: Thu, Aug 16 2018. 10 30 AM IST

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Would you ever have faith in a judicial process in which the judge was till recently a part of a team that took the decision against which you are appealing, and where he is further provided an incentive to decide the matter against you and, in fact, to enhance your

liability? Believe it or not, this is the first level of the income tax appellate process, which the Central Board of Direct Taxes (CBDT) has put in place, and the hurdle that taxpayers would have to overcome.

The tax department selects certain income tax returns for scrutiny. Various details are called for by the tax officer to verify that the correct income has been offered to tax. In most of these cases, a large addition is made to the income disclosed, raising a tax demand on the taxpayer. If the taxpayer feels the addition to the income is not justified, he can file an appeal to the Commissioner (Appeals) (CIT-A), the first appellate authority in the process. The CIT-A would grant a personal hearing where the taxpayer can explain his objections to the addition. The CIT-A then takes a decision, either in favour of the taxpayer by deleting or reducing the addition, or by dismissing it, by confirming the addition.

The CIT-A has always been a part of the income tax department. Unlike the next appellate authority, the Income Tax Appellate Tribunal, which falls within the administrative control of the Ministry of Law and Justice, CIT-A falls within the administrative control of the finance ministry. Typically, he would himself have been a tax officer at the early stage of his career with the tax department, passing assessment orders. But on being made a CIT-A, he is expected to change his approach towards taxpayers, and decide the matter independently, judiciously and without any bias. The Income Tax Act also specifically protects his independence, by providing that the CBDT cannot issue any orders that interfere with the discretion of the CIT-A in the exercise of his appellate functions.



Many CIT-As (though not the majority) have been able to discard their past attitudes, and have been fair and judicious in deciding appeals. Recently, in its Central Action Plan, the CBDT, besides laying down targets for number of appeals to be disposed each month, provided for incentives to be given to CIT-As who pass quality orders. The problem is in the concept of what, according to the CBDT, constitutes quality orders.

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According to the CBDT, quality orders would include those under which the addition made in the assessment is enhanced, the orders of the assessing officer are further strengthened or penalty proceedings initiated. In other words, only cases where the CIT-A decides against the taxpayer would be regarded as quality orders, eligible for incentives. Further, the administrative Chief Commissioner would be the person to decide whether an order is a quality order or not.



How can only an order passed in favour of the tax department be regarded as a quality order? A quality appellate order should be any order that upholds the correct position in law, irrespective of whose favour it is in. Therefore, any order upheld by the Tribunal or the courts should be regarded as a quality order. It may so happen that an order passed in favour of the tax department is held as incorrect by the Tribunal. Can such an order ever be regarded as a quality order?

Is this CBDT move actuated by tax collection target considerations? Given the often unjustified additions being made by tax officers, almost 50% of the appeals were being decided in favour of taxpayers by CIT-A, with another 20% giving partial relief to taxpayers. If the CIT-A were to decide against the taxpayers, a large part of the demand would be actually recoverable, as against only the much lower amounts under the current scenario.

When high tax collection targets are set (which is the scenario every year), tax officers obviously try and raise tax demands, irrespective of whether the related additions are justified or not. If the taxpayer has recourse to an appellate process that is fair and balanced, he knows that relief is just around the corner. Tweaking the appellate process to create an anti-taxpayer bias will completely erode taxpayer's faith in the entire tax process and tax department.



This move is absolutely contrary to the approach of the Prime Minister and the finance minister. Since coming to power, this government has been at pains to remove the “tax terrorism” tag that the tax department had acquired. The Prime Minister, on many occasions, has given assurances that honest taxpayers will be fairly treated. Will the CBDT move quickly to be in tune with the government, and restore taxpayers’ faith in the appellate process, by removing such incorrect incentives?

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**First Published: Thu, Aug 16 2018. 10 30 AM IST**

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