

Solving tax issues in a time-bound manner is a must

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Topics

Tax

A few recent developments have brought the issue of excessive income tax litigation into focus. The first was a recent Supreme Court decision, the second was the announcement of the Taxpayers' Charter and the third is the implementation of the Faceless Assessment Scheme (FAS), followed shortly by the Faceless Appeal Scheme.

The recent SC decision involved the taxation of a public sector corporation. While deciding the case, SC allowed the appeals of the corporation, noting with regret the inordinately long passage of time and the wastage of judicial time on deciding who was principally right, when in either eventuality, it benefited the central government. The court observed that the Indian legal system was reeling under an explosion in the number of cases, to which government and public authorities were active contributors.

The apex court noted that the litigation policy evolved by the government was observed more in breach. It correctly identified the root of the problem: the approach was one of bringing everything before SC, so that there was no responsibility in the decision-making process, an unfortunate situation which created unnecessary burden on the judicial system.

One of the largest areas of litigation for the government is taxation matters. According to SC, 85% of the appeals are filed by the tax authorities, with a success rate ranging from only 12% to 27% at different levels. This obviously shows that appeals are being filed indiscriminately. The substantial increase in the tax threshold limits for filing appeals by the tax department a year ago has reduced the problem quite a bit, but indiscriminate filing of appeals still continues for amounts above the threshold limit.

One wonders whether the introduction of the Taxpayers' Charter, which states that the tax department is committed to collect only the amount due as per the law and to provide a fair and impartial system and resolve the tax issues in a time-bound manner, will change this approach of not taking decisions in favour of the taxpayer, even though justified. Unfortunately, the focus of the tax authorities till recently has been to achieve collection targets, even if it is at the cost of being unfair to the taxpayer. One can only hope that there is a change in this attitude with the introduction of the Taxpayers' Charter, and it is not observed only in breach.

Though the Taxpayers' Charter also states that the department shall hold its authorities accountable for their actions, there is no provision under the law for this, though this has been a demand of

taxpayers and professional bodies for decades. One will have to wait and see how and whether or not this will be implemented.

FAS will definitely be a big relief and a game-changer for taxpayers, if implemented in the right spirit. The concern is that the scheme is being implemented through the same tax officials who had a harsh approach earlier. Unless there is a change in their attitudes or a close monitoring of their actions, it could also aggravate existing problems. For instance, one hopes that a stray or solitary tribunal or high court decision, which is not in keeping with the spirit of the law, is not applied to all taxpayers, as was being done in a few cases so far.

A considered and principled view needs to be taken by a responsible senior tax official or a team of such officials, ignoring the implications on the revenue collections, as to whether such a decision should be followed or not. Very often, such decisions are taken under fear of audit objections, and tend to discriminate against the taxpayer, who is left to fend for himself before the appellate authorities and the courts. Will the government place its trust on at least some of its senior officials, and permit them to take unbiased decisions without fear of repercussions? The worry is that even if one has a team of officials taking a decision, if even one official of the team takes a play-safe approach, other members would not venture to stick their necks out in favour of a more judicious approach, unless they are assured that the government will not punish them for a fair and balanced approach.

Unfortunately, even after team-based faceless assessment subjected to a review before finalization, assessment orders would continue to be subject to audit. This fear of audit may, therefore, continue to haunt even faceless assessments, causing possibly more litigation. One has already seen the large number of reassessments being resorted to on the basis of audit objections. The government needs to find a way to ensure that unfounded audit objections or fear of punishment for acting in a fair manner do not derail the platform of honouring honest taxpayers. Then taxpayers can really be fearless as desired by the Prime Minister.

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