

# Opinion | The dice seem to be loaded against the taxpayers when it comes to appeals

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Taxpayers are at a significant disadvantage while pursuing such appeals on tax disputes

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In the recent budget, the government announced a scheme for settlement of taxpayer disputes, which are pending in appeal. The draft of the original scheme is being amended as it would have found few takers. The amended scheme is slightly more attractive, and may get a better response. The point, however, remains that most of the litigation emanates due to the unreasonable stands taken by tax authorities, leaving taxpayers with little choice but to fight the matter in appeal. Further, taxpayers are at a significant disadvantage while pursuing such appeals.

The government has also been sending contradictory signals. On the one hand, the government proposes to have a taxpayers' charter, with legislative backing. This would obviously imply that taxpayers will be given a fair chance when dealing with their cases. On the other hand, there's a simultaneous proposed amendment, which limits the powers of the Income Tax Appellate Tribunal (ITAT) in deciding taxpayers' appeals.

To file an income tax appeal, taxpayers have to pay certain fees to the government. Tax authorities try and recover the tax demands raised in assessment proceedings, though such demands are often unjustified and have been challenged in appeal. A couple of years ago, the Central Board of Direct Taxes (CBDT) had issued instructions, stating that normally the tax recovery should not exceed 20% of the tax demand while the appeal is pending. This gave substantial relief to taxpayers as they were being forced into paying 50% of the demand earlier. The instructions, however, also provide that, in fit cases, tax may not be recovered or less than 20% of the tax may be recovered.

Very often, one comes across cases where extremely large demands are raised, as compared to the income offered to tax by the taxpayers. In such cases, payment of even 20% of the tax is almost impossible for the taxpayers. Relief is available to taxpayers under the instructions, but on a discretionary basis.

In so far as the appeal to ITAT is concerned, the tribunal could so far grant a stay of recovery of the tax demand in deserving cases. While deciding such cases, ITAT would not only look at the merits of the cases and the orders in earlier years, but also examine the financial position of the taxpayers. It would then pass appropriate orders, which may involve provision of a security (such as an undertaking not to sell an immovable property) by the taxpayers, or provision of a guarantee, or payment of a small sum, maybe even in instalments.

This power to grant a stay on recovery of taxes has been held by courts to be a necessary part of ITAT's duty to do justice to the appeal. As courts have observed, justice cannot be done in an

appeal unless the taxpayers are not unduly harassed. Unfortunately, over a period of time, the government's need for collecting more tax has been riding roughshod over taxpayers' sensitivities.

The latest amendment provides that ITAT shall not grant a stay of demand unless the taxpayer has paid at least 20% of the tax payable or furnishes a security for such amount. Even in cases where ITAT thinks it fit that it should stay the recovery of the entire tax demand, it cannot grant a stay for the entire amount. Therefore, the powers of ITAT are being curtailed, to the detriment of the taxpayers.

In particular, this may badly impact cases where the tax demands are completely unjustified and disproportionate, such as those of charitable trusts whose registration is wrongly cancelled resulting in a demand for 43% of the fair market value of its assets, or taxpayers who are foisted with huge demands totally disproportionate to their income or, at times, even their total assets, who will be forced to find ways to fund even this 20% of tax demand before ITAT hears their appeals.

Earlier also, this had been done by providing that a stay of recovery of taxes granted by ITAT could not exceed one year, which courts had read down. This amendment unfortunately appears to be a part of a growing tendency to reduce taxpayers' rights over a period of time, while claiming to be taxpayer-friendly. Such amendments result in taxpayers losing faith in the tax appeals process. The objective of the government in tax appeals seems to be to ensure a "heads I win, tails you lose" situation in favour of the government.

In any case, the judges, ITAT members and commissioner (appeals) are appointed by the government. In spite of that, we have generally seen a fair judicial process. Should that not be sufficient? Should a litigant (the government) be allowed to further amend the judicial process in such a manner that the other litigant is harassed and dissuaded from pursuing remedies in appeal?

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