

TAX FLASH NEWS

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The CBDT policy providing incentive for disposal of an appeal by the CIT(A) in a particular manner is impermissible

Recently, the Bombay High Court in the case of the Chamber of Tax Consultants¹ (the petitioner) dealt with a part of Central Action Plan 2018-19 (CAP) issued by Central Board of Direct Taxes (CBDT). The petitioner challenged the part of CAP in respect of time line set and the directions issued to the Commissioner of Income-tax (Appeals) [CIT(A)] for deciding appeals within the prescribed time limit. Further, the another challenge was confined to the part of the CAP, where the CIT(A)'s have been given higher weightage for disposal of appeals by quality orders.

With respect to directions issued to the CIT(A) for deciding appeals within the prescribed time limit, the High Court held that the disposal norms issued by the CBDT do not breach the reasonableness or cannot be stated to be arbitrary or illegal.

However, when the CBDT guidelines provide greater weightage for disposal of an appeal by the CIT(A) in a particular manner, provisions of Section 119 of the Act will be violated.

Background and facts of the case

CBDT framed CAP for financial year 2018-19 wherein Chapter III contains litigation management. In order to achieve certain disposal targets of pending appeals, CBDT in CAP had made certain provisions for expeditious disposal of such appeals (in respect of time line set and the directions to the CIT(A) for deciding appeals within prescribed time limit). Similarly, CAP also provided incentive of two units for each quality appellate order² (quality order) passed (higher weightage for disposal of appeals by quality orders).

The petitioner challenged this portion of CAP and filed a writ petition before the Bombay High Court. With respect to timeline set and directions to the CIT(A) deciding appeals within such time, the petitioner contended that such targets and time limits would put unnatural pressure on the CIT(A) to decide cases in hasty manner, which has every possibility of denying a fair hearing to the taxpayer. With respect to the allocation of units for disposal of 'quality order', the petitioner stated that these quality orders are those which result in favour of the tax department. It was contended that granting more weightage to such orders would have the possibility of influencing the outcome of the appeals before the appellate authorities.

A Public Interest Litigation (PIL) has also been filed challenging the same CAP. The challenge however is confined to the portion of the plan, where the CIT(A) have been given higher weightage for disposal of appeals by quality orders.

High Court decision

Expeditious disposal of appeals filed before CIT(A)

The High Court observed that for any organisation, the setting of goals and targets are neither impermissible nor unknown. Only because certain targets for tax collection are set out, it would not render the policy arbitrary or unreasonable. In the context of the disposal norms to be met by the CIT(A), it is permissible for any organisation to set out certain output norms to judge the output performance of the person concerned. In the absence of any such norms, it may be difficult to judge the quantitative performance of a person concerned. Setting out of norms for disposal by the CIT(A) cannot be said to be either impermissible or beyond the scope of CBDT's powers. Disposal of appeals by the CIT(A) is just one of the many parameters for judging his performance.

¹ The Chamber of Tax Consultants v. CBDT (Writ Petition No. 3343 of 2018) – Taxsutra.com

² The term quality cases is explained as those including cases where - a) Enhancement has been made, (b) Order has been strengthened, in the opinion of the CCIT, and (c) Penalty under Section 271(1) of the Act has been levied by the CIT(A).

In the context of the norms set by the CBDT for disposal, firstly it has to be the decision of the organisation to set out appropriate norms and the Court does not have the wherewithal³ to test such norms on the basis of reasonableness. When an expert body like CBDT sets out disposal norms for the CIT(A) to achieve, it has necessary expertise and wherewithal after taking into consideration all relevant factors to come to a proper conclusion.

The High Court held that disposal norms issued by the CBDT do not breach the reasonableness or cannot be stated to be arbitrary or illegal. These guidelines are for general directives and it enables the revenue to collect taxes which were otherwise due and on the other hand to assess the work output of the CIT(A) which in any organisation is of considerable importance. If the CBDT recognises that appeals involving high tax effect are most likely to be more voluminous, involving complex legal disputes, the prescription of higher units for disposal of such cases can neither be stated to be arbitrary nor unreasonable, nor it can be stated to be restricting the discretion of the CIT(A). It cannot be said that such guidelines or prescriptions could possibly result in denial of fair hearing to the taxpayer.

Under the provisions of Section 250(6A)⁴ of the Act, the CIT(A) may decide the appeal within a period of one year from the end of financial year in which such appeal is filed. CAP provision does not lay down any fix time limit for the CIT(A) to dispose of the appeals. It only requires that the appeal be disposed of within a certain time frame. However, this does not indicate that the guidelines issued by CBDT in the impugned plan, are contrary to Section 250(6A) of the Act.

The CBDT had laid down broad guidelines for disposal of appeals category-wise. There were neither firm directives that certain class or kinds of appeals must be decided before a particular date, nor there is any negative implication of a particular CIT(A) not being able to do so. The guidelines of the CBDT in this respect therefore must be seen as directory and not mandatory. Thus, the High Court upheld this part of CAP.

Incentives for quality orders

Any directives by the CBDT which give additional incentive for an order that the CIT(A) may pass having regard to its implication, necessarily contravenes in the CIT(A)'s exercise of discretionary quasi-judicial powers.

Under Section 119(1) of the Act, the CBDT has the power to issue orders and instructions for the proper administration of the Act. As per the said provisions, no such orders, instructions or directions shall be issued, so as to require any income tax authority to make a particular assessment or to dispose of a particular case in a particular manner. In exercise of such powers, the CBDT cannot issue any instructions or directions to any income tax authority to make a particular assessment or to dispose of a case in a particular manner.

When the CBDT guidelines provide greater weightage for disposal of an appeal by the CIT(A) in a particular manner, provisions of Section 119 of the Act would be breached. CAP guidelines issued by CBDT have a propensity to influence the CIT(A) and be tempted to pass an order in a particular manner so as to achieve a greater target of disposal. Any temptation though in the guidelines referred to as incentives for disposal of an appeal in a particular manner would not stand the test of law.

The High Court observed that the CBDT has decided to withdraw the CAP guidelines in the forthcoming year. Similarly, in its existing form for the past financial year also the same cannot be allowed to have effect. For past financial year the appellate Commissioners have already passed the orders. Correction of these orders cannot be doubted only because they were passed under the shadow of the CBDT policy. Nevertheless to allow the implementation of this policy, on the orders passed by the CIT(A) even for the past financial year would amount to an illegal prescription to prevail and operate.

Thus, High Court set aside the CAP on the subject of giving incentive to the CIT(A) for passing quality orders.

Our comments

The CBDT policy to dispose of the appeals expeditiously attracted a lot of criticism amongst the taxpayers. Section 119 of the Act provides that CBDT shall not issue orders, instructions or directions, so as to require any income-tax authority to make a particular assessment or to dispose of a particular case in a particular manner.

The High Court held that the disposal norms issued by the CBDT do not breach the reasonableness or cannot be stated to be arbitrary or illegal. However, CBDT policy providing greater weightage for disposal of an appeal by the CIT(A) in a particular manner is impermissible.

³ Other means needed for a particular purpose

⁴ Filing of an appeal before the CIT(A) - In every appeal, the CIT(A), where it is possible, may hear and decide such appeal within a period of one year from the end of the financial year in which such appeal is filed before him under sub-section (1) of Section 246A of the Act.

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