

CHAPTER 2

MANAGING THE INVENTORY OF APPEALS

Inventory of appeals

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Recommendations

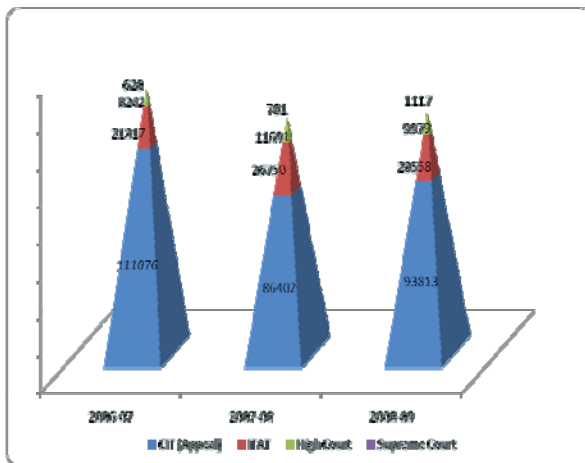
Chapter 2 Managing the inventory of appeals

The average number of appeals preferred annually to all levels of appellate authorities was 1.40 lakh cases during 2006-09. Despite a reduction in referrals at the CIT(A) level, the inventory of appeals with CsIT(A) was building up because of low disposal of appeals. At 20-22 appeals in a month per CIT(A), the disposal of appeals was 1/3rd the targeted level. The present inventory with the CsIT(A) would take 2.4 years to clear at the current levels of disposal. The time taken to dispose off a case that goes to appeal with CIT (A) is 14 months, which is substantially longer than the international standards. The assessment process is unable to satisfy the small taxpayer and low-end disputes (with disputed demand of less than Rs. 1 lakh) constituted 66 per cent of the total appeals. The low-end taxpayer is also the category which is least equipped to bear the litigation cost.

Inventory of appeal

2.1 The average number of appeals preferred annually to all levels of appellate authorities was 1.40 lakh cases during 2006-09.

Chart 2.1: Number of appeals preferred to various appellate levels



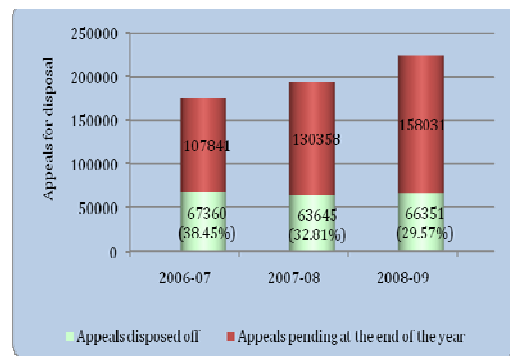
The CIT (A) bears 74 per cent of the appeal cases preferred at the base of the pyramid being the first level of appeal (Chart 2.1).

The number of appeals preferred at CIT (A) level had decreased from 1.1 lakh in 2006-07 to 0.9 lakh in 2008-09.

CsIT are deployed in appeals. The number of appeals finalised per month per CIT (A) remained by and large stagnant, at an average of 20-22. The disposal was substantially lower as compared to the levels of 43 and 28 appeals disposed per month per CIT (A) in 1999-2000 and 2003-

2.2 Around 36-38 per cent of the

Chart 2.2: Appeals disposed off and pending



04 respectively⁸. Currently, the target⁹ for disposal is 60 appeals per month per CIT (A); the actual disposal being 1/3rd of the target.

2.3 The efficiency in disposal measured by number of appeals disposed as a percentage of their pending appeals showed a dip from 38.5 *per cent* in 2006-07 to 29.6 *per cent* in 2008-09. Thus, despite the reduction in appeals preferred the inventory of appeals at the CIT (A) level increased by 46 *per cent* during 2006-09. 1.58 lakh appeals were pending with CsIT(A) at the close of 2008-09. **On an average, the inventory of appeals with each CIT (A) was 637, which would translate to a pendency of 29 months¹⁰ or 2.4 years.**

Time taken to dispose appeals

2.4 The Act¹¹ prescribes that CIT (A) “where it is possible, may hear and decide the appeal within a period of one year”. The time limit is thus not binding on the CIT (A). Our analysis showed that the average time taken by CIT (A) in disposing an appeal was 14 months¹². Most refined tax administrations bind the appeals to a time frame for the convenience of the taxpayer; the time limits prescribed ranging from 45 days to 6 months being far lower than the time taken by CsIT(A) in India.

Her Majesty Revenue and Customs (HMRC) Department of the United Kingdom prescribes that the review of an assessment is usually to be completed within 45 days. In case longer period is required by HMRC to complete the review, the extension in time has to be in agreement with the taxpayer. In case the outcome of the review is not communicated within the review period, the taxpayer has the option to appeal to the tribunal.

Country	Time limit
Austria	6 months
Canada	90-180 days
Portugal	6 months
Bulgaria	45 days
China	60 days
South Africa	60 days
Source: OECD report (Comparative Series -2008) Information	

2.5 During restructuring of the Department in 2001, it was projected that the disposal time in CIT (A) would be reduced from the then prevalent level of 18 months to 6 months. Our analysis shows that this milestone is far from achieved. The inter-zonal swings in turnaround time (Table 2.1) could be a function of several parameters such as complexity of the cases preferred; efficiency in disposal and volume of cases preferred. In the absence of data, we could not ascertain the reasons for the skew displayed in disposal across the zones.

⁸Source: Report of the CAG on Union Government (Direct Taxes) No. 13 of 2005

⁹ Central Action Plan 2008-09. In the 25th Annual Conference of Chief Commissioners & Directors General of Income Tax held in August 2009, it was suggested that the target should be raised to 75 per month per CIT.

¹⁰ Disposal per month is not higher than 22 appeals per month. 637/22= 29 months

¹¹ Section 250 6(A)

¹² An appeal takes 21 months for a decision in the 54 benches of ITAT.

Table 2.1: Age wise analysis¹³ of pending cases at CIT(A) level in different zones

	All India	Mumbai	West Zone (Excluding Mumbai)	East Zone	North Zone	South Zone	Central Zone
No. of pending appeals (in 000)	158	22	43	23	35	23	12
No. covered in age analysis (in 000s)	101	12	29	16	26	12	6
No. of CIT(A)	248	33	58	36	53	45	23
Pendency per CIT(A)	637	667	741	639	660	511	522
Age analysis of pending cases as a percentage of total pendency							
6-9 months	31.6	35.5	24.6	32.1	39.6	25.3	34.6
9-12 months	15.5	19.7	13.7	13.6	18.2	13.4	13.1
1-2 years	29.9	30.7	28.5	31.2	25.3	37.6	36.2
more than 2 years	23.0	14.2	33.3	23.0	16.9	23.7	16.2

2.6 Analysis of the inventory at the level of CIT (A) showed that high-end disputes (where the disputed amount exceeds Rs. 10 lakh) account for 93 *per cent* of the pending tax demand but constituted only 17 *per cent* of the appeals. 66 *per cent* of the appeals were instituted by taxpayers on disputes on tax less than Rs. 1 lakh. The assessment process is unable to satisfy the small taxpayer, leading to greater appeals; a fact that should be viewed with the low success of the Department in appeals at the levels of ITAT and above (discussed in paragraph 3.3). The disputes thus hit the small taxpayer more;

Focus on high value appeals: Departmental strategies¹⁴

- * Prioritise pending high demand appeals that can result in recovery at CIT(A) level; in case of ITAT, request the benches for early disposal.
- * Monitor such appeals in ITAT to ensure that Departmental Representatives do not seek adjournment without prior approval of the respective CCIT.
- * Clear all brought forward high demand appeals pending with CIT(A) within the year.
- * Current high demand appeals to be disposed of within 4/6¹⁵ months of filing of appeals.

the category of taxpayers who are least equipped to bear the cost. He has to meet the litigation costs on his own while large corporates can claim the litigation costs as deductions while computing the tax liability. The demand raised remains uncollected during the pendency of the appeal. The corporate appellant by stretching out the pendency of the demand until he exhausts all

¹³ On the basis of information provided by DGIT (L & R) for the year ending March 2009.

¹⁴ Sources: Strategy for Budget Collection- 2006-07, 2007-08 and 2008-09; Recovery of arrear demand; Central Action Plan 2006-07, 2007-08 and 2008-09

¹⁵ Central Action Plan 2008-09

options is also deriving an arbitrage to the extent that the unmet liability eases his cash flow during the locked-in period.

2.7 There are two provisions of the Act, which in our opinion are not in the interest of revenue. In fact, these provisions cause least discomfort to the taxpayer if he were to remain in appeal, especially to a corporate taxpayer who can bear the litigation costs:

The Department is liable to pay interest on refund up to the date¹⁶ of actual payment of refund (i.e., up to the date of issue of refund voucher). On the other hand, if an appeal is decided against the assessee, any excess refund to be deposited back by the assessee is liable¹⁷ for interest only up to the date of the regular assessment.

An assessee is not considered¹⁸ 'in default' for any amount payable by him against a tax demand as long as the appeal remains 'un-disposed off'. This provision of the Act basically relates to pending appeal¹⁹ with CIT (A). But the phrase 'as long as appeal remains un-disposed off' being a very wide term, we found that AOs were still considering the assessee not in default even if his case is pending at higher levels of appeal.

2.8 These lacunae were brought to the notice of the Department in June/July 2009. In August 2009, the Government released the draft Direct Taxes Code (DTC) which seeks to correct the anomalies²⁰. However, the issues would remain till such time the Code is enforced.

2.9 Recommendations

We recommend that the small taxpayers' disputes may be dealt with by the Department separately through an alternate dispute resolution mechanism²¹. This would bring relief to a large number of disputants (66 per cent) and clear the pendency as in such a situation disposal rate would also be higher. Segregation of complex corporate disputes from such low end disputes, would promote greater focus on the "big ticket" appeals and also facilitate rationalisation of the workload of CsIT(A).

¹⁶ As per section 244A of the Act

¹⁷ As per section 234D of the Act

¹⁸ In terms of section 220 (6) of the Act

¹⁹ In accordance with section 246 or 246A of the Act

²⁰ The DTC extends the interest liability till the date of actual payment to bring in parity. It would also allow the assessee extension of time for payment of amount demanded during the pendency of appeal with the Commissioner (Appeals) only.

²¹ In Internal Revenue Service (IRS) of the United States, there are Low Income Taxpayer Clinics (LITCs), which are independent from the IRS. These clinics provide representation to low income taxpayers for tax collection disputes before the IRS, free or for a nominal charge.

The Ministry stated (July 2010) that an Alternate Dispute Resolution Mechanism for small tax payers would further strain available resources. The present CIT(A) structure is co-terminus with jurisdictional CIT charge. This segregates corporate from non-corporate assessees and appeals of small tax payers would automatically get clubbed together. Further, the work allocation to CsIT (A) has been streamlined recently, which will facilitate rationalisation of workload. Implementation of Central Action Plan 2010-11 is likely to result in higher disposal of appeals.

The reasons for low satisfaction in the assessment of small taxpayers leading to disputes need to be identified.

The Ministry stated (July 2010) that by selecting only large taxpayers in CASS (Computer Assisted Scrutiny System) for scrutiny assessment, additions made by the AOs in respect of small taxpayers would reduce thereby reducing attendant disputes.

The Act may be amended to stipulate a definite time limit for finalising the appeals at the CIT(A) level, which may be in line with international best practices.

The Ministry stated (July 2010) that the Board has been taking various steps to stem the delays. Action Plan 2010-11 reflects the importance that the Board places on this issue.

The Kelkar Committee had recommended that as a confidence building measure, the Board should release annual information on the performance of officers. Greater public disclosure on the performance of the AOs, capturing the error rates, would enforce greater accountability. Such information should provide break-up on the assessments completed, demands raised, number of refunds (and amount) and number in appeals (with amount) disputed. To begin with, such data would also serve as a Management Information System for the Department.

The Ministry felt (July 2010) that the benefit from such transparency may be outweighed by the risk of demoralisation of AOs. On the other hand, the Department plans to put such data on the Central Appeal Registry which will ensure transparency at-least within the Department.

Reasons for low disposal of appeals by CsIT(A) need to be analysed. Wherever pendency is due to lower efficiency, strict administrative measures may need to be taken.

The Ministry stated (July 2010) that constraints of resources have been identified and necessary action is being taken to further improve the position.

Lacunae in the provisions of the Act need to be addressed without linking them to the DTC.

The Ministry stated (July 2010) that lacunae in the provisions of the Act are discussed at various fora although such analysis is not available in an integrated form.