

CHAPTER 5

EFFECTIVENESS OF INTERNAL CONTROLS

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Chapter 5 Effectiveness of internal controls

One of our biggest concerns is the lack of credible and reliable data on the volume and impact of appeals. Widely divergent data is compiled by different sources which have not been subjected to reconciliation. Records to monitor filing of appeals and implementation of appellate orders, were not maintained properly in the assessment units. Inadequate controls led to time barring of appeals and delays in implementation of appellate orders.

Collection of data

5.1 To begin with, the Department does not have accurate data on the amount locked up in appeals, reconciled across different sources of compilation. The Directorate of Income Tax (O&MS) which prepares the Central Action Plan (CAP-I) estimated the locked-up amount at CIT(A) level for the year 2008-09 to be Rs. 49,388 crore. The figures⁵³ of Directorate General of Income Tax (Legal and Research) was around four times this amount at Rs. 1.99 lakh crore. The total disputed amount (for 2008-09) reported in the Receipts Budget of the Union Government 2010-11 was Rs. 53,810 crore while CAP-I reported Rs. 69,253 crore and DGIT(L&R) reported Rs. 216,635 crore. There are thus three sets of information for the same item; the disputed amount is the basis for any administrative intervention on appeals; the absence of accurate data is a pointer to the need for establishing sound internal controls.

Process after the appellate decision

5.2 Once the appellate order is received, the AO has two options either implementing the order or preferring a second appeal. It⁵⁴ is primarily the AO's duty to scrutinise the appellate order to ascertain if a second appeal is necessary and prepare a *scrutiny report* to the respective CIT, who approves the decision. Time limits⁵⁵ have been fixed for preferring appeals (Table 5.1).

Table 5.1: Period within which an appeal is to be filed with the appellate authorities

Sl. No.	Appellate authority	Period within which appeal is to be filed
1.	CIT (A)	Within 30 days of the date of the payment of tax or from the date of service of the notice of demand relating to the assessment or penalty or in any other case, the date on which intimation of the order sought to be appealed against is served.

⁵³ Compiled for the first time by DGIT (L &R). Information discussed in the 25th Annual Conference of Chief Commissioners & Directors General of Income Tax held in August 2009.

⁵⁴ Paragraph 25.1 of the Manual of Office Procedure (Chapter 18, Volume-II, Part A Technical)

⁵⁵ If for any reason, appeals cannot be filed within this timeframe, a notice of motion for condonation of delay along with the affidavit explaining the delay should be filed before the High Court and in case of an extraordinary delay, a detailed affidavit explaining every day of delay should be attached.

2.	ITAT	Within 60 days of the date on which the order sought to be appealed against is communicated to the assessee or to the CIT, as the case may be.
3.	High Court	Within 120 days from the date on which the order appealed against is received by the assessee or the CCIT or CIT.

Receipt of the appellate orders

5.3 In order to ensure that the decisions on appeals are given effect to timely (for taxpayers’ convenience and to reduce the interest liability), the AO must receive the appellate order on time. CIT (A) sends copies of the appellate order on a fortnightly basis to the respective Commissioner, endorsing a copy to the AO. The orders of ITAT are routed through the Departmental representatives in ITAT to the judicial wing of CIT, through whom it is sent to the respective Commissioner and the AO. The order of the HC and SC are sent to the concerned Commissioner through whom it reaches the AO.

5.4 We found instances of delays in receipt of the appellate orders. For

Time taken for receipt of order	Appellate level		
	CIT(A)	ITAT	HC
15-60	15	65	9
61-90	-	12	3
91-220	1	3	6
221-381	-	-	6

instance in Himachal Pradesh, 26 per cent of the orders were received by the AOs after 60 days; the delays being particularly high with respect to orders from HC. We are not in a position to quantify the delay for all the charges as the AOs who are

required to maintain the relevant records, are either not maintaining the records or the records are not complete. We also observed⁵⁶ that there was no correlation between the records maintained by judicial wing in the office of CIT and that of records maintained by the AO.

Filing of second appeal: Timeliness

5.5 The monitoring of appeals, particularly to ensure that second appeals do not get time barred by limitation, is through the appeal registers maintained by the AO and the Commissioner. The register traces the appeal at various stages and captures comprehensive data on the appeals filed, the appellate orders at different levels and the implementing orders of the AO.

5.6 While the second appeal to the ITAT is filed with the approval of the respective Commissioner, the case for filing it with the HC is approved by the Chief Commissioner. The approval for Special Leave Petition (SLP) with the SC goes through a chain across seven⁵⁷ levels including the Law Ministry.

⁵⁶ In Gujarat charge

⁵⁷ The AO, the Range head, the Commissioner, the Chief Commissioner, the DGIT(Legal & Research), Member (Audit & Judicial) of CBDT and the Law Ministry

5.7 The appeal registers were either not maintained or were not filled in completely, thus providing inadequate control on stemming delays in filing appeals. On some appellate orders (18 cases with tax effect of Rs. 3.7 crore), the scrutiny report of the AO recommending escalation was available on file, but subsequent action of either rejecting the recommendation or of implementing the order, was not available. While correlating appeal registers, we found instances where the orders of HC were not placed in the respective assessment files.

5.7.1 The Ministry stated (July 2010) during the exit conference that suitable instructions for maintenance of appeal registers would be issued so as to ensure that the appeal registers are maintained properly.

5.8 We found 91 cases in Maharashtra and 49 cases in West Bengal involving tax effect of Rs. 66.0 crore and Rs. 12.1 crore respectively were dismissed by the respective HCs only on the issue of time barring due to delays in filing appeal ranging from 190 days to 2193 days. The Department replied (June 2009) that SLPs were not filed on 12 of the rejected cases in Maharashtra because the cases did not merit escalation. The reply raises doubts on why the Department appealed in these 12 cases to HC in the first place. In respect of the cases in West Bengal delays were attributed (August 2009) to delay in receipt of approval from the Ministry of Law.

Charge: CIT-3 Mumbai, Maharashtra; AY: 1982-83

Assessee: Indian Express Newspapers Private Limited

The Department filed (November 2008) an SLP after a delay of 481 days as against the prescribed time limit of 90 days from the date of the HC's judgment. The SC while dismissing the SLP said that "it is high time the CIT should try to set its own house in order. SLPs are filed after more than 20 years; it is beyond any comprehension as to why action is not taken against the officers (for) whose fault the delay has occurred". The Department stated (July 2009) that the delay in filing the SLP was a systemic failure and could not be attributed to an individual.

Implementation of appellate orders: Timeliness

5.9 We are of the opinion that the departmental monitoring of appeals is geared more towards ensuring that the escalation does not become time barred, although there were gaps in that area as well. In doing so, both implementation of the appellate orders as well as effective screening of appeals (for escalation) on the merits of the case, have taken a back seat.

5.10 The Act does not specify any timeframe for implementation of appellate orders. The Citizen's Charter of the Department aims for implementation within 45 days from the date of receipt of the order by the AO. Our study showed that only 11 per cent of the orders were implemented within 2 months and in 34 per cent of the cases, the Department took 3 to 6 months. The delays hurt the taxpayer; the interest liability on delayed refunds would be Rs. 250.3 crore.

Table 5.2: Age-wise analysis: Time for implementation of orders

Period (Months)	No of cases	Percentage
1 - 2	44	11.0
3 - 6	135	33.8
7 - 12	74	18.6
13 - 24	81	20.3
25 - 50	48	12.0
51 - 100	15	3.8
101 - 150	2	0.5
Total	399⁵⁸	

Charge: CIT-III Kolkata, West Bengal; AYs: 1993-94 & 1994-95
Assessee: The Peerless General Finance and Investment Company Limited

CIT (A) allowed (December 1996/March 1998) partial relief to the assessee. The Department and the assessee preferred separate appeals before the ITAT. The ITAT gave further relief (June 2003). The AO gave effect to the orders of ITAT and CIT (A) in April 2009; the delays being over 5 years and 12 years respectively. This resulted in avoidable payment of interest of Rs. 24.2 crore.

Charge: CIT-IV Delhi; AY: 1999-2000
Assessee: G.E. Capital Transportation Financial Services Limited

The Department took over 6 years and 2 years to give effect (March 2009) to the appellate orders⁵⁹ of CIT (A) and ITAT respectively. This resulted in avoidable payment of interest of Rs. 35.6 lakh.

5.11 We found 31 appeals with tax effect of Rs. 8.3 crore in which the orders favouring the assessee were yet to be implemented as on date of audit, despite the lapse of 2 months. There were 17 other appeals which were adjudicated in favour of the Department for collection of tax amounting to Rs. 13 crore, which were not implemented. One such case is discussed below:

Charge: CIT-II Chandigarh, UT Chandigarh; AY: 1991-92
Assessee: Punjab State Cooperative Supply and Marketing Federation

⁵⁸ In Andhra Pradesh, Assam, Bihar, Chhattisgarh, Delhi, Goa, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Jharkhand, Madhya Pradesh, Maharashtra, Karnataka, Kerala, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttarakhand, Uttar Pradesh and West Bengal

⁵⁹ Orders of CIT (A)-XIII dated 29 November 2002 and ITAT dated 3 March 2006

AO allowed deduction⁶⁰ of Rs. 57.0 crore on the basis of HC judgment⁶¹. Subsequently, the SC reversed the HC decision and ruled that the assessee was not eligible for the deduction⁶², following which the income was re-assessed. The assessee went to appeal on additional grounds to the ITAT (in 2007 after CIT (A) ruled in favour of the Department) which restored back the file to the AO. Fresh adjudication or assessment orders were not on the file and despite requests we were not informed of the status of the case. The tax involved in this case was Rs. 6.9 crore. We found that the assessee's case for AY 2000-01 and 2001-02 had also been referred back by ITAT to the AO. There were no documents on this referral either on file.

5.12 Recommendations

We recommend automation of receipt and disposal of appellate orders, with inbuilt supervisory controls. Pending automation, maintenance and updating of control registers should be monitored regularly.

The Ministry stated (July 2010) that the Central Appeal Registry will create such a database.

A system for periodic reconciliation of data maintained by different sources may be instituted.

The Ministry, while accepting the recommendation, stated (July 2010) that the Board is seized of the matter.

We recommend that an effective system involving departmental representative/legal counsel may be laid down to ensure timely collection of appellate orders to stem the delays in implementation.

The Ministry accepted (July 2010) the recommendation.

As a confidence building measure, the data on AO-wise receipt and implementation of appellate orders should be placed on the website.

The Ministry stated (July 2010) that the need for updation will make this unviable.

We recommend strict enforcement of accountability of AOs for unwarranted delays in filing of appeals and implementation of appellate orders.

The Ministry accepted (July 2010) the recommendation.

⁶⁰ Under section 80P(2)(a)(iii) and 80 P(2)(a)(iv)

⁶¹ Punjab and Haryana High Court in the decision in 182 ITR 58 (P&H)

⁶² SC ruled that the deduction was to be allowed only to those cooperative societies whose membership consists of agriculturists.