

CHAPTER 6

ACCURACY IN IMPLEMENTATION

Mistakes in assessments

Recommendations

Chapter 6 Accuracy in implementation

We feel that implementation of appellate order is placed low on the AOs' priorities. Inadequate attention to correctness in implementation of appellate orders, led to mistakes amounting to Rs. 1,456 crore in 385 cases. 97 per cent of these mistakes in implementation led to under-assessment of tax benefitting the tax payer, which raises concerns.

6.1 The appeal process is expected to provide clarity to the AO on the assessment and he is expected to implement the order in its letter and spirit. We would assume that an assessment which has gone through a protracted (and costly) dispute, would be treated with greater care in implementation to avoid mistakes especially since the assessee's options for further appeal are thereafter limited.

6.2 The AO is monitored on achievement of targets of collections but implementation of appellate orders remains an unsupervised area. In such a situation, implementation of appellate orders would fall way below the hierarchy of priorities. The delays in implementation are a reflection of this scenario. This also led to inadequate attention on the correctness in implementation of appellate orders. The fact that detailed examination at various stages of appeal and judgments that would be expected to return a firm view, do not together preclude mistakes by AOs would raise doubts on the integrity of the process. This is also to be viewed in the context of the fact that 97 per cent of the mistakes in implementation detected by us led to under-assessment of tax of Rs. 1,446 crore thus benefitting the assessee.

6.3 We found mistakes in 385 cases in assessment of tax amounting to Rs. 1,456 crore. A few are illustrated below:

Charge: CIT-3 Mumbai, Maharashtra; AY: 1995-96

Assessee: ICICI Bank Limited (erstwhile ICICI Limited)

The scrutiny assessment (March 1998) disallowing depreciation on leased assets, was disputed by the assessee in CIT (A) which not only upheld the AO's order, but made further disallowance on depreciation. The AO effaced the original order and re-assessed (February 2000/September 2003) the income as Rs. 294.1 crore. In the meanwhile the assessee approached (June 1999) the ITAT against the CIT (A)'s order, which was on the original assessment. The ITAT granted relief of Rs. 136.9 crore to the assessee. The AO gave effect (March 2007) to the ITAT order by reducing the re-assessed income of Rs. 294.1 crore by Rs. 136.9 crore.

Since the original assessment order had been effaced, ITAT order was, in effect, on an assessment that no longer existed and, therefore, could not be implemented as per the SC's⁶³ ruling. The AO first implemented the order and then misled the Commissioner in his Scrutiny Report (August 2007) recommending no second appeal, stating that "since the original order does not survive..... the (ITAT) appeal be treated as non-est". The AO's actions raise doubts on his intent in granting the assessee of relief of Rs. 136.9 crore and require investigation and appropriate administrative action.

Charge: CIT-2 Mumbai, Maharashtra; AY: 2004-05

Assessee: Tata Sons Limited

The assessee had filed business loss of Rs. 225.2 crore but in scrutiny assessment (December 2006) income of Rs. 758.6 crore was determined including other income. While implementing the order (January 2009) of CIT (A), the business income was reduced to Rs. 56 crore and Double income tax⁶⁴ (DIT) relief was given on the entire income, although the relief was required to be restricted on the tax payable on business income. This led to providing of excess relief of Rs. 34.5 crore.

Charge: CIT LTU Mumbai, Maharashtra; AY: 1991-92

Assessee: Bajaj Auto Limited

The AO added "sales tax incentive" to the income of the assessee, which was rejected⁶⁵ by the ITAT. ITAT's order, in effect, reduced the business profits (and tax liability) of the assessee. The assessee had also claimed deduction under section 80HH (for new units in backward areas) and 80I (for units after a specified date), which are calculated in proportion to business profits. Thus, the relief under these provisions was required to be re-worked in proportion to the reduced profits after implementation of ITAT order. This was not done leading to excess relief of Rs. 12.7 crore to the assessee.

Charge: CIT-II Hyderabad, Andhra Pradesh; AY: 2004-05 and 2005-06

Assessee: Andhra Pradesh Paper Mills Limited

The assessee's claim for deduction⁶⁶ in respect of captive steam and power plants was rejected by the AO during scrutiny assessment. CIT (A) ruled that the assessee was eligible for the deduction. However, we found that the assessee

⁶³ ITO vs. K. L. Srihari (HUF) and others 250 ITR 193

⁶⁴ Double income tax relief on a transaction is given to taxpayer on account of tax on transaction in another country.

⁶⁵ CIT (A) confirmed the inclusion.

⁶⁶ Under section 80IA. The deduction is on the profits earned by the units that are eligible for deduction; the eligibility being for businesses engaged in infrastructure development.

showed inflated profits⁶⁷ at Rs. 21.7 crore for the two AYs together, in order to enhance his claim for more deductions. The AO failed to notice these infractions while implementing the CIT (A)'s orders, and disallow the deductions, thus providing benefit of Rs. 7.9 crore to the assessee.

The Ministry stated (July 2010) that since the CIT (A) allowed the appeal, there is no mistake in the consequential order. This is an unacceptable stand since CIT (A) had clarified only on the eligibility of the unit u/s 80IA and not on the quantum of deduction, which we found, was substantially inflated.

6.4 Recommendations

We recommend supervisory review of orders giving effect to appeal, to detect mistakes.

The Ministry accepted (July 2010) the recommendation.

A stricter accountability structure should be formulated to fix responsibility on AOs for incorrect implementation of appellate orders.

The Ministry accepted (July 2010) the recommendation.

New Delhi
Dated

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Countersigned

New Delhi
Dated

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⁶⁷ By not claiming depreciation on turbine, not capitalising pre-operative interest expenditure on boiler and claiming incorrect amount of depreciation on boiler