

CHAPTER 2

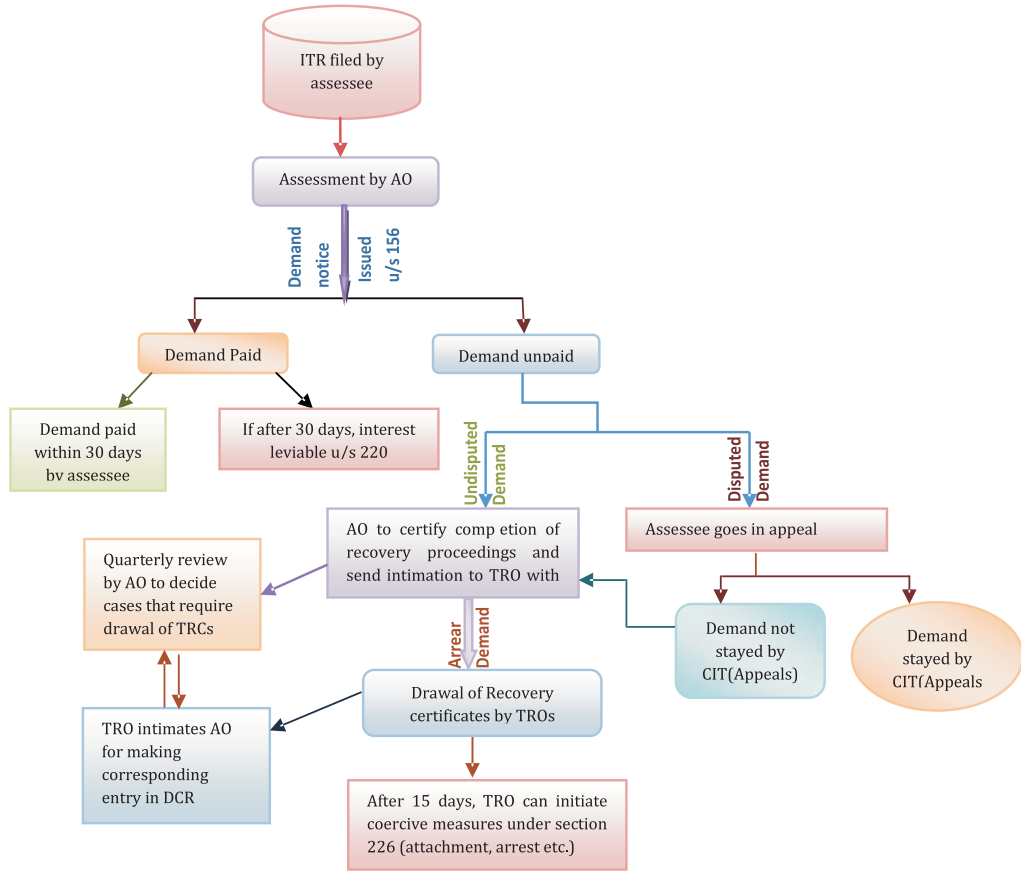
Inventory of Arrears

As on March 2010 tax demand worth ₹ 2,29,032 crore was in arrears. The amount has nearly doubled with reference to the previous year. Individuals accounted for 81 per cent of the arrear demand. Unrecoverable demand constitutes 84 per cent of the overall demand which goes up to 97 per cent in case of Individuals. The database of arrear demand of the Department is unreliable as there are discrepancies in the figures furnished by different wings of the Department.

Incidence of tax arrears

2.1 Incidence of arrears in tax demand is a post assessment phenomenon when the assessee refuses or fails to pay the demand raised by the Income Tax Department. Chart 2.1 outlines the processes involved in raising and collection of demand.

Chart 2.1: Raising and Collection of Demand



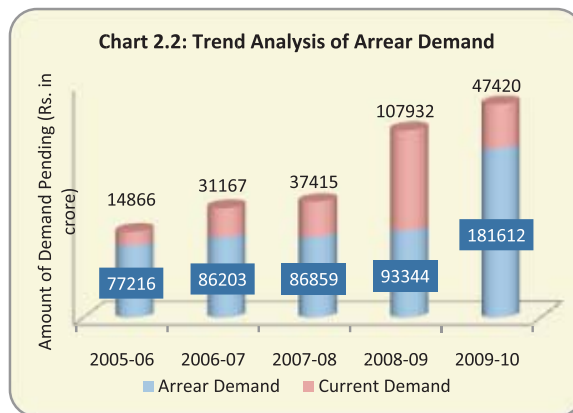
2.2 During the course of the proceedings of scrutiny assessment, the assessee is called upon to furnish details, records and other documents to substantiate claims for deductions, allowance of expenses and receipts treated as non taxable by the assessee. The Assessing Officer (AO) after verifying the submissions made accepts or rejects the claim. When a claim is rejected, the same is added back to the income or the loss. The additions or disallowances have the effect of increasing the tax payable by the assessee. The balance tax payable by the assessee after giving credit to the pre assessment taxes paid is generally communicated to the assessee in the form of an assessment order wherein the AO gives the reasons for the conclusions drawn and additional tax payable by the assessee.

2.3 This order accompanied by a demand notice (DN) is served upon the assessee intimating the tax payable. Generally, the amount indicated in the DN is payable within 30 days or within the time limit prescribed in the DN failing which the assessee is treated as a defaulter and the demand is treated to be in arrears. Further, the assessee is also liable to pay interest on the demand indicated therein for delay in remittance. The assessee has the option of filing an appeal³ against the assessment order within 30 days to an authority higher than the assessing authority.

2.4 The AO is required to send to TRO the details of arrears and assets of the defaulters for drawing up of Tax Recovery Certificates as the TRO is specially empowered⁴ to initiate recovery proceedings against assessee in all cases where demand is more than one year old. The Department treats all demand less than one year old as 'Current Demand'.

Arrear Demand – Trend Analysis

2.5 The arrear tax demand as reported⁵ by the Department showed an increasing trend during 2005-10. The arrear demand increased from ₹ 77,216 crore in 2005-06 to ₹ 1,81,612 crore in 2009-10 registering an increase of 135 per cent over five year period. In 2009-10, out of total pending demand of ₹ 2,29,032 crore, ₹ 1,81,612 crore was demand of earlier years pending collection. Chart 2.2 reflects the year wise trend of pending



³ As per Section 249(4) of the Income tax Act no appeal shall be admitted unless at the time of filing of appeal, the assessee has paid the tax due on the income returned by him (where a return has been filed by the assessee) or the assessee has paid an amount equal to the amount of advance tax payable by him (where no return has been filed by the assessee).

⁴ vide CBDT's letter dated 18-01-2002 in F. No. 402/2/2002-ITCC

⁵ CAP-1 Demand and Collection Statement maintained by the Director of Income tax (O&MS)

demand. As is evident from the chart there was a significant increase in the current demand in 2008-09.

High Value Arrear Demand

2.6 The Directorate of Income Tax (Recovery) is the functional authority responsible for collection, compilation and collation of data relating to recovery of tax arrears involving high value demand of ₹ 10 crore and above, from all CCIT/DGIT(Investigation) charges throughout the country.

2.7 We analyzed the data from the DIT(Recovery) for the Quarter ending September 2010 relating to 1369 cases involving aggregate arrear demand of over ₹ 1,96,092.07 crore. In absence of other reliable data, the information collated from data available with DIT(Recovery) was analyzed. A summary of the amounts outstanding is tabulated below:

Table 2.1: Category wise details of High Value Arrear Demand ₹ in crore

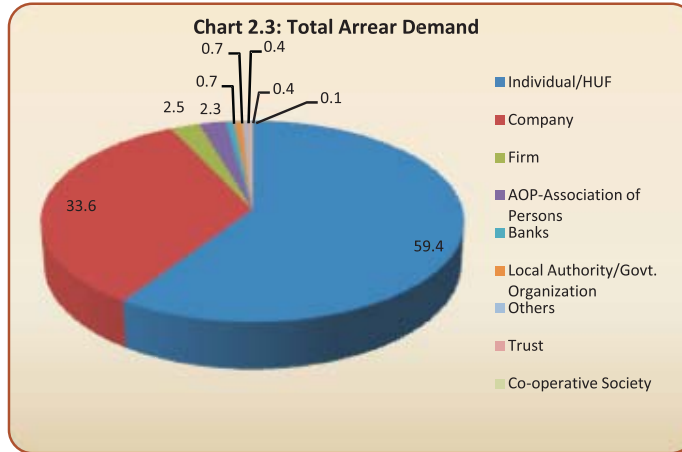
Category	Total Demand	Arrear	Realizable Demand	Unrealizable Demand ⁶
Individual/HUF	1,16,437.71		2,569.41	1,13,868.30
Company	65,816.58		19,372.51	46,444.07
Firm	4,948.57		3,604.92	1,343.65
AOP-Association of Persons	4,455.19		2,671.55	1,783.64
Banks	1,459.84		1,102.56	357.28
Local Authority/ Government Organization	1,357.81		509.00	848.81
Others	747.74		364.36	383.38
Trust	704.37		511.35	193.02
Co-operative Society	164.26		48.99	115.27
Grand Total	1,96,092.07		30,754.65	1,65,337.42

Data Source: Directorate of Income Tax(Recovery)

2.8 Around 60 per cent of the arrear demand was relating to Individuals and HUF, while companies accounted for another 34 per cent. Thus the outstanding demand against individuals was effectively twice as much as against companies. This is in contrast with the trends of tax collection itself, where Corporate tax collected is around twice the amount of

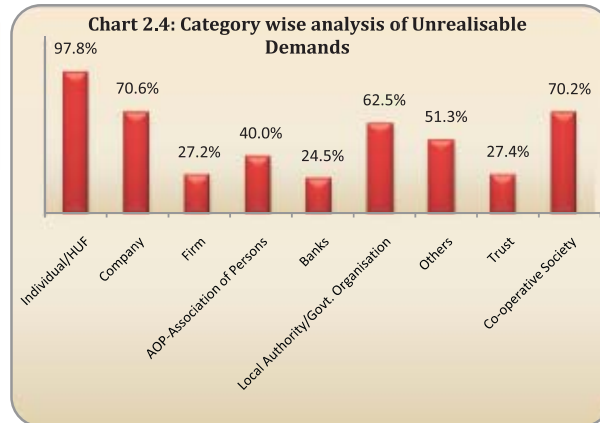
⁶ As per Para 4.1 of Chapter 13 of Manual of Office Procedure (Volume II) – Technical published by DIT(O&MS) the tax arrears may be treated as irrecoverable or unrealizable on account of the following reasons: the assessee has died, he has become insolvent, he is not traceable, he has left India, the company has gone into liquidation, the firm is dissolved and its business has discontinued, the assessee has no attachable assets and when all modes of recovery in accordance with the rules laid down in the Second Schedule including the recourse to civil imprisonment of the defaulter are exhausted and arrears still remain.

tax collected from individuals. Chart 2.3 depicts the relative share of arrear demand against different categories of assesses. Banks, local authorities, trusts and cooperative societies account for a small fraction of arrear demand.



Unrealizable Demand

2.9 Out of ₹ 1,96,092.07 crore the arrear demand reported by the DIT(Recovery), a major portion, i.e. 84.3 per cent amounting to ₹ 1,65,337.42 crore was categorized as unrealizable demand by the Department. On analysis of unrealizable demand vis-à-vis the total outstanding against each category of assessee, it was seen that the unrealizable demand is as high as 98 per cent of the demand against individuals followed by companies (70.6 per cent) and co-operative societies (70.2 per cent), as depicted in Chart 2.4.



Arrear Demand – Individual Assesseees

2.10 The demand against individuals is highly skewed, with 12 individuals⁷ (4.3 per cent of the total cases) accounting for 90 per cent of the arrear demand. One individual Hassan Ali Khan accounts for 43 per cent of the total arrear demand. The demand against Hassan Ali Khan includes ₹ 3,349.9 crore as pointed out in Para 4.2 of the Report No. 26 of 2010-11 (Direct Taxes) of the Comptroller and Auditor General of India. Interestingly, all of this

⁷ Hassan Ali Khan (₹ 50,345.73 crore), Chandrika Tapuriah (₹ 20,540.83 crore) and Harshad S. Mehta (₹ 15,944.38 crore) accounted for 74.57 per cent of total demand pending against individuals.

demand is categorized as unrealizable. The individual cases have been stratified by the amount outstanding and are tabulated below:

Table 2.2: Monetary wise details of arrear demand of individual assesseees ₹ in crore

Category	Total Demand	Percentage of Total Demand	No. of Cases	Realizable Demand	Unrealizable Demand	Percentage Unrealizable of Total Demand
More than 400 crore	1,04,549.41	89.8	12	0	1,04,549.41	100
100 to 400 crore	5,249.28	4.5	23	477.58	4,771.70	91
50 to 100 crore	2,222.39	1.9	31	732.54	1,489.85	67
10 to 50 crore	4,416.63	3.8	210	1,359.29	3,057.34	69
Grand Total	1,16,437.71	100	276	2,569.41	1,13,868.30	98

Data Source: Directorate of Income Tax (Recovery)

Arrear Demand - Companies

2.11 The demand outstanding against companies is also skewed, with 28 companies (3.6 per cent of the total cases) accounting for 37 per cent of the total arrear demand. However, the data is not as skewed as in case of individuals. A stratification of the Tax Demand against companies is shown below:

Table 2.3: Monetary wise details of arrear demand of corporate assesseees ₹ in crore

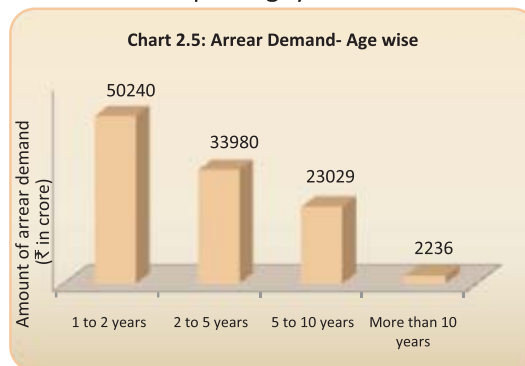
Category	Total Demand	Percentage of Total Demand	No. of Cases	Realizable Demand	Unrealizable Demand	Percentage Unrealizable
More than 400 crore	24,655.72	37	28	6,807.00	17,848.72	72
100 to 400 crore	18,522.74	28	99	4,803.58	13,719.16	74
50 to 100 crore	8,012.93	12	112	2,652.68	5,360.25	67
10 to 50 crore	14,625.19	22	674	5,109.25	9,515.94	65
Grand Total	65,816.58	100	913	19,372.51	46,444.07	71

Data Source: Directorate of Income Tax (Recovery)

2.12 In case of companies, it is seen that percentage of amount realizable is comparable across different categories. This is in stark contrast to the data profile for individuals, where high demand categories showed low realizability.

Age wise analysis of Arrear Demand

2.13 The Fiscal Responsibility and Budget Management Act⁸ prescribes annual disclosure of receivables in the Union Budget namely 'Tax revenue raised but not realized'. These are categorized under 'demand under dispute' and 'not under dispute' for demand more than one year old. The details of 'Tax revenue raised but not realized' are extracted from the Central Action Plan-I (CAP-I) statement. As per Union Budget (Receipt) 2011-12, arrear demand in respect of direct taxes at the end of reporting year 2009-10 was ₹ 1,09,485 crore⁹. Chart 2.6 depicts the age wise details of arrear demand reported in the Budget. The age-wise analysis revealed that out of total arrear demand of ₹ 1,09,485 crore, 2.04 per cent of the total outstanding demand was more than 10 years old, 21.03 per cent was 5 to 10 years old and 31.06 per cent was 2 to 5 years old and 45.89 per cent was 1 to 2 years old. Mumbai region accounted for 54.69 per cent of arrears followed by Delhi region (20.59 per cent).



Cases pending with Appellate Authorities

2.14 A mention was made in Audit Report (No.13 of 2003) for the year ended March 2002 that the main reason for huge build-up of arrears was filing of appeals by tax payers and stay granted by Appellate Authorities. Any assessee aggrieved by the orders of the AO can file an appeal with the CIT (Appeals) a departmental officer. ITAT followed by High Court and Supreme Court are subsequent levels of appeals open both to the assessee and the Department. The number of cases of arrear demand locked in appeal increased year after year. The demand pending before CIT(Appeals) accounted for 91.91 per cent and 70.73 per cent of total demand locked up in appeals in 2008-09 and 2009-10 respectively as detailed below:

Table 2.4: Details of cases pending with Appellate Authorities ₹ in crore

Financial Year	Pending with CIT(A)		Pending with ITAT		Pending with High Court		Pending with Supreme Court	
	No.	Amount	No.	Amount	No.	Amount	No.	Amount
2007-08	1,30,358	*	34,667	9,789.22	31,590	10,052.04	3,344	1170.3
2008-09	1,58,031	1,99,100.89	31,384	9,102.02	34,986	8,050.66	3,984	381.68
2009-10	1,80,991	2,20,148.36	24,693	21,823.26	30,544	68,443.17	5,009	820.79

Source: Directorate General of Income Tax (Legal and Research) Division

2.15 The figures of Directorate General of Income Tax (Legal and Research) is at variance with the estimated demand disputed in appeals reported in CAP-I prepared by Directorate

⁸ Rule 6(1) of FRBM Rules 2004

⁹ As reflected in Column 12 of CAP-I Statement containing details of tax revenues raised but not realized corresponding to arrear demand more than one year old

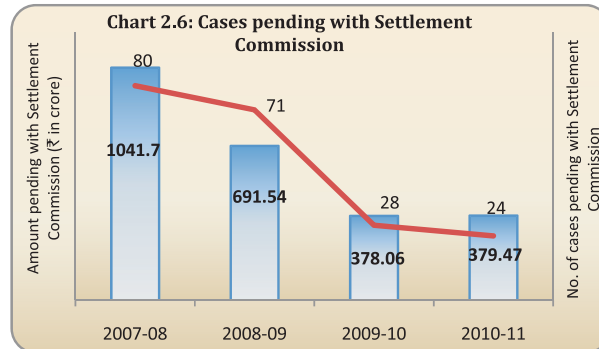
of Income Tax (O&MS). As per CAP-I statement the total demand pending with CIT(Appeals) in March 2009 and March 2010 were ₹ 49,388 crore and ₹ 62,525 crore respectively whereas DGIT(L&R) reported the figures as ₹ 1,99,100.89 crore and ₹ 2,20,148.36 crore respectively . Wide variations in the data compiled by different wings of the Department put a question mark on authenticity and quality of information thereby impairing planning for any corrective action.

2.16 Analysis of the demand locked in appeals at various stages revealed that most of the cases were pending in appeal with the departmental appellate authorities. The number of cases with the CsIT(Appeals) was 65 *per cent* of the total number of cases pending with appellate authorities in 2007-08. This proportion increased to 69 *per cent* in 2008-09 and 75.03 *per cent* in 2009-10. The number of cases of demand locked in appeals with CsIT(Appeals) increased by 39.61 *per cent* during the period 2007-08 to 2009-10.

Cases pending in Settlement Commission

2.17 On test check of assessment records it was found that 80 cases¹⁰ involving arrear demand of ₹ 1,041.7 crore were pending before Settlement Commission in 2007-08. Over the period 2007 to 2011 the number of cases decreased gradually. Chart 2.6 depicts the year-wise details of cases pending with the Settlement Commission.

In the selected units of Rajasthan charge the Department stated that no case was pending before the Settlement Commission. However as per the Central Action Plan arrear demand of ₹ 2.5 crore was pending¹¹ with the Settlement Commission as on 30 November 2010. Such discrepancies need to be reconciled.



Recommendations

- ❖ We recommend that the Department may ensure preparation of a robust and reliable data base of arrear demand by reconciling the data maintained by different wings of the Department as it will assist in effective monitoring and follow up of arrears

The CBDT has stated that the baseline for the statistics is different for different wings and therefore not amenable for comparison.

¹⁰ In Haryana, Madhya Pradesh, Maharashtra, Orissa, Punjab, Rajasthan and West Bengal charges

¹¹ CIT, Jodhpur-Rs.2.39 crore; CIT, Jaipur-II-Rs.0.07 crore and CIT, Udaipur-Rs.0.04 crore

However they have accepted the suggestion on the need for preparation of a robust and reliable data base of arrear demand by reconciling the data maintained by different wings of the Department, towards effective monitoring and follow-up of arrears. The Department also stated that various steps are being taken in this regard.