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Budgetary Proposal – Power of JCIT to Decide Appeal

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Abstract:

The budget 2023, envisages a proposal to grant power of adjudicating an appeal, to the Office of Joint Commissioner /Additional Commissioner of Income Tax, in respect of appeals meeting a certain criterion. This despite the fact that the office JCIT has been not to be exercising the power of direction already available to them in section 144A – an important power to be exercised at assessment stage. The power of adjudication, it is argued, may not serve the desired purpose.

Keywords: *Power of adjudication of an appeal, Office of JCIT/Ad CIT, section 144A direction, faceless jurisdiction.*

Introduction:

An article to argue that the power of adjudicating an appeal, furnished to the JCIT/Ad. CIT, may not serve any essential purposes, much less of reducing avenues of litigation. This view is expressed because the performance of the office of JCIT/Ad CIT is found wanting in the exercise of section 144A power of issuing direction at the stage of assessment.

Objectives:

The objective sought, *inter alia*, to be achieved vide this paper is to bring to notice of hon'ble legislature the half-baked nature of the insertion, authorising JCIT to adjudicate an appeal.

Hypothesis:

There is no hypothesis formed for this paper, as it analyses a policy decision of the hon'ble legislature.

Methodology:

The study of the subject income-tax, complemented with the practice of the income-tax law

over the last 30 years is summoned to form methodology of arriving at the contents of this paper.

Result and Discussion:

1. The tax-relief to the salaried class, expected for decades on grounds of equity & merits, is seemingly accomplished by the budgetary proposals of 2023.
2. The Hon'ble Finance Minister proposes that: *“To reduce the pendency of appeals at Commissioner level, I propose to deploy about 100 Joint Commissioners for disposal of small appeals. We shall also be more selective in taking up cases for scrutiny of returns already received this year.”*
3. It is commonly known that Office of Joint Commissioners/Additional Commissioners of Income-Tax, is already a part of the assessment procedure, apart from the various administrative duties executed by them. Section 144A of the Income-Tax Act 1961, empowers them to issue direction to the Assessing Officers, as follows:
4. “Power of Joint Commissioner to issue directions in certain cases.
144A. A Joint Commissioner may, on his own motion or on reference being made to him by the Assessing Officer or on the application of an assessee, call for and examine the record of any proceeding in which an assessment is pending and, if he considers that, having regard to the nature of the case or the amount involved or for any other reason, it is necessary or expedient so to do, he may issue such directions as he thinks fit for the guidance of the Assessing Officer to enable him to complete the assessment and such directions shall be binding on the Assessing Officer :
Provided that no directions which are prejudicial to the assessee shall be issued before an opportunity is given to the assessee to be heard.
Explanation.— For the purposes of this section no direction as to the lines on which an investigation connected with the assessment should be made, shall be deemed to be a direction prejudicial to the assessee.” (emphasis supplied)
5. As is clear, the power of Joint Commissioner (JCIT for short) to issue directions at the stage of assessment is wide – exercisable at the instance of Assessing Officer (AO, for short) or assessee or even *suo motu*.
6. We hardly come across instances where assessment order is passed by the AO on the directions issued by the JCIT.
7. Factually, an AO shall never be able to muster the courage to seek direction under section 144A, from JCIT – though verbal directions were issued even in the context of assessments, on a daily basis, in the manual regime of assessments.
8. The assessee would also, if at all, very rarely approach the JCIT with a written petition for direction, as in the manual regime, personal visits to office of JCIT, furnished better and

easier options.

9. The JCIT never issued any direction *suo motu*, in the manual regime.
10. With the advent of faceless and jurisdictional less assessment, since August 2020, where there is no face-to-face interaction between assessee and AO, and all communication between the assessee and department flows through Office of JCIT, we do not come across assessment orders passed under the direction of JCIT under section 144A.
11. Hence, section 144A and the power enshrined therein is a dead letter.
12. However, despite this, it is proposed that the Office of JCIT shall now be given the power to decide small appeals, which beyond doubt is a fundamental change.
13. In this context it needs to be stated that till June 2000, the Deputy Commissioner of Income-Tax were empowered under section 246, to decide appeals, which power of appeal was withdrawn from them and furnished to the Commissioner (Appeals).
14. While efforts of government in the sphere of litigation is heartily commended, yet it is respectfully submitted that it is the administrators of the tax law (read Office of JCIT), who need to administer & implement the provisions in the spirit in which they are proposed.
15. The memorandum at page 34 under the heading “Introduction of the authority of Joint Commissioner (Appeals)” at para 2, states:

“It has been noted that as the first authority for appeal, Commissioner (Appeals) are currently overburdened due to the huge number of appeals and the pendency being carried forward every year. In order to clear this bottleneck, a new authority for appeals is being proposed to be created at Joint Commissioner/ Additional Commissioner level to handle certain class of cases involving small amount of disputed demand. Such authority has all powers, responsibilities and accountability similar to that of Commissioner (Appeals) with respect to the procedure for disposal of appeals” (emphasis supplied).
16. In this respect the following issues need deliberation:
 - 16.1 The easy availability with the government of the data of any significance – when all major transactions linked with Aadhar or PAN (Permanent Account Number), and responsibilities cast on several entities under the Income-Tax Act 1961, to furnish statement of financial transaction, nothing remains hidden from the Government of India, despite best efforts to conceal information.
 - 16.2 Since the onset of pandemic itself the government has also consciously not taken up cases for scrutiny, except in limited cases. However, the government got a huge gift with more than 90,000 cases (section 148 cases) being legalised by hon’ble Supreme Court in case of UOI v Ashish Agarwal [2022] 138 taxmann.com 64 (SC) which judgment got fiercely debated, discussed and deprecated in legal circles.

- 16.3 It is respectfully submitted that the source of appeals-to-be-filed with CIT (Appeals) itself has been hugely & unusually depleted in the last 2 years.
- 16.4 In respect of functioning of the Office of JCIT their newly enshrined power of adjudicating an appeal, the issues appearing herein merit consideration.
- 16.5 The Office of JCIT is required to execute several administrative responsibilities, apart from being empowered with quasi-judicial authority under section 144A, to “.....issue such directions as he thinks fit to complete the assessment....”
- 16.6 It bears a recall that “.....A Joint Commissioner, may on his own motion or on a reference being made to him by the Assessing Officer or on the application of an assessee, call for.....” (emphasis supplied)
- 16.7 In the last several decades I have not come across a single case where section 144A direction was given by JCIT on “his own motion”.
- 16.8 It is common knowledge that even when a pleading for section 144A direction is made by the assessee, it generally culminates in the direction to the beleaguered Assessing Officer to follow the law enshrined on the subject. The poor AO is left to his own wisdom, capability and understanding to draft the assessment order.
- 16.9 It is also respectfully submitted that author has also not come across a single direction “.....on a reference being made to him by the Assessing Officer”. Hence to this extent power of adjudication, is rendered a dead-letter and otiose.
- 16.10 It leaves the author speculating as to how the power of adjudicating an appeal, which is now so generously conferred on the office of JCIT, shall be a welcome armoury in the appeal machinery, that shall help mitigate the burden of litigation both of the government and assesseees.
- 16.11 It is very respectfully submitted that with the intent and objective of reducing litigation the department should at the stage of assessment itself decide less cases against the assessee, but with greater authority & conviction of law premised on the orders of judicial and quasi-judicial authorities, that shall add certainty & predictability to cases.
- 16.12 It is stated that: “a new authority for appeals is being proposed to be created at Joint Commissioner/ Additional Commissioner level to handle certain class of cases involving small amount of disputed demand.....”
- 16.13 It is respectfully submitted that in the interest of justice & equity, assessment proceedings should not raise a small demand (as may be envisaged by the CBDT), which shall also be a step in reducing litigation.
- 16.14 It needs a recall that consciously deciding not to file appeal by the department, at the higher appellate forums, in accordance tax-effect stated in the circular no 17 dt 8th Aug 2019,

achieves the same purpose. This is more particularly so, as we already have sub-section (7) of section 270A, though in respect of penalty, which helps reduce litigation, on payment of penalty equal to 50% of tax demand. This is apart from the various litigation reduction schemes that flow in occasionally.

- 16.15 It is stated that: “.....Commissioner (Appeals) are currently overburdened due to the huge number of appeals”, without citing statistics and reasons for pendency of huge number of appeals. It is very respectfully submitted that this is frivolous, unsubstantiated & insufficient argument for this fundamental reform. The parallel of which argument is commonly found in the assessment orders passed by AOs.
- 16.16 It is respectfully submitted that CIT (Appeals) have never really borne the burden of appeals; indisputably it is the beleaguered appellants who bear the real burden.
- 16.17 The large scale reversal of orders of CIT (Appeal) orders by higher appellate authorities demonstrates that the premise of burden, to facilitate the reform, is itself incorrect, though the intention of the government is certainly honorable.
- 16.18 Hardly do we come across orders of CIT (Appeal) receive the same kind of appreciation at appellate forums as that of by Assessing Officers. It is respectfully submitted that the orders of assessment by AOs fight their own battle write till the Supreme Court. When the hon’ble Supreme Court pronounces orders favouring the revenue, very rarely does the contribution of CIT (A) gets acknowledged.
- 16.19 Without prejudice, it is respectfully submitted that the appellant-assessee should be allowed to raise the issue, before the JCIT/Ad.CIT (Appeals), as to why this office did not issue any direction under section 144A at the assessment stage.
- 16.20 It is respectfully submitted that since they are now given the power to decide an appeal the office of JCIT/Ad.CIT should be required to state in the assessment order why he does not deem it fit to issue a direction at assessment stage itself. He should be required to mention that non-issuance of any direction at assessment stage is a consciously arrived at decision and is not due to oversight or ignorance.
- 16.21 It is respectfully submitted that this provision of getting an appeal decided by DCIT, an authority lower than Commissioner, prevailed under section 246 in the statute till 2000.
- 16.22 There is no reason cited for the resuscitation of the dead provision at this stage, when no arguments of merits & enhanced-credibility of the office of JCIT/AD.CIT, which could have otherwise been the basis of empowering them, to decide an appeal have been propounded.
- 16.23 It is respectfully submitted that the Office of JCIT/Ad.CIT has failed the department at assessment stage by not giving direction sustainable in law. How can the legislature now expect miracles from this office?

- 16.24 It is stated that: “Such authority has all powers, responsibilities and accountability similar to that of Commissioner (Appeals) with respect to the procedure for disposal of appeals.” (emphasis supplied)
- 16.25 The sub-section (6B) of section 250, dealing with procedure for disposal of appeals, by CIT(Appeal) states: “The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of disposal of appeal by Commissioner (Appeals), so as to impart greater efficiency, transparency and accountability by—
- (a) eliminating the interface between the Commissioner (Appeals) and the appellant in the course of appellate proceedings to the extent technologically feasible;
 - (b).....; (c).....” (emphasis supplied)
- 16.26 The proposed sub-section (5) to the 246 provides that: “.....for the purposes of disposal of appeal by the Joint Commissioner (Appeals), the Central Government may make a scheme, by notification in the Official Gazette, so as to dispose of appeals in an expedient manner with transparency and accountability by eliminating.....”
- 16.27 The absence of *efficiency*, by advertence or inadvertence, in the procedure stated in the said sub-section (5) is evident. Even when no responsibility is cast on the office of JCIT/Ad.CIT (Appeals), to execute their high-profile job with greater efficiency, can this office be trusted to pass just, fair and legally sustainable orders, is left to the imagination of the reader of this column.

Conclusion:

In view of above it is respectfully submitted that safeguards that are necessary to make the power of adjudication more meaningful, should be also put in place so that intent of legislature is achieved, which shall go a long way in reducing litigation, which remains the avowed objective of the government.

References:

1. The Budget 2023 as proposed by the hon’ble Finance Minister of Government of India, now under consideration of the hon’ble Parliament.
2. The Income –Tax Act 1961
3. Section 144A of the Income-Tax Act 1961