



theirview

Revamping the Income Tax Appellate Tribunal

The solution to delays could very well lie in prioritizing and scheduling the workload properly

PRATIK DATTA, SURYA PRAKASH B.S. AND RENUKA SANE

are, respectively, with National Institute of Public Finance and Policy, Daksh, and Indian Statistical Institute (Delhi).

The recent demonetization is aimed at reducing the extent of black money—money on which tax should be paid, but is not. The government seems keen to bring in other stringent measures to address this menace. Such stringent measures would either result in more people voluntarily paying taxes and assessment volumes rising, or the income-tax department may improve its enforcement capacity to check tax evasion. Either ways, the tax administration and adjudication infrastructure will face increased workload. Unless they are well resourced, the government's noble initiatives will hit an implementation bottleneck.

Indian tax administration and adjudication needs urgent reforms. The latest World Bank Doing Business Index ranks India 172 out of 190 countries on the "Paying Taxes" parameter. Even this metric is based on only the first-level appeals—from assessing officers to commissioner of income tax (appeals) [CIT(A)]. And, as the Parthasarathi Shome Committee has pointed out, in about 75% of the cases, CIT(A) rules in favour of the tax department. The mechanism through which citizens have re-course against excesses of the Indian tax administration is the Income Tax Appellate Tribunal (ITAT), which is not considered in the World Bank rankings.

ITAT is an independent tribunal dedicated to direct tax litigation. Stringent actions by the income-tax department would translate into more appeals to ITAT. If ITAT is not adequately resourced, this potential deluge of cases may affect its performance. This is troublesome as an independent appeals mechanism is necessary to ensure impartial decisions. To adequately resource ITAT, it is important to first know what is its current performance. Unfortunately, like most other Indian courts and tribunals, ITAT's performance has not been studied in detail.

Our recent study seeks to provide deeper insights on ITAT's current performance. We analyse the caseload and disposal rate of ITAT. We use publicly available data from cause-lists published by ITAT, and rulings available on Indiankanoon.org. This gave us details of around 500,000 hearings over 39 months (January 2013 to March 2016) of 126,000 cases and around 28,000 rulings. Analysing its workload and functioning gives us novel insights into ITAT's performance.

ITAT operates across 21 cities with 105 members. Each city has one or more benches. As of July, ITAT had on an average about 880 cases pending per member (September issue of the journal of the *All India Federation Of Tax Practitioners*). In the busier benches (Mumbai and Delhi), we find that the probability that a case will not be solved within one year of filing in Mumbai is 80%, while in Delhi it is almost 95%. Focusing only on solved cases, we find that the ITAT takes on an average 36-48 months to resolve a case. This compares favourably with the five-six years taken on an average across the subordinate courts in the country.

Most of the cases (47% of all hearings and 49% of rulings) pertain to appeals filed against regular assessment orders under Section 143(3) of Income Tax Act, 1961. Amongst records where other relevant details are also available (such as international tax matter, search and seizure), it appears that cases pertaining to assessments for undisclosed income (search and seizure, block assessment, etc.) are common (12% of all hearings and 9% of rulings). These are the cases where the tax department claims to have unearthed income which was not voluntarily disclosed for taxation. The volume of cases is likely to increase if the government is serious about reducing tax evasion. Unless ITATs are resourced to handle this sudden increase in workload, the average time taken for disposal of cases may see a sudden increase from the current 36 to 48 months.

So how can ITAT's performance be enhanced? Commonly suggested remedies include increasing the number of judges or the number of benches to deal with increased caseload. However, our analysis suggests that while a minimum level of infrastructure is important, merely increasing the number of benches or judges is unlikely to deliver better results, as cities with similar numbers of benches and members exhibit very different performance levels.

We also find that cases pertaining to same sections filed within



HINDUSTAN TIMES

one or two days of each other end up having very different time trajectories. We find no noticeable difference in the time taken for disposal between various subject matters. An interesting aspect is the fluctuation in ITAT's activities across benches across the year. For instance, the highest number of pronouncements in Mumbai (24% of its yearly pronouncements) happens in May, while for Delhi it is March (44%). January to March have 30% of the yearly listings. In Kolkata, about a third of all cases listed in a year are in March. Clearly, ITAT does not function uniformly throughout the year (much like many other courts in the country).

This suggests that solutions to delays in ITAT could very well lie in prioritizing and scheduling the workload properly. Although ITAT is a specialized court, there are variations in the complexity and urgency of the cases that come before it. Therefore, it may be useful to frame rules on how different types of cases would be prioritized.

This analysis is just a beginning. Various other parameters need to be considered. For instance, qualitative aspects of rulings, factors influencing them and most frequently litigated subject-matters would all be useful in deciding the policy strategy for improving India's tax environment. More studies like these will help identify the exact institutional weaknesses in tax administration, improving which could help improve India's abysmally low ranking on the "Paying Taxes" parameter in the Ease of Doing Business Index, and ensuring that citizens have access to an independent and impartial appeals mechanism.

*Comments are welcome at
theirview@livemint.com*