



Dated: 24th of January, 2019

To,
Shri Ravi Shankar Prasad
Hon'ble Minister of Law and Justice,
Government of India
New Delhi.

Sub: Suggestions to reduce tax litigations.

Respected Sir,

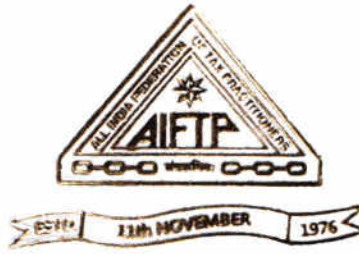
I would take this opportunity to wish you a Happy and Prosperous New Year.

All India Federation of Tax Practitioners is an Apex body of Tax Practitioners of India. It has more than 7500 members across the country and 150 associations as its members. One of the main object of the Federation is to make representation for better administration of tax laws.

Sir, AIFTP has already sent detailed suggestions earlier. In this presentation the AIFTP is restricting only few suggestions to reduce to tax litigations:

1. Tax Benches in High Courts

It may be noted that the pendency before ITAT is only 90000 appeals and the matters are heard within two years of filing of appeals and in some of the Benches within six months of filing of appeals. However, in some of the High



Court's due to shortage of judges the tax matters are not heard within reasonable time. In cities like Mumbai for admission, it takes around two to three years and if admitted for final hearing, it takes another 10 years. It is desired that the High Court should have a continuous and dedicated tax bench for the tax litigation. If revenue prepares the list of pending cases which are admitted and to be admitted and the questions of law involved, it may help quick disposal of pending matters before various Courts and also Apex Court. In tax matters it is the department which is always a party either as petitioner or respondent hence, it may be easy to prepare the list. Once the list is prepared, it can be published in the website which can also help the assesses as well as the department. This project can be done with the co-operation of the tax Bar of the respective State. All India Federation of Tax Practitioners, will be ready to help the tax administration, if an opportunity is given to them.

2. E-bench of Supreme Court can be an effective alternative for having regional benches of Apex Court. E-Bench of Apex Court will help in rendering speedy justice to the litigants, thereby saving huge cost incurred on travelling back and forth to New Delhi.

A common man of our country cannot even think of approaching the Apex Court for justice as it is beyond his reach. One can imagine how expensive it would be for the citizens to approach the Supreme Court for justice and thereby constitution of an e-bench of the Supreme Court is the need of the hour. The hearing of a matter before the Apex Court can be done by linking various High courts and affording facilities for arguing the matter before the Apex Court from the respective High Courts. An e-bench of the Supreme Court can take up State wise matters, e.g. one day could be for matters of Mumbai, another day could be for matters from Chennai or other places,



etc. Initially, an option may be given to the parties for hearing the matters through e-Bench or regular Bench. The Income-tax Appellate Tribunal has started the e-Court at Mumbai through which the matters of Nagpur are heard by members sitting at Mumbai. The experience has been very satisfactory and both the tax payers and the Department have found the functioning of this bench satisfactory. The e-Bench of Supreme Court may initially be started with SLP, relating to direct and indirect tax matters. One Court room of the respective High Court may be converted in to an E-Court.

3. Elevation of members of Income Tax Appellate Tribunal to High Court

India's Income Tax Appellate Tribunal (ITAT) was set up on 25 January 1941, and it was the first experiment in Tribunalization in the history of India. It is considered to be a very successful experiment in Tribunalization and is often cited to justify more steps in this direction. However, till date very few Members of the ITAT have been elevated to the High Courts. Deserving Members of the ITAT due to their specialised knowledge and experience in 'taxation' and 'commercial transactions', would be able to decide the tax matters speedily. This will also attract young bright lawyers to join the Income Tax Tribunal. Further, the lawyers practising on the taxation side in the High Courts may be considered for elevation as Judges of the High Court for speedy disposal of the tax litigations.

4. Increase in age limit of judges and members of the Appellate Tribunal from 62 to 65 years.

There seems no logical reasoning to have differential age limits for judges and members. If a person can be President and lead the institution from his/her ages at 62 to 65 then even the members can be part of the same



institution till the age of 65 to perform their regular work. Parliament had constituted a committee headed by Smt. Jayanti Natrajan as Chairperson for considering the increase in age limit of Judges of High Courts from 62 to 65. The Committee observed as under:

“Taking into account the justifications given by the secretary, Department of Justice, and the statement of objects and reasons appended to the bill, the committee supports the proposal for increase in the retirement age of judges of the High Courts from sixty two years to sixty five years and to be at par with the retirement age of the judges of the Supreme Court. The Committee also acknowledges that the Bill has been brought forth in pursuance of the recommendation made by the Committee in its earlier reports”

Though the committee made the above recommendation on 7th December, 2010, the recommendation have not been followed till date. The then Hon'ble Law Minister, Mr. H. R. Bhardwaj, while addressing the Member's conference at Mumbai on 4th November, 2006, stated that the Government will increase the age limit of all Members from the present age of 62 years to 65 years. A similar representation has also been made by the AIFTP for increasing the retirement ages of High Court judges. The knowledge and experience of a Judge/Member is an intangible asset of a precious nature, and therefore it should be used for justice delivery efficaciously. The federation is thereby of the considered opinion that increasing the age limit will help in reducing the pendency of cases substantially.

5. Setting up of special courts to deal with prosecution in relation to Direct and Indirect taxes

Under the present system, it takes more than 20 years to decide prosecution matters relating to Direct Taxes. Hence, the deterrent provisions fail to achieve the desired object due to the delay in disposal of cases by the trial



courts. Income-tax being a specialized subject, the prosecution cases may be heard by a special court of two judges, similar to the Tribunal, and, thereafter, an appeal may lie directly to the Jurisdictional High Court. This will help in speedy disposal of matters. In fact, speedy prosecution will have great deterrent effect.

I request you therefore to kindly consider the afore-mentioned suggestions.

With sincere regards,

Yours sincerely,

Dr. Ashok Saraf
Sr. Advocate
National President