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A Simple Solution to the Elephant in the Room Syndrome of Large Pendency of Appeals before CIT (Appeals)

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Elephant in the Room Syndrome: Large Pendency of Appeals before CIT(Appeals)

Friends, in a very recent judgement dated October 15, 2024, in the case of '*Om Vision Infraspace Pvt Ltd. v. ITO*', [\[2024\] 167 taxmann.com 709 \(Guj.\)](#), the hon'ble Gujarat High Court has highlighted the syndrome of a very big elephant roaming in the room, in the form of a grave and serious problem of pendency of around 5.80 lakhs appeals for disposal, before the CIT (Appeals), with majority of the pendency before the faceless hierarchy.

Pendency of Appeals before CIT(Appeals) as on 26.09.2024

Category	Pending Appeals	No. of Appointments	Average Pendency per Category
Faceless CIT(Appeals)	3,90,878	279	1400
Non-Faceless CIT(Appeals)	80,170	64	1252
JCIT (Appeals)	1,09,140	100	1091
TOTAL	5,80,188	443	

In the said judgement, the hon'ble Gujarat High Court has held that there shall be no recovery of any outstanding income tax demands from the respective petitioners, as their appeals are pending before the CIT(Appeals), since long four years, without any fault of theirs.

Our hon'ble PM has announced the launching of the Scheme for Faceless Appeals, way back on 25.9.2020, and subsequently all the pending appeals before the jurisdictional CIT(Appeals) as well as the new appeals have been transferred to the National Faceless Appeal Centre, for adjudication and disposal.

However, even after the lapse of four long years, such appeals are still lying pending undisposed off by the National Faceless Appeal Centre. The Finance Act 2023 has enabled the creation of an additional first appellate authority/cadre of JCIT (Appeals) to ensure faster disposal of small value appeals. But practically the quality of the appeal orders being passed by this new cadre/appellate authority has been found not to be of the expected standards of proficiency and are more or less pro-revenue.

In many cases, even the mandatory opportunity of being heard through video conferencing (VC) is not being granted to the appellants. In other cases, where the VC has been granted, but even after the elapse of substantial time period after

the VC hearing, no orders have been passed by the first appellate authority. The appellants have even filed and uploaded their appeal submissions multiple times in the appeal response window of E-Proceedings, but with no response from the concerned appellate authorities. Even the link for mandatory virtual hearing has also not been made available yet in many such pending appeals, in the appeal response window. This is resulting in undue financial hardships to the appellants, because there are many cases of high-pitched assessments, wherein atleast 20% of the demand has been coercively recovered, but the appellate relief is still not coming.

The screenshots of one such long pending appeal before the CIT(Appels) in the faceless hierarchy, are reproduced below, reflecting and evidencing the above-mentioned sorry state of affairs.

The screenshot displays the e-Filing portal interface for the Income Tax Department, Government of India. It shows four individual appeal notices, each with a unique communication reference ID. Each notice entry includes the following information:

- Notice/ Communication Reference ID:** 100063792933, 100053527808, 100039981153, and 100030165362.
- Notice w/s:** 250.
- Document reference ID:** ITBA/NFAC/F/APL_1/2023-24/1053899294(1), ITBA/NFAC/S/62/2022-23/1046645595(1), ITBA/NFAC/F/APL_1/2021-22/1036801742(1), and ITBA/NFAC/F/APL_1/2020-21/1029753888(1).
- Description:** [ITBA]Hearing Notice w/s 250of Income Tax Act 1961, [ITBA]Enablement of Communication Window, [ITBA]Hearing Notice w/s 250of Income Tax Act 1961, and [ITBA]Hearing Notice w/s 250of Income Tax Act 1961.
- Issued On:** 23-Jun-2023, 01-Nov-2022, 10-Nov-2021, and 13-Jan-2021.
- Response Due Date:** 30-Jun-2023, 01-Nov-2022, 25-Nov-2021, and 20-Jan-2021.

Each notice entry includes three action buttons: "View Response" (or "Submit Response" for the second notice), "Notice/Letter Pdf", and "Seek/View Adjournment".

Proceeding Name First Appeal Proceedings	PAN ABCDE1234F	Name of Assessee XYZ LTD	Assessment Year 2015-16
Financial Year 2014-15			

Notice/ Communication Reference ID : **100064706214**

250 Notice u/s	ITBA/NFAC/F/APL_1/2023-24/1054489794(1) Document reference ID	Description : [ITBA]Hearing Notice u/s 250of Income Tax Act 1961. Issued On : 20-Jul-2023 Response Due Date : 04-Aug-2023	View Response Notice/Letter Pdf Seek/View Adjudgment
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Notice/ Communication Reference ID : **100064496772**

VC_APL Notice u/s	ITBA/NFAC/F/VC_APL/2023-24/1054362275(1) Document reference ID	Description : [ITBA]VC NOTICE Issued On : 14-Jul-2023 Served On : 14-Jul-2023 Response Due Date : 26-Jul-2023 View More	View Response Notice/Letter Pdf Seek/View Adjudgment Seek Video Conferencing
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Notice/ Communication Reference ID : **100064496340**

250 Notice u/s	ITBA/NFAC/F/APL_1/2023-24/1054362154(1) Document reference ID	Description : [ITBA]Hearing Notice u/s 250of Income Tax Act 1961. Issued On : 14-Jul-2023 Served On : 14-Jul-2023 Response Due Date : 24-Jul-2023 View More	View Response Notice/Letter Pdf Seek/View Adjudgment
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As can be seen in the above screenshots, this particular appeal of the appellant is pending before the CIT(Appeals) in the faceless hierarchy since January 2021. The appellant had submitted its appeal submissions 7 times till date, and even the VC hearing had also taken place in July 2023, but still even after the elapse of more than three years since transfer of the appeal to the faceless hierarchy and more than one year from the VC hearing date, the appeal is still pending for disposal, with the refunds of all subsequent years being automatically adjusted against the demand litigated in this appeal.

Friends, I think, one of the significant reasons, for the substantial growth in the direct tax collections, in recent years, can be attributed to such kinds of inordinate delays in adjudication and disposal of appeals by the CIT(Appeals) in the faceless hierarchy, and with the refunds of subsequent years being adjusted against the demand embroiled in such long pending appeals.

The Solution:

Our hon'ble Finance Minister Smt. Nirmala Sitharaman, during her Budget Speech, while presenting the full Budget in the Parliament on July 22, 2024, has announced a comprehensive review of the six decades old Income-tax Act, 1961, to make it concise, lucid, easy to read and understand. The objective is to reduce disputes and litigation, thereby providing tax certainty to the tax payers. The review aims at bringing down the demand embroiled in litigation and is proposed to be completed in six months.

Accordingly, the apex body CBDT has formed an Internal Committee, to oversee the said review work. The said internal committee has also invited public inputs and suggestions in four categories viz.

- (i) Simplification of Language;
- (ii) Litigation Reduction
- (iii) Compliance Reduction, and
- (iv) Redundant/Obsolete Provisions

An exclusive webpage to facilitate the uploading of public inputs and suggestions has also been launched in the Income Tax e-filing portal, which can be accessed with the following link:

<https://eportal.incometax.gov.in/iec/foservices/#!/pre-login/ita-comprehensive-review>

On 4th November, 2024, the hon'ble FM has chaired a review meeting to review the ongoing comprehensive review work of the Income tax Act, which was attended by the Revenue Secretary, CBDT Chairman and other senior CBDT officials. In the meeting, the Revenue Secretary has apprised that 22 specialised sub-committees have been established to review the various aspects of the Income Tax Act and till date 6500 valuable suggestions have been received through the webpage on the IT portal, since it was launched on 6th October 2024.

Friends, I have also uploaded my simple yet effective suggestion/solution for tackling the above discussed menace of the large and long pending appeals before the CIT (Appeals), by recommending a minor revision in just one word contained in the existing section [250](#) of the existing Income Tax Act, with the understanding that the said section will continue to exist in the reviewed/new Income Tax Act also, though differently numbered and worded.

Substitution of the word 'may' with the word 'shall' in subsection (6A) of section 250 of the Income Tax Act

In the said judgement, when asked by the hon'ble Gujarat High Court, as to how such large pendency of appeals is going to be disposed of, the Revenue authorities had enlisted the initiatives such as Vivad se Vishwas Scheme, e-Dispute Resolution Scheme etc.

However, in my humble understanding, besides tackling the outcome viz. reducing the number of pending 5.80 lakhs appeals, through such amnesty schemes, there is an urgent need to hammer the very root cause of such piling up of pending appeals before the CIT (Appeals).

The existing subsection (6A) of section 250 of the Income Tax Act, provides the discretion to the CIT(Appeals) that he/she may hear and decide the appeal, within a period of one year from the end of the financial year in which such appeal has been filed by the appellant.

Thus, in order to resolve this menace of long pending appeals, before the CIT(Appeals), the word 'may' should be substituted with the word 'shall' in the existing subsection (6A) of section 250 of the Income tax Act, in the reviewed/new Income Tax Act, so as to convert this discretion of adjudicating the appeal within a period of one year, by the CIT(Appeals), into the mandatory requirement of Law. The necessary supporting infrastructure along with the filling of vacancies/new appointments of the requisite number of competent CIT(Appeals) should be ensured to achieve a permanent solution to this serious problem of piling up of and pendency of large number of long pending appeals for disposal before the CIT(Appeals).

I have uploaded the above suggestion in the suggestions' webpage of the Income Tax portal, the screenshot of which is also being reproduced below, for ready reference.

Home Individual/HUF Company Non-Company Tax Professionals & Others

Suggestions for comprehensive review of Income Tax Act

Please enter section number against which you want to submit response *

Note : For section detail visit incometaxindia.gov.in or [click here](#) to navigate

Simplification of language
Remaining Characters : 500

Litigation Reduction
The word MAY used in existing subsection (6A) of section 250 should be substituted with the word SHALL, to mandate the compulsory adjudication and disposal of appeal by CIT(Appeals).
Remaining Characters : 128

Redundant/Obsolete Provision
Remaining Characters : 500

Compliance Reduction
Remaining Characters : 500

Concluding Remarks: Friends, I do hope and believe, that my above discussed suggestion of fixing the maximum time limit for adjudication and passing of the appeal orders by the CIT/JCIT(Appeals) within a period of one year, from the end of the financial year in which the appeal has been filed by the appellant, with simultaneous assurance of meritorious adjudication of appeals, reaches the right eyes and ears, so that a long lasting and permanent solution is being achieved in respect of this growing menace of large number of long pending appeals before the CIT (Appeals), and this big elephant currently just roaming freely in the room, is no longer just being ignored, but is helped gracefully to be sent to its home place, the jungle.

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