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PAST AND PRESENT OF ITAT - MY PERSPECTIVE

I am extremely happy and glad to know that a great institution – the Income Tax Appellate Tribunal (in short ITAT), is celebrating its Platinum Jubilee. It is indeed a great event and I am happy to participate in its 75 years of unbroken, glorious, much praised and applauded life. It has not become old or senile but became more matured.

The 27 years I spent in the Tribunal was so satisfying and educative that these were the best part of my life. I am extremely happy that I was the head of this Tribunal for about 9¹/₂ years, which enabled me to become a Member of the Law Commission of India.

I remember that Shri Beni Sankar Prasad said in the Parliament that the ITAT in the income tax administration is an "oasis". The former Law Minister Late Shri H. R. Gokhale said in the Parliament that "All the Tribunals in the country should be modelled on the model of ITAT, as it is a model Tribunal delivering equitable justice expeditiously". Late Shri R. Venkataraman, the then Finance Minister and Former President of India said "The Customs and Excise Tribunal is modelled on the model of ITAT as the Government and the parties had utmost faith in the delivery of most

satisfactory judgments". The constitutional law expert, author of Income-tax Act, former Ambassador to the USA, late Shri Nani A. Palkhivala said, with reference to ITAT, that "If a decision even on intricate questions of law is adverse to me, I will not bat an eyelid to accept the judgment in toto and will not advise my client to file a Reference Application (RA) in the High Court".

Several judicial members of ITAT were elevated as Judges in the various High Courts. Some of them even became Judges of the Supreme Court of India, not to speak of Chief Justices of High Courts. A member even became a Member of Human Rights Commission of India and later Governor. Such was the glory of the ITAT. I deliberately used the past tense, for, in my view, such glory is allowed to fade away mostly by the policies adopted by the Governments.

Let me refer to the birth of this great institution –

If I remember right, the birth of the Tribunal was very interesting. I think up to the year 1940 or thereabout, appeals were preferred to the Privy Council. Around 1938 or so, the then government

appointed a committee to go into the method of filing the appeals to mitigate the hardships faced by the assessee in terms of time, cost, etc. This committee recommended the constitution of the ITAT with the head of the Tribunal being referred to as the President, just as in the case of Tribunals in England. Ever since its birth, it has performed its function from glory to glory.

In the beginning, the Finance Ministry was having control, but later it was shifted to the Law Ministry to secure its independence. The members were so knowledgeable and in its anxiety to do complete justice, interpreted its powers so widely to encompass every situation, that the celebrated authors on Income-tax Act devoted about 300 pages of printed matter explaining the widened scope of the appellate authority of the Tribunal with the result an aggrieved assessee or the department can look to it for succour even in extreme circumstances of apparent remedilessness.

The relationship between the Bench and the Bar was always that at the Bar, both the senior most advocates and the Departmental Representatives (DR) used to present the cases with facts, figures and paper books with excellent exposition of legal propositions, that the decision making for the members became as easy as one can breathe. Each case is an exercise in learning new issues and food for thought. Never there was bitterness, rancour, jealousy amongst the members *inter se* or with the Bar. I remember that there were times when a member, in the course of hearing, expressed an opinion, though tentative, as to why this appeal was filed, the Bar, including the DRs,

conceded and withdrew the appeals. I enjoyed to the utmost the bonhomie that prevailed. The members always encouraged the juniors by suggesting clues from the Bench.

In the farewell address given to me, the CBDT Chairman, who was present, perhaps for the first time in the history of ITAT, in the presence of the then Hon'ble Law Minister, the Hon'ble Minister of State for Finance and if my memory holds true, a Barrister from England, said that "though 60% of the decisions of the ITAT were adverse to the Revenue, the Revenue has no grouse because each decision showed where the Revenue went wrong, either in interpretation of law or finding of acts".

I wish to state here with full responsibility how the Government with a view to overcome perhaps the adverse decisions against the Revenue, instead of setting its house in order by improving the knowledge, quality of assessments, went on diluting the stature of the Tribunal. What I mean, instead of allowing the senior most member of the Tribunal, (i.e. Senior Vice-President or a Vice-President) to become the President of the Tribunal, as was in vogue for over 60 years since its inception in 1942 or thereabout and without finding fault, a sitting or retired judge of the High Court is included for appointment as President, giving him the first preference in the IT section and second- preference to the Senior Vice President. How this is justified, I am unable to judge. The President of ITAT is mainly an administrative post. A High Court judge will have no administrative experience, unlike a senior Vice-President. The members of the Tribunal



are as competent as High Court judges in interpreting the law and in appreciation of the evidence. Most of the judgments of the Tribunal, about 95% if my statistics is correct, were upheld by the High Courts and the Supreme Court and even the Income Tax law was amended at times.

This departure is not warranted and will seriously cause disinterest and heart burning in the Members. Every Member will, genuinely and understandably, have an expectation to occupy the high post. I don't mean any disrespect to the High Court judges, whom I hold in the highest esteem. They occupy constitutional post whereas the President occupies an administrative post, subject to the control of the Law Ministry. A junior most Accountant Member can disagree with his view and the Third Member may agree with the dissenting opinion of the Accountant Member. This is likely to cause embarrassment to the High Court judge, if he is the President. For sitting judges this may even mean, in a way, degradation. The Government needs to look into this aspect and make only members of the Tribunal as eligible for the post of the President, as was the case hitherto.

The second aspect which is equally disturbing is the provision to file appeals to the High Court against the orders of the Tribunal u/s. 260A of the Income-tax Act. The earlier procedure of filing RA to the High Court for its opinion on a question of law is the best practice and procedure. The Tribunal is a final fact finding body. Its findings on facts are binding and cannot be interfered with unless they are found to be perverse. In umpteen cases, the High Courts refused to interfere with

the findings of facts and answered the question of law approving the conclusions reached by the ITAT. There is no flaw in this procedure. It was in place most successfully and satisfactorily for over decades. If there was any delay, it was not with the Tribunal. It lies with the High Court. Even the appeals now provided are subject to the same curse of delay at the level of the High Court. How will the appeals help the Revenue or the assessee? The litigants must learn to accept the legal decisions instead of prosecuting litigation endlessly. This is a retrograde step and needs to be reversed.

Regarding qualifications for the Judicial Member (JM), there is again a dilution. Earlier, the qualifications to be eligible for JM are the same as was stated in the Constitution of India for High Court Judges. This was removed in 1998. Earlier, only ILS Grade-I officers or equivalent. i.e. District Judges, were eligible. Now, even Grade-II officers are also eligible. If the number of persons in Grade-I are not sufficient in number, the reduction in the area of recruitment cannot be the answer, just like reduction in eligibility criteria for judges of the High Court cannot be reduced for want of sufficient number of persons. One must try to improve the knowledge, skill and experience rather than reducing the qualification to widen the field. Similarly, in the case of Accountant Members (AM), from CIT, it has now been reduced to Addl. CIT. This is not at all warranted. There are sufficient number of Commissioners in place and it will not be difficult to find few persons as members. If the Commissioners feel that their orders were reviewed and reversed by the Tribunal, the answer is to

strengthen their knowledge and not reduce the qualification for appointment. Now the Addl. CIT can reverse the order passed by not only the CIT but also by the CCIT. This reduction in qualification without any valid justification in law will result in the formation of low idea of the judgements passed by the Tribunal, though they may be correct in all and every aspect.

I may also mention here that when I was the President of the Tribunal, a proposal from the Tribunal to make it equal to that of High Court was accepted by the Law Ministry (at that time Shri P. C. Rao was the Law Secretary, now he is the senior most Judge of the International Tribunal for Law of Seas). But unfortunately at the time of formation, the then Chairman of the Law Commission of India wrote a letter to the Law Ministry suggesting postponement of the same. Otherwise, the fate of the Tribunal would have been totally different. That is how the National Tax Tribunal (NIT) / National Tax Court

(NTC) was conceived but did not see the light of the day.

It must be remembered that the Members of the Tribunal have to understand and interpret all the laws passed by the Parliament and the different State Legislatures, except the Constitution. They should thus have a sound knowledge of jurisprudence in order that their orders stand the scrutiny of the High Court / Supreme Court and the satisfaction of the parties before it. It is doubtful whether lowering of the qualifications will result in bringing the above required satisfaction. Any amendment to the qualification of the members must be carried out in consultation with the views of the Tribunal and the Bar Associations.

Wishing the Tribunal to travel from strength to strength and to celebrate another Platinum Jubilee, gloriously.

Jai Hind.

