IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.3343 OF 2018

1. The Chamber of Tax Consultants
through its President
Mr.Hinesh R. Doshi
Address :
3, Rewa Chambers,
Ground Floor, 31,
New Marine Lines,
Mumbai 400 0 20.

2. Mahendra Sanghvi
10, LA Citadella,
99, Maharshi Karve Road,
Mumbai 400 0 20. ... Petitioners

Versus

1. The Central Board of Direct Taxes,
Department of Revenue,
Ministry of Finance,
Government of India, North Block
New Delhi 110 001.

2. Union of India
through the Secretary,
Department of Revenue,
Ministry of Finance,
Government of India, North Block
New Delhi 110 001. R espondents

....

- Mr. S. E. Dastur, Senior Advocate a/w Mr. Vipul Joshi, Mr. Harsh Kothari, Mr. Abhishek Padwalkar & Mr. Dharan V. Gandhi for Petitioners.
- Mr. Anil Singh, ASG, a/w Mr. Sham V. Walve for Respondent No.1.

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ALONG WITH

CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO.144 OF 2018

1. ACELEGAL
D-201, 2nd Floor,
Vashi Station Complex,
Vashi, Navi Mumbai 400 703.

2. Sneha Sarbhushan
C-104, Rachana Heights,
Near Old Post Office,
Panvel 410 2 06. ... Petitioners

Versus

1. Union of India
Through the Secretary,
Ministry of Finance,
Department of Revenue,
Government of India,
MSEB Building, 2nd Floor,
Estrella Battery Compound,
Labour Compound, Dharavi,
Matunga, Mumbai 40 0 019.

2. Chairman,
Central Board of Direct Taxes,
North Block,
New Delhi 1 10 001. R espondents

....

- Ms. Ritika Agarwal a/w Ms. Deepti Jethva or Petitioners.
- Mr. Anil Singh, ASG, a/w Mr. Sham V. Walve for Respondent No.2.

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CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.
DATE : 11th APRIL, 2019.

P.C. :

1. Heard learned Counsel for the parties for final disposal of the Petitions.

2. The grievances of the Writ Petitioners and the Public Interest Litigation Petitioners substantially overlap. We may record brief facts. The Writ Petition is filed by the Association of Tax Consultants and its office bearers. They have challenged a portion of Central Action Plan (hereinafter referred to as the said plan) prepared by Central Board of Direct Tax (for short 'CBDT') for the financial year 2018-2019. We shall take a detail note of the relevant provisions contained in this plan later. For the moment we may note that this plan contains various provisions made by CBDT setting out targets of tax collection, disposal of cases by income tax authorities and for awarding points for such disposals. The grievances of the Petitioners relate to two areas of this plan. Petitioner's first grievance is in respect of time line set and the directions to the Commissioner (Appeals)

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for deciding appeals within such time. According to Petitioners such targets and time limits would put unnatural pressure on the Commissioner to decide the cases in a hasty manner, which has every possibility of denying a fair hearing to the assessee. Second area of the Petitioners' grievance is with respect to allocation of units for disposal of what has been referred to as quality orders . The Petitioners would point out that these quality orders are those which result in favour of the department. According to Petitioners granting more weightage to such orders, would have the possibility of influencing the outcome of the Appeals before the Appellate authorities.

3. The Petitioners of the Public Interest Litigation have also challenged the same plan. The challenge however is confined to the portion of the plan, where the CIT Appeals have been given higher weightage for disposal of Appeals by quality orders.

4. The CBDT has framed the said plan for the financial year 2018-2019. The preamble of this document sets out the purpose for framing the said plan and reads as under;

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The Vision 2020 document adopted by the Income-tax Department envisages an efficient and effective tax administration, progressive tax policy and improved tax compliance. The Action Plan 2018-19 must work towards accomplishing this vision.

The Action Plan for 2017-18 was a comprehensively re-modeled plan that sought to address all the current priorities in a holistic manner. It laid special emphasis on a number of critical areas such as litigation management, improving quality in diverse areas of work and strengthening compliance and enforcement functions. The plan worked well and resulted in enhanced levels of performance in all functions across the board.

This Action Plan for 2018-19 retains the broad structure of the plan for 2017-18 and seeks to consolidate the achievements made, while re-emphasising priorities within the framework of the overall Vision. A new chapter on Widening of Tax Base has been added, so as to highlight the critical importance of this area. The Chapter on Audit has been omitted, since the CITs(Audit) are already functioning under instructions and SOPs formulated by the Directorate of Income-tax (Audit and Inspections). The separate chapter on Prosecution and Compounding has been omitted and the relevant targets, in consolidated form, have been incorporated in the Chapter on Assessment Units (prosecution targets for TDS units already form part of the Chapter on TDS). Targets in various key result areas have been re-calibrated in the light of experience gained.

5. Chapter I of the plan sets out targets for tax collection. It contains goals for major head wise direct tax collection for the financial year 2018-19. Such targets are broken up region wise, keeping in view revenue potential of the region.

Chapter III of the plan pertains to Litigation Management. The Petitioners' challenge flows from this chapter. The relevant portion of this chapter reads as under;

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CHAPTER-III
LITIGATION MANAGEMENT

"The rising litigation with the taxpayers and the quantum of revenue locked up in appeals is a matter of serious concern that requires attention." – Vision 2020

Litigation is not only a cost on the credibility of a tax administration system but also an indicator of the robustness and fairness of a system of taxation. Litigation has been rising over the years and has now assumed grave proportions, as is evident from the following data:

No. of appeals pending with CsIT (A) as on 01.04.2017	3,28,173
No. of appeals disposed of by CsIT (A) during FY 2017-18	1,23,480
No. of appeals pending with CsIT (A) as on 01.04.2018	3,21,843
Demand involved in appeals with CsIT (A) as on 01.04.2018	Rs.6.38 lakh crore
Demand stayed by ITAT/Courts as on 01.04.2018	Rs.87,035 crore

Such high volume of litigation has resulted in rendering a huge amount of tax as uncollectible. Besides, it is a major impediment towards creating an environment of tax certainty for the taxpayers. It also involves infructuous costs on account of efforts to realize taxes blocked in these appeals. The substantial progress made last year is required to be continued with renewed vigour so as to bring down the quantum of litigation and unblock the revenue involved.

PART A – TARGETS FOR CIT (APPEALS)

2. The pendency of appeals with CsIT (A) and demand locked therein has been increasing over the years. Analysis of the work done last year reveals the following:

	Revenue involved	Pending On 01.04.2017	Disposals	New filings	Pending On 01.04.2018
A1	more than 50 crores	1295	1033	579	841
A2	1 to 50 Cr	34488	9813	11694	36369
A3	10 L to 1 cr	76771	23723	35701	88749
B	Less than 10 Lakhs	215619	86205	1743	131157
C	Current Less than 10 L	0	2706	67433	64727
		328173	123480	117150	321843

(a) Total appeals pending where demand is less than 10 Lakh are 1,95,884 as on 01.04.2018, which shows a decline of about 9% from the corresponding figure as on 01.04.2017. However, the pendency is still very large, and includes 1,15,706 appeals where demand is less than Rs. 2 lakhs. A special focus is required on such cases during the current year.

(b) In regard to high demand appeals, there is a decline of 35% in A1 category but an increase in pendency of A2 and A3 categories of 5 % and 16% respectively.

(c) The appeals pending as on 01.04.2018 include 22256 appeals that are more than 5 years old.

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3. The results of last year‟s action plan strategy in litigation management at the level of CIT(A) are encouraging. There has been a reduction in overall litigation, particularly in cases involving very high quantum of demand, as also in cases with tax demand of less than Rs.10 lakhs which have a wide-spread impact on taxpayers. It is therefore reasonable to continue with a similar action strategy for the current fiscal, to meet the core objectives of budget collection, reduction in outstanding demand and litigation management. Accordingly, a two-pronged strategy as in last year, with slight modifications to deepen the impact, shall be adopted this year, too, having proportionate focus on optimizing disposal in terms of numbers and on maximizing disposal of appeals involving high quantum of demand.

3.1 It is seen that the appeals pending in different categories are not evenly distributed amongst PCCIT regions, as also within each PCCIT region. Hence the targets for disposal are being set at the level of PCCIT regions, and at micro level there shall be norms for disposal of appeals by individual CITs(A). In order to ensure optimum distribution of work and maximum disposals, the PCCIT/CCITs may redistribute the cases in such a manner as to attain/exceed the targeted disposals. The allocations of pending appeals may also be reviewed periodically to ensure that each CIT(A) delivers results in accordance with the norms laid down hereunder. Further, the PCCITs/CCITs shall endeavor to ensure disposal of older appeals on priority, particularly appeals that have been pending for more than 5 years.

3.2 Accordingly, the targets and norms for FY 2018-19 in respect of disposal of appeals pending with CsIT (A) in each PCCIT Region are set out as under:

A. Each PCCIT Region shall ensure:

a. Disposal of at least 25% of appeals that involve demand of Rs.10 lakhs or more in categories A2, and A3 and 100% of appeals pending as on 01.04.2018 that involve demand of Rs.50 crore and above (category A1);

b. Disposal of at least 90% of appeals that involve demand of less than Rs.2 lakhs (new category B3);

c. Disposal of at least 70% of appeals that involve demand of less than Rs.10 lakhs, inclusive of the targeted disposal in B3 (less than 2 lakh demand) category.

B. Each individual CIT (A) shall be expected to dispose of a minimum of 550 appeals, or achieve a minimum of 700 units during the year. In PCCIT regions where the average number of Category B3 appeals pending with CITs(A) is more than 500, each individual CIT(A) shall be expected to achieve a minimum of 800 units during the year.

C. In Regions where the targeted disposal as at A above translates into numbers of units that fall short of the norms for individual CITs(A) stated at B above, the PCCITs concerned shall scale-up the targets stated at A above so as to ensure satisfaction of the norms. Such scaling-up shall be done, as far as possible, in respect of Category A2 appeals followed by Category A3 appeals.

D. Correspondingly, in Regions where the targeted disposal as at A above translates into numbers of units that are significantly higher than the norms for individual CITs(A) stated at above, the PCCITs concerned may scale-down the targets stated at A above, in consultation with the Member (A&J). Such scaling-down shall be done, to the extent possible, only in respect of Category B appeals.

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3.3 The above targets, along with demarcation of units, are represented by the following Table:

TABLE 4

Taget	Category			Unit Per Appeal	Remarks
25%	A (>10 lakhs)	A1	Above 50Cr	3	No inter-se priority except 100% disposal of A1.
		A2	Above 1 Cr to 50 Cr	2	
		A3	Above 10 Lakhs to 1 Cr	1	
70%	B (<10 lakhs)	B1	Filed before 1.4.2015 (2-10 lakhs)	1	No inter-se priority except 90% disposal of B3
		B2	Filed from 1.4.2015 to 31.3.2018 (2-10 lakhs)	1	
		B3	All appeals filed before 31.03.2018 (demand <2 Lakhs)	1	
Balance	C (<10 lakhs)	C	Current Appeals filed during FY 2018-19	1	May be disposed of with approval of PCCIT/CCIT

3.4 For the purpose of evaluation of performance of an individual officer holding additional appellate charge(s) during the year/part-year, the aggregate disposal including in the additional charge(s) held, shall be considered.

3.5 The individual norm of 550 appeals or 700 units stated above may also be varied by the PCCIT concerned in respect of CITs (A) within his jurisdiction, having regard to the number and categories of appeals pending for disposal with the CITs(A), so as to attain maximum output and optimum work allocation. However, each PCCIT Region as a whole must achieve the targets of disposal of 25% of appeals involving demand exceeding Rs.10 lakhs and above, 90% of appeals involving demand less than Rs.2 lakhs and 70% overall in Category B appeals.

3.6. The above targets should cumulatively result in a significant increase in disposal of appeals with CITs(A) and substantially reduce the pending appeals carried forward, as well as unlock the demand locked therein of about Rs.4.5 lakh crore.

ACTION ITEMS:

(1) Category A appeals involving demand above Rs. 50 Crore and pending as on 01.04.2018 shall be disposed of by 31.12.2018.

(2) The priority for disposal of appeals in different Categories shall be as under:

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(i) Higher priority shall be given to appeals involving demand of less than Rs.2 lakhs and filed up to 31.03.2018 (Category B3). There shall be no inter-se priority within the Category.

(ii) The next priority shall be given to disposal of appeals involving demand of Rs.10 lakhs and above (Category A), irrespective of the year in which the appeals are filed. There shall be no inter-se priority within the Category, except that appeals involving demand of Rs.50 crore and above shall be disposed of by 31.12.2018. Different sub-categories shall earn 1, 2 or 3 units respectively as indicated in Table 4 above.

(iii) Lowest priority shall be given to appeals involving demand of less than Rs.10 lakhs and filed during the current FY 2018-19 (Category C). Such appeals can be disposed of, with approval of the CCIT concerned, if there is inadequate number of appeals of Category A or B pending with him. The CIT (A) may also dispose of any such appeal on priority, if so directed by the PCCIT/CCIT concerned.

(iv) Appeals of the same assessee relating to different years involving substantially similar issue(s) or inter related issue(s) may be disposed of irrespective of the Category to which they belong, if one of the appeals falls for priority disposal. In respect of group search & seizure cases, the CIT (A) may dispose of appeals of group cases irrespective of the category to which they belong if one of the appeals falls for priority disposal.

(v) Appeals pending for more than 5 years shall be given priority within each Category. PCCITs shall endeavor to liquidate the pendency of such appeals during the year.

(vi) Cases set aside and restored to the CIT (A) by Courts/ITAT are to be disposed of on priority. These shall get points as per regular category.

(vii) Appeals involving Transfer Pricing issues shall earn 1 unit in addition to the normal number of units specified against the relevant category in Table 4.

(viii) Appeals in cases where returned losses have been reduced or converted into income in assessment will be entitled to normal units specified in Table 4, on the basis of notional tax on the amount of disputed additions.

(3) Incentive for quality orders:

(i) With a view to encourage quality work by CITs(A), additional credit of 2 units shall be allowed for each quality appellate order passed. The CIT (A) may claim such credit by reporting such orders in their monthly DO letter to the CCIT concerned. Quality cases would include cases where-

(a) enhancement has been made,
(b) order has been strengthened, in the opinion of the CCIT, or
(c) penalty u/s 271(1) I has been levied by the CIT(A).

(ii) The concerned CCIT shall examine any such appellate orders referred to him by the CIT(A), decide whether any of the cases reported deserve the additional credit and convey the same through a DO letter to the CIT(A), which can be relied upon while claiming the credit at the year end.

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6. From the above noted portion of the plan it can be seen that in order to achieve certain disposal targets of pending Appeals before the CIT Appeals, CBDT has made detail provisions for expeditious disposal of such Appeals. Part 3 of Chapter III pertains to incentive for quality orders and provides that additional credit of 2 units shall be allowed for each quality appellate order passed. Such term quality cases or quality orders has also been defined in the said part.

7. In the background of such facts on 22/03/2019, we had on the question of higher weightage for quality orders made following observations;

> *5. With respect to the Petitioners second part of the challenge, we are of the opinion that the CBDT should reconsider the same. From the action plan, it is not clear as to the utility of the norms set which the Commissioner has to achieve. If the purpose of setting of norms is to evaluate the performance of the Commissioner, there would be all the more reason why the above-quoted portion of the action plan be reconsidered by the CBDT.*

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6. On the next date of hearing, the learned Counsel for the Respondent would apprise us about the utility of the norms that the Commissioner would need to achieve and the outcome of the CBDT s deliberations on our recommendation for reconsideration.

8. In response to this order, the counsel for CBDT placed on record a communication issued by CBDT dated 04/04/2019, clarifying the issues raised in the said order dated 22/03/2019. Relevant portion of this communication reads as under;

Kindly refer to interim order of Bombay High Court in captioned matter wherein the petitioners have challenged the CAP 2018-19 issued by the CBDT on two grounds viz, (i) directions issued by CBDT for disposal of certain number of Appeals of specified categories within specified time and (ii) incentivization of CsIT(A) for quality orders where enhancement has been made, order of AO has been strengthened and penalty has been levied by the CIT(A). Hon'ble Court has directed that on the next date of hearing, I.e. 11.04.2019, Department Counsel is required to apprise the court about the utility of norms that the commissioner would need to achieve and the outcome of CBDT's deliberations on their recommendation for reconsideration.

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2. In this regard, I am directed to provide following inputs of CBDT for apprising the court on the twin issues:

(a) As regard the utility of the norms that CIT(A) is required to achieve, it is stated that the Department has been formulating Central Action Plan (CAP) for the purpose of identifying the core areas of departmental functioning and setting targets therein including that of CIT(A). The concept of awarding credits has been brought in by the Board to ensure parity in the performance of CIT(A) as he is required to dispose of small appeals involving meagre tax effect as well as large and complicated cases, involving multiple issues, requiring greater effort and devoting of time.

Further, Litigation management particularly w.r.t appeals pending before Commissioners of Income Tax (Appeals) is one of the key priority areas of the CBDT. A two pronged strategy has been detailed in the CAP for respect of disposal of appeals filed with CIT(A),. having proportionate focus on optimizing disposal in terms of numbers and on maximizing disposal of appeals involving high quantum of demand.

(i) As per Central Action Plan (CAP) for the FY 2018-19, the Department has laid out targets and norms for disposal of appeals pending with CsIT (A) in each PCCIT Region. CITs(A) in each PCCIT charge shall be expected to dispose of a

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minimum of 550 appeals, inter alia involving a). Disposal of at least 25% of appeals that involving tax effect of Rs10 lakhs or more b). 100% of appeals pending as on 01.04.2018 that involve tax effect of Rs.50 crores and above c). Disposal of at least 90% of appeals that involve tax effect of less than Rs.2 lakhs and disposal of at least 70% of appeals that involve tax effect of less than Rs. 10 lakhs inclusive of appeals with demand less than Rs.2 lakhs.

(b) With respect to recommendation of Hon'ble court to reconsider the incentivization provided to CsIT(A) for quality orders, it is submitted that the additional weightage to the disposal of appeals has been provided where the CIT (A) has to spend more time and make extra efforts, in investigating the case, thereby making disposal of such appeals a more time taking, strenuous and rigorous exercise. It was never the intention of the CBDT to compromise the independence and judicial autonomy of the CIT (Appeals) by incentivizing the orders in favour of department. Rather CBDT has always upheld their functional autonomy and judicial independence to decide on merits on each case.

Nonetheless, in order to avoid further litigation and since fiscal year 2018-19 is closing, the Board has taken the view that as and when the exercise of formulation of CAP for 2019-20 begins, the existing definition of quality cases' as provided in

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Para 3(i) of Chapter III of CAP would be modified to include all appeal orders passed by the CIT (A), whether decided in favour or against the revenue, where the supervisory Pr CCIT/CCIT is of the view that the CIT(A) has devoted more time for ascertaining the facts and passed exceptionally well-reasoned and speaking order by carefully applying mind to the facts of the case and considering applicable judicial precedents.

9. In the background of such facts, learned Senior Counsel Mr.S.E. Dastur, for the Petitioners raised following contentions;

(i) Any directives from the CBDT to the Appellate Commissioner to dispose of Appeals expeditiously, has a possibility of miscarriage of justice. The assessee may not get full opportunity of hearing if the Commissioner (Appeals) is under pressure to decide the Appeals within a time frame.

(ii) The learned Counsel drew our attention to sub-section (6A) of section 250 of the Income Tax Act, 1961 (for short the Act);

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and he submitted that, this statutory provision also does not lay down a rigid time frame for disposal of an Appeal. Under the impugned circular the CBDT has; (a) shortened the time for disposal of the appeal and; (b) laid down a rigid time frame to decide the appeal which is wholly impermissible;

(iii) Counsel further submitted that the prescription of higher weightage for disposal of cases through quality orders, is wholly impermissible. This has every possibility of consciously or subconsciously influencing the mind of the authority about the ultimate outcome of the Appeal. Such directives have the scope of influencing the outcome of Appeal on merits;

(iv) Learned Counsel submitted that there can be no additional weightage to the orders, based on the contents or the subject matter. He submitted that these directives issued by CBDT transgress the exercise of quasi judicial functions by the

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statutory appellate authorities, which is impermissible. In this respect our attention was drawn to section 119 of the Act, which contains a provision that any instructions or providing directions the CBDT may issue in exercise of such powers, shall not be so as to require any income-tax authority to pass an order in a particular manner.

10. In support of his contentions learned Counsel relied on following decisions;

In case of ***P.K. Ghosh, IAS & Anr. Vs. J .G. Rajput, reported in (1995) 6 Supreme Court Cases 744, in which it was observed as under;***

> *10. A basic postulate of the rule of law is that 'justice should not only be done but it must also be seen to be done.' If there be a basis which cannot be treated as unreasonable for a litigant to except that his matter should not be heard by a particular Judge and there is no compelling necessity, such as the absence of an alternative, it is appropriate that the learned Judge should rescue himself from the Bench hearing that matter. This step is required to be taken by the learned*

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> *Judge not because he is likely to be influenced in any manner in doing justice in the cause, but because his hearing the matter is likely to give rise to a reasonable apprehension in the mind of the litigant that the mind of the learned Judge - may be subconsciously - has been influenced by some extraneous factor in making the decision, particularly if it happens to be in favour of the opposite party. Credibility in the functioning of the justice delivery system and the reasonable perception of the affected parties are relevant considerations to ensure the continuance of public confidence in the credibility and impartiality of the judiciary. This is necessary not only for doing justice but also for ensuring that justice is seen to be done.*

In case of ***Dedicated Health Care Services TPA (India) Pvt. Ltd. and others, Vs. Assistant Commissioner of Income-Tax and others,*** reported in ***(2010) 324 ITR 345 (Bom)***, in which the Division bench by referring to section 119 of the Act struck down a circular issued by the CBDT on the ground that the same would interfere with the exercise of the quasi-judicial discretion of the Assessing Officer.

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11. Learned Counsel Ms. Ritika Agarwal appearing for the Petitioner of the Public Interest Litigation in addition to adopting the arguments of Mr.Dastur further submitted that the policy of the Government which transgresses the statutory limits, should be struck down.

12. On the other hand learned ASG Mr.Anil Singh opposed the Petitions. He submitted that the targets for tax collection and disposal of income tax appeals, would have no effect on a fair hearing that the assessee must get from the Commissioner (Appeals). These targets and parameters for judging the output of a Commissioner (Appeals) are well within the scope of CBDT's powers. Like any other organization, the CBDT also lays down targets for tax collection. In order to judge the quantitative output of the appellate Commissioners, certain disposal norms are set. No directives have been issued to dispose of any number or kind of Appeals within a rigid time frame, if the same cannot be done having regard to the interest of justice. With respect to Petitioners' later part of the challenge to

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additional weightage for quality orders, Counsel pointed out that the CBDT has reconsidered the issue and decided not to implement the same henceforth. With respect to the orders already passed, in any case, no harm or damage would be done to the Petitioners or any of the assesses in allowing such provisions to be effected.

13. Having heard learned Counsel for the parties and having perused documents on record, we may first consider the Petitioners' challenge to the first part of the circular. We have reproduced the relevant portion of the circular at length. Perusal of this portion would show that the CBDT has set out broad targets for revenue collection projected over the different regions. Internal distribution between the regions has been carried out on scientific basis. For any organization, setting of goals and targets is neither impermissible nor unknown. Only because certain targets for tax collection are set out, would not render the policy arbitrary or unreasonable. In the context of the disposal norms to be met by the appellate Commissioner also,

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we do not think that it is impermissible for any organization to set out certain output norms to judge the output performance of the person concerned. In absence of any such norms, it may be extremely difficult to judge the quantitative performance of a person concerned. Setting out of norms for disposal by the Appellate Commissioners, per say, therefore cannot be said to be either impermissible or beyond the scope of CBDT's powers. Disposal of appeals by the Commissioner is just one of the many parameters for judging his performance. Range of other factors such as the quality of the orders, his service record etc. would his suitability for concern advancement. But to subject that quantitative output should not enter such consideration at all would not be correct.

14. In the context of the precise norms set by the CBDT for disposal, firstly it has to be the decision of the organization to set out appropriate norms. The Court does not have the wherewithal to test such norms on the basis of reasonableness. When an expert body like CBDT sets out disposal norms for the Commissioner Appeals to achieve, it has the necessary expertise

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and wherewithal after taking into consideration all relevant factors to come to a proper conclusion in this respect. The Court would not substitute its wisdom for that of the CBDT, duly aided and advised by the experts in the field.

15. With this preamble we may peruse the disposal norms more minutely. These norms provide different units for disposal of the Appeals depending on; the age and the valuation. For example the policy provides the category 'A' where the revenue effect is more than Rs.10 lakhs. The cases involving tax effect of more than Rs.50 Crores upon disposal would receive 3 units. For cases between Rs.1 Crore and 50 Crores the disposal unit would be two and for the rest, it would be one unit. The category 'B' is cases where the revenue effect is less than Rs.10 lakhs. Here the policy trifurcates the cases between those filed before 01/04/2015 and in the range of Rs.2 to 10 lakhs, those filed from 01/04/2015 to 31/03/2018 and the tax effect is between Rs.2 to 10 lakhs and all case filed before 31/03/2018 where the tax effect is less than Rs.2 lakhs. Category 'C' are the cases where

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the tax effect is less than Rs.10 lakhs and the Appeals are filed during the financial year 2018-2019. The Policy prescribes that individual norm of disposal 550 Appeals or 700 units should be achieved, having regards to the number and categories of Appeals pending before such Commissioner, so as to attain maximum output and optimum work allocation. The policy also makes certain general prescriptions such as giving the higher priority to Appeals involving demand of less than Rs.2 lakhs and filed upto 31/03/2018. Next priority would be given to disposal of Appeals involving demand of Rs.10 lakhs and above irrespective of the year of filing and the lowest priority would be given to Appeals filed during the financial year 2018-2019 involving tax effect of less than Rs.10 lakhs.

16. We do not think that these guidelines in any manner breach the reasonableness or can be stated to be arbitrary or illegal. These guidelines are for general directives and prescriptions to on one hand enable the revenue to collect taxes which are otherwise due and on the other hand to assess the

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work output of the Appellate Commissioners which in any organization is of considerable importance. We also do not think that the guidelines have undertone of giving priority to the issues which concern the revenue more than the assessees. As noted the directives include giving priority to old cases of small assessees. If the CBDT also recognizes that appeals involving high tax effect are most likely to be more voluminous, involving complex legal disputes, the prescription of higher units for disposal of such cases, can neither be stated to be arbitrary nor unreasonable, nor can be seen as restricting the discretion of the Appellate Commissioner. We do not accept the suggestion that such guidelines or prescriptions could possibly result in denial of fair hearing to the assessees. Reference in the policy to unblock or unlock the revenue blocked cannot be read in isolation and must be understood in the larger context of the whole document. Before the appellate Commissioner essentially the assessees who are aggrieved by the orders of assessing officers who would be in appeal. Pending such appeals stay of the tax recovery would in many cases be granted conditionally

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or unconditionally. It is only after the appeal is decided by the Commissioner (Appeals) that further recovery of tax if so confirmed can be made. Expression to unlock the revenue must be understood in this background. The policy nowhere expects the disputed tax demand would be confirmed whether justified or not. In a given case it may happen that upon disposal of the appeal, tax provisionally collected may become returnable.

17. In this context, we may also refer to sub-section (6A) of section 250 of the Act, which reads as under;

> *In every appeal, the Commissioner (Appeals), where it is possible, may hear and decide appeal within a period of one year from the end of the financial year in which such appeal is filed before him under sub-section (1) of section 246A.*

This provision thus provides that the Commissioner (Appeals) where it is possible may hear and decide the Appeal

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within a period of one year from the end of financial year in which such Appeal is filed before him. This provision does not lay down any fix time limit for the Commissioner (Appeals) to dispose of the Appeals filed before him. It only requires that the Appeal be disposed of when it is possible, within a certain time frame. This however does not indicate that the guidelines issued by CBDT in the impugned plan, are contrary to sub-section (6A) of section 250 the Act. What the CBDT has done is to lay down broad guidelines for disposal of Appeals category-wise. There is neither firm directives that certain class or kinds of Appeals must be decided before a particular date, nor there is any negative implication of a particular Commissioner (Appeals) not being able to do so. The guidelines of the CBDT in this respect therefore must be seen as directory and not mandatory.

18. Coming to the Petitioners' second limb of the grievance, we may recall the policy provided for incentive for quality orders. This clause states that with a view to encourage quality work by Commissioner (Appeals) additional credit of 2

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units shall be allowed for each quality appellate order passed. Ofcourse subject to CCIT upon examination of the order finds of deserving higher weightage.

The term quality cases is explained as those including cases where -

(a) enhancement has been made,
(b) order has been strengthened, in the opinion of the CCID, and
(c) penalty under section 271(1) has been levied by the CIT (A).

19. All these contingencies necessarily point to circumstances where the order passed by the Commissioner (Appeals) is in favour of the revenue. For example this policy refers to the enhancement made by the Commissioner or a case where the Commissioner has levied penalty under section 271(1) of the Act. This necessarily refers to enlargement of the assessee's liability before the Commissioner as compared to what may have been determined by the Assessing Officer. In our opinion, such policy is wholly impermissible and invalid. Any

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directives by the CBDT which gives additional incentive for an order that the Commissioner (Appeals) may pass having regard to its implication, necessarily transgresses in the Commissioner's exercise of discretionary quasi-judicial powers.

20. It is well laid down through series of judgments in field of administrative law, interference or controlling of the discretion of a statutory authority in exercise of the powers from an outside agency or source, may even be superior authority, is wholly impermissible. This general principal of administrative law finds statutory embodiment in sub-section (1) of Section 119 of the Act. As is well known, under sub-section (1) of section 119, the Board has the power to issue orders and instructions for proper administration of the Act. This provision reads as under;

> *119. (1) The Board, may from time to time, issue such orders and directions to other income-tax authorities as it may deem fit for the proper administration of this Act, and such authorities*

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and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board.

21. In terms of the provisions contained in sub-section (1) of Section 119 of the Act, thus the Board may from time to time issue such orders, instructions and directions to other income tax authorities as it may deem fit, for proper administration of the Act and such authorities shall observe and follow the orders, instructions and directions of the board. While granting such wide powers to the CBDT under sub-section (1) of section 119 of the Act, the proviso thereto provides that no such orders, instructions or directions shall be issued, so as to require any income tax authority to make a particular assessment or to dispose of a particular case in a particular manner. In exercise of these powers thus the CBDT cannot issue any instructions or directions to any income tax authority to make a particular assessment or to dispose of a case in a particular manner.

22. When the CBDT guidelines provide greater weightage

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for disposal of an Appeal by the Appellate Commissioner in a particular manner, this proviso of sub-section (1) of section 119 of the Act, would surely in a breached. It is neither possible nor necessary to judge the actual effect of such guidelines on the orders passed by the appellate authorities. Suffice it to record that such guidelines have a propensity to influence the appellate Commissioners and be tempted to pass an order in a particular manner so as to achieve a greater target of disposal. Any temptation though in the guidelines referred to as incentives for disposal of an Appeal in a particular manner, would not stand the test of law.

23. Under the circumstances the CBDT has now decided to withdraw the guidelines for the coming year. In our opinion in its existing form for the past financial year also the same cannot be allowed to have effect. We are conscious that the appellate Commissioners have already passed the orders. Correction of these orders cannot be doubted en masse only because they were passed under the shadow of the said policy. Nevertheless

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to allow the implementation of this policy, on the orders passed by the Appellate Commissioners even for the past financial year, would amount to an illegal prescription to prevail and operate.

24. In the result, the Petition is allowed in part;

(i) The following portion of the impugned Action Plan of CBDT is set aside.

> ***Incentive for quality orders*** *:*
>
> *(i) With a view to encourage quality work by CITs (A),additional credit of 2 units shall be allowed for each quality appellate order passed. The CIT (A) may claim such credit by reporting such orders in their monthly DO letter to the CCIT concerned. Quality cases would include cases where -*
>
> *(a) enhancement has been made,*
> *(b) order has been strengthened, in the opinion of the CCID, and*
> *(c) penalty u/s 271(1) has been levied by the CIT (A).*
>
> *(ii) The concerned CCIT shall examine any such appellate orders referred to him by the CIT (A),*

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decide whether any of the cases reported deserve the additional credit and convey the same through a DO letter to the CIT (A), which can be relied upon while claiming the credit at the year end.

(ii) Both the Petitions are disposed of accordingly.

(SARANG V. KOTWAL, J.) **(AKIL KURESHI, J.)**

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