

President for the Mother Tribunal: An appeal to appoint the regular President for the Income-tax Appellate Tribunal (ITAT) amongst the eligible Nine Vice-Presidents who have served the Institution for around two decades

- **Dr. K. Shivaram, Senior Advocate**

Until the retirement of then President of the ITAT Hon'ble Shri Vimal Gandhi on June 3, 2010 the Government normally used to appoint the President of the ITAT before retirement of the President. On retirement of then President Hon'ble Shri Vimal Gandhi, Hon'ble Senior Vice-President Shri R.V. Easwar was appointed as officiating President on June 4, 2010 until his elevation as a High Court Judge on October 14, 2011.

On October 14, 2011 the Government appointed Hon'ble Shri G. E. Veerabhdarappa as officiating President until September 01, 2012. For the reasons best known to the Government, on September 01, 2012 the Government appointed Hon'ble Shri H. L. Karwa as officiating President until March 12, 2015.

Hon'ble Justice Mr. Dev Darshan Sud was appointed as Regular President from March 12, 2015 to February 17, 2017. On February 17, 2017 Hon'ble Shri G. D. Agarwal Vice-President was appointed as officiating President till October 24, 2018. Hon'ble Justice P. P. Bhatt was appointed as President till his retirement on September 4, 2021. On September 5, 2021 the Government appointed Hon'ble Vice -President Shri G. S. Pannu as Officiating President.

In the year 2010 the [ITAT Bar Association Mumbai made a strong representation to the Chairman Standing Committee, *inter alia*, opposing the proposed amendment under section 252 \(2A\) of the Income-tax Act, 1961 \(Act\)](#) for appointing a sitting or retired Judge of a High Court who has completed not less than seven years of service as Judge in a High Court as a President of the ITAT.

The following were the main reasons:

- At present the Income Tax appellate Tribunal has benches in 27 Cities with sanctioned strength of 126 members. It should be appreciated that the job of President involves not only discharging judicial duties but also dealing with a lot of administrative aspects.
- A President who has worked as a member for many years in various capacities and at various Benches all over India has very wide experience, understanding and knowledge about the functioning of the Tribunal as well as ground level realities and issues.
- Normally a member is selected as President after serving more than 20 Years in the Tribunal.
- As a member he has to undergo transfer at least once in four years. When a person is selected as a President, he is fully aware of functioning of various benches of Tribunal, knowledge and integrity of each and every Member which makes it easy for him to discharge his duties more efficiently.
- He also develops good rapport with the other Members so as to achieve and maintain cordial relationship, and smooth functioning of the Tribunal without compromising in the dignity, status and the independence of the office of the President and, at the same time, maintaining the requisite discipline.
- With due respect to the capacity of a High Court judge, it may be stated that his lack of knowledge about the functioning of the Tribunal and being away from ground realities may not be conducive to the smooth functioning of the Tribunal and, instead, may create avoidable chaos and frictions in the matter of administration of the Tribunal.
- It may be noted that most of the other Tribunals are constituted of retired employees and Judges who are appointed for fixed tenure ranging from 3 to 5 years. The Benches are not in more than three places, hence other Tribunals cannot be compared with the Income Tax Appellate Tribunal.

In the year the 2012, we had [made an appeal to the Government to appoint a Regular President at the earliest.](#)

In the year 2017 the [AIFTP made a representation to Government to appoint the President of the ITAT amongst from the Vice-Presidents.](#)

It is for the stake holders to judge whether appointing the Judge as President of the ITAT has achieved the desired object or not. Our former Finance Minister and Minister of Law and Justice, [Late Shri Arun Jaitley while addressing the Parliament,](#) stated that he was not in favour of re-appointment of retire judges in different capacities.

At present the ITAT has nine Vice-Presidents many of them have served more than 20 years to the Institution. In the 20 years of their service, they have served in all commercial Cities and known to each and every Hon'ble Members of the Institution and staffs working in different Zones. With their rich experience they are in a position to know the types of litigations prevalent in different Zones.

Experience showed that when a Judge is appointed, their tenure is not more than two and half years, which isn't sufficient to understand the various administrative and judicial functioning of the ITAT.

The ITAT cannot be compared with any other Tribunal. The ITAT has 63 Benches functioning from 10 Zones and 28 Cities across the country and with circuit Benches. It takes time to understand the functioning of Benches in 28 Cities. A judge of High Court does only Judicial work, whereas the President of the ITAT, in addition to Judicial work has to manage various administrative work such as infrastructure, promotion of staff, Transfer of members from one place to another et cetera.

We had an occasion to interact with many Senior Advocates, Chartered Accountants who have practiced before this great institution for more than

45 years and are still in active practice before the ITAT. They are of the well-considered view that in the interest of the institution the selection committee should consider the names of Vice-Presidents on merit to be appointed as President of the Institution.

When there was direct interference of the executives in the Judicial functioning of the ITAT, then President of the ITAT, Hon'ble Shri T. V. Rajagopala Rao has strongly opposed by filing an affidavit before the Court and given the number of instances of interference by the executives. (Refer **ITAT v. V. K. Agrawal (1999) 235 ITR 175 (SC)**, **Ajay Gandhi v. B. Singh (2004) 265 ITR 451 (SC)**).

It is for the stake holders to judge whether an officiating President can take decision against the executives if there is any conflict of interest between the executives and Officiating President? Whereas a regular President, if appointed can take any bold decision in the interest of the Institution even if it is conflict with the interest of the executives.

The Hon'ble Supreme Court in the case of **Madras Bar Association v. UOI (2021) 128 Taxmann.com 218 (SC) (Order dated July 14, 2021)** directed that the vacancies in the Tribunals are filled up, without delay. The Hon'ble Court observed that "*Access to justice and confidence of the litigant public in impartial justice being administered by Tribunals need to be restored*". However, the [judiciary continues to be cold-shouldered by the Government](#).

We make a humble appeal to the Hon'ble Law Minister to start the process of appointment of the Regular President of the ITAT at the earliest so that the functioning of the Mother Tribunal is not affected.

Many members of the Tax Bar are committed to the Independency of the Institution and not for or against any individual. Further, if any one from the nine eligible Hon'ble Vice-Presidents are appointed as the President, the newly

appointed President would hold the office for at least 4-5 years, until his retirement at the age of 65 years. This would ensure enhanced stability in functioning of this great institution.

The view expressed in this article is only with the good intention to render better administration of justice before the Appellate Tribunal.

We hope the Tax Bar Associations across the country takes up the cause of appointment of the regular President of the Income-tax Appellate Tribunal with the Hon'ble Law Minister expeditiously.

Disclaimer : The views expressed on this website are the personal views of the contributor(s) and the ITAT Bar Association does not necessarily concur with the same.