# EXECUTIVE SUMMARY

## REPRESENTATION REGARDING THE APPLICATION OF THE TRIBUNAL REFORMS ACT, 2021 AND THE TRIBUNAL (CONDITIONS OF SERVICE) RULES, 2021 TO THE INCOME TAX APPELLATE TRIBUNAL

**Respected Sir/Madam,**

The ITAT Bar Association, Mumbai, represents Advocates, Chartered Accountants and Tax Practitioners practising primarily before the Mumbai Benches of the Income Tax Appellate Tribunal ("ITAT"). Established in 1965, the Association has consistently endeavoured to preserve the independence, dignity and effective functioning of the ITAT.

We respectfully submit this representation concerning the application of the Tribunal Reforms Act, 2021 and the Tribunal (Conditions of Service) Rules, 2021 ("the Act and Rules") to the ITAT. While reforms may be appropriate for tribunals generally, the ITAT occupies a unique position in India's justice delivery system and, in our respectful submission, warrants a distinct statutory framework. The provisions relating to tenure, reappointment, selection and removal of Members have the potential to adversely affect the independence, specialised character and effective functioning of this time-honoured institution.

### 1. UNIQUE POSITION AND IMPORTANCE OF THE ITAT

The ITAT, established in 1941 and often described as the "Mother Tribunal", occupies a unique position in the administration of tax justice. For over eight decades, it has earned the confidence of the judiciary, the Executive, professionals and the taxpaying community by consistently providing easy, speedy and impartial justice.

The ITAT is the final fact-finding authority under the Direct Tax Laws and, for a substantial majority of taxpayers, effectively constitutes the final appellate forum, considering the time, cost and practical constraints involved in pursuing litigation before the High Courts and the Supreme Court. Available statistics indicate that **72.98%** of the Tribunal's orders were accepted by both taxpayers and the Revenue without any further appeal. Even amongst matters carried to the High Courts, a substantial majority of the Tribunal's orders were upheld, reflecting the confidence reposed in the institution.

The nature of adjudication before the ITAT is highly specialised. Apart from the Income-tax Act, Members are routinely required to decide complex issues involving company law, partnership law, trusts, succession, contracts, property law, international taxation, Double Taxation Avoidance Agreements, transfer pricing and other allied branches of law. The unique composition of each Bench, comprising a Judicial Member and an Accountant Member, has been one of the principal reasons for the institutional success of the Tribunal. The fact that a large number of Judicial Members of the ITAT have subsequently been elevated to various High Courts further reflects the quality and stature of the institution.

## 2. ADVERSE EFFECT OF SHORT TENURE AND REAPPOINTMENT

Section 5 of the Tribunal Reforms Act, 2021 provides for a tenure of four years, with eligibility for reappointment. Such a truncated tenure is particularly unsuitable for the ITAT.

Considerable time and experience are required for a Member to acquire expertise in the complex and constantly evolving field of direct taxation. A four-year tenure may substantially expire by the time a newly appointed Member develops the specialised knowledge and judicial experience necessary for effective adjudication. Such a system would also gradually deprive the institution of senior Members whose experience presently provides guidance, continuity and mentorship to newly appointed Members.

More importantly, tenure appointments materially discourage experienced Advocates and Chartered Accountants from joining the Tribunal. A professional is required to relinquish a well-established practice to accept appointment. Upon completion of four years, or even eight years in the event of reappointment, such a professional may find it extremely difficult to rebuild his or her practice and is, in any event, prohibited from practising before the ITAT after demitting office. The inevitable consequence would be a decline in the willingness of experienced professionals to join the Tribunal, thereby disturbing the unique balance between professionals and members drawn from the administration that has been one of the hallmarks of the ITAT.

## 3. JUDICIAL INDEPENDENCE AND SECURITY OF TENURE

The Central Government is a litigant in virtually every proceeding before the ITAT. Under a system of short tenure followed by reappointment, the same Executive substantially participates in determining whether a Member should continue in office.

Such a framework is fundamentally inconsistent with the constitutional requirement that judicial adjudication must remain free from both actual executive influence and any reasonable apprehension thereof. A judicial functionary must be able to decide every matter without fear or favour and without the prospect of non-reappointment operating, consciously or otherwise, upon the decision-making process. Judicial independence is not merely a personal privilege of the adjudicator; it is an institutional guarantee for every litigant and an indispensable feature of the rule of law.

The Hon'ble Supreme Court has consistently recognised security of tenure as an essential facet of judicial independence. In *S.P. Gupta v. Union of India*, *Union of India v. Sankalchand Himatlal Sheth*, *Union of India v. R. Gandhi*, *Rojer Mathew v. South Indian Bank Ltd.* and the series of judgments in *Madras Bar Association v. Union of India*, the Supreme Court has repeatedly emphasised that judicial and tribunal independence requires insulation from executive interference together with security of tenure and conditions of service.

Significantly, the controversy is no longer *res integra*. In its judgment dated **19 November 2025** in *Madras Bar Association v. Union of India*, the Hon'ble Supreme Court once again held that a truncated four-year tenure and other provisions impairing judicial independence amount to an impermissible legislative override and cannot be constitutionally sustained.

## 4. EXECUTIVE ROLE IN SELECTION, REMOVAL AND ADMINISTRATION

The concerns regarding tenure are compounded by the composition and functioning of the Search-cum-Selection Committee. Judicial functionaries on the Committee may remain in a minority vis-à-vis representatives of the Executive. The involvement of representatives connected with the Ministry of Finance assumes particular significance since the Revenue is invariably a party before the ITAT.

Further, the provisions relating to removal confer substantial powers upon the Central Government, including the power of preliminary scrutiny and reference to the Removal Committee, while the Rules remain silent regarding the composition of such Committee. Certain administrative matters, including sanction of leave, also continue to remain subject to Executive control.

Viewed cumulatively, these provisions create an institutional framework capable of affecting both the actual and perceived independence of the Tribunal. Public confidence in an adjudicatory institution depends not merely upon actual impartiality, but equally upon a statutory framework which demonstrably preserves decisional independence and institutional autonomy.

## 5. NEED TO PRESERVE AND STRENGTHEN THE ITAT

The ITAT has successfully functioned for more than eighty-five years and has earned unparalleled institutional respect. Its unique model of combining experienced professionals with members drawn from the judiciary and the administration has significantly contributed to the evolution of Indian tax jurisprudence and has served as a model for tribunal justice in the country.

The credibility of the ITAT is also an important component of India's investment climate. Certainty, consistency and impartiality in tax adjudication significantly influence investor confidence and reinforce India's commitment to the rule of law.

Any reform concerning the ITAT must therefore strengthen, rather than dilute, its institutional independence, specialised character and professional composition. The statutory framework should encourage talented Advocates and Chartered Accountants to regard appointment to the ITAT as a viable judicial career and should enable the institution to retain the benefit of the experience acquired by its Members.

At the same time, steps may be taken to upgrade the technological infrastructure available for hybrid and virtual hearings, strengthen institutional safeguards, vigilance and transparency mechanisms to eliminate unethical practices, if any, and evolve a formal methodology for considering deserving Judicial Members of the ITAT for elevation to the High Courts.

**OUR SUGGESTIONS**

In view of the above, we respectfully request that:

**(a)** the Income Tax Appellate Tribunal be excluded from the application of the Tribunal Reforms Act, 2021 and the Tribunal (Conditions of Service) Rules, 2021;

**(b)** alternatively, appropriate legislative amendments be carried out to protect the security of tenure and the independent and fair functioning of the President, Vice Presidents and Members of the ITAT and to minimise Executive influence in matters relating to appointment, reappointment and removal;

**(c)** the infrastructure and network facilities available to the ITAT for virtual and hybrid hearings be substantially upgraded;

**(d)** appropriate institutional safeguards, vigilance, transparency and accountability mechanisms be strengthened to identify and eliminate unethical or corrupt practices, if any; and

**(e)** a formal mechanism be evolved for considering deserving Judicial Members of the ITAT for elevation to the High Courts.

The ITAT is not merely another tribunal. It is an institution that has, for more than eight decades, successfully delivered specialised, impartial and efficient justice while commanding the confidence of taxpayers, the Revenue, the Bar and the constitutional courts alike. Preservation of its independence and specialised character is therefore essential not only for the taxpaying community but also for maintaining public confidence, investor confidence and the credibility of India's system of tax adjudication.

We respectfully request your kind and sympathetic consideration of the above representation.