

Tax Litigation Management New Way to Reduce Litigation on Repetitive Matters

Union Budget 2022-23



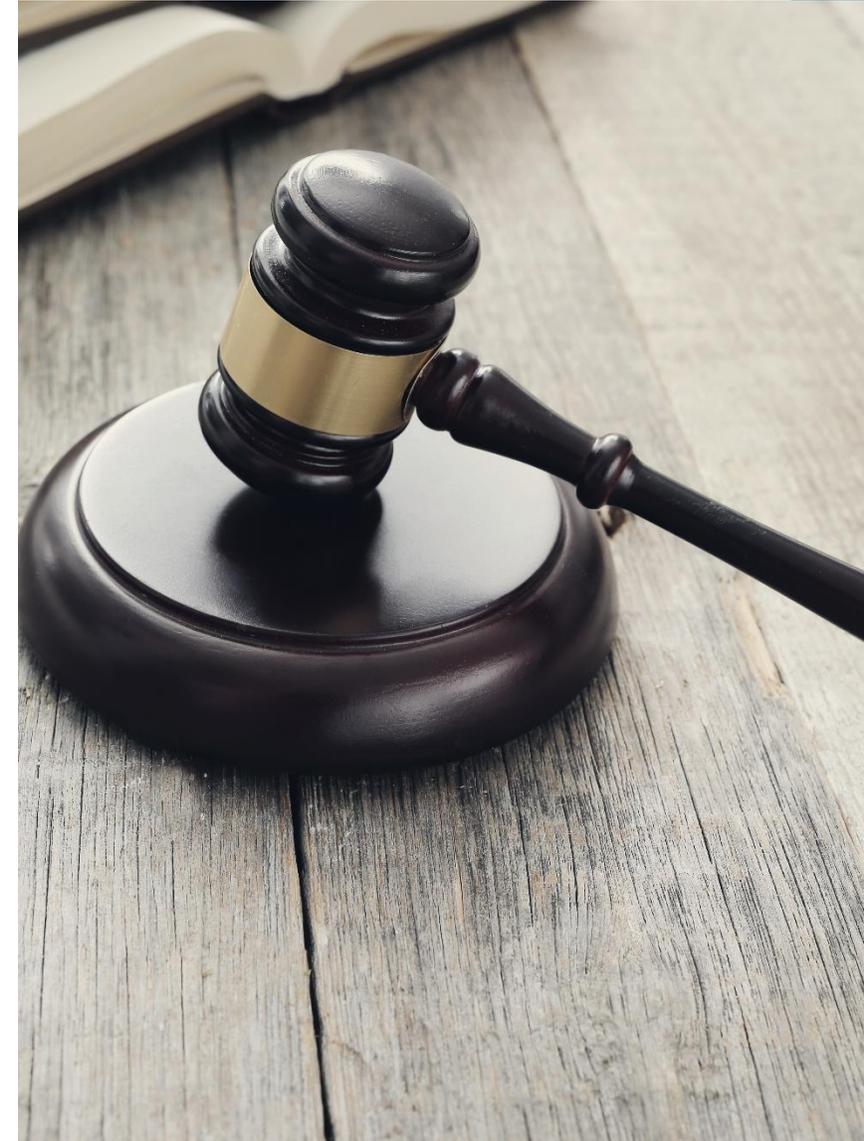
New Measure Proposed

India has a multi-layered dispute resolution mechanism. Over the years, tax appeals pending for disposal are ever-increasing. This in turn results in a delay of justice and resolution of the tax matters, increased cost of litigation, blocking tax revenues for the government and refunds for taxpayers. The government aims to uplift India's ranking on Ease of Doing Business and various measures are taken on this front in the past few years. However, more steps need to be taken to reduce and manage the tax litigation as it directly impacts the environment of doing business in India.

The India tax dispute resolution mechanism surrounds the Commissioner of Income-tax (Appeals) [CIT(A)]/Dispute Resolution Panel (DRP), Income Tax Appellate Tribunal (ITAT), High Court (HC), and Supreme Court (SC). At each of these levels there are many cases that are piled up for adjudication. There are no time limits prescribed for the disposal of tax matters due to which disposal happens at its own pace, which takes on an average 10 to 12 years, especially when the matter is pending before the HC or SC .

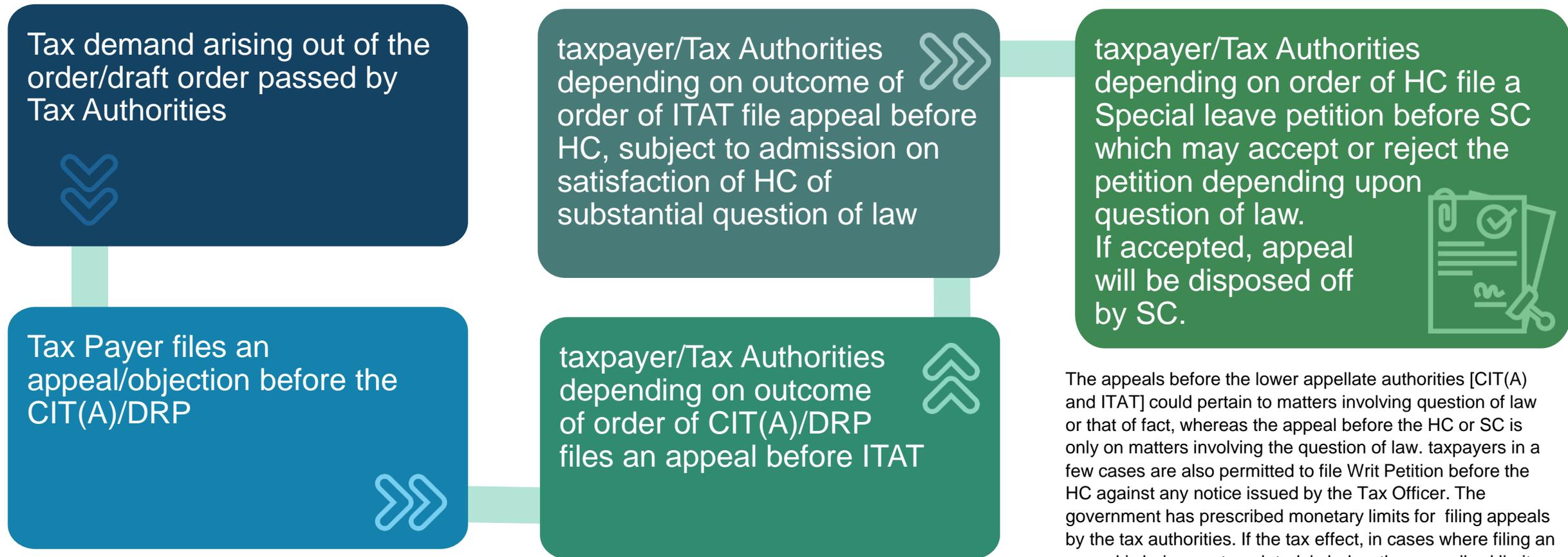
Further, unlike other foreign countries where only a taxpayer files an appeal, the appeal is filed by the taxpayer and the tax officer in India, which results in increased litigation.

The Finance Minister has taken various measures in the past few years to cut down the pending litigation by introducing amnesty schemes like 'Kar Vivad Samadhan', 'Vivad se Vishwas Scheme', 'Income Declaration Scheme', etc. in addition to increasing the monetary threshold limit (tax effect) below which the Tax Authorities are refrained from filing an appeal. In the Finance Bill, 2022, the Finance Minister has proposed another new measure to manage the repetitive tax litigation on the identical question of law pending before the HC or SC. The said measure is a welcome move and the detailed analysis of the said provision is carried out hereunder.



Present Mechanism of Filing Appeal

Before analyzing the proposed provision, let us briefly understand the current process of filing appeal:



The appeals before the lower appellate authorities [CIT(A) and ITAT] could pertain to matters involving question of law or that of fact, whereas the appeal before the HC or SC is only on matters involving the question of law. taxpayers in a few cases are also permitted to file Writ Petition before the HC against any notice issued by the Tax Officer. The government has prescribed monetary limits for filing appeals by the tax authorities. If the tax effect, in cases where filing an appeal is being contemplated, is below the prescribed limit, appeal cannot be preferred before the ITAT, HC, and SC.

Changes Proposed in the Finance Bill 2022

In an endeavor to reduce litigation in case of repetitive/common matters of law, a new procedure is proposed to be laid down by the introduction of Section 158AB under the Income Tax Act, 1961 (ITA). This new procedure aims to defer/curtail the filing of the appeal by the Tax Department in matters having common questions of law.

Under the procedure, in case a matter is decided in favor of the taxpayer and there are litigations pending before the higher authorities i.e. before the jurisdictional HC or SC, the decision of whether or not the matters have an identical question of law, will need to be decided by a collegium. A similar provision is on the statute book even today however, the decision of whether or not the issue is a question of law or not is now decided by a single person as against the proposition of a collegium.

Collegium will be comprised of two or more Chief Commissioners or Principal Commissioners or Commissioners who will intimate the Principal Commissioner or Commissioners not to file any appeal before ITAT or HC in a matter.

Based on the above, the Tax Officer will be required to make an application to the ITAT or HC as the case may be (depending on where the appeal needs to be filed), within the time prescribed for filing the appeal, stating that an appeal on the question of law arising in the relevant case may be filed when the decision on such question of the law becomes final.

Decision on deferment will be subject to acceptance by the taxpayer that question of law in the case under consideration is identical to the question in the other case, else the appeal could be preferred by the Tax Officer.

Where the final decision on such question of law is not in favor of the taxpayer, the Principal Commissioner or Commissioners may direct the Tax Officer to file an appeal to the ITAT or the jurisdictional HC, as the case may be, within the prescribed time limit and as per the procedure that will be specified by the Central Board of Direct Taxes in this behalf.

Analysis of the Proposed Law

The provision states that in case of a matter where an identical question of law is pending either in the taxpayer's own case or in any other taxpayer's case.

Question of Law: What do we understand by Question of Law

Under the provision of Section 260A of the ITA, an appeal before the HC can be filed only in the cases where substantial question of law is involved. Although, the question of law is not defined, inference can be drawn from the various judicial pronouncements¹ on substantial question of law, where certain tests are prescribed to determine the question of law:

1. Whether directly or indirectly it affects substantial rights of the parties, or
2. The question is of general public importance, or
3. Whether it is an open question in the sense that issue is not settled by the pronouncement of this Court or Privy Council or by the Federal Court, or
4. The issue is not free from difficulty, or
5. It calls for a discussion for an alternative view, and
6. When there is a misconstruction of a document or wrong application of a principle of law in construing a document.

In view of the above tests, matters where there is a legal or interpretation issue of the provision could fall under the proposed new provision as question of law. However, in a matter involving Transfer Pricing where the issue is in relation to the selection of comparable, one needs to watch in coming times as to whether these can be covered.

Applicability in case where apart from common question there are other matters involved:

It could happen that the taxpayer's case may involve other issues apart from the matter involving the common question of law. In such a case, the proposed new procedure of deferment of filing appeal may prima facie appear to be not applicable.

Applicability in case of an issue where there are contrary rulings by the Jurisdictional HC

There could be instances where on a particular tax issue there are contrary rulings of the same Jurisdictional HC. In those cases, whether these proposed provisions could be applied will need to be seen.

What happens when taxpayer gives an acceptance to the identical question of law:

In cases where the taxpayer gives an acceptance and subsequently the identical question of law is decided against the taxpayer, whether the taxpayer will have a recourse to take an alternative plea in appeal for non-applicability of the case where identical question of law had arisen based on facts, etc. will need to be seen. As such, the taxpayer needs to analyze the pros and cons and the quantum involved before giving an acceptance on identical question of law.

Conclusion

Although the above provision is a welcome move and would help to reduce repetitive litigation on a common question of law. This may also lead to litigation being open for a longer time. Accordingly, it may not help in substantial reduction of the litigation and the government may need to look at other avenues to reduce the litigation cases and the time taken to arrive at the resolution of the dispute.

1. Sir Chunilal V. Mehta & Sons Ltd. v. Century Spinning & Mfg. Co. Ltd., AIR (1962) SC 1314; Nazir Mohamed v. J. Kamala, 2020 SCC OnLine SC 676

Sudit K. Parekh & Co. LLP

Chartered Accountants



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www.suditkparekh.com

skpco.info@skparekh.com

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