

## ADR IN TAXATION IN INDIA

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### INTRODUCTION

Over the years, 'Justice delayed' concept has hindered Judiciary's growth in India. Resolving legal dispute become very expensive and due to procedural complexities; the way for Alternative Dispute Resolution (herein after referred to as 'ADR') are open. ADR is kind of private remedy. ADR is a process in which disputed parties are involved to seek remedy without the use of litigation. ADR includes arbitration, conciliation, mediations etc. The process of ADR is fewer burdens, less time consuming than the litigation. In courts, the cases are pending for so many years and hence people are now approaching ADR procedures to get speedy justice. Therefore the main objective of ADR is to fulfill the object which is stated in the preamble of the constitution. Preamble of the Constitution of India stated that, "to secure to all the citizens of India, justice-social, economic and political-liberty, equality and fraternity."<sup>84</sup> ADR is a well recognized process now days in India. We are aware of the fact that, Central government has sovereign immunity over everything. Taxes which are paid by the citizens of India to the government are defined as revenue for the Government. Tax is only collected by the authority of law. And those authorities are established by statues which are made by parliament. ADR concept is tax laws are new to our country because it is an always a disputable question that, Can the citizens of India convince central/state government to approach private remedies like ADR? The central/state govt. will always take a defense of sovereign immunity. Sovereign immunity is a common law concept. It is based on the concept of 'A king cannot do wrong'. State has sovereign immunity over everything. It is a general thing that we cannot tell State to seek private remedy when there are statutory remedies is available. According to the author, Sovereign immunity of State is not absolute in nature. Tax disputes are those disputes in which one party is surely a government because tax is only collected by them. When there is a remedy which is already established or available by the statutory body then can Govt. will ask by the other party to go for ADR is a question. Therefore the paper is all about the functioning of ADR in Tax disputes.

### FINAL JUDGMENTS, FINDING AND RESULTS

As it is already mentioned in the introduction part that State has sovereign immunity which means a king

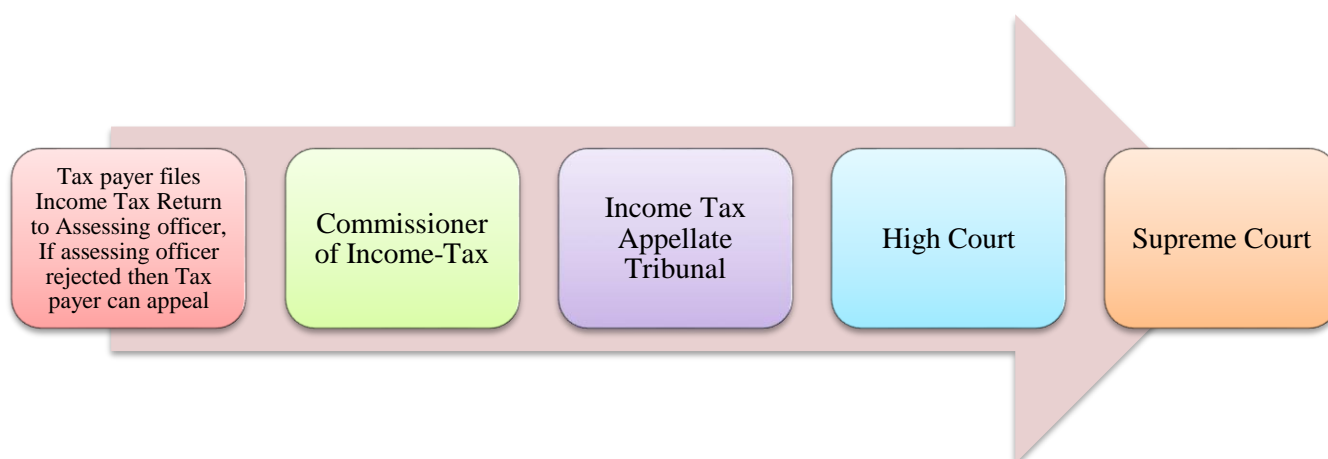
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<sup>84</sup> Preamble of the Constitution of India

cannot do wrong. In India, the procedures of tax matters are governed by ‘Income Tax Act, 1961’ (hereinafter referred to as ‘ITA’). All the methods of tax collection are governed as prescribed by ITA. According to the ITA, every tax payer has to perform self-assessment in which the onus of file income-tax return is on the tax payer. After filing an income-tax return, it will go to the assessing officer according to the valid jurisdiction and then the assessing officer will examine all the documents of income-tax return and either he accept or reject the income-tax return. And if the tax payer is not satisfied with the examination of assessing officer’s order of rejection then he may go for adjudication in commissioner of income-tax (hereinafter referred to as ‘CIT’). If any party is not satisfied with the order of CIT then they may prefer an appeal in the Income Tax Appellate Tribunal (hereinafter referred to as ‘ITAT’). ITAT is a quasi-judicial body. Appeal from the ITAT is lies in the High Court according to the jurisdiction of the parties. And then last appellate court is Hon’ble Supreme Court of India. However, any party can directly approached High Court or Supreme Court through writ petition.

### ***Tax Dispute Resolution Mechanism***



***(Chart 1.1: Tax Dispute Resolution Mechanism According to ITA)***

According to the FICCI’s publication on ‘***Dispute resolution in tax matters***<sup>85</sup> approx 12-20 years of time is required to solve the tax disputes till the final stage of appeal. The report of FICCI is as per year 2013. But as we looking at a current scenario, litigation process definitely involved more than 10-15 years. It is very time consuming and even also money consuming. According to the news, “There were 5.82 lakh direct tax-related pending appeals across judicial and quasi-judicial bodies like the Supreme Court, high court, income tax appellate tribunal and Commissioner of Income Tax (Appeals) as of 31 March 2020, according

<sup>85</sup>FICCI, Dispute Resolution in Tax Matters: A Discussion Paper, Available on <https://ficci.in/spdocument/20235/dispute-resolution-tax.pdf> (Last visited on October 26, 2021)

to finance ministry data presented in a reply to a member query in the Lok Sabha.”<sup>86</sup> Therefore, Judiciary faces a lot of problems with the load of pending cases.

There are many steps which are taken by government in order to reduce the tax disputes such as Authority for advance ruling and dispute resolution panel. According to the official website of Authority for advance ruling is established because of the following reason:

“With a view to avoiding dispute in respect of assessment of tax liability a scheme of Advance Rulings has been incorporated in the Income-tax Act and the Customs Act. The Authority for Advance Rulings (AAR) pronounces rulings on the applications of the non-resident/residents and such rulings are binding both on the applicants and the Tax departments. Thus, the applicant can avoid expensive and time consuming litigation on any question of law or fact which might arise from normal assessment proceedings.”<sup>87</sup> AAR is a quasi-judicial body which is headed by retired Supreme Court Judge. ITA made it compulsory for AAR that the entire dispute which is taken by AAR is disposed within 6 months. This form of dispute resolution is appropriate and famous for non-residents tax payers. Though AAR is a quasi-judicial body, it has judicial mind because it is headed by retired Supreme Court Judge. Therefore all the judicial requirements may fulfill while giving order. It is also not time consuming as order is given within 6-12 months.

Secondly, through the Finance Bill, 2009, ITA has been added by ‘Dispute Resolution Panel’ (DRP). “The DRP is an Alternative Dispute Resolution (ADR) mechanism for resolving disputes related to Transfer Pricing in International Transactions. This Panel has been set up with a view to providing speedy disposal of cases in a fair and just manner.”<sup>88</sup> DRP is a panel of 3 commissioner of Income-tax. DRP is mainly for the dispute relating to transfer pricing disputes. However these dispute resolutions are also kind of ADR but it has no private remedy because it is established by ITA.

Alternative dispute resolution by private person/firm is a concept which has recently been evolved in India. Though this concept has been followed for ages, but people have now started following here. The biggest advantage of opting ADR is that, it is the cheapest and the fastest way of getting remedy to the person who was served injustice. But ADR in taxation is very rarely seen. However it is very helpful. Day and day out, courts, judiciary and tax departments have to deal with the cases of taxation. Our constitution of India is called mother of all acts. Constitution was drafted with a very simple and small intention, no person shall be deprived of his right and no person should be served injustice. ADR in taxation will work hand in hand with the constitution of India. The author of the paper thinks that there shall be certain guidelines introduced which will deal as to which cases shall be dealt by the way of ADR. This will help to reduce the burden of

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<sup>86</sup> The Print, <https://theprint.in/economy/modi-govt-scheme-has-reduced-tax-disputes-by-nearly-30-but-big-cases-still-pose-headache/640926/>, (Last visited on October 26, 2021)

<sup>87</sup> Aar, <https://aar.gov.in/aar/about-us/>, (Last visited October 26, 2021)

<sup>88</sup> Clear Tax, <https://cleartax.in/s/dispute-resolution-panel>, (Last Visited October 26, 2021)

the judiciary. This can be a best remedy as it will be cheaper for the government also and for the private party also. So it will be a win situation. In the process of ADR, Govt. cannot plead for their sovereign immunity. For example, there is a contract between govt. and one company to make some construction and there is an arbitration clause in the agreement. So, if there will be a dispute then surely they will approach arbitrator for adjudication. In this case, govt. also has to appear before arbitrator. So even if tax matters are there and govt. is a one of the party then there is nothing wrong in ADR. There are also mediation centers which are established by the authority. Even the Supreme Court has the mediation centre. In every High Court also, there is a mediation centre. Mediation is also one type of ADR. If govt. believes that, remedy by ADR is a private remedy then they may prefer an appeal before the higher authority. ADR is a faster process where litigation requires a lot of time. And delayed in justice will amount to injustice with the people as well as against our Constitution of India. Litigation in India is a very rigid thing because of delayed in justice and inappropriate procedures and the main thing time consuming and costly.

### CONCLUSION AND SUGGESTIONS

- By concluding, I would like to say that India has very large democracy and in order to ensure justice, Country should adopt modern techniques to solve tax disputes. If our country has very rigid dispute resolution like litigation (which causes delayed in justice, time consuming and costly) then foreign investor will lose interest to invest in our country. And hence it will lead to less revenue for the government. Country should adopt investor friendly system as well as ensure tax payers to solve dispute as early as possible.
- According to the author, ADR is good alternative in tax matters to solve dispute. Approaching ADR will also decrease the burden on judiciary.
- Our country should encourage various methods of ADR like mediation, arbitration because it reduces the costs and it will benefit the Indian legal system.
- Even the Vodafone International Case (mainly famous for Retrospective tax case) was also dealt by the Singapore arbitration court. Indian govt. demanded tax of approx 8 thousand crores against Vodafone and hence Vodafone approach Bombay High Court. The case also went to the Supreme Court of India. Supreme Court gave judgment in the favour of Vodafone. However there was a law which was passed and that law overruled the judgment of Supreme Court of India. And that law has retrospective effect which means Vodafone has to pay tax to the govt. It had a huge impact on the foreign investors. There was some treaty made between India and Netherland in order to promote and protect the investments in year 1955. And hence because of this Vodafone moved to

the permanent court of Arbitration. Vodafone group approach the arbitration against the government of India. So if this can be done then within the India also people can approach the process of ADR even in tax matters.

- If international matters can approach the method of arbitration then within the nation, ADR can be appropriate way to resolve the disputes. If arbitration is invoked even after the order of Supreme Court then why not people may approach ADR before it.
- Secondly, the litigation in tax matters is rarely favored the tax payers. In tax matters, the authority is mostly giving their order in the favor of Govt. which violated the principle of natural justice.
- According to the author, ADR is also the best possible way to solve the dispute where the matters may be less than 1 crore. So if a matter relating to tax matters is come under the 1 crore or when the matter does not require the interpretation of any law then CIT should tell both the parties to invoke ADR rather than go for CIT. India's governing body should mandate to the parties to approach any of the ADR process in some cases.
- Therefore ADR in taxation has a good future in accordance with the changing times. It ensures the social justice and welfare of the people because in Litigation, the process is time consuming, costly, rigid procedures and unfavorable to tax payers. This will not ensure the welfare of the people and which may violate the preamble of the Constitution of India. ADR will ensure the speedy justice to everyone even in tax matters.

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