

INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 6 | Issue 4

2024

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Streamlining the System: Reinvigorating Tax Adjudication to Reduce High Court Backlog and Uphold Judicial Principles

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ABSTRACT

Efficient and fair tax administration relies heavily on a robust legal framework that guides the adjudication of tax cases. Tax assessment is the process by which the Lower Adjudication Authority (LAA) determine a tax liability identifying the escaped tax as well as tax related to illegitimate claims. A well-established set of judicial principles governing adjudication are extended to the assessment proceedings to ensure a fair and transparent process. The LAA is bound to uphold judicial principles while effectively resolving disputes. However, this has ultimately failed and the current litigation system is facing a growing crisis. The Courts are overburdened with an increasing number of tax disputes, despite the ample alternative mechanism attached to the System. This directly results from the failure of LAA to adhere to judicial principles during the assessment process, ultimately resulting in delayed justice or injustice. According to the National Judicial Data Grid¹, the total number of tax cases pending before various High Courts as of March 2024 is 58,195. Thus, through a comprehensive analysis of jurisprudence, procedural frameworks, and empirical data, this research intends to explore the core principles governing adjudication in tax matters and the characterization of tax assessments which is the more critical and contested issue in tax litigation; Delve into the potential of reinvigorating tax adjudication at the officer level to streamline the system, reduce backlog, and uphold core principles like due process and fair hearing; and address the procedural reforms aiming at alleviating the burden on courts and restoring the primacy of adjudicative principles within the litigation landscape.

Keywords: Assessment, Adjudication, Pending Litigation, Natural Justice, Due Process.

I. INTRODUCTION

Efficient and fair tax administration relies heavily on a robust legal framework that guides the adjudication of tax cases. Tax assessment is the process by which the Lower Adjudication Authority (LAA) determine a tax liability identifying the escaped tax as well as tax related to

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illegitimate claims. A well-established set of judicial principles governing adjudication are extended to the assessment proceedings to ensure a fair and transparent process. The LAA is bound to uphold judicial principles while effectively resolving disputes.

However, this has ultimately failed and the current litigation system is facing a growing crisis. The Courts are overburdened with an increasing number of tax disputes, despite the ample alternative mechanism attached to the System. This directly results from the failure of LAA to adhere to judicial principles during the assessment process, ultimately resulting in delayed justice or injustice.

(A) Background of the Study

As per the National Judicial Data Grid², the total number of tax cases pending before various High Courts (HC) as of March 2024 is **58,195**. The approximate number of pending cases before various forums is as follows:

	Cases Pending in Various Tribunals/ Courts	Number of Cases Pending (As per the official data)
Direct Tax ³	CIT(A)	4,85,000
	ITAT	88,018
	HC	31,745
	SC	4,526
Customs & Central Excise ⁴	Commissioner Appeals	27,313
	CESTAT	57,558
	HC	16,367
	SC	2,923
GST ⁵	Cases pending at various	14,227

² National Judicial Data Grid, https://njdg.eCourts.gov.in/hcnjdgnew/?p=main/pend_dashboard, (Last visited: May 25, 2024).

³ Supriyo De, Direct Taxes Litigation Management and Alternate Dispute Resolution, NIPFP working paper series, Working Paper No. 394, pages 5 and 6, 2023, https://www.nipfp.org.in/media/medialibrary/2023/04/WP__394_2023.pdf

⁴ MG Kodandaram, Digital Backend System for Tax Litigation Management, Taxindiaonline.com, (May 25, 2024, 9:39PM), https://taxindiaonline.com/RC2/inside2.php3?filename=bnews_detail.php3&newsid=43738

⁵ Surabhi, MoS Fin in Lok Sabha: Over 14,000 appeals relating to Central GST pending between April and June, Business Today, (May 25, 2024, 09.47pm), <https://www.businesstoday.in/latest/economy/story/mos-fin-in-lok->

	levels	
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It is pertinent to note that, of the total number of direct tax cases pending⁶, the Department loses 73% of its cases in the ITAT&SC and 87% in HCs. In the same way, on average Government fails in 69.41% of the cases in HCs and 83.73% in CESTAT in indirect taxes⁷.

(B) Research Objectives

This research intends to

- explore the core principles governing adjudication in tax matters and the characterization of tax assessments which is the more critical and contested issue in tax litigation.
- Delve into the potential of reinvigorating tax adjudication at the officer level to streamline the system, reduce backlog, and uphold core principles like due process and fair hearing.

(C) Research Questions

- What is the Role of LAA in Tax Adjudication?
- How does LAA undermine Judicial Principles in Assessment?
- Is the LAA scared of Superiors in granting relief?
- How to Integrate Judicial Principles for Effective and Just Tax Assessments?

(D) Hypothesis

Reinvigorating LAA adjudication by upholding core judicial principles could effectively reduce the backlog of tax cases in Courts.

(E) Research Design and Outcome

Through a comprehensive analysis of jurisprudence, procedural frameworks, and empirical data, this research would highlight how the erosion of judicial principles in LAA adjudication not only undermines the integrity of administration but also impedes taxpayers' access to justice, address the procedural reforms aiming at alleviating the burden on Courts and restoring the primacy of adjudicative principles within the litigation landscape.

sabha-over-14000-appeals-relating-to-central-gst-pending-between-april-and-june-393157-2023-08-07.

⁶ Prabhakar K S, India - On the way of Reducing Its Income Tax Litigations..!!, Taxmann.com,(May 25, 2024, 9.25 PM), <https://www.taxmann.com/research/income-tax/top-story/10501000000019055/india--on-the-way-of-reducing-its-income-tax-litigations--experts-opinion>.

⁷ P G James, Government is Compulsive & Largest Litigant, Taxindiaonline.com, (May 25, 2024, 9:43 PM), https://taxindiaonline.com/RC2/inside2.php3?filename=bnews_detail.php3&newsid=16535.

II. DISPUTE RESOLUTION MECHANISM IN TAX CASES

While litigation is essential for a fair and effective legal system, lengthy Court procedures and the backlog of cases hinder its efficiency. To address this challenge, tribunals are established as platforms to accelerate adjudication in contrast to traditional Courts. A Tribunal is a quasi-judicial body established to address disputes and offer specialized knowledge in specific areas. The tribunal settles disagreements, determines rights, makes decisions, and even reviews past rulings.

The Income Tax Appellate Tribunal, established in 1941, marked the inception of Tribunals in India to ease the burden on Courts, hasten dispute resolution, and foster tax expertise within the Tribunal⁸. Currently, in India, direct tax grievances and disputes can be redressed through a five-tier appellate hierarchy in the following ways⁹:

- Tax assessment marks the initial phase of tax disputes, during which the Assessing Officer (AO) ascertain a taxpayer's tax obligations using the provided information.
- The first level of appeal for taxpayers against AO orders lies with the Commissioner of Income Tax (Appeals) (CIT(A)).
- Appeals against the CIT(A) orders lie before the Income Tax Appellate Tribunal (ITAT).
- Decisions of the ITAT may further be appealed at the jurisdictional High Court if there is a substantial question of law. This appeal shall be allowed only on payment of the mandatory pre-deposit.
- The High Court's orders can further be appealed to the Supreme Court of India.

The structure for resolving grievances related to indirect taxes are¹⁰:

- An appeal against the Order passed by the Assistant Commissioner is directed to the Commissioner (Appeals).
- The appeals against the order of the Commissioner in the Pre-GST era were initiated before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT). With the advent of GST, the appeals directly go to the High Courts as the Goods and

⁸ Adhitya Kumar, The Tribunal System in India, (July 24, 2021), prsindia.org, <https://prsindia.org/billtrack/prs-products/the-tribunal-system-in-india-3750>

⁹Prabhakar K S, India - On the way of Reducing Its Income Tax Litigations..!!, Taxmann.com,(May 25, 2024, 9.25 PM), <https://www.taxmann.com/research/income-tax/top-story/105010000000019055/india--on-the-way-of-reducing-its-income-tax-litigations--experts-opinion>.

¹⁰Navigating Tax Controversies in India, PricewaterhouseCoopers (PwC), (May 30, 2024, 10.06 PM), <https://www.pwc.in/assets/pdfs/publications/2014/navigating-tax-controversy-in-india-october-2014.pdf>

Services Tax Appellate Tribunal (GSTAT) is yet to commence its setup and operation.

- An appeal from the tribunal shall lie at the jurisdictional High Court if there is a substantial question of law. This appeal shall be allowed only on payment of the mandatory pre-deposit.
- The High Court's orders can further be appealed to the Supreme Court of India.

The legal framework governing Indian tax also incorporates alternative dispute resolution (ADR) mechanisms under their respective laws¹¹, like

- Settlement Commission,
- Dispute Resolution Panel under the Income Tax Act, 1961,
- Authority for Advance Rulings (AAR), an independent quasi-judicial body that gives directions in the form of rulings to the approached taxpayer on potential tax issues even before they arise,
- Appeals from the AAR rulings lie before the Appellate Authority for Advance Rulings (AAAR),
- Advance Pricing Agreements (APA) - the tax authorities through these Agreements fix the Transfer Price between two taxpayers,
- Mutual Agreement Procedure (MAP) - A mechanism for resolving tax disputes arising from DTAA between countries,
- Amnesty Schemes¹² by the Government to reduce pending cases where the Government compromises on the demands.

These mechanisms are incorporated to provide faster and potentially more cost-effective solutions compared to traditional methods.

Despite the presence of such diverse well-established Dispute Resolution Mechanisms, the Indian tax litigation system is burdened by the rising backlog of cases, revealing inefficiency and raising concerns about the effectiveness, adjudicatory nature, and autonomy of these mechanisms, particularly at the LAA levels. Ultimately, **“The Lower Adjudicating Authorities push Judges to adjudicate rather than them adjudicating”**.

¹¹ Reducing Income Tax Disputes in India | A Way forward, Deloitte, Deloitte Tax policy 6, Pages 11, 12, and 13,(2020),<https://www2.deloitte.com/in/en/pages/tax/articles/tax-policy-papers.html#:~:text=A%20suggestion%20to%20reduce%20tax,build%20greater%20trust%20with%20taxpayers>

¹² Sabka Vishwas and Vivad Se Vishwas Schemes.

The author claims that if LAAs had conducted tax assessments in adherence to judicial principles, many cases wouldn't have arisen and would have made tax administration highly effective, eliminating the need for appeals. Before delving deeper, let's explore and understand the judicial principles involved in tax proceedings.

III. JUDICIAL PRINCIPLES IN TAX ADJUDICATION

Tax law adjudication involves complex disputes between taxpayers and the government. To ensure fairness and transparency in this process, The Constitutional Courts have repeatedly emphasised adherence to the principles of judicial fairness, practicality, and accessibility during tax proceedings.

The Hon'ble Supreme Court (SC) ruled that alternative adjudicatory mechanisms enshrined under respective laws are though quasi-judicial in nature, they are vested with judicial powers and are free from executive interference. Thus, the Judicial Principles enshrined in law, such as the right to a fair hearing and natural justice extended to these forums, guarantee taxpayer rights and promote trust in the system¹³.

This part explores the key judicial principles applied in tax law, particularly in adjudication, and explains their significance in upholding a just and equitable system for resolving disputes.

Judicial principles governing the adjudication of tax disputes are:

- Principles of Natural Justice;
- Stare Decisis and Consistency (Precedents);
- Error Apparent on the Face of the Record.

(A) Principles of Natural Justice

Originating from the Latin term '*Jus Natural*', Principles of Natural Justice represent the law of nature, and aren't based on any specific statute. It is allied to the common law and moral principles. These principles are developed by Courts to protect individuals from arbitrary decisions of authorities and prevent unfairness in legal matters.

In India, the concept of natural justice was established in *Mohinder Gill vs. Chief Election Commissioner*¹⁴, wherein the Court emphasised that fairness should pervade all actions, whether they fall under the purview of judicial, quasi-judicial, administrative, or quasi-administrative functions.

¹³ Madras Bar Assn. v. Union of India, (2014) 10 SCC 1.

¹⁴ Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405

In *Maneka Gandhi vs. UOI*¹⁵, the SC extensively examined the facets of natural justice and underscored its three cardinal principles known as the **Golden Rule of Natural Justice**.

- 1) ***Nemo debet esse iudex in propria causa*** (No man shall be a judge in his own cause):
Bias Rule -This principle guards against bias by ensuring LAAs with a personal interest in the case are not involved in the decision-making process.
- 2) ***Audi alterem partem*** (Hear the other side): **Hearing Rule** - This principle guarantees the right to a fair hearing. Taxpayers must be given adequate notice of any allegations, have the opportunity to present their case, respond to the arguments made against them and challenge assessments. This ensures that decisions are not arbitrary or based on irrelevant factors.
- 3) **Speaking order** (Reasoned Decisions): **Judgment Rule** – This principle ensures a connection between facts and decisions, prevents arbitrary rulings, and non-application of mind. A reasoned decision curbs arbitrary use of judicial power by the LAA and aids in constructing effective cases for appeal.

These fundamental principles form the bedrock of fair adjudication by securing justice and preventing miscarriage of justice¹⁶.

(B) Stare Decisis and Consistency

The doctrine of stare decisis, also known as **precedent**, leads the adjudicating authority to follow the principles established in previous rulings on similar issues. Precedents promote consistency and provide predictability.

In Tax adjudication, the LAA should follow the instructions and orders of the Commissioner, CESTAT, ITAT, High Court and Supreme Court. If an officer at any level ignores or disregards the clear and straightforward directions of a higher appellate forum, it would lead to chaos in the administration of tax laws and deprive justice to the assessee.

However, the principle of consistency differs from stare decisis and applies specifically to tax administration. It ensures that LAAs don't arbitrarily change their position on an issue for the same taxpayer in subsequent years unless new facts emerge. This principle derived from the doctrine of res-judicata, prevents authorities from reopening and reassessing past assessments based solely on suspicion or a change in opinion. Therefore, the principle of consistency ensures fairness and stability in tax administration by prohibiting arbitrary changes in tax

¹⁵ Maneka Gandhi v. Union of India, (1978) 1 SCC 248

¹⁶ Automotive Tyre Manufacturers Assn. v. Designated Authority, (2011) 2 SCC 258

assessments.

Res judicata is a legal principle that prevents re-litigation of the same issue between the same parties. However, this principle does not apply strictly in tax matters as each tax year is treated as a separate unit.

In *Parashuram Pottery Works*¹⁷, the SC held that there should be definiteness attached to an issue as and when it is decided by the higher Courts on the merits. The rule of consistency enables stability in the entire tax assessments and appellate process. Only such an attitude and approach would enable some stability in the proceedings and **obviate unnecessary time and resource-consuming litigation.**

(C) Error Apparent on the Face of the Record

The term "Error Apparent on the Face of the Record" though not exhaustively defined under any statute, The SC in *Arun Dev Upadhyaya's*¹⁸ case observed that; it is a visible error striking on just looking at the record. It should not require any long-drawn process of reasoning on the points where there may be two opinions. Thus, it requires no extraneous evidence and can be an error of law or fact, correctable by review jurisdiction. It should be so obvious that no Court would permit them to remain on record.

In *Malabar Industrial Co. Ltd. vs. CIT*¹⁹, the SC held that an incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous and is an error apparent on the face of the record.

IV. THE PLIGHT OF JUDICIAL PRINCIPLES IN TAX ADJUDICATION

Recent trends show a worrying decline in adherence to these principles, which affects fairness and efficiency, especially in lower tax adjudication. Following these established principles, beyond mere procedural compliance, is crucial for equitable dispute resolution. To make tax adjudication a foolproof mechanism, it is imperative to understand the role of LAA in tax adjudication.

As an Adjudicating Authority, the LAA's initial duty is to serve Show Cause Notice (SCN) to inform taxpayers of charges and hear their contentions. After hearing, the LAA must carefully consider submissions and pass a reasoned order²⁰. Following the principles of Natural Justice,

¹⁷ Parashuram Pottery Works Co. Ltd. v. ITO, (1977) 1 SCC 408

¹⁸ Arun Dev Upadhyaya v. Integrated Sales Service Ltd., (2023) 8 SCC 11 and Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale, 1959 SCC OnLine SC 10

¹⁹ (2000) 109 taxman 66 (SC)

²⁰ Tarlochan Dev Sharma v. State of Punjab, (2001) 6 SCC 260.

consistency, precedents, and making error-free orders are quintessential in this process.

However, there are instances where these principles are breached, leading to significant implications for the assessee and the judicial system. This part examines such breaches in tax litigation and the corresponding judicial response.

(A) Instances of Violation of Principles of Natural Justice

- i. Passing orders without serving SCN²¹.
- ii. Depriving the opportunity of being heard through Personal Hearing (PH)²².
- iii. Denial of representation and disregarding the evidence submitted by the parties²³.
- iv. The suo-moto blocking of available input tax credit without providing any reasons for the blocking and unilaterally proceeding without hearing the taxpayer²⁴.
- v. Failure to provide Relied-upon Documents with the assessment order²⁵.
- vi. Denial of cross-examination²⁶.
- vii. Not giving reasonable time to reply to the notice or appear for a personal hearing²⁷.
- viii. Denying adjournment without proper reasons²⁸.
- ix. Not giving a minimum of three personal hearing opportunities with sufficient intervals and separate notifications²⁹.
- x. Fixing consecutive dates for multiple personal hearings in a single letter³⁰.
- xi. Passing orders for new additional demands without issuing revised notice³¹.

²¹ Balaji Medical and Diagnostic Research Centre v. Union of India [2024] 160 taxmann.com 295 (Delhi), Ishan Construction v. Commissioner of Central Excise (Appeals) [2023] 148 taxmann.com 110 (Chhattisgarh) and Vijaya Consultants v. Commissioner of Customs & Central Excise (Appeals), Guntur. (2007-TIOL-1315-CESTAT-BANG).

²² Tvl. Devi v. Deputy State Tax Officer-1 [2024] 162 taxmann.com 212 (Madras) and K.J. Enterprises v. State of U.P. and Others [2024-TIOL-166-HC-ALL-GST].

²³ Kothari Filaments v. Commr. of Customs, (2009) 2 SCC 192 and TLG India (P.) Ltd. v. Deputy Commissioner of Income-tax, (TDS) [2019] 111 taxmann.com 376 (Bombay).

²⁴ Deepak Jain, Natural Justice in GST Laws, Taxmann.com (May 31, 2024, 11.48 pm) <https://www.taxmann.com/research/gst-new/top-story/10501000000017771/natural-justice-in-gst-laws-experts-opinion>.

²⁵ Tribhuvandas Bhimji Zaveri v. CCE, (1997) 11 SCC 276.

²⁶ Andaman Timber Industries v. CCE, (2016) 15 SCC 785 and Kishinchand Chellaram v. CIT, 1980 Supp SCC 660.

²⁷ Santosh Hazari v. Purushottam Tiwari, (2001) 3 SCC 179.

²⁸ Zuari Global Ltd. v. Pr. CIT, 2016 SCC OnLine Bom 2563.

²⁹ Prakash Industries Ltd. v. Commissioner of Central Excise, Raipur [2009-TIOL-2093-CESTAT-DEL]

³⁰ Bindal Sponge Limited v. Commissioner of Central Excise, Bhubaneswar I [Tribunal Order No. ST/A/15/2010 dated 27.08.2012] and Afloat Textiles (P) Ltd. v. Commissioner of C. Ex., 2007 SCC OnLine CESTAT 1325

³¹ Union of India v. Ashish Agarwal, 2022 SCC OnLine SC 543

- xii. Non-issuance of a speaking order³².
- xiii. Passing orders with pecuniary bias³³, personal bias³⁴ and official bias³⁵.
- xiv. Non-communication of clear and crystalised charges to the assessee³⁶.
- xv. Demanding interest via notices when the law mandates taxpayers to self-assess & pay interest on delayed tax payments on their own and enforcing recovery without hearings or adjudication³⁷.
- xvi. Setting off refunds with tax dues without proper notice³⁸.

In each of the aforementioned instances of breach, the Courts have responded by quashing the orders and remanding them back for new adjudication, while instructing the LAA to rigorously adhere to the Principles of Natural Justice.

(B) Instances of Violation of Stare Decisis and Consistency

In 1991, the SC in *Union of India vs. Kamlakshi Finance Corporation Ltd*³⁹. declared that the appellate orders are binding on subordinate tax authorities, who must follow them without exception as failure to comply would lead to undue harassment of taxpayers and chaos in tax administration. **Despite this clear directive, many authorities flout the principle, disregarding the supremacy of higher judicial decisions.** Further, The Central Board of Excise and Customs (CBEC) also instructed adjudicating authorities to follow precedents, specifically citing the Kamlakshi Finance case. However, judicial indiscipline persists, leading to significant breaches and Court congestion. A few glaring instances are:

- i. In a case⁴⁰, the CESTAT instructed the LAA to refund tax within 45 days of the order, with interest. However, the Asst. Commissioner, instead of granting the refund, issued a new SCN proposing to reduce the refund amount. This action was highly criticized by CESTAT⁴¹, and the Asst. Commissioner was directed to explain why contempt proceedings should not be initiated for interference and non-compliance with the order. This case reflects a concerning trend where departmental officers disregard judicial

³² TLG India (P.) Ltd. v. Deputy Commissioner of Income-tax, (TDS) [2019] 111 taxmann.com 376 (Bombay).

³³ N.B. Jeejeebhoy v. Assistant Collector, Thana Prant, Thana MANU/SC/0248/1964 and Ashok Kumar Yadav v. State of Haryana, (1985) 4 SCC 417

³⁴ A.K. Kraipak v. Union of India, (1969) 2 SCC 262 and Union of India v. Alok Kumar, (2010) 5 SCC 349

³⁵ Gullapalli Nageswara Rao v. A.P. State Road Transport Corpn., 1958 SCC OnLine SC 49

³⁶ S. Chandrashekar v. Asst. CIT, (2017) 396 ITR 538

³⁷ Daejung Moparts (P.) Ltd. v. The Asstt. Commissioner of CGST & Central Excise [2019] 74 GST 691/107 taxmann.com 409 (Mad.)

³⁸ S. Narayanan v. CIT, 2017 SCC OnLine Mad 958.

³⁹ Union of India v. Kamlakshi Finance Corporation Ltd., 1992 Supp (1) SCC 648

⁴⁰ Porteck India Info Services Pvt Ltd v. CCGST & CE (2021-TIOL-854-CESTAT-DEL),

⁴¹ Porteck India Info Services Pvt Ltd v. CCGST & CE (2022-TIOL-262-CESTAT-DEL),

decisions with impunity, believing themselves superior to the judiciary and immune to consequences.

- ii. **“The LAAs shall not deprive the benefit of exemption available to the assessee under the exemption notification with the intent to raise revenue”**, is the ratio laid by the SC in 2002⁴². The Court established that LAAs must protect Revenue interests only by levying duties according to the law, neither more nor less. The duty of the LAA is not to maximize revenue by unfairly denying benefits to taxpayers. But this precedent was not followed leading the Court to again decide on the same issue in 2020⁴³.
- iii. The rule of law is that **“A Coordinate Bench of a Court cannot pronounce a verdict contradicting a legal declaration made by another Bench. It can only refer such matters to a larger Bench if it disagrees with the previous decision”**.

However, the CESTAT Delhi⁴⁴ and Bangalore⁴⁵ took a contradicting view in interpreting an exemption notification. The SC highly contended it **in Gammons⁴⁶ case** and held that taking a contrary view after noticing the decision of a coordinate Bench creates judicial uncertainty on the declaration of law. Consistency in the interpretation of the law can be achieved only if every LAA know the law formulated by the other forums.

(C) Instances of Error Apparent on the Face of the Record

- i. ***In Saurashtra Kutch Stock Exchange⁴⁷*** case, an order was passed by the ITAT in favour of the assessee, relying on a judgment submitted by the assessee. The Bombay HC overruled the said judgment in another case. Now, the revenue through rectification application tried to reverse the order so passed by the ITAT by placing reliance on the assessee's favourable judgment, as it is now erroneous in law, given the subsequent judgment of the Hon'ble jurisdictional Bombay HC⁴⁸.

Such practices would thus expose the assessee once again to the rigmarole & tenuous proceedings, even if there be no misconduct on the part of the assessee. Hence to obviate this situation, in ***Green Meadows Pvt. Ltd v. ITO⁴⁹***, it was observed that an order cannot be reversed based on the subsequent decision of the Superior Court. Thus, the resultant act of reversing the

⁴² *Unichem Laboratories Ltd. v. CCE, (2002) 7 SCC 145*

⁴³ *Vivo Mobile India Pvt. Ltd. v. Commissioner Customs, Customs Appeal No. 51045 Of 2020 CESTAT(Delhi).*

⁴⁴ *IVRCL Infrastructures & Projects Ltd. v. B.C., 2004 SCC OnLine CESTAT 3166*

⁴⁵ *Techni Bharathi Ltd. v. Commissioner of Customs, 2006 SCC OnLine CESTAT 1575*

⁴⁶ *Gammon (I) Ltd. v. Commr. of Customs, (2011) 12 SCC 499*

⁴⁷ (2008) 173 taxman 322 (SC)

⁴⁸ *ITO v Creative Outerwear Ltd MA No 669/M/10 (in ITA Nos 152 & 1563/M/07).*

⁴⁹ *GreenMeadowsPvt. Ltd v. ITO (ITAT Delhi) MA No 269/Del/2014, in ITA no 4395/Del/2013,*

order of the ITAT based on the subsequent HC decision was held to a **mistake apparent from the record.**

- ii. **Non-adherence to the Department Circulars is an error apparent on the face of the record.** A Department Circular No. **1053/2/2017-CX**⁵⁰ dated 10.03.2017 mandated the LAA to provide all assesseees with an opportunity to present their cases through personal hearing; and provide a minimum of three personal hearing opportunities with sufficient intervals through separate notifications;⁵¹ and make separate communication for each date of the personal hearing. The LAA shall also grant up to three adjournments if there are proper reasons⁵².

But all of this is never followed by any of the authorities which is both a violation of principles of natural justice and is a mistake apparent from the face of the record. Further, the LAAs go to the extent of mentioning three consecutive dates in a single notice making it an empty formality⁵³. Though the Hon'ble SC has specifically condemned this behaviour of the officers, they continue doing it.

- iii. More interestingly, A Commissioner in Hyderabad fixed a personal hearing at 12.53 hrs. And, the Superintendent, who sent the intimation stated that no adjournment will be granted, if the assessee fails to appear at the fixed time and the matter shall be decided ex-parte⁵⁴.
- iv. **The law expressly states that no notice shall be served against assesseees who have paid tax with interest.** But the officers issue notices contrary to this. The Court in *Adecco Flexione Workforce Solutions*⁵⁵ case held that such activity is clearly an error apparent on the face of the record. It further commented, that if similar instances of ignorance of the law are observed in the future, it would warrant appropriate action against those who break the law.

This plight of LAA adjudication was criticized openly by Justice Raghuram. In his address to LAAs, he highlighted the spartan issues in departmental adjudication. He urged

⁵⁰ Circular No. **1053/2/2017-CX** dated 10.03.2017, https://upload.indiacode.nic.in/showfile?actid=AC_CEN_2_2_00036_A194401_1671705649438&type=circular&filename=circularcx.pdf

⁵¹ Prakash Industries Ltd. v. Commissioner of Central Excise, Raipur [2009-TIOL-2093-CESTAT-DEL]

⁵² Zuari Global Ltd. v. Pr. CIT, 2016 SCC OnLine Bom 2563.

⁵³ Bindal Sponge Limited v. Commissioner of Central Excise, Bhubaneswar I [Tribunal Order No. ST/A/15/2010 dated 27.08.2012] and Afloat Textiles (P) Ltd. v. Commissioner of C. Ex., 2007 SCC OnLine CESTAT 1325

⁵⁴ Vijay Kumar, Personal Hearing – By Law Not Discretion, Tax India Online, (June 1, 2024, 01.22 PM), https://taxindiaonline.com/RC2/inside2.php3?filename=bnews_detail.php3&newsid=47038.

⁵⁵ C.C.E. & S.T., LTU, Bangalore Vs Adecco Flexione Workforce Solutions Ltd, (2011-TIOL-635-HC-KAR-ST)

Commissioners to wield their power with humility and responsibility, emphasizing public service over arrogance. He advised them to correctly understand and apply the law, stressing that respect comes from integrity, not authority. Justice Raghuram criticized the harsh practise, noting that for many assesseees, departmental adjudication is a torturous ordeal. He also emphasized that losing the trust of assesseees means losing the battle. He warned the LAAs against relying solely on past knowledge, stressing the need for continuous adaptation to dynamic tax legislation.

By not following Judicial principles, the LAA has not only diluted the adjudicating process but also incurred costs for the revenue, as the Courts have started imposing costs for harassing the assessee and wasting its time. This is evident from the CBEC instruction⁵⁶ that quotes: “....*On examination of various orders, it is found that the cost has been imposed on the officers/department for ignoring; (i) the directions and principles laid down made de novo order while Hon'ble Tribunal directing the original adjudicating authority to re-examine the duty liability only, (ii) Principles of natural justice, (iii) the pleadings and evidences on record before deciding the matter or (iv) non-application of mind*”.

How Tax Officer's Practice Undermine the Adjudication Process? Hearing from the Horse Mouth

The above discussions portray how Courts quash the arbitrary adjudication orders passed by LAAs and continue to handle tax disputes despite the availability of alternative forums. Additionally, Courts also consistently instruct LAAs to conduct proceedings fairly and justly. However, the officers persist in their disregard for proper conduct; and persistently undermine the process. The author here illustrates further instances of how LAA weaken the process, as reported by several stakeholders.

a. Personal hearing: Empty show, circus inside

Refusal to grant Personal Hearing is common with the LAAs. Even if a hearing occurs, submissions made are often not recorded, and no copy is provided to the taxpayer. This forces taxpayers to file written submissions online, undermining fair play and justice.

An advocate's statement can corroborate this after a harrowing experience of his client at the Personal Hearing⁵⁷. "At the appointed time, the client arrived at the office of the LAA, but the adjudicator was absent and the client was asked to wait with no seating. He waited over an hour

⁵⁶ Instruction F.No. 390/CESTAT/69/2014-JC dated 22.12.2015

⁵⁷ Vijay Kumar, Personal Hearing – By Law Not Discretion, Tax India Online, (June 1, 2024, 01.22 PM), https://taxindiaonline.com/RC2/inside2.php3?filename=bnews_detail.php3&newsid=47038.

in a crowded hallway before being ushered into the LAA's office. The LAA, surrounded by paperwork and phone calls, barely acknowledged him. Twice, LAA had left for lengthy meetings with superiors without mentioning the hearing. After two agonizing hours, the LAA, with minimal attention, asked, *"Okay you have anything new to submit other than what you have already mentioned in the reply?"*. Further, he had called his steno and said, *"You dictate to her whatever you want to say; I will just come back; okay?"* and left the premises. Thus, the personal hearing was a frustrating charade, failing to provide a genuine opportunity for the client.

Even Supreme Court judges don't enjoy such privileges. The LAAs should similarly ensure undisturbed, scheduled Personal Hearings. This practice is essential to uphold the judicial principle, **"Adjudication should not only be done but seem to be done"**.

b. Adjudication conducted by unauthorised officers.

In many instances, the LAA doesn't pass orders. Instead, Inspectors and Superintendents, who are not present during personal hearings, draft orders without knowing the submissions made during the hearing. And, when the order is put up for signature, the LAA just signs them without pursuing them and sometimes they do not even remember what happened during the personal hearings. So even in the rare cases, when the adjudicating officer is convinced about the case during the hearing, this conviction is not found in the ultimate order, because **one Hears and another Decides**.

In a case⁵⁸, a taxpayer filed the GST refund claim, and in turn, SCN was served to him by a Superintendent. As per the GST Laws, Assistant Commissioners (AC) and officers above the AC rank are only competent to issue SCNs. In this particular case, although the adjudication order was issued by an Assistant Commissioner, the initial SCN and its examination by the Superintendent are unlawful.

This was appealed before the Appellate Authority, which observed that the SCN was issued and reviewed by an incompetent authority and, that the Assistant Commissioner had not independently assessed the case but relied only on the Superintendent's findings. **Despite finding these procedural irregularities in LAA adjudication, the Appellate Authority sustained the rejection of the refund on its merits.**

The taxpayer then approached the Delhi HC⁵⁹, seeking to quash the SCN and the resulting

⁵⁸ Vijaya Kumar, Tax Refund Conundrum – Odyssey of Legal Missteps, Tax India Online, (June 1, 2014, 03.45 PM), https://taxindiaonline.com/RC2/inside2.php3?filename=bnews_detail.php3&newsid=47564.

⁵⁹ M/S Rahul Packaging v. UOI (2024-TIOL-723-HC-DEL-GST)

adjudication order. **The HC annulled the order and directed the relevant authority to reconsider the refund application by following the law.**

c. Not appointing representatives to file and conduct cases and absenting for the Court hearings.

Another reason for the backlog of tax cases in Courts and Tribunals is that the LAA concerned are not attending to the cases earnestly. This in turn makes the public exchequer suffer immensely. In *Jaspal Singh Chandok*⁶⁰ case, the Bombay HC, reprimanded the Principal Chief Commissioners of Customs for not appointing a representative to defend the department in Customs cases.

Further, in *Vishnu Aroma Pouching*⁶¹ case, the SC imposed a penalty of Rs.25,000/- on the department for the delay in submitting the SLP and for wasting the Court's time. Additionally, the Court reprimanded the officers with costs for the delay in filing the petition. Furthermore, the Court strictly ruled that, in the future, if any matter is adjourned due to the absence of a departmental representative, the Court shall impose costs, and it shall be recovered from the salary of the respective Principal Chief Commissioner.

d. Filing frivolous appeals to please the higher Officials.

The Bombay HC⁶² directed CBEC, to instruct its officers to stop filing frivolous appeals to impress Departmental Officers where the duty impact is not at all substantial. The Court criticised the practice, noting that it often results in exorbitant professional fees for advocates representing the department, disproportionate to the actual stakes involved.

Following this judgment, CBEC also issued a Circular⁶³ and Instruction⁶⁴ setting monetary thresholds for filing appeals before the CESTAT and HC, yet adherence to these guidelines remains sporadic.

According to the instruction, appeals shall not be pursued before the Tribunals when the tax amount is below rupees Five Lakhs. However, the department has persisted in filing an appeal⁶⁵ for the **demand of Rs. 5975/-** and this was squarely dismissed as the amount was below the prescribed limit. Similarly, another appeal⁶⁶ involving a paltry sum of **Rs. 14/-** was also summarily dismissed.

⁶⁰Jaspal Singh Chandok v. UOI (2022-TIOL-977-HC-MUM-CUS)

⁶¹ UOI & Ors. v. M/s Vishnu Aroma Pouching Pvt. Ltd. & Anr. (2021-TIOL-192-SC-GST)

⁶² Techno Economic Services Pvt. Ltd. v. CCE (2010-TIOL-464-HC-MUM-CX)

⁶³ Circular No 390/Misc/163/2010-JC dated 20.10.10,

⁶⁴ Instruction F.No. 390/Misc./163/2010-JC dated 17-8-2011

⁶⁵ CCE, Nashik Vs Atlas Copco India Ltd - (2012-TIOL-1668-CESTAT-MUM)

⁶⁶ CCE, Allahabad Vs M/s Hi-Tech Carbon - (2010-TIOL-1198-CESTAT-DEL)

V. CREATING FOOLPROOF TAX ADJUDICATION: EFFECTIVE REMEDIAL MEASURES AND WAY FORWARD

In tax litigation, adherence to judicial principles is paramount to uphold the integrity and fairness of legal proceedings. The violation of judicial principles by the LAA has compelled taxpayers to seek redress before the Courts. In each of the following instances discussed above, the Courts determined that the LAA's orders were invalid. Consequently, the SC/HCs are pushed to decide them on their own resulting in massive backlogs.

The main reason for non-adherence to Judicial principles is due to the negligent attitude exhibited by LAA, as they spend the least time adjudicating; deep driving into the case for the cases initiated by the investigating team. The goal of the investigation team is to build a case with available material and the obligation of LAA is to render justice. But the LAA finds it difficult to apply mind and render justice and thus pass orders in consonance with the investigating team.

Firstly, Tax officers should be ready to take risks. They shall not wait for the case to reach the higher appellate forum to apply the law and adjudicate rather than them adjudicating.

The LAA is driven by a set of two principles – first the Act; and second the Judicial Principles. Proper application of these principles shall have a significant impact on the dispute resolution process. This can be achieved by/with:

- Following the Departmental instruction unreservedly by the LAA.
- Proper application of time and mind to decide each case.
- An efficient infrastructure, that does not impact the quality and timeliness of adjudication proceedings.
- LAAs getting away with informal practices within the administration that could undermine the principles of fair hearing and due process.
- Unbiased decision-making by the LAA grounded on just facts and law.
- making LAAs familiar with new amendments in laws, landmark judgments and judicial principles. Comprehensive training at regular intervals shall be facilitated by the Department.
- A quality assessment of orders passed by adjudicating authorities.

To address backlog issues, a real-time digital system should be established, allowing timely action from issuance of SCN to final disposal. This system would enable a comprehensive

monitoring of cases across all legal stages. Without such infrastructure and officer training, performance won't improve.

As per the 2023 CAG Audit Report, India stands at the 63rd position in “***Ease of Doing Business***” despite the several measures and schemes established by the government. India is crippled from climbing up due to the doctrine of qualified immunity, which shields public officials from accountability even in cases of lawbreaking. This unjust doctrine, lacking a valid legal foundation, consistently denies justice to taxpayers, violates their rights and significantly weakens official accountability, particularly within law enforcement circles.

Until this doctrine is overhauled by the SC and adjudication at the officer level is strengthened by upholding judicial principles, rising up the ladder is a tough task.

Thus, strengthening the LAA adjudication by following judicial principles and overhauling the “Doctrine of Qualified Immunity”, can ensure justice and reduce the time of the Courts from underserving litigations, encourage voluntary compliance, promote economic growth, and foster trust in the overall tax administration framework.
