

Limning India's tax terrorism saga

Rajat Deb

Department of Commerce, Tripura University, Suryamaninagar, India

202

Received 24 August 2020
Revised 27 October 2020
Accepted 29 December 2020

Abstract

Purpose – This study aims to explain the Indian taxpayers' harassment saga in the name of revenue collections by the taxmen.

Design/methodology/approach – The study has adopted descriptive viewpoints supported by empirical evidence.

Findings – Pursuant to the recent amendments in the Act, a good number of Sections such as 132(1), 132(1A) and 153A have empowered the tax officials to conduct raids without explaining the reasons, call for papers for reopening assessments of cases of a decade old and has increased the quantum of penalty for the default period substantially.

Originality/value – The paper is an original one and free from plagiarism.

Keywords Judiciary, Taxpayers, Assessing officers, Income tax act, Tax terrorism

Paper type Conceptual paper

1. The context

In the epic Mahabharata, it has been said by Veda Vyasa that a king is supposed to collect taxes from the citizens like a bee used to collect nectar from the flowers i.e. painlessly. Literature has shown that a complex tax system has more possibilities of tax evasions and least tax compliances *vis-à-vis* a simple tax schedule (Cowell, 1990). It has been argued that high tax compliance costs caused by cumbersome regulations and harassments by the taxmen have hindered investments, encouraged tax evasions resulting least economic growth (Jerbashian and Kochanova, 2016). Notwithstanding, the term “terrorism” has no universally accepted definition, but, it has been frequently used in the political spectrum (Popa, 2013; Grozdanova, 2014; Juruss, 2017). The governments have referred it to explain the activities, which have adopted illegal procedures and methods, i.e. to condemn rather than defining those activities. Terrorism has wider implications on communications, which used to galvanize the society, politics and economy as a whole (Bruce, 2013). Inasmuch terrorism unlikely has been used in financial or tax crimes, rather has its associations with the terror financing, the current study has focused how target-based activities by the Indian tax officials have turned into tantamount to “tax terrorism” for the taxpayers. Under the assumption of “enforcement paradigm,” although the taxpayers have been risk-averse and rational, but tax officers treating them as potential evaders (Yitzhaki, 1974) and have applied legally permissible coercive actions to ensure the honest tax payers' confidence with them (Turner, 2005). Literature has conceded that multiple factors of tax non-compliance



Vilakshan – XIMB Journal of
Management
Vol. 18 No. 2, 2021
pp. 202-215
Emerald Publishing Limited
0973-1954
DOI 10.1108/XJM-08-2020-0094

© Rajat Deb. Published in *Vilakshan – XIMB Journal of Management*. Published by Emerald Publishing Limited. This article is published under the Creative Commons Attribution (CC BY 4.0) licence. Anyone may reproduce, distribute, translate and create derivative works of this article (for both commercial and non-commercial purposes), subject to full attribution to the original publication and authors. The full terms of this licence may be seen at <http://creativecommons.org/licenses/by/4.0/> legalcode

JEL classification – E62, H25

including the high tax rate, penalty level, tax system fairness and others (Sinnaamy *et al.*, 2015); while such unlawful tax avoidance has been referred as tax evasion (Mullineux, 2014). On the other hand, tax terrorism has referred as putting illegal pressure on the taxpayers by the authority for collecting additional revenues or to create bottlenecks in their ways by enforcing the different provisions of the harsh laws inasmuch the non-payment of taxes likely can take the form of tax non-compliance or tax evasion (Blaufus *et al.*, 2016). Moreover, as it has an impact on communication and causes response of society and politics; therefore, it would likely have more social and political consequences as well (Blackburn *et al.*, 2012; Juruss, 2017).

The Ministry of Finance (MoF), Government of India used to set the fixed money value target per geographical area for the tax officials rather based on the volume and nature of transactions banking upon any data analytics. Interestingly, the Indian tax system has empowered the tax officials to serve notices in their discretions for multiple reasons ranging from suspicion of tax evasions, discrepancy in the official records to arithmetical errors and the taxpayers are supposed to respond within 30 days (Krishnan, 2015). Further, for various reasons, taxpayers' transactions have been scrutinized such as bank deposits above INR 10 lakhs, high value transactions through credit cards exceeding INR 2 lakhs, mutual fund investments over INR 2 lakhs or even disposal of house property fetching INR 30 lakhs and above. The notice has also been served to the assessee for non-payment of taxes by any third party who supposed to pay taxes on behalf of the assessee and even for any mistake committed by the employer while calculating the tax liabilities of the assessee. The taxpayers have alleged that tax officials exercising their sweeping powers to call for documents and they were expected to preserve all the relevant documents for an unrealistic time period like 10 years or even more. Indian tax saga has vehemently shown that the setting of unrealistic geographic area-based targets for the tax officials have its origin during the tenure of the former Union Finance Minister (FM) Mr P. Chidambaram (Basu, 2019). Even on June 14, 2019, the government has revised the compounding fees u/s 276CC for failure to furnish the returns of incomes on the due date and such fees would be leviable for the default period (from the due date to the actual date of filing returns or completion of assessment, whichever is earlier) at an enhanced rate of INR 2,000 per day. The critics have pointed out that the government itself has been responsible for the tax terrorism inasmuch the size of the government is gradually increasing and to finance such expansion it has requirement of additional revenues. To achieve the target, the government has been putting excessive pressures on the tax officials and, in turn, they have been extorting. The officials have been empowered with an array of options ranging from serving notices, conducting search, seizures of documents, keeping stocks as pledge, attachments of assets and properties to impose excessive fines and even prosecutions. Interestingly, the success of the collection of taxes as a public service has remained dependent on the collaborative participation of the service users (the taxpayers). Furthermore, the "service and client approach" between the tax officials and taxpayers has created a relationship of mutual trust, respect and cooperation, which has increased the voluntary tax compliance rather coercive compliance (Alam, 2012). However, in India, a tug of war between revenue-seeking governments and exemption-seeking taxpayers has been witnessed since long past, which likely has converted into "tax terrorism" for the taxpayers as officials have remained adamant to achieve their exorbitant tax collection targets even by coercion of any extent (Lavi, 2015).

2. Tax terrorism – the causes

For the past few years, there is a growing perception in the Indian business world that the tax officers harass the honest taxpayers for fulfilling their unrealistic predetermined revenue targets and accordingly an infamous word "tax terrorism" came into the limelight

for the first time in 2014 when the Income Tax (IT) Act was retrospectively amended for levying a tax to Vodafone. The MoF being the preeminent ministry is committed to boost the economic growth and to galvanize the development process. Such stiff revenue targets of the taxmen literally influence their appraisals, transfers and even fear of being accused of exaggerative action if they crackdown on the tax evasions; notwithstanding in many taxpayers' appeals the actions of the taxmen have been dismissed by the judiciaries [e.g. Commissioner of Income Tax (CIT) vs Simon Carves Ltd. 105 Income Tax Return (ITR) 212 (Honorable Supreme Court (SC))]. In recent years, the tax administration has been adopting mechanisms to curb the taxpayers' aggressive tax avoidance strategies when the thin line between tax avoidance and tax evasion becomes blurred and the tug of war between them commences. Interestingly, the taxpayers have been allowed to chalk out their tax planning within the legal framework to minimize their tax liabilities without adopting any colorful devices as upheld by the Hon'ble Apex Court in its varying verdicts [CIT vs A. Raman and Co., [1968] 67 ITR 11 (SC); McDowell and Co. Ltd. vs CTO, (1985) 154 ITR 148 (SC); Vodafone International Holdings BV vs Union of India, (2012) 341 ITR 1 (SC)]. Multiple reasons have been identified for so called tax terrorism by the academic and government studies and even from the judicial pronouncements. The prominent reason has referred to the practice of retrospective amendments in the tax laws. It has been well-settled that any such amendments likely to hinder the investments and adversely affected the taxpayers' morale violating the Article 14 of the Constitution [Niko Resources Ltd. vs Union of India (2015) 374 ITR 369 (Guj.) (High Court (HC))]. It has been alleged that the taxmen while determining the intended purpose of any transaction have not holistically analyzed rather emphasized on its reality and such approach have been struck down by the judiciaries [Mc Dowell and Co. Ltd. vs CTO (1985) 154 ITR 148 (SC)]. The Hon'ble SC in a large number of tax disputes has categorically attempted to draw a fine line of demarcation between the tax avoidance and tax evasion and accordingly the Income Tax Department (ITD)'s allegations of treating tax avoidance strategies as tax evasions have also been quashed [C. B. Gautam vs Union of India (1993) 1 SCC 78]. The ITD's recklessness in filing the frivolous appeals have been miserably failed in establishing cases and accordingly such appeals have been dismissed [M/S Khoday Distilleries Ltd vs CIT and Anr, Civil Appeal No. 6654 of 2008 (SC); Union of India vs Kamalakshi Finance Corporation Ltd. AIR (1992) SC 711]. The taxpayers in different judicial fora have alleged that the ITD has been following a dangerous tendency to flout the settled judicial pronouncements by filing mindless appeals, prayed for revisions and reopening of cases harassing the taxpayers and killing the valuable time of the judiciaries. Interestingly, taking cognizance the taxpayers' complaints and assaying the gravity of the cases, the Hon'ble HCs and SC have severely criticized the ITD and even slapped personal fines on the tax officers for filing such frivolous appeals [Union of India and others vs Kamlakshi Finance Corporation, AIR 1992 SC 711 (SC); Housing Development Finance Corporation Limited Bank vs Deputy Commissioner of Income Tax (DCIT) (2016) 383 ITR 529 (Bom.); CIT vs Sairang Developers and Promoters Pvt. Ltd. IT Appeal No. 2603 of 2011]. Moving further with their plight, the taxpayers have argued that, pursuant to Section 132 of the IT Act in course of search and survey they have been mal-treated and forcibly their signatures were taken by the taxmen. While allowing the taxpayers' appeals the judiciaries have termed many of these search and surveys unconstitutional [Kailashben Manharlal Chokshi vs CIT 328 ITR 411 (Guj.); The CIT vs Ramesh Chander and Ors., 93 ITR 450 Punjab; Tarsem Kumar and Anr. vs The CIT, Haryana, Himachal Pradesh and Delhi and ors.]. It has been also observed that the ITD has been unnecessarily delaying in refunding the excess tax collected, which has created negative sentiments in the minds of the taxpayers. As far as the adjustments of refunds have been concerned, Section 245 has

emphatically stipulated that such action should be clearly intimate to the taxpayers but in practice, the assessing officers (AOs) rarely comply with the provision and straight way adjust against the taxpayers' demands raised and accordingly Hon'ble Courts have turned down such actions [Kerala State Beverages Corporation vs JCIT 388 ITR 600 (Ker.) (HC)].

3. Data on tax disputes

World Bank's Report on the "Ease of Doing Business" (EODB), 2020 has indicated India has been ranked overall at 63 among 190 countries notwithstanding it has ranked below 100 in 3 out of 11 parameters used to compute such overall ranking (Deloitte, 2020). Inasmuch the Indian IT dispute resolution mechanism is multi-layered and a procrastinating process where the tax appeals can extend up to the Hon'ble Supreme Court (SC), adversely affecting the EODB substantially. The statistical data on IT pending cases, revenue blocked and percentage of disposals have been presented in the following three tables.

From Table 1, it has been reported that the total number of pending cases have an increasing trend where most of the cases (69.41%) have remained with the CIT (Appeals), followed by the Income Tax Appellate Tribunal (ITAT) (20.18%), different Hon'ble HCs (8.97%) and Hon'ble SC (1.44%). A year-on-year (y-o-y) comparison has indicated that the pending cases with the CIT (A) and with the different Hon'ble HCs have registered a consistent growth rate during the consecutive three financial years (FYs). For the ITAT, a marginal increase by 0.40% in 2017–2018 while thereafter slipped by around 0.60% in 2018–2019 have been documented. Pending cases with the Hon'ble SC have been reported an increase in 2017–2018 by 10.09% and thereafter it has reduced by approximately 11.58% in the subsequent FY. Interestingly, the Central Board of Direct Taxes (CBDT) in 2019 has raised the threshold limit for filing appeals for the ITAT from INR 20 lakhs to INR 50 lakhs and that of for the Hon'ble HCs from INR 50 lakhs to INR 1 crore and for the Hon'ble SC from INR 1 crore to INR 2 crore notwithstanding the numbers have indicated an increasing trend. Moreover, the pending cases with the Authority of Advance Ruling were substantial while the success rates of the judgments in favor of the ITD were dismal and stood merely at 13% in the Hon'ble HCs and 27% each in the Hon'ble SC and in the ITAT (Ramanujam and Sangeetha, 2020).

From Table 2, it has been evident that corporate income tax (CIT) under litigation before the CIT (Appeals) have reported an increase by around 9.51% during 2018–2019 vis-a-vis 2017–2018, whereas the pending amount lying with the ITAT have also registered an increasing trend on the y-o-y and during 2018–2019 it has increased by whopping 36.47%. Similarly, the CIT revenue blocked with the different Hon'ble HCs and in the Hon'ble SC has reported growth by 34.73% in 2018–2019, whereas rectification/revision/waiver cases pending with the tax administration has reported an increase marginally by 1.56% during the same period. Again, the situation has turned worse for the CIT appeals, which have

Financial year (FY)	Judicial forum				
	ITAT	CIT (A)	HCS	SC	Total
2016–2017	92,388	2,90,227	38,481	6,357	4,27,453
2017–2018	92,766	3,21,843	41,616	6,999	4,63,224
2018–2019	92,205	3,41,484	43,224	6,188	4,83,101
Grand total	2,77,359	9,53,554	1,23,321	19,544	13,73,778
Relative (%)	20.18	69.41	8.97	1.44	100

Table 1.
No. of cases pending
in different courts
and tribunals*

Source: * Compilation from the Rajya Sabha question and answer dt. 23/07/2019

reached to 71.1% in 2016–2017 (Pai and Krishnan, 2018). The Comptroller and Auditor General (CAG) in its Report earlier in 2017 has revealed that direct tax arrears have been increased by 2.2 times during the FYs 2013–2014 to 2016–2017 while actual tax collections for the corresponding period had raised by 1.5 times (Singh, 2016). Interestingly, the CAG has shown that the arrear at the end of the FY 2016–2017 fiscal stood at INR 8,24,211 crores while the Union Budget, 2017 has reported INR 6,59,131 crores and the CAG has further noted 98.6% of the arrear were difficult to recover (Pai and Krishnan, 2018). The keen review of these data has categorically shown that unlikely adequate steps have been taken to recover the outstanding taxes so far.

Table 3 has reported that appeals disposed for the cases pending with the CIT (Appeal) during the five FYs 2014–2015 to 2018–2019. A close analysis has revealed that the percentage of disposal of appeals has registered an increasing trend up to the FY 2017–2018 and thereafter has declined. The ITD has taken multiple measures such as appointing additional officers (independent or additional charge) for deciding the appeals, for quick disposal of pending cases in the Hon'ble SC 22 issues have been shortlisted spanning over 1,000 cases, the Central Technical Committee has been created at the level of CBDT for resolving contentious legal issues and formulate departmental view/settled view. Furthermore, a national and regional talent pool of departmental officers having specialized knowledge in the taxpayers' complex business issues has been constituted to assist the ITD's advocates in the different judicial fora. All those efforts have yielded with settlement of 362 appeals involving tax effect of INR 1.92 lakh crore in the FY 2016–2017, 1,033 appeals involving tax effect of INR 3.03 lakh crore in the FY 2017–2018 and tax effect of INR 3.01 lakh crore has been unlocked in 537 appeals in 2018–2019 (Deloitte, 2020).

4. Taxpayers' concerns

The Union Budget, 2017 with the retrospective amendments w. e. f. October 1, 1975 of the two Sections 132(1) and 132(1 A) of the IT Act, 1961 in line with the Hon'ble SC's verdict of Spacewood Furniture vs CIT (2015) has re-explained the terms "reasons to believe" and

Table 2.
Amount of CIT under dispute (w.e.f. 01-04-2017 to 01-04-2019) [INR in Cr.]*

As on	CIT (Appeals)	ITAT	HC/SC	Rectification/revision/waiver pending before IT authority	Total
01.04.17	325,098	94,843	63,307	18,656	501,904
01.04.18	310,183	88,757	77,698	20,873	497,511
01.04.19	339,693	121,135	104,687	21,199	586,714

Source: *Rajya Sabha Unsattered Question No.-237, dt. 10/11/202019

Table 3.
Disposal of pending appeals*

Financial year	Appeals instituted	Appeals disposed	% of disposal
2014–2015	97,866	73,736	75
2015–2016	1,20,265	94,093	78
2016–2017	1,48,454	1,17,945	79
2017–2018	1,17,150	1,23,480	105
2018–2019	1,40,715	1,20,251	85.5

Source: *Deloitte Tax Policy Paper 6 (February, 2020)

“reasons to suspect,” creating a panic among the taxpayers. After such amendments, the tax officials were protected from disclosure of “reasons to believe” or “reasons to suspect” to any person, authority and even before to any Tribunal. Interestingly, the Hon’ble FM had argued that to eliminate the ambiguities due to multiple judicial pronouncements, these terms have been amended. The Hon’ble SC while deciding the instant case has largely banked upon two earlier cases, namely, Income Tax Officer (ITO) vs Seth Brothers [1969(74) ITR 836 (SC)] and Pooran Mal vs Director of Inspection (investigation), IT [(1974) 93 ITR 505 (SC)] and has empathically concurred that the decisions of the ITO vs Seth Brothers has its relevance even today. Perusals of the verdicts have indicated that whenever the action of the tax officer issuing the authorization is challenged, the officer’s concern must justify the Hon’ble Court about his action. If his action is found malicious or he has exercised power under the Section for collateral purpose, it is liable to quash. Moreover, if the conditions for exercising such power have not been satisfied, the proceedings are also liable to be quashed. The retrospective amendments likely have been suffering from one infirmity i.e. it has surprisingly would not provide reasons by the officers to the ITAT, which has been working for the past six decades as a fact finding authority and the Hon’ble Courts have only been stepped in for clarification of any substitutive question of law. Furthermore, such retrospective amendments have been *ultra vires* to the principles of natural justice, which has created a fear psychosis in the minds of the honest taxpayers as they have been apprehending that such powers probably be misused by the over enthusiastic officers. It has to be noted that the provisions of Section 147 has empowered the AO, to reopen an assessment by fulfilling a few conditions if he has “reason to believe” that income has escaped assessment. The AO may, subject to the provisions of Sections 148 to 153, assess or reassess such income and any other income chargeable to tax, which has escaped assessment and which comes to his notice subsequently in the course of the proceedings. Notwithstanding, the AO has been empowered for reassessments but verdicts of different judicial fora have indicated how such powers have been misused creating uncertainty among the honest taxpayers due to retrospective amendments of the Sections 132(1) and 132 (1 A) [IT Officer vs Saradhbhai M. Lakshmi, (2000) 243 ITR 1 (SC); CIT v. SC Ltd. 105 ITR 212 (SC); Jagat Jayantilal Parikh v. DCIT (2013) 355 ITR 400 (Guj-HC); K.N. Drive Shaft (India) Ltd. vs ITO 259 ITR 19 (SC); CIT v. Kelvinator of India (2010) 320 ITR 561 (SC); Akshaya Souharda Credit Cooperative Limited Vs ITO (ITAT Bangalore); ITA No. 2574/Bang/2019; SPR and RG constructions Pvt. Ltd. Vs ACIT (ITAT Chennai); ITA No. 2334/Chny/2019; 25/02/2020]. The panic among the taxpayers has its basis as the success rates of the ITD in different judicial fora have been poor indicating baseless and frivolous appeals have been filed by the ITD.

From Table 4, it is evident that the success rates of cases in favor of the ITD in multiple judicial fora is dismal whereas *per contra* the ITD has been defeated in the majority of cases, which itself has indicated that either frivolous appeals have been filed by the ITD or it has conducted baseless search and seizures. As far as set aside cases have been concerned, across the three fora for the stated period those have been oscillated between 1% and 9% whereas for partially allowed verdicts those have been lying between 5% and 17%. In the ITAT, the ITD has reported favorable judgments in the FY 2011–2012 (19%), in the Hon’ble HCs in the FY 2014–2015 (21%) and that of the Hon’ble SC in the FY 2014–2015 (25%). Interestingly, the relative success rates have been deteriorated in ITAT over the stated period, consecutively two FYs in the Hon’ble HCs but has surprisingly has registered an increasing trend in the Hon’ble SC in the corresponding period. The verdicts against the ITD in the ITAT and in the Hon’ble HCs for the stated period have crossed the 50% mark whereas in the Hon’ble SC it has been ranged between 39% and 64%. Moreover, the inability

Table 4.
Analysis of appeals
filed by the ITD in
different judicial
fora*

FY	Judicial fora	ITAT					HCs					SC				
		2011–2012	2012–2013	2013–2014	2014–2015	2011–2012	2012–2013	2013–2014	2014–2015	2011–2012	2012–2013	2013–2014	2014–2015			
	In favor of ITD	2,595 (19%)	2,481 (16%)	2,432 (17%)	1,135 (18%)	1,364 (20%)	681 (19%)	748 (19%)	493 (21%)	94 (10%)	55 (13%)	99 (19%)	84 (25%)			
	Against ITD	7,048 (52%)	7,648 (50%)	7,404 (53%)	3,724 (58%)	4,190 (62%)	2,262 (63%)	2,461 (61%)	1,384 (59%)	378 (39%)	272 (64%)	306 (60%)	144 (43%)			
	Set aside	1,195 (9%)	1,055 (7%)	1,257 (9%)	430 (7%)	357 (5%)	166 (5%)	295 (7%)	192 (8%)	76 (8%)	7 (2%)	13 (3%)	4 (1%)			
	Partially allowed	2,276 (17%)	2,459 (16%)	2,006 (14%)	835 (13%)	338 (5%)	267 (7%)	255 (6%)	130 (5%)	86 (9%)	21 (5%)	44 (9%)	23 (7%)			
	Others	542 (4%)	1,720 (11%)	871 (6%)	248 (4%)	546 (8%)	195 (6%)	270 (7%)	166 (7%)	324 (34%)	70 (16%)	46 (9%)	81 (24%)			
	Total	13,656	15,363	13,970	6,372	6,795	3,571	4,029	2,365	508	425	508	336			

Source: *Deloitte Tax Policy Paper 6 (February, 2020)

Source: *Deloitte Tax Policy Paper 6 (February, 2020)

of the ITD to resolve the tax disputes expeditiously without resorting to a prolonged and expensive litigation process has adversely impacted all types of taxpayers. The increasing trend of pending cases have indicated that the rate of disposal of scrutiny assessments at the primary level to even settlements of appeal cases at the next level have remained low.

Reverting back to Union Budget, 2017, it has also empowered the investigating officers to confiscate and to hold assets for a period up to six months without completion of the assessment has created negative sentiments in the business community. Further, the extension of the timeline from 6 years to 10 years for reopening of assessments of previous transactions such as undisclosed deposits or property of INR50 lakhs and above vide amendment of Section 153A notwithstanding likely to evade the tax evasions but the possibilities of harassments of honest taxpayers unlikely be entirely ruled out. The provisions for power to call for information by the junior rank tax officials and incorporating charitable institutions within the ambit of tax survey at par with premises of the businesses and professions have indicated that the government's policy to crackdown the tax evaders undoubtedly appreciable but with reservations of the misuse of such provisions. Literature has divided in two streams about the use of coercive power or the use of mutual trust in collecting taxes. The application of coercive power to any taxpayer has referred a message to other taxpayers that they unlikely have to comply with tax authorities in paying their legitimate share of taxes, hence the enforcement of coerce is the only option (Mulder *et al.*, 2006; Smoke, 2013). In contrast, scholarship has shown that the use of audit and survey have minimal impacts on tax compliances rather it has detrimental impacts and psychological factors such as motivations and attitudes of the taxpayers toward government and social norms have significant impacts (Braithwaite, 2003; Kirchler, 2007; Feld and Frey, 2007). Taking cognizance of the increasing trends of tax disputes, the government has introduced an amnesty scheme for the direct tax dispute settlement through enacting the "Vivad Se Vishwas" Act, 2020 (VSV) framed in line with the "Sabka Vishwas" scheme, which was launched in 2019 for settlement of legacy disputes of the indirect taxes. For addressing the mammoth health expenditure due to the outbreak of the COVID-19 pandemic and emergent border tensions coupled with other galloping expenditures, the government has been attempting to collect revenues from the untapped or under-tapped sources. The VSV scheme as envisaged likely to settle 13,73,778 cases lying pending in the different Courts and tribunals up to December 31, 2019 in the tune of INR12,17,749 crore (Yadav, 2020). Interestingly, the VSV scheme has already erupted controversy inasmuch the taxpayers who have deposited unexplained cash in their bank accounts post demonetization could again likely to access the benefits of the VSV scheme. Surprisingly, those taxpayers have not been served any tax demands for their earlier cash deposits and even under the VSV scheme, they could access the benefits of interest and penalty waivers as well, undermining the moral of the honest taxpayers. Literature has vehemently concurred that such amnesty scheme has multiple flips such as undermining the tax system significantly (Leonard and Zeckhauser, 1987), creating a fallacy of increasing the numbers of taxpayers (Das-Gupta and Mookherjee, 1995), de-motivating the honest taxpayers' future tax compliances (Alm and Beck, 1993), higher probability to provide "clean chits" to the corrupt tax officials and even the black monies could be legalized (Murlidharan, 2020).

In recent years, the ITD has taken multiple measures as enunciated along with has taken stringent steps against the tax evaders through penalty initiatives and by re-opening the assessment of cases. Such steps notwithstanding is commendable but has created an unusual atmosphere of panic among the honest taxpayers inasmuch they have been apprehending they likely be targeted by the taxmen in no time. As far as the penalty proceedings of the IT have been concerned, these are not a part of the assessment proceedings. Tax authorities following the stated procedures i.e. by compliance with the principles of natural justice can initiate such proceedings under Section 274. Again, the taxpayers by virtue of Section 273AA can approach

senior tax officers for reduction in the penalties and even to the appellate authorities for setting aside the said order.

From Table 5, it is evident that the ITD has taken serious steps against the erring taxpayers in curbing the tax evasions creating a panic among the honest taxpayers. Data has revealed that the number of cases in which prosecution complaints filed have registered 126.82% growth in the FY 2016–2017 on y-o-y basis whereas in the FY 2017–2018 it has increased by whopping 261.58%. As far as the number of cases compounded has been concerned, it has also reported a steady increase in the corresponding period by 18.54% and 34.18%, respectively. The data on the number of persons convicted have reported a decrease in the FY 2016–2017 by 42.85% but turning around it has increased unprecedentedly by 325%.

5. Role of the tax administration

The present day tax system has no longer been confined with mere tax collections rather it has significantly indicate the fiscal contact between the stakeholders and the government in particular and with the society in general. In a tax system, the tax administration has been playing a prominent role. The tax morale i.e. the intrinsic willingness of the assesseees to pay taxes has remained higher in those countries where the taxpayers have shown more confidence in the uniqueness and integrity of the tax administration. In contrast, it has to enforce tax compliance through tax audits and other mechanisms. A stronger tax administration has positive associations with the productivity of the small and startup units, as well as with the other small taxpayers. Fairness and tax administration quality have significant effects on the higher tax compliance decisions (Oates, 1973). Any tax administration is supposed to be free from corruption inasmuch it is the fundamental basis for creating good governance, as well as in creating robust fiscal contacts between the government and society, which, in turn, would motivate citizens with voluntary tax compliances. On the other hand, complexity in the tax system would likely to breed corruption, audit probabilities, higher amount fines and even higher tax rates leading to less tax compliances. Ideally, for an adequate level of tax effort, the tax system should be characterized with simplicity, transparency, having prompt grievance redressal and dispute resolution mechanisms, which would catalyze higher tax compliances. Accordingly, the MoF has taken initiatives for rationalizing the tax system not only by Corporate Tax Rate (CTR) cuts but also in filing procedures. On September 20, 2019, the FM has declared massive CTR cuts both for existing firms and green field firms. The effective CTR has been dropped to 25.17% from the current rate of 34.94% with a condition of surrendering the incentives and exemptions that were allowable to the Indian corporates (Lokeswarri, 2019). Furthermore, the newly incorporated firms after October 1, 2019, which should start operations before March 31, 2023, the minimum alternate tax have been reduced to 15% from the prevailing higher rate of 30%. The MoF has estimated such CTR cuts would cost to the exchequer by INR1.45tn (around 0.7% of the gross domestic product (GDP)), making the corporate India’s tax rates

Table 5.
Penalty initiatives by
ITD*

Financial year	No. of cases		No. of persons convicted
	in which prosecution complaints filed	Cases compounded	
2015–2016	552	1,019	28
2016–2017	1,252	1,208	16
2017–2018	4,527	1,621	68

Source: *<http://data.gov.in/>

globally competitive, which would likely to turn around India's image from a "high tax rate country" and would attract fresh investments leveraging "Make in India" initiative significantly (Chandy, 2019). As far as the Personal Income Tax has been concerned, empirical studies in the Indian context have shown several factors such as provisions for scrutiny, audits, penalties and prosecutions along with tax rates have significant influence in the tax compliance decisions (McGee and Jain, 2012; Deb and Chakraborty, 2016). It has been argued that the Indian tax system is complex in comparison to her peers where the filing of returns are time consuming and costlier as the taxpayers to preserve additional tax-related records, and to bear the costs of accessing the services of tax consultants and advocates. Notwithstanding, the ITD for the past several years has been trying to streamlining the tax assessments and filing procedures by encouraging voluntary filing within the statutory due dates. The ITD has taken initiative for promoting electronic filing and electronic verifications, has introduced pre-filled returns, with an intimation of tax-related updates in the registered mobile numbers and e-mail ids of the taxpayers have been identified few of the widely circulated initiatives. By inserting a new Section 139AA in the IT Act, the government has made quotation of Aadhaar or enrolment ID of Aadhaar application form for filing returns or during the application for the permanent account number of the assessee, which has been affirmed by the Hon'ble SC has attempted to bring transparency in financial transactions and to curb corruptions substantially. It has taken initiatives by arranging tax awareness programs to minimize the ambiguities from the minds of the taxpayers regarding the tax interpretations and retrospective amendments in the tax laws, which likely have partially reduced the fallacy about the harsh penalties, harassments and prosecutions. Government has emphatically pronounced that the recent stimulus package in the forms of CTR cuts and other measures of tax certainty would catalyze in improving the EODB, would attract fresh investments as tax conformance *vis-à-vis* financial disciplines likely to contribute in the revenue generation process. In its attempt to rationalize the tax system and to reduce the tax disputes, the government has recently introduced faceless assessment scheme (FAS), which has empowered the National E-Assessment Center (NEAC) to assign verification units or technical units as the case may be for redressal of taxmen's queries regarding any tax assessment matter. As the nomenclature "faceless appeal" goes, its a dynamic system based on the artificial intelligence technique would completely replace the territorial and manual appellate proceedings before the ITAT and all the documents would be digitally verified by the taxmen of any jurisdiction and likely to bring more transparency in the tax dispute resolution process. The assessment procedures would be delinked from the taxpayers' location with random distribution to the taxmen probably to reduce the corruption and human interferences substantially (Memani, 2020). The system has a procedure for serving show cause notices through the NEAC having an audit trail would likely to assure that the taxpayers would get sufficient time to submit their replies rather than last minute rush for tax demands and unprecedented additions in the assessments. Moreover, instead of personal appearances before the ITAT, the system would arrange video conferences for the taxpayers whenever requested and even the unsatisfied taxpayers could approach the Principal CIT of the concerned zone for any violation of any right (s) of the IT Charter or for any assessment issue. Further, the CBDT in a recent circular has also indicated that the IT surveys, an intrusive action would be carried out "with utmost responsibility and accountability" likely to minimize the harassments and quires of the taxmen-the so called "tax terrorism" substantially (Lavi, 2020).

6. The way forward

Modern tax systems should have a minimal interface between the tax officials and the taxpayers. The Tax Administration Reforms Commission (TARC) in its reports have

categorically indicated that tax officials should concentrate on “customer focuses” instead of serving bundles of notices without any proper data analytics. Indian tax saga has shown that it has low tax-to-GDP ratio inasmuch having smaller direct tax base and the presence of higher number of unorganized units. Interestingly, the trend of the growth rate of tax-to-GDP ratio in the past decade was 5.67% *vis-à-vis* real GDP growth rate of 7.78% for the corresponding period (Shome, 2019). Information asymmetry has been identified as the pivotal factor for India’s poor tax enforcement and a lower share of tax revenue in the GDP. Accordingly, the ITD should adopt measures for widening the tax bases to bring the “missing middle” under the tax ambit, in line with the Vijay Kelkar Committee Report and to ensure that the honest taxpayers should not be targeted (Singh and Bagchi, 2017). It has been widely acknowledged that a good tax system has three components, namely, tax determination, computation and payment where for the first and second components information and knowledge have been required, respectively (Shome, 2019). The MoF’s objective of increasing the lower tax-to-GDP ratio notwithstanding is impressive but, the strategies should be widening the tax base by estimating the proportion of the population who liable to pay tax, incorporating the “missing middle,” formalizing the business and enhancing the lower household incomes rather serving notices to the non-filers (Rao and Kumar, 2017; Singh and Bagchi, 2017; Krishnan, 2018). Global experience has also documented that for minimizing the tax evasion and tax litigations countries should work toward developing administrative capacity especially concerning the tax calculation, collection and payment of tax obligations in a transparent manner (Sorel, 2003; Vasile and Croitoru, 2015). The Committee of the Task Force on Direct Tax Code has already submitted the Report to the FM has recommended multiple measures for reducing the tax disputes and litigations, as well as probabilities of taxpayers’ harassments. As far as re-opening of assessment cases have been concerned, the Task Force has recommended for compliance with the pre-determined criteria. Such recommendations, if accepted by the MoF would reduce the tax litigations significantly. It has also recommended reducing the tax slabs for both individuals and corporates (domestic and foreign) with the objective of broadening the tax base, which has been supported by research findings concluding that for each 1% point decrease in the average tax rate, the compliance rates likely to grow by over 6% point (FE Editorial, 2019). As far as search and seizures have been concerned, the TARC in its third report has recommended such operations should be confined exclusively for those cases where severe tax evasions have been suspected. Multiple measures should be adopted for minimizing the harassments of the honest taxpayers e.g. framing guidelines and its strict adherence for internal control in granting authorization, implementations of stringent audit norms, timely updating of search manuals and framing guidelines for code of conducts for the tax officials related to searches (Roy and Shah, 2016). The ITD should be free from political interference in course of tax raids and assessments whenever smell any rat in high value transactions and in suspecting tax evasions. The taxpayers should not be called time and again to meet with the tax officials in the name of inquiry or explanation and not to be harassed for the same reason whenever a new tax officer resumes charges after the replacement of the first officer because of superannuation, transfer or for any other reason. Different Committees, Commissions and Task Forces formed from time to time have categorically criticized the excessive litigations filed by the tax departments and have recommended multiple corrective measures. The significant reasons behind such litigations as pointed out included the obsessions of the tax officials to achieve the pre-determined revenue targets, conservative attitudes of the tax officials for the fear of vigilance inquiry in failing to meet the revenue targets, lack of clients’ business knowledge, lack of accountability norms on the part of junior tax officials for their poor decisions and top officials’ reluctances for stepping in technical matters in mitigating the tax disputes. Ironically, the top

officials in rarest cases have justified the taxpayers' standpoint and instead have been favoring the junior tax officers even in their wrong and badly intentioned decisions. Lack of coordination between the direct and indirect tax Departments, namely, the CBDT and the Central Board of Excise and Customs along with the different Ministries such as Finance, Commerce and Industries have also been creating stumble blocks in drafting the tax policy and its timely implementation, which, must be addressed in no time. Interestingly, the option between the traditional strict approach or liberal approach as adopted by the tax administration have been changed in the light of multiple judicial pronouncements into a combination of both of the approaches, i.e. a strict approach should be followed against the tax evaders whereas a liberal standpoint should be adopted in case of complaint. As far as international tax dispute settlements have been concerned, India should take initiatives to comply with Actions 13 and 15 of the Base Erosion and Profit Sharing Accord rigorously. Increased tax collections and higher tax compliances likely be achieved by sharing a portion of the probable tax evasion quantum with the tax officers rather merely increasing their lump-sum incomes and such higher compliance would reduce the tax collection costs of the exchequer significantly. The success of tax policy with multiple objectives and even the efficacy of the tax system offering concessions at the cost of revenue forgone has to be assessed carefully to determine whether such initiatives would really break the stigma of Indian "tax terrorism." It should also be emphasized that the tax administration is responsible for their applied procedures in accessing the public resources and should exercise authority in a professional manner, honestly, without any prejudices and in an unbiased manner so that the taxpayers pay their due taxes voluntarily rather under the threats of fines and prosecutions since cooperation likely is the best tool in the prevention of tax terrorism (Burton, 2002). As far as the success of the VSV scheme has been concerned, taxpayers' must not be harassed after the declaration of their incomes. For minimizing the tax disputes, the Revenue Department should show enhanced sensitivity and more acumen in conducting searches and seizures. The government should match its revenues and expenditures as far as practicable rather over estimating the revenues and under estimating the expenditures. Further, for smooth implementation of the FAS all the tax officers dealing with the multiple steps of the system should be rigorously trained, should have a fair understanding about the complex business models of taxpayers, the provisions of the Act, rules and notifications should be made taxpayers' friendly and rationalized. Finally, striking a balance between fulfilling ITD's revenue collection objectives without targeting the honest taxpayers by creating an "inspector-free" tax regime and targeting the tax evaders harshly with strict mechanisms is the need of the hour.

References

- Alam, J. (2012), "Measuring, explaining, and controlling tax evasion: lessons from theory, experiments, and field studies", *International Tax and Public Finance*, Vol. 19 No. 1, pp. 54-77.
- Alm, J. and Beck, W. (1993), "Tax amnesties and compliance in the long run: a time series analysis", *National Tax Journal*, Vol. 46 No. 1, pp. 53-60.
- Basu, D. (2019), "Tax terrorism: embedded in laws and practice", *The Business Standard*, p. 9.
- Blackburn, K., Bose, N. and Capasso, S. (2012), "Tax evasion, the underground economy and financial development", *Journal of Economic Behavior and Organization*, Vol. 83 No. 2, pp. 243-253.
- Blaufus, K., Hundsdoerfer, J., Jacob, M. and Sünwoldt, M. (2016), "Does legality matter? The case of tax avoidance and evasion", *Journal of Economic Behavior and Organization*, Vol. 127, pp. 182-206.
- Braithwaite, V.A. (2003), *Taxing Democracy: Understanding Tax Avoidance and Tax Evasion*, Aldershot.

- Bruce, G. (2013), "Definition of terrorism social and political effects", *Journal of Military and Veterans' Health*, Vol. 21 No. 2, pp. 26-30.
- Burton, D.R. (2002), "Towards a global tax cartel?", *Policy*, Vol. 18 No. 4, pp. 9-11.
- Chandy, K.T. (2019), "Tax relief for India Inc", *The Business Line*, p. 15.
- Cowell, F.A. (1990), "Tax sheltering and the cost of evasion", *Oxford Economic Papers*, Vol. 42 No. 1, pp. 231-243.
- Das-Gupta, A. and Mookherjee, D. (1995), *Tax Amnesties in India: An Empirical Evaluation*, Boston University, Institute for Economic Development, Discussion Paper no. 53.
- Deb, R. and Chakraborty, S. (2016), "Tax perception and tax evasion", *IIM Kozhikode Society and Management Review*, Vol. 6 No. 2, pp. 1-12.
- Deloitte (2020), "Reducing income tax disputes in India a way forward", Deloitte Tax Policy Paper 6, February.
- Editorial (2019), "Tax wider, not deeper", *The Financial Express*, p. 8.
- Feld, L.P. and Frey, B.S. (2007), "Tax compliance as the result of a psychological tax contract: the role of incentives and responsive regulation", *Law and Policy*, Vol. 29 No. 1, pp. 102-120.
- Grozdanova, R. (2014), "'Terrorism' – too elusive a term for an international legal definition?", *Netherlands International Law Review*, Vol. 61 No. 3, pp. 305-334.
- Jerbashian, V. and Kochanova, A. (2016), "The impact of doing business regulations on investments in ICT", *Empirical Economics*, Vol. 50 No. 3, pp. 991-1008.
- Juruss, M. (2017), "Criteria for defining tax evasion as tax terrorism", *Economics and Business*, Vol. 30, pp. 102-112.
- Kirchler, E. (2007), *The Economic Psychology of Tax Behavior*, Cambridge University Press, Cambridge, UK.
- Krishnan, A. (2015), "Tax terrorism and aam aadmi", *The Business Line*, p. 10.
- Krishnan, A. (2018), "Busting the myth of the small tax base", *The Business Line*, p. 8.
- Lavi, M. (2015), "A taxing thought", *The Business Line*, p. 17.
- Lavi, M. (2020), "Faceless and seamless", *The Business Line*, p. 5.
- Leonard, H.B. and Zeckhauser, R.J. (1987), "Amnesty, enforcement and tax policy", *Tax Policy and the Economy*, Vol. 1, pp. 55-85.
- Lokeswarri, S.K. (2019), "The numbers don't add up to INR 1, 45,000 cr", *The Business Line*, p. 6.
- McGee, R.W. and Jain, R.K. (2012), "The ethics of tax evasion: a study of Indian opinion", in McGee, R. W. (Ed.), *The Ethics of Tax Evasion: Perspectives in Theory and Practice*, Springer, New York, NY, pp. 337-356.
- Memani, R. (2020), "The future of tax reforms is based on trust and tech", *The Mint*, p. 13.
- Mulder, L.B., Van Dijk, E., De Cremer, D. and Wilke, H.A.M. (2006), "Undermining trust and cooperation: the paradox of sanctioning systems in social dilemmas", *Journal of Experimental Social Psychology*, Vol. 42 No. 2, pp. 147-162.
- Mullineux, J. (2014), "The distinction between tax avoidance and tax evasion", *New Zealand Universities Law Review*, Vol. 26 No. 2, pp. 273-296.
- Murlidharan, S. (2020), "Indulging the evaders", *The Business Line*, p. 7.
- Oates, W.E. (1973), "Fiscal federalism", *Journal of Public Economics*, Vol. 2 No. 2, pp. 188-191.
- Pai, T.V.M. and Krishnan, S. (2018), "View: there's no end in sight to India's tax terrorism, just look at the data", *The Economic Times*, p. 9.
- Popa, G.D. (2013), "Tax havens and the terrorism", *Analele Universitatii Maritime Constanta*, Vol. 14 No. 20, pp. 275-279.
- Ramanujam, T.C.A. and Sangeetha, T.C.A. (2020), "Time for a Samadhan scheme for taxpayers", *The Business Line*, p. 6.

- Rao, M.G. and Kumar, S. (2017), "Envisioning tax policy for accelerated development in India", NIPFP Working Paper No. 190, New Delhi.
- Roy, S. and Shah, A. (2016), "How to build tax administration", The Business Standard, p. 9.
- Shome, P.S. (2019), "Appropriate tax administration", The Business Standard, p. 9.
- Singh, R.R. (2016), "Improving taxation environment: attracting foreign direct investment", Working Paper No. - 325, ICRIER.
- Singh, R.R. and Bagchi, A. (2017), "A tool for widening taxpayer base", The Financial Express, p. 9.
- Sinnasamy, P., Bidin, Z. and Ismail, S.S.S. (2015), "A proposed model of non-compliance behaviour on excise duty: a moderating effects of tax agents", *Procedia - Social and Behavioral Sciences*, Vol. 211, pp. 299-305.
- Smoke, P. (2013), "Why theory and practice are different: the gap between principles and reality in sub-national revenue systems", International Center for Public Policy, Working Paper Series No. 51, available at: <https://doi.org/10.4337/9781783474332.00017> (accessed 30 August 2020).
- Sorel, J.M. (2003), "Some questions about the definition of terrorism and the fight against its financing", *European Journal of International Law*, Vol. 14 No. 2, pp. 365-378.
- Turner, J.C. (2005), "Explaining the nature of power: a three-process theory", *European Journal of Social Psychology*, Vol. 35 No. 1, pp. 1-22.
- Vasile, E. and Croitoru, I. (2015), "Theoretical considerations on tax evasion", *Valahian Journal of Economic Studies*, Vol. 6 No. 3, pp. 49-55.
- Yadav, B. (2020), "A Shout-out to the tax-complaint", The Economic Times, p. 8.
- Yitzhaki, S. (1974), "A note on income tax evasion: a theoretical analysis", *Journal of Public Economics*, Vol. 3 No. 2, pp. 201-202.

About the author

Dr Rajat Deb, Assistant Professor, Department of Commerce, Tripura University, Tripura, India; did MCom, MBA and PhD from the same institution. A UGC-NET qualifier and recipient of three Gold Medals for top ranks in UG and PG examinations; has around 13 years teaching experience in PG courses, 2 years experience in Government Audit and Accounting; Assistant Co-coordinator, IGNOU Tripura University Study Center, PhD supervisor, life member of 6 academic associations and has 47 publications in his credit; presented papers in seminars and conferences. Rajat Deb can be contacted at: debrajat3@gmail.com; rajatdeb@tripurauniv.in

For instructions on how to order reprints of this article, please visit our website:

www.emeraldgroupublishing.com/licensing/reprints.htm

Or contact us for further details: permissions@emeraldinsight.com