

INTRODUCTION

The study relates to cases referred to the Commission by the CBDT during the period Jan 1999 to Dec 2001.

The scope of the study focuses on Quantitative / qualitative Analysis of

- i) Nature of Lapses Committed by the Officers
- ii) Problem Analysis.
- iii) Certain Solutions have been examined

Methodology

1st Stage & 2nd Stage

Cases pertaining to three years from Jan 1999 to Dec 2001 were taken up for study and critical analysis. All the files were individually studied and it was found that the nature of lapses, which occurred during this period could be classified under 5 broad categories.

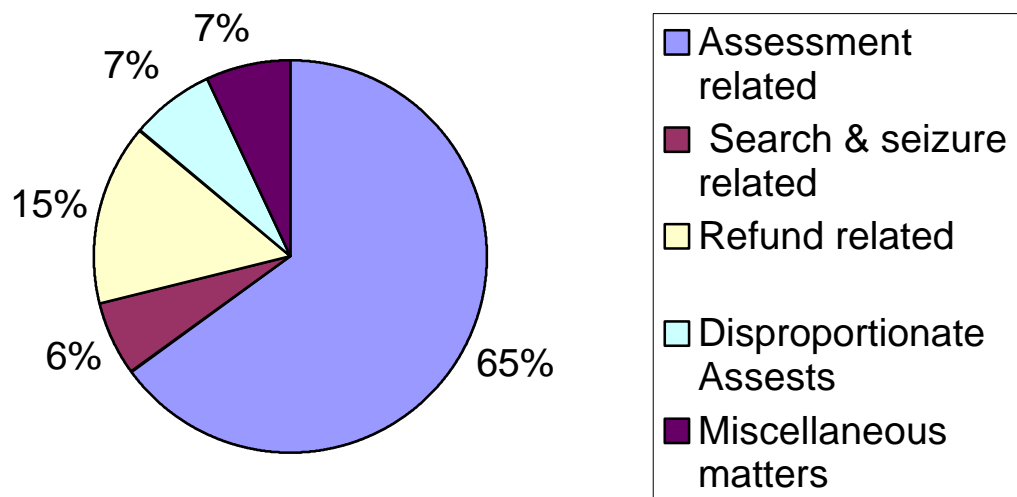
- A. Assessment related
- B. Search & seizure related
- C. Refund Related
- D. Cases of Disproportionate Assets etc.
- E. Miscellaneous

Distribution of cases

A quantitative analysis of the Data available for the three years shows that a major portion i.e. 65% of the cases pertain to Assessment matters. About 15% of the cases are related to refund. 7% cases pertain to search & seizures and about 6% cases relate possession of disproportionate Assets etc. Remaining 7% of cases can be categorised as miscellaneous cases.

It needs to be stated that a refund problem could be part of an Assessment related case also. In that sense these classifications can not be treated as water-tight compartments and many of the problems / lapses in the various categories could be co-related and overlapping.

Distribution of Cases



% of Action taken cases

1st Stage Advice

The Data reveals that in the year 1999, only 33% of the cases were recommended for action i.e. major / minor in the 1st stage as against 24% in the year 2000, and 50% in the year 2001. This goes to demonstrate that the commission has shown extreme caution and has judiciously selected only those cases for initiation of inquiry, which really deserved to be inquired into.

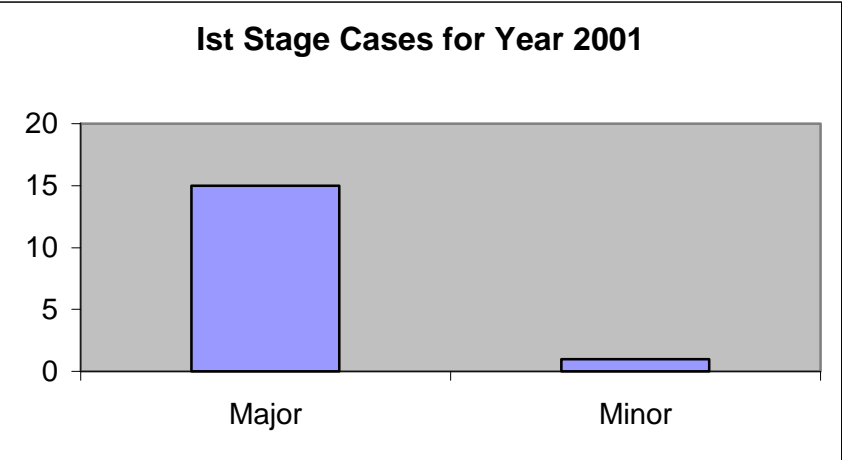
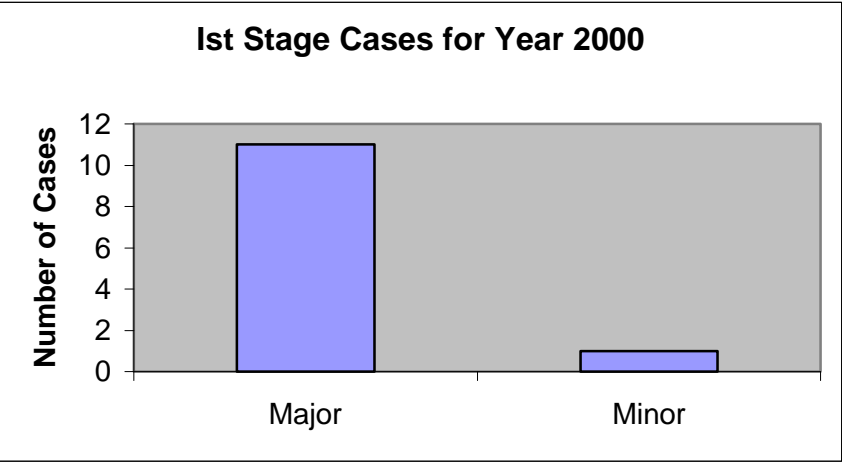
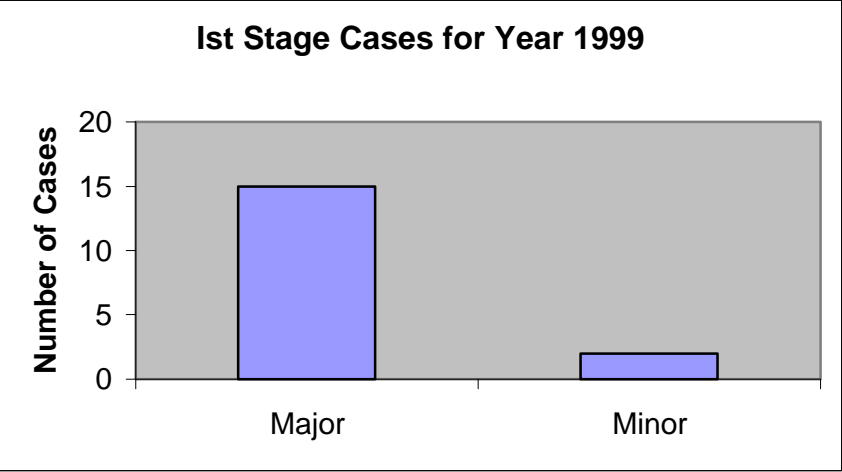
2nd Stage Advice

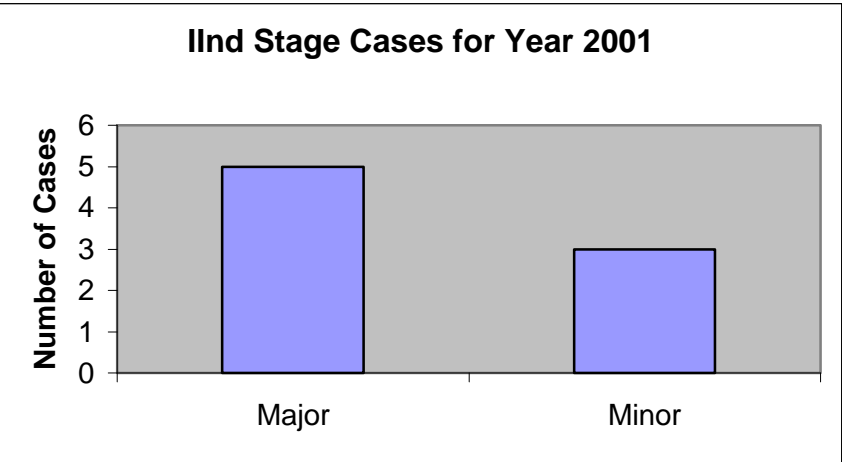
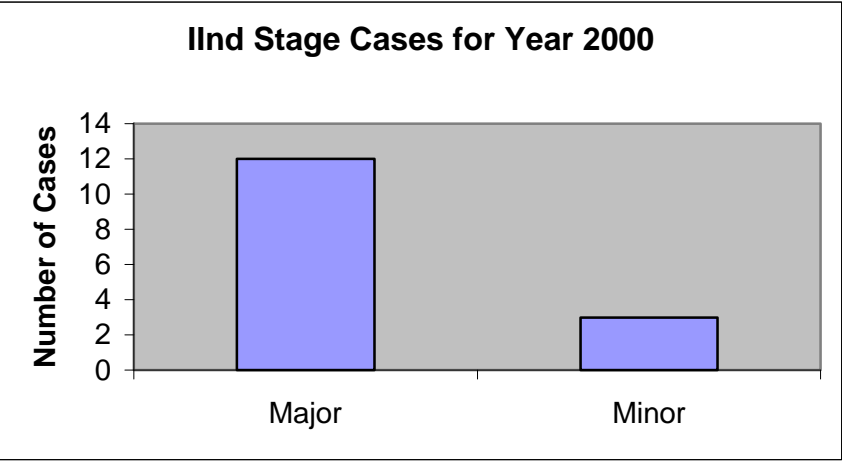
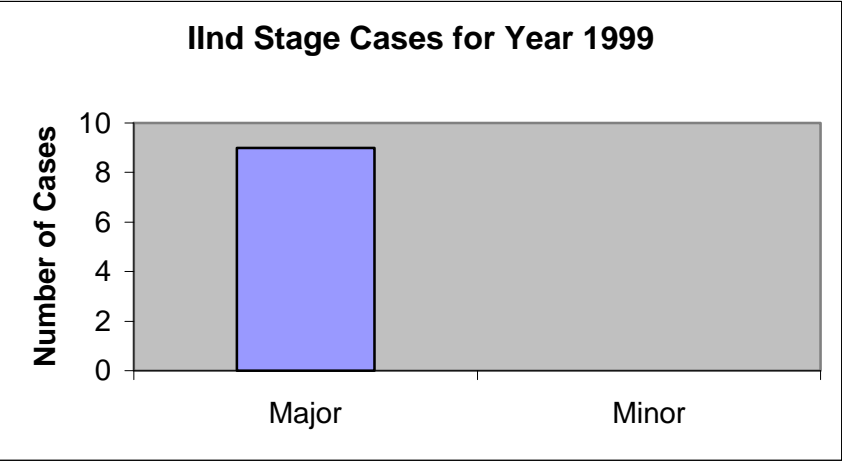
Similarly in the year 1999, only in 40% cases imposition of Major/Minor penalty was proposed. In the year 2000 this figure dropped to 35% and in the year 2001 imposition of Major / Minor penalty was proposed only in 27% cases.

% of Agreement

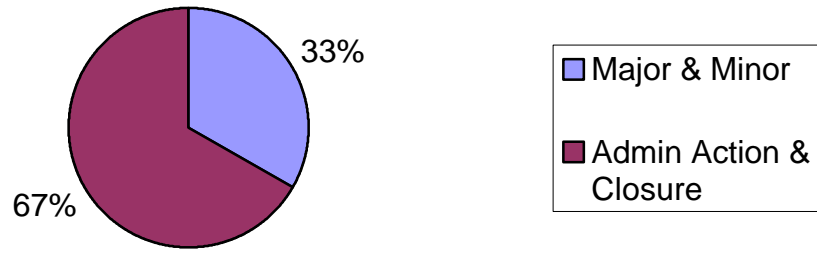
If the figures related to percentage of Agreement / Disagreement on advises is analysed, it will be observed that during the three years, the Agreement rate / factor has ranged from 95% to 98% for both 1st stage and second stage advices.

If the Agreement factor is examined and analysed against the backdrop of cases discussed above in which action was taken, it will be seen that even at second stage, the commission is not shy of exonerating an officer if the case so merits. Of course, many of the cases do fail due to technicalities of inquiry proceedings and other factors.

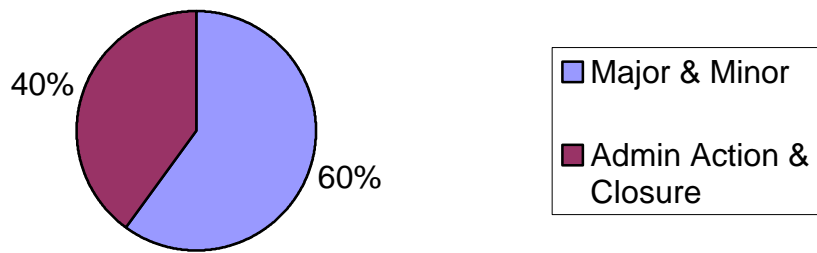




Ist Stage Cases for Year 1999



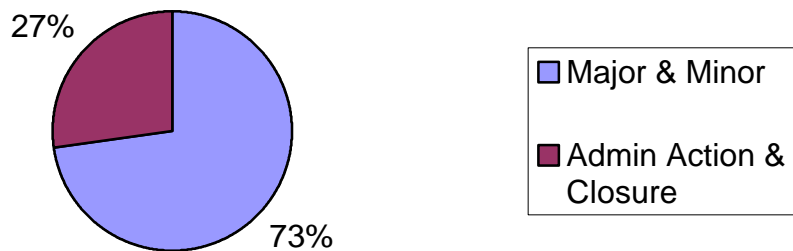
IIInd Stage Cases for Year 1999



IIInd Stage Cases for Year 2000



IIInd Stage Cases for Year 2001



Comparative chart of Major and Minor penalty cases - 1st stage and 2nd stage.

In the year 2000 number of recommendations for Major Penalty action in the first stage dropped, but picked up again in the year 2001.

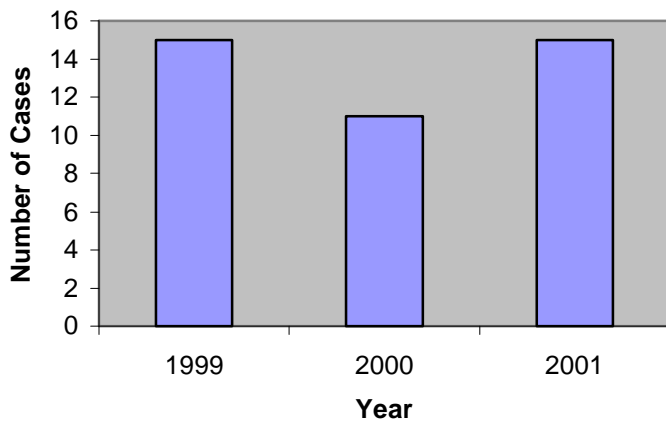
In the year 2000 number of recommendations for major penalty imposition went up, but dropped again in the year 2001 in the 2nd stage.

Number of proposals for minor penalty action in the first stage came down in the year 2000 and remained steady in the year 2001.

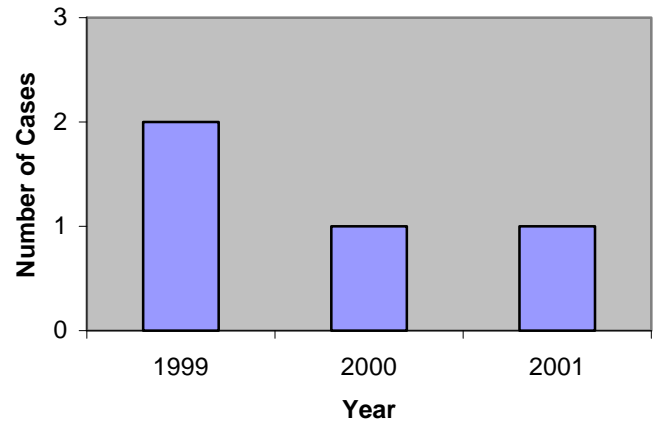
In the year 1999 there were no cases where minor penalty was recommended in the 2nd stage. However, for the year 2000 and 2001 the figure remained constant.

Since the variations in all these cases are only marginal, no reasons can really be attributed for the increase or decrease. Also, despite the fact that files for three years were taken up, the sample size/data remained fairly small.

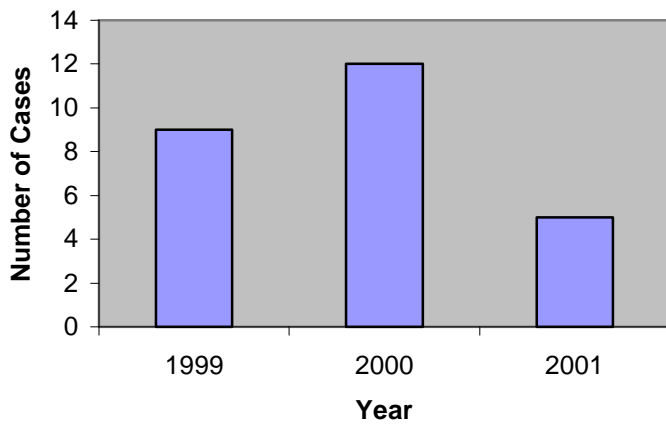
Ist Stage Major Cases



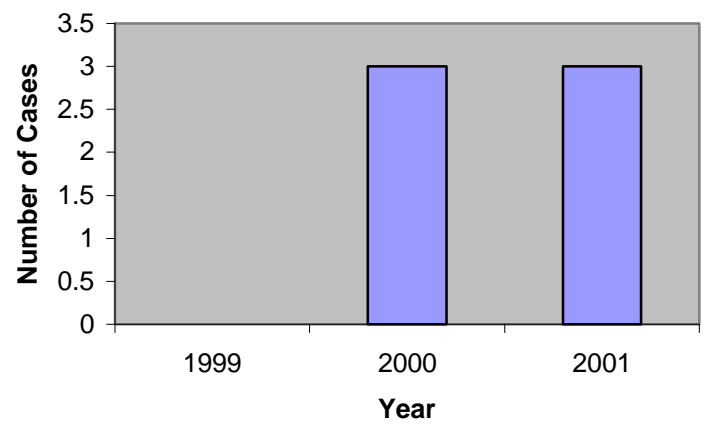
Ist Stage Minor Cases



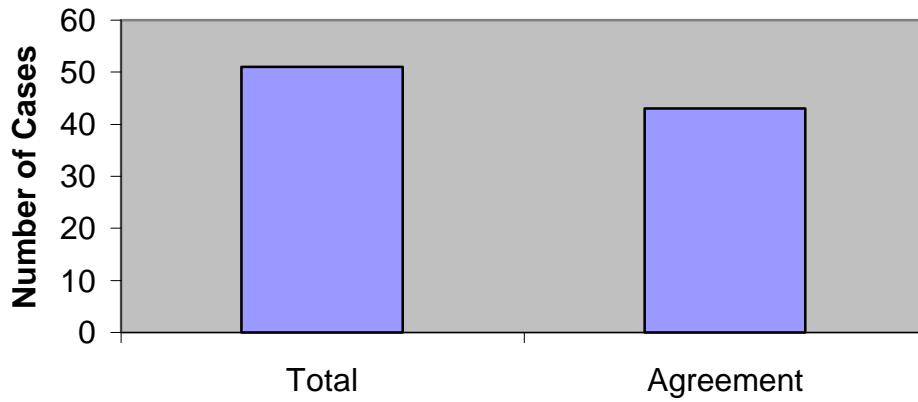
IInd Stage Major Cases



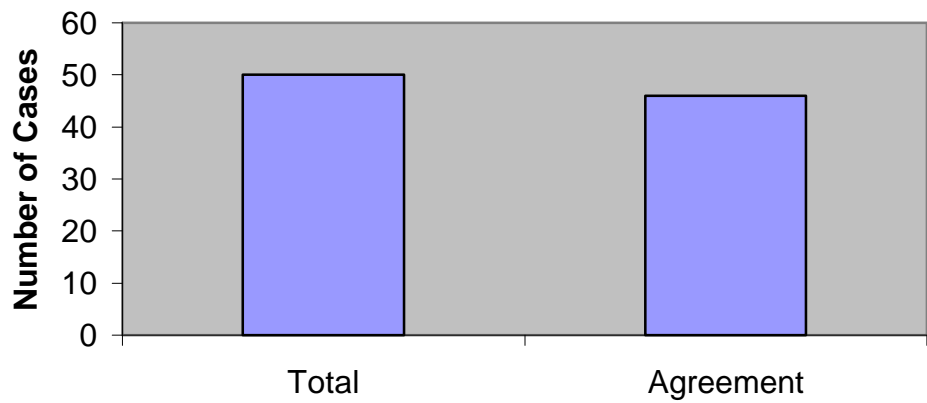
IInd Stage Minor Cases



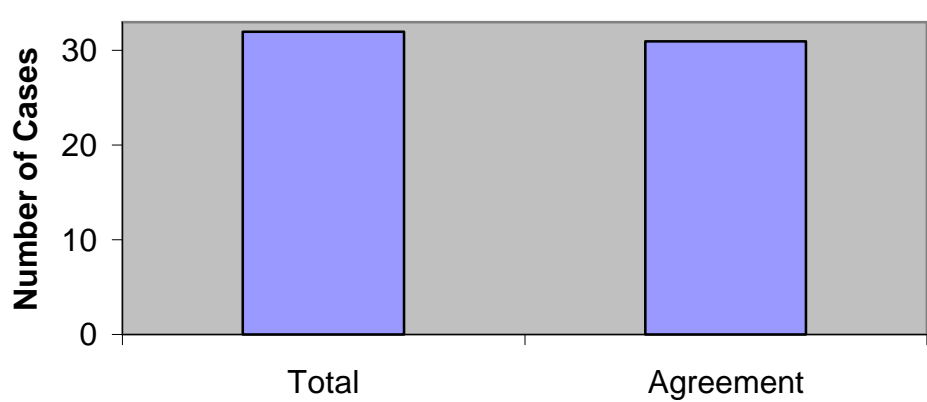
Ist Stage Cases for Year 1999



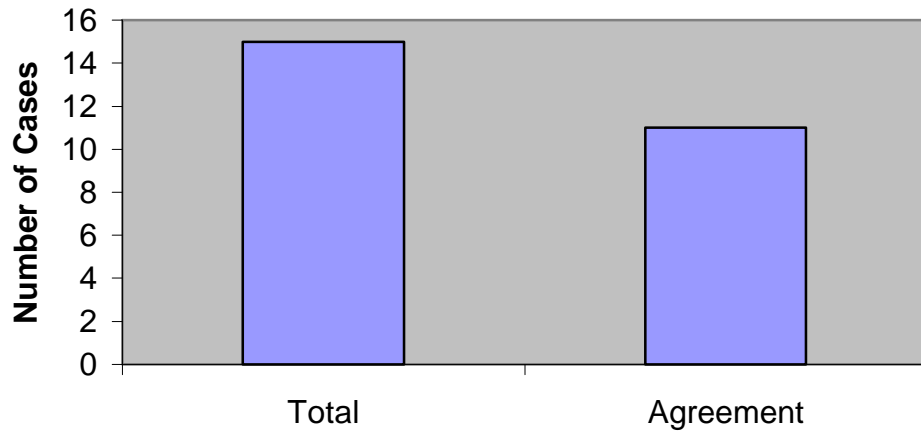
Ist Stage Cases for Year 2000



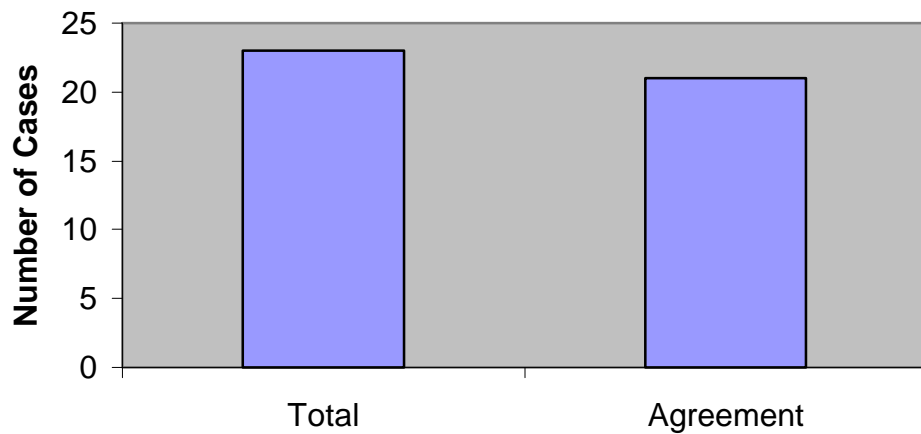
Ist Stage Cases for Year 2001



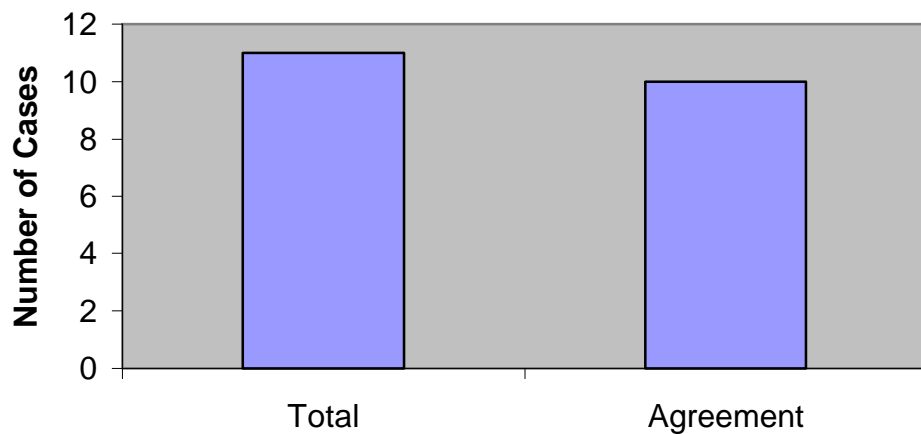
IIInd Stage Cases for Year 1999



IIInd Stage Cases for Year 2000



IIInd Stage Cases for Year 2001



On an analysis of the cases referred by the CBDT, for the first and second stage advice of the CVC, during the period 1999 to 2001, it is seen that the misconduct of officials can be broadly categorised under the following heads :

- (A) Assessment related
- (B) Search & seizure related
- (C) Refund related
- (D) Cases related to demand/acceptance of bribe/disproportionate assets etc.
- (E) Miscellaneous matters

(A) Assessment related

The returns of income filed by various class of assesseees during a financial year are scrutinized and processed by the Assessing Officer under whose jurisdiction these returns are filed. Thereafter, a certain percentage of the returns are selected for scrutiny assessments, as per the Instructions/Guidelines issued by the CBDT for the period under consideration. As assessment related work is the major work of the Department, apart from collection of demand and issuance of refund, it is noticed that about 60% of the misconduct relates to the irregularities committed by officials right from the selection of cases for scrutiny assessment upto the

finalisation of the assessment proceedings. These irregularities are either procedural or substantive in nature, meaning thereby that at times, the procedure established for selection of cases or maintenance of notesheets, service of notices have not been followed, while on other occasions, the substantive part of making investigation of certain facts claimed by the assessee or application of relevant provision of law has been ignored. A study of the irregularities in assessment proceedings has been made and this has been classified in two categories for study of the problem and proposed solutions. The first one is Pre-Assessment irregularities and the second one is irregularities committed during assessment proceedings.

1. **Pre-Assessment irregularities :**

- i. Selection of cases for scrutiny assessment, not made in a systematic manner, and in violation of CBDT's guidelines.
- ii. Cases selected for scrutiny, without approval of the higher authorities or without having jurisdiction over the case.

- iii. Scrutiny assessment made even without issuance of statutory notice u/s 143(2) or without any evidence of service of such notice. In some cases, ante-dating of notices for hearing have also been noticed.

- iv. The ordersheet/notesheet maintained for the day-to-day assessment proceedings have not been properly maintained, no dates of attendance recorded, no queries calling for the details or what transpired on a particular day of hearing has been recorded. At times, interpolation in ordersheet and even the fact that all the dates of the ordersheet have been entered on one particular date has also been noticed.

1.1. **Solutions**

Though the guidelines of CBDT are circulated every year, it is felt that the field formations at times are unaware of the existing guidelines. It is, therefore, required that there should be strict instructions to all Assessing Officers not to select any case for scrutiny without seeking prior approval of their supervisory officers,

which should invariably be in writing. Further, reasons must be recorded regarding the grounds/points on which the cases have been selected for scrutiny and in depth investigation must be made with reference to these points before finalisation of assessment. It would also be a welcome move on the part of the Department, if limited publicity is given to the instructions/guidelines issued by the CBDT for selection of scrutiny assessment cases for returns filed for a particular financial year. This would make the public aware of the existing norms for selection of cases and thereby minimise the complaints of harassment often made by the assessees on this account. At times, certain code numbers have been issued by the supervisory officers, for selection of scrutiny assessment from returns filed during the particular year. However, for proper working of this system, it is mandatory that all returns filed are entered in the return receipt register on day-to-day basis and in a systematic manner. For if this is not properly done, the allocation of code would not work in an objective manner. Strict instructions for proper maintenance of receipt register in which entries of returns received by the Department are instantly made, must be issued. surprise checks are

also required to be made by the supervisory authority to see that these instructions are complied with.

1.2 So far as issue of statutory notices within time is concerned, a proper record of the mode of service, whether through RPAD or the notice server, should be maintained by the Assessing Officer. Instructions are also required to be reiterated regarding proper maintenance of notesheet, which should truthfully and correctly be recorded by the Assessing Officer and be a reflection of what has happened during the course of proceedings. The replies filed, the notices issued, the dates of adjournment granted and the inquiries/investigation made should all be recorded on the ordersheet. It is required that the instructions on the issue of passing of assessment order, within a reasonable time, say within 10 days of completion of assessment proceedings must be reiterated for strict observance by the Assessing Officer. In case, due to exigency of work it is not possible to follow such guidelines, necessary prior approval of the supervisory officer must be taken in this regard.

2. **Irregularities committed during assessment proceedings** :

Some of illustrative mistakes are as under :

- i. Cash credits/squared loans are not properly verified.
- ii. Introduction of loans/advances/deposits/gifts – sources or genuineness thereof is not properly examined.
- iii. The reasons for substantial fall in GP rate are not properly examined.
- iv. Claim of loss or bad debts have been allowed without proper verification.
- v. Claim of extra ordinary expenses, which have been claimed for the first time, have not been properly examined.
- vi. Acceptance of foreign remittance as genuine gifts, without proper verification.
- vii. Non-verification of claim towards brokerage or commission paid.

- viii. Allowing deductions u/s 80 HH and 80-I, without examining whether all conditions for claim of such deduction are fulfilled by the assessee.
- ix. Acceptance of the documents/evidences filed by the assessee without proper cross-verification, in cases of doubtful claims.
- x. Retraction of earlier admission made by an assessee of earning of unaccounted income, accepted without any supporting evidence or without any investigation.
- xi. High pitched assessments have been made by Assessing Officer, without making any worthwhile inquiry.
- xii. Reassessment completed adopting the originally assessed income in spite of clear order of supervisory authority to probe source of investment in house property.
- xiii. Ignoring the cost of construction determined by the Valuation Cell of the Department and instead, choosing to apply rates without assigning any reasons.

- xiv. Perfunctory additions are made in a casual and arbitrary manner, without making any proper inquiry.

2.1 **Problem analysis :**

The assessment proceedings are quasi-judicial in nature and is a highly technical and specialised subject. The Assessing Officers are required to be not only professionally sound but also upto date with regard to the latest provisions in the IT Act and Rules, rulings of the Supreme Court and High Courts and instructions/circulars issued by the higher authorities, from time to time. It is also understood that the number of assessments required to be finalised by Assessing Officers every year, is quite large. Thus, there is always a possibility of a mistake in an assessment order due to the ignorance or pressure of work on the Assessing Officer. It is, therefore, required to make a distinction between a bona fide mistake and a mala fide and deliberate act of omission or commission of an Assessing Officer during the assessment proceeding. Though the dividing line between negligence and vigilance is thin, but at the same time, it is real and can be ascertained by a discerning eye on

examination of the assessment records, for the reason that records have a tendency to speak for themselves. Thus, it is not every bona fide mistake, which necessarily has a vigilance angle to it but then, at the same time, it is required to take action against the erring officials, who have completed the proceedings in gross violation of instructions, guidelines, provisions of law, in order to confer benefit to the assessee.

2.2 **Solution**

Assessment proceedings being a quasi-judicial function, it is not possible to lay down objective and standard parameters for completion of the proceedings, as each case depends upon its own facts and circumstances. Moreover, the Assessing Officers are required to finalise the assessments within a stipulated time frame, which is in addition to the work relating to collection of demands, issue of refunds and other action plan targets for the year. Further, each and every aspect of the case cannot be investigated from all angles of tax avoidance/evasion by an Assessing Officer. However, efforts can be made to minimise the subjective element in an assessment proceeding by creating certain institutional safeguards, which are as under

- (a) The number of scrutiny assessments to be finalised by an Assessing Officer in one financial year should be brought down to a realistic and optimum level, which should not be more than 40 assessments in a year. By this reduction, the quality of assessment would become more focussed and the chances of technical errors being committed would be negated.
- (b) It should be mandatory that the first questionnaire issued by the Assessing Officer is with the approval of his supervisory authority, and must focus on the examination of particular issues for which the case was selected for scrutiny.
- (c) The progress of investigation of the scrutiny assessment must invariably be monitored, by way of written instructions, issued by the supervisory authority from time to time.
- (d) Instead of the present system under which the assessment is done by an officer individually, a though

may be given to assign the task of investigation/inquiry on receipt of the replies of the assessee to a group of officers upon whose recommendation the case may proceed further for finalisation. This institutional correction may lead to improvement in quality of assessment and make it more objective. This would also reduce the complaints of harassment, which may occur due to the individual indiscretion of an officer.

- (e) In the present system of assessment, the replies filed by the assessee and the supporting books of accounts and documents are examined by the Assessing Officer, while sitting in his office. In this way, the Assessing Officer is able to examine only those aspects, which are produced before him. Such assessment proceeding can be termed as 'arm chair assessment'. It is required that the role of the Assessing Officer be made more proactive in the sense that he may be asked to examine the records, documents and books of accounts of assessee for which he should make visits to the office/factory/business

premises of the assessee, where he may, not only examine the process of manufacturing/trading, but also see in depth whether the claims of depreciation, investment allowance etc. have been made in accordance with law, and that the machinery claimed to have been purchased, have actually been installed for business purposes.

(B) Search/Survey related problems :

The nature of irregularities committed during search and seizure, and survey proceedings are as under :

- i. Reasons for conducting surveys are not recorded.
- ii. Approval of the Competent Authority is not sought before conducting surveys.
- iii. Satisfaction note recorded after the search operation was conducted.
- iv. Search premises put under restraint many times before conclusion of search.

- v. Search conducted in very casual and non serious manner and the seized documents improperly numbered.
- vi. Incriminating seized documents not confronted by the authorised officer during the search operation or even before the preparation of appraisal report.
- vii. Tampering seized documents, either in investigation wing or with the Assessing Officer.
- viii. Instructions regarding operation of strong room where seized valuables are kept, not followed and custody of keys and visitors' registers not maintained properly leading to loss of valuables.

Solutions :

- a. Strict instructions may be issued to the effect that no survey operation would be conducted without prior recording of reasons and prior approval of the Commissioner of Income-tax. The survey party should consist of officers and inspectors from the other Assessing Officers' jurisdiction and this should be rotated

periodically. The survey report must be submitted to the supervisory officer within 24 hours of the conclusion of the survey.

- b. Of late, it is observed that the earlier existing practice of recording statement on oath of the searched party with respect of incriminating seized document have been given a go-by. Instructions may be issued for invariably recording of statements at the time of search or immediately thereafter, before the assessee has time to think and create fictitious evidence in support of his bogus claims. By this process, not only the quality of search operation would improve but also the search assessment would yield excellent results. Also, the tampering of documents by the assessees would go down once their statements have been recorded with reference to the seized material.
- c. The practice of putting unnecessary restraints on lockers and cupboards should be discouraged for which necessary instructions be issued.
- d. Though it is not possible to maintain photocopy of all seized documents at end of the Investigation Wing which had conducted the search operation but then necessary instructions may be issued by the CBDT to the effect that

copies of all incriminating documents about which reference has been made in the statement on oath or in the appraisal report are kept in the custody of the officer conducting the search, after getting it authenticated from the Officers to whom these are being handed over, at least upto the time the search assessments are completed. This would result in practically reducing all cases of tampering of seized documents by the assessee, through the officials of the Department.

(C) **Refund related complaints/irregularities :**

The instances of complaints under this head are as under

:

- i. Returns are not processed in a chronological order. Refunds are not issued segmentially.
- ii. Refunds are not issued by registered post and are rather handed over to the assessees, in person.
- iii. Refunds issued on the basis of invalid return, returns not signed by the assessee and returns filed without jurisdiction.

- iv. Refunds issued on basis of bogus returns filed in the name of fictitious persons.
- v. Inordinate delay in issue of refunds on which substantial interest has been given.
- vi. Returns proceeded out of turn without approval of supervisory officer.
- vii. Entries in respect of refund vouchers not mentioned in D&C Register.

Problem analysis :

The issue of refunds to the assesseees has always been perceived to be a matter of harassment for them. However, in this regard, it may be seen that the officers and staff of the I.T.Department also work under the constant fear whether they are issuing refunds on the basis of properly paid challans and genuinely deducted TDS. There is no ready method to ascertain the above pitfalls and any delay in issuing of refunds is interpreted as motivated delay. At the same time, there is no denying the fact that there are isolated cases of harassment to assesseees and also pick and choose cases in issue of refund.

Solution

In order to reduce the complaints in the area, the following proposals are for consideration :

- a. There should be strict instructions that all returns must be processed in chronological order and this aspect of work must be monitored by the supervisory officers on fortnightly basis. Any deviation from chronology can be made only with the prior approval from the CIT.
- b. All evidence of despatch of refund certificates through RPAD must be maintained at the end of the Assessing Officer and no refund should be given in person.
- c. In all cases where a TDS certificate appears to be doubtful, proper inquiry be made from the officer where the TDS return is filed by the other party.
- d. In all cases where advance tax or self-assessment challan appears to be doubtful, proper inquiry be made from the bank where such challan has been deposited.
- e. The Department may also give a thought of creating a separate Cell for processing of returns and issue of refunds to the assessee, before these returns are finally sent to the Officer under whose jurisdiction the case of the assessee lies. This Cell should have no public contact and refunds of smaller amounts may be issued, across the counter within a few days of the filing of the return.

(D) Demand/Acceptance of bribe/Disproportionate Assets

On an average 6% of the cases relate to demand/acceptance of bribe/disproportionate assets. At least in two cases Rule 19 of the CCS (CCA) Rules was invoked as the Charge Officers were successfully prosecuted in the Court of Law.

(E) Miscellaneous complaints :

- i. Unauthorized absence.
- ii. No Objection Certificate, not issued by administrative machinery of Appropriate Authority, though signed by the members of Appropriate Authority.
- iii. Inconsistent approach in granting relief on identical issue by CIT(Appeal).
- iv. Stay of demand by CIT(A) without giving opportunity to the Assessing Officer to present the Department's case.
- v. Appeal decided on a date, which was earlier to the date when the case was next fixed for hearing. This pre-dating was done by the CIT(A) as the jurisdiction of appeal stood transferred.
- vi. Valuation of property improperly done by the Valuation Officer.

Need for Computerisation

The Income Tax Department has undertaken large scale of computerisation and has been allotting PAN No. to its assesseees.

However, this limited exercise may not serve the purpose. It is felt that CBDT should not only issue PAN Nos. to all the assessees, but also start the process of carrying out assessments through the aid of computers, which will naturally require capturing of data and WAN based linkages to access online information of transactions entered into by the assessees. Various assessment processes can be computerised and an effort should also be made to process and issue refunds electronically.
