

Insights into the low success rate of the Indian Income Tax Department in litigation: a grounded theory approach

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Abstract

The Economic Survey of India of 2017-18 and OECD data show that the Indian Income Tax Department (ITD) loses more than two-thirds of the income tax appeals litigated before the Income Tax Appellate Tribunal (ITAT), the High Courts, and the Supreme Court in India. However, reasons for the ITD's subpar performance, which may adversely impact revenue collection and the ability of the government to fund public services, are unknown. This study applies grounded theory methodology to case law, interview, and survey data to develop a theoretical model to explain the ITD's low success rate in income tax litigation.

The study shows that Indian bureaucratic culture, which is characterised by poor accountability, ineffective performance management, and a trust deficit, contributes to the ITD's low success rate in income tax litigation before the ITAT and the courts. Inadequate accountability and ineffective performance management in turn contribute to the poor quality of income tax assessments and the ITD filing meritless or frivolous appeals. Factors that lead to such sub-standard quality of income tax assessments and ITD filed appeals include revenue targets imposed on income tax officials by the ITD, inadequate supervision of tax officials with regard to their assessment of tax, and tax officials disregarding precedent in the process of making assessments and filing appeals. The inferior quality of income tax assessments and ITD filed appeals consequently results in the low success rate of the ITD in tax litigation. In addition, poor accountability and ineffective performance management perpetuate inadequate representation of the ITD before the appellate fora, adding to the ITD's losses in litigation.

Further, trust deficit, which underlies Indian bureaucratic culture, fosters a mindset of tax officials that reflects prejudice against taxpayers and a fear of audit and investigation. Trust deficit also leads to officials abdicating their responsibility to make objective decisions in favour of taxpayers. This trust deficit therefore adds to the poor quality of tax assessments and appeals filed by the ITD, further compounding the ITD's losses in income tax litigation.

By explaining reasons for the low success rate of the ITD in income tax litigation as well as the poor quality of income tax assessments made and income tax appeals filed by the ITD, the theory of Indian bureaucratic culture provides insights for reforming Indian tax administration. Further, the use of grounded theory methodology to develop a theory based on multiple sources of empirical evidence is a unique contribution to the field of taxation and to the literature on tax administration, especially, the literature on Indian tax administration.

Keywords: tax administration, bureaucratic culture, tax litigation, accountability, performance management, trust, taxation

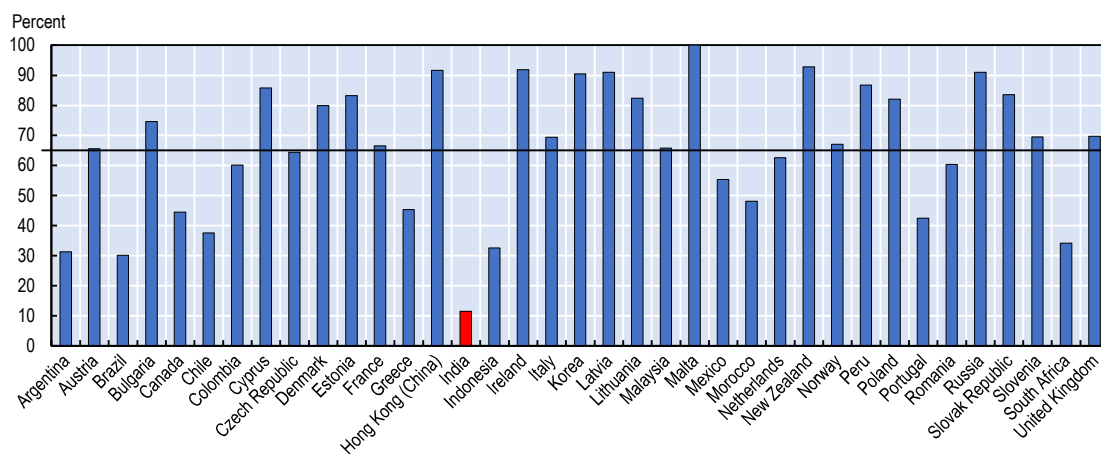
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1. INTRODUCTION

In India, the first level of appeal for taxpayers against the Income Tax Department (ITD) lies before the Commissioner of Income Tax (Appeals) (CIT(A)), a quasi-judicial authority who is a senior ITD official. The second stage of appeal for taxpayers, against the CIT(A)'s orders, is before the Income Tax Appellate Tribunal (ITAT), which is independent of the ITD and is the first level of appeal for the ITD against the orders of the CIT(A). Decisions of the ITAT may be appealed to the jurisdictional High Court, whose orders can further be appealed to the Supreme Court of India, which is the highest court of the land.

Research shows that less than 15% of the tax appeals in India were decided in favour of the Indian tax administration in 2014-15 (Deloitte Touche Tohmatsu India, 2020; Organisation for Economic Co-operation and Development (OECD), 2017). This success rate was the lowest among tax administrations of 37 emerging and advanced economies (Deloitte Touche Tohmatsu India, 2020; OECD, 2017), as shown in Figure 1. In addition, the Indian Economic Survey of 2017-18 reveals that more than two-thirds of the direct tax appeals before the ITAT, the High Courts, and the Supreme Court of India were decided against the ITD (Ministry of Finance, India, 2018). Of all direct tax appeals (including those filed by the ITD and the taxpayers), the ITD won around 27% of the appeals before the ITAT, only 13% before the High Courts, and 27% of the appeals before the Supreme Court (Ministry of Finance, 2018, p. 138). Further, the success rate of the ITD in direct tax appeals filed by the ITD is also less than 50%. Data compiled for the four-year period between 2011-12 and 2014-15 show that, of all the direct tax appeals filed by the ITD, the ITD loses the majority of such tax appeals, 'about 53 percent before the ITAT', 'about 61 percent before High Courts', and 'about 51 percent before the Supreme Court' (Deloitte Touche Tohmatsu India, 2020, p. 12).

Fig. 1: Percentage of Appeals Resolved in Favour of Tax Administrations, 2014-15



Source: OECD (2017)

The low success rate of the ITD in income tax litigation raises the question of why the ITD fares poorly. Given the implication of the low success rate of the ITD for tax collection and, possibly, economic development, this question is important to answer. This article seeks to answer this question based on the author's analysis of case law, interview data, and survey data.

The article begins with a review of the literature on tax administration and litigation in India and describes the methodology used to conduct the research undertaken for this article. The article then lays out reasons for the low success rate of the ITD in income tax litigation and concludes with a discussion of the theoretical model built to explain this low success rate.

2. LITERATURE REVIEW

Tax administration is a key determinant of the performance of not only the tax system but also tax policy. Bird (2014, p. 271) echoed this sentiment by asserting that 'tax administration is tax policy' (quoting Casanegra de Jantscher, 1990, p. 179) and contending that '[t]he best tax policy in the world is worth little if it cannot be implemented effectively' (2014, p. 269). Tax administration is of even greater importance in developing countries such as India as ineffective tax administration impedes the collection of tax revenue (for funding public services) and the implementation of growth friendly policies (Gordon, 2010, p. 9).

Researchers have commented that the literature on tax administration is not adequate. For instance, Alley and Bentley (2008, pp. 124, 132) have asserted that 'research into tax administration is not comprehensive', and Hasseldine (2011, p. 372) concluded that there is 'a dearth of scholarly literature' on best practices in tax administration. More recently, Shome (2016, pp. 2-4) advocated for more research into tax administration, especially in India. Despite the Indian tax administration losing more than two-thirds of the appeals in the ITAT and the courts, there is little research on tax administration and litigation in India.

Below is an overview of the literature on tax administration and litigation in India.

2.1 Tax administration in India

A review of the literature on tax administration in India helps set the context for the research question discussed in this article. Based on comprehensive research into Indian tax administration, Mookherjee (1998, p. 105) cautioned that motivating tax officials to 'collect revenues more aggressively' may lead to the harassment of taxpayers. Gordon (2010, p. 5) agrees and adds that '[w]hen tax officials are given incentives simply to collect more revenue, it is not surprising that they do so even beyond what the statutes would allow'. For instance, Das-Gupta (2006, p. 25) contends that unreasonable tax assessments are made by Indian tax officials just to meet their revenue targets (see also Rao, 2015, p. 30). Noting the tendency of income tax officials to 'frame high-pitched and unreasonable assessment orders', Butani (2016, p. 439) agrees that income tax assessment in India is 'often guided by revenue-collection targets'. Butani (2016, p. 444) concludes that 'targets-linked performance evaluation and incentives' have resulted in income tax officials 'making arbitrary/irrational demands' at times. This is all the more likely when targets are set 'with no mechanism to revise the targets with the change in the performance of [the] economy' (Butani, 2016, p. 445). Butani (2016, p. 439) also raises other concerns about the quality of tax assessments, noting, for

example, that often, 'key legal and interpretative issues are not adequately dealt with'. The literature therefore suggests multiple reasons for the poor quality of tax assessments in India.

Other administrative issues reported by the literature include low taxpayer compliance and high compliance costs in India. Compliance costs in India have been estimated to be 'extraordinarily high by international standards' (Chattopadhyay & Das-Gupta, 2002, p. v). In a survey of 45 Indian companies, respondents identified 'lack of accountability and transparency in tax administration matters', litigation, administrative delays, and 'non-transparent, ambiguous terminology of tax laws' as important factors contributing to high corporate compliance costs (Das-Gupta, 2006, p. 25). Survey respondents also cited 'unhelpful attitude' of the tax officials as a contributing factor (Das-Gupta, 2006, p. 25).

The 'poor state of tax administration' is proposed to be 'a major reason for low compliance and high compliance cost[s]' in India (Rao, 2005, p. 1009). Literature suggests that improving administration may increase voluntary compliance (Sharma & Singh, 2018, p. 11; Singh & Sharma, 2010, p. 147; Kumar, Nagar & Samanta, 2007, p. 110). Kumar and co-authors (2007, p. 109) add that poor compliance is due to 'the perceived inequity of the tax system, complexity of tax laws, lack of fairness of the penalty system, and weak taxpayer education programmes'. Addressing these issues may reduce compliance costs and improve voluntary compliance.

In this regard, Jain (2016, p. 723) notes that while 'the promotion of voluntary compliance' is the stated goal of the ITD, 'there is a basic absence of trust in the taxpayer', as well as 'inadequate emphasis' on the 'creation of a tax friendly culture' and the provision of 'comprehensive and reliable guidance on compliance to taxpayers'. This may be due to the 'adversarial attitude of the tax administration towards taxpayers', who are viewed by many tax officials as 'tax evaders' (Rao, 2015, p. 30). Jain (2016, p. 723) adds that the Indian tax administration is 'by and large perceived to be unfriendly towards the taxpayer'. For instance, in a survey of chartered accountants of a province in India, the majority of the respondents perceived the Indian income tax authorities as 'enforcers' and not 'facilitators' and viewed the ITD as not being 'taxpayer-friendly' (Rani & Arora, 2011, pp. 49-50). Jain (2016, p. 723) explains that while the 'vision and strategy documents' of the ITD espouse 'lofty ideals', the experience of taxpayers on the ground is 'at wide variance with these ideals and shows a gulf between what is professed and actual practice' within the ITD.

Literature on Indian tax administration thus reveals concerns about the effectiveness of tax administration in India as well as low compliance rates and high compliance costs in India. Literature also describes an administration that favours enforcement over enabling taxpayer compliance. The next section describes the literature on tax litigation in India.

2.2 Tax litigation in India

A recent Economic Survey of India (for 2017-18) notes that delays and pendency of economic cases in the courts, the tribunals, and the income tax department are high and mounting, with the pendency adversely impacting the economy in the form of delayed projects, high legal costs, disputed tax revenues, and declining investment (Ministry of Finance, 2018, p. 132). Such delays and pendency of cases may arise from an increase in the judiciary's workload, for example, due to greater use of injunctions and stays, and

from the Indian income tax officials favouring litigation despite the ITD's high rate of failure to prevail in cases at every stage of the tax appeal process (Ministry of Finance, 2018, p. 132).

With respect to the appeals filed by the ITD, an OECD paper notes that, 'following a decision by the commissioner in the taxpayer's favour, too many cases with limited merit are brought by the Tax Department before the Courts' (Joumard, Thomas & Morgavi, 2017, p. 30). The paper suggests that the possibility of 'imposition of sanctions against assessing officers who are considered by the Comptroller and Auditor General to have under-assessed [tax] incentivises a defensive approach towards [tax] assessments' (Joumard et al., 2017, p. 31). Also, such a conservative approach may lead to cases without merit being appealed (Joumard et al., 2017, p. 31). In this context, Butani (2016, p. 445) notes that the fear of audit and the prospect of 'being subjected to critical evaluation pushes [Indian] tax officials into a "fault-finding" mode'.

Another OECD paper describes other factors that contribute to an environment of overly conservative assessments, which in turn result in a significant number of tax disputes and litigation (Thomas et al., 2017, p. 42). Examples of such factors include limited staffing, limited audit expertise in some areas, unclear guidelines, fear of corruption accusations, and unreasonable audit revenue targets (Thomas et al., 2017, p. 42). These factors are likely to incentivise tax officials to take an overly defensive approach (Thomas et al., 2017, p. 42).

In this regard, Das-Gupta (2006, p. 23) suggests, based on anecdotal evidence, that Indian income tax officials file appeals against taxpayers notwithstanding the department's low success rate in tax litigation to 'avoid sanctions for lack of due diligence' in not filing an appeal. For example, to avoid adverse comments during an external audit by the Comptroller and Auditor General of India, income tax officials are likely to pass the buck by filing an appeal even if the officials believe that an appeal is not warranted (Das-Gupta, 2006, p. 23).

Based on the results of a survey of 45 Indian companies, Das-Gupta (2006, p. 25) concludes that litigation is a recurrent administrative 'hotspot' for taxpayers in India. Thomas and co-authors (2017, p. 43) propose that the factor most responsible for fostering 'an environment of excessive disputes' in India is the 'imposition of audit revenue targets on assessing officers'. They argue that the low success rate of the ITD in appeals to the CIT(A) suggests that revenue targets are 'excessive' and lead to 'unreasonable [tax] assessments' (Thomas et al., 2017, p. 43). Further, Butani (2016, p. 439) notes that there is 'no qualitative assessment' of taxpayer disputes by income tax officials, leading to 'protracted litigation'.

Literature on tax litigation in India therefore paints a picture of an environment of excessive and unnecessary litigation, which is at least in part driven by tax assessments of a poor quality. Such assessments may result from, for example, unreasonable revenue targets imposed on tax officials and their fear of audit and inquiry and corruption allegations. This article discusses factors that contribute to the ITD's low success rate in litigation, including reasons behind income tax officials making assessments of a poor quality and filing appeals without merit.

The next section explains the methodology followed in the research described herein.

3. RESEARCH METHODOLOGY

3.1 Methodology

The research discussed in this article follows the grounded theory methodology. Grounded theory is ‘the discovery of theory from data systematically obtained from social research’ (Glaser & Strauss, 1999, p. 2). Such theory is ‘derived’ from research data and is ‘illustrated by characteristic examples’ of the data (Glaser & Strauss, 1999, p. 5). ‘Generating a theory from data means that most hypotheses and concepts not only come from the data but are systematically worked out in relation to the data during the course of the research’ (Glaser & Strauss, 1999, p. 6). This often takes place in an iterative manner.

Grounded theory is built upon two key concepts – constant comparison and theoretical sampling (Suddaby, 2006, p. 634). Constant comparison involves simultaneous collection and analysis of data, while theoretical sampling enables decisions about data collection based on the theory that is being developed (Suddaby, 2006, p. 634). These steps are performed iteratively. Constant comparison is used to replicate facts based on comparative evidence and establish the generality of each fact (Glaser & Strauss, 1999, pp. 23-24). By generating the properties of conceptual categories that emerge from the data, comparison of facts can increase the generality and the explanatory power of such categories (Glaser & Strauss, 1999, p. 24). Generalisations help broaden the grounded theory and enhance the theory’s explanatory and predictive power (Glaser & Strauss, 1999, p. 24).

Classical Grounded Theory, which is the version of grounded theory described above, recommends substantive and theoretical coding (Evans, 2013, p. 40) in conjunction with the comparative analysis and theoretical sampling strategies to analyse data. Substantive coding precedes theoretical coding (Evans, 2013, p. 40) as substantive coding involves coding of raw data. In this research, substantive coding has been performed using descriptive coding to analyse the data and build the categories. Theoretical coding was then undertaken using selective coding to identify concepts underlying the developed theory. This identification was facilitated by themes developed from comparison of the categories with the core category.

3.2 Methods

Grounded theory permits the use of various types of data collection methods, including qualitative methods and quantitative methods, to generate theory. For example, quantitative methods can supplement qualitative ones. Although the research presented in this article relies primarily on the qualitative methods of case law review and interviews, a survey has also been deployed to corroborate some of the themes. Glaser and Strauss (1999, pp. 75, 104, 18) propose that document reviews, interviews, and surveys are all acceptable methods for use with grounded theory methodology to build a substantive theory from the data.

Glaser and Strauss (1999, p. 163) add that documentary materials may be ‘as potentially valuable for generating theory’ as ‘observations and interviews’. In this research, case law provided insights into legal principles that are commonly relied upon by the courts for deciding against the ITD. Moreover, while not random, the sample of cases reviewed for this article is biased only by the income tax assessment years selected for review (2010-20 for Supreme Court cases and 2015-20 for High Court cases). The historical

depth of case law reviewed for the research discussed in this article is greater than that of the interview data.

In addition to the review of case law, former ITD officials were interviewed to obtain the perspectives of income tax officials *vis-à-vis* the research question. Chartered accountants and tax lawyers were interviewed to understand the views of taxpayer representatives. Also, former ITAT members and judges were interviewed to obtain the opinions of adjudicators.

The author conducted semi-structured interviews (Qu & Dumay, 2011, p. 246) of 34 tax professionals between December 2020 and April 2021. The interviewees were identified using purposive, convenience, and snowball sampling techniques. Of these 34 research participants, six are former income tax officials, two are former income tax officials who served and retired as ITAT adjudicators, seven are chartered accountants or lawyers who served on the ITAT or in the judiciary as adjudicators, and 19 are lawyers or chartered accountants with no prior experience of having served as adjudicators in income tax cases. Below is a legend corresponding to the codes used to refer to the interviewees in this article.

Table 1: Legend of Abbreviations Used to Refer to the Different Backgrounds of Interviewees

	Abbreviation	Description of Interviewee Background
1.	J	Judge of High Court or Supreme Court
2.	T	Former Income Tax Official
3.	A	Chartered Accountant
4.	L	Tax Lawyer
5.	IT	Retired ITAT Adjudicator and Former Income Tax Official
6.	IA	Former ITAT Adjudicator and Chartered Accountant
7.	IL	Retired ITAT Adjudicator and Lawyer
8.	TP	Tax Practitioner with Legal and Accountancy Qualifications

After reviewing the case law and analysing the interview data, an anonymous online survey of chartered accountants, income tax lawyers, and former income tax officials was undertaken. Potential respondents were identified using purposive and convenience sampling. The questionnaire was designed and administered online through Qualtrics and resulted in 123 valid survey responses. The survey data was thereafter analysed using SPSS software.

The section below discusses themes related to the low success rate of the ITD that emerged from the analysis of case law as well as that of interview and online survey data.

4. LOW SUCCESS RATE OF THE ITD

A review of case law, interview data, and survey results reveals reasons for the low success rate of the ITD in tax litigation. Key reasons include the poor quality of income

tax assessments and appeals, poor accountability of tax officials, inadequate representation of the ITD in the appellate fora, inadequate supervision of tax officials, their disregard of precedent, revenue targets imposed on officials, the prejudiced mindset of officials, their fear of audit and inquiry, and their abdication of responsibility. A discussion of these reasons follows.

4.1 Poor quality of assessments

Case law refers to the poor quality of income tax assessments made by assessing officers, i.e., officials who assess tax within the ITD (Mohan, 2021, pp. 22-27). Interviewees agree that the quality of many of the income tax assessments is poor. In addition, the results of the survey of tax professionals undertaken for this research show that 49% of the respondents to the survey believe that income tax officials make correct assessment of tax sometimes and 18% believe that officials make correct assessments rarely or never.

Interviewees propose that the poor quality of income tax assessments made by assessing officers results in the low success rate of the ITD in litigation (Interview T5; Interview IL1; Interview IA2; Interview TP2; Interview A3). Reasons behind inadequate assessments include poor examination of accounts by officers (Interview A5) or officers not properly applying the law, rules, or procedures (Interview IL2). Interviewees, including those who previously served as the CIT(A) (Interview T5; Interview T2) or as retired ITAT adjudicators (Interview IA2; Interview IL1; Interview IL2), agree that an assessment that is inadequately supported by facts or in law is difficult to defend in the ITAT or the courts.

Another reason for the poor quality of tax assessments is not investigating thoroughly or not drafting the income tax assessment orders properly (Interview T5). For example, tax practitioners contend that, in some cases, the assessment of tax is made in a hurry before assessments become time-barred by the operation of law (Interview A2; Interview A7; Interview IA1). When assessing officers do not have enough time to make a thorough assessment, they err on the side of making additions, even those not substantiated by evidence, to avoid missing out on potential tax collection, likely resulting in high-pitched tax assessments (Interview IT2; Interview T3). High-pitched tax assessments are unreasonable assessments that make unsustainable tax demands (Interview A3). Even where an officer investigates properly, they may not reference correctly incriminating materials unearthed in the investigation in the assessment order, a deficiency that cannot usually be overcome in the ITAT and the courts, which do not permit new evidence (Interview T5; Interview IA2).

Poor-quality tax assessments may also result from inadequate training and insufficient knowledge (Interview IA2), especially in complex areas of taxation such as international taxation and transfer pricing (Interview A3). Despite officers being trained for more than a year prior to their posting (Interview T6; Interview T1; Interview T2; Interview T3), some suggest that more training is required as assessing officers may not have prior experience in taxation, accounting, and law (Interview A5; Interview T5; Interview IT1; Interview IA1).

Other interviewees dispute that lack of training is a major cause of poor assessments (Interview T4; Interview T1; Interview T6). Some propose instead that poor accountability, the mindset of assessing officers (Interview L7; Interview A1), or insufficient supervision (Interview T2; Interview T6) are more likely reasons for the

poor quality of assessments and the resulting low success rate of the ITD. For instance, while supervision of assessing officers and their tax assessments is provided for in the ITD's processes (Interview T5), as discussed in detail below, this supervision is inadequate (Interview T5; Interview IT1; Interview T6).

Incorrect tax assessments are typically appealed by taxpayers. When taxpayers prevail in such appeals, the ITD is said to routinely file appeals against orders in favour of taxpayers.

4.2 Poor quality of appeals

Case law shows examples of tax appeals without merit filed by income tax officials (Mohan, 2021, pp. 25, 29-30). In addition, interviewees suggest that the poor quality of appeals filed by income tax officials contributes to the low success rate of the ITD in tax litigation in many cases. According to a former income tax official, in some cases, appeals are filed based on 'one string of evidence' or just based on suspicion (Interview T5). Also, a retired ITAT adjudicator said that 'at least 50 percent of the appeals filed' by the ITD are 'without merit' as officials 'file appeals against the CIT[(A)]'s order ... indiscriminately' (Interview IA2). Regarding indiscriminate filing of appeals by income tax officials, a retired High Court judge added that a reason for the poor success rate of the ITD in the High Courts is officials filing infructuous appeals that do not raise a substantial question of law (Interview J2).¹ Meritless appeals therefore do not withstand the scrutiny of the higher appellate fora.

In addition, many income tax officials file appeals mechanically because of the belief that filing appeals does not cost the ITD much (Interview T2). This contributes to the ITD filing twice or thrice the number of appeals filed by taxpayers (Interview T2; Interview A6). The large number of meritless appeals filed by the ITD impacts its success rate in litigation.

4.3 Poor accountability

The substandard quality of tax assessments and appeals filed by the ITD can result from poor accountability. For instance, assessing officers and their superiors are purportedly not held accountable for the poor quality of assessments (Interview T5). Moreover, assessing officers who make high-pitched tax assessments are not penalised within the ITD because the ITD feels that assessing officers who make such assessments protect the ITD's interests by being overzealous, colloquially referred to as being 'revenue-minded' (Interview IT2).

Most of the interviewees, including many retired ITAT adjudicator interviewees and some former income tax official interviewees, believe that there is little to no accountability of assessing officers within the ITD for making incorrect assessments or those of a poor quality (Interview L1; Interview A2; Interview A3; Interview TP2; Interview TP3; Interview L3; Interview TP4; Interview L4; Interview L5; Interview L7; Interview IT1; Interview IL1; Interview IA1; Interview IT2; Interview T5). Further, the results of the survey of tax professionals show that around two-thirds of the respondents

¹ The higher judiciary adjudicates only substantial questions of law, not ordinary questions of law, in tax cases.

do not believe that officials face consequences for making incorrect assessments or for filing meritless or frivolous appeals.

With respect to appeals, tax practitioners, retired ITAT adjudicators, and former ITD officials note that while tax officials may be held accountable for not filing an appeal where it is due, there appears to be no accountability when income tax officials file appeals without merit (Interview L5; Interview IA1; Interview TP3; Interview IL1; Interview IL2; Interview L7; Interview T5). For example, a senior tax lawyer (Interview L7) said that there is ‘zero accountability’ within the ITD for its officials filing meritless or frivolous appeals. Such meritless and frivolous appeals are invariably lost by the ITD before the ITAT and the courts. Poor accountability thus contributes to the low success rate of the ITD in appellate litigation.

4.4 Inadequate supervision

Poor accountability can be fostered by inadequate supervision. Supervision of assessing officers and their assessments exists on paper as the ITD vests the Additional Commissioner of Income Tax, to whom the assessing officers report, with the authority to monitor and verify income tax assessments (Interview T5). However, most former income tax official interviewees believe that this monitoring, verification, guidance, and supervision is often missing (Interview T5; Interview IT1; Interview T6; Interview T1; Interview T4). A retired member of the Central Board of Direct Taxes (CBDT), which oversees the ITD, said that the department does not have ‘a formal program or even a service culture’ of senior officials mentoring assessing officers and is ‘an individualistic department’ (Interview T6).

Another retired member of the CBDT added that, ‘though the [Income Tax] Department is now over 100 years old, the culture of close monitoring of ... assessments hasn’t happened’ (Interview T5). The retired CBDT member suggested that a review mechanism is needed, not to punish erring assessing officers, but to train them and monitor them closely (Interview T5). The former senior income tax official added that in the absence of proper training and monitoring, erring assessing officers may end up wasting taxpayers’ time and the government’s time by making assessments of a poor quality (Interview T5).

Reasons for inadequate supervision include the reluctance of assessing officers to be supervised, under the guise of their being quasi-judicial authorities, despite supervision being required by the department rules (Interview T5; Interview T6). Some assessing officers are said to have in the past attributed ulterior motives to supervision, for example, by filing anonymous complaints against their supervising officials (Interview T5). This is said to have led to supervising authorities taking a step back to avoid the questions and allegations that come with supervision (Interview T5; Interview IT1). A former income tax official remarked that supervising income tax officials ‘now are afraid of ... [their] subordinates’ (Interview IT1). A senior tax lawyer concluded, in the context of income tax assessments prepared by assessing officers, that there appears to be no quality control within the ITD (Interview TP3).

4.5 Revenue targets

In addition to poor accountability and inadequate supervision, the imposition of revenue targets on income tax officials also contributes to the poor quality of assessments. Many interviewees believe that the influence of revenue targets on income tax assessments

made by assessing officers is a key factor that impacts the quality of the assessments made (Interview IT1; Interview A1; Interview TP1; Interview A3; Interview IA1; Interview TP4; Interview T3; Interview L4; Interview J1; Interview J2; Interview J3; Interview IL1; Interview A8; Interview IL2). Revenue targets seek to hold assessing officers accountable and may be used as a metric during performance evaluation (Interview L6). However, the imposition of revenue targets appears to have unintended or undesired consequences at times.

For example, targets may lead to ‘high-pitched assessments’ (Interview A5), and result in orders without adequate foundation (Interview TP2). A senior tax lawyer remarked that, in some cases, tax assessments are reopened, or unreasonable positions are taken, by assessing officers just to meet targets (Interview L7). Other practitioners add that the revenue targets ‘thrust’ upon assessing officers result in high-pitched assessments as meeting the target becomes ‘more important’ than ‘fair collection’ of tax (Interview TP1; Interview A1).

Interviewees also note that assessing officers sometimes acknowledge the pressure from superiors within the ITD to collect revenue and even ask taxpayers to seek relief in the appellate fora, for example, in the ITAT, instead (Interview TP1; Interview TP3). As a senior tax accountant (Interview A3) remarked, high-pitched assessments contribute to the ITD’s low success rate in tax litigation as assessments that make unsustainable tax demands are generally overturned by the ITAT and the courts. Interviewees thus conclude that revenue targets contribute to the low success rate of the ITD in litigation (Interview L7; Interview J2).

4.6 Disregard of precedent

Another factor that contributes to the poor quality of both income tax assessments and ITD filed appeals is the disregard of precedent by income tax officials. Case law offers several examples of income tax assessments made or appeals filed by income tax officials that disregard judicial precedent (Mohan, 2021, pp. 24-25). Referring to an instance of disregard of precedent by income tax officials, the High Court of Bombay said that ‘the least that is expected of the Officers of the State is to apply the law equally to all and not be over zealous in seeking to collect the revenue ignoring the statutory provisions as well as the binding decisions of ... [the] Court’.² Many interviewees confirm the practice of assessing officers disregarding binding precedent while making tax assessments or filing tax appeals (Interview L7; Interview A2; Interview L4). Moreover, income tax officials have in some cases disregarded binding precedent of not only the jurisdictional High Court but also that of the Supreme Court, the highest court (Interview L7). Some interviewees suggest that revenue targets put pressure on assessing officers to disregard precedent (Interview L4; Interview L7). However, as shown by case law, assessments made by disregarding judicial precedent, for example, to meet revenue targets, do not withstand appellate scrutiny (Interview TP3).

Disregard of precedent also contributes to the poor quality of appeals (Interview A3; Interview T2; Interview IL1; Interview IL2). When income tax officials seek to re-litigate issues covered by binding jurisdictional High Court precedent or Supreme Court precedent (Interview T2; Interview IL1), the ITD eventually loses such cases during

² *Milestone Real Estate Fund v Assistant Commissioner of Income Tax, Circle 25(3), Mumbai* [2019] 105 taxmann.com 292 (High Court of Bombay, India) (26 March 2019).

appeal. In one case, the High Court of Bombay stated that it was ‘pained to record ... [the] most unreasonable attitude on the part of the Advocate for the Revenue of seeking to reargue settled concluded issues, without having obtained any stay from the Apex Court’.³

Data therefore suggests that the reluctance of income tax officials to follow judicial precedent contributes to the poor quality of both income tax assessments and ITD appeals, which in turn results in the ITD losing the corresponding appeals before the appellate fora.

4.7 Prejudiced mindset

In addition to the above factors, the mindset of income tax officials contributes to the poor quality of assessments. Case law shows examples of the prejudiced mindset of income tax officials against taxpayers (Mohan, 2021, pp. 27-28). In one case, the High Court of Bombay said that the behaviour of the income tax officials in that case was ‘high handed and manifestly unfair towards the [taxpayer] ... [and was] in defiance of settled law’.⁴ This prejudiced mindset of income tax officials was referred to by many of the interviewees as well. Also, more than three-quarters of the survey respondents believe that income tax officials are biased in favour of the ITD when making assessments or filing appeals. Further, most survey respondents believe that officials are not fair to taxpayers while assessing tax.

Interviewees propose that the prejudiced mindset of officials contributes to the low success rate of the ITD in litigation. For example, assessing officers tend to interpret the law to avoid giving a benefit or relief to taxpayers under some pretext or the other (Interview A1; Interview L7), even when that benefit or relief is explicitly provided to taxpayers by the *Income Tax Act, 1961*. This leads to the underlying assessment being overturned on appeal.

Interviewees also note that the mindset of prejudice against taxpayers (Interview L1; Interview L2) and resulting trust deficit (Interview A1) contribute to income tax officials viewing taxpayers unfavourably (Interview A7) or with suspicion (Interview A5). A former senior income tax official and retired member of the CBDT said that, among officials, ‘there is considerable suspicion that most taxpayers are evading or avoiding payment of tax’ and added that this bias often ‘persists’ with the officials throughout their career (Interview T5).

Assessments driven by prejudice, for example, based on suspicion or with unfairness, do not usually withstand appellate scrutiny (Interview T5; Interview A5; Interview A1), adding to the low success rate of the ITD in litigation before the ITAT and the courts.

4.8 Fear of audit and inquiry

In addition, the mindset of fear of audit and inquiry influences assessing officers to make unnecessary additions in tax assessments to avoid being questioned by their superiors for not making enough additions in an assessment (Interview TP4). Referring to

³ *Principal Commissioner of Income-tax, Central-1 v JWC Logistics Park (P.) Ltd* [2018] 100 taxmann.com 355 (High Court of Bombay, India) (11 April 2018).

⁴ *Milestone Real Estate Fund*, above n 2 (imposing costs on ITD officials (payable to the taxpayer) ‘for the unnecessary harassment’ that the taxpayer had to undergo ‘at the hands of the Revenue’).

discussions with some assessing officers, a senior lawyer interviewee (Interview TP4) explained that assessing officers are questioned for not making an addition but not probed for making an unsustainable addition that is bound to be deleted upon appeal. Further, the fear of a vigilance investigation by the ITD, when assessing officers do not make additions in an important case, influences assessing officers to make unjustifiable and arbitrary additions in such cases to avoid a vigilance investigation in the future (Interview J2; Interview J1). This fearful mindset of assessing officers (Interview A4) often leads to indefensible additions (Interview A5) in tax assessments that are ultimately set aside by the appellate fora, adding to the ITD's losses.

Interviewees add that the ITD is known to retaliate against assessing officers who accept even legitimate deductions sought by taxpayers, by auditing and investigating such officers (Interview TP3). This leads to officers erring on the side of the ITD (Interview T6) to be safe. This despite the Supreme Court's mandate that if there are two views possible, then the assessing officer should take the view that favours the taxpayers, not the tax department. Instead, 'it's easier [for officers] not to take a decision or [to] take a decision in favour of the department, even if it is wrong' as that would spare the assessing officers of 'a witch-hunt' for not making an addition, even one that is indefensible on appeal (Interview A5). The ITD tends to ultimately lose appeals in which the underlying assessment erred in the ITD's favour.

The fear of audit and inquiry by the ITD may also influence an income tax official's decision to file an appeal. To avoid the risk of being questioned or even accused for not filing an appeal, income tax officials routinely file appeals regardless of their merit (Interview J1; Interview TP3; Interview L7; Interview IL1), leading to the ITD losing many such appeals. The fear of audit and inquiry therefore contributes to the ITD's low success rate in litigation.

4.9 Abdication of responsibility

A further aspect of the mindset of income tax officials is their tendency to abdicate responsibility by playing it safe and passing the buck. For example, assessing officers play it safe by not taking an objective view on a point of law that is under litigation (Interview A2) or by making unnecessary additions and asking taxpayers to get relief from the CIT(A) or the ITAT (Interview A7). Assessing officers thus prefer to let someone else decide by 'handing off [their] responsibility' to be fair to taxpayers to the appellate fora instead (Interview L4).

Assessing officers also abdicate responsibility to avoid being questioned by their superiors within the ITD for not making an addition or for not making enough additions in an assessment (Interview TP4). A former income tax official and retired member of the CBDT (Interview T6) and a retired income tax official (Interview T1) claim that at least 50% of the tax officials play it safe (Interview A3). As noted in the previous section, officials file an appeal to 'play [it] safe' (Interview T6), especially in cases involving a large tax demand (Interview IT1), to avoid retaliation, for example, an investigation, by the ITD.

A retired Chief Commissioner added that 'very few' officials 'are bold enough to take independent decisions and take responsibility' for not filing an appeal (Interview T1). Another retired Chief Commissioner explained that many income tax officials incorrectly 'think that they need not take any decision, it is someone else who will have to take a decision, and that should be the High Court or the Supreme Court' (Interview

T2). This ‘tendency to pass the buck’ (Interview IA1) by not assessing the merit of an appeal leads to the mechanical filing of appeals (Interview A6) lacking merit (Interview L4; Interview L5).

A retired Chief Commissioner of Income Tax disagrees with this approach, explaining that most of the ITD’s appeals may be ‘infructuous’, partly due to income tax officials taking such a mechanical approach (Interview T2). A retired ITAT adjudicator concurred (Interview IA2). The result is that the ITD loses such meritless appeals before the ITAT and the courts.

4.10 Inadequate representation

Another reason that adds to the ITD’s low success rate is inadequate representation. Interviewees propose that the poor quality of representation of the ITD during litigation further contributes to the ITD’s low success rate in at least some cases (Interview T5; Interview TP2; Interview IA1; Interview T2; Interview IA2; Interview J2; Interview IL1; Interview L6). For example, the ITD is represented by its own officials before the ITAT. A tax practitioner said that due to ‘poor representation by the [tax] department, the results at [the] ITAT are more favourable’ to taxpayers than to the tax department (Interview A3).

One reason for poor representation may be inadequate training of officials to prepare and present a good case before the ITAT (Interview T5). Another reason may be inadequate preparation or poor presentation of the case by the official representing the ITD before the ITAT (Interview IA2; Interview J2). In some cases, even where the tax official is capable, they may not get the necessary information or support (for example, case information or files) well in advance from the ITD to make a strong case (Interview T5; Interview IA2; Interview J2). Yet another reason for the ITD’s poor representation in the ITAT is the perception that being deputed to represent the ITD before the ITAT is a ‘punishment posting’ (Interview T1; Interview IA1; Interview TP3; Interview IA2; Interview L6). This results in ‘disinterested’ representation by officials deputed to that role (Interview J2; Interview IL1; Interview T2).

Also, retired income tax officials and former ITAT adjudicators claim that the ITD’s standing counsel, i.e., lawyers hired by the ITD to represent the ITD before the High Courts and the Supreme Court, are often ineffective as well, leading to even cases in favour of the ITD sometimes being lost (Interview T5; Interview T2; Interview J2; Interview T4). Thus, poor representation of the ITD in appeals is a contributing factor to its low success rate.

The next section illustrates the development of a theoretical model from this analysis.

5. THEORETICAL MODEL

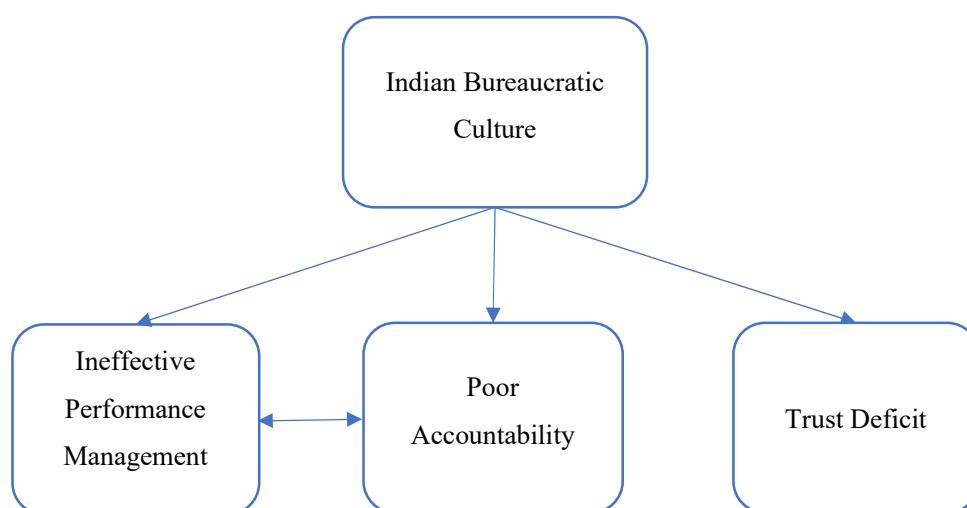
This section describes the theory developed from the themes in the preceding section to explain the low success rate of the ITD in tax litigation before the ITAT and the courts.

The themes related to the low success rate of the ITD in income tax litigation demonstrate that commissions and omissions by income tax officials contribute to the poor performance of the ITD in litigation. Data also indicate that the culture within the ITD (and the larger Indian bureaucracy) influences these commissions and omissions. The proposed theoretical model therefore presents the characteristics of Indian

bureaucratic culture that motivate the themes related to the low success rate of the ITD in income tax litigation.

The theoretical model proposes that Indian bureaucratic culture is characterised by inadequate performance management, poor accountability, and trust deficit, as shown in Figure 2. This section explains these concepts using the themes developed from the analysis of case law, interview, and survey data, thus providing empirical support to the model.

Fig. 2: Theoretical Model for Explaining the Low Success Rate of the ITD in Tax Litigation



5.1 Ineffective performance management

Performance management in this article refers to the monitoring and evaluation of the actions of Indian government officials. Indian bureaucratic culture is beset by ineffective performance measurement, which adversely impacts the delivery of public services. The problem of ineffective performance measurement within the Indian government has been discussed in the literature (Panda, 2021, p. 10; Kashikar, 2004, p. 554). For example, a report published by the National Commission to Review the Working of the Constitution (appointed by the Government of India) in 2002 proposed ‘drastic reform’ to the methods of performance evaluation within the government (National Commission to Review the Working of the Constitution, India (Justice M N Venkatachaliah, chair), 2002, Ch. 6, para. 6.7.5). The Commission found that ‘neither the quantity nor the quality of output of individuals and collective units’ was being ‘properly measured’ (National Commission to Review the Working of the Constitution, 2002, Ch. 6, para. 6.7.5). The Commission added that ‘the good, the bad and the indifferent’ government officials are treated alike and that only the seniority of the

officials determined their advancement in the government (National Commission to Review the Working of the Constitution, 2002, Ch. 6, para. 6.7.5).

Performance management is an established mechanism for monitoring and reviewing the performance of both individuals and organisations (Rao, 2016, pp. 9, 24, 89, 100; Bourne & Bourne, 2011, pp. 8, 62, 99, 103-104). As performance management seeks to facilitate 'good performance' (Rao, 2016, pp. 2-3, 5, 77; Bourne & Bourne, 2011, pp. 1-3, 9, 12), the absence of effective performance management can contribute to sub-optimal performance.

In income tax administration, inadequate performance of income tax officials can lead to sub-standard representation of the ITD before the ITAT and the courts, as revealed by interview data. Other manifestations of inadequate performance, shown by case law and interview data, are incorrect assessments of tax and the filing of meritless appeals against taxpayers. In addition, the Comptroller and Auditor General of India's reports (2022, p. 43; 2021, p. 27) refer to 'significant deficiencies in the performance of the Assessing Officers'. The reports give examples of the types of errors made by income tax officials in incorrect tax assessments and suggest the absence of proper monitoring and evaluation within the ITD.

As mentioned earlier in this section, effective performance management requires monitoring of the actions of government officials. Proper monitoring of the performance of these officials requires the institution of systems and processes to identify any lapses in their performance as well as any deviations in their actions, through commission or omission, from those authorised by law. Ineffective performance management can therefore be evidenced by inadequate controls within the government for detecting erroneous actions of officials. In the context of income tax administration, the Comptroller and Auditor General of India's reports (2022, p. 43; 2021, p. 27), for example, raise concerns about the 'weaknesses in the internal controls in the ITD' and imply that these weaknesses lead to incorrect assessments of tax.

More specifically, themes developed from the analysis of case law and interview data illustrate such weaknesses within the ITD. For example, violations of the principles of natural justice by income tax officials suggest ineffective systems and processes for identifying and preventing these violations, especially those arising from not providing notice to taxpayers or not providing taxpayers with an opportunity to be heard before finalising the tax assessment.

Inadequate supervision is another reason for wrong assessments passing through unchecked. This can be due to the absence of a strong culture of monitoring and mentoring within the Indian bureaucracy, as shown by interview data. A reason for the culture of monitoring and mentoring assessing officers within the ITD being weak may be the reluctance of these officers to be supervised, as suggested by the history of anonymous complaints made against senior income tax officials who had endeavoured to supervise.

Performance management also requires proper review of the effectiveness of the actions of government officials for the purposes of providing feedback and taking corrective steps. Inadequate or improper evaluation of the actions of government officials can result in mistakes being repeated, as noted by the Comptroller and Auditor General of India's reports (2022, p. 43; 2021, p. 27) in the context of assessment of tax within the ITD, for instance. Specifically, improperly incentivising income tax officials or

inadequately disincentivising them can lead to incorrect assessments of income tax and the filing of meritless tax appeals.

For example, as discussed previously, literature supports the view that incentivising officials to collect taxes may result in their collecting more tax than is authorised by law (Gordon, 2010, p. 5). This may also lead to the harassment of taxpayers (Mookherjee, 1998, p. 105) as unreasonable revenue targets do not reflect the state of the economy and may not be revised to correspond to changes in economic circumstances (Butani, 2016, p. 445). Interview data shows this to be the case within the ITD. Revenue targets put pressure on income tax officials to make unreasonable additions or deny taxpayers legitimate deductions as well as file income tax appeals without merit against decisions in favour of taxpayers. There is support in the literature for this impact of revenue targets on tax officials (Butani, 2016, pp. 439, 444; Thomas et al., 2017, p. 42). Literature also suggests that the performance of income tax assessing officers is determined by the ITD largely based on their meeting revenue targets and that overturning of an assessing officer's assessments upon appeal (an indicator of the quality of the assessments) has 'no bearing on the assessing officer's performance measurement' (Thomas et al., 2017, p. 43). Interview data validates this view.

In addition, inadequately disincentivising income tax officials, for instance, for disregarding precedent, as shown by case law and interview data, or for abdicating their responsibility to be objective and fair, as shown by interview data, contributes to the entrenchment of the abdication of responsibility and disregard of precedent by income tax officials. Moreover, data shows that, apart from the absence of disincentives to discourage income tax officials from disregarding precedent and abdicating responsibility, improper incentives in the form of unreasonable revenue targets encourage tax officials to disregard judicial precedent, at times, even that of the Supreme Court, and abdicate their responsibility.

Measuring the performance of income tax officials based on the assessed income tax (or revenue targets met based on the assessed income tax) and not based on the quality of income tax assessments made or appeals filed or revenue ultimately collected at the end of the appellate process, inadequate supervision, and a weak bureaucratic culture of mentoring junior officials together contribute to ineffective performance management within the ITD.⁵

Ineffective performance management, which is a well-documented problem that affects Indian bureaucracy, therefore impacts the ITD as well. Specifically, ineffective performance management contributes to the low success rate of the ITD in income tax litigation by adding to the incorrect assessments made and meritless appeals filed by income tax officials as well as the inadequate representation of the ITD before the ITAT and the courts. Indian bureaucratic culture thus contributes to the low success rate of the ITD.

⁵ While the CBDT revised the performance review process of assessing officers in 2015 to measure the quality of income tax assessments (for example, by considering whether the assessments have been upheld on appeal) (Butani, 2016, p. 443), the impact of these revisions is not apparent from interview data. This could be due to the long duration of the appellate cycle making the benefits of some of these revisions hard to see yet.

5.2 Poor accountability

Accountability here refers to government officials having to answer for their actions. Poor accountability within the government reflects the inability or the unwillingness of the government to make its officials answerable for their failure to discharge duties in accordance with the law. Poor accountability in Indian bureaucracy, including the dearth of 'public accountability', has been discussed in the literature (Chakraborty, 2011, pp. 103, 110; Kumar, Sahay & Ranjan, 2011, p. 24; Baqai, 2008, p. 25; Sharma, 2007, pp. 104-106). For example, Panda (2021, p. 2) remarks that accountability is an issue that the Indian government has been grappling with for more than 70 years (since independence) and proposes (2021, p. 9) that officials be made accountable to address the 'power asymmetry and imbalance between the state and the citizens'. In addition, Kashikar (2004, pp. 549, 553) discusses the 'erosion of accountability' in Indian bureaucracy and the perception that officials are not accountable.

Analysis of the data collected for this research also suggests poor accountability in Indian bureaucracy. For instance, survey data shows widespread belief that income tax assessing officers, CIT(A) officials, ITAT adjudicating members, and High Court judges do not face consequences for making incorrect assessments and passing incorrect orders, inconsistent decisions, and inconsistent judgments respectively. Also, the discussion of interview and survey data demonstrates that income tax officials do not face consequences for filing meritless or even frivolous appeals. These results suggest that inadequate accountability may be a systemic problem in Indian bureaucracy, as reported by the literature.

With reference to the ITD, Butani (2016, p. 442) claims that the 'accountability' of income tax officials is 'undefined'. Further, the results of a survey of Indian firms suggested a lack of accountability within the Indian tax department (Das-Gupta, 2006, p. 25). In addition, literature also refers to the challenge of introducing accountability in the public sector in India, including, within the Indian tax administration (Bagchi, 1993, p. 1644). Inadequate accountability within the Indian government has therefore been recognised in the literature.

Poor accountability not only contributes to the sub-optimal performance of Indian officials but also entrenches ineffective performance management in government. The discussion below illustrates the impact of poor accountability in the context of the ITD.

Poor accountability of income tax officials can perpetuate incorrect assessments of income tax by assessing officers or the filing of meritless appeals by income tax officials. This postulation is supported by the interview data. Further, survey data shows a correlation between the accuracy of income tax assessments and consequences tax officials face for making incorrect assessments. When officials are not held accountable for making incorrect assessments or filing meritless appeals, the quality of the assessments and appeals may not improve. For example, the Comptroller and Auditor General of India's reports (2022, p. 43; 2021, p. 27) raise concerns regarding the quality of assessments year after year, with recurring references to some issues. These include errors in the calculation of income tax, 'application of incorrect rates of tax', and 'mistakes in [the] levy of interest' (Comptroller and Auditor General of India, 2022, p. 43; Comptroller and Auditor General of India, 2021, p. 27). The reports suggest ineffective performance management within the ITD as a reason for recurring errors and recommend that erring officials be held responsible (Comptroller and Auditor General of India, 2022, p. 43; Comptroller and Auditor General of India, 2021, p. 27).

This culture of poor accountability of Indian government officials to the public, which is alluded to in the literature, most likely arises from officials being accountable to politicians they report to and not to the public they are meant to serve. The data collected for this research shows that while income tax officials may be punished for wrongly acting against the ITD's interest, they are not penalised for incorrectly acting to the detriment of taxpayers. For example, income tax officials are not reprimanded for recklessly making additions of income tax in assessments or for passing unnecessarily harsh orders against the taxpayers.

As the above discussion suggests, ineffective performance management and poor accountability are interrelated, as shown in Figure 2. For example, ineffective performance management can foster poor accountability when officials are not questioned for inadequate performance or improper actions. This appears to be the situation within the ITD, where the accountability of the officials is 'undefined' (Butani, 2016, p. 442). Not holding the officials accountable may entrench ineffective performance management and create a vicious cycle.

Therefore, poor accountability within the Indian bureaucracy, as discussed in this section, leads to income tax assessments and ITD filed income tax appeals of a poor quality as well as the inadequate representation of the ITD before the ITAT and the courts. Indian bureaucratic culture therefore contributes in another way to the low success rate of the ITD.

5.3 Trust deficit

Trust in this context refers to the confidence of the public in the actions and conduct of Indian government officials and the confidence of officials in their respective departments. Trust deficit is part of Indian bureaucratic culture, as evidenced by the following discussion of the literature. This trust deficit can be between government officials and the public or even between officials and their departments and can impact the way in which officials treat the public and deliver services as well as the manner in which officials discharge their duties.

Trust deficit can also lead to government officials being perceived as being prejudiced and acting based on their prejudices, and not pursuant to the facts and the law. In addition, trust deficit can result in officials abdicating their responsibility to be objective and fair.

Literature shows that Indians do not appear to trust their government officials (Panda, 2021, p. 6). This trust deficit may be due to the 'colonial mindset' and the 'legacy of civil service' (Baqai, 2008, p. 24) that make government officials accountable to their political masters and not to the public (Masum, 2018, pp. 441-442; Kashikar, 2004, p. 549). Indian bureaucrats are also perceived as being 'elite, exclusionist, rule-wielding, power-hungry, corrupt, non-accountable, conservative, yes-men and subservient' (Kashikar, 2004, p. 549).

More specifically, income tax officials are perceived to be prejudiced and adversarial, not fair and reasonable. For example, Indian taxpayers believe that they are treated by income tax officials 'harshly' and that officials enforce punitive tax provisions 'ruthlessly' (Singh & Sharma, 2010, p. 137). The interview data supports this view, while the survey data demonstrates that assessing officers are not considered to be fair in their assessment of tax. Survey data however shows that ITAT adjudicating members

and High Court judges are perceived to be fair, suggesting that perceptions of unfairness, at least in the context of income tax assessments and income tax litigation, are particularly directed towards income tax officials. Income tax officials are also considered to be biased towards the ITD (as shown by interview and survey data), instead of being impartial during their assessment of income tax and the filing of appeals against appellate decisions in favour of taxpayers. Due to this perception of income tax officials, there is a trust deficit between taxpayers and the officials.

Moreover, the analysis of survey data reveals a correlation between perceptions regarding the quality of income tax assessments and perceptions about the fairness of income tax officials. Fairness inspires trust (Walsh, 2012, p. 455) and unfairness of income tax officials can lead to a trust deficit between income tax officials and taxpayers. Trust deficit may therefore also influence perceptions regarding the quality of income tax assessments.

In addition, income tax officials in India do not appear to trust taxpayers either. For example, literature describes the ‘adversarial attitude of the tax administration towards taxpayers’, who are said to be viewed by many tax officials as ‘tax evaders’ (Rao, 2015, p. 30), and suggests that ‘there is a basic absence of trust in the taxpayer’ (Jain, 2016, p. 723). Interview data provides evidence that income tax officials treat taxpayers with suspicion, supporting the inference from the literature that officials are prejudiced against taxpayers.

Trust deficit can also develop between income tax officials and the ITD. Income tax officials do not trust the ITD owing to their fear of retaliation by the ITD. Interview data provides such evidence of intimidation or investigation of income tax officials for corruption. This evidence is in line with similar data from the literature (Thomas et al., 2017, p. 42). The fear of investigation by the ITD can lead to officials abdicating their responsibility to be objective and fair and instead playing it safe and passing the buck by erring in favour of the ITD to avoid being questioned. For instance, income tax officials may file meritless appeals to avoid being questioned by the ITD (Joumard et al., 2017, p. 31; Butani, 2016, p. 445).

Trust deficit between income tax officials and the ITD can thus lead to officials making unnecessary additions or denying legitimate deductions in income tax assessments, or officials filing income tax appeals without merit against decisions in favour of taxpayers, resulting in the proliferation of disputes and litigation (Thomas et al., 2017, p. 42). Income tax assessments and ITD filed appeals informed by trust deficit between the officials and taxpayers or between the officials and the ITD do not withstand scrutiny by the ITAT and the courts. Therefore, Indian bureaucratic culture, through trust deficit, again contributes to the low success rate of the ITD in income tax litigation before the ITAT as well as the courts.

To improve the success rate of the ITD in tax litigation, bureaucratic culture within the ITD needs to be transformed to one characterised by effective performance measurement, accountability, and informed trust between officials and taxpayers and officials and the ITD. While the Taxpayers’ Charter, adopted by the CBDT (which oversees the ITD) under section 119A of the *Income Tax Act* and unveiled by the Prime Minister of India in 2020 (Income Tax Department, 2020), is a step in the right direction, the success of the Taxpayers’ Charter depends on its implementation by the CBDT and its enforceability by taxpayers. The Charter (Income Tax Department, 2020) has the potential to institute accountability, improve performance management within the ITD,

and build trust between the ITD and taxpayers. However, the CBDT is yet to issue guidelines to facilitate the Charter's implementation.

6. IMPACT OF TECHNOLOGY

The impact of the Indian bureaucratic culture has been alleviated to some extent by the adoption of technology by the CBDT. For example, electronic processing of income tax returns by the Centralised Processing Centre and automated selection of income tax returns (in many cases) for scrutiny by the Computer-Assisted Scrutiny Selection system limit the number of taxpayers who need to interact with income tax officials (Interview T1; Interview A2; Interview L6). Also, electronic processing enables many taxpayers to receive refunds fairly quickly (Interview T1). However, the taxpayers whose returns have been selected for scrutiny and those whose refunds are delayed by income tax officials continue to be affected by the Indian bureaucratic culture. Therefore, while technology has reduced the number of taxpayers impacted by the Indian bureaucratic culture, it has not eased the impact of this culture on taxpayers who interact with income tax officials either electronically or in person.

In August 2020, the Indian government introduced the Faceless Assessment Scheme, under which assessments are conducted electronically without taxpayers having to visit the ITD (Ministry of Finance, 2020). Tax assessments under the Faceless Assessment Scheme seek to eliminate the human interface between the taxpayers and the income tax officials (Directorate of Income Tax, 2021). As the interviews conducted for this research took place between December 2020 and April 2021, prior to faceless assessments becoming common (after mid-2021), further research is required to evaluate the effectiveness of this scheme.

7. CONCLUSION

The theoretical model described in this article explains the low success rate of the ITD in income tax litigation. This model suggests that Indian bureaucratic culture suffers from poor accountability and ineffective performance management. In the context of the ITD, these characteristics contribute to the poor quality of income tax assessments made and appeals filed by income tax officials. For example, the inclination of income tax officials to abdicate their responsibility by playing it safe and passing the buck, tax officials disregarding judicial precedent, and inadequate representation of the ITD before the ITAT and the courts reflect poor accountability and ineffective performance management in the ITD. Improper revenue targets are another sign of ineffective performance management within the ITD.

In addition, income tax officials are perceived to be prejudiced against taxpayers and partial towards the ITD and as not always following income tax rules and procedures. The prejudiced and biased mindset of these officials leads to a trust deficit between the officials and taxpayers. There is also a trust deficit between income tax officials and the ITD due to the latter retaliating against the former for making legitimate assessments that benefit taxpayers or for not filing appeals, even those without merit, against taxpayers. This fear of retaliation by the ITD may lead to income tax officials abdicating their responsibility to be objective and fair. The trust deficit in both cases contributes to income tax assessments of a poor quality and the ITD filing appeals with limited merit or even those without any merit.

The theory proposed by this article and factors informing the development of the theoretical model can enable the CBDT to undertake reforms within the ITD to instil accountability, improve performance management, and foster trust within the ITD. For example, insights from this article can enable the CBDT to develop appropriate rules and procedures to guide income tax officials in adhering to the Taxpayers' Charter and empower taxpayers to enforce the Taxpayers' Charter when officials fall short of the Charter's promise.

8. LIMITATIONS

The limitations of this research include those typically associated with qualitative research. First, the theory of Indian bureaucratic culture proposed in this article is based on research corresponding to the ITD and needs to be tested in the context of other Indian government departments to examine the generalisability of the theory more broadly. Next, the sampling used to select interviewees and survey respondents is not random, which further limits the generalisability of the research findings, and therefore that of the proposed theory. Third, although multiple sources of data have been referred to in this research to corroborate the research findings, some of the results are based only on interview data. Further, the theory is more likely to apply to jurisdictions that are culturally similar to India and perform poorly in the context of assessing income tax and defending the assessments in the appellate fora.

9. FUTURE RESEARCH

As this research studied the direct tax administration system in India, specifically, the income tax system, researching similar issues in the indirect tax system can help improve the predictive power of the theory of Indian bureaucratic culture. The indirect tax administration in India also suffers from a low success rate in litigation (Ministry of Finance, 2018, p. 138).

Future research can also investigate the impact of the Taxpayers' Charter (launched in August 2020) on accountability, performance management, and trust building within the ITD. At the time of this writing, the CBDT was yet to publish guidelines to enforce the Charter, nor had the CBDT published any data related to the impact of the Charter on tax administration.

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