

Supreme Court strikes down constitutional validity of the National Tax Tribunal Act

1 October 2014



Background

On 25 September, 2014, the Supreme Court passed a landmark judgement¹. A five-judge constitution bench headed by Chief Justice R. M. Lodha held that the National Tax Tribunal (NTT) Act is 'unconstitutional' as several features of the NTT were in violation of constitutional norms.

More than three decades back, the Chokshi Committee suggested the setting up of the Central Tax Court. Several years later, Mr. V. P. Singh, the then Finance Minister (FM), had proposed the setting up of a National Court of Direct Taxes, which would function on a par with the High Court as a dedicated Tax Court. The proposal did not see light of the day.

On 15 July, 2003, the then FM while addressing the 19th all-India conference of Chief Commissioners and Director Generals of Income-tax, Excise and Customs, at Delhi, made an announcement aiming to reduce the litigation and ensure speedy disposal of pending cases by way of setting up of a NTT.

In October 2003, the President of India promulgated the National Tax Tribunal Ordinance, 2003 (the Ordinance) to set up a NTT under Article 323B of the Constitution of India. However, tax professionals across the country had expressed reservations on the move to set up NTT and had urged the Government to drop the proposal on several grounds including constitutional validity, lack of necessary infrastructure etc. On such appeals, various High Courts (Calcutta, Gujarat, Orissa etc.) stayed the operation of the Ordinance. Subsequently, the Ordinance lapsed following the dissolution of the 13th Lok Sabha.

On 6 December, 2004, the National Tax Tribunal Bill, 2004 (the Bill) was introduced in the Parliament, inter-alia, to overcome the pendency of a large number of cases before the High Courts. The Bill provided for the adjudication by the NTT of disputes with respect to levy, assessment, collection and enforcement of direct taxes. It also provided for the adjudication by the NTT of disputes with respect to the determination of the rates of duties of customs and central excise on goods and the valuation of goods for the purposes of assessment of such duties as well as in matters relating to levy of service tax.

¹ Madras Bar Association v Union of India and another – with Civil Appeal No. 3850/3862/3881/3882/4051/4052 of 2006 (SC)

One of the reasons behind setting up the NTT was several instances where High Courts in different States had taken contrary views on similar issues. The Income-tax Act being Central legislation ought to have been interpreted and implemented in a uniform manner throughout the country. Speedy disposal, reduction of huge arrears and uniformity in the interpretation of tax laws were key reasons that motivated set-up of the NTT.

The NTT was proposed to be headquartered in Delhi with benches around the country and it would eventually take cases relating to both direct tax and indirect tax. It was also provided that all matters and proceedings including appeals and references under the direct taxes and indirect taxes (excluding sales tax) pending before any High Court would be transferred to the NTT on establishment of the NTT. The appeal against the decision of the NTT would lie before the Supreme Court.

The NTT Act challenged

Subsequently, the NTT Act was passed in 2005. Before the NTT could be set up and become operational, several petitions were filed challenging the NTT Act. The first petition on the issue was filed in 2006 when the Madras Bar Association challenged the setting up of the NTT and later many other lawyers' bodies followed suit. The petitioners, including several bar associations in the country, had also challenged Article 323B of the Constitution.

The Supreme Court judgement

In the judgment authored by Justice J.S. Khehar (representing four of the five Judges), the Hon. Supreme Court held that although constitutional conventions do not debar Parliament from vesting judicial powers in tribunals, it should have the trappings of a court viz. the salient characteristics and the standards of the courts which it seeks to substitute; else it would be violative of the basic structure of the Constitution. The decision quashed sections 5, 6, 7, 8 and 13 of the NTT Act as the same were held to be unconstitutional. Since these provisions constituted edifice of the NTT Act and without the same remaining provisions would be rendered ineffective and inconsequential, the entire enactment is declared unconstitutional.

Justice R.F. Nariman, while passing concurring judgement agreed with the majority view and also observed that the NTT Act is departure made by the Parliament to the extent that it allows tribunals to decide questions of law which hitherto were decided by the superior constitutional courts. The NTT Act takes away the power of judicial review of the High Court under articles 226 and 227, as it provides an appeal directly to the Supreme Court against an NTT order.

Some other interesting aspects which were considered by the Hon. Court are separation of powers between the judiciary and the executive and judicial superintendence. The Court also held that Chartered Accountants and Company Secretaries are not eligible for representing a party to an appeal before the NTT.

Our comments

This Ruling disposes the efforts of the Government to bring on fast track the disposal of tax disputes and thereby reduce tax arrears. The Government may have to find alternative ways of ensuring the speedier disposal of appeals. The committee constituted by the Central Board of Direct Taxes and the Government need to ensure that an alternate dispute resolution process is legislated early to achieve its objective of unclogging the backlog of cases in the High Court and to increase the confidence of tax payers.

The ruling may also have a bearing on similar tribunals set up, including the National Company Law Appellate Tribunal (NCLT) which would aid to speed up, inter-alia, mergers etc. NCLT is also facing similar legal challenge. As per news reports, the Madras Bar Association has already challenged the constitutional validity of NCLT before the Supreme Court.

It would be apt if going forward the Government adopts a collaborative approach and involve all the stakeholders before introducing such dispute resolution mechanism.



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