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**Quality assessment cases compilation-
Whether leading to a violation of s. 119 (1)
Proviso? -A Controversy**

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**Exploring
Provisions**

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PREFACE

A letter F No. 225/65/2013 /ITA-II, dated 11/4/2013 issued at the instance of the CBDT to all Chief Commissioners of Income tax to prepare a structured compilation of at least 50 quality assessments passed in their respective charges in the course of scrutiny assessments completed during the financial year 2012-13 indicating the quality of work done and the resultant revenue impact in each case. Such orders will be reviewed and thereafter would form source material in the form of compilation for the use of subordinate authorities which is a sort of direction to make a particular assessment in a particular manner thereby challenging the proviso to s. 119 (1) of the Income tax Act

Hence, source of law is in the creation and VINOGADOFF describes it as a process by which the rule of law may be evolved. Board is expending the practice followed in quality assessment to create a rule and the use of the word ‘source material for quality assessment’ in the letter is indicative of the instruction insensible to the circumstance that it is prevented by the proviso to s. 119 (1) to issue any such kind of instructions.

Purpose of this Document

This document aims to throw light on the making of the ‘Quality assessment cases compilation’ for the forthcoming assessments.

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I. Background

There are as many as 8 Directorates as attached offices of CBDT to play a vital role by developing a positive liaison between the field formations and the CBDT. The following Directors General of Income Tax are directly under the administrative control of the Central Board of Direct Taxes:-

1. Director General of Income Tax (Administration)
2. Director General of Income Tax (Systems)
3. Director General of Income Tax (Vigilance)
4. Director General of Income Tax (Training)
5. Director General of Income Tax (Legal & Research)
6. Director General of Income Tax (Business Process Re-engineering)
7. Director General of Income Tax (Intelligence)
8. Director General of Income Tax (HRD)

Further the Director General of Income Tax (Administration) supervises the functioning of the following Directorates:-

- Directorate of Income Tax (PR,PP &OL)
- Directorate of Income Tax (Inspection & Examination)
- Directorate of Income Tax (Audit)

- Directorate of Income Tax (Recovery)
- Directorate of Income Tax (TDS)

The short term 'PR, PP and OL' symbolize public relation, printing, publications and official language.

The Central Board of Direct Taxes (in short CBDT) is the Supreme Body of Income Tax Department responsible for formulation and implementation of Govt. policy and administration of Direct Taxes Laws. As per provisions of section 119 of the Act, the CBDT is vested with the powers of issuing directions/instructions to the field officers. And such authorities and all other persons employed in the execution of this Act shall have to observe and follow such orders, instructions and directions of the Board.

There is however a proviso in sub-section (1) of s. 119 that limits the boundary for such instructions which more particularly read as follows:

Provided that no such orders, instructions or directions shall be issued--

- (a) so as to require any income-tax authority to make a particular assessment or to dispose of a particular case in a particular manner ; or
- (b) so as to interfere with the discretion of the Commissioner (Appeals) in the exercise of his appellate functions.

As part of its mission the CBDT publishes a compilation of best practices and orders in its publication 'Let Us Share' for internal circulation being compiled and published by the Directorate of Income Tax (PR,PP &OL).

Recently in a circular issued at the instance of CBDT vide letter No. F No. 225/65/2013 /ITA-II), dated 11/4/2013 it has been directed to show-case the quality orders in a compilation which can be used as source material for framing quality assessments.

II. F No. 225/65/2013 /ITA-II), dated 11/4/2013- A controversial letter

Of Recently in a letter F No. 225/65/2013 /ITA-II), dated 11/4/2013 issued at the instance of the CBDT it has been conveyed to all Chief Commissioner of Income tax to prepare a structured compilation of at least 50 quality assessments passed in their respective charges in the course of scrutiny assessments completed during the financial year 2012-13 indicating the quality of work done and the resultant revenue impact in each case. It is further desired by the board that such orders will be reviewed and thereafter would form source material for quality assessment work to be incorporated in forthcoming issue of 'Let Us Share' publication.

Further in the note to the format of compilation highlight various inclusions and exclusions.

The use of the word 'source material for quality assessment' in the letter is indicative of the instruction made to the subordinate authorities to make a particular assessment in a particular manner whereas the Board is prevented

by the Income tax Act proviso to s. 119 (1) to issue any such kind of instructions. The proviso reads as under:

1. That it shall not require any income tax authority to make a particular assessment or to dispose of a particular case in a particular manner; or
2. That it shall not interfere with the discretion of the Commissioner (Appeals) in the exercise of his appellate functions.

Here since the matter involved is assessment the first embargo come into application. Even in their previous DO letter dated 25th September 2012 it has been strenuously pressed for such compilation. In the letter concern has been shown for not adhering to the direction of the member (IT) to send list of top 100 quality assessments in respective charges.

III. Controversy

Whether it is fair to issue such instructions to the assessing authority who is expected to exercise quasi judicial powers under the Act and also especially when the proviso to s. 119(1) place a bar upon the board to issue any particular set of instruction to make a particular assessment in a particular manner. Even though the instruction is general and not particular to a case or assessment yet it line up these orders as source material for framing quality assessments. They are kind of setting mandatory standards after these are worded as 'source material'. And since these so called quality assessment will not be in the public domain their use as a source material against the assessee in assessment would tend to upset the quasi judicial character of the assessment and further every

assessment framed based on such material would go illegal and untenable at law.

IV. AO to be solely guided by the provisions of the Act

In *Raja V.V.V.R.K. Yachendra Kumara Rajah of Venkatagiri v. Income-tax Officer* (1968) 70ITR772 the AP High Court read out the well settled law that the assessment proceedings before the Income tax Officer are quasi judicial in nature and while making assessments the Income-tax Officer has solely to be guided by the provisions of law. He cannot avail of any instruction or direction given by his higher authorities including the Central Board of Direct Taxes for making a particular assessment. While passing assessment orders he is only bound by what has been decided by the appellate authorities mentioned in the Income-tax Act and the opinion expressed by the High Court or the Supreme Court. It is also now well settled that, as far as the income-tax is concerned, the principle of res judicata is not applicable and the Income-tax Officer is not bound by the decision rendered by him in an earlier order in regard to the same assessee. When these principles are kept in view, it becomes clear that the orders, instructions or directions that can be issued under section 119(1) are administrative directions which cannot in any manner fetter the discretion of the Income-tax Officer in making the assessment. This becomes more clear from the proviso to sub-section (1) of section 119 which says that no orders, instructions or directions shall be given by the Board so as to interfere with the discretion of the Appellate Assistant Commissioner in the exercise of his appellate function. The Appellate Assistant Commissioner's functions are not executive. They are only judicial and this proviso has been enacted to make it clear that the orders,

instructions or directions of the Board will not interfere with the judicial or quasi-judicial functions.

The Bombay High Court in *Gordhandas Desai P. Ltd. v. V.B. Kulkarni*, ITO (1981) 129ITR495 held that in exercising his judicial or quasi judicial functions, an income-tax authority must act in consonance with the statutory provisions ignoring the administrative instructions or directions , and decide the case on merits. The Madras High Court in *Union of India v Lakshmi Machine Works Ltd.* (1995) 77ELT799, that the adjudicating authority shall determine the issue independently and uninfluenced by the Circular issued by the Central Board of Excise and Customs (CBDT in the context of Income tax).

The Board has the power to issue general circulars which are binding on the department (*Dr. T. P. Kapadia v. CIT* [1973]87 ITR 511 (Mys) ; *Bela Singh Daulat Singh v. CIT* [1966] 62 ITR 250 (All)). However the quasi-judicial functions of an income-tax authority cannot be controlled by the Board in a Particular case; but they can be so controlled to the extent that general directions are issued by the Board. Even then the general circulars would not be one that intercept with the quasi-judicial function of the AO.

V. Circulars of the board cannot extend to judicial aspects

In a notable case in *A.L.A. Firm v. Commissioner of Income-tax* (1976) 102ITR622 the Madras High Court held that judicial power of the Income-tax Officer cannot be controlled by any circular that may be issued by the Central Board. The circulars that are contemplated by section 119 of the Income-tax Act, 1961, are

only in regard to administrative aspects and cannot extend to the judicial aspects of the administration of the Act.

VI. Quality Assessment

Each assessment case is unique with its own set of facts and questions. The assessing officer is expected to compute the true and correct income in every case. Based on appreciation of such facts in each case, the available evidence and evidence gathered by AO the assessment highlight the findings, the disallowances, the additions and the concealment. The assessment so framed has thereupon to further test before the appellate authorities ranging from Commissioner (Appeals)/Dispute Resolution Panel, ITAT, High Court and the Supreme Court. Until such time the findings during assessment are approved by the highest authority the same cannot be categorized as a quality assessment. At best an order can be labeled as best order but it is pre-emptive to call an order a quality assessment to be used as a source material by each officer.

It may be a quality assessment from board's perspective and can be shared too but is mischievous to call them as 'source material' for quality assessment to be framed in future. Also at best these can be termed as assessment guidelines or advisory in which case these would lack any statutory force as otherwise u/s 119 (1) every officer and person employed in the execution of the Act is required under the law to observe the orders, instructions and directions of the board. It

is a settled law that circulars issued by the board are generally binding on officers by *Navnit Lal Javeri v. K K Sen* (1965) 56ITR198,203 (SC).

The Allahabad High Court in *Indo-Gulf Fertilizers & Chemicals Corpn Ltd. v. Union of India* (1992) 195ITR485 held that if the directions of the Board are beyond the scope of the provisions of the Income-tax Act, they will not hold good and the authorities can very well be asked to act in accordance to law

VII. Conclusion

Whether or not these set of instructions are by itself find challenge before the court of law the assessments made on their reference can always be challenged on the ground of excessive use of jurisdiction. And of course there are other ways available to the board to bring improvement in the quality of assessment such as internal audit, training etc. but this kind of giving direct lending material to the Assessing Officer to blow is certainly not the fair proposition and must be avoided. The AO has several powers under the Act to call for information from the assessee directly, to gather information from 3rd parties who are linked to assessee, to conduct survey, to test persons on oath etc. but under no circumstances the CBDT can lend their hand to the AO by handing him source material to complete the assessment.

At this time of the hour the board has got to do some introspection and to redraft the direction issued on 11.4.2013. The publication 'let us share' at best can have best assessment practices and case studies but certainly

cannot have account of actual and direct course
of proceedings and findings in an assessment which is as latest as the
one completed in 2012-13 and which has yet to test its propriety and
weight before the appellate authorities

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Appendix 1

COMPILATION OF QUALITY SCRUTINY ASSESSMENT CASES COMPLETED DURING FINANCIAL YEAR 2012-13

LETTER [F.NO. 225/65/2013/ITA-II], DATED 11-4-2013

I am directed to draw your kind attention towards Board's decision to review the Quality of assessments completed by the Assessing Officers during financial year 2012-13 in each CCIT/DGIT charge. The same finds mention in clause 2(k) of "Guidelines for Scrutiny Selection" [File No. 225/97/2012/ITA-II] for Financial Year 2012-13, dated 23-8-2012 read with clarification dated 20-9-2012.

2. All the CCsIT/DGsIT charges are therefore requested to ensure that a compilation of at least 50 quality assessments passed in their respective charges is made in respect of scrutiny assessments completed during financial year 2012-13, clearly bring out the quality of work done and the resultant revenue impact. The compilation should be made in the format enclosed as Annexure to this letter.

3. I am further directed to request that all CCsIT/DGsIT may send their compilation as per annexed format alongwith copies of all the orders to the concerned CCIT (CCA) who in turn would send the above analysis to their respective Zonal Member by 30th April, 2013 after due consolidation. A copy of the consolidated compilation should also be sent to Member (IT) without enclosing hard copies of assessment orders.

4. Para 2(1) of Board's letter dated 20-9-2012 mentions that quality orders compiled through above process would form source material for quality assessment work to be incorporated in forthcoming issue of 'Let us Share', In this regard, I am further directed to request that a copy of compilation alongwith all assessment orders may also be sent to respective Appraisal Committees constituted for 'Let us Share' by DGIT(Admin.).

Annexure

FORMAT of Compilation

Chief Commissioner of Income Tax (CCA)..

LIST OF QUALITY ASSESSMENT CASES

CCIT/DGIT charge.....

Name of the case	Name of the Assessing Officer/ Addl. CIT/CIT	Assessment completed under section- (143(3)/144/147/153A /153C)	Selection criteria (CASS /Compulsory Manual Scrutiny /Discretionary Manual Scrutiny)	Brief description or the significant issues identified in the assessment on the basis of which the case has been characterized as quality work	Amount of concealment detected/disallowance made	Whether Penalty Imposed /prosecution launched (the relevant section should be mentioned)	Comment of CCsIT/ DGsIT on Quality of order

Note:

- (a) The compilation should not include the cases of PSU, Government organisations and the cases with a history of addition/disallowances being consistently made and contested in appeals in the past years. In such cases only those issues should be reported which have been detected for the first time during the year.
- (b) Before reporting such cases in compilation, due care must be taken that the issues have been properly thrashed and it is not a case where the Assessing Officer has resorted to summary additions, routine disallowances or best judgment assessment without any worth while independent inquiry. Reporting of such cases would be viewed adversely.
- (c) The cases where addition has been made due to Transfer Pricing Adjustment on the basis of TPO report should not be included.
- (d) The Central Charges are requested to incorporate those cases where the Assessing Officer, while framing assessments in search and seizure cases, have been able to establish tax evasion and made independent detailed investigation traversing beyond the indicated facts in Appraisal report of the investigation unit. The assessments in any other cases which reflect the work done by the Assessing Officers on the basis of their independent investigations can also be included if it amounts to quality work.

Appendix 2

Text of section 119 of the Income tax Act, 1961

119. Instructions to subordinate authorities.--(1) The Board may, from time to time, issue such orders, instructions and directions to other income-tax authorities as it may deem fit for the proper administration of this Act, and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board:

Provided that no such orders, instructions or directions shall be issued--

(a) so as to require any income-tax authority to make a particular assessment or to dispose of a particular case in a particular manner ; or

(b) so as to interfere with the discretion of the Commissioner (Appeals) in the exercise of his appellate functions.

(2) Without prejudice to the generality of the foregoing power,--

(a) the Board may, if it considers it necessary or expedient so to do, for the purpose of proper and efficient management of the work of assessment and collection of revenue, issue, from time to time (whether by way of relaxation of any of the provisions of sections **115P, 115S, @115WD, 115WE, 115WF, 115WG, 115WH, 115WJ, 115WK, 139, 143, 144, 147, 148, 154, 155, *158BFA sub-section (1A) of section 201, sections 210, 211, 234A, 234B, 234C, 271 and 273 or otherwise), general or special orders in respect of any class of incomes @or fringe benefits or class of cases, setting forth directions or instructions (not being prejudicial to assessee) as to the guidelines, principles or procedures to be followed by other income-tax

authorities in the work relating to assessment or collection of revenue or the initiation of proceedings for the imposition of penalties and any such order may, if the Board is of opinion that it is necessary in the public interest so to do, be published and circulated in the prescribed manner for general information ;

(b) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order, authorise any income-tax authority, not being a Commissioner (Appeals) to admit an application or claim for any exemption, deduction, refund or any other relief under this Act after the expiry of the period specified by or under this Act for making such application or claim and deal with the same on merits in accordance with law.

(c) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order for reasons to be specified therein, relax any requirement contained in any of the provisions of Chapter IV or Chapter VI-A, where the assessee has failed to comply with any requirement specified in such provision for claiming deduction thereunder, subject to the following conditions, namely:--

(i) the default in complying with such requirement was due to circumstances beyond the control of the assessee ; and

(ii) the assessee has complied with such requirement before the completion of assessment in relation to the previous year in which such deduction is claimed:

Provided that the Central Government shall cause every order issued under this clause to be laid before each House of Parliament.

(3) Omitted by DTL (Amend.) Act, 1987 wef 1-4-88.

Appendix 3

DO Letter

Improving quality of scrutiny assessments - Central Action Plan ('CAP') for Financial Year 2012-13

Letter DO F.No. 225/97/2012/ITA.II, dated 25-9-2012

1. As you are aware, the CBDT has laid special emphasis in the CAP 2012-13 for improving the quality of assessments. In this regard, a strategy has been mentioned at Annexure-II (pgs. 38-43) of CAP Document.
2. The then Member (IT) had asked the Chief-Commissioners of Income-tax ('CCsIT') to send list of top 100 quality assessments in respective charges. This direction of Member was not complied with by many of CCsIT which has been viewed seriously by the Board. It is expected from the field-formation that in future the directions of the Board will not be ignored.
3. Some CCsIT have forwarded the list in mechanical manner without bringing out the quality aspect of the assessments. The analysis of the information supplied to the Board shows that the quality of assessments in the FY 2011-12 has been far from satisfactory in majority of cases.
4. The CCsIT are therefore requested to sensitize the Assessing Officers in their Region to pay focused attention towards the pending assessments to be completed till March, 2013. The strategy mentioned in CAP document should be followed by each Assessing Officer to bring out the quality in assessments. The steps suggested in the guidelines for scrutiny cases should also be scrupulously adhered to.

I am confident that if proper attention is paid to this aspect of work at this stage it will help not only in improving quality of assessments but also in augmenting the post assessment tax revenues.

Appendix 4

Instruction No. 1771, dated 25.9.1987

Jurisdiction pattern of I. A. C(Asstt.)-Improving the quality if assessment.

Attention is invited to D.O.M.S. Circular No.33 (F.No.21/5/76-OD/DOMS dated 9.1.79 in which the jurisdiction pattern of the IACs (Asstt.) was prescribed. The matter of jurisdiction of IACs (Asstt.) and the cases to be assigned to them was discussed in the Conference of Commissioners of Income-tax, 1987.

2. In modification of their existing instructions on the subject, the Board have now decided that in the four metropolitan cities, IACs (Assessment) should be assigned cases in which the return income/loss from business/profession exceeds Rs.10 lakhs or the aggregate sales/turnover/gross receipts exceeds Rs.5 crores in respect of any assessment year for which the assessment has not been made.

3. If under the scheme of selection of cases for IACs (Asstt.) as indicated in para 2 above, the work with IACs (Asstt) is found to be inadequate, Commissioners of Income-tax should assign to I.A.C(Asstt.) some important cases out of those selected for scrutiny by the Range IACs under his charge.

4. Other scrutiny assessments shall be assigned to the Income-tax officers under the Range IACs. In cases taken up for scrutiny, the objective should be thorough investigation with a view to detecting concealment.

5. It is desired that the above exercise of transferring the cases is completed by 30.10.87 and a compliance report sent by 7.11.87 positively.

[F.No. 201/61/87-ITA-II dated 25.9.87 from CBDT

Appendix 5

Statutes

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INSTRUCTION

INCOME-TAX ACT

Section 144A of the Income-tax Act, 1961 - Joint Commissioner, power to issue directions in certain cases - Scheme for improving quality of assessments

Instruction No. 6/2009 [F. No. 225/11/2006/IT(A-II)], dated 18-12-2009

For past sometime the Board has been concerned about the need for improving general quality of scrutiny assessments on a sustainable basis. In this connection, reference is invited to Board's instruction No. 2/2006 dated 27-4-2006 which required monitoring of scrutiny assessments by Range Heads under the powers available to them under section 144A of Income-tax Act. Instructions have also been issued from time to time for strengthening the machinery for review of assessments and inspection of assessment charges. However, it is felt that there is significant scope for improving the quality of scrutiny system. The matter came up for discussion during 25th Annual Conference of Chief Commissioners of Income-tax held in August 2009. A presentation was made by CCIT Chandigarh outlining a scheme for improving quality assessments implemented in NWR Region. After taking into account various suggestions, it was decided to devise a similar scheme with appropriate flexibility for country-wide implementation.

2. Accordingly, it has now been decided that the following scheme for improving quality of assessments shall be implemented from calendar year 2010 onwards,—

(i) At the beginning of each calendar year *i.e.*, in the month of January, the Range Head in consultation with the concerned Assessing Officer would identify at least 5 pending time-barring assessment cases in respect of each Assessing Officer of his Range for monitoring. These should normally include cases taken up for scrutiny with

the permission of CCIT. The selection should be done jointly by the Range Head and the concerned Assessing Officer. Cases of PSUs and loss-making concerns should normally not be identified for this purpose. This exercise should also include those Ranges which are held as additional charge by a Range Head in January.

(ii) The Range Head would issue directions under section 144A in the identified cases for the guidance of the Assessing Officer regarding the course of investigation to enable him to complete these assessments in a proper manner. This should be done at the earliest available opportunity so as to allow the Assessing Officer to have sufficient time to complete the assessment proceedings. A copy of the directions issued by the Range Head would also be endorsed to the CIT. The Range Head should also monitor the subsequent developments in the assessment proceedings in these cases.

(iii) On completion of the assessment the Assessing Officer shall send a copy of the assessment order to the Range Head and the CIT.

(iv) In the event of a Range Head holding more than one Range the concerned CCIT may appropriately relax the requirement for issue of directions under section 144A in respect of the cases of the Range(s) held as additional charge.

(v) For the purpose of this instruction, a quality assessment would be one in which issues arising for consideration are clearly identified, investigation of basic facts in respect of these issues is carried out, adequate opportunity to rebut adverse evidence is given to the assessee, the rival evidence are suitably analysed and evaluated in the light of correct interpretation of law, and these efforts result in substantial addition to the returned income. The benchmark for the quantum of addition to the returned income, which may qualify for being a quality assessment, may be decided by the concerned CCIT depending upon the potential of the given Range/Charge. Normally, this should not be less than Rs. 5 lakh excluding additions on account of recurring issues. It is expected that the selected cases will meet the parameters for quality assessment.

(vi) As regards the remaining scrutiny assessments, it is expected that 30 per cent of assessments completed by the Range Head, 20 per cent of the remaining scrutiny assessments completed by DC/ACIT and 10 per cent by ITOs will result in quality assessments. These benchmarks can be reviewed once the scheme has been in operation for sometime.

(vii) The parameters for determining whether an assessment is a quality assessment should be decided by the concerned Chief Commissioner in the light of the above and should be widely circulated at the beginning of the calendar year *i.e.*, in the month of January of every year.

(viii) At the end of the financial year, the data regarding assessments completed by Assessing Officers of the CCIT Region shall be got evaluated by the concerned CCIT in the month of next April according to the parameters decided earlier. The overall results will be tabulated in the enclosed proforma and circulated in the CCIT (CCA) Region for information. Separate performance ranking should be done for Range Heads in respect of cases completed by them under section 143(3) out of the cases selected under Instruction 4 of 2007 dated 16-5-2007 (*see below*), and those monitored by them under this instruction.

(ix) CCITs may also devise methods for commending good performance of Assessing Officers in the area of quality assessments and reflecting the same in the annual appraisals. Important cases involving large successful additions may be reported to the Board in monthly D.O. letters. These can also be sent to DIT (RSP & PR) for inclusion in the Annual Report of good assessment cases.

3. These instructions may please be brought to the notice of all officers working in your Cadre Control region immediately for proper compliance.

Proformae

Performance Ranking of Assessing Officers

CCIT	CIT	Range	Name of the Assessing Officer	No. of assessments completed	No. of quality assessments out of 2
1	2	3	4	5	6

Performance Rankings for Range Heads as Guides

CCIT	CIT	Range	Name of the Addl./Joint	No. of cases in which	No. of quality assessments out of 2

			CIT	guidance given u/s 144A	
1	2	3	4	5	6

Management of Scrutiny Workload

Instruction No. 4/2007 [F. No. 225/6/2007-IT(A-II)], dated 16-5-2007

Kindly refer to above

2. Considering the increasing gap between workload and disposal of scrutiny assessments, it has been decided to entrust the Range Heads with the responsibility of making assessments in top revenue potential cases of the Range to be selected on the basis of returned income.

3. In this regard, targets for disposal of cases by the Range Heads are prescribed as under :—

Sl No.	Charge	Minimum number of cases to be disposed of per year
1.	Corporate	20
2.	Non-Corporate/Mixed/Salaries	30

However, the CCITs, considering the local circumstances and other factors, may assign more cases to the Addl. CITs/Joint CITs.

4. It is hereby clarified that the above targets are not applicable to Central Ranges.

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Our Values:

