

For Departmental use only



OFFICE PROCEDURE MANUAL

for

Departmental Representatives

in

Income Tax Appellate Tribunal



ARUN KUMAR JAIN
Chairman
Central Board of Direct Taxes,
New Delhi.

FOREWORD

This edition of the Manual for Departmental Representatives in the ITAT comes at an important juncture when the restructuring of the department has just taken place.

I see this present edition of the manual as a serious attempt on part of the department to manage change, overcome resistance and over all improvement in the departmental representation. The Manual deals with Tribunal's own work processes as well as with the procedure which needs to be followed in the DR's office.

The Board commissioned this project about 9 months back. I am glad that it has achieved fruition within the little time available with the Committee which was constituted comprising of Ms. Simar Singh Negi, five other Members of the Committee. All the members of the Committee need to be complemented for having brought out this wonderful monograph.

I am confident that this publication will help officials of the department in general and the Departmental Representatives in particular to acquire greater professional expertise concerning the departmental litigation in ITAT.

(ARUN KUMAR JAIN)



S.K. RAY
Member (A&J)
Central Board of Direct Taxes
New Delhi.

FOREWORD

The Board had constituted a six members Committee to review the Office Procedure Manual for the Departmental Representatives.


The Committee has presented the Draft Manual to the Board for its approval. The Manual so approved is for the Departmental Representatives in the Income Tax Appellate Tribunal. Though technically this is the second edition of the Manual but as a matter of fact earlier monograph published in 1990 has completely been overhauled and re-written because it out lived its utility in view of two restructurings of the department and also in the structure of the departmental representations in the ITAT. Apart from the restructurings and change in the departmental representations, need to revise the manual was felt in view of the changes brought out in the law.

An effort has been made to consolidate at one place not only the procedure being followed in the ITAT & its Registry but also the procedure which need to be followed by in the office of the Departmental Representatives. For convenience, almost all the relevant instructions of the Board as applicable to appeals in the Tribunal have been incorporated.

The Chairman of the Committee, Ms Simar Singh Negi, the then CCIT-III, New Delhi and other Members of the Committee namely S/Sh. Yogesh Kumar, Reena Tripathi, T.P Krishnakumar and Adarsh Kumar Modi, all Commissioners deserve sincere thanks who wrote this monograph. Shri Ramesh Chander, deserves special

thanks who was integrally involved in the drafting and the finalization of the Manual. I am aware that many other officials also assisted the group in this project. Their contribution cannot be acknowledged individually, but I would, nonetheless, like to place on record my appreciation of the services rendered by all the officials who contributed to the publication of this manual.

I am confident that this Manual will help the DRs and the field officers as well in narrowing down the gap between what they know and what they are expected to know and will go a long way in fine tuning the over all litigation related environment of the Department.

A handwritten signature in blue ink that reads "S.K. Ray".

(S.K. RAY)
Member (A& J)

PREFACE

Role of the Departmental Representative is primarily to represent the Income Tax Department before the Income Tax Appellate Tribunal (ITAT). The Departmental Representative (DR) assists the Tribunal in disposal of appeals, cross objections, reference applications and miscellaneous applications. The proceedings before the Appellate Tribunal are adversarial, i.e. both the assessee and the Department make submissions on all issues relating to the appeal.

2. Change is an inevitable part of any system and functioning of the Income Tax Appellate Tribunal vis-a-vis the departmental representation is no exception to this cardinal principle. Last edition of the Manual for DRs was published way back in the year 1990. Substantial changes in all aspects during this gap of more than two decades made it imperative to update the Manual which serves as a guiding Manual for the DRs handling tax litigation in ITAT. The department and its functioning have undergone substantial changes post two restructurings along with office automation and creation of extensive IT Network. This has resulted in significant progress in the functional capability enabling effective representation of the department in tax litigation before the ITAT and also ensuring consistent fact based responses in such litigation.

3. The Manual issued in the year 1990 having outlived its usability, it was decided to bring out a new and updated Manual encompassing the changes that have taken place over the years. Accordingly, the Board vide OM FNo.279/Misc/51/2014-(ITJ) dt. 26.03.2015 constituted a six members Committee comprising of Ms. Simar Singh Negi, the then CCIT-III; and S/Shri Yogesh Kumar, Ramesh Chander, T.P. Krishan Kumar, Adarsh Kumar Modi, Ms. Reena Tripathi, all CsIT to update and rewrite the Manual in tune with the extant procedures, for facilitating the working of the DRs.

4. The present Manual is structured in a manner so as to give operational perspective of different aspects of the ITAT working to enable the DR to effectively discharge responsibilities. Chapter I provides Legislative Framework about construct of the DR Institution. Chapter II gives a broad overview of ITAT structure. Chapter III summarizes the procedure followed by the Tribunal. Chapter IV is about the functioning of the DR including the methodology and various Dos and Don'ts. Chapter V deals with importance of the decision of the Tribunal in the overall administration of income-tax law. While Chapter VI focuses on miscellaneous aspects of the Office of DR chapter VII throws light on the National Judicial Reference System and the ITBA which are also hoped to sharpen the skills of the DRs and to give them contemporaneous perspective. Various useful forms and important and relevant instructions and circulars have also been included in the Manual, to be used by the DR to effectively function.

5. In the earlier set up, AC/DC and Joint/Additional CIT were deployed to represent the department, known as Junior AR and Senior AR respectively. There was no functional difference between them in terms of representation of cases. In the current dispensation, the profile has undergone a change. The earlier nomenclature of AR is now known as DR (Departmental Representative) and Joint CIT /Additional CIT (also known as Senior DR) are assigned along with CIT-DR who is expected to supervise the working of the Senior DR and also represent the Department in ITAT in important cases. The case assignment is based on tax impact and specified classes of cases. These are listed in the Manual in detail. Besides, the CIT (DR) is also required to handle Specialized Benches set up for Transfer Pricing and International Taxation cases.

6. It has also been endeavoured to consolidate all the relevant Instructions, Circulars of the Board/Tribunal and other procedures etc in this Manual for easy accessibility. Besides, the Manual also deals with the skills of Court-Craft and Conduct of the Departmental Representatives (DR) in the Court which are very vital for efficient functioning of the Departmental Representatives. The importance

of co-ordinating with field formations in respect of upcoming matters of litigation before ITAT and also for formulating departmental views for escalating the litigation to Higher Courts, have also been highlighted. Comprehensive coordination between the DR and the field formation is of utmost importance in order to defend the departmental position with full vigour. Regular interaction between both the DR and the field formation before and during the appeals is of utmost importance.

7. The knowledge pool on jurisprudence is available on electronic/web based tools and this has resulted in quicker dissemination of information for the user and resultantly the need for their physical compilation has also lost much relevance.

8. It has been our endeavour to synchronize this Manual with the current developments to ensure that the extant information in respect of the law and procedures are available with the Departmental Representative. It is hoped that this will help the DRs to be in tune with the changing environment of tax litigation and be able to respond to current challenges.

— • — • —

INDEX

Chapter Contents	Page No.
PREFACE	vii
I. MACHINERY FOR APPEALS UNDER INCOME TAX ACT, 1961	1-2
II. INCOME TAX APPELLATE TRIBUNAL	3-6
• Income Tax Appellate Tribunal- history	3
• Constitution of Tribunal & Working hours	3
• Organizational structure of the Tribunal	3
• Benches of the Tribunal	5
– Division Bench	5
– Single Member Bench	5
– Third Member Bench	5
– Special Bench	6
– E-Court	6
• Nature of Proceedings before the Tribunal	6
III. IMPORTANT PROCEDURES FOLLOWED BY THE TRIBUNAL	7-13
• Entry of appeals/application in kachcha Register	7
• Intimation of Filing appeal/application to Respondent	7
• Filing of affidavit/documents	8
• Bringing Legal heirs/representatives on records	8
• Stay Application-filing and disposal	9
• Appeals/Cross objection	11

IV. DEPARTMENTAL REPRESENTATION BEFORE TRIBUNAL	14-57
• Role of the Departmental Representative	14
• Organization of the DR's office	15
• Work allocation amongst DRs	16
• Filing of Appeals etc.	17
• Departmental Appeal	18
• Chronology of events in the Tribunal	19
• Hearing of appeals	20
• Procedure when appeal is actually posted for hearing	21
• Basic Check Sheet	22
• Supplementary Check Sheet	25
• Order Sheet Entries	26
• Order of the Tribunal and Rectification application	27
• Departmental Appeals-receipt of appeal forms etc.	28
• Filing of Cross Objections by Revenue	29
• Application under rule 27	30
• Assessee's Appeals	30
• Brief for the Departmental Representatives	32
• Dismissal of Departmental appeals by Tribunal for low tax effect	33
• Dismissal of Departmental appeals for non-prosecution	35
• Filing of Paper Book	35
• Raising of additional Ground in appeals	37
• Introduction of additional evidences before the Tribunal	37
• Service of Notices	38
• Adjournment applications	38

• Substitution of Legal Heirs in case of death	39
• Transfer of records or of the AO	39
• Daily Fixation Register	40
• Procedure on conclusion of hearing	44
• Post hearing follow up	44
• Deployment of DRs in Multi Bench stations	45
• Miscellaneous Application Register	45
• Applications for stay of recovery of demand	46
• Bunching or consolidation of appeals	46
• Representation before the Single bench	47
• Representation before the Special Bench	48
• Representation before the Third Member Bench	49
• Register for Third Member/Special Bench appeals	50
• Representation against orders passed u/s 263	50
• Representation in appeals against orders passed u/s 80G/12A	51
• Requisitioning of departmental records	51
• Requisitioning of Judicial Files	51
• Requisition Cell	52
• Records Movement Register in DR's office	54
• Return of case records	54
• Confidential Records	55
• Filing of Written submissions by the DRs	55
• DRs guiding Standing Counsel	56
• Involving DR in filing of appeals in High Courts	56
• Disputes Resolution Panel	57

V. IMPORTANCE OF THE TRIBUNAL'S DECISIONS **58-61**

VI DEPARTMENTAL REPRESENTATIVE'S OFFICE-MISC. ASPECTS	62-68
• Library	62
• Maintenance of the Cause Lists	63
• Liaison between DRs and the Judicial section	63
• Engaging Special Counsel	64
• Disposal of Reference Applications	64
• Leave Vacancies	65
• Training & In-house meetings of DRs	66
• Principles of Good Representation	67
• Close co-ordination between the DRs & field formations	68
 VII E-ENABLED OFFICE OF THE DEPARTMENTAL REPRESENTATIVE	 69-81
• National Judicial Reference System	69
• Courts/Tribunals/Authorities covered under NJRS	70
• Components of NJRS	70
• Features of NJRS	70
• Search facility in NJRS	72
• Bunching facility in NJRS	72
• Circulations of good orders of NJRS	72
• Home Page/Dash Board facility in NJRS	72
• Alert facility in NJRS	73
• Access to www.incometaxindia.gov.in through NJRS	73
• Library facility for litigation related issues	73
• Reports facility in NJRS	73
• Access to NJRS	74

• Workflow related features in NJRS	74
• Role of CIT(DR) (Admn) at ITAT	76
• Identification of DR Units in NJRS	76
• Bunching of Appeal in NJRS	76
• Common features of NJRS qua all the DRs at the ITAT	77
• Utility of ITBA for DR	78
• Processes involved in the functioning of the DRs	78
• Digitization and Assignment of the ITAT Cases	78
• Calling for information from the field formations	79
• Recording of hearing details against each case	80
• Generation of MIS reports and online maintenance of various Registers	81
VIII FORMS AND RECORDS IN DR'S OFFICE	82-90
• Daily Fixation Register–Part A	83
• Miscellaneous Application Register–Part B	84
• Register of Cases in which requisition for case records sent–Part C	85
• Records Movement Register–Part D	86
• Tribunal Orders Register–Part E	87
• Special Bench/Third Member Appeals Register–Part F	88
• Reporting of cases argued by CIT(DR)–Part G	89
• Reporting of cases argued by Sr. DR–Part H	90
IX ORDERS/INSTRUCTIONS/NOTIFICATIONS OF CBDT/TRIBUNAL	91-152
• Circular No.21/2015–Revision of Monetary limits for filing of appeals	91

• Instruction No.5/2014- Monetary limits for filing of appeals	96
• Instruction No.9/2013- Work allocation amongst DRs	100
• Instruction No.1914 dt. 02-12-1993- Recovery of demand & stay	102
• Instruction No.8/2011- Filing of appeals to Tribunal	109
• Order No.1 of 1973 of Tribunal- Presentation of appeals	125
• Standing Order dt. 16-09-1997 of Tribunal-Bench jurisdiction	126
• Income-Tax (Appellate Tribunal) Rules, 1963	132

Chapter-I

MACHINERY FOR APPEALS UNDER THE INCOME TAX ACT, 1961

Income Tax Act, 1961 (*for short "the Act"*) is a self contained code, which besides providing the machinery for assessment of income, also provides for the machinery for appeal against assessments, so finalized. As per the machinery prescribed, the order of the assessing officer (*for short "the AO"*) is allowed to be challenged by an assessee in appeal before the Commissioner (Appeals) {for short "the CIT(A)"}. Thereafter, if the order of the CIT(A) is not acceptable it can further be challenged by the assessee as well as the AO before the Income Tax Appellate Tribunal (*for short "Tribunal" or "ITAT"*).The details of appealable orders are specified in section 253(1) of the Act and are extracted hereunder.

1.2 Appeals to the Tribunal lie against any of the following orders:

- (a) Order passed by Commissioner of Income Tax (Appeals) u/s 154, 250, 271, 271A or Sec. 272A;
- (b) Order passed by an AO u/s 158BC(c);
- (c) Order passed by an AO u/s 115VZC(1);
- (d) Order passed by the Commissioner/Principal Commissioner u/s 12AA; or 80G(5); or 263; or 271; or 154 amending order passed u/ s 263;
- (e) Order passed by Principal Chief Commission or Chief Commissioner or Principal Director General or Director General u/s 272A;
- (f) Order passed by a Principal Director or Director u/s 272A;
- (g) Order passed by an AO u/s 143(3) or u/s 147 or u/s

153A or u/s 153C in pursuance of directions of the Dispute Resolution Panel or an order passed u/s 154 in respect of these orders;

- (h) Order passed by AO u/s 143(3) or u/s 147 or u/s 153A or u/s 153C with the approval of Principal Commissioner or Commissioner as referred u/s 144BA(12) or an order passed u/s 154 in respect of these orders;
- (i) Order passed u/s 10(23)(C)(vi) or u/s 10(23)(C)(via).

1.3 Likewise, the orders of the Tribunal, as per the provisions of section 260A, involving substantial questions of law, are allowed to be challenged before the High Court. Lastly, as provided u/s 261 of the Income Tax Act, appeal against the orders of the High Court lies in the Supreme Court.

1.4 Procedure of appeals thus provided under the Act is termed as statutory appeals. Apart from having the option to avail statutory appeals, Revenue as well as the Taxpayer can approach the relevant High Court and the Supreme Court by filing writ petitions respectively under articles 226 and 32 of the Constitution.

— • — • —

Chapter-II

INCOME TAX APPELLATE TRIBUNAL

The Income Tax Appellate Tribunal has its origin in the recommendations of the Enquiry Report, 1936. A Bill to amend the Income-tax Act, 1922 was introduced in the Central Legislative Assembly to set up the Income Tax Appellate Tribunal. This was referred to the Select Committee. In pursuance of the recommendations of the said Committee section 5A was introduced in the Income-tax Act, 1922. These very provisions were later incorporated in the form of section 252 of the present Act which *inter alia* provided that Central Government shall constitute an Appellate Tribunal.

2. Constitution of the Tribunal

2.1 As per section 252(1) of the Income Tax Act, 1961 Tribunal has to consist of Judicial and Accountant Members to exercise the powers and discharge the functions conferred on it. As provided under section 255 of the Act the powers and functions of the Tribunal may be exercised and discharged by Benches constituted by the President of the Tribunal from among the members thereof.

2.2 The court hours, except with certain exceptions in the North Eastern States, for all the benches are uniform from 10.30 Hrs in the morning to 13.30 hrs and from 14.30 Hrs to 16.30 hrs in the afternoon. Part heard matters are usually posted for hearing at 14.30 Hrs or next day.

3. Organizational structure of the Tribunal

3.1 As indicated earlier and subject to the provisions of Income Tax Act, 1961, and other allied Acts, the Tribunal has the power to regulate its own procedure and the procedure of its Benches in

all matters arising out of the exercise of its powers or the discharge of its functions, including selecting the places at which the Benches shall hold their sittings.

3.2 The Headquarters of the Tribunal are located in Mumbai. At present, it is functioning with 63 Benches at 27 different places having jurisdiction as specified in the Standing Order dated 16-09-1997 as amended by Notification Nos. 63-Ad(AT)/2001 dated 29-05-2001 & 63-Ad(AT)/2001 dated 19-10-2001 issued by the President of the Tribunal. For the sake of administrative convenience, the Tribunal is divided into nine Zones. The President of the Tribunal is the Head of the Department and he also exercises administrative control over all the Benches of the Tribunal. Each Zone is headed by a Vice-President. The areas over which Vice-President of the Zone exercises jurisdiction are as under:

- (a) Mumbai Zone : Mumbai, Nagpur, Bilaspur, Panaji, Pune Benches.
- (b) Delhi Zone : Delhi, Agra
- (c) Chennai Zone : Chennai Benches
- (d) Kolkata Zone : Kolkata, Patna, Cuttack, Guwahati and Ranchi Benches
- (e) Ahmedabad Zone : Ahmedabad, Indore and Rajkot Benches
- (f) Bangalore Zone : Bangalore and Cochin Benches
- (g) Hyderabad Zone : Hyderabad and Visakhapatnam Benches
- (h) Chandigarh Zone : Chandigarh, Amritsar, Jaipur and Jodhpur Benches
- (i) Lucknow Zone : Lucknow, Allahabad and Jabalpur Benches

3.3 Area of jurisdiction of each Member is the same as that of the bench which he is a member of or over the case(s) specifically assigned to him by the President. Full copy of the Notification as amended from time to time is placed in Chapter IX of this Manual.

4. Benches of the Tribunal

Section 255 – Procedure of Appellate Tribunal-provides for the constitution of following types of Benches of the Tribunal:

4.1 Division Bench of the Tribunal:

Sub-section (2) to section 255 of Income Tax Act, 1961 provides for the constitution of a Bench of the Tribunal to be comprising of one Judicial Member and one Accountant Member. In judicial parlance it is commonly known as a Division Bench of the Tribunal. A Division Bench has to necessarily consist of two or more members of the Tribunal out of whom one has to be a Judicial Member and an Accountant Member. And as provided u/s 255(4) decision of the bench has to be according to the opinion of the majority. Generally, in routine a Bench of the Tribunal consists of two members.

4.2 Single Member Bench of the Tribunal:

As provided u/s 255(3) of the Act in a case where total income computed by the Assessing Officer does not exceed Rs.15 lakh (*prior to 01/06/2015 limit was Rs. 5 Lakh*), the President of the Tribunal, and any other Member of the Tribunal so authorized by the Central Government may sit singly in a Bench and decide a case. In judicial parlance, this is known as Single Member Bench or Single Member Court (for short 'SMC'). Here, it is relevant to note that any appeal under the Wealth Tax Act cannot be heard by a Single Member Bench because corresponding to section 255(3) of the Income Tax Act there is no provision in the Wealth Tax Act.

4.3 Third Member Bench:

As provided u/s 255(4) of the Act decision of the bench has to be according to the opinion of the majority and in a case where there is no majority and if the Members are equally divided, they are required to state the point or points on which they differ and thereupon the President orders for hearing on such point or points by one or more of the members of the Tribunal and where after the points are decided as per the majority view. Generally, in case of difference of opinion the President orders a particular Judicial or

Accountant Member to hear the points on which difference arose. This is commonly known as a 'Third Member bench'.

4.4 Special Bench:

For the disposal of any particular case, sub-section (3) of the section 255 of the Act empowers the President to constitute a Special Bench consisting of three or more members *inter alia* comprising necessarily of one Judicial and one Accountant Members. This is popularly known as Special Bench of the Tribunal.

4.5 E-Court:

Aiming at speedy and cost-effective justice, the Tribunal has taken steps in this direction to automate its function. In that context, a sample bench to conduct e-hearings has been set up at Nagpur Bench and detailed regulations are laid down vide Office Order No F.1- AD (e bench)/AT/2012 dated 09/11/2012.

5. Nature of proceedings before the Tribunal:

5.1 Unlike the proceedings before the income-tax authorities {including the CIT(A)} before the Tribunal the proceedings are adversarial in nature i.e. for the Tribunal both the parties (*i.e. the Assessee and the Revenue*) are separate and equal and the Tribunal cannot provide one party an edge over the other and cannot make good any shortcoming or failures of either of the parties.

5.2 As provided u/s 260A of the Income Tax Act, an appeal, from any order passed in appeal by the Appellate Tribunal, lies before the High Court only if in the satisfaction of the High Court the case involves a substantial question of law. This makes orders of the Tribunal to be conclusive in so far as facts of a case are concerned. In other words, on facts orders of the Tribunal are final i.e. the Tribunal is the final fact finding authority.

5.3 The relevant provisions relating to filing of Appeals, Cross Objections, Miscellaneous Applications before the Tribunal are contained in section 253, 254 and 260A of the Income Tax Act.

— • — • —

Chapter-III

IMPORTANT PROCEDURES FOLLOWED BY THE TRIBUNAL

1. Entry of appeals/applications in Kachha Register.

1.1 All appeals and memos of cross objections so received are entered in the diary maintained for the purpose. As soon as they are received towards the end of the office hours, the appeal clerk or the clerk-in-charge of preparation of appeals and applications collects all the appeals and applications from the concerned persons, as the case may be, enters them in the register of institutions of appeal and applications and takes the initials of the receiving officer as a token of verification and checks the total number of receipts.

1.2 Where there is more than one Bench at a station, the Assistant Registrar or the receiving officer is required to make an allotment. Allotment to Benches is to be made ad seriatum or a uniformly determined criterion. In case the receiving officer recollects to have received any appeal of the same assessee on previous occasion the same Bench is allotted the appeal received subsequently. If more than one appeal is filed involving same issue, they are generally to be marked to one Bench.

2. Intimation of Filing of Appeal/Application to the Respondent.

2.1 After scrutiny is done, intimation of filing of appeal/application is sent to the respondent for information. The third copy of the memo of appeal along with grounds of appeal is endorsed to the respondent.

2.2 Memorandum of Appeals filed during a fortnight of the month are collected and sorted out Act-wise in the first instance. Copies

of memo of appeals preferred by the assessee are sent directly to the concerned AO under intimation to the CIT concerned. In case the appeal is under the Income-tax Act, 1961, attention of the respondent is invited to the provisions contained in section 253(4) of the aforesaid Act and the officer is requested to treat the aforesaid letter as notice required u/s 253(4) *ibid*.

2.3 In case, any copy of memo of appeal is returned un-served by the postal authority, it is sent again with a letter through the AO concerned for service on the respondent. He is also requested to send the receipt of the Memo of Appeal and the present full postal address of the respondent for future correspondence.

2.4 If any affidavit, Miscellaneous Application or other documents or additional grounds of appeal are filed, the same are to be placed before the Bench for orders for admitting these and placing them on record and for sending a copy thereof to the opposite party for information. If the Bench so directs, copy thereof is endorsed to the opposite party.

2.5 Copy of the memo of cross objection, after registration and scrutiny, is endorsed for information to the opposite party (Appellant in the appeal), in the prescribed form. Entry is required to be made in the Order Sheet- that a copy of the Appeal/Cross Objection has been endorsed. The date of dispatch is invariably to be given in the order sheet.

3. Filing of affidavit/documents

In case, any affidavit or other document is received and a copy thereof is sent to the opposite party after obtaining the order of the Bench to place it on the record, a note to that effect is recorded in the Order Sheet.

4. Bringing Legal Heirs/ Representatives on records

4.1 During the pendency of an appeal/ application if the Appellant or Respondent dies or is adjudicated insolvent or in the case of a company if it goes into liquidation, the appeal/application does not abate. The legal representative/heir or Liquidator/Receiver as the

case may be, may apply to the Tribunal for continuing the appeal/application and to bring him on record.

4.2 In case the death/liquidation of the Assessee/Appellate/Respondent comes to the knowledge of the Tribunal and the legal heirs or Liquidator has not applied for bringing him/her on record then the Legal Heir etc. is asked by a letter to apply for bringing him/her on record of the Tribunal, accompanied by a sworn affidavit to bring him on record of the Tribunal. The application and affidavit has to be filed in duplicate. On receipt of the application and affidavit a copy of the same is endorsed to the Assessing Officer concerned for his objection, if any, by a letter.

4.3 On receipt of intimation from the Assessing Officer concerned informing that the department has no objection in bringing the legal heirs or Liquidator as the case may be, on record, the application is submitted to the Bench for orders. After obtaining the orders of the bench, necessary changes in the title of the appeal are made in the Order Sheet, File Cover, Memo of Appeal and Appeal/application register. The changes made are communicated to both the parties through a letter.

4.4 In such cases, fresh Vakalatnama/letter of authority are required to be called for and placed on record. An entry in the Order Sheet stating that the assessee died/ went into liquidation and that legal heir or liquidator, as the case may be, has been brought on record is accordingly made.

5. Stay application-filing & disposal

5.1 Every application for stay of recovery of demand of tax, interest, penalty, fine, or any other sum is to be presented in triplicate by the applicant in person, or by his duly authorized agent, or sent by registered post to the Registrar/Deputy Registrar or the Assistant Registrar, as the case may be, at the Headquarters of a Bench or Benches having jurisdiction to hear the appeals in respect of which the Stay Application arises.

5.2 Where the application for stay relates to demands, though for more than one assessment years but under only a single statutory

enactment, then a single stay application would be sufficient in respect of demands for which stay is sought. However, separate applications are required to be filed for stay of recovery of demands, under different enactments. Every stay application is to be recorded in the register. The Assistant Registrar, on its receipt, puts his initials and date. He shall indicate the mode of presentation and direct the office for preparation of the file cover, arrangement of papers and making three sets and registration etc.

5.3 The application for stay should, as far as possible, be filed in the form as per the format prescribed. Every application shall be neatly typed on one side of the paper and shall be in English setting forth concisely the following:

- (i) Summary of facts regarding the demand of the tax interest, penalty, fine or any other sum, the recovery of which is sought to be stayed;
- (ii) The result of the appeal filed before the Commissioner (Appeals), if any;
- (iii) The exact amount of the tax, interest, penalty, fine or any other sum demanded, as the case may be, and the amount undisputed there from and the amount outstanding;
- (iv) The date of filing the appeal before the Tribunal and its number, if known;
- (v) Whether any application for stay was made to the revenue authorities concerned and if so, the result thereof (copies of correspondence, if any, with the Revenue authorities to be attached.);
- (vi) Reasons, in brief, for seeking stay;
- (vii) Whether the applicant is prepared to offer security, and if so, in what form;
- (viii) Prayer to be mentioned clearly & concisely (stating exact amount sought to be stayed);
- (ix) The contents of the application shall be supported by an

affidavit sworn by the applicant or his duly authorized agent.

5.4 In case any Stay Application does not contain or is not submitted with the above stated facts or enclosures, it is taken as defective and the defect is pointed out in the memo. An application which does not conform to the above requirements is liable to be summarily rejected.

5.5 The Stay Application, after registration, is put up before the Bench concerned immediately for orders as to whether the Stay Application is to be posted for hearing in case the same is in order. In case it is defective, in any respect, it is to be posted for hearing when the Bench directs to do so after the defect is rectified. The stay application along with annexures, if any are required to be sent to the Departmental Representative along with the hearing notice.

5.6 When an order is passed in the Stay Application and it is received in the office for issue, it is to be issued immediately. After the issuance of the order passed in Stay Application, in cases where stay is granted, the appeal(s) is/are to be fixed for hearing out of turn for disposal as per orders of the President/Vice President.

5.7 In some Stay Applications, an interim order is passed. In such cases, steps for finalizing and dispatch of orders are taken immediately.

6. Appeals/Cross Objection

6.1 Notices of hearing in Appeals/Cross Objections and Miscellaneous Applications are issued to the Appellant and the Respondent at the address given in the memorandum of appeal i.e. in Form No.36 or 36A. Notices meant for the AO or concerned officers under related Acts are sent through the Departmental Representative concerned.

6.2 Notice of hearing is prepared in Quadruplicate, one copy for the Appellant, one for the Respondent, one for the Departmental Representative and the fourth one is used as office copy. When an appeal is fixed for hearing for the first time, the date of presentation of appeal, the number and date of Order and the authority against

whose order {i.e. CIT(Appeals) or CIT as the case may be} the appeal filed is mentioned in the notice of hearing. In other cases, the date on which the Appeal was last fixed for hearing is given in the Notice of hearing.

6.3 In every Notice of hearing, the Appellant/Respondent is asked (vide note) as to intimate whether any other appeal/appeals involving similar points is/are pending before the Tribunal. If any cross Appeal/Appeals has/have been filed by the other side, the date of filing the Cross Appeal/Appeals is/are also to be intimated. The above required information is to be furnished within 8 days of the receipt of the notice of hearing so as to enable the issuing office to fix such Appeal/Appeals along with the Appeal/Appeals already fixed after obtaining the order of the Bench to do so.

6.4 In case any Appeal/Appeals is/are time-barred, a Show Cause notice is to be enclosed with the notice of hearing.

6.5 Notices are issued by Registered A.D. Post, through courier or through hand delivery in case the parties are local and the process adopted is cheaper, convenient and results in quick and sure delivery to the addressee. In later cases, Peon books or the Tear off slips are to be properly maintained. In former cases, A.D. Card is pasted on the back of the notice of hearing or placed on the relevant file.

6.6 If notice of hearing is not served by the aforesaid methods of service, it may be served by affixation after obtaining the order of the Bench and issuing through Assessing Officer with appropriate direction.

6.7 Issue of Notices should be in chronological order and they are to be issued at least four weeks in advance except in exceptional cases fixed at short notice under the order of the Bench.

6.8 In some cases it is necessary to enclose certain other documents with the notice, if not endorsed before e.g. copy of the Remand report, copy of the Miscellaneous application, copy of the Affidavit etc.

6.9 In case, Notice meant for assessee appellant/applicant or Respondent is received back, it should be again sent for service

through the AO concerned, when no other address is available for proper service, with the letter and the tear off slip received from the AO is placed on the file like the A.D. Card. If notice of hearing is not served by applying all the methods of service, it may be served by affixation after obtaining order of the Bench.

6.10 For convenience sake, like any other Court, Tribunal also brings out a daily Cause List which is a printed roll of all appeals/ matters to be adjudicated in the order of their entry with names of the appellants for each entry. In the Tribunal all the matters are taken up in *seriatum* except certain matters which are taken up on priority under the orders of the Bench. As a matter of practice, old appeals are accorded priority in the roll. Certain urgent matters like the stay granted matters or matters rolled over from the previous day are taken up giving precedence over the matters listed for hearing in the Cause List. The Cause List besides being displayed on the Notice Board is available in the public domain and can also be accessed on the official Web-site of the Tribunal at *itat.nic.in*. This computer generated Cause list does not, at times, include certain matters which are fixed up for hearing during the week and hence this list is updated by the Bench Clerk regularly under the orders of the Bench.

— • — • —

Chapter-IV

DEPARTMENTAL REPRESENTATION BEFORE THE APPELLATE TRIBUNAL

Like any other litigation, even in any matter (appeal) carried before the Tribunal invariably there are at least two parties—Assessee and the Revenue. As per the provisions of section 254(1) of the Act, Tribunal provides opportunities of being heard to both the parties to the appeal.

1.2 Section 288 of the Act allows an assessee to attend, before an Income-tax Authority or the Tribunal, through a representative duly authorized, by him in writing, to appear on his behalf. Qua the other party to an appeal before the Tribunal i.e. the Income-tax Department sub clauses (i) & (ii) of clause (b) of Rule 2 of the Appellate Tribunal Rules, 1963 – provides concerned ‘authorized representative’ to mean a person duly appointed by the Central Board of Direct Taxes/Chief Commissioner to appear, plead and act on behalf of the Income Tax Authority. The persons other than an Income-tax Authority involved in an appeal before the Tribunal are commonly known as Departmental Representative (*for short* ‘DR’).

1.3 Though Departmental Representatives are generally the in service officers of the Department but in view of clause (b) of Rule 2 of the Appellate Tribunal Rules, 1963 the Departmental Representative may well be an Advocate or any other person duly appointed by the Board as authorized representative.

2. Role of the Departmental Representative

2.1 The function of the authorized representative (*in the context of officers deployed for representing Revenue read as Departmental Representative or ‘DR’ in short*) is primarily to represent the

Departmental before the Tribunal. The DR like any other representative representing the assessee or the income-tax authority assists the Tribunal in disposal of appeals, cross objections, reference applications and other matters before it. Since the proceedings before the Appellate Tribunal are adversarial in nature, both the assessee and the Department have a right to make submissions (both orally as well as in writing) before the Tribunal.

2.2 DR is informed the moment an appeal, Cross Objection (*for short 'CO'*) or a miscellaneous application (*for short 'MA'*) is filed with the Registry of the Tribunal either by the Commissioner or by the assessee. Miscellaneous application may *inter alia* be of the nature of:

- (i) Application for rectification of some mistake which crept in the Tribunal's order;
- (ii) Application praying for the recalling of the order passed by the Tribunal;
- (iii) Application seeking stay on recovery of demand or on other proceedings before the income-tax authorities etc.

3. Organization of the DR's office

Departmental Representatives posted in the Tribunal are Revenue's sentinels entrusted with the responsibility of defending actions of the field formations *qua* the assessments framed by them. Post restructuring of the Income Tax Department, the organization of the Departmental Representative per Bench would generally consist of :

- (a) Commissioner (ITAT) : One
- (b) Addl./Joint Commissioners : Two
- (c) Income Tax Officer : One
- (d) Administrative Officer Gr. III : One
- (e) Private Secretary : One
- (f) Notice Server/Daftary : One
- (g) Multi Tasking Staff (MTS) : Three

In multi-bench stations, the number of officers would be higher. For assisting the DRs, in performing their functions effectively, they will be provided with the services of Income Tax Officer and other ministerial staff comprising of Inspector, TA/Executive Assistant/Clerks as mentioned above.

4. Work allocation amongst the DRs

Board vide its communication F.No. 279/Misc./M-82/2011-ITJ dated 22nd July, 2013 has provided for the allocation of work between the CIT(DRs) and Sr. DRs as under:

(A) Cases to be argued by the CIT (DRs):

- i. All appeals relating to Search cases/Block assessments.
- ii. All Special Bench & Third Member appeals. However, the Sr. DR/CIT(DR) who argued the matter earlier may assist/argue the matters.
- iii. Appeals filed against orders passed u/s 12A, 80G and 263 of the Act.
- iv. All appeals in DRP matters.
- v. All appeals in assessment cases, in which the aggregate of the additions made by the AO which are under dispute/subject matter of appeal in a case is more than:
 - a) Rs.10 crores in cities in Mumbai & Delhi.
 - b) Rs.6 crores in the cities of Chennai, Kolkata, Ahmedabad, Hyderabad, Bangalore and Pune.
 - c) Rs.3 crores in other cities.
- vi. All appeals against imposition of penalty or levy of interest in which the aggregate of penalty imposed or interest levied by the AO which are under dispute/subject matter of appeal in a case, is more than:
 - a) Rs.3 crores in Mumbai and Delhi.
 - b) Rs.2 crores in Chennai, Kolkata, Ahmedabad, Hyderabad, Bangalore & Pune.

c) Rs.1 crore in other cities.

(B) Cases to be argued by the Senior DRs :

All cases other than those mentioned above in (A).

The CCIT, in relaxation of the above parameters is allowed to assign cases from CIT (DR) to Sr. DR or vice versa in consideration of administrative requirements.

Full copy of the aforesaid Instructions can be seen in Chapter IX of this Manual. Accordingly, before deciding to argue a case, DR should make it sure that it needs to be argued by him only.

5. Filing of appeals etc.

5.1 The Appellate Tribunal has 63 benches spread all over India. The territorial jurisdiction of each bench is notified by the President of the Tribunal. Full copy of this Notification is placed in Chapter IX of this Manual. The Assessing Officers working within the territorial jurisdiction of a particular bench must file appeals etc. before that bench only. The jurisdiction of the benches is changed sometimes and the notification to this effect is issued by the President of the Tribunal. All concerned must make a note of it while filing the appeal. The procedure for filing of appeal, hearing and the disposal of appeal etc. by the Tribunal is governed by the Income Tax (Appellate Tribunal) Rules, 1963 as amended from time to time. These Rules are placed in Chapter IX of this Manual.

5.2 The appeals are required to be presented before the Registrar or Assistant Registrar of the Bench which has the jurisdiction to hear such appeal etc. However, the Standing Order No. 1 of 1973 dated 10th July, 1973 allows presentation of appeals at the residences of the officials. Relevant para of the Standing Order reads as under:

“Provided further that if the appellant or the appellant apprehends that it is the last day of the limitation for presentation of his appeal or application, he may present it to any Assistant Registrar at Bombay/ Allahabad/ Madras/ Calcutta/ Delhi/ Hyderabad/ Patna/Cochin/Ahmedabad/ Bangalore/Indore/ Chandigarh/ Nagpur/ Cuttack/Jabalpur/

Jaipur/ Amritsar/ Poona and Gauhati at his respective residence or any other place wherever he they may be, or to a Member of the Tribunal at his residence or wherever he may be.”

Full copy of Order 1 of 1973 dated 10-07-1973 is placed in Chapter IX of this Manual.

6. Departmental Appeal

6.1 Rule 47 – *Form of appeal and memorandum of Cross-objections to Appellate Tribunal*-of the Income-tax Rules 1962 provides that an appeal to the Appellate Tribunal both under sub-section (1) or sub-section (2) of Section 253 shall be made in Form No. 36. Likewise, Cross Objection needs to be filed in Form No. 36A. On being authorized by the Principal Commissioner, Commissioner (*in this Manual for convenience referred to as ‘CIT’*) to file appeal or the CO against the order of the CIT (A), the Assessing officer having the jurisdiction over the case at the time when the appeal or CO is directed by the Commissioner, files the appeal/CO in triplicate. The memorandum of appeal is to be filed with the following enclosures:

- (i) Two copies of the appellate order appealed against at least one of which must be a certified copy {Rule 9(1) of the I.T (Appellate Tribunal) Rules 1963};
- (ii) Two certified copies of the relevant order of the Assessing Officer {Rule 9(1) of the IT (Appellate Tribunal) Rules 1963};
- (iii) A certified copy of the order of the Commissioner directing that an appeal be preferred. {Rule 15 of the IT (Appellate Tribunal) Rules, 1963};
- (iv) A certificate signed by the Commissioner stating the date when the order of the CIT (A) appealed against was communicated to him;
- (v) Grounds of appeal signed by the Assessing Officer;

- (vi) Two copies of the grounds of appeal before the first appellate authority; and
- (vii) Two copies of the statement of facts, if any, filed with Form No. 35 before the said appellate authority.

6.2. In so far as filing of Cross Objections is concerned there is no need for filing the aforesaid documents except for filing of:

- (i) A certificate copy of the order of the CIT directing that CO needs to be filed;
- (ii) Grounds of Cross Objections;

Since all other documents are already available with the Tribunal with the appeals already filed in which the CO is filed, there is no specific requirement to file any other documents.

7. Chronology of events in the Tribunal

7.1 On filing of appeal or CO or MA with the Tribunal, the Registry verifies them in the specific context of

- (a) Whether the appeal or cross objection is filed in time.
- (b) Whether the appeal or cross objection is filed in the prescribed form;
- (c) Whether the appeal is verified in the prescribed manner;
- (d) Whether Grounds of appeal are filed;
- (e) Whether Verification is signed properly;
- (f) Whether in case of appeal against the order of the Commissioner of Income Tax (Appeals) copy of appeal form No. 35 (along with copy of the Statement of Facts, if any) is filed;
- (g) Whether, in case of appeal by the Income-tax authority, authorization of the Commissioner is filed;
- (h) Whether the Appeal filed by the assessee is accompanied by a fee prescribed u/s 253(6);
- (i) Whether the appeal is filed against the orders prescribed u/s 253(1) of the Act.

7.2 The Registry of the Tribunal then allots, appeal or CO or MA filed, a specific number like ITA No...../..

7.3 At a station where there are more than one Benches of the Tribunal, the appeals & MAs are allocated to the Benches on a roster or as per the alphabets allocated to the benches.

7.4 A copy of the Appeal Memo or MA in case of Revenue's appeal with annexures is sent to the assessee.

7.5 In case of an Appeal or MA by an assessee, a set of Appeal or MA papers is sent to the Assessing Officer concerned or at times to the Departmental Representative.

7.6 In case an Appeal or MA is found to be defective, a communication known as 'defect memo' is sent to the appellant.

7.7 If the appellant rectifies the defects, the appeal is taken up for hearing by the Tribunal.

8. Hearing of appeals

8.1 Now-a-days, at the very stage of filing of appeal a computerized acknowledgment is generated wherein apart from pointing out the defects, if any, in the appeal papers date of hearing of that appeal is also mentioned.

8.2 If it is not possible to intimate the date of hearing immediately, then after an interregnum, depending upon the pendency, the Bench of the Tribunal posts the appeals for hearing. As per the policy of the Tribunal issuance of notices is done in chronological order and they are issued at least four weeks in advance. In exceptional cases, the hearings are fixed at a short notice under the specific orders of the Bench. A communication of hearing is sent to the applicant and also to the respondent. At most places, a copy of the notice meant for the Assessing Officer for convenience is also sent to the DR.

8.3 On the allotted date, the hearing takes place wherein after ensuring that the appeal is not defective, the applicant addresses the Bench first either himself or through his representative. Thereafter, the respondent makes his submissions in reply. The

appellant then gets a chance to make the final submissions by way of rejoinder.

8.4 DRs posted at the Tribunal should note that as a policy, priority is given by the ITAT to old appeals. Sec. 254(2A) of the Act requires that the ITAT where possible may hear and decide an appeal within a period of four years from the end of the financial year in which the appeal was filed. Accordingly, all such old appeals which get adjourned are usually re-fixed at an interval of about a month, unless otherwise directed by the Bench. These appeals continue to be re-fixed, subject to any other orders of the bench till they are finally heard and disposed of. Thus, the DRs should make all out efforts to avoid adjournments and to see that they get disposed at the earliest.

8.5 To ensure consistency and avoiding conflicting decisions on issues arising out of the very same order impugned before the Tribunal, Appeals, Cross Appeals and Cross objections filed are taken up together for hearing. Though hearing of appeals takes place in the order in which they are listed in the 'cause list' yet if the Cross appeals or Cross Objections involve a ground whereby very validity (like the challenging the limitation issue etc.) of the order of the Assessing Officer is involved then for convenience and saving time and efforts they are given precedence over other appeals.

8.6 DR in important cases (like search & seizure cases) should not hesitate even in visiting the field offices especially when the documents seized or requisition are found to be sensitive and need to be perused for proper representation. Likewise, DR for prompt and effective action can decide to visit the field officers especially in appeals involving complex issues or where the issues are such where consultation with the AO, Range-Head and the CIT is considered necessary especially when these field officers are based at a place where the DR is located.

9. Procedure when the appeal is actually posted for hearing:

9.1 The DR's office normally has one Bench Clerk who is either a TA or UDC or Executive Assistant and also an Inspector attached for every Bench of the Tribunal. When an appeal is posted for

5. If it is Assessee's appeal state whether CO :
is filed by the Revenue and also state the
number of such CO.
6. Verify Form No.35 as filed before the
CIT(A) and state,
 - (a) Whether Statement of Fact was filed : Yes/No
 - (b) Date of the order appealed against :
 - (c) Date of service of the order on assessee :
 - (d) Whether appeal was filed in time.
If not state the delay :
 - (e) Date of filing of appeal before CIT(A) :
 - (f) Whether Grounds of Appeal filed before
CIT(A) signed : Yes/No
 - (g) Whether Verification duly signed by : Yes/No
assessee
7. Verify Form No.36 as filed before
Tribunal and state,
 - (a) Whether Form No.35 as filed before
CIT(A) is filed? : Yes/No
 - (b) Date of the order of the CIT(A) :
 - (c) Date of service of CIT(A) order on :
the assessee
 - (d) Date of filing of appeal in ITAT :
 - (e) Whether appeal was filed in time & :
if not state the delay
 - (f) Whether Grounds of Appeal filed before : Yes/No
ITAT signed
 - (g) Whether Verification in FN 36 is duly : Yes/No
signed by assessee
 - (h) Whether additional grounds raised : Yes/No
before ITAT, if yes whether comments
of AO to be sought

8. Other inputs to be kept on file
 - (a) Whether all the pages of orders including annexures referred in assessment / appeal order are legible and available on the record. :
 - (b) In case of search and seizure cases check the status of appeals filed for other group cases / other years. Whether consolidation to be requested. :
 - (c) In search cases if appeal is filed by the Department, whether the paper book containing documents/statements relied by the AO/CIT(A) is to be filed. :
 - (d) Check whether along with ground taken for violation of Rule 46A, the merit of the issue has also been challenged. If not, concerned CIT may be requested to consider challenging the same. :
 - (e) Specify grounds covered by the decision of the bench. Also place copy of the relevant order. :
 - (f) Check whether both cases where protective and substantive additions have been made are consolidated for hearing before ITAT. :
 - (g) If it is Departmental appeal whether AO has been asked to prepare a paper book. :
 - (h) Also check the jurisdiction, in places where CCIT Charge and ITAT jurisdiction is not mapped one to one. :
9. Officer competent to argue the present appeal/CO is :
 - (a) Present appeal is to be argued by the : Sr. DR

- (b) Present appeal is to be argued by the CIT (DR) because
- (i) It is an appeal against search assessment :
 - (ii) It is an asstt appeal involving disallowance/addition >10 cr.* :
 - (iii) It is an appeal in DRP matter order passed :
 - (iv) It is a Third Member appeal/ Special Bench /appeal before Third member/Special Bench :
 - (v) It is an appeal against 263/12A/8G : 263/80G/ Order of the CIT 12A
 - (vi) It is an appeal involving Penalty/ Interest of 3 Crores* :
- (Signature)
with date & designation

* At stations other than Mumbai and Delhi these limitations would undergo change as per the Board's communication F.No. 279/Misc./M-82/2011-ITJ dated 22nd July, 2013.

SUPPLEMENTARY CHECK SHEET

(To be filled when the case has been listed for hearing on earlier dates but got adjourned)

1. It is verified that the defects which were noticed vide Basic Main Check Sheet stand removed.
2. Further, compliance of subsequent letters issued to field formations has been received as flagged "A".
3. Notings as recorded on the file have been gone through and it is verified that the compliance of the Notings have been received.

4. It is seen that the appeal in this case was filed by the Revenue on.....and on verification it (intimation of Revenue having filed appeal) is seen to have been served on..... The CO is seen to have been filed onwhich means that it is in time/it is not in time.

(Signature)

With date & designation.

9.3 Instead of waiting for the receipt of the Notice of hearing or of the 'Cause List' it will be desirable if the 'Check List' is prepared immediately on receipt of the appeal papers so as to ensure completeness of necessary actions well before the case actually comes up for hearing.

9.4 The daily 'Cause List' is also available on the website of the Tribunal. This 'Cause List' is regularly updated. Final Cause List is received by the DR office a week in advance. The Cause List sent by the Tribunal is for the entire week for each Bench.

9.5 The Bench Clerk should take out the relevant files on receipt of the fixation notice. These files should be put up to the DR concerned of the Bench who will go through the files and see whether all necessary papers, Brief and Paper book etc. are in his file and will also consider, upon going through the papers, whether it is necessary to call for the assessment records and other documents like 'seized or impounded document' etc. He will then issue necessary orders on the file. This exercise should be carried out at least 2 weeks in advance of the date of hearing. On receipt of the final weekly cause list, the DR will go through the appeal files and see if any action is pending or is required to be taken. In case of difficulty in receiving the assessment records etc. the DR should file an application for adjournment stating the nature of difficulty so that the Bench may pass necessary orders. The DR shall if possible also inform the assessee well in advance.

10. Order Sheet entries

The Tribunal during the course of hearing even if it is not

taken up for final hearing, at times makes certain observations and gives certain directions to the parties to the Appeal/CO to be complied with. DRs should meticulously make a note of all those directions in the case file. It would be advisable to apply for an extract of the Order sheet of the ITAT where these directions are noted and place it on the file, so that in the next hearing reference thereof can be made by the DR to ensure that there is no failure in making compliance of the Tribunal's directions.

11. Order of the Tribunal & Rectification application

11.1 The ITAT proceedings are governed by Chapter XX of the I T Act 1961. There is no time limit fixed by the Act/Rules to provide for how many days after final hearing of the matter, the order needs to be passed. Generally, as required by Rule 34(5)(c) of the Appellate Tribunal Rules, 1963 and also in compliance with the Supreme Court judgment dated 06-08-2001 in Anil Rai v State of Bihar {JT 2001 (6) SC 515} mandating that pronouncement of judgments should not be permitted to go beyond two months, efforts are made by the Tribunal to ensure that orders are issued within two months of the conclusion of hearing of an appeal.

11.2 Just before releasing the Order, pronouncement of the results of the appeal heard is made in the open court and thereafter Order is released. Generally, Tribunal prepares the list of Orders to be pronounced on a given date or day which normally happens to be the Friday of the week.

11.3 Where the appellant or the respondent feels that there is a mistake apparent from the record in the order disposing of the appeal he may file an application seeking rectification of the mistake. Though the law provides that such an application can be made within 4 years of the date of receipt of the impugned order, it would always be useful if such an application is made prior to filing of appeal in the High Court u/s 260A against the Tribunal's order because if the mistake is rectified in time, the questions proposed in the Grounds of appeal could be suitably modified. As a matter of prudence and practice the Rectification applications are posted before the same constitution of the Bench which had passed

the order sought to be rectified, if they (very same Members) happen to be posted at the same station/Bench.

12. Departmental Appeals

12.1 As per the instructions one set of appeal papers is required to be forwarded by the Assessing Officer to the Departmental Representative. In the DR's office these papers are received by the Receipt Clerk. After entering these papers in this Receipt Register he hands over the same to the concerned Clerk/Staff of the respective Bench who in turn puts them up before the DR concerned for his perusal.

12.2 After these papers have been perused by the DR, the Bench Clerk should keep them in his custody and he should visit the office of the ITAT Registry once or twice a week and note down the appeal numbers allotted to these departmental appeals in the office of the ITAT. After noting down the appeal numbers on the departmental appeals, he should open the files for these appeals and arrange them in the serial order of appeal numbers. He should prepare suitable bundles of such appeals files, each such bundle containing about 50 appeal files. On the top of each bundle, he should stick slip or write indicating clearly the appeal numbers.

12.3 On the file cover, he should mention the appeal No; parties to the dispute; date of hearing; and the Bench Number. Each file should be allotted a File Number. Sometimes, it may happen that the appeal papers, as mentioned above, are not on record. In such a case, the copies of the relevant appeal papers may be obtained from the office of the ITAT. The Bench Clerk, after obtaining the copies of the relevant appeal papers from the office of the ITAT, shall prepare his own file and put up the same to the DR for his perusal before the date of hearing of the appeal.

12.4 The Staff attached to the Bench should ensure that as per the instructions, now copy of the Central Scrutiny Report (*for short* 'CSR') along with the comments of the Assessing Officer, Range Head and the decision of the Commissioner is required to be forwarded to the DR office along with the appeal papers and hence

he should take special care to ensure that these papers are also placed in the appeal folder. In case he finds appeal papers to have been received without enclosing therewith copy of the CSR he should immediately take up the matter with the AO concerned.

13. Filing of Cross Objections by Revenue

13.1 Sub-section (4) of Section 253 of the Income-tax Act, 1961 provides that the Assessing Officer or the assessee (as the case may be) on receipt of notice that an appeal against the order of the Commissioner (Appeals) has been preferred under sub-section (1) or sub-section (2) by the other party, may notwithstanding that he may not have appealed against such orders or any part thereof, within 30 days of the receipts of the notice, file a memorandum of Cross objections, verified in the prescribed manner, against any part of the order of the Commissioner (Appeals) and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).

13.2 On receipt of papers of the appeal filed by the assessee, the Assessing Officer should examine them. If it is found that on certain points decided against the Department no appeal was originally filed, a decision should be taken whether it would be worthwhile to file a cross objection at this stage. If so, the cross objection should be filed within 30 days of the receipt of notice of assessee's having filed the appeal after taking due approval of the Commissioner. Cross Objection, if required to be filed by the Assessing Officer, has to be in Form No.36A along with;

- (a) A certified copy of the order of the CIT directing that CO needs to be filed.
- (b) Grounds of the Cross Objections.

13.3 When the Cross Objections (*for short* 'CO') is filed by the Assessing Officer and a copy of the same is received in DR's office, the Receipt Clerk should pass it on to the Clerk of the concerned Bench who will put it up before the DR-in-charge of the Bench for his perusal and thereafter it shall be linked with the

appeal papers already available with him so that the same are made available to the DR when the appeal comes up for the hearing before the Tribunal.

13.4 Though primary responsibility to decide filing of the Cross Objects rests with the Assessing Officer still, the Departmental Representative also should examine the necessity of filing of the Cross Objection. If the DR feels that there is a necessity of filing the Cross Objection, he should take up the matter with the field formation including the AO preferably in writing giving the reasons for filing of the CO. The AO, if time limit to file CO has expired should also file an application in the Tribunal giving therein the reasons for condoning the delay.

14. Application u/r 27

In a case where the order of the CIT(A) which was partly or entirely decided against the Assessee or the Revenue and for some reasons neither the appeal nor the CO was filed against such order then by virtue of Rule 27 of the Appellate Tribunal Rules, the respondent may support the order appealed against on any of the grounds decided against him. Before the Tribunal, at times the assessee resorts to Rule 27 as respondent to challenge the order of the CIT(A) which is not permissible under the law. DRs should take special care to see that whenever Rule 27 is invoked efforts of the respondents in challenging the order of the CIT(A) which they have accepted as such (that is why appeal was not filed) do not become successful and correct mandate of Rule 27 should be highlighted properly before the Tribunal. In short, the DRs must note clearly that Rule 27 is just to support whatever the CIT(A) had decided and in no way findings recorded by him can be assailed so as to get further relief over and above what the appellant before the CIT(A) had already got.

15. Assessee's Appeal

15.1 Section 253(1) of the Income-tax Act, 1961 gives an assessee a right to appeal to the Tribunal if he is aggrieved by any of the orders specified. As per the present provisions, assessee has to file

following papers to the Registrar or the Assistant Registrar of the Tribunal:

- (i) Three copies of memorandum of Appeal in the prescribed Form No. 36;
- (ii) Two copies of appellate order, at least one of which just be a certified copy;
- (iii) Two copies of the relevant order of the Assessing officer;
- (iv) Challan evidencing the payment of prescribed fee;
- (v) Grounds of Appeal;
- (vi) Two copies of the Statement of Facts as filed before the first appellate authority with form No.35;
- (vii) Two copies of the Grounds of appeal before the first appellate authority.

15.2.1 In so far as filing of Cross Objection by the assessee is concerned, he is required to file:

- (a) Grounds of Cross Objections;
- (b) Form No.36A.

Since all other documents are already available with the Tribunal with the appeals already filed in which the CO is proposed to be filed, there is no specific requirement to file any other documents.

15.2.2 After perusal of CO papers by the office of the DR in-charge of the administration, the Clerk receiving the appeals should pass them to the concerned official (TA/Clerk) of the respective DR who is required to make representation before the Bench of the Tribunal. This official (TA/Clerk) places CO in the appropriate file of the appeal papers because on this memo of Appeal, appeal number allotted by the Tribunal is already given. This will be made available by the filing Clerk subsequently when the appeal comes up for hearing before the Tribunal.

16. Brief for the Departmental Representative

16.1 It is of utmost importance that the AO sends a 'Brief' to the Departmental Representative both on the departmental and assessee's appeals within 3 months of the filing of the appeal. After indicating the appeal number and the date of filing of appeal, the 'Brief' should include reference to the Case law, Orders & the facts favourable to the Department which have not been discussed or inadequately discussed by the first appellate authority. Brief with one copy each of AO's order and CIT(A) order and Memo of appeal with Grounds of appeals be sent to the DR through the CsIT. The original memorandum of appeal with Grounds of appeals should be sent to the DRs so that he may verify whether it is in the proper form. The Brief should point out the new contentions and the facts placed by the appellant.

16.2 The 'Brief' should also highlight the documents and such pieces of evidence which are on record and are in the custody of the Department but have not been fully discussed in the order of the first appellate authority. The photo copies of such documents should invariably be annexed to be 'Brief'. AO, who made the assessment particularly in complicated cases of Central Circles and in Search cases to invariably brief the DRs fully with facts. In search and seizure and other cases involving important issues, it is desirable that the 'Brief' is prepared in consultation with the officer who passed the assessment order. The 'Brief' should also highlight any important observations made by the superior officers while recommending or authorizing filing of appeals.

16.3 For effective representation by the department, it is very important for the Departmental Representative to know about the exact reasons as to why the appeal is preferred by the AO. Hence, in line with the Board's decision communicated vide Ins.08/2011 dated 11-08-2011 a complete copy of the Report scrutinizing the appellate order (commonly known as 'Scrutiny Report') is sent to the Departmental Representative along with the copy of the appeal memo meant for the DR's office. It should be ensured that the Scrutiny Report sent to the Departmental Representative is complete and *inter alia* contains comments of the AO, Range-Head and the

decision of the Commissioner authorizing filing of Appeal or Cross Objection. The DR should also communicate and seek information/clarifications from field formations wherever required.

16.4 At times, it is seen that many times during the course of assessment proceedings, the Range Heads either at their own or on the motion of the assessee or of the AO, issue directions u/s 144A on the basis of which AO makes additions/disallowances in the final computation. In such cases, for the effective representation, it is very important for the DR to know such directions as well as the context in which they were given. Accordingly, in the Brief, the letter of motion as well as the order giving directions u/s 144A should invariably be incorporated.

16.5 Likewise, it is also seen that at times during the disposal of the appeal, the CIT(A) calls for the Remand Reports from the AOs. In such cases, it will be very useful for the DR to know the 'Remand Order' of the CIT(A) as well as the 'Remand Report' so sent by the AO to him. The comments of the Range Head through whose office the Remand Reports are sent may also prove very useful. These important events also need to be incorporated in the Brief meant for the DR.

16.6 When the 'Brief' is received by the Receipt Clerk in the office of the Departmental Representative, the same will be passed on by him to the Filing Clerk after its perusal by the Departmental Representative. Filing Clerk should link this 'brief' with the original appeal papers already available with him and keep the same in safe custody so that the same is made available to the Departmental Representative subsequently when the appeal comes up for hearing before the Tribunal.

17. Dismissal of Departmental appeals by the Tribunal for low tax effect

17.1 At times it is not uncommon to come across many instances where the Tribunal dismisses the appeals filed by the Revenue because of low tax effect. Without going through any further, the Benches of the Tribunal are seen to be dismissing Revenue's appeal where the tax effect, as provided under the Instructions on monetary

limits issued from time to time. In this connection we may refer to Circular No. 21/2015 dt. 10.12.2015 issued vide CBDT's File No. 279/Misc.142/2007-ITJ(Pt.). Experience has been that DRs at times are not able to impress upon the Tribunal that despite the low tax effect, appeal by virtue of the above Instruction can still be filed in certain circumstances viz;

- (a) Where the constitutional validity of the provisions of an Act or Rule are under challenge; or
- (b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or *ultra vires*, or
- (c) Where Revenue audit objection in the case has been accepted by the Department.
- (d) Where the addition relates to undisclosed foreign assets/banks accounts.

17.2 DRs should take note of the above exceptions and well before the case is fixed up for hearing, they should ascertain from the AO/CIT the reason as to why appeal despite low tax effect has been filed in case the copy of the Scrutiny Report is not readily available with him.

17.3 In terms of Para III of Instruction No. 21/2015 dt. 10.12.2015 referred above, henceforth Appeals/SLPs shall not filed in cases where the tax effect does not exceed the monetary limits given hereunder:-

Sl.No.	Appeals in Income Tax matters	Monetary Limits (In Rs.)
1.	Before the Appellate Tribunal	10,00,000/-
2.	Before the High Courts	20,00,000/-
3.	Before the Supreme Court	25,00,000/-

This instruction is made applicable retrospectively to pending appeals and the appeals to be filed henceforth in the High Courts/Tribunals. Pending appeals below the specified tax limits in para above may be withdrawn/not pressed. Appeals before the Supreme

Court will be governed by the instructions on this subject, operative at the time when such appeal was filed.

18. Dismissal of appeal for non-prosecution

In all such appeals filed by the assessee before the ITAT, where the notice of hearing has been served but there is no appearance, Bench hearing the appeal tends to infer that probably the appellant is not interested in prosecuting the appeal as a result of which after pressing into service its Delhi Bench decision in CIT v. Multi Plan P. Ltd. {38 ITD 320 Del} the appeal so filed is dismissed. In this connection, efforts should be made by the DR to, at least where pure question of law is involved or where full facts are available on records, impress upon the Bench to decide the appeal even in absentia only on merits. Such an attempt on DR's part, if successful, will go a long way in lessening the pendency of appeal work load in the Tribunal because dismissal of appeal and then its subsequent restoration on appellant's showing some vague reasonable cause is of no use except increasing the ever mounting pendency in the Tribunal.

19. Filing of Paper Book

19.1 Preparation of paper book is governed by Rule 18 of the Appellant Tribunal Rules, 1963. As per this Rule :

- (a) Paper Book has to be filed at least a day before the date of hearing of the appeal alongwith proof of service of a copy of the same on the other side at least a week before.
- (b) Papers forming part of the paper book must be legible and each paper should be certified as a true copy by the party along with index and brief description of the relevancy of the document, with page numbers and the Authority before whom it was filed.
- (c) Additional evidence, if any, shall not be included in the paper book. Additional evidence needs to be filed by way of separate paper book accompanied by an application stating the reasons for filing of such additional evidence.

- (d) Additional or supplementary paper books cannot be filed except with the leave of the Bench.

19.2 Rule 18(6) clarifies that Paper Book/papers not conforming to Rule 18 are liable to be ignored. Rule 18(5) further provides that out of the documents placed in the paper books, only such documents, which are referred to and relied upon by the parties during the arguments shall alone be treated as part of the record of the Tribunal.

19.3 On receipt of this Paper Book from the Assessing Officer, it shall be put up before the DR concerned for his perusal and necessary action as deemed fit. After it is perused by the DR concerned, the Receipt Clerk should link this Paper Book with the appeal papers already available with him and send the file to the Bench Clerk concerned when the appeal comes up for hearing before the Tribunal.

19.4 Rule 18 of the Income Tax (Appellate Tribunal) Rules, 1963 prescribes the submission of Paper-book in triplicate within a month of filing of the appeals. Assessing Officers and the DRs should take note that the Paper book should, while containing the important documents to be relied during the course of arguments, must not contain copies of the assessment order, appellate order, grounds of appeal etc. which form part of the Memorandum of appeal already filed. Care should be taken to see that confidential documents or internal correspondence should not be included in the Paper book and these papers should be brought to the notice of the DR separately in the 'Brief'. In all these cases, the copies of the relevant entries on the order sheet particularly if they are signed by the assessee or his representative may be included. An index giving page wise content should also be added to the paper book. The Paper book should have running page numbers, page one to contain the index.

19.5 The Assessing Officer should prepare four copies of the Paper book-two copies for the Members of the Bench, and one copy each for the assessee and the DR. The DR also can file a Paper book bringing out such documents which have not been highlighted by the AO. Such a Paper book may also include relevant orders of the

Tribunals/High Courts etc. on which the DR intends to base his arguments.

19.6 As regards the Paper Book filed by the assessee, the DR should first verify that the contents do not include any new evidence which was not filed before the lower authorities. If necessary, he may forward the Paper Book to the Assessing Officer for his comments. Wherever it is found that the assessee's Paper Book contains new evidences the DR should bring it to the notice of the Tribunal and make submissions for its exclusion.

20. Raising of additional Ground in appeals

Rule 11 of ITAT Rules provides that the appellant, shall not except by leave of the Tribunal urge or be heard in support of any ground not set forth in the memorandum of appeal. However, the Tribunal is competent to allow the appellant to raise, at the hearing of the appeal, an additional ground even without a formal amendment of the memorandum of appeal. For raising an additional ground appellant has to make an application in writing containing the additional ground, its necessity and reasons as to why it could not be taken earlier. As mandated by the proviso of Rule 11—*Grounds which may be taken in appeal* – a copy of the application raising the additional ground is required to be provided to the respondent and respondent is heard, before its admission and disposal. The DR depending on the facts of the case, may decide to send the additional ground so raised by the assessee for the comments of the Assessing Officer especially when it hovers around the consideration of the facts.

21. Introduction of additional evidences before the Tribunal

21.1 Rule 29 places a total bar on the parties to the appeal from producing additional evidences, either oral or documentary, before the Tribunal. However, the Tribunal has been vested with inherent discretion to allow the production of the additional evidence where.

- (i) It (Tribunal) requires any document to be produced or any witness to be examined or any affidavit to be filed

to enable it to pass orders or for any other substantial cause;

- (ii) If the Income-tax authorities have decided the case without giving sufficient opportunity to the assessee to advance evidence either on points specified by them, or not specified by them.

21.2 The application for additional evidences should give reasons, justify the necessity, prove its genuineness, its non-availability earlier or that there was no negligence, malafide, laches or inaction on the part of the appellant for not producing it before the lower authorities. That apart, on being satisfied, the Tribunal has to record its reasons, and then admit and consider the same at the time of final hearing.

22. Service of Notice

Notices of the Tribunal are served through post on the appellant at the addresses given in the memo of appeal. At times when the notice of hearing sent to the assessee is returned un-served, the Bench directs for the service of the notice through the Revenue. Whenever, such directions are given, the AO should take care that the matter is given top priority and notice should be served at the earliest possible *inter alia* ensuring that it is served well before the date of hearing mentioned therein the notice. After service of the notice, acknowledgement should be sent to the DR office with a copy to the Registry immediately. DR as well as the AO must appreciate that without having served the notice on the assessee, the disposal of the appeal would get held up at the Tribunal.

23. Adjournment applications

Generally, adjournment applications received in advance are placed before the President/Vice President. The Registry records the date and time of receipt of such applications. Applications sought to be filed before the commencement of the Bench are accepted by the Bench Clerk concerned of the Tribunal and he places them before the Bench for consideration. *Qua* the adjournments moved by the DRs it should be noted that adjournment except in exceptional

circumstances, should be avoided because due to this Revenue alone is the biggest loser.

24. Substitution of Legal heirs in case of the death

24.1 During the pendency of an appeal/application, even if the assessee, dies, or is adjudicated insolvent or in case the company goes into liquidation, the appeal/application does not abate on account of Rule 26 – *Continuation of proceedings after the death or insolvency of a party to appeal* – of Appellate Tribunal Rules, 1963. In such cases, the legal representative/heir or Liquidator/ Receiver; as the case may be, has to apply to the Tribunal for continuing the appeal/application and for bringing him on record. One of the legal heirs has to make an application to the Registrar, in duplicate, along with two copies of sworn affidavit and death certificate. It is advisable to file an application along with copies of affidavit as soon as they come to know about the death, liquidation etc. so that, unnecessary adjournment, at the time of hearing may be avoided.

24.2 DRs should note that once the death is noticed the appeal cannot continue unless the legal heirs are brought on record. On receipt of application for substitution and affidavit a copy of the same is endorsed to the AO concerned for his objection, if any, by a letter. Thus, it is important to bring legal heirs on records so as to ensure prompt disposal of the appeal. The DR should note clearly that proviso to Rule 26 requires filing of revised form No.36 giving revised name of the party & duly verified as per the requirements of Rule 47.

25. Transfer of the records or of the AO

25.1 It is often noticed that the Assessing Officer who passed the assessment order may not be the Assessing Officer who filed the appeal. Likewise, it also happens that subsequent to the filing of the appeal the jurisdiction over the case is transferred to another officer. In all these cases, it is of the utmost importance that as and when the assessment records are transferred to another officer, intimation to this effect is sent by the officer transferring the records

to the Registrar of the Tribunal and also to the DR. Such intimation must indicate the Appeal number and the date of filing of the appeal. This will enable the DR in requisitioning the records from the Officer presently holding the jurisdiction. Needless to emphasise that on receipt of such intimation, the Bench Clerk concerned will place it in the file.

25.2 In the above context, AOs to take note that the Board letter F.No. 56/134/64-IT(9) dated 15.03.1967 has emphasized that when papers are received from the Tribunal, High Court, Supreme Court and the AO finds the case to be no longer with him, he (AO) should ascertain present AO and transfer them to him under intimation to the DR, ITAT, Standing Counsel.

26. Daily Fixation Register

26.1 The Bench Clerk (Bench Staff) will maintain a Daily Fixation Register. The proforma for the Register is given below:

Bench _____

Date _____

Sr. No.	Appeal/ CO No.	Names of the parties to the dispute	A. Y. involved	Whether Asstt Records/ other records received	Name of the DR whom appeal marked	Whether Hearing in the case is over/if adjourned, date to which adjourned	Remarks	Name of the AR of the Assessee
1	2	3	4	5	6	7	8	9

26.2 On receipt of notice of hearing from the Tribunal, the Bench Clerk should fill, in the relevant columns in this Register, the date on which Appeal has been fixed for hearing. When the cause list is received from the Tribunal, the Bench Clerk will check up the entries made by him in the Daily Fixation Register (on the basis of notices of hearing) and make corrections in this Register, if required. The name of the DR who has to argue the case before the Tribunal will be mentioned in Col. No. 6. On receipt of the file from the DR, he will fill in Col. No. 7. In cases where the appeals are adjourned, he will fill make necessary entry here in this Column; simultaneously making entries in this register against the date to which that particular appeal has been adjourned.

26.3 Especially when the adjournment is sought, the Bench on accepting the request posts the case to a future date which is normally announced in the Court. At times, it may happen that on the date to which the case is adjourned the fixation is already heavy & hence to ensure that adjournment remains meaningful the convenience of the DR as well as of the AR is also ascertained by the Bench. To enable the DR also to take a date on which the matter with the possibility of conclusion can be taken up for hearing, it is of importance that the DRs know the fixation on the date to which the matter is proposed to be adjourned by the Tribunal. To enable the DRs to take a convenient date, it is important that the DRs carry with them the Fixation Diary of all future dates. The Fixation Diary of future dates on which the Tribunal has already fixed the cases for hearing, can be prepared in the following format:

Date:		Day of the Week				
Sr. No.	Name of the Case/ Assessee	A.Y. involved	Type of the case e.g. search case etc.	AR of the Assessee	Adjourned to	Remarks
1	2	3	4	5	6	7

26.4 Though most of the columns of the above chart are self explanatory yet it is relevant to note that in Column No. 4 'type of the case', like whether a Transfer Pricing or International Taxation appeal or whether it is a search case or a survey case or a normal appeal, would be required to be mentioned. Generally, there are many cases like the cases involving searches or Transfer pricing adjustments or International taxation issues which are normally heavy and consume lot of time of the Tribunal and hence filling this column would enable the DR to ascertain the general nature of cases fixed on a particular date as a result of which the DR after consulting this diary in the Court Room itself would be able to tell the Bench the date on which heavy and time consuming matter can really be taken up for hearing. Likewise, in Column No. 8 'Remarks' DR would have to record in short the directions/observations made by the Bench etc. When the matter is adjourned to a future date, the Bench Clerk will make suitable entries along with 'remarks' entries while carrying this entry to a date to which the matter is adjourned.

27. Procedure on the conclusion of hearing

27.1 After the case is heard finally, a date is fixed by the Bench to make pronouncement of the order proposed to be passed. In a case where an appeal has been finally heard by the Tribunal, the Bench Clerk should retain the files with him until the receipt of the order. This order shall be put up on the file by the Bench Clerk for the perusal of the DR who had argued the case.

27.2 In case any decision to file Miscellaneous Application is taken either by the DR or by the Assessing Officer, the file will continue to be retained by the Bench Clerk for linking it with miscellaneous application filed. In other cases, the files should be transferred to the Records Room.

28. Post Hearing follow up

28.1 DR who had represented the case which was finally heard should keep track of the order and as soon as it is passed, he must carefully examine it and see whether all the important arguments

made by him and all the material relied by him have been taken note of in the Order. If the DR finds the order to be not acceptable because of non-consideration of important arguments or evidences, he should write suitably to the field office suggesting the grounds as to why order needs to be challenged further in the High Court and also as to how substantial question of law arises. Likewise, if he feels the case to be such where MA needs to be filed he should suggest so in his communication addressed to the CIT/AO/Range-Head concerned.

28.2 In important cases like the search & seizure cases etc. it will be of tremendous use for the field formations to involve the DR arguing the case in filing of appeal in case the Commissioner finds the order of the Tribunal to be prima facie fit for being challenged in the High Court.

29. Deployment of DRs in Multi Bench Stations

In stations having more than one bench, it is desirable that the same set of DRs represent before a particular Bench. This will ensure continuity in representation. Reshuffling of the DRs from one Bench to another should ordinarily be avoided. However, in case of shortage of DRs because of leave etc. subject to Board instructions, the CIT(DR) looking after the administration can temporarily shuffle DRs from one bench to another. In case the DR is on long leave or is transferred out to a different station leaving behind a case which is 'part-heard', the Bench may be moved for making the case 'de-part-heard' requesting fresh hearing. Normally, the same DR who presented the appeal should also represent the consequential Miscellaneous application for rectification.

30. Miscellaneous Application Register

To keep track, all the Miscellaneous applications filed, should be entered in a Register as per the proforma prescribed. The proforma meant for this purpose is given in Part-B of Chapter VIII of this Manual. Meticulous maintenance of this proforma will enable the DR to take up the matter with the Registry for fixation of the Miscellaneous applications especially filed by the Department.

31. Applications for stay of recovery of demand

31.1 Many a times, the assessee file applications seeking stay of demand or of assessment proceedings before the Tribunal. Normally, such stay applications are filed by the assessee when their applications for stay of demand are rejected by the Assessing Officer. It is seen that, in most of the cases, the assessee do not exhaust the remedies available from the Departmental hierarchy. They approach the Tribunal without seeking stay or grant of instalments from the Commissioner. The DR should, therefore, invariably consult the Commissioner in all matters relating to stay applications. In case sufficient time is not available, the DR should personally talk to the Commissioner and obtain oral instructions.

31.2 Board, vide Instruction No. 12 dated 18.10.2004, has desired that in respect of stay petitions DR should file written submissions opposing the grant of stay. Further, if at all it is to be granted, the DR should ask the Tribunal to give conditional and bank guarantee backed stay. DR should note violations of Rule 35A and ask the Tribunal in writing accordingly under sub rule (3). Board instructions provide that wherever stay is granted CCIT/CIT etc. should make efforts to get it vacated from the High Court.

32. Bunching or consolidation of appeals

32.1 Sometimes, it may happen that a number of appeals in which the same issue is involved may be pending before the Tribunal. There will be considerable saving in time and efforts if such appeals are bunched and heard together. The judicial section in the Commissioner's office in collaboration with the Assessing Officers should identify such appeals and issue instructions to the DRs for moving the Tribunal for fixing them up together. The basis for bunching of appeals could be;

- (i) Same questions of law involved.
- (ii) Group assessments of different family members or sister concerns.
- (iii) Involvement of large number of assessee showing credits

from the same persons (Hawala operators/Entry Operators).

- (iv) All cases connected with a particular search and seizure operation.

32.2 Especially in search cases it is seen that there are at times multiple assessees involved and in all their appeals either common issues are involved or the facts involved are common. In such cases, to save time and to ensure consistency DRs and the field formations should identify the appeals pertaining to the same group and involving common facts and common issues. It is desirable that these need to be consolidated with one particular Bench which will *inter alia* ensure common approach in arguments and will in turn result in faster disposal of appeals.

32.3 At Multi Bench stations, the appeals of a particular Group get scattered over different Benches. To enable the DR to have knowledge of all the Group cases, it is expected of the Investigation Wing and the Assessing Officers to furnish a list of cases of the same Group and in that context, after the search assessments are over there should be no objection in sharing the contents of the Appraisal Reports with the Departmental Representative. After the appeal is decided by the first appellate authority, the Commissioner concerned while recommending appeal should send a copy of the Appraisal Report to the CIT (DR) in-charge of the administration under a 'Confidential Cover' to be kept in personal custody to make use of it at the opportune moment for consolidation of different appeals of the group scattered across different benches of the Tribunal.

33. Representation before the Single Member Bench

Small appeals where income computed by the Assessing Officer does not exceed 15 lakh can be taken up by a single Member Bench of the Tribunal. Single Member Bench is distinct from Division Bench and a separate Bench clerk should be made in-charge of the maintenance of these files. Normally, newly posted DRs especially those who had never been posted in the Tribunal earlier should be posted for representation before the Single Member.

The Bench Clerk will maintain register in the same manner as is prescribed for any Division Bench.

34. Representation before the Special Bench

34.1 In an appeal involving important controversial and complex issues, the President of the Tribunal sets up a Special Bench of three or more members. Somehow, the practice followed by all the Benches is that wherever there is a decision of the Special Bench they will follow the same. This practice has so crystallized that even where there is a High Court decision in favour of the Department, the Benches of the Tribunal, situated outside the jurisdiction of that High Court, normally follow the Special Bench decision. In all such cases the DR should take a stand that the decision of the High Court which is in favour of the Department should be followed especially because the Special Bench decision cannot go beyond the facts of the case for the disposal of which it was constituted. Perusal of the words “*for the disposal of any particular case*” postulates that the Special Bench can be constituted only for the disposal of a particular case. This also means that a decision of the Special Bench can be binding only on the Bench which had referred the matter for Special bench and that decision has to be always taken as in *personam*. Use of words ‘*for the disposal of any particular case*’ make it amply clear that the decision of the Special Bench can be used only in reference to that particular case. Applying or interpreting this decision to be in reference to cases of non-parties before the Tribunal (in Special Bench) will be against the limitation (*being only for the disposal of any particular case*) imposed by the statute.

34.2 Further, considering the fact that the Special Bench is constituted for the purpose of disposal of a particular case, by no means it can pass orders whereby non-parties are made to comply with its orders especially when such type of sweeping jurisdiction (extending beyond its territorial jurisdiction) is not conferred even on the High Courts. Clearly, by applying the Special Bench decisions in other cases (non-parties before the Special Bench) would not only be travelling beyond the mandate given to it by the President

when he refers the issue to it but would also go against the bare statutory mandate available under the law which is that its orders have to be confined to the parties before it and not beyond. If necessary the DR should apply to the President of the Tribunal for constitution of a larger Special Bench.

34.3 The order of the President setting up the Special bench also spells out the issue involved and this order is publicly displayed on the notice boards outside the Court as well in Tribunal's official Website. Thus, the DRs all over the country are well aware of the issues which are likely to come up for hearing before each Special Bench. It is quite likely that the appeals involving the same issue are also pending for disposal or have been disposed of in places other than the station in which the special bench is constituted. It is also likely that other DRs have already studied the issue. In such a case, the DRs concerned from out station should send their comments on the specific issue to the CIT (DR-Admn.) of the station where it is coming up for hearing before the Special Bench. The CIT (DR-Admn.) in consultation with the Chief Commissioner shall suggest well in advance the team of DRs responsible for representation before the Special bench. It will be desirable if that team of the DRs is not allotted any representation work for a week before the case comes up for hearing. This will give them adequate time to prepare the appeal and, if necessary, consult other senior colleagues on the matter. If any DR stationed elsewhere considers that his assistance will be valuable, he should prepare a brief set of arguments and forward the same to DR concerned. He may, after obtaining the approval of his Controlling Officer also come on tour and assist the DR in-charge of the representation.

35. Representation before the Third Member:

Whenever there is difference of opinion among the two members of the Division Bench, the appeal is referred before the Third Member to be appointed by the President of the Tribunal. Ordinarily, the same DR who appeared before the Division Bench should also handle the appeal before the 3rd Member.

36. Register for Third Member/Special Bench Appeals

Various Registers required to be maintained in the DR office *qua* the matters concerning the appeals taken up by Third Member Bench, Special Bench are mentioned in Part-F of Chapter VIII of this Manual.

37. Representation against orders passed u/s 263:

37.1 Since, the AO is the appointee of the Revenue *qua* the Revenue's interests, there is presumption of correctness of his decision on the acceptance of any claim made in the Return of Income. Because of this attached presumption of correctness, the law does not provide for any appeal by the Revenue against the orders of the AO and they are taken to be final. When income tax assessment proceedings are not adversarial in nature it would have been dangerous for the State to always treat the AO's order as always conclusive and this would have made the AO *imperium in imperio*.

37.2 To take care of the possible errors in AO's decision making process the Law has empowered the CIT to revise such orders of the AO which are found to be erroneous and prejudicial to the interests of Revenue. To demonstrate that in the facts and circumstances of the case, AO has failed to discharge duties expected of a *quasi* judicial authority-especially when he as AO not only is a judge but also an investigator-making his orders to be not acceptable to Revenue, DRs should call for the assessments records to understand as to what sort of investigations or enquiries or verifications were done by him and what was the reply of the assessee thereon which ultimately went into the revision of the order by the CIT. In these cases, it will be very useful for the Revenue to file Paper Book comprising therein Order sheet extracts, the Questionnaires, Letters etc. issued by the AO and the replies filed by the assessee and with the help of these DR would be in a position to impress upon the Bench that in the facts and circumstances there was failure on AO's part to discharge his *quasi* juridical role resulting in errors causing prejudice to Revenue's interest.

38. Appeals against orders passed u/s 80G/12A

In these appeals filed by the Assesseees it will be very useful for the Revenue to file Paper Book containing therein the copies of the Trust/Society Deeds, Application filed seeking registration, Notices issued by the Commissioner, replies filed by the applicants and Order Sheet extracts as these will be very handy for effective representation before the Tribunal and to adjudge the sustainability of the rejection order passed.

39. Requisitioning Departmental Records

39.1 DR, in charge of the respective Benches, should ensure;

- (i) that the Requisition slips are sent within 3 days of the receipt of the notice of fixation received from the Tribunal.
- (ii) that he processes his own files well in advance and sees whether the calling for records is really necessary. In many small appeals or such appeals where the issues are clearly covered by a decision of the Special Bench or of a High Court which the Tribunal has been consistently following, there may not be any need to call for records except where the DR apprehends material difference in the fact situation of the case which he is about to represent in.

39.2 Assessment records must always be called for in appeals involving large revenue especially where the issues are factual in nature. Likewise, major appeals arising from Central Circles should be prepared by the DR with reference to the assessment records.

40. Requisitioning of Judicial files

At times, on the face of the reading of the Grounds of appeal etc., DR is not able to appreciate as to why the appeal is filed especially where the order the CIT(A) appears to be very reasonable. In such a situation, instead of just viewing the appeal to be infructuous/unwarranted one DR should invariably refer the judicial records where precise reasons for filing appeals are always

mentioned. Hence, in such cases apart from assessment records other records (like the judicial file of the Commissioner and the file of the first Appellate authority), are necessary for proper representation. These files are less bulky and are also not required for use and/or not subject to movement after they have been disposed of by the respective authorities. These folders should be called for by the DR not when the appeal is fixed for hearing, but should be requisitioned as a matter of routine when the appeal file is started by the Bench clerk. These files should be kept in the appeal folder. This procedure will go a long way in making effective representation.

41. Requisition Cell

On receipt of the Notice of hearing from the Tribunal (which is normally received at least two weeks in advance), the Bench Clerk should prepare Requisition slip in ITNS -76 indicating there the date by which the records are to be sent to the DR office. The requisition slips will be prepared by the Bench clerk in triplicate. The Bench clerk will often prepare a list of the cases in the following proforma, in triplicate, and along with the Requisition slips, send it to the Records Section.

Date:

Name of the Bench

Sr. No.	Name of the Assessee	A.Y. involved	Date of hearing fixed by ITAT	Due Date of Records	Date of receipt of records in DR Office	Remarks
1	2	3	4	5	6	7

42. Records Movement Register in DR's Office

42.1 On receipt of the records, the Bench Staff shall make entries in the Movement of Files Register maintained by him with the columns given in Part-D of Chapter VIII of this Manual. The records shall then be put up by the Bench staff to the DR who has to represent the case. When hearing of the appeal is over, the Bench Clerk will return the assessment records to the AO.

42.2 In mofussil charges, the Bench clerk will send the requisition slips to the concerned AO. The AO will directly forward the assessment records to the office of the DR alongwith the copy of the requisition slips, as discussed in detail above.

42.3 Overall responsibility of sending the records to the DR's office shall rest with the AO. The requisition slips should be received by the AO himself in order to exercise better control over his staff to send the files to the DR office.

42.4 Where the case is transferred to another officer and the DR's office not being aware of the transfer, issues the requisition slips to the officer having jurisdiction earlier, the officer concerned must not refuse to receive the requisition slip or send it back to the DR but he should forward the requisition slip to the officer to whom the case records have been transferred. He should also inform the DR about the change of the assessing officer. This will facilitate timely procurement of the records by the DR office.

43. Return of case records

43.1 On completion of hearing of appeal by the Tribunal, the DR will make a note to that effect in the file and return the same (along with the assessment and other records) to the Bench Clerk. The Bench Clerk will retain the appeal file with him and return the assessment records etc. to the authorities concerned as per the procedure laid down after making entries in the File Movement Register.

43.2 In a case where an appeal is partly heard by the Tribunal, the DR may keep the appeal file and other records in his possession until the completion of the proceedings.

43.3 Where the hearing of appeal is adjourned by the Tribunal, the DR will return the appeal file alongwith the assessment records etc. to the Bench Clerk. An entry to this effect will be made by the DR in the file. In all cases, the DR will exercise his discretion about retaining the custody of sensitive records and documents in his personal possession. The Bench Clerk will put up the file along with the assessment records etc. to the DR when the appeal comes up for hearing next before the Tribunal.

44. Confidential Records

44.1 On receipt thereof, the confidential records should be kept in the personal custody of the DR concerned. A separate Movement Register for confidential records will be maintained by the Bench Clerk in the same proforma as mentioned in Part-D of Chapter VIII of this Manual. After hearing the appeal, the confidential records will be returned separately to the AO after making necessary entries in the Movement Register. Care should be taken to see that confidential records are not produced before the Tribunal.

44.2 CIT(DR) in-charge of the administration should periodically, carry out a review of the Register mentioned above and ensure that the assessment records have been returned to the AO as soon as the appeal is fully and finally heard and the order thereafter is passed by the Tribunal.

45. Filing of Written submissions by the DR

At times, either on own motion or on the direction of the Bench, the DRs file Written Submissions or a Written Synopsis in the appeals heard by the Tribunal. These submissions generally *inter alia* cover many arguments/aspects/case laws which are either not highlighted in the assessment order or in the order of the CIT(A) or they are not addressed to in the manner in which the submissions of the DR deal them. Possibility of their being found relevant and useful in future cannot be ruled out. If these submissions are not shared with the field formations the AO, CIT etc. remain oblivious of these important arguments which at time are not even found addressed by the Tribunal which in itself is enough to assail the

order of the Tribunal. To ensure that maximum possible benefit is derived by the field formations, the DRs filing the Written submissions should invariably simultaneously send a copy of the submissions so filed with the Bench to the Assessing Officer and the Commissioner concerned. This will ensure their being used for the purpose of filing appeal etc.

46. DR's guiding Standing Counsel

46.1 Many DRs send their own comments on the acceptability or otherwise of Tribunal's order passed. While analyzing the decisions of the Tribunal in the cases represented by them, these DRs give their own views and reasoning regarding specific reasons why the order is not acceptable. These reports of the DRs can play an important role in facilitating effective arguments which the Standing Counsels may take in the High Court. It is desirable if the field offices share these reports of the DRs with Standing Counsels.

46.2 Apart from the reports sent by the DRs at their own, the Commissioner concerned & his team should, at least in cases where the favourable order of the CIT(A) has been set aside or in other important cases of wide ramifications or palpably unacceptable orders of the Tribunal, also rope in the DR representing that case and their inputs so obtained may *inter alia* be used not only for the purpose of filing appeal but even apprising the Standing Counsel who is assigned the appeal to argue in the High Court.

47. Involving DR in filing of appeals in the High Court

47.1 The Departmental Representatives handle and process appeals before the Tribunal in some very important matters involving huge amount of revenue or substantive issues of wide import or very important and sensitive taxpayers/assesseees. In this regard, it is to be appreciated that DR has a complete overview on the facts of the case including the order of the AO, CIT(A) or DRP which also include the details of the arguments – counter arguments, existing jurisprudence on related issues. The DR is aware about all these matters as on day to day basis these arguments are handled by him.

It is, therefore, imperative that the DR should be involved if the appeals by the department are taken to the High Court.

47.2 DR's involvement is valuable as the detailed factual matrix and related questions of law are known to the DR and due to in-depth knowledge of the issue concerned, he can assist in processing appeals before the High Court so as to make departmental position more effective. In this regard, it will be very important if the Written submissions of the DR and the case laws summary prepared is considered while processing the appeals.

48. Disputes Resolution Panel

Disputes Resolution Panel (*for short 'DRP'*) is a new process to minimize litigation and also to ensure better appraisal of facts relating to taxation of the international transactions of Indian and foreign business entities. DRP is not an appellate mechanism. DRP comprises of a panel of 3 Commissioners to examine the objections of the assesseees with regard to the proposed addition in the draft order of the Assessing Officer. The DRP, on being approached issues directions u/s 144C that are binding on the Assessing Officer. However post 01-07-2012 the directions of the DRP can be challenged before the Tribunal by both the Assessee as well as the Commissioner/Assessing Officer.

— • — • —

Chapter V

IMPORTANCE OF THE DECISIONS OF THE TRIBUNAL

Generally speaking, main sources of the law are considered to be

- (i) Law as made by the Legislature;
- (ii) Precedent;
- (iii) Custom, and
- (iv) Conventional law.

After the Legislature made law, 'precedent' is the most important source of law. In the Indian context, Legislation being the exclusive domain of the Legislature, the Courts, including the Supreme Court are left with the job of interpreting and applying the law so made while deciding the legal rights of the persons concerned. Human life is very complex and it is virtually impossible to frame a law which can be said to be answering all the possible questions or eventualities which may crop up later in future and hence it is the responsibility of the Courts to, in case of ambiguities, interpret the law and answer the questions which crop up afterwards, but are as such not directly and plainly answered by the laws made by the Legislature.

2. For the smooth working of any judicial system consistency is the most important requirement. Every time it is neither feasible nor possible to go to the Legislature seeking its intervention *qua* the ambiguities, deficiencies in the law or about the doubts that crop up in the process of application or interpretation of the laws. Accordingly, in that context 'precedents' play a very important role. 'Precedent' as a source of law, in common parlance, is also known as judge made law. Till the law is suitably amended

'precedents' play a guiding role in resolving the legal disputes. As per the scheme as declared under Article 141 of the Constitution, the law declared by the Supreme Court is binding throughout the country and it becomes the duty of everybody including the High Courts to obey the order and not try to avoid it. Likewise, the judgments of the High Courts are binding on all the lower courts or the subordinate authorities falling within its jurisdiction. The Judgments of the Supreme Court or of the High Courts and also of the other subordinate Courts and the Tribunals bring clarity in law and ensures consistency in their application. Unlike the Supreme Court though the Income Tax Appellate Tribunal is not a court of record yet in the context of bringing stability and clarity to the tax laws its orders also play, a very important role and are required to be followed by the lower authorities working within its jurisdiction.

3. Sub section (4) of section 254 of the Income Tax Act provides that save as provided u/s 250 or 260A of the Act the orders passed by the Tribunal on appeal shall be final. Since, reference or appeal to the High Court is only on questions of law the order of the Tribunal is final on facts. Supremacy of the Tribunal on the issue of finality of Tribunal's decisions has been reiterated by the Supreme Court in *Karnani Property Ltd vs West Bengal* [(1972) 82 ITR 547 SC], holding that it is for the Tribunal to find facts and it is for the High Court and the Supreme Court to lay down the law applicable to the facts founds and that neither the High Court nor the Supreme Court has the jurisdiction to go behind or to question the statements of fact made by the Tribunal.

4. As indicated earlier decisions of the Tribunal also play an important role in administration of justice. Since the process of obtaining a judgment from the High Court and the Supreme Court even on questions of law is comparatively long and time taking, in the *inter-regnum* the decisions of the Tribunal even on the legal interpretation play a vital role in bringing clarity and ensuring consistency about the legal ambiguities. Especially on the questions of facts role (precedential value) of the decisions of the Tribunal is all the more stronger and they guide the other Benches of the Tribunal as well as the other authorities functioning within its

jurisdiction. To bring stability on the issues involving facts as well as of law the decisions of the Tribunal act as a beacon for the *quasi* judicial authorities working within its jurisdiction. These decisions, besides reducing the scope for subjectivity and controlling the unbridled exercise of subjectivity and discretion of lower authorities provide answer as to what has to be done by an authority in a given case whose facts are found to be in *pari materia* with the facts of the case which had already been adjudicated upon by the Tribunal in the past.

5. In disposing quasi judicial issues Revenue officers are bound by the decisions of the appellate authorities and the orders of the Tribunal are binding upon all the Revenue Officers who function under the jurisdiction of the Tribunal¹. Though the Tribunal is an all India body and deals with the Income Tax Act, 1961, an Act applicable in the entire country logically its decisions irrespective of the location of the Bench of the Tribunal should theoretically be binding throughout the country but the Tribunal has itself held² that outside its sphere the decisions of the Tribunal just have persuasive value.

6. Since, Tribunal is not a Court of record, it is very important for the Tribunal also to discuss, may be in brief, all the relevant facts which have gone into arriving at a decision, on the facts of that case. Similarly, for the subordinate authorities i.e. Assessing Officers and Commissioners of Income Tax (Appeals) etc. it is very important to go through the factual matrices of the case decided by the Tribunal involving the identically similar points of law or of facts which is proposed to be applied in the case in hand before the lower authorities. Though now-a-days the Tribunal's decisions also get reported in Reports and Journals like TTJ, ITD, DTR etc. and hence one can argue that for all practical purposes the Tribunal too can be said to have become courts of records. However, in this context, it needs to be appreciated that firstly just because some decision of the Tribunal has also been reported in the Journal/

¹ *UoI and Ors. vs Kamalakshi Finance Corporation Limited* {AIR 1992 SC 711}

² *Saipem SPA v. DCIT* {(2003)86 ITD 572 Delhi}

Report, that by itself cannot make the Tribunal a court of records when law does not provide so and secondly most of the decisions so reported are found to be have duly been edited and printed in truncated forms and hence it would be of paramount importance on the part of the Tribunal/other lower authority itself to discuss, may be in short, the facts of that decision which is being relied upon so as to compare them with the facts of the case being now adjudicated upon and when the case is found to be similar in facts and law then only such decision of the Tribunal can be applied as a precedent.

7. To sum up, to correctly understand and apply the provisions of the Income Tax Act, 1961 it is very important for all the Revenue Officers {Assessing Officers, Commissioners (Appeals) etc.} to be abreast at least of all the judgments of the Supreme Court, High Courts (especially of the jurisdiction) and then also of the decisions of the Tribunal, especially of jurisdictional Bench or of the Special Bench. These all taken together will help the officers to understand legal and factual nuances better and apply the provisions of the Income Tax Act correctly.

— • — • —

Chapter VI

MISCELLANEOUS ISSUES CONCERNING DR OFFICE

1. Library:

1.1 DR is akin to a practicing/arguing Counsel. He needs latest and up to date books/ commentaries on Direct tax Laws and other laws. Good reference law books and dictionaries are also required. It is, therefore, advisable that while allocating the budget for books, the Chief Commissioner consults the CIT (DR-Admn.) and specially allocates funds for the same. The CIT (DR-Admn.) after consulting his colleagues can procure such books, material and e-journals.

1.2 The Library should be maintained by a clerk qualified in Library science. The Librarian will be responsible for the safe custody of books. The Librarian shall maintain a stock register for the books. The format of the stock register shall be the same as has been adopted by other Libraries in the department. Similarly, on the same lines as other central Libraries, a complete record of the issue and return of the books shall be maintained. The library will be housed in a separate room and the books will be kept in glass-panelled shelves for ready access.

1.3 Now-a-days most of the journals (ITR, CTR) etc.) are available in soft form—on line or in CD form etc—as a result of which at times it may be felt that there is no need to indent these journals in document forms. In this connection, it should be realized that these reports in document form have their own utility and cannot be summarily and abruptly discontinued just because now they are available on-line etc. In every Bench at least one copy of all these popular reports should be obtained in document form irrespective of whether all the DRs have been allowed these journals in e-form.

1.4 Supreme Court judgments bring ultimate stability in the context of legal issues. Though most of the Supreme Court judgments which are directly connected with the Income Tax Law are reported in all the popular tax journals but non-income tax decisions are not reported in these Income-tax journals though they also play their own role in better understanding of the legal nuances hovering around the Income Tax Act and other direct tax laws. It is advisable that the Library must subscribe to at least one such journal (like SSC, SCR, JT, AIR etc) which report all Supreme Court judgments on all laws including the Income tax judgments. Board vide its Instruction No. 20/20/67-ITJ(4)/ 11-01-1968 has taken a decision that Supreme court journals need to be subscribed for DRs & CIT office.

2. Maintenance of the Cause Lists:

2.1 Each Bench Clerk receives a weekly Cause list from the Registry of the Tribunal. These Cause Lists shall be preserved by him in a separate file properly arranged i.e. Cause Lists for the preceding week being followed by Cause List for the succeeding week. There shall be a separate file of Cause Lists, Bench-wise, for each financial year. The file containing the Cause Lists shall be weeded out after a period of one year.

3. Liaison between DRs and the Judicial section:

3.1 With a view to obtaining a consistent and uniform approach to filing of appeals in the High Courts it is necessary that the Chief Commissioners/DsG hold a meeting once in a month with the DRs and the Commissioners so that a uniform decision can be taken on important questions of law arising from the orders of the Tribunal received in the preceding month. This will enable the Commissioners and the Chief Commissioners in taking a consistent stand before the High Courts. The DR who argued the appeal, will be able to assist the Chief Commissioner in the proper formulation of the questions. The DR can play an important role in identifying provisions and instructions which have generated greater litigation and, thus help the Department in taking suitable action with a view to reducing litigation.

3.2 The monthly conferences of the Chief Commissioner should also discuss the nature and intent of the second appeals authorized in the light of the Tribunal decisions on points involving facts so that indefensible orders and infructuous appeals by the Department could be identified and further litigation avoided.

4. Engaging Special Counsel:

At times the issue before the Tribunal can be very complex and may have wide spread repercussions involving large revenues. If the DR, after consulting his colleagues feels that the interest of the Department will be better served if a Senior Counsel is engaged, he should take up the matter in advance with the Chief Commissioner and also with the Commissioner concerned so that the Senior or Special Counsel is engaged well before the date of hearing. The process of engaging Special Counsel is time consuming because the approval of the Finance Minister and the Law Minister has to be taken. It may, therefore, be advisable instead to avail the services of Senior Standing Counsel/Standing Counsel in such cases. The Standing Counsel can be engaged to represent cases before the Tribunal on the terms and conditions prescribed in the Board's instructions.

5. Disposal of Reference Applications:

5.1 Prior to introduction w.e.f. 01-10-1998 of section 260A, the jurisdiction of the High Court used to be fundamentally advisory to be invoked by making applications under section 256(1) and u/s 256(2) of the Act. Sizeable number of references or statements of questions of law drawn to the High Court u/s 256(1) or u/s 256(2) are still pending for disposal at the High Courts. After answering the references or statements drawn by the Tribunal u/s 256(1) or made u/s 256(2) at the instance of the High Court pursuant to application made by the applicants, the orders of the High Court do reach the Tribunal to finally decide the appeals in conformity with the Statement of case answered by it (High Court). Likewise, at times it happens that the Statement so drawn by the Tribunal is found to be defective and the matter is remitted back to the Tribunal to re-draw the statement.

5.2 Since, all these records are very old, for quick retrieval of them CIT(DR) in-charge of the administration must centralize all these records at one single place under the custody of one particular staff member so that, whenever these matters are posted for hearing by the Tribunal for passing final orders as a consequence of the answer of the High Court to the Statement drawn, they are retrieved immediately. Since, in all the High Courts pendency of appeals/ references has been digitized, the DR office can very easily obtain the list of pending references and can, well in advance, keep the records ready.

6. Leave Vacancies:

6.1 Unlike the High Courts, the Tribunal Benches do not break for vacation. Various Benches of the Tribunal function round the year. On the other hand, the number of sanctioned posts of the DRs is limited and, many a time it is experienced that whenever one or two DRs proceed on leave, there are not enough DRs to adequately represent the appeals before the Tribunal. It is, therefore, necessary that every Chief Commissioner supervising the functioning of the Tribunal keeps a panel of adequate number of officers in the rank of Joint/Additional CsIT and Commissioners which could be drawn upon to represent the department before the Tribunal. While drawing the panel of the above officers, it is of importance that the officers so empanelled should *inter alia* include officers who have had an exposure to the administration of the Act in regard to Transfer Pricing adjustments and International Taxation. Wherever required Board's approval be taken in principle for drawing such panel. The order drawing panel of the above officers shall be communicated to the CIT(DR) in-charge of the administration in Tribunal who could call upon them whenever required.

6.2 The CIT(DR) in-charge of the administration in the Tribunal will ensure proper deployment of these officers so that there is proper, effective and meaningful representation before the Tribunal. The officers so empanelled will ensure that they will not seek adjournments of cases which they are directed to represent except in rarest of rare cases that too after informing the CIT(DR-Admn.).

Since, the empanelled officers have already prepared these cases, to ensure maximum utilization of their efforts already put in, the CIT(DR-Admn.) will see that, at least if the empanelled officers happen to be posted at the station where the Tribunal's Bench is located, these very officers who had been empanelled but took adjournments, are informed well in time before the next day of hearing and they be asked to handle them before the Tribunal.

7. Training:

7.1 An officer who has been working in the field is generally not very familiar with the working of the Tribunal. He may not also have any experience handling litigations in the Courts. It is necessary that an officer posted as DR for the first time should be helped by his more experienced colleagues. In the first two weeks he may be posted as an Observer and to assist the more experienced DRs. Once he has absorbed the practical aspects of the court work, he should be initially assigned simpler cases for representation. This will build up his confidence and also enable him to get over the initial diffidence. In this context, monthly conference of the Chief Commissioner of the Region as discussed above (refer para discussing *Liason between DRs and the Judicial section*) will be very useful. In the Seminar other senior officers who have earlier worked as DRs and also the Standing Counsels of the Department can be invited.

7.1.2. Especially at multi bench stations, the DR (Admn.) should organize regular fortnightly meetings of all the Departmental Representatives for deliberating various issues which may include common issues cropping up across the Benches; departmental views on various legal issues and decisions and judgments of the Tribunal & the High Courts and the Supreme Court.

7.2 Court-craft plays a crucial role in the success or failure of the arguments made. To help the DRs in understanding the Court procedure and also the Court craft, the National Academy of the Direct Taxes & other RTIs should organize at least one training programme every year wherein, apart from experienced officials of the department who have excelled as DRs, known Advocates and

Judges should also be associated. Their knowledge and hands-on experience will be very helpful in equipping the DRs with the requisite Court-craft. In such training programmes officers associated with the judicial work can also be nominated.

8. Principles of good representation:

8.1 Role of the Departmental Representative is to assist the Tribunal to achieve its goals which are:

- (a) To be objective, helpful and fair in balancing taxpayers right to private property and claims of revenue which represents public interest.
- (b) To provide finality to tax disputes at the earliest and at least cost i.e. '*sulabh nyay satwar nyay*'; and
- (c) To curb tax evasion and tax avoidance.

8.2 Thus, DR should realize that these are the very same goals of the Department also. Tribunal is not the adversary. *Qua* the Revenue, actual adversary is the tax evader and fraudulent tax avoider. Actual fight of the Revenue is against the fraudulent litigants, tax dodgers and never against the Tribunal.

8.3 Since, the Tribunal and the Department aim at the very same goals it is very important for any DR to appreciate that there prevails faith and confidence in between the Tribunal and him. Failure and success of any case before the Tribunal besides being dependent upon the quality of the arguments made is also dependent upon the over-all conduct of the person arguing the matter before the Court. Well established principles which enhance reputation of the arguing Counsel/Representative and in turn of the arguments likely to be made by him, can be summed up as under :

- (i) DR should be punctual and learn the time management.
- (ii) DR should adhere to the Dress Regulation.
- (iii) DR should, respect the Chair, be courteous and humble.
- (iv) DR should try to make arguments in simple language

which can be understood even by the assessee also (who at times are appearing as party-in-person).

- (v) Arguments should be brief and precise because lengthy arguments tend to lose focus.
- (vi) DR should take care to observe decorum in the Court.
- (vii) DR should treat the opposite party/Counsel with courtesy and not try to decry him.
- (viii) DR should appreciate that evidence, and arguments and not the eloquence, prevails.
- (ix) During the arguments, the DR should remain cool, calm and temperate.
- (x) DR should respect the seniors and should be affectionate to the juniors.
- (xi) DR should remember that arguments in law courts are much different from oratory in the public meetings.
- (xii) Irrespective of the provocation from the Bench or the Counsels, DR should not lose temper.
- (xiii) Irrespective of the interruption by the Bench, DR should not express annoyance.
- (xiv) When some query is posed by the Bench DR should avoid entering into arguments with the Member.

9. Close co-ordination with field formations

For effective representation, it is necessary for the Departmental Representatives and the field formations to maintain close co-ordination in matters of appeals before and during the hearing of the appeals before the Tribunal.

— • — • —

Chapter VII

E-ENABLED OFFICE OF THE DEPARTMENTAL REPRESENTATIVE

PART A

NATIONAL JUDICIAL REFERENCE SYSTEM (NJRS)

1. National Judicial Reference System (NJRS) project is one of the key measures being taken up by the Central Board of Direct Taxes to streamline the litigation management system in the Income Tax Department (ITD). NJRS is envisaged to be a comprehensive electronic database of all appeals and judgments in Direct Tax cases pending before various judicial authorities i.e. Income Tax Appellate Tribunal (ITAT), High Courts and the Supreme Court of India. It will also bring automation in the working of the Judicial wings of the Department. NJRS has the facility to help in tracking of appeals in ITAT, High Courts and the Supreme Court, and issuing alerts and reminders for various events.

1.2 NJRS is also a knowledge repository that will enable the Assessing Officers to be consistent in framing assessment orders as it will provide easy accessibility to judicial information, case laws and judgments. Thus, NJRS will help in improving the quality of work output. It will assist the Departmental Representatives/Counsels in improving the quality of representation before Tribunal & Courts and enhancing the success rate of the Department in appeals.

1.3 NJRS is thus envisaged as a tool for effective tracking and monitoring of Appeals at various stages, reduce litigation & disputed tax demand by bunching & targeting high demand cases, a comprehensive reference system and a decision support system to achieve efficiency in the tax litigation processes of the Income Tax Department. It is accessible to all officers of the Income Tax Department over the internet & on intranet as well.

2. Courts/Tribunals/Authorities covered under NJRS

The following Courts/Authorities are covered under NJRS:

- Income Tax Appellate Tribunal (ITAT) (all 27 cities).
- All High Courts.
- Supreme Court of India &
- Authority for Advance Rulings (AAR).

The appeals filed with Commissioner of Income Tax (Appeals) are not covered in NJRS as the appeals to CIT (A) are covered under the ITBA project of the Department.

3. Components of NJRS

There are conceptually two components of NJRS for appeals and judgments that are accessible through a unified interface of the NJRS portal :

- Judicial Research & Reference System (JRRS)** - an electronic database of all orders/judgments of ITAT, Authority of Advance Ruling, High Courts and the Supreme Court. The JRRS contains the full text of the judgments as well as the relevant metadata (in all cases) and case summaries (in all important cases).
- Appeal Repository Management System (ARMS)** – It is an electronic database of appeals at Income Tax Appellate Tribunal, High Courts and the Supreme Court of India (SC). It has the relevant appeal documents like the grounds of appeal, statement of facts, copies of orders of the Assessing Officer and CIT (A) and the Central Scrutiny Report etc. in scanned/ electronic format.
- ARMS and JRRS are available through the unified interface of the NJRS portal. Certain workflows have also been provided in NJRS using the ARMS and JRRS repositories for various types of users in the department.

4. Features in NJRS

NJRS has the following features:

- Homepage for displaying a consolidated position of

litigation in the Department and important judgments flagged by users.

- Dashboard for display of jurisdiction specific information about cases in various courts. Alerts for users about new messages received from other users. Calendar for display of cases fixed in the various courts on any particular date.
- Provision to search appeals and judgments database based on key metadata elements. Facility for filtering of search results based on keywords/catchphrases, AY, Section/Sub-section etc.
- Facility to view scanned appeal documents and the related appeal data (metadata) such as key phrases, sections involved etc.
- Workflows for officers of the Department engaged in litigation related activities.
- Facility to carry out research and prepare case notes. The NJRS will support the research by auto displaying related appeals and judgments.
- Facility to enter and maintain a case diary for day to day case proceedings.
- Functionality to identify related cases for bunching of appeals.
- Facility to mark appeals for priority attention.
- Facility to send messages between various users (primarily between officers engaged in litigation work and those engaged in assessment work).
- Facility for data analysis and generation of reports based on data contained within ARMS and JRRS.
- Facility for users to upload articles on litigation issues and a Library of Acts, Circulars, notifications and other publications for reference.

5. Search facility in NJRS:

An enterprise class search engine has been provided in NJRS to enable users to search on various parameters including free text search. Enhanced search and filtering of search results is possible based on keywords/catch phrases, AY, Section/Sub-section etc.

6. Bunching facility in NJRS:

6.1 NJRS provides facility to the users to identify similar cases (based on key parameters like PAN, section or same relied upon cases) and bunch them together manually.

6.2 The system can also suggest possible cases for bunching based on predetermined parameters. The system suggested list of cases can be augmented / reduced manually to arrive at the final list.

7. Circulation of good orders through Home page of NJRS:

A facility has been provided for users to recommend a judgment for head note creation. The recommendations received from the users will be filtered by a committee of senior Department officers through the NJRS software itself.

8. Homepage / Dashboard Facility in NJRS:

8.1 Homepage provides the following information:

- Global/Jurisdictional information about appeal and judgment data available in NJRS for different Court through graphs and charts.
- Provides facility to search in the NJRS database.
- Provides links to Judgments recommended by other Users, Library documents and recent Circulars and Announcements.

8.2 Dashboards provide the following information about appeals and judgments being handled by the particular officer of the Department:

- Information about appeal and judgment data available in NJRS for different courts through graphs and charts.

- User Inbox, where different types of event based alerts are being shown to the user.
- Hearing date calendar to view date-wise / period-wise details of appeals listed for hearing in the Courts.

9. Alert Facility in NJRS:

NJRS system is configured to issue alerts to concerned stakeholders on important events. The examples of events triggering alerts are:

- Upload of fresh appeal into the NJRS database.
- Change in the status of an appeal.
- Reminder for Next Date of Hearing.
- Reminder for filing of CSR after a Judgment.
- Communication of any special requirement by judicial officials to appeal owners.

Reminder for providing documents of an Appeal to RSC for scanning.

10. Access to www.incometaxindia.gov.in through NJRS

In order to provide a seamless experience to the users of NJRS, the users can navigate to the Income Tax website directly through NJRS. This will allow users to view the various Acts, Circulars, notifications, etc. through the NJRS website.

11. Library facility for litigation related issues

NJRS provides for a 'Library' facility wherein Users can upload articles, media reports etc. to NJRS. The content is to be limited to that relating to litigation issues only.

12. Reports facility in NJRS

12.1 Users can generate customized reports based on the metadata pertaining to appeals and judgments available in NJRS. In addition, there is a provision to generate certain pre-defined reports for specific ITD users such as the quarterly progress report of appeals.

12.2 NJRS has a facility to view and download reports in xls, pdf & csv formats. Users can download the reports on their local computer for further analysis.

13. Access to NJRS

13.1 NJRS has been designed mainly for use by the ITD officers. Taxpayers will also have limited access to NJRS to view their own cases. NJRS has a role-based access control system for users. In case an officer is holding multiple charges, the system will prompt the officer to select one of the charges. The access to underlying data will be covered accordingly.

13.2 In order to provide seamless access to other Departmental applications such as ITBA through a single-sign-on, the user name has been kept the same as proposed in ITBA viz., the employee ID. The password will be provided by NJRS.

13.3 The process of obtaining NJRS login password is as follows:

- (a) ITD users are required to send their employee ID by email to **NJRS-user@nsdl.co.in**. The email **must** be sent from their **official email ID** issued **by name**¹ and ending with “@incometax.gov.in”. The subject line of the email should be ‘**Register**’.
- (b) The first time password will be communicated to the Users’ official email ID from where the request was initiated.

14. Workflow related features in NJRS:

14.1 There are three broad set of ITD users who would be utilizing the online workflow and advanced functionalities in the NJRS system (besides the search facility for appeals and judgments):

‘A’ Department officers who are engaged in the litigation work

¹ Department has a two email policy – one by the post and one by the name of the officer. As the NJRS user name is issued only once, it is better to use the email issued by name rather than the email issued by post.

and related activities at the Tribunal, High Courts, and Supreme Court :

- a. Messaging with Departmental officers engaged in assessment related activities for appeals assigned to them.
- b. Conduct research using the ARMS and JRRS database for the appeals assigned to them.
- c. Update case diary and notes related to daily hearings/proceedings of their respective courts.
- d. Flag important judgments pertaining to their appeals for display on the home page of NJRS.

‘B’ Department officers at the Directorate of Income Tax (Legal & Research) for processing of SLP proposals.

- a. Processing of proposals for filing of SLP as per the Departmental procedures.
- b. Messaging with Departmental officers engaged in assessment related activities for SLP proposals assigned to them.
- c. Conduct research within the ARMS and JRRS database for the SLP proposals assigned to them.
- d. Track the SLP proposal through the various stages of decision-making until it is approved and filed in the Supreme Court or disposed.

‘C’ All administrative CIT’s.

- a. Messaging facility with Departmental officers engaged in litigation work.
- b. Upload CSR pertaining to an appeal.
- c. Upload proposals for filing of SLP to DGIT (L&R).

14.2 NJRS provides certain workflows specifically for Officers posted in ITAT, HC Cell and DGIT (L&R). The details of how to actually use the NJRS and workflows have been provided through User Manual which shall be uploaded shortly. It will also be updated

from time to time. However, certain administrative roles related to NJRS have to be discharged by the CIT(DR)(Admn.) at ITAT, CIT(J) at the HC's, Nodal Officers at ITATs and HCs and Officers of the Directorate General of Income Tax (Legal & Research).

15. Role of CIT(DR)(Admn.) at ITAT

15.1 CIT(DR)(Admn.) to do mapping of DR to benches - At most ITATs, the work is divided amongst the DRs based on a bench to DR mapping. The NJRS system provides role based access to various workflows. Therefore, the initial bench to DR mapping has to be fed into the system. This is an Admin level task in NJRS. The Admin role is to be discharged by the CIT(DR)(Admin) either himself or through the Nodal Officer. Thereafter, the system will auto allocate all new appeals based on this bench to DR mapping.

15.2 Allocation of unassigned appeals to a DR - Appeals that are not assigned to a DR due to any reason will be assigned by the system to the person holding the Admin role. The Admin will assign these appeals to the concerned DR as using the mechanism provided in NJRS.

15.3 Re-allocation of appeals already assigned to a DR to another – If any appeal is required to be reassigned to another DR, the same can be done through the user interface of NJRS by the officer holding the Admin role in NJRS for that ITAT.

16. Identification of DR Units in NJRS

The NJRS system allows creation of a team (DR Unit) working with the CIT. These can be the rotational duty officers assigned to a DR, ITOs or other officers working under the CIT DR. The DR Units are to be created by the Admin. A DR Unit facilitates in intra group communication, can view appeals assigned to the unit, preparation of case notes, collaboration with field Officers and updation of case diary (for all appeals) allocated to the DR.

17. Bunching of Appeals in NJRS

The Admin can also create lists of cases for the purpose of bunching based on key parameters like PAN, section and/or same

referred case. NJRS can also auto suggest possible cases for bunching based on predetermined parameters.

18. Common features of NJRS qua all the DRs at the ITAT

18.1 Case preparation through NJRS –As mentioned earlier, the appeals will be assigned to DRs based on a bench to DR mapping or by manual assignment by the Admin. The appeals will also be visible to each member of the DR Unit in their respective accounts. NJRS has workflows for making case notes and entering a daily diary of case wise ITAT proceedings. CIT(DR) should ensure that:

- Case diary pertaining to each appeal is updated regularly, specifically mentioning the next date of hearing.
- Case notes are entered for each appeal.
- In case any submissions are made to the court during the hearing which are not available on NJRS, scanned copy of those documents should be uploaded along with a mention in the case diary.

18.2 Communication with field officers – NJRS has a facility for appeal linked communication between the assessment units and the ITAT units. This includes a facility to DRs and AOs for uploading additional documents pertaining to their appeal. These uploaded documents will also be visible to other users of NJRS as part of the particular appeal's details under "ITD Documents".

18.3 Recommend Judgments - DRs should recommend judgements which they consider worthy of wider dissemination as it involves an issue of wider ramifications. Such recommended judgments will be published on the Home Page of NJRS along with a brief note entered by the DR.

Part-B

Utility of ITBA for DR

With the roll out of the NJRS, the functioning of the offices of the Departmental Representatives posted in the ITAT has been computerised. Further, with the integration of the NJRS and the ITBA, the DRs would also be interlinked with the Assessing Officers for accessing information from the field formation and information available on the System, in respect of cases where second appeals are pending before the ITAT. A functionality to capture hearing details in respect of each case will also be made available. Consequently, various MIS reports can be generated for monitoring and reporting purposes. There are roles envisaged for the following Departmental officials working in ITAT:

- Departmental representative (Admin),
- Other DRs,
- Staff in the offices of the DRs for the purpose of capturing and maintaining information regarding appeals pending in the Tribunal.

2. Processes involved in the functioning of the DRs:

S.No.	Process Name
1	Digitization and Assignment of ITAT cases
2	Calling for information from the field formation
3	Recording of hearing details
4	Maintain MIS for cases under appeal before the ITAT

3. Digitization and Assignment of the ITAT cases:

Appeal is filed before the Registrar of the ITAT either by the assessee or by the Department through Form No. 36. In the proposed application (ITBA), the Departmental Representative DRs would have access to the Form 36 filed by the Assessing Officers before

the ITAT in respect of Departmental appeals and therefore the need for digitization of such Form 36 would not arise. In case appeal is filed by assessee, ITAT Registrar sends the copy of the Form 36 to the (DR). The DR (Admin) staff records the details available in Form 36. Thereafter, the DR(Admin) can view all cases where second appeal was filed and can then assign such cases to different DRs.

4. Calling for information from the field formation:

DRs will have the provision to view a complete list of cases assigned to them. They will also have the facility to get information from the system or from the field formation with respect to their assigned cases including orders passed by Commissioner of Income Tax, orders of Assessing Officers, scrutiny reports and history ledger of the relevant assesses. The steps in this regard are summarized as follows:

- DR will have the facility to view the list of cases assigned through work list.
- DR will use the screen for getting information from the system.
- DR will enter the Permanent Account Number & select the Assessment Year.
- DR will access the information residing in the system on the basis of the PAN & AY details of the case. Access will be provided till the completion of hearing.
- View facility will be given to the DR against a particular case for the data of: -
 - PAN details
 - Assessment Orders
 - Returns
 - CSRs
 - Challan data
 - Demand/ Refund Data
- DR will use the screen for generation of letters for calling information.

- DR will enter the details required for calling information.
- DR will save the details and the letter will be sent to the users. The letter will be generated from the system which will be sent physically. Alternatively, an online requisition can also be made which would also be marked to the CIT(Admin) and the Addl. CIT of the concerned AO.
- DR will generate the request for the physical records or other information.
- DR will record the following correspondence details:-
 - Name of physical documents received
 - Receiving date
 - Received from whom
 - Remarks

5. Recording of hearing details against each case:

- User will view the assigned case list using PAN & AY.
- User will select the functionality of recording case proceedings.
- User will enter PAN and select AY.
- User will select the Appeal no. against which proceedings are to be entered.
- User will enter the proceedings details of the case against the hearing date.
 - Hearing date
 - Name of the DR
 - Hearing remarks/ details
 - Next hearing date (Refer Business Rule 1)
 - Status of the case (Open, Closed)
- User will have the facility to attach the final order for future reference and enter the date and close the case in the system.
- User will save the details.

6. Generation of MIS reports and On line maintenance of various Registers :

- i. With the online functioning of the offices of the DRs, various registers and reports shall be generated and maintained in the ITBA, viz. Hearing Register, Disposal Register and the ITAT orders Register. In addition MIS can be generated in various other forms and manner as per requirement.
- ii. The ITBA application, once functional will automate the functioning of the offices of the DRs, thereby increasing all round efficiency and also expedite real time exchange of information amongst the DRS and the field formations thus offering a more pro active approach to management of workload in the ITAT.

— • — • —

Chapter-VIII

IMPORTANT FORMATS /REGISTERS/ FORMS FOR DR OFFICE

Part-A
Daily Fixation Register

Date:

Bench

Sl. No.	Appeal No.	Names of Parties the dispute	A.Y.	Whether Asstt. Records/ Other records received to	Name of the Sr. DR/ CIT DR	Whether the hearing in the case is over/if adjourned, date to which	Remarks
1	2	3	4	5	6	7	8
1							
2							
3							
4							

Note: To be prepared for the entire year but excluding Closed Days and Holidays.

Part-B
Miscellaneous Application Register

Sl. No	Name of the assessee	ITA/WTA/RA	AY	Date of the order of the Tribunal in which MA filed	Date of hearing	Date of Disposal with Results
1	2	3	4	5	6	7
2						
2						
3						
4						

Part-C
Register of cases in which requisition for case records sent

Sl. No.	Name of the assessee	A.Y. to which the appeal relates	Date of hearing fixed by ITAT	Due date of receipt of asstt records.	Date of receipt of records.	Remarks
1	2	3	4	5	6	7
1						
2						
3						
4						

Part-D
Record Movement Register

Sl. No.	Name of the Assessee	Bench to which relates	Circle/Ward	No. of volumes received	Date of return	No. of Volumes returned
1	2	3	4	5	6	7
1						
2						
3						
4						

Part-E
Tribunal Orders Register

Sl.No.	Date of order	Appeal No.	Parties to the dispute	Remarks
1	2	3	4	5
1				
2				
3				
4				

Part-F
Special Bench Cases Register

Sl. No.	Name of the Assessee	Appeal No. ITA	A.Y.	Issue Involved	Date of reference	Date of order	Remarks
1	2	3	4	5	6	7	8
1							
2							
3							
4							

Part G
PROFORMA FOR REPORTING CASES HANDELED BY CIT(DR) BEFORE ITAT

Name of the CCIT Charge/Region:

Name & Designation of the CIT(DR):

REPORT FOR THE MONTH OF.....

Category	Appeals relating to cases of search/Block assessment	Appeals referred to Spl. Bench or Third Member Bench of ITAT	Appeals against order passed u/s 263 of the Act	Appeals in DRP matters	Appeals challenging the order of the CIT u/s 12A, 80G of the Act	Cases required to be argued by the CIT9DR) as per para 2(A) of the Instruction	Cases required to be argued by the CITDR) as per para 2(A) of the (vii) of the Instruction	Cases assigned by the CCIT as per para 4 of the Instruction	Total
No. of cases represented									
No. of adjournment sought									

CIT (DR) ITAT

Part-H
PROFORMA FOR REPORTING CASES HANDELED BY Sr. DR BEFORE ITAT

Name of the CCIT Charge/Region:

Name & Designation of the Sr.DR:

REPORT FOR THE MONTH OF.....

Category	Cases where amount of addition in dispute is below Rs.3 Crore	Cases where amount of addition in dispute is between Rs.3 Cr and Rs.6 Crores	Cases where amount of addition in dispute is between Rs.6 Crores and Rs.10 crores	Cases where imposition of penalty or levy of interest is below Rs.1 Crores	Cases where imposition of penalty or levy of interest is between Rs.2 crores & 3 crores	Cases assigned as per para 3 of the Instruction	Cases assigned as per para 4 of the Instruction	Total
No. of cases represented								
No. of adjournment sought								

Sr. DR ITAT

Chapter IX

ORDERS/INSTRUCTIONS/NOTIFICATIONS OF CBDT OR OF TRIBUNAL

CIRCULAR NO 21/2015, DATE: 10TH DECEMBER, 2015

Subject: Revision of monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal and High Courts and SLP before Supreme Court – measures for reducing litigation – Reg –

Reference is invited to Board's instruction No 5/2014 dated 10.07.2014 wherein monetary limits and other conditions for filing departmental appeals (in Income-tax matters) before Appellate Tribunal and High Courts and SLP before the Supreme Court were specified.

2. In supersession of the above instruction, it has been decided by the Board that departmental appeals may be filed on merits before Appellate Tribunal and High Courts and SLP before the Supreme Court keeping in view the monetary limits and conditions specified below.

3. Henceforth, appeals/ SLPs shall not be filed in cases where the tax effect does not exceed the monetary limits given hereunder:-

Sl.No.	Appeals in Income-tax matters	Monetary Limit (in Rs)
1.	Before Appellate Tribunal	10,00,000/-
2.	Before High Court	20,00,000/-
3.	Before Supreme Court	25,00,000/-

It is clarified that an appeal should not be filed merely because the tax effect in a case exceeds the monetary limits prescribed above. Filing of appeal in such cases is to be decided on merits of the case.

4. For this purpose, “tax effect” means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issues against which appeal is intended to be filed (hereinafter referred to as “disputed issues”). However the tax will not include any interest thereon, except where chargeability of interest itself is in dispute. In case the chargeability of interest is the issue under dispute, the amount of interest shall be the tax effect. In cases where returned loss is reduced or assessed as income, the tax effect would include notional tax on disputed additions. In case of penalty orders, the tax effect will mean quantum of penalty deleted or reduced in the order to be appealed against.

5. The Assessing Officer shall calculate the tax effect separately for every assessment year in respect of the disputed issues in the case of every assessee. If, in the case of an assessee, the disputed issues arise in more than one assessment year, appeal, can be filed in respect of such assessment year or years in which the tax effect in respect of the disputed issues exceeds the monetary limit specified in para 3. No appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit specified in para 3. In other words, henceforth, appeals can be filed only with reference to the tax effect in the relevant assessment year. However, in case of a composite order of any High Court or appellate authority, which involves more than one assessment year and common issues in more than one assessment year, appeal shall be filed in respect of all such assessment years even if the ‘tax effect’ is less than the prescribed monetary limits in any of the year(s), if it is decided to file appeal in respect of the year(s) in which ‘tax effect’ exceeds the monetary limit prescribed. In case where a composite order/ judgement involves more than one assessee, each assessee shall be dealt with separately.

6. In a case where appeal before a Tribunal or a Court is not filed only on account of the tax effect being less than the monetary limit specified above, the Commissioner of Income-tax shall specifically record that “even though the decision is not acceptable, appeal is not being filed only on the consideration that the tax effect is less than the monetary limit specified in this instruction”. Further, in such cases, there will be no presumption that the Income-tax Department has acquiesced in the decision on the disputed issues. The Income-tax Department shall not be precluded from filing an appeal against the disputed issues in the case of the same assessee for any other assessment year, or in the case of any other assessee for the same or any other assessment year, if the tax effect exceeds the specified monetary limits.

7. In the past, a number of instances have come to the notice of the Board, whereby an assessee has claimed relief from the Tribunal or the Court only on the ground that the Department has implicitly accepted the decision of the Tribunal or Court in the case of the assessee for any other assessment year or in the case of any other assessee for the same or any other assessment year, by not filing an appeal on the same disputed issues. The Departmental representatives/counsels must make every effort to bring to the notice of the Tribunal or the Court that the appeal in such cases was not filed or not admitted only for the reason of the tax effect being less than the specified monetary limit and, therefore, no inference should be drawn that the decisions rendered therein were acceptable to the Department. Accordingly, they should impress upon the Tribunal or the Court that such cases do not have any precedent value. As the evidence of not filing appeal due to this instruction may have to be produced in courts, the judicial folders in the office of CsIT must be maintained in a systemic manner for easy retrieval.

8. Adverse judgments relating to the following issues should be **contested on merits** notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above or there is no tax effect:

- (a) Where the Constitutional validity of the provisions of an Act or Rule are under challenge, or
- (b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or
- (c) Where Revenue Audit objection in the case has been accepted by the Department, or
- (d) Where the addition relates to undisclosed foreign assets/ bank accounts.

9. The monetary limits specified in para 3 above shall not apply to writ matters and direct tax matters other than Income tax. Filing of appeals in other Direct tax matters shall continue to be governed by relevant provisions of statute & rules. Further, filing of appeal in cases of Income Tax, where the tax effect is not quantifiable or not involved, such as the case of registration of trusts or institutions under section 12 A of the IT Act, 1961, shall not be governed by the limits specified in para 3 above and decision to file appeal in such cases may be taken **on merits** of a particular case.

10. This instruction will apply retrospectively to pending appeals and appeals to be filed henceforth in High Courts/ Tribunals. Pending appeals below the specified tax limits in para 3 above may be withdrawn/ not pressed. Appeals before the Supreme Court will be governed by the instructions on this subject, operative at the time when such appeal was filed.

11. This issues under Section 268A (1) of the Income-tax Act 1961.

(D. S Chaudhry)
CIT (A&J)CBDT,
New Delhi

Copy to:

- 1. The Chairman, Members and all other officers in CBDT of the rank of Under Secretary and above.

2. All Pr. Chief Commissioners of Income Tax and All Directors General of Income Tax with a request to bring to the attention of all officers.
3. ADG (PR,PP& OL), MayurBhawan, New Delhi for printing in the quarterly Tax Bulletin and for circulation as per usual mailing list.
4. The Comptroller and Auditor General of India
5. ADG (Vigilance), MayurBhawan, New Delhi
6. The Joint Secretary & Legal Advisor, Ministry of Law & Justice, New Delhi
7. All Directorates of Income-tax, New Delhi and DGIT(NADT), Nagpur
8. ITCC (3 copies)
9. The ADG(Systems)-4, for uploading on the Department's website
10. Data Base Cell for uploading on irsofficersonline.gov.in
11. Hindi Cell for translation
12. Guard file.

(D. S Chaudhry)
CIT (A&J)CBDT,
New Delhi

INSTRUCTION NO 5/2014, DATED JULY 10, 2014

Sub: Revision of monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal, High Courts and Supreme Court – measures for reducing litigation – Reg

Reference is invited to Board's instruction No 3/2011 dated 09/02/2011 wherein monetary limits and other conditions for filing departmental appeals (in Income-tax matters) before Appellate Tribunal, High Courts and Supreme Court were specified.

2. In supersession of the above instruction, it has been decided by the Board that departmental appeals may be filed on merits before Appellate Tribunal, High Courts and Supreme Court keeping in view the monetary limits and conditions specified below.

3. Henceforth appeals shall not be filed in cases where the tax effect does not exceed the monetary limits given hereunder:–

Sr. No.	Appeals in Income-tax matters	Monetary Limit (in Rs.)
1.	Before Appellate Tribunal	4,00,000/-
2.	U/s 260 A before High Court	10,00,000/-
3.	Before Supreme Court	25,00,000/-

It is clarified that an appeal should not be filed merely because the tax effect in a case exceeds the monetary limits prescribed above. Filing of appeal in such cases is to be decided **on merits** of the case.

4. For this purpose, "tax effect" means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issues against which appeal is intended to be filed (hereinafter referred to as "disputed issues"). However the tax will not include any interest thereon, except where chargeability of interest itself is in dispute. In case the chargeability

of interest is the issue under dispute, the amount of interest shall be the tax effect. In cases where returned loss is reduced or assessed as income, the tax effect would include notional tax on disputed additions. In case of penalty orders, the tax effect will mean quantum of penalty deleted or reduced in the order to be appealed against.

5. The Assessing Officer shall calculate the tax effect separately for every assessment year in respect of the disputed issues in the case of every assessee. If, in the case of an assessee, the disputed issues arise in more than one assessment year, appeal, can be filed in respect of such assessment year or years in which the tax effect in respect of the disputed issues exceeds the monetary limit specified in para 3. No appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit specified in para 3. In other words, henceforth, appeals can be filed only with reference to the tax effect in the relevant assessment year. However, in case of a composite order of any High Court or appellate authority, which involves more than one assessment year and common issues in more than one assessment year, appeal shall be filed in respect of all such assessment years even if the 'tax effect' is less than the prescribed monetary limits in any of the year(s), if it is decided to file appeal in respect of the year(s) in which 'tax effect' exceeds the monetary limit prescribed. In case where a composite order/judgement involves more than one assessee, each assessee shall be dealt with separately.

6. In a case where appeal before a Tribunal or a Court is not filed only on account of the tax effect being less than the monetary limit specified above, the Commissioner of Income-tax shall specifically record that "even though the decision is not acceptable, appeal is not being filed only on the consideration that the tax effect is less than the monetary limit specified in this instruction". Further, in such cases, there will be no presumption that the Income-tax Department has acquiesced in the decision on the disputed issues. The Income-tax Department shall not be precluded from filing an appeal against the disputed issues in the case of the same assessee for any other assessment year, or in the case of any other assessee for the same or any other assessment year, if the tax effect exceeds the specified monetary limits.

7. In the past, a number of instances have come to the notice of the Board, whereby an assessee has claimed relief from the Tribunal or the Court only on the ground that the Department has implicitly accepted the decision of the Tribunal or Court in the case of the assessee for any other assessment year or in the case of any other assessee for the same or any other assessment year, by not filing an appeal on the same disputed issues. The Departmental representatives/counsels must make every effort to bring to the notice of the Tribunal or the Court that the appeal in such cases was not filed or not admitted only for the reason of the tax effect being less than the specified monetary limit and, therefore, no inference should be drawn that the decisions rendered therein were acceptable to the Department. Accordingly, they should impress upon the Tribunal or the Court that such cases do not have any precedent value. As the evidence of not filing appeal due to this instruction may have to be produced in courts, the judicial folders in the office of CsIT must be maintained in a systemic manner for easy retrieval.

8. Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above or there is no tax effect.

- (a) Where the Constitutional validity of the provisions of an Act or Rule are under challenge, or
- (b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or
- (c) Where Revenue Audit objection in the case has been accepted by the Department.

9. The proposal for filing Special Leave Petition under Article 136 of the Constitution before the Supreme Court should, in all cases, be sent to the Directorate of Income-tax (Legal & Research), New Delhi and the decision to file Special Leave Petition shall be in consultation with the Ministry of Law and Justice.

10. The monetary limits specified in para 3 above shall not apply

to writ matters and direct tax matters other than Income tax. Filing of appeals in other Direct tax matters shall continue to be governed by relevant provisions of statute & rules. Further, filing of appeal in cases of Income Tax, where the tax effect is not quantifiable or not involved, such as the case of registration of trusts or institutions under section 12 A of the IT Act, 1961, shall not be governed by the limits specified in para 3 above and decision to file -appeal in such cases may be taken on merits of a particular case.

11. This instruction will apply to appeals filed on or after 10th July, 2014 However, the cases where appeals have been filed before 10th July, 2014 will be governed by the instructions on this subject, operative at the time when such appeal was filed.

12. This issues under Section 268A (1) of the Income-tax Act 1961.

F No 279/Misc. 142/2007-ITJ (Pt)

(Priyanka Singh)

INSTRUCTION NO. 09/2013, DATED JULY 22, 2013

Subject : Work allocation of Departmental Representatives before ITAT

Reference is invited to Board's earlier Instruction No. 13/2008 dated 18-09-2008 on the subject of work allocation of CIT(DRs)/Sr. DRs.

In supersession of earlier instructions on this subject, the Board has decided to lay down the following parameters for allocation of work between the CIT (DRs) and the Sr. DRs for representation before ITAT.

2. The allocation of work between the CIT(DRs) and Sr. DRs would be as under:

[A] Cases to be argued by the CIT (DRs):

- i. All appeals relating to Search cases/Block assessments.
- ii. All appeals referred to a Special Bench or Third Member Bench of ITAT and fixed for hearing. However, the Sr. DR/CIT (DR) who argued the matter earlier may assist/argue the matter before the Special or Third Member Bench.
- iii. All appeals filed against order passed under section 263 of the Income Tax Act, 1961
- iv. All appeals in DRP Matters
- v. All appeals challenging the order of CIT under sections 12A and 80G of the Act
- vi. All appeals in assessment cases, in which the aggregate of the additions made by the A.O. which are under dispute/subject matter of appeal in a case, is more than;
 - a) Rs. 10 crores in the cities of Mumbai and Delhi.
 - b) Rs. 6 crores in the cities of Chennai, Kolkata, Ahmedabad, Hyderabad, Bangalore and Pune.
 - c) Rs. 3 crores in other cities.

- viii. All appeals against imposition of penalty or levy of interest, in which the aggregate of penalty imposed or interest levied by the A.O. which are under dispute/ subject matter of appeal in a case, is more than;
- a) Rs. 3 crores in the cities of Mumbai and Delhi.
 - b) Rs. 2 crores in the cities of Chennai, Kolkata, Ahmedabad, Hyderabad, Bangalore and Pune.
 - c) Rs. 1 crore in other cities.

[B] Cases to be argued by Sr. DRs:

All cases other than those mentioned above.

3. The CIT(DR), in relaxation of 2[A](i) , may allocate cases to Senior DRs, keeping in view the monetary limits stated in 2[A](vi), in cases where the appeal does not involve any issue which is either complex or has general applicability to other cases. The allocation, however, shall be made under intimation to CCIT and in case of any difficulty regarding allocation of cases, decision of the CCIT will be final
4. The CCIT, in relaxation of the above parameters, may assign cases from CIT (DRs) to Sr. DRs or vice versa in consideration of administrative requirements.
5. The CIT (DRs)/Sr. DRs would also submit a monthly performance report on the cases/category of cases represented by them before the Bench in the prescribed proforma which is enclosed as Annexure 'A'. This should be brought to the notice of all CIT (DRs) and Sr. DRs for immediate compliance.
6. The CCIT referred to in this Instruction shall mean the Chief Commissioner of Income Tax in charge of ITAT matters.
7. The Hindi Version of the Instruction follows.

(Hemant Gupta)
Under Secretary to the Govt. of India

INSTRUCTION NO-1914/1993, DATED DECEMBER 2, 1993

Subject : Recovery of outstanding tax demands –

The Board has felt the need for a comprehensive Instruction on the subject of recovery of tax demand in order to streamline recovery procedures. This Instruction is accordingly being issued in supersession of all earlier Instructions on the subject and reiterates the existing circulars on the subject.

2. The Board is of the view that, as a matter of principle, every demand should be recovered as soon as it becomes due. Demand may be kept in abeyance for valid reasons only in accordance with the guidelines given below :

A. Responsibility

- (i) It shall be the responsibility of the Assessing Officers and the TRO to collect every demand that has been raised, except the following :
 - (a) Demand which has not fallen due;
 - (b) Demand which has been stayed by a Court or ITAT or Settlement Commission;
 - (c) Demand for which a proper proposal for write off has been submitted;
 - (d) Demand stayed in accordance with paras B & C below.
- (ii) Where demand in respect of which a recovery certificate has been issued or a statement has been drawn, the primary responsibility for the collection of tax shall rest with the TRO.
- (iii) It would be the responsibility of the supervisory authorities to ensure that the Assessing Officers and the TROs take all such measures as are necessary to collect the demand. It must be understood that mere issue of a show-cause notice with no follow up is not to be regarded as adequate effort to recover taxes.

B. Stay petitions

- (i) Stay petitions filed with the Assessing Officers must be disposed of within two weeks of the filing of petition by the taxpayer. The assessee must be intimated of the decision without delay.
- (ii) Where stay petitions are made to the authorities higher than the Assessing Officer (DC/CIT/CC), it is the responsibility of the higher authorities to dispose of the petitions without any delay, and in any event within two weeks of the receipt of the petition. Such a decision should be communicated to the assessee and the Assessing Officer immediately.
- (iii) The decision in the matter of stay of demand should normally be taken by Assessing Officer/TRO and his immediate superior. A higher superior authority should interfere with the decision of the AO/TRO only in exceptional circumstances e.g. where the assessment order appears to be unreasonably highpitched or where genuine hardship is likely to be caused to the assessee. The higher authorities should discourage the assessee from filing review petitions before them as a matter of routine or in a frivolous manner to gain time for withholding payment of taxes.

C. Guidelines for Staying Demand

- (i) A demand will be stayed only if there are valid reasons for doing so. Mere filing an appeal against the assessment order will not be sufficient reason to stay the recovery of demand. A few illustrative situations where stay could be granted are—
 - (a) if the demand in dispute relates to issues that have been decided in assessee's favour by an appellate authority or Court earlier; or
 - (b) if the demand in dispute has arisen because the Assessing Officer had adopted an interpretation of law in respect of which there exist conflicting

decisions of one or more High Courts (not of the High Court under whose jurisdiction the Assessing Officer is working); or

- (c) if the High Court having jurisdiction has adopted a contrary interpretation but the Department has not accepted that judgment.

It is clarified that in these situations also, stay may be granted only in respect of the amount attributable to such disputed points. Further, where it is subsequently found that the assessee has not co-operated in the early disposal of appeal or where a subsequent pronouncement by a higher appellate authority or Court alters the above situation, the stay order may be reviewed and modified. The above illustrations are, of course, not exhaustive.

- (ii) In granting stay, the Assessing Officer may impose such conditions as he may think fit. Thus he may,—
 - (a) require the assessee to offer suitable security to safeguard the interest of Revenue;
 - (b) require the assessee to pay towards the disputed taxes a reasonable amount in lump sum or in instalments;
 - (c) require an undertaking from the assessee that he will co-operate in the early disposal of appeal failing which the stay order will be cancelled;
 - (d) reserve the right to review the order passed after expiry of reasonable period, say upto 6 months, or if the assessee has not co-operated in the early disposal of appeal, or where a subsequent pronouncement by a higher appellate authority or Court alters the above situations;
 - (e) reserve a right to adjust refunds arising, if any, against the demand.

- (iii) Payment by instalments may be liberally allowed so as to collect the entire demand within a reasonable period not exceeding 18 months.
- (iv) Since the phrase 'stay of demand' does not occur in section 220(6) of the Income-tax Act, the Assessing Officer should always use in any order passed under section 220(6) [or under section 220(3) or section 220(7)], the expression that occurs in the section viz., that he agrees to treat the assessee as not being in default in respect of amount specified, subject to such conditions as he deems fit to impose.
- (v) While considering an application under section 220(6), Assessing Officer should consider all relevant factors having a bearing on the demand raised and communicate his decision in the form of a speaking order.

D. Miscellaneous

- (i) Even where recovery of demand has been stayed, the Assessing Officer will continue to review the situation to ensure that the conditions imposed are fulfilled by the assessee failing which the stay order would need to be withdrawn.
- (ii) Where the assessee seeks stay of demand from the Tribunal, it should be strongly opposed. If the assessee presses his application, the CIT should direct the Departmental Representative to request that the appeal be posted within a month so that Tribunal's order on the appeal can be known within two months.
- (iii) Appeal effects will have to be given within 2 weeks from the receipt of the appellate order. Similarly, rectification application should be decided within 2 weeks of the receipt thereof. Instances where there is undue delay in giving effect to appellate orders, or in deciding rectification applications, should be dealt with very strictly by the CCITs/CITs.

4. The Board desires that appropriate action is taken in the matter of recovery in accordance with the above procedure. The Assessing Officer or the TRO, as the case may be, and his immediate superior officer shall be held responsible for ensuring compliance with these instructions.

5. The procedure would apply *mutatis mutandis* to demands created under other direct taxes enactments also.

F. NO. 404/72/93-ITCC

NARENDER SINGH
Under Secretary (ITCC)

**CLARIFICATION ON INSTRUCTIONS
ON STAY OF DEMAND**

RECOVERY—SECTION 220

Many queries have been received regarding the applicability of Instruction No. 95 dated 21st Aug., 1969 vis-a-vis Instruction No. 1914, dated 2nd Dec., 1993. Many assesses are taking the plea that Instruction No. 1914 does not supercede Instruction No. 95 dated 21st Aug., 1969.

1. Instruction No. 95 dated 22.8.1969 was an assurance given by the then Deputy Prime Minister during the 8th Meeting of the Informal Consultative Committee held on 13th May, 1969. The observations made by the Deputy Prime Minister were as under :

“Where the income determined on assessment was substantially higher than the returned income, say twice the latter amount or more, the collection of the tax in dispute should be held in abeyance till the decision on the appeal provided there were no lapses on the part of the assesses.”

The above observations were circulated to the field officers by the Board as Instruction No. 95 dated 21st Aug., 1969.

2. The matter has been considered by the Board and the decision of the Board has been approved by the Finance Minister. It is hereby clarified that subsequent to Instruction No. 95 following Instructions/ clarifications on the stay of demand were issued till 15th Oct., 1980 :

- (i) Clarification to Instruction No. 95 was issued on 14th Sept., 1970 stating that it relates to disputed demands only.
- (ii) Instruction No. 635 was issued on 12th Nov., 1973 stating that stay should be granted only in those cases where demands are attributable to substantial points of dispute.
- (iii) Clarification to Instruction No. 95, dated 13th July, 1976 held that the Instruction becomes operative only in cases where there are no lapses on the part of the assessee.
- (iv) Instruction No. 1067, dated 21st June, 1977 held that the ITO can pass the necessary orders under s. 220(6) in all cases except cases under s. 144A or s. 144B where the approval of IAC is required.
- (v) Instruction No. 1158 dated 27th March, 1978 held that in suitable cases the assessee may be allowed to furnish security.
- (vi) Instruction No. 1282, dated 4th Oct., 1979 held that requests should be made to CIT(A) and ITAT for early disposal of appeals and constant watch should be kept on progress of appeals.
- (v) Instruction No. 1362 was issued on 15th Oct., 1980 in supersession of all the earlier Instructions. It was an Instruction covering the issue in detail and in para 4 of the same there was a clear reference to the proposition laid down in Instruction No. 95 which is as follows :

“In exercising this discretion, the Income-tax Officer should take into account factors such as: whether the points in dispute relate to facts; whether they arise from different interpretations of law; whether the additions have been made as a result of detailed investigation; whether the additions are based on materials gathered through enquiry/survey/ search and seizure operations; whether the disputed addition to income has been assessed elsewhere by way of protective assessment and

the tax thereon has been paid by such person etc. The magnitude of addition to income returned cannot be the sole determinant in this regard. Each disputed addition will need to be considered to arrive at the quantum of tax that may need to be stayed.”

3. It is clear that the substance of the assurance as laid down in Instruction No. 95, dated 21st Aug., 1969 was submerged in the Instruction No. 1362, dated 15th Oct., 1980 which was issued in supersession of all earlier Instructions on the subject. Instruction No. 1914 dated 2nd Dec., 1993 was issued subsequently in supersession of all the earlier Instructions on the subject and the said Instruction also covers unreasonably high pitched assessment order and genuine hardship cases.

4. It is therefore clarified that there is no separate existence of the Instruction No. 95, dated 21st Aug., 1969. Instruction No. 95 and all subsequent Instructions on the issue ceased to exist from the date Instruction No. 1362 came into operation. In turn Instruction No. 1362 and all subsequent Instructions on the issue also ceased to exist the day Instruction No. 1914 came into operation i.e. 2nd Dec., 1993. The Instruction No. 1914 holds the field currently and a copy of Instruction No. 1914 is enclosed for reference.

INSTRUCTION NO.08/2011 DATED: AUGUST 11, 2011

Sub: Standard Operating Procedure on filing of appeals to ITAT under section 253 of the Income Tax Act, 1961 and related matters: Instructions regarding-

With a view to streamline the process of filing appeals to ITAT and in supersession of the existing Instructions on the subject in general, and Instruction No. 1274 dated 10-8-1979, Instruction No. 1353 dated 9-9-1980, Instruction No. 1387 dated 3-3-1981, Instruction No. 1493 dated 18-11-1982, Instruction No. 1570 dated 4-7-1984, Instruction No. 1894, dated t. 16-6-1992, and Instruction No. 1921 dated 23-1-1995, In particular, the following Instructions are issued herewith for compliance by all concerned:

2. Responsibility for filing of appeals to ITAT

Subject to the Instructions issued by the CBDT for the time being in force on monetary limits for filing appeals under section 268A, the jurisdictional CIT shall be the authority to decide whether to contest an order of the CIT(A), in the light of the facts and circumstances of a particular case and the statutory provisions. While taking decision in the matter, he shall, *inter alia*, take into consideration reports of the authorities below. Once the CIT communicates his decision to contest a particular order of CIT(A), it shall be the responsibility of the Range Head to ensure timely and proper filing of appeal in the ITAT and consequential follow up actions. The actual filing of appeal is to be ensured by the Assessing Officer (AO).

3. Time Lines for Filing of Appeals in ITAT under section 253 of the Act

Time lines, indicating clearly the responsibilities of each level involved in the process, for filing appeals to ITAT have been laid down in Annexure-I to this instruction for strict adherence by all concerned.

4. Appeal Effect and Scrutiny Report

- i. On receipt of the order of the CIT(A), the AO shall give appeal effect promptly and properly. Range Head shall

monitor correctness and timely appeal effect in respect of orders of CIT(A).

- ii. Any pendency in regard to the appeal effect beyond one month shall be reported by the Range Head to the CIT in the DO reporting monthly activities of the Range, along with reasons for the delay.
- iii. With a view to provide relevant inputs to the decision making authority for filing appeals to ITAT, a format for scrutiny report is prescribed herewith at Annexure-II.
- iv. In respect of appeals decided in favour of revenue, the AO shall submit only Part-I of the proforma in Annexure-II to the Range Head and there will be no need to fill in other parts of the proforma in such cases.

5. Quality of appeals

- i. The CsIT shall ensure that appeals to ITAT are filed only where there is proper justification. Orders of CIT(A) on factual issues should be accepted unless the findings are perverse.
- ii. While giving comments/recommendations or taking decision to contest CIT(A)'s order, the officers concerned shall, inter alia, ensure that the following issues have been taken into consideration:
 - a) Facts of the case and basis of addition/disallowance are clearly brought out.
 - b) Reasons for granting relief by the CIT(A) on the relevant issues are clearly spelt out.
 - c) The reasons as to why the CIT(A) was not justified in recording the findings of fact or law on each issue are clearly brought out. Evasive stand or ambiguous language is to be avoided.
 - d) If any factual finding by CIT (A) is inconsistent with or contrary to the material on record, the

relevant material should be clearly identified to show perversity.

- e) Cogent reasons for the decision to file appeal on relevant issues are properly and clearly recorded by the CIT, as this will constitute the basis for further litigation in appropriate cases.
 - f) The grounds of appeal arising out of the order of CIT(A) are carefully drafted to clearly spell out the grievance of the department and the relief sought.
 - g) In case of mixed question of facts and law, the grounds of appeal should clearly bring out specific legal and factual issues to be contested.
 - h) The grounds are precise and not argumentative.
- iii. Along with authorization memo under section 253(2) and grounds of appeal, the CIT shall send a copy of comments of Range Head and reasons for his own decision authorizing appeal to the AO for his record and guidance.
 - iv. In case appeal has not been authorized against adverse order of the CIT(A), the decision should be conveyed to the AO along with copy of scrutiny report containing reasons for acceptance.

6. Proper Judicial Record Management System

6.1 The CIT shall, inter alia, ensure that once appeal to ITAT is authorized against the order of CIT (A), a separate judicial folder for the assessee for a particular year is maintained in his office. Among other things, the folder should have a copy of relevant assessment order (along with copies of key documents used as evidence in support of additions made), a copy of the remand report, if any, and the scrutiny report submitted by the authorities below.

6.2 Such judicial folder should be easily retrievable for scrutiny of ITAT order or judgment of the High Court, as the case may be, at the time of considering further appeal in the case, if any. A

similar judicial folder in respect of assessee's appeal under section 253 filed in ITAT, containing a copy of appeal memo filed by the assessee and other relevant documents should also be maintained for the aforesaid purpose.

7. Transfer of Jurisdiction outside CIT's Charge During Pendency of Appeal

7.1 In case of transfer of jurisdiction over a case from one CIT to another CIT charge during pendency of appeal, the transferor AO shall, while transferring the case records along with the judicial folders in CIT's office to the transferee AO, duly inform the change of jurisdiction to the Registrar ITAT with a copy to his CIT's office. This fact of intimation to the Registrar ITAT shall also be mentioned by him in the transfer memo. This procedure shall apply to the appeals filed by the Department as well as by the assessee.

7.2 In such cases, if the ITAT order is received by the transferor CIT, he shall immediately return the same to the Registrar ITAT referring to the earlier intimation of transfer of jurisdiction and informing that in view of the transfer of jurisdiction it is the transferee CIT who holds jurisdiction over the case and as such the service of the order should be made on him. A copy of the communication to the Registrar should be endorsed to the transferee CIT along with the copy of Tribunal's order for taking further necessary action.

7.3 In case of transfer of jurisdiction over a case involving two different Benches of ITAT during the pendency of appeal, necessary steps shall be taken by the transferor CIT to request the ITAT Bench where the case is pending to transfer the same to the Bench of ITAT having jurisdiction over the cases of transferee AO. The matter may also be coordinated with the transferee CIT.

8. Preparation of Memorandum of Appeals/Papers etc.

The Range Head shall ensure that:

- i. Once the grounds and authorization under section 253(2) for filing appeal are received from CIT, Form No. 36 i.e. memo of appeal is duly filled-in and filed by AO, with

all necessary annexures, in the registry of ITAT before expiry of limitation.

- ii. The ITA No. of the appeal filed is obtained by AO and recorded on other sets (including office copy) of the appeal papers. The Range Head should communicate the same to the CIT within the prescribed time limit as in Annexure-I.
- iii. There is proper vetting of Memorandum of Appeals as regards relevant facts therein before the appeal is actually filed.
- iv. Necessary particulars including the correct PAN, tax effect involved are mentioned.
- v. All annexures including copies of orders of authorities below are properly typed as per ITAT Rules to avoid defects/office objections.
- vi. In case, any document such as agreement, seized papers, depositions etc. are crucial to the issues involved and considered by lower authorities, a copy of the same must be referred to at relevant place in appeal memo and its copy annexed thereto.

9. Filing of Appeal and Subsequent Monitoring

The CIT shall put in place proper mechanism with defined responsibility of different levels of officials in his charge to ensure that:

- i. The appeal is filed in the ITAT within prescribed time limit as in Annexure-I.
- ii. ITA/WTA Number allotted by the registry is obtained and recorded in judicial folder in CIT's office as mentioned in check list/proforma for scrutiny report on CIT(A) order at Annexure-II.
- iii. In case, the registry of the ITAT notifies any defect, immediate steps are taken by the AO concerned to

remove the same with the assistance of the office of CIT (DR) or Senior DR as the case may be.

- iv. One set of appeal memo is kept with the AO for linking the same with the relevant assessment record.
- v. One set of appeal memo is kept in the office of CIT for placing the same in judicial folder.
- vi. Appeals are followed up and the Department is effectively represented at every hearing stage.
- vii. Proper coordination with the Departmental Representative is maintained at every stage by Range Head.
- viii. The details and information called for by the ITAT/DR should be furnished (in quadruplicate) at the earliest and, in any case at least three days before the date fixed for hearing before the ITAT.

10. Appeals/Cross Objections Filed by the Assessee

10.1 In cases where appeal to ITAT against the order of CIT(A) is filed by the assessee (whether department has filed appeal or not), the CIT shall ensure to put in place proper mechanism to examine the desirability of filing cross-objections (CO) in suitable cases. As soon as the memo of appeal filed by the assessee is received, a file should be opened in the office of CIT and assigned a proper identification number incorporating the ITA No. allotted by the ITAT and further necessary action taken.

10.2 Officers have to be alert particularly in those cases where CIT(A)'s order was not acceptable but appeal was not filed as tax effect was below the prescribed limit. If the assessee has filed appeal in ITAT in such cases, the CIT shall direct the AO to file cross-objections against that part of the CIT(A)'s order to which he objects, within statutory time limit.

11. Compliance of ITAT Directions

The CIT shall put in place proper mechanism to ensure timely and due compliance to the directions of the ITAT. Close co-

ordination between field officers, CIT (DR) and Departmental Representative in the ITAT has to be ensured so that directions are communicated in time and proper compliance is made to the satisfaction of the Tribunal.

12. Orders of ITAT containing strictures etc.

Orders of the ITAT containing strictures or those which are contrary to Board's orders, notifications, instructions, circulars etc. shall be brought to the notice of the Board (concerned division) immediately by the CIT through CCIT/DGIT under intimation to ITJ section of the Board.

13. Assistance to Departmental Representatives

The Range Head shall ensure that the AO sends a copy of the scrutiny report, comments of Range Head and decision of CIT, to the DR office along with the DR's copy of appeal papers immediately after filing of appeal and obtaining ITA No. Whenever DR requires any records, clarification or other material, including paper book to be submitted to ITAT, the CIT and Range Head shall ensure that the requirements are complied with promptly.

14. Monitoring mechanism

- i. The CIT shall ensure that appeals to ITAT are filed within prescribed time and pursued properly.
- ii. The CIT shall intimate to the CCIT in his monthly DO, the instances of delayed appeals to ITAT along with the reasons and corrective actions taken. The CCIT shall review due adherence to this instruction on a quarterly basis and take appropriate measures in case of deviations.
- iii. The cases of material deviations from this instruction, if any, shall be brought to the notice of ITJ section of the Board by the CCIT.

15. This Instruction shall apply to appeals to be filed in ITAT with effect from 22nd August, 2011.

16. Hindi version of instruction to follow.

Note : Reference to the CCIT/CIT in this Instruction includes DGIT/DIT as the case may be.

(Gaurav Kanaujia)
Deputy Secretary to Government of India
ITJ,CBDT

ANNEXURE-I**TIME LINES FOR FILING APPEAL TO THE ITAT**

Sr. No.	Stages	No. of days	Total time
1.	Receipt of CIT(A)'s order in the office of the CIT	0 day	0 day
2.	Sending the order to AO for necessary action along with a copy to Range Head	5 days	5 days
3.	Entry in the relevant register and submission of scrutiny report in prescribed proforma by AO to Range Head after appeal effect.	25 days	30 days
4.	Submission of recommendation by Range Head on scrutiny report to CIT along with draft grounds of appeal.	10 days	40 days
5.	Decision making by the CIT including finalization of grounds of appeal and sending the same to AO.	7 days	47 days
6.	Actual filing of appeal in ITAT by AO.	6 days	53 days
7.	Intimation of Diary/lodging to the office of CIT.	2 days	55 days

ANNEXURE-II

PROFORMA FOR SCRUTINY REPORT ON CIT(A) ORDER

Limitation to file appeal under section expires on.....

(Parts 1 to 4 to be filled in by the AO and 5 & 6 by Range Head)

- **TO BE FILLED IN ALL THE CASES OF ORDERS OF CIT(A)**

1. Particulars from the order under scrutiny

Sr. No.	Points	Particulars
i	Name and address of the assessee	
ii	PAN	
iii	Assessment Year	
iv	Appeal No. and date of the order	
v	Date of receipt of the order in the office of CIT	
vi	Date of giving appeal effect	
vii	Overall Tax effect of the order	

- **TO BE FILLED IN ONLY WHERE ORDERS OF THE CIT(A) ARE ADVERSE TO REVENUE**

2. Analysis of the order under scrutiny.

i	Whether it is combined order for more than one assessment year	Yes/No
ii	If yes, specify assessment years involved and identify specific issues related to different assessment years for filing separate appeals. Use Annexure, if required.	

iii	Whether it is combined order for more than one assessee/group case	Yes/No
iv	If yes, whether jurisdiction of all assesses falls in the same Range	Yes/No
v	If reply to (iv) above is no, identify the AO/Range/CIT having jurisdiction over other assesses for communication of stand taken on common issues.	
vi	If the proceeding of order under scrutiny was dependent on some other proceedings (say order u/s 263/ set aside order/Registration u/s 12A/ Approval etc.) specify the present appellate status of the other proceedings along with ITA No./WP No. etc.	
vii	Whether any additional ground was admitted by the CIT(A)	Yes/No
viii	If yes, whether the AO was intimated of the new ground?	Yes/No
ix	Whether any additional evidence was admitted by CIT(A)?	Yes/No
x	If yes, whether opportunity to AO was granted under Rule 46A to give comments/counter comments?	Yes/No

3. Scrutiny report on appellate order.

- A. If tax effect in 1(vii) above is below prescribed monetary limit and case does not fall in any exception of Instruction on monetary limits for filing appeals for the time being in force, detailed scrutiny may not be taken up and only general recommendations as to whether decision of

CIT(A) is prima facie acceptable on merits or not, may be given.

- B. In cases other than at 'A' above, the AO in his scrutiny report shall cover following points, as may be applicable, on each issue where relief is allowed by CIT(A), in a separate Annexure.

i	Relief allowed by the CIT(A):- <ul style="list-style-type: none"> • Description of issue involved in brief, • Basis of addition/disallowance made in assessment order, • Reasons for grant of relief by CIT(A), <i>(Relevant page/para No of assessment order and CIT(A)'s order for each issue may also be specified)</i>
ii	Tax effect in respect of each issue on which relief is allowed by CIT(A) is to be worked out separately.
iii	Whether any remand report was called for by the CIT(A)?
iv	If yes, AO's comments in brief on relevant issues above should be given. Specify whether relief by CIT(A) is in conformity with AO's views in the remand report? <i>(Attach copy of CIT(A)'s letter/order calling for the report and also the remand report submitted by the AO along with assessment order).</i>
v	Whether any factual finding given by CIT(A) is contrary to the material on record? If yes, specify in detail indicating specific para of order under scrutiny and material on record contradicting such a finding.
vi	If the decision of CIT(A) is not acceptable, specify reasons (also taking into account the remand report, if any on the issue)
Vii*	Whether similar issue was involved in the case of the assessee in earlier years? If yes, status of appeal etc. may be indicated.

viii	The same issue is involved in subsequent year in the case of assessee, the stand/action taken by AO/status of appeal, if any, may be indicated.
ix	Has CIT(A) relied upon any judicial decision? If yes, has a copy been annexed or citation given in case of reported decisions? (Note: Whether the relied upon decision has been challenged in further appeal? If so, the present status may be given.
x	Whether the issue arises out of audit objection?
xi	If yes, whether audit objection is included in Draft para? Also state whether Audit objection has been accepted by the department or not.

* Item will be extremely important, if applicable. {the involvement of issue in earlier year may already be indicated in assessment order or CIT(A)' order}.

4. General:

i	Aggregate of tax effect in 3B (ii) above	
ii	Whether the tax effect above is below the limit prescribed for filing of appeal in CBDT instruction on monetary limits?	Yes/No/NA
iii	Whether the case falls in any of the exceptions laid down in the said Instruction? If so, specify clause no.	
iv	Due date for submission of report to Range Head (30 days from the date of receipt of CIT(A)'s order in the office of CIT).	

Submitted to the Addl./Jt. CIT, Range.....for kind consideration and further action. The assessment records in.....volumes are also sent herewith.

Date:

Signature

Place:

Name and Designation of the AO

5. Recommendation of Range Head on scrutiny report by AO:

i	For each issue on which relief is allowed by the CIT(A) specify the issue involved with proper referencing:- <i>(issues involved to be mention in brief, for illustration- disallowance of interest for interest free loan given; repair expenses treated as capital; accrual of interest income on Bonds; deduction u/s 80IB etc.)</i>
ii	Whether any additional evidence was admitted without granting opportunity to AO? If yes, give details.
iii	Whether any finding of fact given by CIT(A) is inconsistent with material on record, making order perverse? (see Note below)
iv	If so, give details and explain which parameters of perversity are satisfied and how? (Refer to Note below)
v	Whether there are any mistakes apparent from record which require filing of rectification application before CIT(A)?
vi	Whether the decision of the CIT(A) is acceptable on merits? If not, give reasons for each issue.
vii	Draft specific ground to be taken before ITAT.

6. Final Summary of report:

Appeal is recommended on issues nos.&.....
Aggregate tax effect on issues on which appeal is recommended.	
Due date for submission of report in CIT office (40 days from the date of receipt of CIT(A) order in CIT office.	

Submitted to the CIT,for kind consideration and further action.

Date:

Signature

Place:

Name and Designation of the AO

7. Decision by the CIT on the scrutiny report:

- A. Issue wise decision of the CIT as to whether appeal is to be filed or not, may be recorded with reasons, keeping in view the line of argument the DR is expected to take before ITAT at the time of hearing:

Issue No.1.

Issue No.2.....and so on.

Aggregate effect on issues proposed to be contested in the ITAT	
---	--

- B. Grounds of appeal to be raised before the ITAT may be framed in respect of issues not accepted by the CIT.
- C. In case of a combined order or order in a group case, involving more than one assessee falling under jurisdiction of different CsIT, the CIT shall communicate the stand taken on common issues to the CIT having jurisdiction over other case(s).

8. Categorization of final decision by CIT:

A. The appeal is not to be filed.

- i. As the order is acceptable on merits, or
- ii. Even though the order is not acceptable, appeal is not being filed only on the consideration that the tax effect is less than the limit prescribed in CBDT's Instruction on monetary limits.

B. Appeal is to be filed on the 'grounds of appeal' framed above.

- i. As the order is not acceptable on merits, or
- ii. Though tax effect is below the prescribed limit, the case falls under the exceptions (to be specified) of the Instruction of the CBDT on monetary limit.

- iii. Authorization under section 253(2) of the I.T. Act is issued separately. Appeal to be filed accordingly.

Date: _____ Signature
Place: _____ Commissioner of Income-tax

9. Filing of appeal

- i. After decision of the CIT, the DCIT/ACIT/ITO(J) shall send authorization letter and grounds of appeal alongwith the scrutiny report to the AO and ensure that appeal to ITAT is filed within time limit.
- ii. A copy of scrutiny report is to be sent to the DR along with his copy of appeal papers.
(NOT TO BE ENCLOSED WITH OTHER SETS TO BE FILED IN ITAT)

The ITA No and ate of filing should be obtained from AO and recorded.

ITA No. _____ dated _____

Note on perversity:

An order or finding is perverse on facts, if it falls under any of the following categories:

- (a) The finding is without any evidence. Briefly indicate how it is so.
- (b) The finding is contrary to the evidence. Briefly state how it is so with particular reference to documents on record.
- (c) There is no direct nexus between the conclusion of fact and primary fact upon which that conclusion is based. If it is so, briefly stat how it is so.
- (d) When an authority draws a conclusion which cannot be drawn by any reasonable person or authority on the material and facts placed before it. {Sudarshan Silk and Sarees vs. CIT 300 ITR 205 SC}.

INCOME TAX APPELLATE TRIBUNAL

(Order No. 1 of 1973, dated 10th July, 1973)

PRESENTATION OF APPEAL / APPLICATION

In pursuance of rule 7 of the Income-tax (Appellate Tribunal) Rules, 1963, and in supersession of all previous orders on the subject, I hereby authorize the Assistant Registrars of the Appellate Tribunal at Bombay /Allahabad/Madras/Calcutta / Delhi/Hyderabad/ Patna/ Cochin/ Ahmedabad/ Bangalore/Indore/ Chandigarh/ Nagpur/ Cuttack/ Jabalpur/ Jaipur/ Amritsar/Poona/ & Gauhati for the purpose of that rule.

Provided that if at the time of presentation of appeal/ application, the Assistant Registrar is absent from office, the appeal or application may be presented to the Superintendent / Assistant Superintendent/Senior most Head Clerk of the office at Bombay/Delhi/ Calcutta or the head-clerk at Madras/ Allahabad/Patna/Hyderabad/Cochin/ Ahmedabad/ Bangalore/ Indore/ Chandigarh/ Nagpur/Cuttack/Jabalpur/Jaipur/ Amritsar / Poona & Gauhati in the office during office hours.

Provided further that if the appellant or applicant apprehends that it is the last day of the limitation for presentation of his appeal or application, he may present it to any Assistant Registrar at Bombay/ Allahabad/ Madras/ Calcutta/ Delhi/ Hyderabad/ Patna/ Cochin/ Ahmedabad/ Bangalore/ Indore/ Chandigarh/ Nagpur/ Cuttack/ Jabalpur/Jaipur /Amritsar/ Poona/ & Gauhati at his respective residence or any other place wherever they may be, or to a Member of the Tribunal at his residence or wherever he may be.

(Sd.)

Registrar,

Income-tax Appellate Tribunal, Bombay.

(No. F.161-Ad (AT)/70).

INCOME TAX APPELLATE TRIBUNAL, MUMBAI

STANDING ORDER UNDER INCOME TAX
(APPELLATE TRIBUNAL) RULES, 1963
(F.No.63-Ad.(AT)/97)

16-09-1997

In pursuance of sub-rule (1) of rule 4 of the Income-tax (Appellate Tribunal) Rules, 1963, and in supersession of Standing Order No. 1 of 1987, dated the 17th July, 1987, as amended from time to time till date, it is hereby directed that subject to any special order, all appeals and applications from the Districts, States and Union Territories specified in Column 3 shall, with effect from 1st October, 1997, be heard and determined by the Benches specified in Column 2 of the Table below :

Sr. No.	Bench Name	Districts/States/Union Territories
1	Agra Bench (1)	Districts of Agra, Aligarh, Etah, Etawah, Farrukhabad, Firozabad, Jalaun, Jhansi, Lalitpur, Mahamayanagar, Mainpuri and Mathura of Uttar Pradesh. – Bhind, Datia, Guna, Gwalior, Morena and Shivpuri Districts of Madhya Pradesh.
2	Ahmedabad Benches (4)	Gujarat (excluding the Districts of Amreli, Bhavnagar, Jamnagar, Junagarh, Kachchh, Rajkot and Surendernagar). – Union Territory of Dadra and Nagar Haveli. – Territory of Daman of the Union Territory of Daman & Diu.
3	Allahabad Bench (1)	– Uttar Pradesh (excluding the districts of Agra, Aligarh, Bahraich, Barabanki, Basti, Badaun, Bareilly, Bijnor, Bulandshahr, Etah, Etawah, Faizabad,

		Farrukhabad, Firozabad, Gautam Budh Nagar, Ghaziabad, Gonda, Hardoi, Jalaun, Jhansi, Jyotiba Rao Phule Nagar, Kanpur (Rural), Kanpur (Urban), Lalitpur, Lucknow, Lakhimpur, Kheri, Mahamayanagar, Mainpuri, Mathura, Meerut, Moradabad, Muzaffar Nagar, Pilibhit, Raibareilly, Rampur, Saharanpur, Seetapur, Shahjahanpur and Unnao). Uttaranchal (excluding the districts of Almora, Chamoli, Dehradun, Haridwar, Nainital, Pauri Garhwal, Pithoragarh, Tehri Garhwal, Udham Singh Nagar and Uttarkashi).
4	Amritsar Bench (1)	– Districts of Amritsar, Bhatinda, Faridkot, Firozpur, Gurdaspur, Hoshiarpur, Jalandhar and Kapurthala of Punjab. – State of Jammu & Kashmir.
5	Bangalore Benches (3)	State of Karnataka (excluding the Districts of Belgaum and Karwar Taluka of Uttar Kannada Districts).
6	Bilaspur Bench (1)	–
7	Chandigarh Benches (2)	– Punjab (excluding the Districts of Amritsar, Bhatinda, Faridkot, Firozpur, Gurdaspur, Hoshiarpur, Jalandhar and Kapurthala). – Haryana (excluding the Districts of Bhiwani, Faridabad, Gurgaon, Hissar, Jhajjar, Karnal, Mohindergarh, Panipat, Rewari, Rohtak and Sonapat). – Himachal Pradesh. – Union Territory of Chandigarh.

8	Chennai Benches (4)	<ul style="list-style-type: none"> – Tamil Nadu. – Union Territory of Pondicherry excluding Mahe.
9	Cochin Bench (1)	<ul style="list-style-type: none"> – Kerala. – Union Territories of Lakshadweep, Minicoy and Amindivi Islands. – Mahe of the Union Territory of Pondicherry.
10	Cuttack Bench (1)	<ul style="list-style-type: none"> – Orissa.
11	Delhi Benches (9)	<ul style="list-style-type: none"> – National Capital of Territory of Delhi. – Districts of Bhiwani, Faridabad, Gurgaon, Hissar, Jhajjar, Karnal, Mohindergarh, Panipat, Rewari, Rohtak and Sonapat of Haryana. – Districts of Badaun, Bijnor, Bulandshahr, Gautam Budh Nagar, Ghaziabad, Jyotiba Rao Phule Nagar, Meerut, Moradabad, Muzaffar Nagar, Rampur and Saharanpur of Uttar Pradesh. – Districts of Almora, Chamoli, Dehradun, Haridwar, Nainital, Pauri Garhwal, Pithoragarh, Tehri Garhwal, Udham Singh Nagar and Uttarkashi of Uttaranchal.
12	Guwahati Bench (1)	<ul style="list-style-type: none"> – Arunachal Pradesh. – Assam. – Manipur. – Meghalaya. – Mizoram. – Nagaland. – Tripura.

13	Hyderabad Benches (2)	– Andhra Pradesh (excluding the Districts of East Godavari, West Godavari, Guntur, Krishna, Srikakulam, Vishakhapatnam and Vizianagaram).
14	Indore Bench (1)	– Districts of Bhopal, Dewas, Dhar, Indore, Jhabua, Khandwa, Khargon, Mandsaur, Raisen, Ratlam, Sehore, Shajapur, Ujjain and Vidisha of Madhya Pradesh and Rajtgarh Chhattisgarh.
15	Jabalpur Bench (1)	– Madhya Pradesh (excluding the districts of Bhind, Bhopal, Datia, Dewas, Dhar, Guna, Gwalior, Indore, Jhabua, Khandwa, Khargon, Mandsaur, Morena, Raisen, Ratlam, Sehore, Shajapur, Shivpuri, Ujjain and Vidisha). – Chhattisgarh (excluding the districts of Basta Durg, Rajgarh, Rajnandgaon and Raipur).
16	Jaipur Benches (2)	– Rajasthan (excluding the Districts of Banswara, Barmer, Bhilwara, Bikaner, Chittorgarh, Churu, Dungarpur, Jaisalmer, Jalore, Jodhpur, Nagaur, Pali, Rajsamand, Sirohi, Sriganganagar and Udaipur).
17	Jodhpur Bench (1)	Districts of Banswara, Barmer, Bhilwara, Bikaner, Chittorgarh, Churu, Dungarpur, Jaisalmer, Jalore, Jodhpur, Nagaur, Pali, Rajsamand, Sirohi, Sriganganagar and Udaipur of Rajasthan.
18	Kolkata Benches (5)	– West Bengal; Sikkim – Union Territory of Andaman and Nicobar Islands.

19	Lucknow Benches (2)	– The Districts of Barabanki, Bareilly, Basti, Bahraich, Faizabad, Gonda, Hardoi, Kanpur (Rural), Kanpur (Urban), Lucknow, Lakhimpur Kheri, Pilibhit, Raibareilly, Shahjanhanpur, Seetapur, Unnao.
20	Mumbai Benches (12)	– Mumbai City, Mumbai Suburban and Thane Districts of Maharashtra.
21	Nagpur Bench (1)	– Akola, Amravati, Bhandara, Buldhana, Chandrapur, Gadchiroli, Nagpur, Wardha and Yeotmal districts of Maharashtra.
22	Panaji Bench (1)	– State of Goa. – Districts of Belgaum and Karwar Taluka of the Uttar Kannada Districts of Karnataka State.
23	Patna Bench (1)	– Bihar and Jharkhand.
24	Pune Bench (2)	– Maharashtra (excluding the Districts of Akola, Amravati, Bhandara, Chandrapur, Gadchiroli, Mumbai City, Mumbai Suburban, Nagpur, Thane and Yeotmal).
25	Rajkot Bench (1)	– Districts of Amreli, Jamnagar, Junagarh, Kachchh, Rajkot and Surendernagar of Gujarat. – Territory of Diu of the Union Territory of Daman & Diu.
26	Ranchi Bench (1)	-
27	Vishakhapatnam Bench (1)	– Districts of East Godavari, West Godavari, Guntur, Krishna, Srikakulam, Vishakhapatnam and Vizianagaram of Andhra Pradesh.

2. All pending appeals and applications, except those in which orders have been reserved after hearing, will be governed by the above order. Appeals and applications already fixed for hearing will be heard by the Bench before which they are so fixed.
3. It is further directed that the reference applications, arising out of the orders passed by the Bench wherefrom the jurisdiction is transferred, shall be heard and decided by the Bench to which the jurisdiction now stands transferred.
4. The ordinary jurisdiction of the Bench will be determined not by the place of business or residence of the assessee but by the location of the office of the Assessing Officer.
5. All appeals and applications pertaining to the Rajkot, Panaji, Vishakhapatnam, Agra and Jodhpur Benches shall, however, be received at the Ahmedabad, Pune, Hyderabad, Delhi and Jaipur Benches respectively till the above said newly created Benches become functional. All such appeals and applications shall be separately registered/entered in the relevant registers, meant for these newly created Benches, and shall be handed over to the concerned Bench(es) as and when the said Bench(es) become (s) functional.

Sd/-
President
Income Tax Appellate Tribunal
New Delhi.

INCOME-TAX (APPELLATE TRIBUNAL), RULES, 1963
*Rules to regulate the procedure of the Appellate Tribunal and
the procedure of the Benches of the Tribunal*

Short title and commencement.

1. (1) These rules may be called the Income-tax (Appellate Tribunal) Rules, 1963.
- (2) They shall come into force at once.

Definitions.

2. In these rules, unless there is anything repugnant in the subject or context,-
 - (i) “Act” means the Income-tax Act, 1961 (43 of 1961);
 - (ii) “authorised representative” means—
 - (a) in relation to an assessee a person authorised by the assessee u/s 288 to attend before the Tribunal; and
 - (b) in relation to an income-tax authority who is a party to any proceedings before the Tribunal—
 - (i) a person duly appointed by CBDT as “authorised representative” to appear, plead &
 - (ii) a person duly authorised by the Chief Commissioner of Income-tax to appear, plead and act on behalf of the income-tax department.
 - (iii) “Bench” means a Bench of the Tribunal constituted under sub-section (1) of section 255 read with sub-section (2) thereof and includes the President, Senior Vice-President, Vice President or any other Member sitting singly under the provisions of sub-section (3) of the said section and a Special Bench constituted under the same provisions;
 - (iv) “member” means a member of the Tribunal;
 - (v) “prescribed form” means a form prescribed in the rules made by the CBDT u/s 295;

- (vi) “President” means the President of the Tribunal;
- (vii) “Registrar” means the person who is for the time being discharging the functions of the Registrar of the Tribunal and includes a Dy. Registrar & Assistant Registrar where the context so requires ;
- (viii) “section” means a section of the Act ;
- (ix) “Senior Vice-President” means the Senior Vice-President of the Tribunal;
- (x) “Tribunal” means the Appellate Tribunal constituted by the Central Government under section 252, and includes, where the context so requires, a bench exercising and discharging the powers and functions of the Tribunal;
- (xi) “Vice-President” means a Vice-President of the Tribunal.

Sittings of Bench.

3. A Bench shall hold its sittings at its headquarters or at such other place or places as may be authorized by the President.

Powers of Bench.

4. (1) A Bench shall hear and determine such appeals and applications made under the Act as the President may by general or special order direct.

(2) Where there are two or more Benches of the Tribunal working at any headquarters, the President or, in his absence, the Senior Vice-President/Vice-President of the concerned zone or, in his absence, the senior most member of the station present at the headquarters may transfer an appeal or an application from any one of such Benches to any other.

Powers and functions of the Registrar.

4A (1) Registrar/Dy.Registrar/Assistant Registrar shall have the custody of records of the Tribunal and shall exercise such other functions including weeding out of old records as may be assigned

to him under these rules by the President, Senior Vice-President, Vice-President of the concerned Zone or Senior Member of the Bench.

(2) Subject to any general or special order of the President, the Registrar shall have the following powers and duties, namely :—

- (i) to receive all appeals, miscellaneous applications, stay petitions as well as other documents including applications for early hearing, transfer of appeals, applications for adjournment;
- (ii) to endorse on such appeals and applications the date of receipt for the purpose of calculating limitation and the amount of fee received;
- (iii) to scrutinize appeals & applications to find out whether they are in conformity with rules;
- (iv) to point out defects in such appeals and applications to the parties requiring them to rectify by affording reasonable opportunity and, if within the time so granted defects are not rectified, to obtain the orders of the Bench for the return of the appeals and applications;
- (v) to check whether the appeal or appeals are barred by limitation and, if so, intimate the party and place the matter before the Bench for orders;
- (va) to send the memo of appeals, applications, petitions along with enclosures to the opposite party (respondents) within a reasonable time from their institution by the applicant/ Department and to receive cross objection on the appeal filed by the applicant/Department and to carry out similar functions as indicated in sub-rules (ii) to (v) of this rule;
- (vi) subject to the directions of the President, Senior Vice-President, Vice-President and Senior Member to fix the date of hearing and direct the issue of notices therefor;
- (vii) to ensure that sufficient number of cases are fixed before the Bench under the directions of the President, Senior Vice-President, Vice-President or Senior Member, as the case may be;

- (viii) to bring on record legal representatives, in case of death of any party, to the proceedings;
- (ix) to verify the service of notice or other processes and to ensure that the parties are properly served, after obtaining the orders of the Bench whenever required for substituted service;
- (x) to requisition records from the custody of any authority;
- (xi) to allow inspection of records of the Tribunal;
- (xii) to return the documents filed by any authority on orders of the Bench;
- (xiii) to consolidate the appeals relating to the same assessee or the same issue or for any reason on the direction of the President, Senior Vice-President, Vice-President or Senior Member;
- (xiv) to fix cases out of turn on the direction of the President, Senior Vice-President, Vice-President or Senior Member;
- (xv) to certify and issue copies of the orders of the Tribunal to the parties;
- (xvi) to grant certified copies of documents filed to the parties, in accordance with the rules;
- (xvii) to grant certified copies of orders of Tribunal for publication, in accordance with rules;
- (xviii) to segregate cases to be heard by Single Member and fix them for hearing separately;
- (xix) to ensure that remand reports are submitted in time whenever called for by the Bench by issuing necessary reminders to the authority concerned;
- (xx) to obtain orders of the Bench on applications for withdrawal of appeals and applications and put up before the Bench;
- (xxi) to refund the institution fee on the direction of the Bench.

Language of the Tribunal.

5. The language of the Tribunal shall be English.

Filing of documents in Hindi.

5A. Notwithstanding anything contained in these rules, the parties may file documents drawn up in Hindi, if they so desire, in the Benches located in such States as may be notified by the President in this behalf from time to time.

Use of Hindi in proceedings and orders

5B. Notwithstanding anything contained in these rules, the Tribunal in its discretion may permit the use of Hindi in its proceedings or may pass orders in Hindi, in such States as may be notified by the President in this behalf from time to time:

Provided that where the order is passed in Hindi, it shall be accompanied by an authorized English translation thereof.

Procedure for filing appeals.

6. (1) A memorandum of appeal shall be presented by the appellant in person or by an agent to the Registrar at the headquarters of the Tribunal at Bombay, or to an officer authorised in this behalf by the Registrar, or sent by registered post addressed to the Registrar or to such officer.

(2) Appeal sent by post under sub-rule (1) shall be deemed to have been presented to the Registrar or to the officer authorised by the Registrar, on the day on which it is received in the office of the Tribunal at Bombay, or, as the case may be, in the office of such officer.

Date of presentation of appeals.

7. The Registrar, or, as the case may be, the authorised officer, shall endorse on every memorandum of appeal the date on which it is presented or deemed to have been presented under rule 6 and shall sign the endorsement.

Contents of memorandum of appeal.

8. Every memorandum of appeal shall be written in English and shall set forth, concisely and under distinct heads, the grounds of

appeal without any argument or narrative; and such grounds shall be numbered consecutively.

What to accompany memorandum of appeal.

9. (1) Memorandum of appeal shall be in triplicate and shall be accompanied by two copies (at least one of which shall be a certified copy) of the order appealed against, two copies of the order of the Assessing Officer, two copies of the grounds of appeal before the first appellate authority and two copies of the statement of facts, if any, filed before the said appellate authority.

(2) (i) In the case of appeal against the order of penalty, the memorandum of appeal shall also be accompanied by two copies of the assessment order;

(ii) In the case of appeal against the assessment under section 143(3) read with section 144B, the memorandum of appeal shall also be accompanied by two copies of the draft assessment order and two copies of the Inspecting Assistant Commissioner's directions under section 144B;

(iii) In the case of assessment u/s 143(3) r.w.s.144A, memorandum shall also be accompanied by two copies of the Inspecting Assistant Commissioner's directions u/s 144A; and

(iv) In the case of assessment under section 143 read with section 147, the memorandum of appeal shall also be accompanied by two copies of the original assessment order, if any.

(3) The Tribunal may in its discretion accept a memorandum of appeal which is not accompanied by all or any of the documents referred to in sub-rule (1).

Explanation : For the purpose of this rule, "certified copy" will include the copy which was originally supplied to the appellant as well as a photostat copy thereof duly authenticated by the appellant or his authorised representative as a true copy.

When to give revised Form No. 36

9A. (1) In the event of change in the address of the parties to the appeal as provided in column Nos. 10 & 11 of Form No. 36, the appellant should file a revised Form No. 36 duly filled up giving the new address of the party, duly verified in the same manner as required by rule 47 of the Income Tax Rules, 1962.

(2) The revised Form No. 36 shall specify the appeal No. as originally assigned or, in the event of non-availability of such No., the date of filing of the appeal shall be mentioned in the covering letter.

(3) No cognizance of change of address of the parties shall be taken for any purpose, unless a revised form as per sub-rules (1) and (2) is filed.

(4) The address furnished in the revised Form No. 36 shall be deemed to be the address of the parties for the purpose of service of all notices/orders.

Filing of affidavits.

10. Where a fact which cannot be borne out by, or is contrary to, the record is alleged, it shall be stated clearly and concisely and supported by a duly sworn affidavit.

Grounds which may be taken in appeal.

11. Appellant shall not, except by leave of the Tribunal, urge or be heard in support of any ground not set forth in the memorandum of appeal, but the Tribunal, in deciding the appeal, shall not be confined to the grounds set forth in the memo. of appeal or taken by leave of Tribunal under this rule:

Provided that the Tribunal shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of being heard on that ground.

Rejection or amendment of memorandum of appeal.

12. Tribunal may reject a memorandum of appeal, if it is not in

the prescribed form or return it for being amended within such time as it may allow. On representation after such amendment, the memorandum shall be signed and dated by the officer competent to make an endorsement under rule 7.

Who may be joined as respondent in an appeal by assessee.

13. In an appeal by an assessee under sub-section (1) of section 253, the Assessing Officer concerned shall be made a respondent to the appeal.

Who may be joined as respondent in an appeal by the Assessing Officer.

14. In an appeal by the Assessing Officer under s.s (2) of sec. 253, the appellant before the CIT (A) shall be made a respondent to the appeal.

What to accompany memorandum of appeal under section 253(2).

15. In an appeal under sub section (2) of section 253, a certified copy of the order of the Commissioner directing that an appeal be preferred, shall be appended to the memorandum of appeal.

Authorising a representative to appear.

16. In any appeal by any assessee, where the memorandum of appeal is signed by his authorised representative, assessee shall append to the memorandum a document authorising the representative to appear for him and if the representative is a relative of the assessee, the document shall state what his relationship is with the assessee, or if he is a person regularly employed by assessee, the document shall state capacity in which he is at the time employed.

Authorisation to be filed.

17. An authorised representative appearing for the assessee at the hearing of an appeal shall, unless the document referred to in rule

16 has been appended, file such a document before the commencement of the hearing.

Dress regulations for the members and for the representatives of the parties.

17A. (i) Summer dress for the Members shall be white shirt, white pant with black coat, a black tie or a buttoned-up black coat.

In winter, striped or black trousers may be worn in place of white trousers.

In case of female Members, dress shall be black coat over white saree or any other sober saree.

(ii) Dress for the authorised representatives of the parties (other than a relative or regular employee of the assessee) appearing before the Tribunal shall be the following :

(a) In case of male, a suit with a tie or buttoned-up coat over a pant or national dress, *i.e.*, a long buttoned-up coat on dhoti or churidar pyjama. Colour of the coat shall, preferably, be black.

(b) In case of female, black coat over white or any other sober coloured saree.

Where, however, the authorised representatives belong to a profession like that of lawyers or Chartered Accountants and they have been prescribed a dress for appearing in their professional capacity before any Court, Tribunal or other such authority, they may, at their option, appear in that dress, in lieu of the dress mentioned above.

(iii) All other persons appearing before the Tribunal shall be properly dressed.

Preparation of paper books, etc.

18. (1) If the appellant or the respondent, as the case may be, proposes to refer or rely upon any document or statements or other papers on the file of or referred to in the assessment or appellate orders, he may submit a paper book in duplicate containing such

papers duly indexed and paged at least a day before the date of hearing of the appeal along with proof of service of a copy of the same on the other side at least a week before :

Provided however, the Bench may in an appropriate case condone the delay and admit the paper book.

(2) The Tribunal may *suo motu* direct the preparation of a paper book in triplicate by and at the cost of the appellant or the respondent containing copies of such statements, papers and documents as it may consider necessary for the proper disposal of the appeal.

(3) The papers referred to in sub-rule (1) above must always be legibly written or type-written in double space or printed. If xerox copy of a document is filed, then the same should be legible. Each paper should be certified as a true copy by the party filing the same, or his authorised representative and indexed in such a manner as to give the brief description of the relevance of the document, with page numbers and the Authority before whom it was filed.

(4) The additional evidence, if any, shall not form part of the same paper book. If any party desires to file additional evidence, then the same shall be filed by way of a separate paper book containing such particulars as are referred to in sub-rule (3) accompanied by an application stating the reasons for filing such additional evidence.

(5) The parties shall not be entitled to submit any supplementary paper books except with the leave of the Bench.

(6) Documents that are referred to and relied upon by the parties during the course of arguments shall alone be treated as part of the record of the Tribunal.

(7) Paper/paper books not conforming to the above rules are liable to be ignored.

Date and place for hearing of appeal to be notified.

19. (1) Tribunal shall notify to the parties specifying the date and place of hearing of the appeal and send a copy of the

memorandum of appeal to the respondent either before or with such notice.

(2) The issue of the notice referred to in sub-rule (1) shall not by itself be deemed to mean that the appeal has been admitted.

Date and place of hearing of appeal, how fixed.

20. The date and place of hearing of the appeal shall be fixed with reference to the current business of the Tribunal and the time necessary for the service of the notice of appeal, so as to allow the parties sufficient time to appear and be heard in support of or against the appeal.

Grant of time to answer in an appeal under section 253(1).

21. In an appeal under sub-section (1) of section 253, in fixing the date for the respondent to appear and answer to the appeal, a reasonable time shall be allowed for the necessary communication with the Commissioner through the proper channel and for the issue of instructions to an authorised representative to appear and answer on behalf of the respondent.

Cross-objections.

22. A memorandum of cross-objections filed u/s 253(4) shall be registered and numbered as an appeal and all the rules, so far as may be, shall apply to such appeal.

Hearing of the appeal.

23. On the day fixed, or any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal. The Tribunal shall, then, if necessary, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply.

Hearing of appeal ex parte for default by the appellant.

24. Where, on the day fixed for hearing or on any other date to which the hearing may be adjourned, the appellant does not appear in person or through an authorised representative when the appeal

is called on for hearing, the Tribunal may dispose of the appeal on merits after hearing the respondent:

Provided that where appeal has been disposed of as above and the appellant appears afterwards and satisfies the Tribunal that there was sufficient cause for his non-appearance, when the appeal was called on for hearing, the Tribunal shall make an order setting aside the *ex parte* order and restoring the appeal.

Hearing of appeal ex parte for default by the respondent.

25. Where, on the day fixed for hearing or any other day to which the hearing may be adjourned, the appellant appears and the respondent does not appear in person or through an authorised representative when the appeal is called on for hearing, the Tribunal may dispose of the appeal on merits after hearing the appellant :

Provided that where an appeal has been disposed of as provided above and the respondent appears afterwards and satisfies the Tribunal that there was sufficient cause for his non-appearance when the appeal was called on for hearing, the Tribunal shall make an order setting aside the *ex parte* order and restore the appeal.

Continuation of proceedings after the death/insolvency of an assessee

26. Where an assessee whether he be an appellant or the respondent to an appeal dies or is adjudicated insolvent or in the case of a company being wound up, the appeal shall not abate and may, if the assessee was the appellant, be continued by, and if he was the respondent be continued against, the executor, administrator or other legal representative of the assessee or by or against the assignee, receiver or liquidator, as the case may be:

Provided that:

- (i) The assessee files a revised Form No.36 duly filled up giving revised name of the party duly verified in the same manner as required by rule 47 of Income Tax Rules, 1962.
- (ii) The revised Form No.36 shall specify the appeal number as

originally assigned or, in the event of non-availability of such number on the date of filing the appeal shall be mentioned in the covering letter to enable the Registrar to place fresh Form No.36 in the original file.

Respondent may support order on grounds decided against him.

27. The respondent, though he may not have appealed, may support the order appealed against on any of the grounds decided against him.

Remand of the case by the Tribunal.

28. Where the Tribunal is of the opinion that the case should be remanded, it may remand it to the authority from whose order the appeal has been preferred or to the Assessing Officer, with such directions as the Tribunal may think fit.

Production of additional evidence before the Tribunal.

29. Parties to appeal shall not be entitled to produce additional evidence either oral or documentary before Tribunal, but if the Tribunal requires any document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or, if the income-tax authorities have decided the case without giving sufficient opportunity to assessee to adduce evidence either on points specified by them or not specified by them, Tribunal, for reasons to be recorded, may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be adduced.

Mode of taking additional evidence.

30. Such document may be produced or such witness examined or such evidence adduced either before the Tribunal or before such income-tax authority as the Tribunal may direct.

Additional evidence to be submitted to the Tribunal.

31. If the document is directed to be produced or witness examined or evidence adduced before any income-tax authority, he shall

comply with the direction of the Tribunal and after compliance send the document, the record of the deposition of the witness or the record of the evidence adduced, to the Tribunal.

Adjournment of appeal.

32. The Tribunal may, on such terms as it thinks fit adjourn the hearing of the appeal.

Award of costs.

32A. (1) The costs of any appeal shall be at the discretion of the Tribunal.

(2) The costs awarded by the Tribunal shall be paid or recovered as if it were a tax payable or a refund due to a party.

(3) Notwithstanding anything contained hereinabove, the Tribunal may in its discretion, direct such costs to be deposited in any other manner as it deems fit.

Proceedings before the Tribunal.

33. Except in cases to which the provisions of section 54 of the Indian Income-tax Act, 1922, and/or section 137 of the Act are applicable and cases in respect of which the Central Government has issued a notification under sub-section (2) of section 138 of the Act, the proceedings before the Tribunal shall be open to the public. However, the Tribunal may, in its discretion, direct that proceedings before it in a particular case will not be open to the public.

Order to be pronounced, signed and dated

34. (1) Order of the Bench shall be in writing and shall be signed and dated by the Members constituting it.

(2) The Members constituting the Bench or, in the event of their absence the Vice-President, Senior Vice-President or the President may mark an order as fit for publication.

(3) Where a case is referred under sub-section (4) of section 255,

the order of the Member or Members to whom it is referred shall be signed and dated by him or them, as the case may be.

(4) The Bench shall pronounce its orders in the Court.

However, where the Bench is not functioning or for any other good reason the pronouncement of order in the Court is not possible or practicable, a list of such order(s) shall be prepared duly signed by the Members showing the result of the appeal and the same would be put on the Notice Board of the Bench and it shall be deemed pronouncement of the order.

(5) The pronouncement may be in any of the following manners:-

- (a) The Bench may pronounce the order immediately upon the conclusion of the hearing.
- (b) In case where the order is not pronounced immediately on the conclusion of the hearing, the Bench shall give a date for pronouncement.
- (c) In a case where no date of pronouncement is given by the Bench, every endeavour shall be made by the Bench to pronounce the order within 60 days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of exceptional and extraordinary circumstances of the case, the Bench shall fix a future day for pronouncement of the order, and such date shall not ordinarily be a day beyond a further period of 30 days and due notice of the day so fixed shall be given on the notice board.

(6) Order of the Bench shall ordinarily be pronounced by the Members who heard the appeal. However, if the said Members or any of them is or are not available for pronouncement for any reason, then the order will be pronounced by such Member or Members as may be nominated by the President, Senior Vice-President, Vice-President, or Senior Member, as the case may be.

(7) In the case where the order is ready in every respect and can be made available to the parties, the Bench may advance the date

of pronouncement and put this information on the notice board and the order shall be pronounced accordingly.

(8) In a case where the order cannot be pronounced on the date given, the date of pronouncement may be deferred, subject to sub-rule (5) (c) above, to a further date and information thereof shall be given on the notice board.

Procedure for dealing with applications under section 254(2).

34A (1) An application under section 254(2) of the Act shall clearly and concisely state the mistake apparent from the record of which the rectification is sought.

(2) Every application made under sub-rule (1) shall be in triplicate and the procedure for filing of appeals in these rules will apply mutatis mutandis to such applications.

The Applicant shall also state whether any Miscellaneous Application under section 254(2) was filed earlier before the Tribunal against the same order and if so, the fate of such application. Copies of the orders passed by the Tribunal on such applications shall also be filed before the Tribunal in triplicate along with the Miscellaneous Application.

(3) The Bench which heard the matter giving rise to the application (unless the President, the Senior Vice-President, the Vice-President or the Senior Member present at the station otherwise directs) shall dispose it after giving both the parties to the application a reasonable opportunity of being heard :

(4) An order disposing of an application, under sub-rule (3), shall be in writing giving reasons in support of its decision.

Order to be communicated to parties.

35. Tribunal shall, after the order is signed, cause it to be communicated to the assessee and to the Commissioner.

Procedure for filing and disposal of stay petition.

35A. (1) (a) Every application for stay of recovery of demand

of tax, interest, penalty, fine, estate duty or any other sum shall be presented in triplicate by the applicant in person, or by his duly authorised agent, or sent by registered post to the Registrar or the Assistant Registrar, as the case may be, at the headquarters of a Bench or Benches having jurisdiction to hear the appeals in respect of which the stay application arises.

(b) Separate applications shall be filed for stay of recovery of demands under different enactments.

(2) Every application shall be neatly typed on one side of the paper and shall be in English and shall set forth concisely the following :—

- (i) short facts regarding the demand of the tax, interest, penalty, fine, estate duty or any other sum, recovery of which is sought to be stayed;
- (ii) the result of the appeal filed before the CIT (Appeals), if any;
- (iii) the exact amount of tax, interest, penalty, fine, estate duty or any other sum demanded, as the case may be, and the amount undisputed therefrom and the amount outstanding;
- (iv) the date of filing the appeal before the Tribunal and its number, if known;
- (v) whether any application for stay was made to the revenue authorities concerned, and if so the result thereof (copies of correspondence, if any, with the revenue authorities to be attached);
- (vi) reasons in brief for seeking stay;
- (vii) whether the applicant is prepared to offer security, and if so, in what form;
- (viii) prayers to be mentioned clearly and concisely (stating exact amount sought to be stayed);
- (ix) the contents of the application shall be supported by an

affidavit sworn by the applicant or his duly authorised agent.

What to accompany an application for reference under section 256(1).

36. An application for reference under sub-section (1) of section 256 shall be in triplicate and shall be accompanied by documents referred to in item No. 7 of Form No. 37 prescribed under rule 48 of the Income-tax Rules, 1962, which in the opinion of the applicant should form part of the case, and a translation in English of any such document, where necessary.

Procedure in respect of application under section 256(1).

37. Rules 6, 7, 12, 19, 20, 21, 23, 26 and 34 shall apply *mutatis mutandis* to an application under sub-section (1) of section 256.

Who may be joined as a respondent in an application by the assessee.

38. Where the application is by an assessee, the Commissioner to whom the Assessing Officer is subordinate shall be made a respondent.

Who may be joined as a respondent in an application by the Commissioner.

39. Where the application is by the Commissioner, the assessee shall be made a respondent.

Same Bench to hear the application.

40. The Bench which heard the appeal giving rise to the application shall hear it unless the President, the Senior Vice-President or the Vice-President, as the case may be, directs otherwise.

Time for submission of reply by the respondent.

41. On receipt of the notice of the date of hearing of the application, the respondent shall, at least 7 days before the date of hearing, submit a reply in writing to the application.

Contents of the reply.

42. Reply to the application shall specifically admit or deny whether the question of law formulated by the applicant arises out of the order under sub-section (1) of section 254. If the question formulated by the applicant is defective, the reply shall state in what particular the question is defective and what is the exact question of law which arises out of the said order. The reply shall be accompanied by two copies thereof, a list of documents (the particulars of which shall be stated) which, in the opinion of the respondent, should form part of the case and a translation in English of any such document, where necessary.

Dismissal if no question of law arises.

43. On the day fixed for the hearing of the application or any other day to which the hearing may have been adjourned, after hearing the parties, the Tribunal shall dismiss the application, if it is of the opinion that no question of law arises out of the order passed u/s 254(1).

Statement of case to be prepared, if a question of law arises.

44. Where the Tribunal is of the opinion that a question of law arises out of the order u/s 254(1), it shall draw up a statement of the case.

What to accompany the statement of the case.

45. The Tribunal shall append to the statement documents which, in its opinion, form part of the case and as supplied to it by the parties. Within such time after the statement of the case is drawn up, as the Tribunal may direct, the applicant, or the respondent, as the case may be, shall, in addition to the documents already filed in accordance with rule 36, file as many certified copies of the documents which form annexures to the case, as the Tribunal may direct, and in case the party responsible for filing defaults, the Tribunal may send the statement to the High Court without annexures.

Order on application to be communicated to the parties.

46. The order on the application for reference shall be communicated to the assessee and the Commissioner.

47. Same Bench to deal with requisition from High Court u/s 256(2).

Where a requisition is received from the High Court under sub-section (2) of section 256, or where the case is referred back under section 258, it shall be dealt with by the Bench referred to in rule 40 unless otherwise directed by the President or the Senior Vice-President or the Vice-President, as the case may be.

Copy of the judgment of the High Court to be sent to the Bench.

48. When a copy of the judgment of the High Court is received by the Tribunal under sub-section (1) of section 260, it shall be sent to the Bench referred to in rule 40, or any other Bench as directed by the President, the Senior Vice-President or the Vice-President, for such orders as may be necessary.

Scale of copying fees.

49. (1) Copying fees for supply of certified copies shall be:
- (i) for a full page or part thereof, Rs. 10 irrespective of whether the copy is typed or xeroxed.
- (2) Except in cases where copies are supplied free under the rules or instructions for the time being in force and in cases covered by sub-rule (3), the scale of fees to be charged for the supply of copies urgently shall be twice those prescribed by sub-rule (1) where the copies are typed and in such cases, fifty per cent of the fees so charged shall be paid to the official who types such copies.
- (3) Where a party applies for immediate delivery of a copy of evidence taken down by a stenographer, the fee charged shall be twice those prescribed by sub-rule(1), and in case a typed copy is supplied, fifty per cent of the fees so charged shall be paid to the official who types such copies.

(4) If a publisher applies for a copy of an order of the Tribunal for the purpose of publication, the fee for such copy shall be Rs. 15 per page or part thereof.

(5) Copying fees for supply of certified copies, whether typed or xeroxed, shall be recovered in advance in cash.

Fees for inspection of records.

50. (1) Fees for inspecting records and registers of the Tribunal shall be charged as follows:-

(a) For the first hour or part thereof 20

(b) For every additional hour or part thereof 10

(2) Fees for inspection shall be recovered in advance in cash.

(3) No fees shall be charged for inspecting records of a pending appeal or application by a party thereto.

Repeal and saving.

51. The Appellate Tribunal Rules, 1946, are hereby repealed except as to proceedings to which the Indian Income-tax Act, 1922, applies.

Application of Rules.

52. These rules shall apply *mutatis mutandis* to proceedings under all such Acts which provide for adjudication of disputes by the Income-tax Appellate Tribunal.