

HAND BOOK ON JUDICIAL MATTERS



Principal Commissioner of Income Tax, (Judicial)
Aayakar Bhavan, Maharshi Karve Road, New Marine
Lines, Mumbai - 400020



HAND BOOK ON JUDICIAL MATTERS



O/o Principal Commissioner of Income Tax, (Judicial)
Aayakar Bhavan,
Maharshi Karve Road, New Marine Lines,
Mumbai – 400020

कार्यालय
प्रधान मुख्य आयकर आयुक्त
तीसरी मंजिल, आयकर भवन,
महर्षि कर्वे मार्ग, मुंबई -400 020



Office of the
Pr. Chief Commissioner of Income tax
3rd floor, Aayakar Bhavan,
Maharshi Karve Road, Mumbai – 400 020

फोन: 022-22017654

Email: mumbai.pccit@incometax.gov.in

Dated: 9.9.2024

**MESSAGE FROM THE PR. CHIEF COMMISSIONER OF INCOME TAX, MUMBAI
ON RELEASE OF THE HANDBOOK ON JUDICIAL MATTERS**

Judicial matters are a very important part of our work and I must thank the PCITs (Judicial), Mumbai, the editors and their team, for bringing out this Handbook on Judicial Matters. This Handbook is expected to serve as a useful resource on judicial matters. The Handbook discusses matters relating to filing of appeals and representation before the ITAT. It discusses the filing of appeals, the removal of objections in appeals before the High Court, and IAMS portal (Integrated Appeal Management System). It also discusses prosecution matters and matters relating to NCLT and NCLAT. The Handbook also has a separate chapter on filing of SLPs. Following due process is important and we must be aware of the requirements of law, and should continuously update our knowledge in this area. I am sure that the Handbook will help the officers in dealing with judicial matters.

Officers are requested to provide their feedback and valuable suggestions for improving this Handbook. It is necessary that this Handbook be updated periodically and improved, to incorporate latest changes and suggestions from the officers. I am confident that the PCITs (Judicial) and their team will continue to update and improve this Handbook so that it effectively assists the officers in judicial matters.

Best Wishes,

(Raj Tandon)
Pr. Chief Commissioner of Income-Tax,
Mumbai

GUIDANCE -

MR. SANDEEP DAHIYA

Pr. Commissioner of Income Tax(Judicial)-1

MR. AJAY KUMAR SHARMA

Pr. Commissioner of Income Tax(Judicial)-2

MR. SANJEEV KASHYAP

Commissioner of Income Tax(TDS)

EDITORS -

MR. B. ARUN

Joint Commissioner of Income Tax(Judicial)

DR. B. BRAHMA VIDHYA

Joint Commissioner of Income Tax(Judicial)

MRS. LEKHA S. NAIR

Deputy Commissioner of Income Tax(Judicial)

ASSISTANCE

MRS. NIMISHA D. PARIKH

Income Tax Officer

MRS. CHHAYA M. SONKUSALE

Administrative Officer

MRS. SNEHALATA M. DIXIT

Private Secretary

MRS. SHILPA R. DALVI

Inspector

MR. PRATIK S. MISAL

Inspector

MR. KRISHNA KUMAR MEENA

Inspector

MS. SRISHTI VATSAL

Stenographer

CONTENTS AT A GLANCE

PART - A Income Tax Appellate Tribunal (ITAT)

| | | |
|--------------------|--|----|
| Chapter-I | Functions of ITAT and Issues related to presentation before ITAT | 1 |
| Chapter-II | Appeals to ITAT..... | 5 |
| Chapter-III | E-Filing of Appeal in ITAT and Check List | 11 |

PART - B HIGH COURT

| | | |
|---------------------|--|----|
| Chapter-I | Filing of Appeal in the High Court..... | 15 |
| Chapter-II | Monetary limits for filing Appeal in HC..... | 20 |
| Chapter-III | E-Filing of Appeals..... | 24 |
| Chapter-IV | Removal of Objections in the Appeals | 30 |
| Chapter-V | Hearing of Appeal and Passing of Order..... | 32 |
| Chapter-VI | Engagement of Counsels and ASG | 35 |
| Chapter-VII | IAMS Portal..... | 37 |
| Chapter-VIII | Section 158AA and Section 158AB..... | 46 |

PART – C WRIT PETITION

| | | |
|--------------------|---|----|
| Chapter-I | Writ Petition..... | 50 |
| Chapter-II | Filing of Writ Petition..... | 52 |
| Chapter-III | Procedure of Handling Writ Petitions..... | 53 |
| Chapter-IV | Action taken after disposal of Writ Petition..... | 60 |

PART – D PROSECUTION

| | | |
|--------------------|---|----|
| Chapter-I | Prosecution..... | 61 |
| Chapter-II | Launching Prosecution..... | 63 |
| Chapter-III | Important Aspect in the Preparation of Complaint..... | 68 |
| Chapter-IV | Offences under various other Acts..... | 71 |
| Chapter-V | IPMS Portal..... | 75 |

PART – E National Company Law Tribunal and National Company Law Appellate Tribunal (NCLT & NCLAT)

| | | |
|--------------------|---|----|
| Chapter-I | National Company Law Tribunal and National Company Law Appellate Tribunal (NCLT & NCLAT)..... | 77 |
| Chapter-II | Merger & Acquisition in the light of Income Tax Act, 1961..... | 83 |
| Chapter-III | Important Points to Consider in Merger/ Amalgamation cases..... | 89 |
| Chapter-IV | Insolvency and Bankruptcy Code, 2016..... | 95 |

PART – F SPECIAL LEAVE PETITION (SLP)

| | | |
|--------------------|--|-----|
| Chapter-I | Special Leave Petition..... | 110 |
| Chapter-II | Filing of SLP..... | 112 |
| Chapter-III | Important Points for SLP Proposals..... | 113 |
| Chapter-IV | Checklist and Steps relating to SLP..... | 116 |

TABLE OF CONTENTS

PART – A Income Tax Appellate Tribunal (ITAT)

| Sr. No. | Contents | |
|-------------------|---|--|
| Chapter-I | Functions of ITAT and Issues related to Representation before ITAT | |
| | i. Introduction ii. Pre-requisite for filing Appeal before ITAT iii. Timelines for filing Appeals to ITAT iv. Constitution and Departmental Setup in ITAT v. Benches of ITAT vi. Appellate proceedings before ITAT vii. Powers & Limitations of ITAT viii. Issues of Presentation before ITAT | |
| Chapter-II | Appeals to ITAT | |
| | i. Mandate of ITAT ii. Departmental Appeals: Commissioner's Authority and Tax Threshold iii. Time limit for presenting appeal iv. Form and Signature Requirements v. Memorandum of Cross Objections vi. Documents to be submitted with appeal vii. Submission of paper book viii. Hearing of the appeal by the ITAT ix. Filing of additional evidence x. Order of the ITAT xi. Stay application xii. Rectification of Appellate Order u/s 254(2) of the IT Act xiii. Faceless Proceedings before ITAT | |

Chapter-III E-Filing of Appeal in ITAT and Check List

- i. Note for e-filing in the ITAT
- ii. E-Filing Procedure
- iii. Checklist for e-filing

PART - B HIGH COURT

| Sr. No. | Contents | |
|---------|----------|--|
|---------|----------|--|

Chapter-I Filing of Appeals in the High Court

- i. Appeal to High Court
- ii. Procedure for Appeals
- iii. Stages for Hearing of Appeals
- iv. Case before High Court to be heard by not less than two judges
- v. Meaning of Substantial Question of Law
- vi. Filing fee
- vii. No Abatement of Appeal

Chapter-II Monetary limits for filing Appeals in HC

- i. Circular No. 3 of 2018, dated 11.07.2018
- ii. Circular No. 5/2024 dated March 15, 2024
- iii. Scenarios of applicability of Monetary Limit u/s 158AB

Chapter-III E-Filing of Appeal

- i. Steps for filing of appeal u/s 260A of the Act in High Court by Counsel

Chapter-IV Removal of Objections in Appeals

- i. Removal of Objections
- ii. Common objections raised by the Registry

Chapter-V Hearing of Appeal and Passing of Order

- i. Hearing of Appeal and Passing of Order by the High Court
- ii. Procedure after disposal of the case

| | |
|---------------------|--|
| Chapter-VI | Engagement of Counsels and ASG |
| | i. Appointment/Renewal of Standing counsels of ii. IT Department before various High Court iii. Contingencies arising during the pendency of appeals |
| Chapter-VII | IAMS Portal |
| | i. Key features of IAMS |
| Chapter-VIII | Section 158AA and Section 158AB |
| | i. Section 158AA and Section 158AB ii. Amendment of section 158AA iii. Explaining of the provisions of section 158AA and 158AB |

PART – C WRIT PETITION

| Sr. No. | Contents | |
|----------------|-----------------|--|
|----------------|-----------------|--|

| | |
|--------------------|--|
| Chapter-I | WRIT PETITION |
| | i. Introduction ii. Importance of Writ Petition iii. Difference between Writ and Writ Petition iv. Difference between a Writ Petition, an appeal and a PIL v. Writ in Mandamus |
| Chapter-II | Filing of Writ Petition |
| | i. Circumstances under which a Writ Petition can be filed ii. Provision of the law under which a Writ is filed iii. Time limit for filing a Writ Petition |
| Chapter-III | Procedure of Handling Writ Petitions |
| | i. Importance ii. SOPs/Instructions regarding Writ Petitions iii. Common issues noticed in Handling of Writ Petitions iv. Steps to be taken when a Writ Petition is Received |

Chapter-IV Action taken after disposal of Writ Petition

- i. Dismissal of the Writ Petitions
- ii. Set Aside Directions
- iii. Petition being allowed

PART – D PROSECUTION

| Sr. No. | Contents | |
|---------|----------|--|
|---------|----------|--|

Chapter-I PROSECUTION

- i. Introduction
- ii. Offences liable to prosecution
- iii. Sections relating to prosecution

Chapter-II LAUNCHING PROSECUTION

- i. General issues relevant to procedure for launching prosecution
- ii. Procedure for launching of Prosecution

Chapter-III Important Aspect in the Preparation of Complaint

- i. Important Aspect in the Preparation of Complaint
- ii. Custody of Records and Evidence Relating to Prosecution
- iii. Publicity of Convicted Cases

Chapter-IV Offences under various other Acts

- i. Prosecution provisions under the Black Money and Imposition of Tax Act, 2015
- ii. Prosecution provisions under the Prohibition of Benami Property Transaction Act, 1988
- iii. Comparative chart of prosecution under I.T Act vis-à-vis Black Money Act & Benami Act

Chapter-V IPMS PORTAL

- i. Integrated Prosecution Management System (IPMS)

PART – F

SPECIAL LEAVE PETITION (SLP)

| Sr. No. | Contents | |
|--------------------|--|--|
| Chapter-I | SPECIAL LEAVE PETITION | |
| | i. Introduction | |
| | ii. Scope of Article 136 | |
| | iii. Applicability of a SLP | |
| | iv. Rules for filing SLP | |
| | v. Time Frame for filing SLP | |
| Chapter-II | Filing of SLP | |
| | i. Requirements for filing a SLP | |
| | ii. Pre-requisite for filing SLP | |
| Chapter-III | Important Points for SLP Proposals | |
| | i. Points to be taken into Consideration for SLP Proposals | |
| Chapter-IV | Checklist and Steps relating to SLP | |
| | i. Checklist | |
| | ii. Steps for sending SLP Proposal through E-Office | |
| | iii. SLP E-Office File Movement | |
| | iv. Proforma B Utility | |

LIST OF ANNEXURES

| | |
|--|--|
| | Instructions regarding Standard Operating Procedure on filing of appeals to the ITAT under section 253 and related matters. |
| ANNEXURE B1: CIR. NO.8/2023 dated 31.05.2023 | CIR.NO.8/2023 Revision of exceptions to monetary limits for filing appeals deferred under provisions of section 158AB dtd. 31.05.2023. |
| ANNEXURE B2: Cir. No.F.No.279/Misc.142/2007/ITJ(PT) dated 15.3.2024 (Circular No 5/2024): | In supersession of all earlier Circulars, the Board has vide this Circular amended the exceptions to filing appeals in all judicial fora. |
| ANNEXURE B3: INSTRUCTION 7/2016 | Revision of the Guidelines for engagement of standing counsels to represent the income-tax department before high court and other judicial forums; revision of their schedule of fees and related matters |
| ANNEXURE B4: CBDT LETTER NO. F. NO.278/M-23/2021-ITJ DATED 9TH JUNE, 2021 | Engagement of Additional Solicitor General (ASG). To represent the income-tax department before High Court and other judicial forums; revision of their schedule of fees and related matters |
| ANNEXURE B5: THE CBDT LETTER NO. F. NO. 278/MISC/ M-23/2021-ITJ DATED 18TH AUGUST, 2021 | Revised Guidelines – Appointment of Special Counsels to represent Income Tax Department before Courts and Tribunals |
| ANNEXURE B6: CONTACT LIST OF COUNSELS DATED 31.03.2024. | List of Standing Counsels empaneled by the Department to represent before Bombay High Court. |
| ANNEXURE B7: No. 272/ M-26/2015(ITJ)] DATED 07.12.2018. | Non-removal/ delay in removal of defects of pending appeals before Hon’ble High Courts |
| ANNEXURE C1: INS.NO. 7/2011[F.NO.279 /MISC. /M-42/2011-ITJ], dtd: 24.05.2011 | Instructions regarding standard operating procedure on filing of appeals to the High Court under section 260A and related matters. |
| ANNEXURE C2: F.NO.CIT (NaFAC)-1/58/2021-22/333 DATED 26.07.2021. | Standard Operating Procedure (SOP) for handling Writ Petitions where assessment is made under the Faceless Assessment Scheme 2019 (FAS,19)/section 144B of the IT Act, 1961(the Act) and or penalty is passed under Faceless Penalty Scheme (FPS), 2021, where NaFAC/CBDT is one of the respondents. |

| | |
|--|--|
| ANNEXURE C3: F.NO. NaFAC/Delhi/CIT-3/2022-23/339/76 DATED 01.08.2022 | Standard Operating Procedure (SOP) for handling Writ Petitions against assessment proceedings conducted under section 144B of the IT Act, 1961 or penalty proceedings under Faceless Penalty Scheme (FPS), 2021. |
| ANNEXURE D1: CIRCULAR NO.24/2019 [F. No. 285/08/2014- IT (INV. V)/349] DATED 09-09-2019 | Procedure for identification and processing of cases for prosecution under Direct Tax Laws-reg. |
| ANNEXURE D2: CIRCULAR NO. 5/2020 [F. NO. 285/08/2014-IT (INV.V)/712], DATED 23-01-2020 | Section 276C, Read with Sections 276B, 276BB, 276CC Of the Income-Tax Act, 1961 -Offences And Prosecution - Willful Attempt To Evade Tax, Etc. - Procedure For Identification and Processing of Cases For Prosecution Under Direct Tax Laws - Amendment In Circular No. 24/2019 [F.No. 285/08/2014-IT(Inv.V)/349], Dated 09-09-2019. |
| ANNEXURE D3: Instruction No. 6/2016 [F.No. 279/Misc./M-77/2011-ITJ] DATED 07-09-2016 | Guidelines for engagement of Special Public Prosecutors (SPPs) to represent the Income Tax Department before Courts of Session and its subordinate Courts; revision of their schedule of fees and related matters-instructions regarding. |
| ANNEXURE D4: [F.No. 279/Misc./M-77/2011-ITJ] DATED 18-10-2016 | Modifications to the Instruction No. 6/2016 for engagement of Special Public Prosecutors (SPPs) to represent the Income Tax Department before Courts of Session and its subordinate courts-regarding. |
| ANNEXURE E1: | Proforma Format for Presentation of Caveat before NCLT |
| ANNEXURE E2: | Form B Proof of Claim by Operational Creditors except Workmen and Employees. |
| ANNEXURE E3: | Form C-Proof of Claim by Financial Creditors to be filed before NCLT. |
| ANNEXURE F1: INSTRUCTION NO. 2/2022 [F.NO.279/ MISC./M-72/2022-ITJ] | Standard Operating Procedure on filing of Appeals/Special Leave Petitions (SLPs) by the Income Tax Department in the Supreme Court and related matters |
| Annexure F2: F. No. DDIT (L&R) HQ/ /2024-25/02 dated 21.05.2024 | Submission of Deficiency-Free SLP Proposals on E office for Timely Processing-reg |

DISCLAIMER

- Hand book on Judicial Matters is intended only to be a reference book and it cannot be a substitute for Acts, Rules, Orders, Instructions, etc. of various authorities.
- We have taken every effort to provide accurate and updated information in the Hand book on Judicial Matters. For any inadvertent error and omission or doubt, the Principal Commissioner of Income Tax (Judicial) may be contacted for clarification.
- The statements in this Manual should not be construed as the final authority about any provision of law. For the same, the actual text of a provision of law or a judgment or Circular etc, which are quoted in this book, may be referred to.
- The Principal Commissioner of Income Tax (Judicial) welcomes suggestions on content or form and inadvertent errors or omissions in this Manual for further improvement.

All rights reserved.

No part of this publication may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, for any commercial use, or otherwise, without the prior written permission of Principal Commissioner of Income Tax (Judicial), Mumbai.

Chapter-I

FUNCTIONS OF ITAT AND ISSUES RELATED TO REPRESENTATION BEFORE ITAT

1. Introduction: -

The Commissioner of Income Tax (Appeals) serves as the first appellate authority, while the Income Tax Appellate Tribunal (ITAT) is the second appellate authority. Established in January 1941, the ITAT is a quasi-judicial institution that specializes in handling appeals under the Direct Taxes Acts. Both taxpayers and Assessing Officers can file appeals to the ITAT if they are dissatisfied with the decision of the first appellate authority. The ITAT operates under the Ministry of Law and comprises two types of members: Judicial members and Accountant members.

2. Pre-requisite for Filing Appeal before ITAT:-

- 1. Scrutiny Report:** The Assessing Officer (AO) or Range Head must submit a scrutiny report under Section 253 of the Act to the concerned Principal Commissioner of Income Tax (PCIT), as per the Central Board of Direct Taxes (CBDT) Instruction No. 08/2011 [F NO. 279/MISC./M-43/2011-ITJ], dated August 11, 2011.
- 2. Tax Effect:** Consider the tax effect for Income Tax and Wealth Tax cases, along with any exceptions.
- 3. Framing Questions:** Properly frame both question of fact and question of law.
- 4. Form No. 36:** Ensure the correct completion and submission of Form No. 36.

3. Timelines for filing Appeals to ITAT: -

| Sr. No. | Stages | Number of Days | Total Time |
|----------------|---|-----------------------|-------------------|
| 1. | Receipt of CIT(A)'s order in the office of Pr.CIT/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 giving appeal effect. | 25 days | 30 days |
| 4. | Submission of recommendation by Range Head on scrutiny report to Pr.CIT/CIT along with draft grounds of appeal | 10 days | 40 days |
| 5. | Decision making by the Pr.CIT/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 Pr.CIT/CIT | 2 days | 55 days |

4. Constitution & Departmental setup in ITAT: -

- i. Registrar
- ii. Judicial Members
- iii. Accountant Members
- iv. Vice Presidents
- v. President

Departmental Setup.

- i. CIT (DR) – CIT
- ii. Sr. AR-JC/Addl. CIT
- iii. ITO(HQ) to CIT(DR) or Sr. AR
- iv. CIT (DR)(ITAT)(Admin.)
- v. ITO (ITAT)(HQ)(Admin.)
- vi. Inspectors
- vii. OS/TA/MTS

5. Benches of ITAT: -

i. Two Member Bench:

- a. Typically consists of one Judicial Member and one Accountant Member.

ii. Single Member Bench:

- b. At least one bench headed by either a Judicial Member or an Accountant Member.

iii. Special Benches:

- c. Constituted to decide issues with wider ramifications.

iv. Third Member Bench:

- d. Formed when members of a division bench disagree on a particular issue.

6. Appellate Proceedings Before ITAT: -

i. Filing and Review:

The appellant files the appeal using Form No. 36, which is then reviewed by the Registrar of ITAT. The Registrar checks for correctness, completeness, and ensures that all required fees are paid. If any discrepancies are found, notices are issued to the appellant for rectification.

ii. Communication:

Once the appeal is accepted for further processing, the Registrar sends an appeal memo to the Respondent. At this stage, the Respondent has the option to file cross-objections if deemed necessary.

iii. Hearing and Presentation:

Cases are listed in the cause list, and the proceedings are scheduled accordingly. During the hearing, the appellant presents facts, arguments, and supporting evidence as outlined in the paper book. Following this, the Respondent presents their rebuttal to the appellant's contentions.

iv. Order and Timeframe:

After the completion of arguments and evidence presentation, the Bench declares the case as heard. From this point, the Bench has a mandate to pass an order within 90 days. If there are complexities or clarifications needed, the Bench may extend this timeframe by an additional 30 days.

v. Resolution:

In cases where the members of the Bench are unable to reach a consensus or decision, the matter may be referred to a third member for resolution. If the case is released, it is listed for a fresh hearing before a new Bench to ensure a fair and thorough consideration of the issues at hand. The third member conducts hearings and must pass an order within 60 days of declaring the case as heard, with an option to extend this timeframe to 90 days for thorough deliberation.

7. Powers & Limitations of ITAT:-

1. Case Handling:

- ITAT has the authority to hear cases and issue orders based on the merits presented.

2. Admission of Evidence:

- ITAT can admit additional evidence if reasons are recorded for doing so.

3. Fresh Assessments:

- ITAT can set aside orders for fresh assessment by the Assessing Officer, either entirely ("de novo") or regarding specific issues.

4. Review by CIT(A):

- ITAT can also set aside orders for a fresh decision by the CIT(A), either entirely or on specific issues.

5. Mistake Correction:

- ITAT can correct mistakes apparent from the record based on applications from the parties involved.

6. Limitation on Order Recalls:

- ITAT cannot recall orders that have been decided on their merits.

8. Issues of Presentation Before ITAT:-

Analysis of the order under scrutiny:

| | | |
|---------|---|------------------|
| I ii | Whether it is combined order for more than one assessment years If yes, specify assessment years involved and identify specific issues related to different assessment years for filing separate appeals. Use Annexure, if required. | Yes/No |
| iii | Whether it is combined order for more than one assessee group case? | Yes/No |
| iv | If yes, whether jurisdiction of all assessees falls in the same Range? | Yes/No |
| v | If reply to (iv) above is no. identify the AO/Range CIT having jurisdiction over other assessees for communication of stand taken on common issues? | |
| vi | If the proceedings of order under scrutiny were dependent on some other proceedings (say order under section 263, set aside order, Registration under section 12A 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 grounds? | Yes/No |
| ix | Whether any additional evidence was admitted by CIT(A)? | |
| x | If yes, whether opportunity to AO was granted under Rule 46A to give comments or for countering the same? | Yes/No Yes/No |

Chapter-II

APPEALS TO ITAT

— — — — —  — — — — —
Appealable Orders to appeal by the Commissioner
Hearing of the appeal by the ITAT
Order of the ITAT
Disposal of Appeal Rectification of Appellate Order
Faceless Proceedings before ITAT
— — — — —  — — — — —

1. Mandate of ITAT:

ITAT is mandated to adjudicate appeals filed against orders of:

1. CIT(A) (Commissioner of Income Tax - Appeals)
2. DRP (Dispute Resolution Panel)
3. CIT/PCIT (Commissioner of Income Tax/Principal Commissioner of Income Tax) under section 263 of the Act
4. CIT (Exemption) under section 12AA of the Act
5. PCIT (Principal Commissioner of Income Tax) under section 80G(5)(vi) of the Act
6. CCIT (Chief Commissioner of Income Tax) under section 10(23C)
7. Assessing Officer/PCIT disposing of stay petitions
8. Miscellaneous applications filed against ITAT orders

2. Departmental Appeals: Commissioner's Authority and Tax threshold

If the Principal Commissioner of Income-Tax or Commissioner of Income-Tax disagrees with the order passed by the Joint Commissioner of Income-tax (Appeals) or the Commissioner of Income-Tax (Appeals) under section 154 or section 250, they may direct the Assessing Officer to file an appeal to the ITAT against these orders. This type of appeal is known as a departmental appeal, where the Income-Tax department challenges the order of the Joint Commissioner of Income-tax (Appeals) or the Commissioner of Income-Tax (Appeals) at the ITAT level.

For such departmental appeals to be allowed, the tax effect involved in the appeal must exceed Rs. 50,00,000. In other words, the Pr. Commissioner of Income-Tax can instruct the Assessing Officer to file an appeal to the ITAT against the order of the Commissioner of Income-Tax (Appeals) only in cases where the tax effect exceeds Rs. 50,00,000. Detailed guidelines and exceptions regarding this provision are provided in Circular No. 17/2019, dated 08-08-2019, and Circular No. 05/2024, dated 15.03.2024.

The term “**tax effect**” refers to the difference between the tax on the total income assessed and the tax that would have been chargeable if such total income were reduced by the amount related to the disputed issues (“disputed Issues”). However, the tax effect does not include interest, except when the chargeability of interest itself is in dispute. In such cases, the amount of interest becomes the tax effect. If a returned loss is reduced or assessed as income, the tax effect includes notional tax on disputed additions. For penalty orders, the tax effect refers to the quantum of penalty deleted or reduced in the order being appealed against.

The Assessing Officer calculates the tax effect for each assessment year concerning the disputed issues of every taxpayer separately. If the disputed issues arise in multiple assessment years for a taxpayer, an appeal can be filed for those assessment years where the tax effect exceeds the specified monetary limit. No appeal is filed by the department for assessment years where the tax effect is below the monetary limit.

In essence, appeals filed by the Commissioner of Income-tax are now based on the tax effect in the relevant assessment year. However, for composite orders involving multiple assessment years and common issues, appeals are filed only for assessment years where the tax effect exceeds the prescribed limits. **If a composite order involves more than one taxpayer, each taxpayer is considered separately.**

Adverse judgments related to the following issues should be contested on merits even if the tax effect involved is below the specified monetary limits or if there is no tax effect:

a. Constitutional Validity Challenge:

Cases challenging the constitutional validity of provisions in an Act or Rule.

b. Board’s Orders or Circulars:

Cases where Board’s orders, notifications, instructions, or circulars have been deemed illegal or ultra vires.

c. Revenue Audit Objections:

Cases where Revenue Audit objections have been accepted by the Department.

d. Writ Matters:

Matters subject to writ petitions.

e. Other Direct Taxes:

Matters concerning other direct taxes apart from Income Tax.

f. Non-Quantifiable Tax Effects:

Cases where the tax effect is not quantifiable or not involved, such as the registration of a trust or institution under section 12A.

g. Undisclosed Foreign Assets:

Cases involving additions related to undisclosed foreign assets or bank accounts.

3. Time- limit for presenting appeal -

An appeal to the ITAT must be filed within 60 days from the date on which the order sought to be appealed against is communicated to the taxpayer, Principal Commissioner of Income-Tax, or

Commissioner of Income-Tax, depending on the case. However, the ITAT has the discretion to admit an appeal even after the 60-day period if it is satisfied that there was a valid and sufficient reason for not presenting the appeal within the prescribed time

4. Form and Signature Requirements:

The appeal to ITAT must be filed using Form No. 36. The form of appeal, grounds of appeal, and verification must be signed by the person authorized to sign the return of income under section 140. Specifically:

- i. For individual taxpayers, the appeal must be signed by the individual taxpayer or by a person duly authorized with a valid power of attorney.
- ii. For Hindu Undivided Families, the appeal must be signed by the Karta of the family. If the Karta is absent from India or unable to sign, any other adult member of the family may sign.
- iii. For companies, the appeal must be signed by the Managing Director. If the Managing Director is unavailable, any director of the company may sign.
- iv. For firms, the appeal must be signed by the Managing Partner. If the Managing Partner is unavailable, any partner (not a minor) may sign.
- v. For Limited Liability Partnerships (LLPs), the appeal must be signed by the Designated Partner. If the Designated Partner is unavailable, any partner may sign.
- vi. For Local Authorities, the appeal must be signed by the Principal Officer.
- vii. For Political Parties, the appeal must be signed by the Chief Executive Officer of the party.
- viii. For other associations or persons, the appeal must be signed by the Principal Officer or by any member or person competent to act on their behalf.

5. Memorandum of cross objections -

Upon filing an appeal to the ITAT by the taxpayer or the Assessing Officer, the opposing party will be notified about the appeal, and they have the option to file a memorandum of cross-objections with the ITAT.

The memorandum of cross-objections must be filed within 30 days of receiving the notice and should be submitted using Form No. 36A. There is no fee for filing the memorandum of cross-objections. The ITAT may consider accepting a memorandum of cross-objections even after the 30-day period if there is a valid reason for the delay.

The person authorized to sign Form 36 (the form of appeal) must also sign and verify the memorandum of cross-objections. The ITAT will handle and dispose of the memorandum of cross-objections similar to an appeal filed using Form 36.

6. Documents to be submitted with appeal -

- i. Documents Required for the Appeal:
- ii. Form No. 36 - to be submitted in triplicate.
- iii. Order appealed against - 2 copies (including one certified copy).
- iv. Order of Assessing Officer - 2 copies.
- v. Grounds of appeal before the first appellate authority (i.e., Commissioner of Income Tax (Appeals)) - 2 copies.
- vi. Statement of facts filed before the first appellate authority (i.e., Commissioner of Income-Tax (Appeals)) - 2 copies.
- vii. For appeals against penalty orders - 2 copies of the relevant assessment order.
- viii. For appeals against orders under section 143(3) read with section 144A - 2 copies of the directions of the Joint Commissioner under section 144A.
- ix. For appeals against orders under section 143 read with section 147 - 2 copies of the original assessment order, if any.
- x. Copy of the challan for payment of fees

7. Submission of paper book -

The Appellant or the Respondent, also known as the opposite party, may compile a paper book to support their claim. This paper book, submitted in duplicate, should contain documents, statements, or other papers referenced in the assessment or appellate order on which the Appellant/ Respondent intends to rely.

The paper book must be properly indexed, with pages numbered accordingly. It should be filed at least one day before the scheduled hearing of the appeal, accompanied by proof of service showing that a copy of the paper book was provided to the opposite party at least a week before the hearing date. Each document within the paper book must be certified as a true copy by the party submitting it.

In cases of genuine delay, the ITAT may condone the late filing of the paper book. Additionally, the ITAT has the authority to direct the preparation of the paper book in triplicate, to be borne at the cost of either the appellant or the respondent, as deemed necessary for the appeal's resolution.

It's important to note that any additional evidence should be filed separately and not included as part of the paper book.

8. Hearing of the appeal by the ITAT -

The ITAT will schedule the date and location for the appeal hearing and notify all parties involved. A copy of the memorandum of appeal must be sent to the Respondent either before or along with this notice. The ITAT will proceed to hear the appeal on the designated date, although it may be adjourned to subsequent dates as necessary.

If the appellant is summoned by the ITAT but fails to appear, whether in person or through an authorized representative, the ITAT may proceed to dispose of the appeal based on the merits after hearing from the Respondent.

Following an ex parte hearing, if the appellant later appears before the ITAT and demonstrates sufficient cause for their earlier non-appearance, the ITAT can set aside the ex parte order and reinstate the appeal. A similar procedure applies if the appeal is disposed of in the absence of the respondent.

9. Filing of additional evidence -

Parties to the appeal are not allowed to file additional evidence, whether oral or documentary, before the ITAT. This means that no new evidence can be introduced during the appeal process.

However, if the Tribunal deems it necessary to consider specific documents, examine witnesses, or receive affidavits to make informed decisions, it may permit the production of such documents, witness examinations, filing of affidavits, and the presentation of additional evidence as deemed necessary.

10. Order of the ITAT -

The Members of various benches of the ITAT hear the appeals assigned to them. Once the appeal is heard, the ITAT will deliver its order within a specified timeframe and communicate it to both the taxpayer and the Assessing Officer.

Appeals are typically heard by a Bench comprising one judicial member and one accountant member. However, appeals where the total income computed by the Assessing Officer does not exceed Rs. 50 lakh may be disposed of by a Single Member Bench.

In cases where the members of the Bench have differing opinions on any point, the decision is made based on the majority view. If the members are equally divided, each member states their points of difference, and the case is referred by the President of the ITAT for further deliberation by one or more other members of the ITAT. The final decision is then based on the majority opinion of all members who have heard the case.

Usually, the Bench announces its orders in court. However, if orders are not announced in court, a list of such orders showing the appeal results and signed by the members is displayed on the notice board of the Bench.

Where it is possible, the ITAT shall dispose off the appeal within a period of four years from the end of the financial year in which appeal is filed.

11. Stay application -

The ITAT may, on an application made by the taxpayer and after considering the merits of the application, pass an order of stay in any proceedings relating to an appeal filed under section 253(1). The stay order will be in operation for a period not exceeding 180 days from the date of such order. The ITAT shall dispose of the appeal within the said period of stay specified in that order.

However, the stay shall be granted by the ITAT only when the assessee has ‘deposited’ or ‘furnished security’ to the extent of 20% of his tax liabilities (i.e. tax, interest, fee, penalty or any other sum payable under the provisions of this Act). [Inserted by the Finance Act, 2020, Applicable w.e.f. Assessment Year 2020 -21].

If such appeal is not so disposed of within the period of stay specified in the order of stay, the ITAT may extend the stay period, on an application made in this behalf by the taxpayer on being satisfied that the delay in disposing of the said appeal is not attributable to the taxpayer. The extension of stay period can be for a further period or periods, as the ITAT thinks fit, but the aggregate of the period originally allowed and the period or periods so extended or allowed shall not, **in any case, exceed 365 days and the Appellate Tribunal shall dispose of the said appeal within the period of stay so extended or allowed.**

If the appeal is not disposed off within the period allowed or within the period or periods extended, which shall not in any case exceed 365 days, the order of stay shall stand vacated after the expiry of such period or periods, even if the delay in disposing of the appeal is not attributable to the taxpayer.

12. Rectification of Appellate Order u/s 254(2) of the IT Act-

The ITAT may, at any time within 6 months from the end of the month in which the order was passed, rectify any mistake apparent from record, amend any order passed by it if the mistake is brought to its notice by the taxpayer or Assessing Officer. However, where such amendment has the effect of enhancing an assessment or reducing a refund or otherwise increasing a liability of the taxpayer, it shall not be made unless the Appellate Tribunal has given a notice to the taxpayer of its intention to do so and has allowed the taxpayer a reasonable opportunity of being heard.

13. Faceless Proceedings before ITAT -

To impart greater efficiency, transparency and accountability for the purpose of disposal of appeals by the Appellate Tribunal, the Central Government may make a scheme by:

- a. Eliminating the interface between the Appellate Tribunal and parties to the appeal in the course of appellate proceedings to the extent technologically feasible;
- b. Optimizing utilization of the resources through economics of scale and functional specialization;
- c. Introducing an appellate system with dynamic jurisdiction.

The Central Government may, for the purpose of giving effect to the scheme, issue notification in the Official Gazette, to direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification.

Chapter-III

E-FILING OF APPEAL IN ITAT & CHECKLIST

— — — — —
Note for e-filing
E-Filing Procedure
— — — — —

Note for E-Filing in the ITAT

Mandatory E-Filing:

- Appeals, Memorandum of Cross Objections, Stay Applications, and Miscellaneous Applications, previously submitted in physical form as per the Income Tax (Appellate Tribunal) Rules, 1963, must now be filed electronically. This should be done through the newly developed e-Filing Portal of the ITAT: <https://itat.gov.in/efiling/register>.

Key Identifiers:

- The Permanent Account Number (PAN) or Tax Deduction and Collection Account Number (TAN) of the Assessee, along with their mobile number and email ID, are essential identifiers in the e-Filing Portal.

Eligibility:

- Any person entitled to file an appeal before the Income Tax Appellate Tribunal under Section 253 of the Income Tax Act, 1961, or any other relevant enactment, may do so electronically through the e-Filing Portal.

Document Requirements:

- All documents requiring signatures must be physically signed before scanning and uploading to the e-Filing Portal.
- All filings, including prayers, petitions, grounds, affidavits, etc., should be typed in Arial font, size 12, on one side of A4 size paper with double spacing and justified horizontally before uploading.

1. E-filing Procedure

Step-I: Login in to ITAT Website (<https://itat.gov.in/efiling/register>)

E-filing Registration –

E-Filing Registration Steps:

- Select User Type: Choose ‘I am an Assessee’ if you are an assessee, or ‘I am Department’ if you are an officer of the Income Tax Department.
- Agree to Terms of Use: Click ‘Click here to read and agree to the Terms of Use’ to view the Terms of Use of the e-Filing Portal.
- Review Terms and SOP: Carefully read the Terms of Use and the Standard Operating Procedure (SOP) for e-Filing. Ensure you have all important dates, appeal/order numbers, and addresses of the assessee and department ready.
- Prepare Documents: Have all documents duly signed, scanned, and ready for uploading. Review the List of Documents required for e-Filing of an appeal.
- Submit: click ‘Submit’ to proceed.

2. Important Checklist for e-filing: -

| Particulars | | Yes/ No/ NA |
|-------------|--|-------------|
| 1 | Mandatory Enclosures | |
| | A Appeals | |
| 1 | Memorandum of Appeal | |
| 2 | Certified copy of the order appealed against (CIT/CIT(A)/AO) | |
| 3 | Form 35, Grounds of Appeal & Statement of facts filed before the CIT(A) | |
| 4 | Relevant order(s) of Assessing Officer/Directions of DRP | |
| 5 | Penalty order | |
| 6 | Draft assessment order (wherever required) | |
| 7 | Order of Transfer Pricing Officer | |
| 8 | Tribunal Fee Challan (in case of an appeal by assessee) | |
| 9 | Authorization of the CIT to file the appeal (in case of appeal by Revenue) | |
| | B Cross Objections | |
| 1 | Memorandum of Cross Objection | |
| 2 | Authorization of the CIT to file the CO (in case of a C.O. by Revenue) | |

| | | | |
|----|---|---|--|
| | C | Stay Applications | |
| | 1 | Stay Application in prescribed format (Annexure-X) | |
| | 2 | Sworn affidavit in support of Stay Application | |
| | 3 | Demand Notice and relevant orders of lower authorities | |
| | 4 | Tribunal Fee Challan (Rs. 500/-) | |
| | D | Miscellaneous Applications | |
| | 1 | Miscellaneous Application | |
| | 2 | Relevant Tribunal Order appealed against which the M.A. is preferred | |
| | 3 | Tribunal Fee Challan (in case of an Miscellaneous Application by assessee) | |
| | 4 | Authorization of the CIT to file the MA (in case of a Miscellaneous Application by Revenue) | |
| 2 | | Optional Enclosures | |
| | 1 | Covering Letter | |
| | 2 | Vakalatnama/Power of Attorney (in case of an appeal by assessee) | |
| | 3 | Application for condonation of delay, wherever required. | |
| | 4 | Affidavit in support of application for condonation of delay | |
| 3 | | All the documents which require the signature of the parties are physically signed, scanned and filed/uploaded. | |
| 4 | | All prayers, petitions, Grounds, affidavits, etc. are typewritten on one side of A4 size 4 paper with double spacing, justified horizontal alignment in font Arial font and font size 12. | |
| 5 | | All documents/enclosures are fully and properly scanned in A4 size Black & White 150-200 DPI resolution, and no pages are missing. | |
| 6 | | Paper Books, if any, are properly paginated and indexed. | |
| 7 | | Tribunal Fee is paid under 300- Self Assessment Others Category'. | |
| 8 | | Legal Representative of the assessee is brought on record, wherever applicable. | |
| 9 | | All the affidavits are properly attested and identified. | |
| 10 | | Vakalatnama/Power of Attorney is properly executed by the party and accepted by the counsel. | |
| 11 | | Details of identical matters in the case of the assessee disposed off by/or pending before the Tribunal, if any. | |
| 12 | | Postal address with PIN code, mobile number and e-mail address are mentioned correctly. Mobile number and e-mail address are valid and in active use. | |
| 13 | | Grounds raised in the appeal, but not raised before the CIT(A), if any. Also furnish an application justifying admission of such Ground(s) by ITAT | |

Appointment of Special Counsel to Represent the Income Tax Department Before Tribunals

As per the guidelines for the appointment of Special Counsel, outlined in CBDT order No. F. No. 278/M 23/2021-ITJ dated 18-08-2021, Special Counsel is generally appointed only under exceptional circumstances. The proposal for such an appointment must be submitted using the prescribed proforma A and B, duly recommended by the respective CCIT/DGIT, and requires subsequent approval from the Pr.CCIT of the region. The CBDT order further stipulates that no case can be assigned to any Counsel other than the Standing Counsel, and cases may only be assigned to the Special Counsel after a sanction order is issued by the CBDT.

Additionally, the CBDT order No. F. No. 278/M 23/2021-ITJ dated 08-05-2024 highlights instances where proposals have been received requesting a Special Counsel to act as an “Assisting Counsel” in addition to the primary Special Counsel. The CBDT has stated that this practice should be avoided unless acutely warranted by the facts or circumstances involved. Instead, the services of the empanelled Standing Counsels should be utilized to assist the Special Counsel if necessary.

Further, the Senior Standing Counsel representing the Department in the High Court can be appointed as Special Counsel to represent cases before the Tribunal, as per the terms and conditions laid out in Instruction No. 7/2016 dated 07-09-2016, after obtaining the necessary approval from the Pr.CCIT Mumbai.

Chapter-I

FILING OF APPEAL IN THE HIGH COURT

— — — — —  — — — — —

Appeal to High Court
Procedure for Appeal
Stages for Hearing of Appeal
Cases before HC to be heard by not less than two judges
Meaning of Substantial Question of Law
Filing fee
No Abatement of Appeal

— — — — —  — — — — —

1. Appeal to High Court: -

The filing of appeals in the High Court against the orders of the Income Tax Appellate Tribunal (ITAT) is governed by section 260A and 260B of the Income Tax Act, 1961.

Section 260A states as under:

(1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal, if the High Court is satisfied that the case involves a substantial question of law.

(2) [The [Principal Chief Commissioner or] Chief Commissioner or the [Principal Commissioner or] Commissioner or an assessee aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this Sub-section shall be—]

- a. filed within one hundred and twenty days from the date on which the order appealed against is [received by the assessee or the[Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner];
- b. [**
- c. in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

[(2A) The High Court may admit an appeal after the expiry of the period of one hundred and twenty days referred to in clause (a) of Sub-section (2), if it is satisfied that there was sufficient cause for not filing the same within that period.]

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(4) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this Sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(5) The High Court shall decide the question of law so formulated and deliver such judgement thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(6) The High Court may determine any issue which -

a. has not been determined by the Appellate Tribunal; or

b. has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section.

(7) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.]

2. Procedure for appeals: -

Who can file appeal? -

Section 260A(1) provides that an appeal shall lie before the High Court from every order passed in appeal by the Appellate Tribunal, if the High Court is satisfied that the case involves a substantial question of law. The section 260A(2) states that the Principal Chief Commissioner or Chief Commissioner or an assessee aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court.

3. Stages for Hearing of Appeals: -

The appeal is heard in two stages.

2.12.1 First-Admission to consider whether the issue involved in appeal is a substantial question of law or not. Where the High Court is satisfied that a substantial question of law is involved, it will formulate the same.

2.2 Second- The appeal is finally disposed of after hearing. After hearing the case, the high Court decides the question of law so formulated and delivers the judgment giving reasons. In addition, the High Court may determine any issue, which has not been determined by the Appellate Tribunal or an issue which has been wrongly determined. The High Court can also, award costs, as it deems fit.

Section 260(1) and Section 260(2) states as under:

Section 260. (1) *The High Court or the Supreme Court upon hearing any such case shall decide the questions of law raised therein, and shall deliver its judgement 72 thereon containing the grounds on which such decision is founded, and a copy of the judgment shall be sent under the*

seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgement.

[(1A) Where the High Court delivers a judgment in an appeal filed before it under Section 260A, effect shall be given to the order passed on the appeal by the Assessing Officer on the basis of a certified copy of the judgement.]

(2) The costs of any reference to the High Court or the Supreme Court which shall not include the fee for making the reference shall be in the discretion of the Court.]

4. Case before High Court to be heard by not less than two Judges: -

Section 260B. (1) When an appeal has been filed before the High Court under Section 260A, it shall be heard by a bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.

(2) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall then be heard upon that point only by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.]

5. Meaning of Substantial Question of Law: -

As per the Income Tax Act, 1961, the Tribunal is the last fact-finding authority and only questions of law and that too what is referred to as a “substantial question of law” is taken up in appeals filed before the High Court.

Section 100 of the Code of Civil Procedure, 1908, as amended in 1976, restricts the jurisdiction of the High Court to hear a Second Appeal only on a “**substantial question of law involved in the case**”.

Though the expression “substantial question of law” has not been defined in any Act or in any of the statutes where this expression appears, e.g., section 100 of the Code of Civil Procedure, the true meaning and connotation of this expression is now well settled by various judicial pronouncements. It was observed by the Supreme Court in **Sir Chunilal V. Mehta & Sons Ltd. v. Century Spg. & Mfg. Co. Ltd. (1962 AIR 1314)**, that

“a question of law would be a substantial question of law if it directly or indirectly affects the rights of parties and/or there is some doubt or difference of opinion on the issue”.

But

“if the question is settled by the Apex Court or the general principles to be applied in determining the question are well-settled, mere application of it to a particular set of facts would not constitute a substantial question of law”

Section 100 of CPC deals with “Second Appeal” moreover it includes the Substantial Question of Law as well. The proviso reads as follows:

“Section 100 – Second Appeal:

Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, If the High Court is satisfied that the case involves a substantial question of law.

An appeal may lie under this section from an appellate decree passed ex parte.

In an appeal under this Section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing takes away or abridges the power of the question of law, not formulated by it, if it is satisfied that the case involves such question.”

I. Question of Law and Question of Fact: -

Here dissimilarity between question of law and substantial question of law is required to understood.

i.e. what can be the subject matter of an appeal under Section 100 can only be a substantial question of law. It should involve a matter of general public importance or affect the rights of the parties substantially. **Where the determination of the issue depended upon the appreciation of evidence or materials resulting in ascertainment of basic facts without application of any principle of law, the issue merely raises a question of fact.** Hon’ble Delhi High court observed in **Mahavir Woollen Mills v. CIT (245 ITR 297)**.

A question of fact becomes a question of law, if the finding is either without any evidence or material, or if the finding is contrary to the evidence, or is perverse or there is no direct nexus between the conclusion of fact and the primary fact upon which that conclusion is based. But, it is not possible to turn a mere question of fact into a question of law by asking whether as a matter of law the authority came to a correct conclusion upon a matter of fact. In **Sree Meenakshi Mills Ltd. v CIT (1967 SC 819)** the Apex Court has held that where the determination of an issue depends upon the appreciation of evidence or materials resulting in ascertainment of basic facts without application of any principle of law, the issue raises a mere question of fact.

- i. As the Tribunal is the ultimate fact-finding authority, if it has reached certain findings upon examination of all relevant evidence and materials before it, the existence or otherwise of certain facts at issue is a question of fact.

- ii. Any inference from certain facts is also a question of fact. If a finding of fact is arrived at by the Tribunal after improperly rejecting evidence, a question of law can arise.
- iii. While the Tribunal acts on materials partly relevant and partly irrelevant, it can give rise to a question of law if it is impossible to say to what extent the irrelevant material was used to arrive at the finding. Such a finding is vitiated because of the use of inadmissible material.
- iv. Where any finding is based on no evidence or material, it involves a question of law.

6. Filing fee

Initially, according to section 260A(2) a fee of Rs. 10,000/- was fixed by the statute for every appeal filed. However, an amendment was made by the Finance Act, 1999 with effect from 1st June, 1999 whereby the provisions of Code of Civil Procedure, 1908 relating to appeals to the High Court were made applicable also to appeals under section 260A. As a result, the court fee as applicable for filing a Second Appeal under section 100 of the Code of Civil Procedure, 1908, has to be paid for filing an appeal under section 260A.

As far as the Bombay High Court is concerned, Article 16A was inserted in Schedule 1 to the Bombay Court Fees Act to provide that an appeal filed after 1.6.1999 and pending before the High Court against the order passed in appeal by the Appellate Tribunal, u/s. 260A(2), an ad valorem fee would be leviable on the amount in dispute; i.e. the difference between the amount of tax actually assessed and the amount of tax admitted by the assessee as payable by him, subject to a maximum fee of Rs. 10,000/-.

Thus, the filing fee is one as fixed by the State Governments under the relevant Court Fees Act.

7. NO ABATEMENT OF APPEAL: -

Section 159 of the Act makes it expressly clear that the liability to pay tax under the Act does not cease on account of the death of the assessee. Thus, in case of death of an assessee the appeal filed under section 260A does not abate. The proceedings under the Act could be proceeded with against the legal representatives. In case of death of the assessee a notice of motion / chamber summons can be taken out to get the legal heirs on record. – [CIT vs. Smt. Rukmini (331 IRE 102, Karn) and Arvind Kayan v. Union of India [403 ITR 36 (Calcutta)].

Chapter-II

MONETARY LIMITS FOR FILING APPEAL IN HIGH COURT

1. Introduction

The CBDT, through **Circular No. 3 of 2018 dated 11-7-2018** and its subsequent amendment dated 20th August 2018, has specified monetary limits for filing income tax appeals by the Department before the Income Tax Appellate Tribunal, High Courts, and SLPs/Appeals before the Supreme Court.

Additionally, the CBDT issued an amendment through **Circular No. 17/2019 [F.NO. 279/MISC.142/2007-ITJ(PT.)], dated 8-8-2019**, wherein it further clarified or stated certain provisions related to this matter.

“As a step towards further management of litigation, it has been decided by the Board that monetary limits for filing of appeals in Income cases be enhanced further through amendment in Para 3 of the Circular mentioned above and accordingly, the table for monetary limits shall read as follows:

| Sl. No. | Appeals/SLPs in Income-tax matters | Monetary Limit (Rs.) |
|----------------|---|-----------------------------|
| 1. | Before Appellate Tribunal | 50,00,000 |
| 2. | Before High Court | 1,00,00,000 |
| 3. | Before Supreme Court | 2,00,00,000 |

It has been clarified in the said circular that

“... 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. Further, even in the case of 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, 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 case where a composite order/ judgement involves more than one assessee, each assessee shall be dealt with separately.”

2. Circular No. 5/2024 dated March 15, 2024

The Central Board of Direct Taxes (CBDT) has recently issued Circular No. 5/2024, F. No 279/Misc.143/2007/ITJ(PT), dated March 15, 2024. This circular revises the exceptions related to the filing of appeals across all judicial fora.

While the monetary limits set for filing appeals or Special Leave Petitions (SLPs) remain applicable to all cases, including those involving Tax Deducted at Source (TDS) and Tax Collected at Source (TCS) under the Act, there are specific exceptions to this rule.

In instances that fall under these exceptions, the decision to file an appeal or an SLP is to be based solely on the merits of the case, disregarding the tax effect and the monetary limits. The categories exempt from monetary limits are as follows:

- a. Where any provision of the Act or the Rules or notification issued thereunder has been held to be constitutionally invalid, or
- b. Where any order, notification, instruction or circular of the Board or the Government has been held to be illegal or ultra vires the Act or otherwise constitutionally invalid, or
- c. Where the assessment is based on information in respect of any offence alleged to have been committed under any other law received from any of the law enforcement or intelligence agencies such as CBI, ED, DRI, SFIO, NIA, NCB, DGGI, state law enforcement agencies such as State Police, State Vigilance Bureau, State Anti-Corruption Bureau, State Excise Department, State Sales/Commercial Taxes or GST Department, or
- d. Where the case is one in which prosecution has been filed by the Department in the relevant case and the trial is pending in any Court or conviction order has been passed and the same has not been compounded, or
- e. Where strictures/adverse comments have been passed and/or cost has been levied against the Department of Revenue, CBDT or their officers, or
- f. Where the tax effect is not quantifiable or not involved, such as the case of registration of trusts or institutions under sections 10(23C), 12A/ 12AA/12AB of the Act, order passed u/s 263 of the Act etc. The reference to cases involving sections referred here, where it is not possible to quantify tax effect or tax effect is not involved, is for the purpose of illustration only.
- g. Where addition relates to undisclosed foreign income/undisclosed foreign assets (including financial assets)/undisclosed foreign bank account, or
- h. Cases involving organized tax evasion including cases of bogus capital gain/loss through penny stocks and cases of accommodation entries, or
- i. Where mandated by a Court's directions, or Writ matters, or
- j. Matters related to wealth tax, fringe benefit tax, equalization levy and any matter other than the Income Tax Act, or

- k. In respect of litigation arising out of disputes related to TDS/TCS matters in both domestic and international taxation charges: -
 - l. Where dispute relates to the determination of the nature of transaction such that the liability to deduct TDS/TCS thereon or otherwise is under question, or
 - m. Appeals of International taxation charges where the dispute relates to the applicability of the provisions of a Double Taxation Avoidance Agreement or otherwise
 - n. Any other case or class of cases where in the opinion of the Board it is necessary to contest in the interest of justice or revenue and specified so by a circular issued by Board in this regard.

3. Scenarios on the applicability of monetary limits u/s 158AB: (Circular No.8/2023- No. 279Misc. IM-93/2018-ITJ(Pt.) DATED 31.05.2023.)

After insertion of Section 158AB of the Act, The Board has issued scenarios on the applicability of monetary limit in view of Section 158AB of the Act.

As per this Circular;

“In this respect the insertion of Section 158AB in the Income Tax Act, 1961 [hereinafter referred to as the Act] has led to queries on monetary limits and exceptions applicable in respect of cases falling within the purview of Section 158AB of the Act. In supersession of the letter dated 29.09.2022, referred to above, the following guidelines on the above subject are hereby issued: 3. At the outset it is clarified that references to collegiums constituted U/S 158AB of the Act for deciding on the deferral of appeal(s)/grounds of appeal(s) would be made having regard to the extant monetary limits read along with the exceptions to the same, as mentioned in para 1 above and the exceptions provided in para 6 below. – If the following terminology is proposed in respect of para 5 below:

- i. *Yo: the current year in which appeal filing is under consideration, and*
- ii. *Yf: the year in which the final decision on the question of law is received in favour of Revenue in the ‘other case’ (‘other case’ being as referred to in section 158AB of the Act).*

3.1 Scenarios on the applicability of monetary limits. -

- I. In cases where only one ground is contested and where the tax effect is greater than the monetary threshold as per the extant monetary limits for filing appeals at relevant judicial fora, set by CBDT, and section 158AB is applicable to it, appeal may be deferred in the current year (Yo) in view of the provisions of section 158AB. The appeal is to be filed in the year in which the final decision on the identical question of law is received in favour of Revenue in Yf.
- II. In cases where multiple grounds are contested and where the total tax effect of all the disputed grounds (i.e., grounds to which Section 158AB is applicable and otherwise) is greater than the extant monetary limits for filing appeals at relevant judicial fora, set by CBDT, and Section 158AB is applicable only to certain grounds, the guidelines for filing appeal are as follows:

- i. in the current year (Yo),
 - a. filing of appeal on the grounds to which section 158AB is applicable may be deferred in view of the provisions of that section, and
 - b. appeal may be filed on the residual grounds.
- ii. in the year in which the final decision on the identical question of law is received in favour of Revenue in FY, appeal is to be filed on the grounds to which section 158AB is applicable, irrespective of the monetary limit at that point in time.

In respect of deferring appeals u/s 158AB of the Act, while adhering to the guidelines as laid down in the preceding paras, it is to be ensured that when judicial finality is achieved in favour of Revenue in the 'other case', appeal in the 'relevant case' should be contested on merits subsequent to the decision in the 'other case' irrespective of the extant monetary limits. Further, if the judicial outcome in the other case is not in favour of Revenue and is not accepted by the Department, appeal against the same may be contested on merits in the 'other case' irrespective of the extant monetary limits, to arrive at judicial finality.

CBDT Circular No. 09/2024- New Income Tax Monetary Appeal Limits

According to the above-mentioned circular, the CBDT has enhanced the monetary limits for the department for filing appeals before the Tribunal, High Courts, and Supreme Court vide Circular No. 09/2024-Income Tax Dated: 17/09/2024 w.e.f. 17.09.2024.

With effect from 17th September 2024 Circular No. 09/2024 has enhanced the monetary limits cited in Circular No. 5/2024 hereunder.

| Sl.No | Appeals/SLPs | Monetary Limits |
|--------------|--------------------------------------|------------------------|
| 1 | Before Income Tax Appellate Tribunal | INR 60,00,000/- |
| 2 | Before High Court | INR 2,00,00,000/- |
| 3 | Before Supreme Court | INR 5,00,00,000/- |

Chapter-III

E - FILING OF APPEAL

— — — — —  — — — — —
Steps for filing E Appeal
— — — — —  — — — — —

1. Steps for filing of appeal u/s 260A of the Act in High Court by Counsel

1. The concerned Principal Commissioner of Income Tax (PCIT) or Commissioner of Income Tax (CIT) should inform the Junior/Senior counsel regarding the filing of the appeal under section 260A of the Income Tax Act. This communication should include relevant documents necessary for drafting the appeal memo and preparing the case.
2. The email sent to the counsel should include legible attachments such as:
 - Assessment Order
 - Form 35 (Appeal to the Commissioner of Income Tax (Appeals))
 - CIT Appeal Order
 - Form 36 (Appeal to the Income Tax Appellate Tribunal)
 - ITAT Order (Order of the Income Tax Appellate Tribunal)
 - Scrutiny Report
 - Approval letters confirming the decision to file an appeal
 - Questions of law involved
 - Tax effect
 - Last date of filing
 - Docket details
3. The appointed counsel then prepares a draft of the Income Tax Appeal and sends it via email to the concerned PCIT/CIT for review.

4. The income tax appeal draft is reviewed by the concerned PCIT/CIT, and the final draft, including the Appeal Memo and exhibits, is printed on A-4 size white bond paper. The draft is then signed and stamped by the Income Tax Officer (ITO) and PCIT/CIT. The appeal documents should prominently display the name, contact number, email ID of the JAO and the ITO(Judicial) concerned for effective coordination with the Standing Counsel.
5. Court Fee of Rs. 10,000/- is also annexed with the draft in the form of challan. The process of payment is through GRAS [Government Receipt Accounting System]. Court fee of Rs. 15/- is affixed to Vakalatnama. Give all the above documents to the appointed Counsel.
6. The draft is then notarized, OCR Scanned, digitally numbered and E-filed by the appointed Counsel.
7. Once the draft is e-filed, a CNR number and e-filing number is generated. Next day lodging number is received from the e-filing department on email of the counsel.
8. The registry in the High Court checks the draft and intimates the defect or Objection in the appeal filed and sends an email to the counsel who has filed the appeal.
9. In case of any defect/Objection pointed out by the registry, upon intimation from the Standing Counsel, the objection is to be removed within 15 days of such communication from the registry. The PCIT should have regular interaction to ensure that the objections are removed by the Counsel immediately.
10. While the appeal is on lodging number, copy of Income tax appeals needs to be served in the respondents within two weeks of earliest. The Affidavit of Service is then to be uploaded on the e-filing portal.
11. As soon as the objections are removed the Appeal gets registered and the registry gives an ITXA number to the appeal which should be intimated by the Standing Counsel to the office of the PCIT /CIT concerned.

IN CASE OF DELAY.

If there is a delay in filing income tax appeal or if the last date has already passed.

Then

1. Along with the draft Income Tax Appeal, draft Interim Application explaining the delay should also be prepared. There should be averment of delay in income tax appeal.
2. Both the documents should be filed one after the other.
3. Once Interim Application for condonation of delay is e- filed, lodging number will be received for both. ITXAL & IAL. Both the copies of Income tax appeal and Interim Application should be served on the respondents.
4. Once served Affidavit of Service should be filed.
5. A circulation should be taken for fixing the Interim Application for hearing on board by the Counsel.
6. Once the application is allowed, the order copy should be annexed with the main Income Tax Appeal i.e. on lodging number for removal of objections and registration of appeal.

Format of Docket & Vakalatnama

I am member of Advocates welfare fund hence stamp of Rs. 20/- is affixed.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION No. -----

M/s.-----**Petitioner**

PAN No.-----

Mumbai

V/s.

Income Tax Officer-_____

Mumbai & others

Respondents

A.Y. _____

To,
The Prothonotary & Senior Master,
High Court, O.S., Mumbai

Respected Sir/Madam,

I, -----, Pr. Commissioner of Income Tax-___, Mumbai, the appellant above named, do hereby appoint Shri. _____, Advocate, to act, appear and plead for me/ us in the above matter.

In witness thereof, I have set and subscribed my/our hand to this writing at Mumbai.

Dated this day of May 2023.

(-----)

Pr. Commissioner of Income Tax-___,
Mumbai

ACCEPTED Appellant

(Advocate for Respondents)

Advocate, High Court

O.S. No. _____

Advocate, High Court

Advocate Code _____

Office: _____

Phone _____

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION No. _____ of 2023

M/s.-----Petitioner

PAN No. -----

Mumbai

V/s.

Income Tax Officer-----

Mumbai Respondents

A.Y. _____

VAKALATNAMA

Dated this day of May, 2022

Advocate, High Court

O.S. No. _____

Advocate Code _____

Office: _____

Phone _____

CIT/SI. No

HIGH COURT

O.O.C.J

| | | |
|---|--|--|
| 1 | Panel Counsels are requested to ensure that the bills are submitted within three months of the date of Judgment/ order of | WRIT PETITION NO. SUIT / APPEAL NO. ARB. SUIT/ ARB. PETN. NO. CO. PETN./ CO. APPLN. CIVIL WRIT PETITION NO. ----- of 20240 |
| 2 | After Admission/ final hearing, copy of the Petition etc. Along with Judgment / Order passed by the Court, must be returned to the concerned CIT's office. | M/s _____ PAN No.-----, Mumbai Petitioner |
| 3 | Whenever conferences are held, name of the officials, duration and dates must invariably be indicated. | Income Tax Officer- _____ Mumbai A.Y. _____ Respondent |
| 4 | As regards admissibility and quantum of fee, the decision of the concerned Officer incharge in the office of Mumbai shall be final. | Coram:- date : _____ |
| 5 | In the event of any doubt or difference regarding the fees, the fees determined, the decision of the Central Board of Direct Taxes shall be final and binding. It may be an order in writing, making suitable modification in any of the provisions contained in the Scheme containing terms and conditions for the engagement of the counsel. | APPEARANCE OF WRIT PETITION OF INCOME TAX ACT, 1961 Counsel Name : _____ Advocate for the Respondents |
| 6 | Bills shall be submitted in Triplicate and pre-receipted (Revenue Stamped) in the new format. | ITO (Judl) to Pr. CIT- , Mumbai |

Chapter-IV

REMOVAL OF OBJECTIONS IN FILING APPEAL

— — — — —  — — — — —

Removal of Objections

Common objections raised by the Registry

— — — — —  — — — — —

1. Removal of Objections: -

- a. The process of filing of Appeal u/s 260A starts with filing of Appeal and reaches the point of finality only after the **IT. Appeal No (ITXA in case of IT Appeal and WTXA in case of Wealth Tax Appeal)** is allotted. In other words, mere filing of documents of Appeal does not mean that the Appeal is filed, since the same is liable to be dismissed for want of removal of objections raised by the Registry of the High Court. A cumulative time period of 30 days is given for removal of these objections after which it is treated as a fresh filing.
- b. The Standing Counsel/ High Court Cell intimates the respective PCIT/CIT offices about the same for removing the concerned objections. But this aspect requires to be closely monitored at different levels and all objections removed within the limitation period from the date of its being raised.
- c. In case the objection cannot be removed in the time allotted due to the departmental difficulties or the appeal papers not being available in the office of the Registry then the concerned Assessing Officer cannot get an extension but will have to file a regular appeal for condonation of delay in removal of objections with reason for the delay in the form of an affidavit.
- d. In case the appeal has been filed u/s 260A of the IT Act beyond the stipulated period of filing of appeal, an appeal for condonation of delay with reason for the delay in filing is to be filed in the form of an affidavit. This notice of motion is listed for hearing before the High Court for condonation of delay. If the Court condones the delay, it would be necessary to remove the objection within seven days from the date of order pronounced in the Court. If the objections are not removed, then the appeal filed will automatically be rejected. After the removal of objections, the Assessing Officer / Ward Inspector should ensure that the appeal number by the Registry is allotted. For this purpose, he should be constantly in touch with the office of the Registrar of the concerned HC or the Standing Counsel.

- e. **It is reiterated that the process of filing of Appeal is complete only when the answer to the question “Has appeal number been allotted to particular case?” is “Yes”. If the answer is “No”, the process is still incomplete.**
- f. It is suggested that Standing Counsels having the necessary experience should take necessary steps to identify and remove the objections at the filing stage itself though it is rare that an appeal is accepted without any objections being raised by the Registry.

2. COMMON OBJECTIONS RAISED BY THE REGISTRY: -

- The exhibits are not legible, photocopy is faint.
- No underlining, marking of documents: The documents should be free from underlining and marking etc. The rationale is that the marking should be of the Hon’ble Judges only during hearing.
- Missing Exhibits
- Index is not properly prepared. Page Number/s are not given.
- Delay in filing of appeals.
- Margins and line spacing.

Chapter-V

HEARING OF APPEAL AND PASSING OF ORDER

—  —

Hearing of Appeal and Passing of Order by the High Court Procedure after disposal of the case

—  —

1. HEARING OF APEPAL AND PASSING OF ORDER BY THE HIGH COURT

1. After the appeal is filed, either by the Department or by the assessee, it is taken on the Board of the Tax Bench by the High Court Registry. The intimation that the case is listed for hearing is conveyed by the registry through two lists:
 - i. Daily Main Cause-List
 - ii. Daily Supplementary Cause -List
 - iii. Weekly Main Cause-List
 - iv. Weekly Supplementary Cause-List

The Cause-lists is put out on the website of the Bombay High Court i.e. **bombayhighcourt.nic.in**. This cause-list is for the next week and is usually put up in the evening of Saturday by 8.00 p.m. Further on the previous day at 8.00 p.m., a supplementary cause-list is also put up for additional cases to be taken on the board on the next day. The officers concerned are required to view the same and instruct the Counsel to represent the case in the High Court. The Cause lists can also be viewed in the IAMS portal.

These lists categorize the cases into different classes carrying the following abbreviations with their numbers.

- i. **W.P. – Writ Petition** – [It appears in the list as WP/123 (No. given by the Writ Section of the High Court)/2023 (year of filing)]

Writ Petitions are generally filed by the assessee. Exceptionally, they can be filed by the Department against the order passed by the ITAT or Settlement Commission.

- ii. **NMA – Notice of Motion** – [It appears in the list as NMA/123 (No. given by the Prothonotary’s office)/2023 (year of filing)].

When an appeal is filed in the High Court after the due date of filing of appeal as per the criteria laid down in clause (a) of sub-section (2) of section 260A, a notice of motion

application is required to be filed. The notice of motion is a request to the Hon'ble Court to condone the delay stating in detail, the reasons for the delay. As this is to be decided before hearing the appeal on merits, it is treated as a separate category.

- iii. **ITXAL – Income Tax Appeal (Lodging)** – It appears in the list as ITXAL/123 given by the Prothonotary's office/2023 (Year of filing of appeal)].

ITXAL signifies Lodging number of the Income tax appeals. This number is given at the time of filing of an appeal u/s. 260A. This number will cease after the permanent appeal number (i.e. ITXA) is given after the removal of objections, if any, and remain till the disposal of appeal.

ITXA – Income Tax Appeal – It appears in the list as ITXA/123 (No. given by the Prothonotary's office / 2024 the year in which the delay is condoned and objection is removed).

This is the final categorization of the Income Tax Appeal filed in the High Court u/s. 260A. It indicates that the appeal has been accepted by the Registry and is now ready for being included in the cause-list.

Accessing Cause Lists on Bombay High Court Website:

- Cause lists are available on the Bombay High Court website a day before the hearing, around 8:00 p.m.
- Click the "Cause List" icon and navigate to the "daily/weekly cause list" page, then
- Select 'Original Side' for tax bench listings.
- Various lists like case number-wise, lawyer-wise, party-wise, court-wise, and judge-wise are accessible.
- If the judge's name is known, select it to access the cause list of that specific Tax bench.

Preparing for Court Representation:

- The PCIT/CIT issues a docket in the Standing Counsel's name for court representation.
- Junior Standing Counsel who drafted the appeal can assist the Senior Standing Counsel.
- Assessing Officer should provide proper assistance and brief the Counsel on case details before the hearing.
- Standing Counsel should receive a copy of the scrutiny report to understand case basics, including tax effects and covered issues.

2. Procedure after disposal of the case: -

Once the order is pronounced in the High Court, the Assessing Officer should immediately download the digital copy of the same from the High Court website and start further process as deemed necessary. The digital copy is also forwarded by CIT(Judicial) to the CIT concerned.

The Assessing Officer should also keep in touch with the Standing Counsel for obtaining a certified copy of the order after disposal of the case and in case the department appeal is dismissed, he should take immediate steps to get it restored or to file an SLP in the Supreme Court. In case the appeal is decided in favour of the Department, he should take steps either himself or through the Tax Recovery Officer to recover the arrears.

The milestones of progress of the case should be recorded in the Appeal Control Register maintained in the PCIT's office.

| Sr. No | Name of the assessee | PAN | Order No. | Order received in PCIT's office | Order sent to AO date | Result of appeal | Limitation date for filing further appeal | Scrutiny report receipt date |
|--------|----------------------|-----|-----------|---------------------------------|-----------------------|------------------|---|------------------------------|
| | | | | | | | | |

Chapter-VI

ENGAGEMENT OF COUNSELS AND ASG

— — — — —  — — — — —

**Appointment/Renewal of Standing counsels of IT Department before
various High Court
Contingencies arising during the pendency of appeals**

— — — — —  — — — — —

1. Appointment /Renewal of Standing counsels of Income Tax Department before various High Court: -

The CBDT has issued several important guidelines regarding the engagement of legal representatives to represent the Income-Tax Department before various judicial forums:

1. Revision of Guidelines for Standing Counsels:

- CBDT revised the Guidelines for engagement of Standing Counsels through F. No. 279/ Misc/M-75/2011-ITJ(Part-II) dated 7th September 2016. This includes a revision of their schedule of fees and related matters.

2. Engagement of Additional Solicitor General (ASG):

- CBDT issued a letter for the engagement of Additional Solicitor General (ASG) through F. No. 278/M-23/2021-ITJ dated 9th June 2021. This letter specifies the revision of the schedule of fees and related matters for ASGs representing the Income-Tax Department before High Court and other judicial forums.

3. Revised Guidelines for Appointment of Special Counsels:

- CBDT issued revised guidelines for Appointment of Special Counsels through F. No. 278/ Misc/M-23/2021-ITJ dated 18th August 2021. These guidelines outline the appointment process for Special Counsels representing the Income Tax Department before Courts and Tribunals.[ANNEXURE - B5]

In summary, the proposal for engagement of an ASG to defend matters within their jurisdiction on normal terms and conditions specified in the MOL notification dated 01-10-2015 does not require approval from the Board. However, if the ASG to be engaged belongs to a different region, the appointment will be treated as that of a Special Counsel, and the proposal must be sent to the Board for approval.

2. Contingencies arising during the pendency of appeals: -

Certain contingencies may arise during the pendency of appeals. These require bringing on record the names and addresses of the relevant persons. These contingencies are tabulated below:

| Sr.No | Contingency arising during the pendency of appeal | Name and address of persons to be brought on record |
|-------|--|---|
| 1 | In the case of an individual, there may be death, insolvency, etc. | Legal heirs or representatives or executors of his will or administrators of his estate |
| 2 | In the case of an HUF, there may be complete partition amongst the members | Erstwhile members of the HUF and the Karta |
| 3 | In the case of a company, it may go into liquidation or be wound up | Liquidator of the company |
| 4 | In the case of a firm, AOP or BOI there may be | Erstwhile partners of the firm or members of the AOP or BOI |
| 5 | In the case of a trust, the trustees may change | New trustees |

The Department must bring on record the names of relevant persons as early as possible. It is also possible that during the pendency of the appeals, the addresses of the parties may change, case-papers are transferred or jurisdiction of CIT is changed. It is necessary to bring all these facts to the notice of the Judicial Section.

Chapter-VII

IAMS PORTAL

— — — — —

Key features of IAMS

— — — — —

Integrated Appeal Management System (IAMS) is an upgraded version of the AMS, launched on 01.03.2022 by Shri Anand Sharan Singh, Pr. Chief Commissioner, Income Tax, Mumbai. It is exclusively used by the Income Tax Department, Mumbai, with designation-based email IDs serving as user IDs for officers.

1. Key Features of IAMS:

i. Comprehensive Database:

Includes all Income Tax cases ever filed in the Hon'ble High Court.

ii. Automatic Case Sourcing:

IAMS automatically sources new income tax cases from the Bombay High Court and integrates them into the system.

iii. Regular Data Synchronization:

Data of all cases in the system is synchronized regularly with High Courts. Case data, status, and next dates are automatically updated, ensuring accuracy and timeliness.

iv. Scheduled Updates:

The cycle of updating the IAMS database runs twice a week to synchronize data efficiently.

IAMS streamlines appeal management processes, enhances data accuracy, and provides real-time updates for assessing officers within the jurisdiction. Apart from the core functionalities mentioned earlier, IAMS offers several additional features and benefits:

i. Data Export to Excel:

a. The database can be downloaded in Excel format for further processing as per specific requirements.

ii. Cause List Analysis:

a. Analyses cause lists and presents them in a usable format, aiding in efficient case management

iii. Alerts System:

- a. Various alerts are issued based on updates in the database, ensuring timely actions and notifications.

iv. Document Management:

- a. PDFs of all appeal documents filed are mapped to respective cases.
- b. Automatic orders are integrated into the system for easy access and reference.

v. Online Repository:

- a. Offers an online repository of Questions of Law, facilitating legal research and reference.

vi. Customization Options:

- a. Manual fields allow for PAN number mapping, Assessment Year (AY) mapping, Tax Effect information, and more, providing flexibility and customization.

vii. Case Segregation and Tracking:

- a. Cases are segregated under various heads such as Disposed/Pending, CIT- wise, Counsel-wise, Appeal Type, and Mumbai or out of Mumbai jurisdiction.
- b. Displays total case pendency and CIT charge-wise case pendency, enabling tracking and monitoring of case status and workload distribution.

These features collectively enhance the functionality, usability, and efficiency of IAMS, making it a comprehensive and valuable tool for appeal management within the Income Tax Department, Mumbai

Key Features of System Life cycle

- i. Main page displays the case statistics in the form of charts and graphs.
- ii. PCIT/CIT wise case statistics is displayed. It also shows various action points



On 'cases' page various search criteria are given. Search can be executed by combining &/or omitting various criteria. Various criteria are disposed, non-disposed, Sections, Tax effect, PAN, CIT jurisdiction, Counsel, Case type, AY, Filing date etc.

The screenshot shows the search interface with various filters and a table of case records. The search filters include:

- Status: All (dropdown menu with options like Admitted, Disposed, etc.)
- Search in Any / ALL Fields listed (input field)
- Appeal Docs: With & Without (dropdown)
- Filing Date Range: 1900-01-01 - 2024-03-13 (dropdown)
- Ranges: All (dropdown)
- AOs: All (dropdown)
- Next Date Range: 1900-01-01 - 2024-03-13 (dropdown)
- Reg No: With & Without (dropdown)
- Last Order Date Range: 1900-01-01 - 2024-03-13 (dropdown)
- PAN: With & Without (dropdown)
- Filed By: All (dropdown)
- A.Y.: With & Without (dropdown)
- Revenue Counsel: All (dropdown)
- Objections: With & Without (dropdown)
- QOL: With & Without (dropdown)

The table below shows the search results:

| Lodging No. | Filing Date | Register No. | Petitioner | Pr CIT | Sections(Auto) | Status(Auto) | Last Date | AY(Auto) | Tax Eff(Auto) | Adv Petnr(Auto) | Objn? | QOL? | Appl Docs |
|----------------|-------------|---------------|---|---------------------------------|----------------|--------------|----------------------|--------------|-----------------------------|-------------------------------------|-------|------|-----------|
| Filed By | Reg. Date | Category | V/S Respondent | Range AO | Sections(Man.) | Stage(Auto) | Next Date Last Order | AY(Man.) PAN | Tax Eff(Man.) Tax Eff(Man.) | Adv Resp(Auto) [Revenue Counsel] | | | |
| ITXAL/418/1999 | 17-06-1999 | ITXA/109/2000 | MRS. KOMAL WAZIR - V/S THE DEPUTY COMMISSIONER OF I-TAX, SPECIAL RANGE 48 - | PR-CIT-8 [Income Tax Act, 1961] | -NA- | Disposed | 23-02-2015 | 1992, 1993 | 0.00 | Gagrats ANURADHA MANE | | | Y |
| ITXAL/942/1999 | 15.12.1999 | ITXA/549/2000 | THE COMMISSIONER OF I-TAX - V/S | -NA- | -NA- | Disposed | 18-02-2015 | 1992, 1993 | 0.00 | R.N.BANDYOPADHYAY (B) D.M.HARISH(H) | | | Y |

Case Manager – filter for Active or Non-Disposed cases

The screenshot shows the Case Manager interface with the following filters applied: Status - All, All-NON-Disposed [24231], Filing Date Range 1900-01-01 - 2024-03-13, Next Date Range 1900-01-01 - 2024-03-13, Last Order Date Range 1900-01-01 - 2024-03-13. The table displays 25 records per page, with a total of 20286 records found.

| Lodging No. Filing Date | Register No. Reg. Date Category | Petitioner V/S Respondent | Pr CIT Range AO | Sections(Auto) Sections(Man.) | Status(Auto) Stage(Auto) | Last Date Next Date Last Order | AY(Auto) AY(Man.) PAN | Tax Eff(Auto) Tax Eff(Man.) | Adv Petnr(Auto) Adv Resp(Auto) [Revenue Counsel] | Objn? QOL? | Appl Docs |
|------------------------------|---------------------------------|---|-----------------|-------------------------------|--------------------------|--------------------------------|-----------------------|-----------------------------|--|------------|-----------|
| ITXAL/54/2001 02-11-2001 | ITXA/49/2002 17-01-2002 | THE COMMISSIONER OF INCOME TAX, MUMBAI - V/S MAHARASHTRA NYBRID SEEDS CO.LTD. | PR-CIT-1 | [Income Tax Act, 1951] | Admitted(Unready) | 22-11-2021 | 1996-1997 | 43224291.00 | SURESH KUMAR (APPELLANT) | Y | Appl Docs |
| ITXAL/286/2002 22-03-2002 | ITXA/225/2002 30-03-2002 | HINDUSTAN EXPORT AND IMPORT CORPN. PLTD - V/S THE DY. CIT S.R.4 and ANR. | PR-CIT-1 | [Income Tax Act, 1951] | Admitted(Unready) | 08-03-2024 | 1995-1996 | 3015494.00 | T.POORAN and CO.ATUL KARSANDAS JASANI | Y | Appl Docs |

Case Manager – filter for cases with PAN

The screenshot shows the Case Manager interface with the following filters applied: Sections - All, Reg. No. - With & Without, Last Order Date Range 1900-01-01 - 2024-03-13, MUST HAVE 10 DIGIT PAN. The table displays 3 records per page, with a total of 33023 records found.

| Lodging No. Filing Date | Register No. Reg. Date Category | Petitioner V/S Respondent | Pr CIT Range AO | Sections(Auto) Sections(Man.) | Status(Auto) Stage(Auto) | Last Date Next Date Last Order | AY(Auto) AY(Man.) PAN | Tax Eff(Auto) Tax Eff(Man.) | Adv Petnr(Auto) Adv Resp(Auto) [Revenue Counsel] | Objn? QOL? | Appl Docs |
|------------------------------|---------------------------------|--|-----------------|-------------------------------|--------------------------|--------------------------------|-----------------------|-----------------------------|--|------------|-----------|
| ITXAL/537/2000 19-07-2000 | ITXA/1021/2000 19-07-2000 | RELIANCE INDUSTRIES LTD. - V/S THE DEPUTY COMMISSIONER OF INCOME-TAX SPECIAL RANGE-16- | PR-CIT-3 | [Income Tax Act, 1951] | Disposed | 20-07-2015 | 1967-88 | 3838059.00 | RAJ DHARAK(I) | Y | Appl Docs |
| ITXAL/538/2000 19-07-2000 | ITXA/1022/2000 19-07-2000 | RELIANCE INDUSTRIES LTD. - V/S THE DEPUTY COMMISSIONER OF I-TAX SPECIAL RANGE 16.- | PR-CIT-3 | [Income Tax Act, 1951] | Disposed | 20-07-2015 | 1968-89 | 4231701.00 | RAJ DARAK | Y | Appl Docs |
| ITXAL/107/2001 01-03-2001 | ITXA/90/2001 05-03-2001 | THE COMMISSIONER OF INCOME TAX, MUMBAI-II - V/S DHE OPERATIONS, B.V NETHERLANDS- | CIT-IT-2 | [Income Tax Act, 1951] | Disposed | 23-07-2018 | 1989-1990 | 8.38 | Charanjeet APPELLANT | Y | Appl Docs |

Case Manager - filter for cases of various CITs

The screenshot shows the Case Manager interface with the following filters applied: Status - All, MUMBAI or BOMBAY or NOT ENTERED, PR-CIT-19, Appeal Docs - With & Without, Filing Date Range 1900-01-01 - 2024-03-13, Ranges - All, AOs - All, Next Date Range 1900-01-01 - 2024-03-13, Reg. No. - With & Without, Last Order Date Range 1900-01-01 - 2024-03-13, A.Y. - With & Without, Revenue Counsel - All, Objections - With & Without, QOL - With & Without. Total 2386 record(s) found.

| Upload File(s) | Lodging No. Filing Date | Register No. Reg. Date | Petitioner V/S Respondent | Pr CIT Range | Sections(Auto) Sections(Man.) | Status(Auto) Stage(Auto) | Last Date Next Date Last Order | AY(Auto) AY(Man.) PAN | Tax Eff(Auto) Tax Eff(Man.) | Adv Petnr(Auto) Adv Resp(Auto) [Revenue Counsel] | Objn? QOL? | Appl Docs |
|-----------------|------------------------------|------------------------------|--|--------------|-------------------------------|--------------------------|--------------------------------|-----------------------|-----------------------------|--|------------|-----------|
| View Edit Dates | ITXAL/839/2000 09-11-2000 | ITXA/1396/2000 09-11-2000 | HARISH TEXTILE ENGRS.LTD MUMBAI - V/S DY.COMMISSIONER OF INCOME TAX, SPECIAL RANGE-19 MUMBAI - | PR-CIT-19 | [Income Tax Act, 1961] | Disposed | 30-10-2015 | | 0.00 | K.B. BHULEDAVE AND GIRISHAND. GO APPELLANT SURESH KUMAR. | Y | Appl Docs |
| View Edit Dates | ITXAL/589/2002 19-07-2002 | ITXA/553/2002 02-08-2002 | SRICHAND L. TAQLREJA - V/S ASSISTANT COMMISSIONER OF INCOME TAX. - | PR-CIT-19 | [Income Tax Act, 1961] | Disposed | 02-02-2024 | 1995-1996 | 923753.00 | SAMEER DALAL D.K.KAMWAL [D. K. Kamwal] | Y | Appl Docs |

Case Manager - filter containing cases with the search string (petitioner/respondent)

The screenshot shows the Case Manager interface with the search string 'parle' applied. The filters are: Status - All, MUMBAI or BOMBAY or NOT ENTERED, PR-CITs - All, Appeal Docs - With & Without, Filing Date Range 1900-01-01 - 2024-03-13, Ranges - All, AOs - All, Next Date Range 1900-01-01 - 2024-03-13, Reg. No. - With & Without, Last Order Date Range 1900-01-01 - 2024-03-13, Cases Type - All, Tax Effect - All, A.Y. - With & Without, Revenue Counsel - All, PAN - With & Without, Filed By - All, Objections - With & Without, QOL - With & Without. Total 110 record(s) found.

| Upload File(s) | Lodging No. Filing Date | Register No. Reg. Date | Petitioner V/S Respondent | Pr CIT Range | Sections(Auto) Sections(Man.) | Status(Auto) Stage(Auto) | Last Date Next Date Last Order | AY(Auto) AY(Man.) PAN | Tax Eff(Auto) Tax Eff(Man.) | Adv Petnr(Auto) Adv Resp(Auto) [Revenue Counsel] | Objn? QOL? | Appl Docs |
|-----------------|------------------------------|------------------------------|--|--------------|-------------------------------|--------------------------|--------------------------------|-----------------------|-----------------------------|---|------------|-----------|
| View Edit Dates | ITXAL/210/2000 15-03-2000 | ITXA/1004/2000 15-03-2000 | THE C.I.T.,CENTRAL-II, MUMBAI - V/S M/S.PARLE PRODUCTS LTD, MUMBAI - | PR-CIT- (C)2 | [Income Tax Act, 1961] | Disposed | 19-03-2015 | | 0.00 | R.N.BANDYOPADHYAY | Y | Appl Docs |
| View Edit Dates | ITXAL/141/2002 21-02-2002 | ITXA/252/2002 04-04-2002 | PARLE BUSLERN PLTO. - V/S THE DEPUTY COMMISSIONER OF INCOME-TAX. - | PR-CIT- 2 | [Income Tax Act, 1961] | Disposed | 15-06-2022 | 1989-1990 | 27153188.00 | ATUL JASANI. ARVIND PINTO [UD]BJ. CD NOT GIVEN[RESPONDENT SURESH KUMAR] | Y | Appl Docs |

Case Manager - filter containing cases with the search string (case number)

The screenshot shows the 'Cases List' page in the IAMS Integrated Application. The search filter 'ITXAL072000' is applied. The table below shows the results:

| Lodging No. Filing Date | Register No. Reg. Date | Petitioner V/S Respondent | Pr CIT Range AO | Sections(Auto) Sections(Man.) | Status(Auto) Stage(Auto) | Last Date Next Date Last Order | AY(Auto) AY(Man.) PAN | Tax Eff(Auto) Tax Eff(Man.) | Adv Petnr(Auto) Adv Resp(Auto) [Revenue Counsel] | Objn? QOL? | Appl Docs |
|---------------------------|---------------------------|---|-----------------|-------------------------------|--------------------------|---------------------------------------|-----------------------|-----------------------------|--|------------|-------------|
| ITXAL072000 11-05-2000 | ITXA9902000 11-05-2000 | THE C I T, MUMBAI CITY I, MUMBAI - V/S M/S GULF OIL (I) LTD, MUMBAI - | -NA- -NA- | [Income Tax Act, 1961] | Disposed | 06-06-2016 1998-1999 08-06-2016 | 0.00 5182045.00 | 0.00 | R.N BANDOPADHYAY CHITNIS & CO. | Y | [Red icons] |

Case Manager - filter of particular counsel name

The screenshot shows the 'Cases List' page with a filter for 'AJEET ASHOK MANWANI : ACTIVE'. The table below shows the results:

| Lodging No. Filing Date | Register No. Reg. Date | Petitioner V/S Respondent | Pr CIT Range AO | Sections(Auto) Sections(Man.) | Status(Auto) Stage(Auto) | Last Date Next Date Last Order | AY(Auto) AY(Man.) PAN | Tax Eff(Auto) Tax Eff(Man.) | Adv Petnr(Auto) Adv Resp(Auto) [Revenue Counsel] | Objn? QOL? | Appl Docs |
|------------------------------|---------------------------|--|-----------------|------------------------------------|--------------------------------------|--------------------------------|-----------------------|-----------------------------|--|------------|-----------|
| WPL304562022 22-09-2022 | WPI46022022 14-11-2022 | GANDHI COMMODITIES LLP (EARLIER KNOWN AS GANDHI COMMODITIES P LTD.) - V/S UNION OF INDIA THROUGH SECRETARY AND 3 ORS - CENTRAL BOARD OF DIRECT TAXES, -INCOME TAX OFFICER WARD 1(1) - PRINCIPAL COMMISSIONER OF INCOME TAX THANE 1 - | -NA- -NA- | 228 [Income Tax Act, 1961] 000 | Pre-Admission DUE ADMISSION | 12-02-2024 29-04-2024 | 0.00 0.00 | 0.00 | Economic Laws Practice AJEET MANWANI [Ajeet Ashok Manwani] | N | |
| ITXAL201292023 24-07-2023 | ITXAL201292023 -NA- | MOHINI D MORE - V/S INCOME TAX OFFICER-WARD 3(3) - | -NA- -NA- | 260A [Income Tax Act, 1961] 000 | Pre-Admission INTERIM APPLICATION | 12-02-2024 12-02-2024 | 0.00 0.00 | 0.00 | Raitha Haibe AJEET MANWANI [Ajeet Ashok Manwani] | N | |

Case Manager - Upload Files(s) button for a case (ITXAL/244/2002)

| Lodging No. Filed By | Register No. Reg. Date Category | Petitioner V/S Respondent | Pr CIT Range AO | Sections(Auto) Sections(Man.) | Status(Auto) Stage(Auto) | Last Date Next Date Last Order | AY(Auto) AY(Man.) PAN | Tax Eff(Auto) Tax Eff(Man.) | Adv Petnr(Auto) Adv Resp(Auto) [Revenue Counsel] | Objn? OOL? | Appl Docs |
|----------------------|---------------------------------|---|-----------------|-------------------------------|----------------------------|--------------------------------|-----------------------|-----------------------------|--|------------|-----------|
| Department | TAX APPEALS | MAHARASHTRA NYBRID SEEDS CO.LTD - | -NA- | | HEARING | 22-11-2021 | AAACM2809C | | [SURESH KUMAR] | | |
| ITXAL/266/2002 | ITXA/235/2002 | HINDUSTAN EXPORT and IMPORT CORPN. PLTD. - | PR-CIT-1 | [Income Tax Act, 1961] | Admitted(Unready) | 06-03-2024 | | 0.00 | T.POORAN and CO ATUL KARSANDAS JASANI | Y | |
| 22-03-2002 | 30-03-2002 | V/S THE DY. CIT S.R.4 and ANR. - | -NA- | 80(C)(i),234B(i)(i) | FOR FINAL HEARING | 22-03-2024 | 1995-1996 | 3015494.00 | -Suresh Kumar | | |
| Assessee | TAX APPEALS | | -NA- | | | 19-01-2024 | AAACH1112M | | [SURESH KUMAR] | | |
| ITXAL/244/2002 | ITXA/002/2002 | VEENA ESTATES PLTD. - | PR-CIT-6 | [Income Tax Act, 1961] | Admitted(Ready) | 11-01-2024 | | 0.00 | S. J. MEHTA AND A. VISSANJI APPELLANT | Y | |
| 22-03-2002 | 30-03-2002 | V/S COMMISSIONER OF INCOME TAX MUMBAI CITY-DK.MUMBAI. - | Range- 5(i) | 263(i)(i) | PRONOUNCEMENT OF JUDGEMENT | 11-01-2024 | 1984-1985 | 9334096.00 | -DEVVRAT SINGH | | |
| Assessee | TAX APPEALS | | ITO: 13(3)(1) | | | 11-01-2024 | AAACV1288L | | [Shri Devvrat Singh] | | |
| ITXAL/550/2002 | ITXA/575/2002 | DIRECTOR OF INCOME-TAX, EXEMPTIONS, MUMBAI. - | PR-CIT-41 | [Income Tax Act, 1961] | Admitted(Unready) | 21-02-2019 | | 0.00 | R. A. WASHAMPYANAR, MALHOTRA APPELLANT | Y | |
| 01-07-2002 | 01-08-2002 | V/S | Range- 41(4) | 000 | FOR WITHDRAWAL | 21-02-2019 | 1991-1992 | 35692.00 | -NA- | | |
| Department | TAX APPEALS | | ITO: 41(4)(4) | | | 21-02-2019 | AAATU1030H | | [INC MOHANTY] | | |
| ITXAL/551/2002 | ITXA/576/2002 | DIRECTOR OF INCOME TAX, EXEMPTIONS, MUMBAI. - | PR-CIT-41 | [Income Tax Act, 1961] | Admitted(Unready) | 21-02-2019 | | 0.00 | A.R. MALHOTRA APPELLANT | Y | |
| 01-07-2002 | 01-08-2002 | V/S UDAY CHARITABLE TRUST. - | Range- | 000 | FOR WITHDRAWAL | 21-02-2019 | 1992-1993 | 41264.00 | -NA- | | |

Case Manager - Upload Files(s) page for a case (ITXAL/244/2002)

ITXA/302/2002 -

Choose files | No file chosen | Upload

Already Uploaded files

ITXA-302-2002.pdf, ITXA-302-2002-BM.pdf

Close Window

Case Manager - View button for a case (ITXAL/244/2002)

| Lodging No. Filing Date Filed By | Register No. Reg. Date Category | Petitioner V/S Respondent | Pr CIT Range AO | Sections(Auto) Sections(Man.) | Status(Auto) Stage(Auto) | Last Date Next Date Last Order | AY(Auto) AY(Man.) PAN | Tax Eff(Auto) Tax Eff(Man.) | Adv Petnr(Auto) Adv Resp(Auto) [Revenue Counsel] | Objn? QOL? | Appl Docs |
|---|--|---|--|---|---|--|-------------------------|-----------------------------|---|------------|-----------|
| ITXAL/266/2002 22-03-2002 Assessee | ITXA/225/2002 30-03-2002 TAX APPEALS | HINDUSTAN EXPORT and IMPORT CORPN. PLTD. - V/S THE DY. CIT S R 4 and ANR. | PR-CIT-1 -NA- -NA- | [Income Tax Act, 1961] 80(O)(i),234B(i)(i) | Admitted(Unready) FOR FINAL HEARING | 08-03-2024 22-03-2024 19-01-2024 | 1995-1996 AAACH1112M | 0.00 3015494.00 | T. POORAN and CO. ATUL KARSANDAS JASANI -Suresh Kumar [SURESH KUMAR] | Y | pdf |
| ITXAL/244/2002 15-03-2002 View This Case [last AUTO updated on: 10-03-2024 02:36] | ITXA/302/2002 17-04-2002 TAX APPEALS | VEENA ESTATES PLTD. - V/S COMMISSION OF INCOME TAX MUMBAI CITY-X, MUMBAI - | PR-CIT-5 Range-5(i) ITO-130(X1) | [Income Tax Act, 1961] 263(O) | Admitted(Ready) PRONOUNCEMENT OF JUDGEMENT | 11-01-2024 11-01-2024 11-01-2024 | 1984-1985 AAACV1268L | 0.00 3334096.00 | S. J. MEHTA AND A. VISSANJI APPELLANT -DEVVRAT SINGH [Shri Devvrat Singh] | Y | pdf |
| ITXAL/050/2002 01-07-2002 Department | ITXA/075/2002 01-08-2002 TAX APPEALS | DIRECTOR OF INCOME-TAX, EXEMPTION, MUMBAI - V/S | PR-CIT-41 Range-41(4) ITO-41(4)(4) | [Income Tax Act, 1961] (00) | Admitted(Unready) FOR WITHDRAWAL | 21-02-2019 21-02-2019 21-02-2019 | 1991-1992 AAATU1530H | 0.00 35892.00 | R. A. WASHAMPYANAR MALHOTRA APPELLANT -NA- [NC MOHANTY] | Y | pdf |
| ITXAL/051/2002 01-07-2002 Department | ITXA/076/2002 01-08-2002 TAX APPEALS | DIRECTOR OF INCOME TAX, (EXEMPTIONS), MUMBAI - V/S UDAY CHARITABLE TRUST. - | PR-CIT-41 Range-41(4) ITO-41(4)(4) | [Income Tax Act, 1961] (00) | Admitted(Unready) FOR WITHDRAWAL | 21-02-2019 21-02-2019 21-02-2019 | 1992-1993 AAATU1530H | 0.00 41264.00 | A.R. MALHOTRA APPELLANT -NA- [NC MOHANTY] | Y | pdf |

Case Manager - View page for a case(ITXAL/244/2002)

| | | | |
|---|---|---|---|
| Registered Case Number ITXA/302/2002 | Lodging No. ITXAL/244/2002 | Petitioner VEENA ESTATES PLTD. - | Respondent COMMISSION OF INCOME TAX MUMBAI CITY-X, MUMBAI - |
| Reg. Date 17-04-2002 | Filing Date 15-03-2002 | Under Section (As per High Court Site) [Income Tax Act, 1961] | |
| Case Status Admitted(Ready) | Case Stage PRONOUNCEMENT OF JUDGEMENT | Case Category TAX APPEALS | Case District MUMBAI |
| Petitioner Advocate S. J. MEHTA AND A. VISSANJI APPELLANT | Respondent Advocate -DEVVRAT SINGH | Tax Effect (Auto) 0.00 | Assessment Year (Auto) |
| Case Assessee PAN By Assessee AAACV1268L | Present Counsel Shri Devvrat Singh | Tax Effect (in Full Amount) 3334096.00 | Assessment Year 1984-1985 |
| ITAT Appeal No / | CIT Charge (Pre 2014) | Pr CIT Charge (2014-2020) PR-CIT-13 | Pr CIT Charge (2020 onwards) PR-CIT-5 |
| Range Range-5(i) | AO ITO-130(i) | ASG/SC? No | |
| Section(s) 263(O) | | | |

Case Manager - Dates for a case

The screenshot displays the IAMS Case Manager interface. At the top, there is a browser window with the URL 'incometaxcases.com/Member5/Cases'. Below the browser, a table lists case details. The main table has columns for Lodging No., Register No., Petitioner V/S Respondent, Pr CIT Range AO, Sections(Auto) Sections(Man.), Status(Auto) Stage(Auto), Last Date Next Date Last Order, AY(Auto) AY(Man.) PAN, Tax Eff(Auto) Tax Eff(Man.), Adv Petnr(Auto) Adv Resp(Auto) [Revenue Counsel], and Appl Docs. The case details shown are for ITXA/266/2002, registered on 22-03-2002, with a petitioner of HINDUSTAN EXPORT and IMPORT CORPN. PLTD. and a respondent of THE DY. CIT S R 4 and ANR. The status is 'Admitted(Unready)' and the stage is 'FOR FINAL HEARING'. Below the main table, there is a 'Case Record' section with a table showing a history of 'Auto Added Date' entries from 2023 to 2024. The bottom of the screenshot shows the Windows taskbar with the search bar and system tray.

| Lodging No. Filing Date Filed By | Register No. Reg. Date Category | Petitioner V/S Respondent | Pr CIT Range AO | Sections(Auto) Sections(Man.) | Status(Auto) Stage(Auto) | Last Date Next Date Last Order | AY(Auto) AY(Man.) PAN | Tax Eff(Auto) Tax Eff(Man.) | Adv Petnr(Auto) Adv Resp(Auto) [Revenue Counsel] | Objnr? QOL? | Appl Docs |
|--|---------------------------------------|---|-----------------------|----------------------------------|--|--------------------------------------|-----------------------------|--------------------------------|--|-------------|--------------|
| ITXA/266/2002 | ITXA/225/2002 | HINDUSTAN EXPORT and IMPORT CORPN. PLTD. - V/S THE DY. CIT S R 4 and ANR. - | -NA- | 80(CX)(1),234B(1)(i) | Admitted(Unready) FOR FINAL HEARING | 08-03-2024 | 1995-1996 AAACH1112M | 0.00 3015484.00 | T.POORAN and CO.ATUL KARSANDAS JASANI -Suresh Kumar [SURESH KUMAR] | Y | PDF |

| Cases Date | Date Title | Order | What Transpired | Description |
|------------|---------------------|-------|-----------------|-------------|
| 22-03-2024 | LS: Auto Added Date | | | -NA- |
| 08-03-2024 | LS: Auto Added Date | | | -NA- |
| 01-03-2024 | LS: Auto Added Date | | | -NA- |
| 23-02-2024 | LS: Auto Added Date | | | -NA- |
| 16-02-2024 | LS: Auto Added Date | | | -NA- |
| 09-02-2024 | LS: Auto Added Date | | | -NA- |
| 19-01-2024 | LS: Auto Added Date | Order | | -NA- |
| 11-01-2024 | LS: Auto Added Date | | | -NA- |
| 14-12-2023 | LS: Auto Added Date | Order | | -NA- |
| 26-10-2023 | LS: Auto Added Date | Order | | -NA- |
| 19-10-2023 | LS: Auto Added Date | Order | | -NA- |
| 05-10-2023 | LS: Auto Added Date | Order | | -NA- |
| 31-08-2023 | LS: Auto Added Date | Order | | -NA- |
| 24-08-2023 | LS: Auto Added Date | Order | | -NA- |
| 17-08-2023 | LS: Auto Added Date | Order | | -NA- |
| 10-08-2023 | LS: Auto Added Date | | | -NA- |

Chapter-VIII

SECTION 158AA AND SECTION 158AB

—  —

Amendment of section 158AA

Explanation of the provisions of section 158AA and 158AB

—  —

The Government has recently taken steps to reduce the backlog of cases by raising the tax-effect thresholds for Revenue's appeals. The Finance Bill, 2022 introduced Section 158AB in the Income Tax Act, 1961, which helps minimize litigation. Section 158AB allows the department to refrain from filing repeated appeals with the High Courts and Supreme Court on legal questions that are already pending before a jurisdictional High Court or the Supreme Court.

1. SECTION 158A, 158AA AND SECTION 158AB :-

Chapter XIV-A of the Income-tax Act, 1961

Chapter XIV-A, containing sections 158AA and 158AB, was introduced by the Taxation Laws (Amendment) Act, 1984, effective from October 1, 1984. Initially, this chapter consisted of only section 158A, which was included as a measure for managing litigation. The primary aim was to avoid repetitive appeals and reference applications.

Section 158A: Avoiding Repetitive Appeals

Section 158A allows an assessee, during ongoing proceedings for an assessment year, to claim that a question of law arising in the current case is identical to a question of law already pending in the assessee's own case before the High Court or Supreme Court for another assessment year. If the Assessing Officer or appellate authority is satisfied with the claim, they may agree to apply the final decision on the question of law from the earlier year to the present year. Consequently, the assessee will not need to challenge the same question of law again in higher appellate authorities for the present year. This process significantly reduces repetitive litigation and ensures judicial efficiency.

Section 158AA: Deferment of Appeals Pending Supreme Court Decision

The Finance Act of 2015 introduced section 158AA. This section specifies that if a question of law in an assessee's case for any assessment year is identical to a question of law pending before the Supreme Court in an appeal or special leave petition filed by the revenue against a High Court's order in favor of the assessee for another assessment year, the Assessing Officer can make

an application to the Appellate Tribunal. This application requests that the appeal on the relevant question of law in the present case be deferred until the Supreme Court's decision on the question of law in the earlier case becomes final. This provision aims to prevent unnecessary appeals and streamline the resolution of legal questions pending the highest court's judgment.

Section 158AB: Expanded Scope and Applicability

The Finance Bill of 2022 proposed to replace the existing section 158AA with a new and expanded section 158AB. This revamped section is broader in coverage and applicability compared to the previous section. The new section 158AB empowers the department to defer filing repeated appeals with the High Courts and the Supreme Court on questions of law that are already pending before a jurisdictional High Court or the Supreme Court. This measure is intended to further minimize litigation and optimize judicial resources. Chapter XIV-A of the Income-tax Act, 1961, which contains sections 158AA and 158AB, was introduced by the Taxation Laws (Amendment) Act, 1984, effective from 1st October 1984. Initially, this chapter consisted of only one section, namely, section 158A

2. Amendment of section 158AA-

- i. In section 158AA of the Income-tax Act, in Sub-section (1), the following proviso shall be inserted, namely: –**

“Provided that no such direction shall be given on or after the 1st day of April, 2022.”.

Insertion of new section 158AB.

- ii. After section 158AA of the Income-tax Act, the following section shall be inserted, namely:–**

Procedure where an identical question of law is pending before High Courts or Supreme Court.

158AB. (1) Notwithstanding anything contained in this Act, where the collegium is of the opinion that–

- a. any question of law arising in the case of an assessee for any assessment year (such case being herein referred to as the relevant case) is identical with a question of law arising, –*

- i. in his case for any other assessment year; or*

- ii. in the case of any other assessee for any assessment year; and*

- b. such question is pending before the jurisdictional High Court under section 260A or the Supreme Court in an appeal under section 261 or in a special leave petition under article 136 of the Constitution, against the order of the Appellate Tribunal or the jurisdictional High Court, as the case may be, which is in favour of such assessee (such case being herein referred to as the other case), the collegium may, decide*

and inform the Principal Commissioner or Commissioner not to file any appeal, at this stage, to the Appellate Tribunal under sub-section (2) of section 253 or to the jurisdictional High Court under sub-section (2) of section 260A in the relevant case against the order of the Commissioner (Appeals) or the Appellate Tribunal, as the case may be.

(2) *The Principal Commissioner or the Commissioner shall, on receipt of a communication from the collegium under sub-section (1), direct the Assessing Officer to make an application to the Appellate Tribunal or the jurisdictional High Court, as the case may be, in such form as may be prescribed within a period of sixty days from the date of receipt of the order of the Commissioner (Appeals) or within a period of one hundred and twenty days from the date of receipt of the order of the Appellate Tribunal, as the case may be, stating that an appeal on the question of law arising in the relevant case may be filed when the decision on such question of law becomes final in the other case.*

(3) *The Principal Commissioner or Commissioner shall direct the Assessing Officer to make an application under sub-section (2) only if an acceptance is received from the assessee to the effect that the question of law in the other case is identical to that arising in the relevant case; and in case no such acceptance is received, the Principal Commissioner or Commissioner shall proceed in accordance with the provisions contained in sub-section (2) of section 253 or in sub-section (2) of section 260A.*

(4) *Where the order of the Commissioner (Appeals) or the order of the Appellate Tribunal, as the case may be, referred to in sub-section (1) is not in conformity with the final decision on the question of law in the other case, as and when such order is received, the Principal Commissioner or Commissioner may direct the Assessing Officer to appeal to the Appellate Tribunal or the jurisdictional High Court, as the case may be, against such order and save as otherwise provided in this section all other provisions of Part B of Chapter XX shall apply accordingly.*

(5) *Every appeal under sub-section (4) shall be filed within a period of sixty days from the date on which the order of the jurisdictional High Court or the Supreme Court in the other case is communicated, in accordance with the procedure specified by the Board in this behalf, to the Principal Commissioner or Commissioner.*

Explanation. – For the purposes of this section, “collegium” means a collegium comprising of two or more Chief Commissioners or Principal Commissioners or Commissioners, as may be specified by the Board in this behalf.’.

3. Explaining the provisions of section 158AA and section 158AB-

Section 158AA of the Act relating to procedure when in an appeal by revenue an identical question of law is pending before Supreme Court.

- a. Sub-section (1) of the section stipulates that if a collegium of Chief Commissioners, Principal Commissioners, or Commissioners collectively agrees that a question of law arising in an assessee’s case for any assessment year (referred to as the “relevant case”) is identical to a question of law in the case of that assessee or another assessee for a

different assessment year, which is currently pending before the jurisdictional High Court under section 260A or the Supreme Court in an appeal under section 261 or a special leave petition under article 136 of the Constitution, against the order of the Appellate Tribunal or the jurisdictional High Court, in favor of such assessee (referred to as the “other case”), they may decide and communicate to the Principal Commissioner or Commissioner not to file any appeal, at this stage, to the Appellate Tribunal under sub-section (2) of section 253 or to the jurisdictional High Court under Sub-section (2) of section 260A against the order of the Commissioner (Appeals) or the Appellate Tribunal, as applicable.

- b. Sub-section (2) instructs the Principal Commissioner or Commissioner to direct the Assessing Officer to apply to the Appellate Tribunal or High Court within 60 days of receiving the order from the Commissioner (Appeals) or within 120 days of receiving the Appellate Tribunal’s order. This application states that an appeal on the legal question from the relevant case may be filed once the decision on the question of law becomes final in the other case.
- c. Sub-section (3) states that the Principal Commissioner or Commissioner can only direct the Assessing Officer to make this application if the assessee agrees that the question of law in the other case is identical to that in the relevant case. If no such agreement is received, the Principal Commissioner or Commissioner will proceed as per the provisions in section 253(2) or section 260A(2).
- d. Sub-section (4) allows the Principal Commissioner or Commissioner to direct the Assessing Officer to appeal against the order of the Commissioner (Appeals) or the Appellate Tribunal if it doesn’t align with the final decision on the question of law in the other case.
- e. Sub-section (5) specifies that the appeal in the relevant case must be filed within 60 days of receiving the order from the jurisdictional High Court or Supreme Court in the other case, following the procedure set by the Board.

The **expression “collegium”** for the purposes of the section means a collegium comprising of two or more Chief Commissioners, Principal Commissioners or Commissioners as may be specified by the Board.

This amendment took effect from 1st April, 2022.

Chapter-I

WRIT PETITION

— — — — —

— — — — —

Importance of Writ Petition

Difference between a Writ, a Writ Petition, an appeal and a PIL

Writ in Mandamus

— — — — —

— — — — —

1. Introduction: -

A writ can be termed as a formal written order issued by a judicial authority who possesses the authority to do so. The meaning of the word “writs” means command in writing in the name of the Court. It is a legal document issued by the court that orders a person or entity **to perform a specific act or to cease performing a specific action or deed**, In India, writs are issued by the Supreme Court under Article 32 of the Constitution of India and the High court under Article 226 of the Constitution of India.

Meaning of Writ - Fundamentally, a writ is a formal written order issued by anybody, executive or judicial, authorised to do so. In modern times, this body is generally judicial.

Writs under Indian Constitution - Fundamental Rights are contained in part III of the Indian Constitution including the right to equality, right to life and liberty etc. Merely providing for Fundamental Rights is not sufficient. It is essential that these Fundamental Rights are protected and enforced as well. To protect Fundamental rights the Indian Constitution, under, Articles 32 and 226, provides the right to approach the Supreme or High court, respectively, to any person whose fundamental right has been violated. At the same time, the two Articles give the right to the highest courts of the country to issue writs on order to enforce Fundamental rights.

Kinds of writs -

- i. Habeas corpus
- ii. Mandamus
- iii. Certiorari
- iv. Prohibition
- v. Quo-warranto

2. Importance of Writ Petition: -

Writs play a crucial role in ensuring the proper functioning of the legal system and protecting individual rights. They provide a mechanism for individuals to challenge government actions, seek relief from unlawful detention, and enforce fundamental rights.

“Anyone whose fundamental rights, as outlined in Part III of the Indian Constitution, are violated can file a Writ Petition. This is a safeguard against the infringement of these fundamental rights.”

Writ Petition can be filed in SC - Under Article 32, a writ petition can be filed in the Supreme court. The Supreme Court can issue a writ only if the petitioner can prove that his Fundamental Right has been infringed. It is important to note that the right to approach the Supreme Court in case of a violation of a Fundamental Right is in itself a Fundamental right since it is contained in Part III of the constitution.

Under Article 226, a writ petition can be filed before any High court within whose jurisdiction the cause of action arises, either wholly or in part. It is immaterial if the authority against whom the writ petition is filed is within the territory or not. The power of the High court to issue a writ is much wider than that of the Supreme court.

The High Court may grant a writ for the enforcement of fundamental rights or for any other purpose such as violation of any statutory duties by a statutory authority. Thus, a writ petition filed before a Supreme Court can be filed against a private person too. Where a fundamental right has been infringed, either the Supreme Court or the High Court can be approached.

It is not necessary to go to the High Court first and only thereafter approach the Supreme Court. However, if a writ petition is filed directly in the Supreme Court, the petitioner has to establish why the High Court was not approached first.

3. Difference between Writ and Writ Petition?

- A writ means an order that is issued under an authority. Therefore, a writ can be understood as a formal order issued by a Court.
- A writ Petition is an application filed before a Court, requesting to issue a specific writ.

4. Difference between a Writ Petition, an Appeal and a PIL

- Writ Petition is typically filed when someone’s fundamental rights have been violated or they have been the victim of injustice. It is for seeking justice for self and is normally filed to address grievances against a Statutory Authority.
- An Appeal is a Petition to a higher court by a party who seeks to overturn a lower court/ appellate authority’s ruling.
- Writs are filed by individuals or institutions for their own benefit and not for public interest, whereas PILs are litigations filed in a court of law, on any matter where any interest of the public at large is affected such as Pollution, Terrorism, Road safety, Constructional hazards etc.

5. Writ in Mandamus: -

It is the most common writ petition preferred by the assessee against the Department. Wherever a public officer or the Government has done some act which violates the fundamental right of a person, the Court would issue a writ of mandamus, restraining the public officer or government from enforcing that order or doing that act against the person whose fundamental right has been violated.

Chapter-III

PROCEDURE FOR HANDLING WRIT PETITIONS

Importance

SOPs/Instructions regarding Writ Petitions

Common issues noticed in Handling of Writ Petitions

Steps to be taken when a Writ Petition is Received

1. Importance: -

Many Writ Petitions are being received in Hon'ble Bombay High Court currently, especially against the Assessment Orders passed under the Faceless Assessment Scheme (FAS). In many of such cases, the Hon'ble HC has expressed its displeasure over the nature and content of such orders, including issues like not giving enough time period to the assessee to file submissions, not considering the reply filed by the assessee in the orders passed etc. The High Court has even imposed cost upon officers, called them for personal attendance in Court (including senior officers like CIT (Judicial) and PCsIT), initiated perjury proceedings in one case, asked the order to be circulated to the Revenue Secretary and to everyone in the Finance Ministry and law ministry. Thus, the handling of Writ Petitions is very important.

2. Standard Operating Procedures (SOPs) and Instructions for Writ Petitions

In the realm of legal procedures concerning Writ Petitions, adherence to established protocols and meticulous attention to directives are paramount. Instruction No. 7/2011 [F.NO. 279/ MISC./M- 42/2011-ITJ], dated 24-05-2011, delineates precise guidelines to be followed in matters involving the Union of India, Ministry of Finance, Secretary (Revenue), Chairman CBDT, or their representatives as respondents before High Courts in cases pertaining to Direct Taxes.

Para 11: Defending Cases and Seeking Guidance

“All the cases before High Court, pertaining to Direct Taxes, wherein Union of India, Ministry of Finance, Secretary (Revenue), Chairman CBDT, or any of these figure as respondents, should be defended by the CCIT/ DGIT concerned. Powers may be delegated to appropriate officers nominated for the purpose stated above. The Board may be approached immediately for guidance/ Instructions in case any difficulty is experienced in exercising these powers. In Writ matters against orders under section 119(2) of the IT Act, 1961 etc, appropriate instructions may be obtained from the concerned division of the Board under intimation to ITJ section.”

Para 14: Supporting Departmental Counsels

The CIT should ensure that whenever the Departmental Counsel seeks Instructions / clarifications in a case, the same are attended to by the officers concerned promptly. The counsel should be briefed properly to strengthen Revenue's case. The CIT should personally involve himself in cases involving intricate issues of facts/law having wide ramifications or involving high revenue stake. A copy of the scrutiny report for filing appeal to High Court should invariably be made available to the appearing counsel for his assistance in preparation of the case and arguments”.

Judgments of High Court containing strictures etc.

Judgments of the High Court containing strictures or 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 CCIT/DGIT under intimation to ITJ section of the Board.

2.1 Standard Operating Procedure (SOP) for handling writ petitions where assessment is made under the Faceless Assessment/Penalty Scheme where NaFAC/CBDT is one of the respondents (N.A.F.A.C-1/58/2021-22/333 Dt: 26-7-2021).

The Central Board of Direct Taxes (CBDT) has provided comprehensive guidelines for the implementation of the Faceless Assessment Scheme 2019 (FAS 2019) through F. No. 173/165/2020-ITA-I dated 14.08.2020. These guidelines specifically mandate that field formations of jurisdictional charges outside the National Faceless Assessment Centre (NaFAC)/Regional Faceless Assessment Centers (ReFACs) hierarchy are responsible for performing judicial functions, including defending writ petitions.

In light of these administrative directions and legislative changes, all judicial functions, including the defence of writ petitions, shall be carried out by the jurisdictional Income Tax Authorities. This direction is based on the fact that the original jurisdiction lies with the Jurisdictional Assessing Officer (JAO), with concurrent jurisdiction vested in the NaFAC under sub-section (5) of section 120 of the Act, specifically for the limited purpose of assessment

A. SOP for PCIT Jurisdictional Charge being Nodal Coordinating Authority for defending writ petitions arising from the assessment/penalty proceedings pending before NaFAC:

PCIT (JAO) is responsible for handling writ petition matters with the support of the Pr. CCIT's office, CIT (Judicial) of the region, and the concerned PCIT (ReFAC) (AU). Since the case records during the proceedings before NaFAC won't be visible to the PCIT (Jurisdictional), inputs and parawise comments will be provided by the PCIT (ReFAC) (AU).

In such cases, the following steps should be followed:

1. Immediate Notification:

- Information about the filing of a Writ Petition before the jurisdictional High Court should be forwarded by the CIT (Judicial) or PCIT (Jurisdictional) to CIT (NaFAC)-3, New Delhi without any delay. Upon identification, the Writ Petition will be referred to the concerned PCIT (ReFAC) (AU).

2. Identification of PCIT (ReFAC) (AU):

- On receiving information from the concerned Pr. CCIT (Jurisdictional), High Court Cell, the High Court's website, or any other source, CIT (NaFAC)-3, New Delhi will request ITBA to identify the involved PCIT (ReFAC) (AU) immediately. Once identified, the Writ Petition will be referred to the concerned PCIT (ReFAC) (AU).

3. Examination of Writ Petition:

- The PCIT (ReFAC) (AU) will review the Writ Petition in the context of the case's facts and applicable law. The PCIT (ReFAC) (AU) can access all case records, including case history notes, through the status monitor.

4. Recording Parawise Comments:

- The PCIT (ReFAC) (AU) will examine the petitioner's claims and record parawise comments on the issues involved in the Writ Petition, cross-verifying with the information available on the ITBA records. For any technical issues or processes, the PCIT (ReFAC) (AU) may seek clarification from CIT ITBA.

5. Forwarding Comments:

- The parawise comments received from PCIT (ReFAC) (AU) will be forwarded to the PCIT (Jurisdictional) and the office of Pr. CCIT with a request to take necessary measures to defend the case before the High Court.

6. Seeking Specific Comments from NaFAC:

- The PCIT (ReFAC) (AU) will make a reference to NaFAC for specific comments in the following cases:
- If any provision related to FAS 2019 or section 144B of the Act is challenged in the writ or during arguments.
- If specific inputs on any policy issue are required.
- This reference should be made in the prescribed format (Annexure-A) and include parawise comments of the PCIT (Jurisdictional) or PCIT (ReFAC) (AU) supported with necessary documents like the Writ Petition, assessment order, and case history notes.

7. Reference to NaFAC for Policy Issues:

- Reference to NaFAC on specific policy issues or provisions of FAS 2019/section 144B should be made in exceptional circumstances requiring specific advice on policy matters, not on case-specific facts. This should ideally be done within 5 days of receiving the Writ Petition or immediately if the writ is scheduled earlier.
- General comments or directions from NaFAC should be avoided.

8. Authorization to Defend the Case:

- NaFAC will authorize the PCIT (Jurisdictional) to defend the case, give directions regarding the arguments, and decide the stand to be taken before the High Courts. Parawise comments, inputs, and instructions to counsel (if required) will be provided by PCIT (ReFAC) (AU) to PCIT (JAO) in such cases.

B. SOP for PCIT (Jurisdictional) Charge being Nodal Coordinating Authority for defending Writ Petitions arising from the assessment/penalty orders completed by NaFAC:

1. Initial Examination:

- Upon receiving a Writ Petition, the PCIT (Jurisdictional) must examine it in the context of the case facts and applicable law. Access all case records and history notes through the status monitor, providing comprehensive comments based on all relevant facts and legal issues.

2. Detailed Analysis:

- Review the taxpayer's petition and record parawise comments related to the issues in the writ petition. Cross-verify these with the information available in ITBA. If technical issues arise, seek clarification from CIT ITBA.

3. Coordination with PCIT (ReFAC) (AU):

- If necessary, the PCIT (Jurisdictional) can seek comments from the PCIT (ReFAC) (AU) who issued the assessment order. Provide written reasons and request unmasking of the AU from NaFAC (email: <delhi.cit3neac@incometax.gov.in>, cc: Addl.CIT-3(1) NaFAC <delhi.addlcit3.1neac@incometax.gov.in> & DCIT 3(2)(2) NaFAC <delhi.dcit3.2.2neac@incometax.gov.in>). Post-unmasking, coordinate via email/faceless ITBA communication.

4. Reference to NaFAC:

- Make references to NaFAC for:
- Challenges related to FAS 2019, section 144B of the Act, or FPS 2021.
- Policy-specific inputs.
- Follow the same protocol as in para (A)(6). These references should be exceptional, focused on policy advice, not case facts, ideally within 5 days of receiving the writ or sooner if necessary. Avoid general comment requests.

5. Handling Natural Justice Violations:

- If High Courts set aside cases due to natural justice violations, instruct the JAO to create set-aside proceedings in ITBA. Request ITBA to reallocate the case to FAO after creation.

6. Unfavourable High Court Orders:

- Decide on appeals or stay applications before a division bench for single bench orders, or filing SLPs, in line with guidelines from Pr. DGIT (L&R) and CBDT.

7. Further Action on Unfavorable Orders:

- If the High Court's unfavorable order pertains to ongoing NaFAC proceedings, obtain inputs from Pr. CIT (ReFAC) (AU) to decide on the order's acceptability.

3. Common issues noticed in Handling of Writ Petitions: -

Generally, the tendency of the JAO is to defend the Assessment order at any cost. While it's a noble pursuit, it should not come at the cost of facts of the case.

- Some issues in assessment may be due to the Faceless AO's actions-
 - not granting enough time with the final notice.
 - not taking submissions of the assessee into consideration while passing the draft/final order etc, even when it has come long back.
 - Passing order u/s 144 when submissions are on record.
- Some issues in assessment maybe due to Technical issues-
 - AO gave a certain time and date for compliance while system automatically set the time to 23:59 hrs of that day.
 - The submissions were not reflected on the system on the date of passing of order, but it reflected later and with the date and time stamp of the assessee's submission, not with when it reflected on AO's screen.

4. STEPS TO BE TAKEN WHEN A WRIT PETITION IS RECEIVED: -

1. Immediate Actions upon Receiving the Writ Petition

- i. Open a new file in the office of the Principal Chief Income Tax (PCIT).
- ii. Assign a proper identification number (with the WP. NO. allocated by the Hon. High Court).

2. Jurisdictional Verification:

- Check jurisdiction to ascertain if the petitioner is assessed within the jurisdiction.
- **If the answer is "NO":**
 - Ascertain the correct jurisdiction.
 - Transfer the writ petition to that jurisdiction.
 - Update the records accordingly.

- **If the answer is “YES”:**

- Check and note all the respondents involved.
- Inform and forward a copy of the writ petition to all respondents.
- Gather inputs from all respondents.
- Send a proposal to the PCIT to engage Special Counsel (SSC)/Additional Solicitor General (ASG)/special Counsel.
- Send the Vakalatnama/Docket/copy of the writ petition to the SSC authorized by the Principal Commissioner of Income Tax (Pr.CIT).
- Take possession of the original records pertaining to the case.
- Update the pendency of the Writ Petition in the workflow of ITBA.
- Read and thoroughly understand the averments made in the petition.

I. Responses to a Writ Petition:

i. Filing of a Statement: If the assessee seeks directions from the court to ensure that the Departmental Officer disposes of a pending application within a specified time limit, a mere statement in reply would suffice.

ii. Cases not covered in (a) above:

- Prepare parawise comments after verifying the averments raised with the original records in possession, either accepting or rejecting the averments made.
- Ensure that parawise comments are based on facts on record.
- Rebut case laws with facts on record or differentiate the laws in the case.
- Concluding comments should clearly elucidate the stand taken by the Department.

II. Challenges to Principles of Law/Constitutional Validity or Writ against Order u/s 119(2) of the Act:

Seek inputs from the Board (ITJ) section and incorporate them into the Affidavit in reply [Instruction no 07 dated 25/04/2011].

III. Preparation and Filing of Affidavit in Reply:

Once parawise comments are prepared (after collating inputs from other respondents and the Board where inputs are sought), seek the approval of the Principal Commissioner of Income Tax (Pr. CIT) concerned.

Forward the said comments to the Standing Counsel (SC) for the preparation of the affidavit in reply.

Ensure that the affidavit in reply is filed before the next hearing date.

IV. Next Hearing Date Preparation:

Check the next date of hearing and brief the SSC/Additional Solicitor General (ASG)/Special Counsel.

V. Affidavit in Reply Filing:

Prepare and file an affidavit in reply against each writ received before the ensuing hearing date

Points to be noted.

- A. Factual inaccuracy in the Affidavit in reply can lead to the Court imposing cost or even lead to the Court starting a perjury proceeding against the Officer filing the Affidavit.
- B. Keep track of the hearing dates and interim orders issued by the Hon. High Court and ensure that the interim directions issued by the Hon'ble High Court are duly compiled and timely instructions are issued to the counsels.

Chapter-IV

ACTION TAKEN AFTER DISPOSAL OF WRIT PETITION

1. Dismissal of Writ Petitions:

Upon receiving a favourable decision leading to the dismissal of the Writ Petitions, immediate steps should be taken to update ITBA and complete any pending processes that initially led to the filing of the writ.

2. Set Aside Directions by High Court:

When the High Court sets aside a case back to the file of the Assessing Officer, the PCIT (Jurisdictional) should instruct the Jurisdictional Assessing Officer (JAO) to create a set-aside proceeding in ITBA promptly. Furthermore, request ITBA to reallocate the case to the First Appellate Authority (FAO).

3. Petition Allowed by High Court:

In cases where the petition is allowed by the High Court, the Principal Commissioner of Income Tax (Pr. CIT) (Jurisdictional) should make a decision on filing further Special Leave Petition (SLP) or stay application before the division bench (if the order is from a single bench) or based on existing guidelines issued by Pr. DGIT (L&R) and CBDT

- a. If an unfavourable order is received in a case pending before NaFAC, seek inputs and comments from Pr. CIT (ReFAC)(AU) for determining the acceptability of the order.
- b. The timeline for forwarding the proposal for filing an SLP is 21 days from the passing of the order.

1. Use the IAMS Portal and also update the IAMS Portal as per the status of the Writ Petition.

Chapter-I

PROSECUTION

Launching of prosecution in relation to various offences under the Income-tax Act is intended to make enforcement of Direct tax laws more effective. Imposition of penalty has not been found to be adequate deterrent to check tax evasion and in enforcing tax laws. There may also be occasions to initiate prosecution proceedings under various sections of IPC independently or in addition to prosecution under the Income Tax Act, 1961.

1. OFFENCES LIABLE TO PROSECUTION.

I. Liable to be prosecuted-

- i. Any individual who commits an offense is under various provisions of IT Act subject to prosecution, regardless of whether they are an assessee under the Income-tax Act. In cases involving offenses committed by entities such as companies, firms, associations of persons, or bodies of individuals, every person in charge or responsible for conducting the business of the entity, as well as the entity itself, is deemed to be guilty. Similarly, in the case of offenses by a Hindu Undivided Family, the Karta of the family is deemed to be guilty of the offense.
- ii. If an offense under the Income-tax Act is committed by a company, and the prescribed punishment includes imprisonment and fines, the company shall be penalized with fines. Additionally, any person mentioned in subsection (1) of section 278B, or any director, manager, secretary, or officer of the company mentioned in subsection (2) of section 278B, may be subject to legal proceedings and penalties as per the provisions of the Act.

2. SECTIONS RELATING TO PROSECUTION: -

Sections 275A to 280 of the Income Tax Act, 1961 provide for various types of offences for which the Department can prosecute an assessee.

- a. **Section 275A** - Contravention of order made u/s. 132(1) (Second Proviso) or section 132(3) in the case of search & seizure.
- b. **Section 275B** - Failure to afford necessary facility to authorised officer to inspect books of account or other documents as required under section 132(1)(iib).
- c. **Section 276** – Removal, concealment, transfer or delivery of property to thwart tax recovery.

- d. **Section 276A** – Failure to comply with provisions of section 178(1) and (3) – re: company in liquidation.
- e. **Section 276B** - Failure to pay to credit of Central Government (i) deducted at source under Chapter XVII-B or (ii) tax payable u/s.115-O(2) or proviso to section 194B,194R(1),194S(1) or 194BA(2) of the Act.
- f. **276BB**- Failure to pay to the credit of the Central Government , the Tax collected at source as per Section 206C of the I.T Act.
- g. **Section 276C** – Willful attempt to evade tax, penalty or interest chargeable or imposable for under-reporting of Income.
- h. **Section 276CC** – Willful failure to furnish returns.
- i. **Section 276D** – Willful failure to produce accounts and documents.
- j. **Section 277** – False statement in verification or delivery of false account, etc.
- k. **Section 277A** – Falsification of books of account or document, etc., to enable any other person to evade any tax, penalty or interest chargeable/leviable under the Act.
- l. **Section 278** – Abetment of false return, account, statement or declaration relating to any income or fringe benefits chargeable to tax.
- m. **Section 278A** – Second and subsequent offences under section 276B, 276C (1), 276CC, 277 or 278.
- n. **Section 278AA** – No person shall be punished for any failure if he proves that there was reasonable cause for such failure.
- o. **Section 278B** – Offences by companies.
- p. **Section 278C** – Offences by HUF
- q. **Section 280(1)** – Disclosure of particulars by public servants in contravention of section 138(2) {Prosecution to be institutes with previous sanction of Central Government under section 280(2)}.
- r. **276 BB**- Failure to pay to the credit of the Central Government the Tax collected at source under section 206C of the IT Act.

Chapter-II

LAUNCHING PROSECUTION

1. GENERAL ISSUES RELEVANT TO PROCEDURE FOR LAUNCHING PROSECUTION:

The Central Board of Direct Taxes, through Circular No. 24/2019 dated 09.09.2019, has outlined guidelines for a streamlined process in identifying and evaluating cases for prosecution related to Direct Tax Laws.

Place of Prosecution:

As stated in paragraph 7(i) of the Standard Operating Procedure (SOP) from 27.06.2019, complaints are to be filed in the court with jurisdiction. Section 177 of the Criminal Procedure Code (Cr.P.C.) stipulates that offenses are generally tried by the Court within whose jurisdiction the offense occurred. This provision extends to offenses under Direct Tax laws as well.

Authority Competent to Launch Prosecution:

The field authorities responsible for identifying and initiating prosecution proceedings are outlined in paragraph 3.2 of the Standard Operating Procedure (SOP) dated 27.06.2019. Here are the key points regarding the competent authorities for launching prosecution:

i. Authority under Whose Jurisdiction Offence Was Committed:

The assessing officer, who has jurisdiction over the assessment, is the authorized person to initiate prosecution with the prior sanction of the Principal CIT/CIT having jurisdiction over the case. It is immaterial whether the assessing officer conducted the assessment personally or not. Similarly, in cases of TDS default, the assessing officer with jurisdiction over the TDS matter can initiate prosecution.

ii. Prosecution by Authority Presented with False Evidence:

An important aspect is that the authority presented with false evidence can also initiate prosecution. For instance, if a statement under oath recorded by an ADIT/DDIT/authorized officer is found to be false, then the concerned ADIT/DDIT/AO can initiate prosecution with the prior sanction of the Principal CIT/CIT/Principal DIT/DIT having jurisdiction over such individual.

iii. Prosecution under Sections 193 and 196 of IPC:

Prosecution under sections 193 and 196 of the Indian Penal Code (IPC) can only be initiated by the officer before whom the offense occurred. This officer could be a revisional authority, first

appellate authority, or assessing officer/ADIT/DDIT. However, section 195(1)(a) of the Criminal Procedure Code (Cr.P.C.) allows a superior authority to the officer before whom the offense occurred to also initiate prosecution.

Authority Competent to Grant Sanction for Prosecution:

The procedure for granting sanction under section 279(1) is outlined in paragraph 5 of the Standard Operating Procedure (SOP) dated 27.06.2019. Here are the key points regarding the competent authority to grant sanction:

i. Authority for Sanction under Section 279(1):

The Principal Commissioner, Commissioner, Commissioner (Appeals), or the Appropriate Authority as defined in clause (C) of section 269UA is empowered to grant sanction under section 279(1) of the Income Tax Act for launching prosecution under various provisions of the IT Act.

ii. Direction from Higher Authorities:

Under the proviso to Section 279(1), the Principal Chief Commissioner, Chief Commissioner, Principal Director General, or Director General may also provide directions for initiating prosecution proceedings to the aforementioned Income Tax authorities.

iii. Sanction for Prosecution under IPC:

There is no statutory requirement to obtain previous sanction for prosecution under different sections of the Indian Penal Code (IPC). However, the authority competent to grant sanction for prosecution under the Income-tax Act shall also provide administrative sanction for prosecution under IPC.

iv. Role of Sanctioning Authority:

If the sanction is granted by the competent authority and includes the facts constituting the offense and the grounds of satisfaction, the sanctioning authority does not need to be a prosecution witness. However, if the prosecution sanction is challenged by the defense on grounds such as competence of the sanctioning authority or lack of application of mind, the trial court may summon the sanctioning authority under section 311 of the Criminal Procedure Code (Cr.P.C.).

v. Collegium System for Approval:

Circular No. 24/2019 dated 09.09.2019 prescribes a collegium system comprising two CCIT/DGIT rank officers, including the CCIT/DGIT in whose jurisdiction the case lies, to provide prior administrative approval to the Sanctioning Authority before initiating prosecution in most cases. This system ensures that prosecution proceedings are initiated only in deserving cases. The Principal CCIT(CCA) concerned may issue directions for forming the collegium of CCsIT/DGIT for this purpose, and any disagreements are resolved as per the guidelines outlined in the circular.

I. No Limitation for Launching Prosecution under Income-tax Law:

While Section 468 of the Criminal Procedure Code sets a three-year limitation for launching prosecution, offences under the Income-tax Act and Wealth-tax Act are exempt from this limitation. However, it's important to note that newly introduced provisions like Securities Transaction Tax and Banking Cash Transaction Tax are not exempt from this limitation. Although there's no statutory time limit, the Hon'ble Bombay High Court has quashed prosecutions due to unreasonable delays, as seen in the case of **KMA Ltd vs Sundararajan ITO (1996) Tax LR 248 (Bom)**.

II. Prosecution under Income-tax Law vis-a-vis IPC:

- a. Prosecution under the Income-tax Act is distinct and more tailored to tax-related violations.
- b. Section 278A mandates harsher penalties for repeat offences, even if they are under different sections.
- c. Section 278AA shifts the burden of proving reasonable cause to the accused for specific offences.
- d. Section 278E includes a presumption of a culpable mental state, which can be challenged by the accused.
- e. Section 278B clarifies the liability of companies and individuals responsible for business conduct, setting standards for due diligence.
- f. Section 279(2) allows for compounding of offences under the Income-tax Act, unlike IPC offences that cannot be compounded and may only be withdrawn with court approval.

2. PROCEDURE FOR LAUNCHING OF PROSECUTION: -

The detailed procedure for launching prosecution in case of offences related to TDS/TCS is governed by SOP dated 18.10.2016 and in case of all other offences the same shall be governed by SOP dated 27.06.2019. The brief procedure for launching prosecution is as discussed in these Paragraphs:

I. Steps for launching prosecution The process begins with the ADIT/DDIT/Authorized officer/ Assessing officer/TRO identifying the case as per prosecution guidelines or based on available evidence. A proposal containing case facts, identified offences, and case records are then sent to the Pr.CIT/CIT with jurisdiction for approval.

- i. The Pr.CIT/CIT reviews the proposal's feasibility for prosecution considering the case's facts. If deemed fit, the Pr.CIT/CIT issues a notice under Section 279(1) of the IT Act (or otherwise for IPC offences) to the assessee, informing them of the proposed action and requesting their version within a stipulated time.
- ii. After the notice period expires:
 - If no response is received, the Pr.CIT/CIT proceeds based on available facts.
 - If the assessee responds, further action is taken accordingly.

- iii. If the assessee seeks compounding of the offence, they are advised to submit the compounding application within a specified time. Failure to do so prompts the sanctioning authority to proceed without delay. If the compounding application is received, it follows guidelines for compounding of offences.
- iv. If the assessee's reply does not request compounding and is not deemed fit for prosecution after review, prosecution may not be launched, with reasons recorded.
- v. Upon satisfying the offence's elements, the Commissioner may grant sanction under Section 279(1) of the Act. In certain cases, prior approval of a Collegium of two CCIT/DGIT rank officers is required. The sanctioning order should reflect careful consideration of facts and adherence to Section 278AA provisions.
- vi. If there's doubt regarding the prosecutability of the offence after considering facts and replies, the Commissioner may seek the Special Public Prosecutor's opinion. This opinion assists but isn't binding for granting prosecution sanction.

II. Important aspects regarding preparation of the proposal for prosecution-

Para 4 of SOP dated 27.06.2019 deals with procedure to prepare proposal for Prosecution. The Proposal shall be prepared in Form A which is attached to SOP as Annexure-1.

In preparing such proposals following aspects may be kept in mind: -

- i. The AO is required to study the entire records of a delinquent assessee with special reference to the following: -
 - a. Background of the case with particular attention to past lapses
 - b. Stages of the relevant proceedings from the issue of the notice requiring submission of return to the completion of assessment and finalisation of penalty proceedings.
 - c. Appellate Proceedings.
 - d. Identification of documentary evidence like notices, return, statement of accounts etc.
 - e. Identification of other documentary evidences
 - f. Identification of departmental witnesses
 - g. Identification of outside witnesses
 - h. Expert testimony, if any
 - i. Identification of corroborative evidence.
- ii. After study of records a proposal in prescribed proforma shall be drafted incorporating all the required details as provided in the proforma enclosed as Annexure-1 of SOP, strictly following the instructions to fill the proforma.

III. Safeguards in granting sanction for prosecution u/s 279(1) of the IT Act-

The Standard Operating Procedure (SOP) dated 27.06.2019 outlines important aspects of mandatory sanction under section 279(1) of the Income Tax Act. Here are some safeguards to consider when granting such sanction:

1. Application of Mind:

- The sanction order under section 279(1) should clearly show that it was issued after careful consideration of the available materials. The authority granting sanction must have genuinely applied its mind to the facts of the case.

2. Purpose of Safeguard:

- The purpose of requiring sanction is to prevent frivolous prosecutions and to allow the authority to determine the necessity and appropriateness of prosecution based on the specific circumstances of each case. The sanctioning authority should demonstrate in the sanction order that they have indeed considered all the facts before granting sanction.

3. Precedents and Legal Validity:

- There have been cases where complaints were dismissed due to improper or insufficient sanction. The sanction order should be robust enough to withstand legal scrutiny and not be found defective or lacking in a court of law.

4. Separate Sanction for Each Offence:

- Each offence should have a separate sanction, even if the order is the same. For instance, if sanction is granted for an offence under section 276C but proceedings are initiated under section 277, the proceedings may be deemed invalid and could be quashed.

5. Year-wise Sanction:

- Similarly, under section 279(1) of the Income Tax Act, separate sanction should be given for each assessment year through distinct orders specifying each offence separately.

These safeguards ensure that the sanctioning process is thorough, legally sound, and aligned with the requirements of the law, reducing the risk of challenges or dismissals based on sanction-related issues.

Chapter-III

IMPORTANT ASPECTS IN THE PREPARATION OF COMPLAINT

1.1. Important aspects in the preparation of complaint: -

Important aspects in the preparation of a complaint are outlined in Para 6 of the SOP dated 27.06.2019. Since the complaint forms the basis of prosecution proceedings, it should be meticulously prepared with the following considerations:

a. Foundation of Prosecution:

The complaint serves as the foundation of a prosecution proceeding. It should be drafted in a manner that would convince a person of reasonable intelligence about the commission of the offence by the accused.

b. Charging Section Mention:

The complaint should clearly mention the appropriate charging section of the Income Tax Act as well as the Indian Penal Code (IPC). This aids the Magistrate during the framing of charges and ensures legal accuracy.

c. Signature by Competent Officer:

The complaint must be signed by the competent officer initiating the prosecution. This adds legitimacy and accountability to the document.

d. Crucial Legal Sections:

For drafting the complaint, Chapter XVII of the Criminal Procedure Code (Cr.PC) is relevant, specifically Sections 211 to 224. Familiarity with these sections ensures compliance with legal procedures.

e. Separate Charges and Trials:

Section 218 of Cr.PC mandates a separate charge for each distinct offence and a separate trial for each offence. However, Section 219 allows for multiple offences of the same kind, committed within 12 months, to be charged and tried together in one trial if they fall under the same section of the IPC or any special law, including the Income Tax Act.

1.2. Brief guidelines for proper drafting of complaints:

- i. Before prosecution is launched, it is imperative that there must be a sanction for such prosecution and that it should be at the instance of the authority enumerated in section 279(1) of the Act. Otherwise, prosecution is likely to be quashed.
- ii. The place of commission of the offence shall specifically be discussed with the Prosecution Counsel and accordingly the jurisdiction of the court should be mentioned.

- iii. The correct names and complete addresses of the accused should be specifically mentioned. This prevents delay in service of summons etc., by the court.
- iv. The following should be annexed to the complaint:
 - a. Sanction order for prosecution
 - b. List of important documents / exhibits
 - c. List of prosecution witnesses.
- v. It may be however noted; that prosecution can also furnish additional list of witnesses during trial [section 204(2) of Cr.P.C]
- vi. Chronological events leading to commission of offences should be spelt out. The evidence collected during the investigation should be set out precisely so that the Magistrate is able to appreciate the grounds to proceed with the case. Care, therefore, needs to be taken to establish clearly the ingredients of the offence in the complaint.

1.3. Selection of evidence as exhibits -

In most prosecution trials, evidence in the form of books of account and documents plays a crucial role. This evidence can be obtained during Income-tax proceedings, through submissions by the assessee, or from third parties. It can also be obtained through impounding under sections 131(3) or 133A, or through seizure under sections 132(1) or 132A of the I.T. Act. Such records and documents are considered admissible evidence in court. Key documents like the original and amended returns, statement of accounts, and any statements by the assessee admitting an offense or contradicting previous statements should be specifically listed as exhibits in the complaint. Ensuring the safekeeping of these documents is important, with a preference for relying on government, bank, or other authoritative documents.

Regarding digital or electronic evidence, the Supreme Court has relaxed the requirement of a certificate under section 65B(4) of the Evidence Act in certain cases, such as when a party does not have access to the device producing the document. In TDS cases under sections 276B/276BB, the default sheet generated by the CPC-TDS System can be submitted as admissible evidence.

1.4. Selection of witnesses:

- It's crucial to carefully select prosecution witnesses during the preparation of the complaint. Instead of listing all possible witnesses for proving identical facts, prioritize those who can easily appear before the court.
- The complainant officer should always be included as a witness.
- Independent witnesses like bank officers, government employees, or business associates of the assessee should be preferred based on the circumstances of the case.
- Avoid relying on witnesses associated with the delinquent assessee or those relied upon for their defend

2. Custody of records and evidence relating to Prosecution: -

Safe custody of evidence is a critical aspect highlighted in Para 8 of SOP dated 27.06.2019. **Many cases are lost due to the department's failure to present evidence in court, emphasizing the need for careful identification and preservation of material evidence for prosecution proceedings.**

I. Identification and Collection of Evidence:

- Any authority discovering fraud or serious tax evasion should proceed with further investigations, considering the potential for prosecution. These cases are termed "potential prosecution cases," and evidence collection should be meticulous.
- Assessing Officers (AOs) must ensure that returns are filed correctly and signed by authorized personnel. Documents submitted by the assessee should be properly signed and verified.

II. Custody of Original Records:

- Once prosecution proceedings are initiated, the entire original records should be kept in personal custody, and further processing should be based on photocopies.

III. Handling of Certified Photocopies:

- Certified photocopies of relevant records should be given to the prosecution counsel at the time of launching the prosecution. The prosecution counsel is responsible for presenting these copies during each hearing.
- The original records remain in the personal custody of the complainant officer and their successor after filing the complaint. They can be produced in court as required.

IV. Retention of Seized Material:

- Seized or impounded material relevant to prosecution proceedings should not be released until the completion of those proceedings. Approval from the competent authority should be obtained for its retention.

V. Documentation and Record Keeping:

- Upon initiating prosecution proceedings, the case name should be entered into the prosecution register on ITBA by the AO/TRO/ADIT.

3. Publicity of Convicted cases:-

All cases, where prosecution proceedings launched by the Department have resulted in conviction of the assessee should be given appropriate publicity by the Pr.CIT/Pr. DIT concerned.

Chapter-IV

OFFENCES UNDER VARIOUS OTHER ACTS

— — — — —
Black Money and Imposition of Tax Act, 2015
Prohibition of Benami Property Transaction Act, 1988
Comparative chart of prosecution under I.T Act vis-à-vis
Black Money Act & Benami Act
— — — — —

1. Prosecution provisions under the Black Money (Undisclosed Foreign Income and Assets) And Imposition of Tax Act, 2015 ('Black Money Act') :-

Nature of offence: In absence of any non-obstante clause (like section 279A of the Income-tax Act) in the Black Money Act, the classification of offences under the Black Money Act shall be governed by the Code of Criminal Procedure, 1973.

Part II of the First Schedule of the Cr. P.C. as reproduced below, which classifies "Offences under other laws" (other than IPC), shall be applicable for offences under the Act.

| Offences | Cognizable or non-cognizable | Bailable or non-bailable |
|--|-------------------------------------|---------------------------------|
| If punishable with death, imprisonment for life, or imprisonment for more than 7 years | Cognizable | Non-bailable |
| If punishable with imprisonment for 3 years and upwards but not more than 7 years | Cognizable | Non-bailable |
| If punishable with imprisonment for less than 3 years or with fine only | Non-cognizable | Bailable |

The offences under sections 49 to 53 of the Black Money Act are punishable with a maximum imprisonment for a term of at least seven years. Thus, in accordance with the classification of Cognizable/Non-Cognizable and Bailable/Non-Bailable offences under the Cr.P.C., the offences under Sections 49 to 53 of the Act are Cognizable and Non-Bailable offences.

Compounding: As against the compounding provision under the Income-tax Act, the Act does not provide for compounding of offences. Thus, the offences under the Black Money Act are non-compoundable.

Prosecution provisions under the Black Money (Undisclosed Foreign Income and Assets) And Imposition of Tax Act 2015

| | | |
|------------|--|--|
| Section 49 | Punishment for failure to furnish return in relations to foreign income and asset | This section is identical to section 276CC of the Income-tax Act. The punishment for wilful failure to file the return of income u/s 139(1) before the expiry of the assessment year by a resident other than not ordinarily resident, having any asset or, financial interest in any entity, located outside India as a beneficial owner or as a beneficiary shall be rigorous imprisonment from six months to seven years and with fine. |
| Section 50 | Punishment for failure to furnish in return of income, any information about an asset (including financial interest in any entity) located outside India | This provision will apply if any person (resident), as a beneficial owner or as a beneficiary, willfully fails to furnish in return of income, any information about an asset (including financial interest in any entity) located outside India. Punishment is rigorous imprisonment for a term of six months to seven years and fine. |
| Section 51 | Punishment for wilful attempt to evade tax | This section is identical to section 276C of the Income-tax Act (except for the quantum of punishment) and is applicable only for Residents other than not ordinarily residents. As per the section 51(1), in case of willful attempt to evade any tax, penalty or interest chargeable or imposable under the Act, the person is punishable with rigorous imprisonment for a term from three years to ten years and with fine. |
| Section 52 | Punishment for false statement in verification | This section is identical to section 277 of the Income-tax Act except that there is no linkage with the quantum of evasion of tax. The punishment is rigorous imprisonment for six months to seven years and fine. Application of this section is not limited to “residents”. |
| Section 53 | Punishment for abetment | This section is identical to section 278 of the Income-tax Act except that there is no linkage with the quantum of evasion of tax. The punishment is rigorous imprisonment for six months to seven years and fine. Application of this section is not limited to “residents” |
| Section 54 | Presumption as to culpable mental state | This section is identical to section 278E of the Income-tax Act. |

| | | |
|------------|---|---|
| Section 55 | Prosecution to be at the instance of Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General or Principal Commissioner or Commissioner | This section is identical to section 279 of the Income-tax Act. Sanction of the Principal Commissioner or Commissioner or the Commissioner (Appeals) is required for filing prosecution u/s 49 to 53. |
| Section 56 | Offences by Companies | This section is identical to section 278B of the Income-tax Act. However, in the definition of Company, HUF has also been included (In the Income-tax Act for offences by HUF a separate Section 278C is provided) |
| Section 57 | Proof of entries in records or documents | This section is identical to section 279B of the Income-tax Act. |
| Section 58 | Punishment for second and subsequent offences | This section is identical to section 278A of the Income-tax Act. However, punishment for second and subsequent offences u/s and 49 to 53 is three years to ten years with fine which shall not be less than Rs. 5 lakhs but which may extend to Rs. 1 crore |

2. Prosecution provisions under the Prohibition of Benami Property Transactions Act, 1988 (“Benami Act”)

| | | |
|--|------------------------------------|---|
| Section 3 | Prohibition of benami transactions | For offences prior to the amendment of the Benami Act w.e.f. 01.11.2016, entering into any benami transaction is punishable with imprisonment for a term which may extend to three years or with fine or with both. |
| Chapter VII - Offences and Prosecutions | | |
| Section 53 | Penalty for benami transaction | Where any person enters into a benami transaction shall be punishable with rigorous imprisonment for a term from one year to seven years and shall also be liable to fine which may extend to twenty-five per cent of the fair market value of the property. |
| Section 54 | Penalty for false information | Any person who is required to furnish information under this Act knowingly gives false information shall be punishable with rigorous imprisonment for a term from six months to five years and shall also be liable to fine which may extend to ten percent of the fair market value of the property. |
| Section 55 | Previous sanction | Sanction of the Board is required for filing prosecution |

| Chapter VIII - Miscellaneous | | |
|--|--------------------------------------|--|
| Section 60 | Application of other laws not barred | It clarifies that provisions of prosecution under the Benami Act are independent of and in addition to the provisions of prosecution under any other law |
| Section 62 | Offences by Companies | This section is identical to the Section 278B of the Income-tax Act and covers Company, Firm, BOI and AOP but does not cover HUF |
| <ul style="list-style-type: none">● There is no provision for compounding of offences like Section 279(2) of the Income-tax Act.● There is also no provision corresponding to Section 278E of the Income-tax Act regarding “Presumption as to culpable mental state”.● The offences under the Benami Act are non-cognizable as mentioned in Section 61 of the Act. | | |

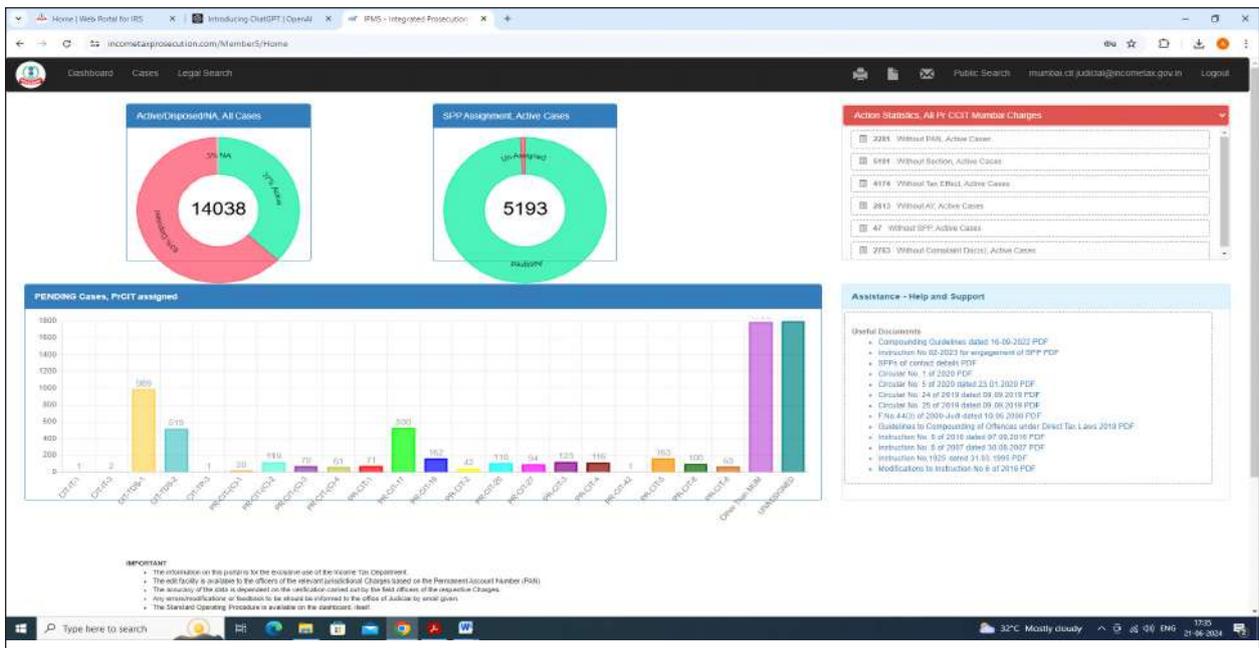
Chapter-V

IPMS PORTAL

Integrated Prosecution Management System(IPMS)

1. INTEGRATED PROSECUTION MANAGEMENT SYSTEM (IPMS):-

The Integrated Prosecution Management System (IPMS) is the website for information on prosecution complaints filed by the Department. The information on this portal is for the exclusive use of the Income Tax Department. IPMS provides the data of Mumbai Region as well as for all the PCIT charges separately. The IPMS website provides the information in respect of the case, the Advocate and the no. of hearings held in each case.



| Case Final No. Reg. Date CNR number | Lodging No. Filing Date | Petitioner V/S Respondent | Pr CIT | Sections(Auto) Sections(Man.) | Status(Auto) Stage(Auto) | Last Date Next Date Last Order | Adv Petnr(Auto) Adv Resp(Auto) [SPP] | PAN A.Y. T.E. | Court Info | Complaint Copy |
|---|--|---------------------------------|---|----------------------------------|--|--------------------------------------|--|----------------------------|--|-------------------|
| Upload File(s) View Edit Dates | S W38000062022 07-03-2022 MHMM200012582022 | 501220/2022 07-03-2022 | 1) INCOME TAX DEPARTMENT V/S 1) M/s B. E. Billimora and Co. Ltd. 2) Digant Laxmidas Kapadia. 3) Jeet Digant Kapadia. 4) Parthasarathy Jagannathan. 5) Rajesh Jaykumar Doshi. 6) Natsimha Ravinchandran. 7) Kaiyoze Bej Billimora. | CIT- TDS-1 | Income Tax Act 1961, Section 276B, i/w 276B, (XX) | -NA- -NA- 08.12.2024 | Amit Munde -NA- [Amit Munde] | AAACB1542P -NA- 0.00 | 1-ADDL CHIEF METROPOLITAN MAGISTRATE. 28TH COURT | |

| Registered Case Number | Lodging No. | Petitioner | Respondent |
|------------------------------|-------------------------|---|---|
| S W38000012022 | 501215/2022 | 1) INCOME TAX DEPARTMENT | 1) MS. Admiral Shipping Ltd. 2) Shaoh Fidanussan Rangwala. 3) Abbas Fidanussan Barodawala. 4) Ronak Sameer Sunder Shetty. |
| Reg. Date | Filing Date | Under Section (As per High Court Site) | Assessment Year |
| 07-03-2022 | 07-03-2022 | Income Tax Act, 1961, Section 276B, i/w 276B, | |
| Case Status | Case Stage | CNR Number | Designation and AO |
| | Evidence before charge. | MHMM200012582022 | |
| Respondent Advocate | Petitioner Advocate | Tax Effect (In Full Amount) | Assessment Year |
| | Amit Munde | 0.00 | |
| Assessee PAN | Present Counsel | Remarks | Designation and AO |
| AAACB1542P | Amit Munde | | |
| Income Involved | Gist Of Offences | Compounding Petition? | Designation and AO |
| 0.00 | | No. | |
| Pr CIT Charge (2020 onwards) | Current Jurisdiction | Compounding Petition? | Designation and AO |
| CIT-TDS-1 | | No. | |
| Section(s) | Current Jurisdiction | Compounding Petition? | Designation and AO |
| 000 | | No. | |

[Close Window](#)

Chapter-I

NATIONAL COMPANY LAW TRIBUNAL AND NATIONAL COMPANY LAW APPELLATE TRIBUNAL (NCLT & NCLAT)

1. Introduction

1.1 National Company Law Tribunal (NCLT):

The National Company Law Tribunal (NCLT) is a quasi-judicial authority constituted by Union Government of India on 1 June 2016 under Section 408 of the Companies Act, 2013. Its primary role is to handle corporate civil disputes arising under this Act. The NCLT possesses powers and procedures similar to those of a court of law or judge.

1.2 Key Functions and Powers:

- **Fact-Finding and Decision-Making:** The NCLT is tasked with objectively determining facts, deciding cases based on principles of natural justice, and issuing orders that can correct wrongs, remedy situations, or impose legal penalties and costs.
- **Orders and Impact:** The orders issued by the NCLT can affect the legal rights, duties, or privileges of the involved parties.
- **Procedure:** Unlike traditional courts, the NCLT is not bound by strict judicial rules of evidence and procedure. It operates on principles of natural justice, providing a more flexible approach to resolving disputes.

1.3 National Company Law Appellate Tribunal (NCLAT):

The National Company Law Appellate Tribunal (NCLAT) is designed to handle appeals against the decisions made by the NCLT. It serves as an appellate authority to review and possibly alter the decisions of the NCLT.

1.4 Key Functions and Powers:

- **Appellate Review:** The NCLAT reviews decisions taken by the NCLT on both factual and legal grounds.
- **Powers:** It has the authority to set aside, modify, or confirm the decisions of the NCLT.
- **Intermediate Appellate Forum:** The NCLAT acts as an intermediate appellate body, with further appeals from its decisions being directed to the Supreme Court of India.

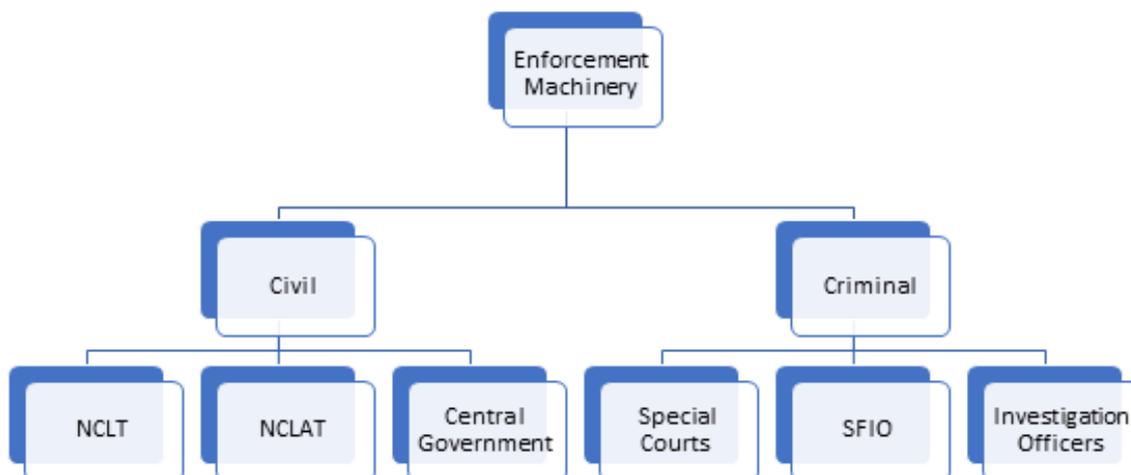
1.5 New Enforcement Mechanism: Place of Tribunals

The Companies Act, 2013, envisions a comprehensive enforcement mechanism where the NCLT and NCLAT play crucial roles. The enforcement hierarchy is as follows:

1. NCLT: The primary tribunal for corporate civil disputes under the Companies Act, 2013.
2. NCLAT: The appellate body for reviewing NCLT decisions.
3. Supreme Court: The apex court where decisions of the NCLAT can be further appealed.

This structure ensures a systematic approach to dispute resolution and enforcement under the Companies Act, providing clear pathways for appeals and reviews, thereby enhancing the efficiency and effectiveness of corporate legal proceedings in India.

The chart below provides a holistic view about the enforcement mechanism contemplated under the Companies Act, 2013 and the place of Tribunals in this machinery.



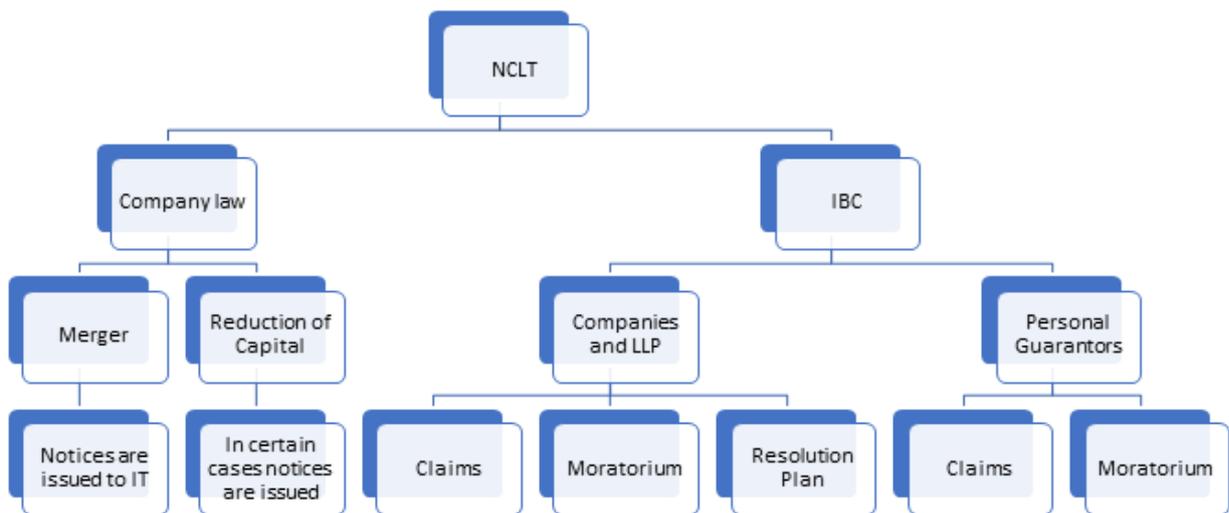
1.6 Why NCLT & NCLAT required:-

The constitution of NCLT and NCLAT was a step towards to improving the ease of doing business by bringing all aspects of Company law matters under one roof. Some of most important advantages are as under:

- a. Single Window:** It is most important benefit that the tribunals will act as a single window for settlement of all Company law related disputes effectively. It shall avoid unnecessary multiplicity of proceedings before various authorities or courts.

- b. Speedy Process:** The NCLT and the NCLAT are under a mandate to dispose of the cases before them as expeditiously as possible. In this context a time limit of three (3) months has been provided to dispose of the cases with an extension of ninety (90) days for sufficient reasons to be recorded by the President or the Chairperson, as the case maybe. The speedy disposal of cases will save time, energy and money of the parties.
- c. Reduction of work of High Court:** The number of pending cases with High Court is too high and now the matters in respect to compromise, arrangement, amalgamations and winding-up transferred to NCLT. Accordingly, NCLT and the NCLAT will reduce the work of overburdened High Courts.

1.7 Role of NCLT



1. Territorial Jurisdiction of NCLT

| Sr. No | Title of the Bench | Location | Territorial Jurisdiction of the Bench |
|--------|--|-----------|---|
| (1) | (2) | (3) | (4) |
| 1. | (a) NCLT, Principal Bench. (b) NCLT, New Delhi Bench. | New Delhi | (1) Union Territory of Delhi |
| 2. | NCLT Ahmedabad Bench. | Ahmedabad | (1) State of Gujarat (2) Union Territory of Dadra and Nagar Haveli (3) Union Territory of Daman and Diu |
| 3. | NCLT Allahabad Bench. | Allahabad | (1) State of Uttar Pradesh (2) State of Uttarakhand |
| 4. | NCLT Bengaluru Bench. | Bengaluru | (1) State of Karnataka |

| | | | |
|-----|------------------------|------------|---|
| 5. | NCLT Chandigarh Bench. | Chandigarh | (1) State of Himachal Pradesh(2) State of Jammu and Kashmir(3) State of Punjab(4) Union Territory of Chandigarh(5) State of Haryana |
| 6. | NCLT Chennai Bench. | Chennai | (1) State of Tamil Nadu(2) Union Territory of Puducherry |
| 7. | NCLT Guwahati Bench. | Guwahati | (1) State of Arunchal Pradesh(2) State of Assam(3) State of Manipur(4) State of Mizoram(5) State of Meghalaya(6) State of Nagaland(7) State of Sikkim(8) State of Tripura |
| 8. | NCLT Hyderabad Bench. | Hyderabad | (1) State of Telangana |
| 9. | NCLT Kolkata Bench. | Kolkata | (1) State of Bihar(2) State of Jharkhand(3) State of West Bengal(4) Union Territory of Andaman and Nicobar Island |
| 10. | NCLT Mumbai Bench. | Mumbai | (1) State of Maharashtra(2) State of Goa |
| 11. | NCLT Jaipur Bench. | Jaipur | (1) State of Rajasthan. |
| 12. | NCLT Cuttack Bench. | Cuttack | (1) State of Chhattisgarh.(2) State of Odisha. |
| 13. | NCLT Kochi Bench. | Kochi | (1) State of Kerala(2) Union Territory of Lakshadweep |
| 14. | NCLT Indore Bench. | Indore | (1) State of Madhya Pradesh |
| 15. | NCLT Amravati Bench. | Amravati | (1) State of Andhra Pradesh |

2. Subject Matter Jurisdiction- NCLAT

| Act/Code | Powers | Description of Section |
|------------------------------------|--|--|
| Section 410 of Companies Act, 2013 | Hearing appeals against orders of NCLT | <p>The Central Government shall, by notification, constitute, an Appellate Tribunal to be known as the National Company Law Appellate Tribunal for hearing appeals against, -</p> <p>(a) the order of the Tribunal or of the National Financial Reporting Authority under this Act; and</p> <p>(b) any direction, decision or order referred to in section 53A of the Competition Act, 2002 in accordance with the provisions of that Act.</p> |

| | | |
|---|---|--|
| <p>Section 132 of Companies Act, 2013 read with Section 410 Companies Act, 2013.</p> | <p>Hearing appeal against orders of National Financial Reporting Authority (NFRA)</p> | <p>(5) Any person aggrieved by any order of the National Financial Reporting Authority issued under clause (c) of sub-section (4), may prefer an appeal before the Appellate Tribunal</p> |
| <p>Section 53A of Competition Act, 2002 read with Section 410 of Companies Act, 2013</p> | <p>Hear and dispose of appeals against any direction issued or decision made or order passed by the Competition Commission of India (CCI)</p> | <p>(1) The Central Government shall, by any notification, establish an Appellate or Tribunal to be known as Competition Appellate Tribunal, - the to hear and dispose of appeals against any direction issued or decision made or order passed by the Commission under sub-sections (2) and (6) of section 26, section 27, section 28, section 31, section 32, section 33, section 38, section 39, section 43, section 43A, section 44, section 45 or section 46 of this Act; to adjudicate on claim for compensation that may arise from the findings of the Commission or the orders of the Appellate Tribunal in an appeal against any finding of the Commission or under section 42A or under subsection (2) of section 53Q of this Act, and pass orders for the recovery of compensation under section 53N of this Act.</p> |
| <p>Section 61 of In- solvency Bankruptcy 2016 read with Section 32 of Insolvency and Bankruptcy Code.</p> | <p>Hearing appeal against orders passed under IBC by NCLT</p> | <p>1) Notwithstanding anything to the contrary contained under the Companies Act 2013, any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal.</p> <p>(2) An appeal against an order approving a resolution plan under section 31 may be filed on the following grounds, namely:-</p> <ul style="list-style-type: none"> (i) the approved resolution plan is in contravention of the provisions of any law for the time being in force; (ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period; (iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board; (iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or (v) the resolution plan does not comply with any other criteria specified by the Board. |

| | | |
|---|--|--|
| Section 202 of Insolvency and Bankruptcy Code, 2016 | Hearing appeals against the orders passed by Insolvency and Bankruptcy Board of India with respect to insolvency | Any insolvency professional agency which is aggrieved by the order of the Board made under section 201 may prefer an appeal to the National Company Law Appellate Tribunal |
| | professional agencies. | |
| Section 211 of Insolvency and Bankruptcy Code, 2016 | Hearing appeals against the orders passed by Insolvency and Bankruptcy Board of India with respect to information utilities. | Any information utility which is aggrieved by the order of the Board made under section 210 may prefer an appeal to the National Company Law Appellate Tribunal. |

Chapter-II

MERGER & ACQUISITION IN THE LIGHT OF INCOME TAX ACT, 1961

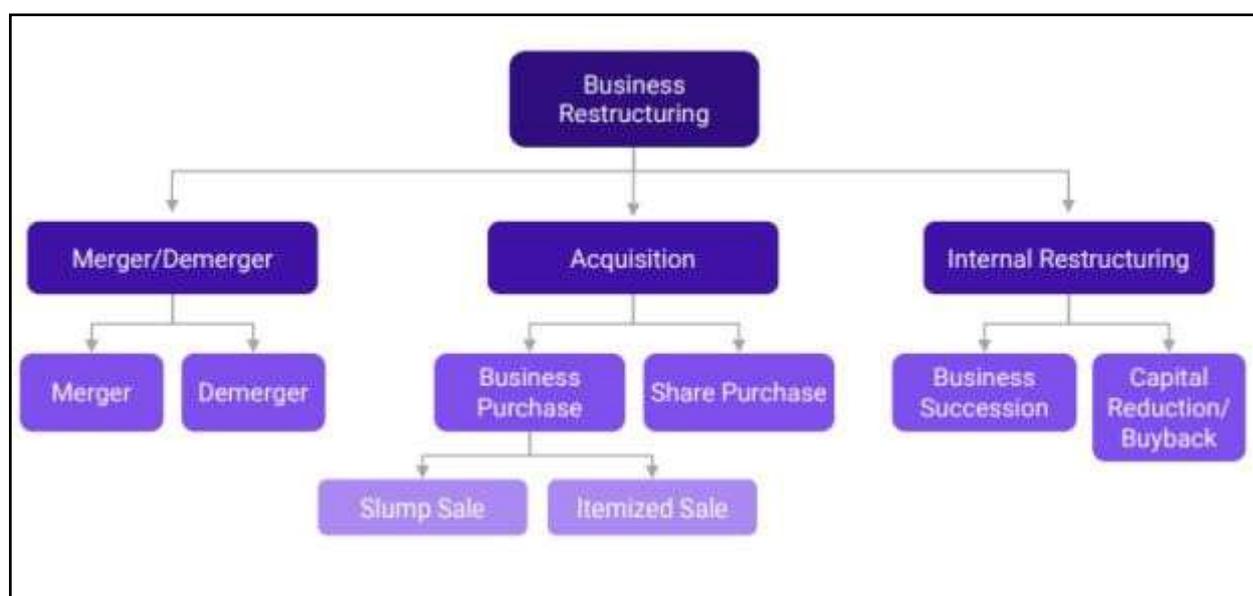
1. Introduction

Mergers and acquisitions (M&A) have emerged as significant tools for growth in Indian businesses, playing a critical role in corporate strategy. These strategies enable companies to gain market strength, expand their customer base, reduce competition, or enter new markets and product segments. Companies may pursue mergers and acquisitions to:

- **Access markets through established brands.**
- **Gain market share.**
- **Eliminate competition.**
- **Reduce tax liabilities.**
- **Acquire new competencies.**
- **Offset accumulated losses of one entity against the profits of another.**

M&A transactions can be implemented by various modes of restructuring, both internal and external, be it mergers, demergers, acquisition of shares, asset sale, buybacks, etc. Each mode of restructuring comes with its own set of tax considerations.

A snapshot of commonly adopted restructuring strategies is pictographically depicted below.



A brief comparative summary of various restructuring options from an Indian context is mentioned below:

| Options | Brief description | Key features |
|------------------------------|---|--|
| Merger/Amalgamation | One or more companies come together to form a new company or one company merges with another. | <ul style="list-style-type: none"> • Tribunal process. • Cashless option. |
| Demerger | Transfer of a business undertaking/division. | <ul style="list-style-type: none"> • Tax neutral option. • Carry forward of losses available. |
| Slump Sale | Acquisition of business undertaking on a going concern basis. | <ul style="list-style-type: none"> • Involves payment of consideration/sale price. |
| Itemized Sale of Assets | Sale of individual assets for consideration/price. | <ul style="list-style-type: none"> • Taxable event in the hands of the company. • Consideration can be in kind (non-monetary). |
| Share Transfer | Entails the acquisition of a stake from an existing shareholder. | <ul style="list-style-type: none"> • Consideration to be paid. • Taxable event in the hands of the shareholders. • Minimum Valuation rules apply. • Transfer Pricing, FEMA applicability to be evaluated in case of cross-border transactions. |
| Buyback | The company buys back the shares from the shareholders for consideration. | <ul style="list-style-type: none"> • Taxable event in the hands of the company. • Tax Exempt in the hands of shareholders. |
| Capital Reduction of shares. | A company cancels its share capital with or without consideration. | <ul style="list-style-type: none"> • Tribunal driven process. • Taxable in the hands of shareholders. |

By notification dated December 15, 2016, the Ministry of Corporate Affairs (“MCA”) notified Section 233 of the CA, 2013 which provides for Fast Track Mergers (“FTM”). FTM is a new concept which allows for mergers without the approval of the NCLT, in case of a merger between.

- (i) two or more small companies,
- (ii) holding company and its wholly-owned subsidiary, and (iii) such other class of companies as may be prescribed.

An FTM only requires approval of the shareholders, creditors, liquidator and the Registrar of Companies (“ROC”) which takes substantially lesser time than obtaining approval from the NCLT.

DEFINITIONS:

Merger: The term ‘merger’ has not been defined under the Act or the IT Act. Merger is the process of combining two or more distinct entities in such a manner that it amounts to the accumulation of the assets and liabilities of the said entities into one business entity.

Amalgamation: Section 2 (1B) of the IT Act defines ‘amalgamation’ as the merger of one or more companies into another company or the merger of two or more companies to form one company in such a manner that the assets and liabilities of the amalgamating companies vest in the amalgamated company.

The basic ingredients of amalgamation are as follows:-

1. all of the properties and liabilities of the amalgamating company or companies immediately before the amalgamation becomes the properties and liabilities of the amalgamated company by virtue of the amalgamation;
2. shareholders holding not less than 3/4 in value of the shares in the amalgamating company or companies (other than shares already held therein immediately before the amalgamation by, or by a nominee for, the amalgamated company or its subsidiary) become shareholders of the amalgamated company by virtue of the amalgamation,

Demerger: The concept of ‘demerger’ has been elucidated in Section 2 (19AA) of the IT Act. It means the transfer of a demerged undertaking by a demerged company to the resulting company as a going concern, pursuant to a Scheme of Arrangement sanctioned under Sections 230 to 232 of the Act.

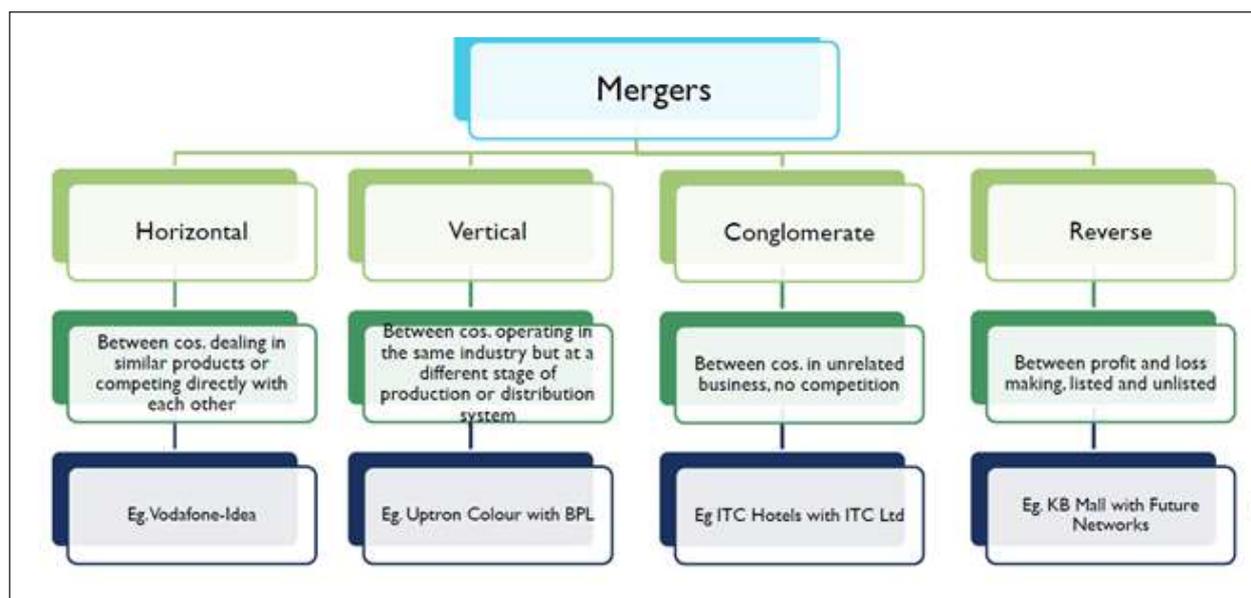
The basic ingredients of demerger are as follows: -

1. All the properties and liabilities of the undertaking, being transferred by the demerged company, immediately before the demerger, become the properties and liabilities of the resulting company by virtue of the demerger. They are transferred at values appearing in its books of account immediately before the demerger;
2. In consideration of the demerger, the resulting company issues its shares to the shareholders of the demerged company on a proportionate basis;
3. The shareholders holding not less than 3/4th in value of the shares in the demerged company (other than shares already held therein immediately before the demerger, or by a nominee for, the resulting company or, its subsidiary) become shareholders of the resulting company or companies by virtue of the demerger;

The transfer of the undertaking is on a going concern basis.

Undertaking: Explanation 1 to Section 2(19AA) of the IT Act prescribes that any part of an undertaking/ unit/ division of a business activity taken as a whole without assigning values to the individual assets and liabilities of the said business activity constitutes an ‘undertaking’ for slump sale

Modes of Merger:



TRIBUNAL GOVERNED - SCHEME OF ARRANGEMENT

A **Scheme of Arrangement** (“Scheme”) is an NCLT governed procedure involving an agreement between two or more companies and its shareholders and creditors. The said Scheme, if sanctioned by the NCLT is binding on the said companies, its shareholders, creditors, and all of its stakeholders.

Earlier the forum for sanctioning of the Scheme was the Hon’ble High Courts. With effect from 01.06.2016, the Ministry of Corporate Affairs (“MCA”) notified the establishment of NCLT under Section 408 of the Act. The jurisdiction to sanction the Scheme was vested with the NCLT on 15.12.2016.

A Scheme may involve mergers and demergers and is prepared in accordance with the provisions of Sections 230-232 of the Act and accompanying rules thereto.

The tribunal governed procedure for sanctioning of Scheme between the transferor and transferee companies as per the provisions of the Act read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (“**Rules**”) is detailed hereunder

| STAGE I - First Motion | |
|------------------------|---|
| S. No. | Particulars |
| 1. | A first motion petition is jointly filed before the NCLT by the transferor and the transferee companies along with the copy of the Scheme of Arrangement. |
| 2. | The NCLT may admit the first motion petition and direct or dispense with meetings of the creditors and shareholders of the transferor and transferee companies. |

| | |
|----------------------------------|---|
| 3. | <p>If a meeting is required, a notice along with the Scheme and Explanatory Statement is served to the Regional Director, Registrar of Companies, Income Tax Authorities, Official Liquidator, and other relevant regulators as directed by the NCLT.</p> <p>These authorities have 30 days to submit representations to the NCLT. If no representation is made within this period, it is assumed they have no objections to the Scheme.</p> |
| 4. | <p>The companies must publish the meeting notice as an advertisement in two newspapers and send individual notices to the creditors/shareholders as directed by the NCLT.</p> |
| 5. | <p>The Chairperson must file an Affidavit of Service before the NCLT, confirming that all NCLT directions regarding the issuance of notices and publication of advertisements for convening the meeting have been complied with by the companies.</p> |
| 6. | <p>A meeting of shareholders/creditors is convened as directed by the NCLT. The Scheme must be approved by a special majority (75% in value of the members) as per Section 230(6) of the Act.</p> |
| 7. | <p>The meeting result is determined by voting. A report must state the number of creditors/shareholders present and voting, either in person, by proxy, or electronically, along with their individual values and voting choices.</p> |
| 8. | <p>The Scrutinizer and the Chairperson appointed by the NCLT are required to submit their Reports with respect to the meeting before the NCLT.</p> |
| STAGE II - Section Motion | |
| 9. | <p>Pursuant to the aforesaid compliances, a second motion petition is filed by the companies before the NCLT seeking approval of the Scheme.</p> |
| 10. | <p>The NCLT may issue Orders admitting the second motion petition and set a date for the final hearing. A Notice of the hearing date for the second motion petition must be advertised in the same newspaper as the meeting notice, unless otherwise directed by the NCLT.</p> |
| 11. | <p>Reports from regulatory/statutory authorities are submitted to the NCLT for approval of the Scheme. Queries raised by authorities must be addressed before NCLT approval.”</p> |
| 12. | <p>The NCLT may pass an order sanctioning and approving the Scheme, with its contents binding on creditors, shareholders, and stakeholders of both the transferor and transferee companies.</p> |

Tax implications on a Scheme:

A transaction involving a merger and demerger is generally considered as tax neutral transaction as Section 47 of the IT Act exempts such transactions from the purview of 'transfer'. Hence, such transactions are not amenable to capital gains tax. Further, carry forward and set off accumulated tax business losses as mentioned in Section 72A of the IT Act is available in the case of Schemes.

2. Different Cases of Corporate Restructuring and their Tax Issues.



Chapter-III

IMPORTANT POINTS TO CONSIDER IN MERGER/ AMALGAMATION CASES

Possible issues in Merger:

1. **Valuation Accuracy and Tax Implications:** To ensure accurate tax assessments during mergers, it is imperative that proper valuation methods are employed. Incorrect valuations can lead to significant tax implications and tax avoidance schemes. A thorough scrutiny of valuation practices needs to be ensured so that they comply with tax laws and regulations and avoid any tax avoidance schemes.
2. **Mergers Involving Foreign Shell Companies:** Transactions involving shell companies established abroad and merging with Indian entities require careful examination to verify compliance with domestic tax regulations, foreign investment guidelines, and anti-avoidance provisions.
3. **Tax Liability of Merging Entities:** Assess mergers involving a company with substantial income tax dues and a loss-making entity to ensure transparency and adherence to tax obligations, preventing concerns about tax evasion or avoidance.
4. **Legitimate Business Purpose of Mergers:** Review the business rationale behind mergers to ascertain their legitimacy beyond tax benefits, ensuring they are not used solely for tax planning purposes, such as setting carry forward losses against future profits.
5. **Payments to Promoters and Tax Compliance:** Scrutinize any payments made to promoters as part of a merger to ensure they are not aimed at tax avoidance. Ensure transparent disclosure and documentation of such payments to uphold tax compliance standards.
6. **Section 79 Benefits and Loss Carry Forward:** Diligently evaluate mergers undertaken for the purpose of availing benefits under tax provisions like Section 79. Ensure proper valuation methods and business justifications to prevent abuse of tax benefits.

Possible issues in Demerger:

- I. **Demerger as a Tax Strategy:** Investigate demergers as potential strategic tax planning tools used to manage or avoid capital gains tax liabilities on assets being hived off.
- II. **Potential for Slump Sale via Demergers:** Examine the possibility of demergers being utilized as a means to conduct slump sales, especially when assets are transferred at lump sums without individual valuation.

- III. Demergers for Ownership Restructuring: Review demergers undertaken for ownership restructuring purposes, particularly those aimed at facilitating the entry of new shareholders at a later date.
- IV. Corporate Veil Lifting Consideration: Consider lifting the corporate veil in cases where there are suspicions of demergers being misused for tax evasion or illicit purposes.
- V. Importance of Accurate Valuation: Ensure accurate valuation in demergers, both for the undertakings retained by the company and the assets hived off.
- VI. Scrutiny for Genuine Undertakings: Scrutinize demergers to determine whether they involve genuine undertakings or if assets are being transferred under the guise of an undertaking to avoid taxes.

Reduction in Capital:

- I. Selective Reduction and Valuation Impact: In cases of selective reduction where one set of shareholders is paid and their shares are cancelled, it is important to evaluate whether the valuation has been reduced to benefit the existing shareholders. This assessment is crucial to ensure fairness and transparency in the reduction process.
- II. Utilization of Share Premium Account: Investigate instances where the share premium account is set off against capital during a reduction of share capital. Verify if there is sufficient capital to support such adjustments and ensure compliance with relevant tax regulations.
- III. Reduction Route to Avoid Buy Back Tax: Examine whether the reduction route is being used as a strategy to avoid buyback tax liabilities. Assess the motive behind the reduction and ensure that it is not being misused to circumvent tax obligations.
- IV. Selective Reduction and Benefit to Remaining Shareholders: Consider whether the selective reduction benefits the remaining shareholders in a fair and equitable manner. Evaluate the impact of the reduction on the overall ownership structure and shareholder rights.

1. Points to be Considered by the Assessing Officer When Reviewing a Merger Scheme Submitted for Approval

1. Abridged Scheme of Amalgamation:

- Ensure that a copy of the “abridged” scheme of amalgamation is furnished.

2. Commercial Rationale:

- Review the commercial rationale for the proposed amalgamation to understand its purpose and benefits.

3. Nature of Business:

- Assess the nature of business in respect of each company involved in the amalgamation.

4. Synergy Expected:

- Evaluate the synergy expected from the amalgamation, including potential benefits such as enhanced market share, improved efficiencies, and cost savings.

5. Appointed Date:

- Confirm the 'appointed date' of amalgamation and ensure it is justified, especially if it is ante-dated.

6. Financial Statements:

- Examine the standalone financial statements of each company before amalgamation and the consolidated financial statements of the company after amalgamation.

7. Tax Consequences:

- Analyze the tax consequences both before and after the amalgamation to ensure compliance and identify any potential tax liabilities or benefits.

8. Statement of Total Income:

- Verify the statement of total income with working notes for all companies for the latest assessment year for which the return has been filed.

9. Losses, Unabsorbed Depreciation, and MAT Credit:

- Check the details of all losses, unabsorbed depreciation, and MAT credit carried forward in respect of each company for previous Assessment Years

10. Compliance with Section 2(1B) of the Income Tax Act:

- Ensure the arrangement satisfies the definition of "Amalgamation" under section 2(1B) of the Income-tax Act, 1961.

11. Compliance with Section 72A(2) of the Income Tax Act:

- Confirm that the arrangement meets the conditions prescribed under section 72A(2) of the Income-tax Act, 1961.

12. Shareholding Structure:

- Review the shareholding structure in respect of each company before and after the amalgamation.

13. Outstanding Statutory Dues:

- Assess the details of outstanding statutory dues in respect of each company under the Income-tax Act, 1961.

14. Valuation Report:

- Verify the valuation report to ensure the fair valuation of assets and liabilities.

15. Treatment of Assets and Liabilities:

- Evaluate the treatment of assets and liabilities in the amalgamation process.

16. Treatment of Written-off Bad Liabilities:

- Consider the treatment of written-off bad liabilities to ensure proper accounting and compliance.

Proforma Points for filing report before The Hon'ble NCLT in Merger Cases

| Sl. Nos. | Components of the Proposal | Observation of the AO |
|----------|--|-----------------------|
| 1 | Details of proposal | |
| 2 | Details of benefit as stipulated in the scheme | |
| 3 | Details of any Proceedings pending against applicant company under the income tax Act | |
| 4 | Details of tax demand pending for recovery (Year wise amount outstanding) | |
| 5 | Details of pendency of investigation / enquiry proceedings, if any | |
| 6 | Whether proposed scheme will impact allowability of carry, forward losses or unabsorbed depreciation or any benefits under the IT Act, if yes quantify the amount of tax effect in compliance of section 72A | |
| 7 | Whether the proposed scheme will have any im- pact of exemption of capital gain tax / dividend distribution tax | |

| | | |
|----|---|--|
| 8 | Whether in view of the assessing officer prima facie GAAR provisions appear to be attached in the scheme of arrangement | |
| 9 | Comments on Valuation Report attached to the scheme | |
| 10 | In case of reverse merger where loss making company continues to exist and profit making company dissolves to reduce its tax. What is the specific reasons for continuation of loss making company? Need to examine applicability of provisions of GAAR | |
| 11 | Details of ITRs filed by the Company | |
| 12 | Whether scheme is opposite to public policy (need to examine the whether promoters are only getting benefit and also examine - if possible quantum of tax evaded which is proposed to be avoided through the scheme of arrangement | |

2. Lodging of caveat before NCLT

2.1. Lodging of caveat: -

Any person may lodge a caveat in triplicate in any appeal or petition or application that may be instituted before this appellate tribunal by paying a fee of rupees thousand Rs. 1000/- only after forwarding a copy by registered post or serving the same on the expected petitioner or appellant.

Caveat shall be in the form given below and shall contain such details and particulars or orders or directions, details of authority against whose orders or directions the appeal or petition or application is being instituted by the expected appellant or petitioner or applicant which full address for service on other side, so that the appeal or petition or application could be served before the appeal or petition or interim application is taken up.

The caveat shall remain valid for a period of ninety days from the date of its filing under

Rule 25 of NCLT Rules, 2016

.NCLT may pass interim orders in case of urgency in case of lodging of caveat.

No provision for filing caveat before NCLAT - There is no specific provision in NCLAT Rules, 2016 for filing a caveat. However, it does not mean that Caveat cannot be filed.

2.2. Presentation of caveat: -

Every caveat shall be presented in triplicate by the appellant or applicant or respondent, as the case may be, in person or by his duly authorized representative or by an advocate duly appointed in this behalf in the form given below with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same. (Format enclosed in Annexure).

Chapter-IV

INSOLVENCY AND BANKRUPTCY CODE, 2016

1. 1. Introduction to the Insolvency and Bankruptcy Code, 2016

In 2016, the Indian government implemented the Insolvency and Bankruptcy Code (IBC), a pivotal piece of legislation aimed at tackling insolvency issues within a structured framework. With the Presidential assent received in May of the same year, the IBC introduced a time-bound process to resolve claims involving insolvent companies. This revolutionary code grants creditors the authority to take control of a debtor's assets upon default, setting forth a clear path for resolving insolvency. Notably, both debtors and creditors have the right to initiate 'recovery' proceedings under the IBC, signalling a balanced approach to addressing financial distress. The code mandates that companies must complete the entire insolvency exercise within a strict 180-day timeline, ensuring efficiency and expediency in the resolution process.

Key Functions of the Insolvency and Bankruptcy Code, 2016

1. Consolidation and Refinement of Insolvency Laws:

- The IBC consolidates and refines existing laws related to the reorganization and insolvency resolution for various entities, ensuring a cohesive legal framework.

2. Time-bound Framework for Processes:

- It establishes a time-bound process for resolving insolvency issues, promoting efficiency and timely resolutions.

3. Maximization of Asset Value:

- The IBC aims to maximize the value of the assets of insolvent entities, thereby fostering a supportive environment for entrepreneurship and business continuity.

4. Facilitation of Credit Availability:

- By providing a structured mechanism for resolving insolvency, the IBC facilitates the availability of credit, thereby encouraging financial stability and growth.

5. Harmonization of Stakeholder Interests:

- The IBC seeks to balance the interests of all stakeholders involved, including creditors, debtors, and the government. It revises the payment priority of governmental dues to ensure a fair and equitable distribution of assets.

6. Establishment of the Insolvency and Bankruptcy Board of India (IBBI):

- The IBC establishes the Insolvency and Bankruptcy Board of India (IBBI) to oversee and regulate insolvency proceedings, ensuring that they are conducted in a transparent and efficient manner.

Enforcement and Integration with Other Laws

The IBC is designed to create a streamlined and effective insolvency resolution process that maximizes asset value, encourages entrepreneurship, ensures the availability of credit, and protects the interests of all stakeholders. Under the IBC, its provisions supersede conflicting enactments, ensuring uniformity and clarity in insolvency resolution. Consequently, amendments have been integrated into various laws such as the Companies Act, Income Tax Act, The RDBFI Act, and SARFAESI Act to align with the principles and objectives of the IBC. This code stands as a definitive and exhaustive guide on matters of insolvency, precluding the application of decisions from other statutes in this domain.

The IBC represents a significant step forward in India's insolvency regime, promoting a disciplined and fair process for resolving financial distress. By empowering creditors, allowing debtor-initiated proceedings, and enforcing a stringent timeline, the IBC aims to maximize asset value and ensure swift resolution of insolvency cases. The establishment of the IBBI further ensures the proper regulation and oversight of insolvency proceedings in India, contributing to a more robust and reliable economic environment.

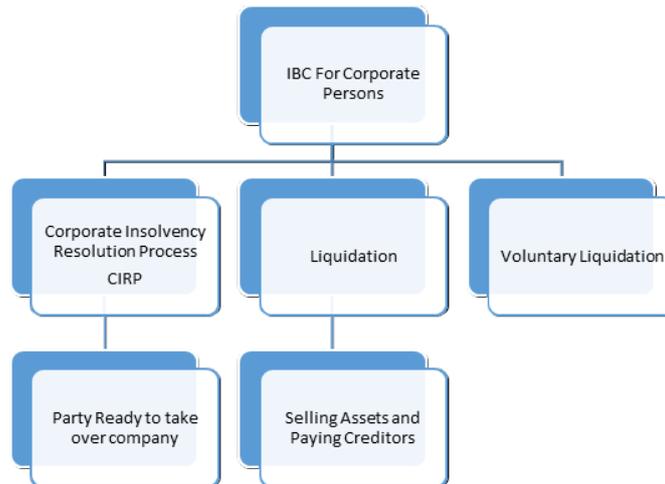
NCLT will be 'adjudicating authority' for this purpose. NCLAT will be appellate authority.

The Debt Recovery Tribunal (DRT) serves as the Adjudicating Authority for non-corporate entities like individuals, firms, and Hindu Undivided Families (HUFs), while the Debt Recovery Appellate Tribunal (DRAT) acts as the Appellate Authority.

A recent addition to insolvency procedures is the **Pre-Packaged Insolvency Resolution Process (PPIRP)**, implemented from April 4, 2021, specifically targeting Micro, Small, and Medium Enterprises (MSMEs). This innovative approach expedites the resolution of insolvency for MSMEs, fostering quick and efficient outcomes.

The **Insolvency and Bankruptcy Board of India (IBBI)** plays a crucial role, overseeing insolvency and bankruptcy proceedings for corporate entities, firms, and individuals. Insolvency Professionals (IPs), members of Insolvency Professional Agencies (IPAs), are instrumental in managing the intricacies of insolvency cases, ensuring they possess the necessary knowledge and expertise.

Under the Insolvency Code, control shifts to the Committee of Creditors (CoC) of financial creditors when an enterprise defaults on payments. IPs, supervised by the CoC, take charge of the insolvency process, adhering to specified timeframes for evaluating proposals aimed at revitalizing or liquidating the enterprise. This time-bound approach enhances the likelihood of salvaging the enterprise as a going concern, thereby optimizing the productive resources of the economy.



2. Applicability of the Insolvency and Bankruptcy Code, 2016

The Insolvency and Bankruptcy Code, 2016 (IBC), specifies its applicability to different entities for issues related to insolvency, liquidation, voluntary liquidation, or bankruptcy, as outlined in Section 2. Here's a clear breakdown of what entities the IBC covers:

1. Companies Incorporated under the Companies Act:

- The IBC applies to all companies formed under the Companies Act.

2. Companies Governed by Special Acts:

- It also covers companies regulated by special Acts, but if there's a conflict between the IBC and the special Act, the special Act takes precedence.

3. Limited Liability Partnerships (LLPs):

- LLPs are included under the IBC.

4. Other Body Corporates:

- The Central Government can notify other body corporates to be covered by the IBC.

5. Personal Guarantors to Corporate Debtors:

- Individuals who have given personal guarantees for corporate debtors fall under the IBC.

6. Partnership Firms and Proprietorship Firms:

- Partnership and proprietorship firms are also covered.

7. Individuals:

- The IBC applies to individuals, except those specified in clause (e).

Exclusions Under the Insolvency and Bankruptcy Code

The IBC does not apply to corporate entities in the finance sector. Section 3(7) of the IBC specifically excludes financial service providers from being considered “corporate persons.” However, there are notable exceptions:

1. Non-Banking Financial Companies (NBFCs):

- Certain NBFCs, including housing finance companies with assets of Rs. 500 crore or more, are included under the IBC. This was clarified in Notification No. S.O. 4139(E) dated November 18, 2019.

2. Role of the Reserve Bank of India (RBI):

- The RBI is the appropriate financial regulator for these NBFCs, ensuring they follow the IBC’s framework.

Regulatory Framework for Financial Service Providers

To manage insolvency and liquidation proceedings for financial service providers, the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019, have been established. These rules ensure that the processes for financial service providers are orderly and regulated.

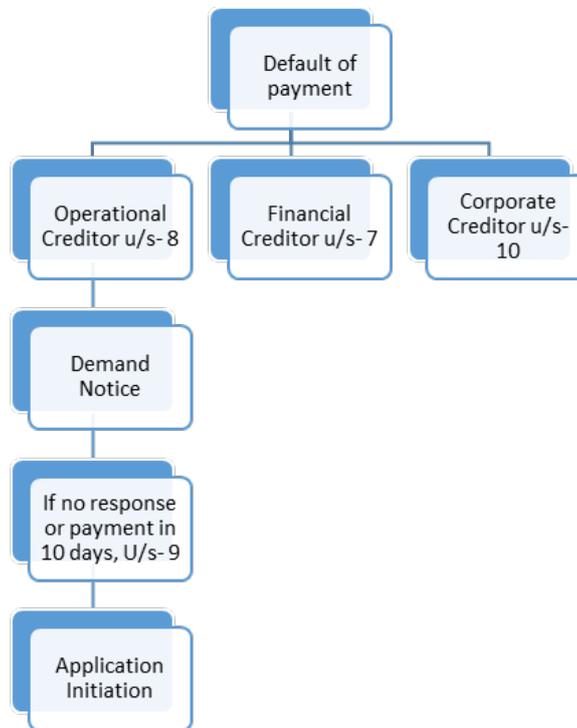
Terms

Under the Insolvency and Bankruptcy Code (IBC), several terms hold significance, particularly

concerning creditors:

1. **Creditors:** - Refers to any person to whom a debt is owed, encompassing various categories such as financial creditors, operational creditors, secured creditors, unsecured creditors, and decree-holders.
2. **Financial Creditor:** - Defined in Section 5(7) of the IBC, a financial creditor is someone to whom a financial debt is owed, which includes loans and borrowings along with interest, disbursed against consideration for the time value of money. This category typically includes banks and financial institutions.
3. **Financial Debt:** - Section 5(8) of the IBC outlines financial debt as debt with interest, disbursed against consideration for time value of money, including specified borrowings. Essentially, it pertains to loans received.
4. **Operational Creditor:** - As per Section 5(20) of the IBC, an operational creditor is owed an operational debt, which covers claims related to goods or services, including employment, or dues under any law payable to government entities like the Central Government, State Government, or Local Authorities.
5. **Operational Debt:** - Section 5(21) of the IBC defines operational debt as claims regarding goods or services, including employment-related dues or payments under any law, owed to government bodies.

Importantly, the IBC prioritizes government dues under operational creditors, placing their repayment even after unsecured financial creditors in the hierarchy. This highlights the specific treatment of government dues within the insolvency and bankruptcy framework.

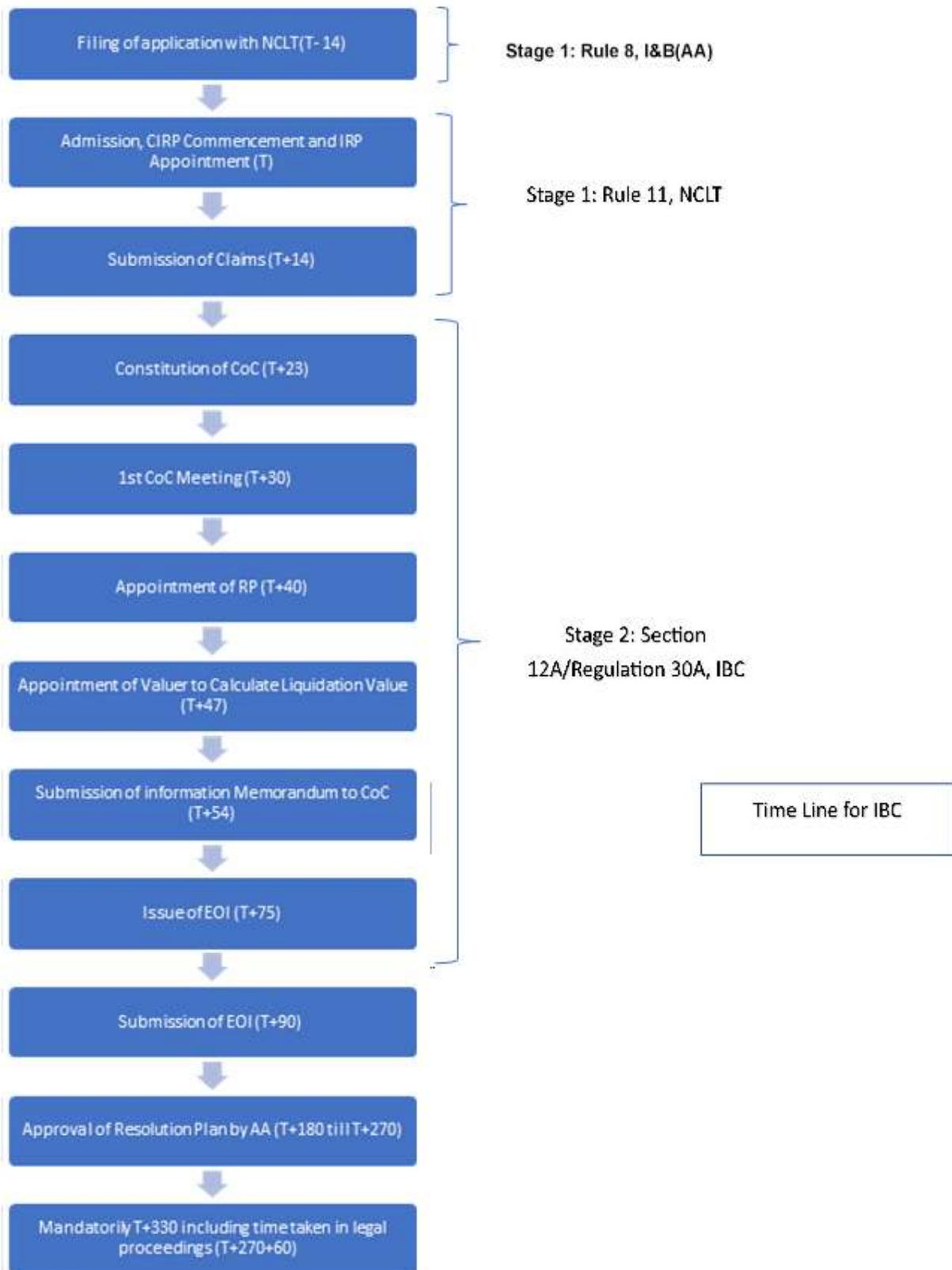


3. Insolvency Process under the IBC

1. **Filing an Application:** - Any creditor of the assessee, including operational creditors, can file an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) to initiate the corporate insolvency resolution process.
2. **Admission and Initial Orders by NCLT:** - The National Company Law Tribunal (NCLT) will admit the application. Upon admission, Section 13 of the IBC comes into play, leading to a moratorium and the appointment of an Interim Resolution Professional (IRP).
3. **Constitution of Committee of Creditors:** - A Committee of Creditors (CoC) will be formed from among the financial creditors of the assessee. Following this, a Resolution Professional (RP) will be appointed who will make a public announcement.
4. **Resolution Process:** - The RP will invite prospective resolution applicants to present their resolution plans for the assessee. After discussions with the CoC, a final resolution plan will be prepared.
5. **Approval of Resolution Plan:** - The resolution plan, once approved by the CoC, will be submitted to the NCLT for its approval. The rights of the Income Tax Department will be considered within the context of the IBC, and the department cannot exercise independent rights once the NCLT approves the resolution plan.

Implications for Income Tax Department

1. **Extinguishment of Prior Dues:** - Once the resolution plan is approved by the NCLT, all prior dues and proceedings against the corporate debtor are extinguished under Section 31 of the IBC and any notices proposing to initiate proceedings against the corporate debtor for periods prior to the NCLT's order are abated.
2. **Operational Creditor Status:** - Under Sections 5(20) and 5(21) of the IBC, the Income Tax Department is considered an operational creditor, and tax dues are considered operational debts.
3. **Binding Nature of Resolution Plan:** - Once the resolution plan approved by the CoC is sanctioned by the adjudicating authority under Section 31(1) of the IBC, all authorities, including the Income Tax Department, are bound by the terms of the resolution plan.
4. **IBC Prevailing over Other Acts:** - Section 238 of the IBC clearly states that the provisions of the IBC prevail over any other laws.
5. **Priority in Distribution of Assets:** - According to Section 53(1) of the IBC, the priority for distribution of assets places amounts due to the Central Government and State Government for the two years period preceding the liquidation commencement date at the fifth position in the order of priority.

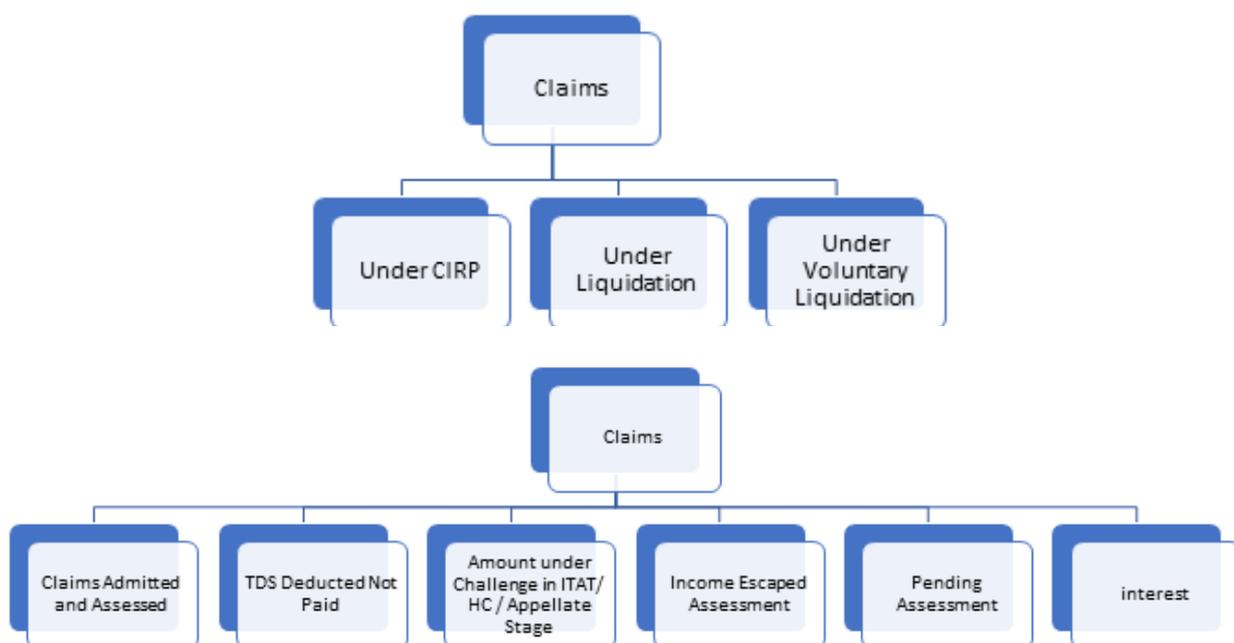


Who can initiate insolvency resolution process?

Claim:

As defined in Section 3(6) of the Insolvency and Bankruptcy Code, 2016, “claim” means:

- a. A right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured, or unsecured.
- b. A right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured, or unsecured.



Who can initiate the process?

Under Section 6 of the IBC, the following entities can initiate the corporate insolvency resolution process when a corporate debtor commits a default:

- Financial creditors
- Operational creditors
- The corporate debtor itself Initiation by Operational Creditor

Procedure:

1. Demand Notice:

- Operational creditors can initiate the process by delivering a demand notice or a copy of an invoice demanding payment of the default amount to the corporate debtor (Section 8(1) of the IBC).

- The demand notice must be in the prescribed form (Form 3 or Form 4) and can be sent by post, hand delivery, or email (Rule 5(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016).
- A copy of the demand notice or invoice should be forwarded to an information utility.

2. Response from Corporate Debtor:

- The corporate debtor must reply within ten days of receiving the demand notice if there is a dispute regarding the debt, indicating the existence of the dispute or any pending suit or arbitration (Section 8(2)(a) of the IBC).

3. Action by Operational Creditor:

- If no reply is received within ten days, the operational creditor can file an application before the NCLT to initiate the corporate insolvency resolution process (Section 9(1) of the IBC).
- The application should be in the prescribed form and accompanied by the documents specified in Section 9(3) of the IBC.

Application and Admission Process

Application Filing:

- The operational creditor files the application against the corporate debtor in Form 5 before the NCLT. A copy of the application should be sent to the Insolvency and Bankruptcy Board of India (IBBI) (Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016).

Admission Criteria:

- The application will be admitted by the NCLT if:
- It is complete.
- There is no payment of the unpaid operational debt.
- The demand notice was delivered.
- No notice of dispute is received from the corporate debtor.
- No disciplinary proceedings are pending against the proposed resolution professional (Section 9(5)(i) of the IBC).

Rejection Criteria:

- The application will be rejected if any of the above requirements are not met (Section 9(5)(ii) of the IBC).
- Before rejecting, the operational creditor will be given notice to rectify defects within seven days of receipt of the notice (Proviso to Section 9(5) of the IBC).

Orders Post Admission

After admitting the application, the Adjudicating Authority (NCLT) will:

- Declare a moratorium for purposes referred to in Section 14 of the IBC.
- Cause a public announcement of the initiation of the corporate insolvency resolution process and call for the submission of claims (Section 15 of the IBC).
- Appoint an interim resolution professional in the manner laid down in Section 16 of the IBC (Section 13(1) of the IBC). Where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided under this Chapter (Chapter II of Part II) – Section 6 of Insolvency Code, 2016.

4. Moratorium under IBC and Tax Proceedings

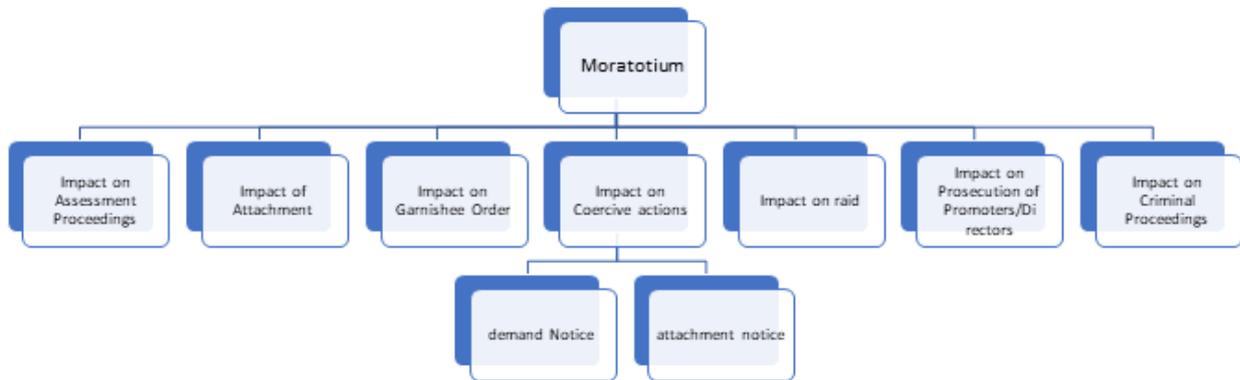
Has the Supreme Court (SC) in Sundaresh Bhatt, Liquidator of ABG Shipyard Vs CBIC (Civil Appeal No. 7667/2021 dated 26/08/2022) legitimised tax proceedings during the period of moratorium set under the Insolvency & Bankruptcy Code?

Rendered in context of the custom law, in the aforesaid matter, SC has held that IBC would prevail over the Customs Act, to the extent that once moratorium is imposed in terms of sections 14 or 33(5) of the IBC, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act. The Court observed that issuance of demand notices to seek enforcement of custom dues during the moratorium period would clearly violate the provisions of Sections 14 or 33(5) of the IBC, as the demand notices are an initiation of legal proceedings against the Corporate Debtor (CD). Thus, the SC has fairly settled that recovery of tax dues cannot be made, otherwise than in the manner prescribed under IBC.

However, what is noteworthy is further examination of the powers which the tax authority can exercise during the moratorium period under the IBC. The court has importantly observed that authorities could however initiate assessment or re-assessment of the duties and other levies. The Resolution Professional has an obligation to ensure that assessment is legal, and he has sufficient power to question any assessment, if he finds the same to be excessive. The court relied on the ratio of the judgement in *S.V. Kondaskar v. V.M. Deshpande*, AIR 1972 SC 878, wherein the court had held that the authorities can only take steps to determine the tax, interest, fines or any penalty which is due. However, the authority cannot enforce a claim for recovery or levy of interest on the tax due during the period of moratorium.

There has been varying positions vis-à-vis initiating or continuing tax proceeding during the period of moratorium. For instance, the Calcutta HC in *SREI Equipment Finance Ltd. vs. Additional/Joint/Deputy/Assistant Commissioner of Income Tax and others* has held that tax proceeding cannot be continued during moratorium. However, given the ratio of the ruling, moratorium for prohibiting initiation or continuation of tax proceedings will now have limited bearing.

Since IBC is a relatively new law, judicial decisions are still developing. The flow chart below outlines different scenarios that may arise for the IT department. Assessing officers are advised to seek legal opinions from standing counsels regarding these intricate situations before proceeding with any actions during the Moratorium period.



Frequently Asked Questions

1. What is a claim? A claim is essentially a right to payment or a remedy for a breach of contract. Under Section 3(6), it is defined as:

- A right to payment, regardless of whether this right is confirmed by a judgment, fixed, disputed, undisputed, legal, equitable, secured, or unsecured.
- A right to a remedy for breach of contract under any prevailing law, if such a breach results in a right to payment, irrespective of whether this right is confirmed by a judgment, fixed, matured, unmatured, disputed, undisputed, secured, or unsecured.

This includes all payable amounts, including disputed income tax claims, interest, and penalties. After the CIRP process is completed, new assessments and claims cannot be made. Therefore, it is critical to compile all claims related to the assessee promptly.

2. When should claims be filed? Claims are commonly required during the CIRP and Liquidation stages but can also be filed in other proceedings such as voluntary liquidation, insolvency proceedings against personal guarantors, and under Section 271 of the Companies Act, 2013.

3. How can I find out if a company is in CIRP or Liquidation? Information on companies undergoing CIRP or Liquidation is available on the IBBI website (www.ibbi.gov.in). The site provides a quick link to Corporate Processes, where all public announcements issued by resolution professionals and liquidators can be found.

4. Who can submit a claim? Claims can be submitted by creditors, workmen, employees, home buyers, and any other creditors under the Code. The income tax department is considered an operational creditor. If income tax is secured by an attachment or any other security, it remains a secured operational creditor and should be filed as such.

- 5. Does a claim need to be matured when filed?** Both matured and unmatured claims can be filed. Once a resolution plan is approved, no assessment proceedings can be initiated against the Corporate Debtor, and no claims for past dues can be made. Therefore, it is important to complete assessments for all years prior to the CIRP commencement date and file related claims accordingly. Pending proceedings, such as those in ITAT for prior period claims, should also be included.
- 6. In which form should claims be filed, and how should they be submitted?** Claims must be filed using the appropriate forms as per the CIRP Regulations, with necessary proofs and documents. The following forms are used based on the specific insolvency process:
- **CIRP:** Form B as per CIRP Regulations 2016
 - **Fast Track IRP:** Form B as per Fast Track IRP Regulations 2017
 - **Liquidation:** Form C as per Liquidation Process Regulations 2016
 - **Voluntary Liquidation:** Form B as per Voluntary Liquidation Regulations 2017
 - **Personal Guarantors:** Form B as per IIRP Regulations 2019

Claims can be submitted in person, by post, or electronically.

- 7. What is the deadline for filing claims during CIRP?** Claims should ideally be filed within 90 days of the commencement of CIRP or before the issuance of a Request for Resolution Plan, whichever is later. Late filings require permission from the NCLT. After the approval of the resolution plan by the CoC, late claims are unlikely to be admitted, as supported by numerous Supreme Court judgments.
- 8. What happens to claims pending assessment during CIRP?** Claims pending assessment may be held in abeyance during CIRP due to the unavailability of information with the Resolution Professional (RP). Even if proceedings like appeals are ongoing, the disputed amount should still be included in the claim.
- 9. What rights do tax authorities have during CIRP?** Tax authorities can attend Committee of Creditors (CoC) meetings if their claims constitute at least 10% of the total debt but do not have voting rights. However, if the Corporate Debtor lacks financial creditors and the income tax department is among the top 18 operational creditors, they are granted a seat in the CoC with voting rights.
- 10. Does failure to submit proof of claim lead to disqualification?** No, a creditor who misses the initial deadline can still submit proof of claim to the IRP/RP until the resolution plan is approved by the CoC. The IRP/RP may request additional details or clarification.
- 11. What happens to claims pending assessment during Liquidation?** During Liquidation, pending assessment claims are typically revived, and assessments are completed based on the available information.

12. Do tax authorities need to refile claims during Liquidation if already filed under CIRP?

If the CIRP process fails and Liquidation proceedings begin, a new public announcement calling for claims is made. It is advisable to refile claims during Liquidation even if they were filed under CIRP, as the two processes and their requirements differ.

13. Can tax authorities file a claim during Liquidation if it wasn't filed during CIRP? Is NCLT approval needed?

Yes, claims can be filed during Liquidation even if not filed during CIRP. NCLT approval is not required for timely submissions, but late submissions will need NCLT approval.

14. In which form should tax authorities file their claim, and how should it be submitted to the Liquidator?

Tax authorities should file their claims using Form C, along with an Affidavit and Verification as per Schedule II of the IBBI (Liquidation Process) Regulations, 2016. Claims can be submitted in person, by post, or electronically.

15. What rights do tax authorities have during Liquidation?

During Liquidation, tax authorities can participate in the Stakeholders' Consultation Committee.

16. What is the format of the Affidavit and Verification required with proof of claim?

The format for the Affidavit and Verification is included with Form C, which is applicable for tax authorities.

17. What is the deadline for submitting a claim to the Liquidator?

Claims must be submitted within thirty days from the commencement of Liquidation, as specified in the Public Announcement available on the IBBI website. Late submissions require NCLT approval, which is unlikely if assets have been sold or a Section 54 application for dissolution has been filed.

18. What if tax authorities miss the deadline for filing their claim?

The only recourse for late submissions is to file an appeal under Section 42 of the IBC to the NCLT. Claims must be submitted before the distribution of assets, as post-distribution claims will not be entertained by the NCLT.

19. Is the Liquidator obligated to admit all filed claims?

No, the Liquidator has the discretion to reject or partially admit claims.

20. How can I find out if my claim is admitted or rejected?

Information on admitted and rejected claims is typically posted on the IBBI website. You can also contact the RP for this information. Creditors who have filed claims are entitled to receive a copy of the creditors' list.

21. What can tax authorities do if their claim is rejected or partially rejected by the Liquidator?

Tax authorities can appeal to the NCLT within 14 days of receiving the Liquidator's decision. It is crucial to file promptly, as delays may render the appeal ineffective if the amount is distributed in the meantime.

- 22. Can tax authorities modify or withdraw a filed claim?** Yes, claims can be modified or withdrawn within 14 days of submission as per Section 38(5) of the IBC. Even beyond 14 days, tax authorities may attempt to withdraw claims, arguing that the mentioned time limits are directory.
- 23. Can tax authorities update their claim?** Yes, tax authorities can revise or update their claim. However, significant delays in filing updates may require approval from the resolution professional or liquidator, or may need to be addressed with the NCLT.
- 24. Can a contingent claim be filed?** Yes, contingent claims can be filed but must be clearly identified as such. Under Regulation 14 of the CIRP Regulations, if a creditor's claim amount is uncertain due to contingency, the IRP or RP will estimate the claim amount based on available information and adjust it when additional information is provided.
- 25. Should claims with secured assets be filed by tax authorities?** Yes, claims involving secured assets must be filed, as the assets form part of the Corporate Debtor's liquidation estate and are prioritized according to Section 53 of the IBC. It is crucial to detail the attached assets in the claim form to avoid indicating "Not applicable" inaccurately.

Form C

| | |
|-----|--|
| 9. | WHICH MAY BE SET-OFF AGAINST THE CLAIM DETAILS OF: a) any security held, the value of security and its date, or b) any retention of title arrangement in respect of goods or properties to which the claim refers |
| 10. | DETAILS OF THE BANK ACCOUNT TO WHICH THE |

5. Action points for Assessing Officers during the Corporate Insolvency Resolution Process (CIRP):

1. File Claims:

- File claims even for disputed amounts: It's important to submit claims for all amounts, including those that are under dispute. This ensures that the department's interests are protected during the resolution process.
- File claims for amounts that are not Crystallized: Claims should be filed even for amounts that are not yet fully determined or finalized. This ensures that the department is included in the distribution of assets in case of resolution.

- File claims for contingent claims: Assessing Officers should also file claims for contingent liabilities or claims that may arise in the future, ensuring that the department's potential claims are recognized.
- File claims for amounts under dispute with any appellate tribunal: Claims should also be filed for amounts that are being disputed with any appellate tribunal. This ensures that the department's position is represented in ongoing legal disputes.

2. Attend Committee of Creditors (CoC) Meetings:

- Participate if the debt owed to the department is significant: If the debt owed to the department constitutes at least 10% of the total debt, the Assessing Officer should actively participate in CoC meetings to ensure that the department's voice is heard in decision-making.

3. Operational Creditors' Representation:

- In absence of financial creditors, top 18 Operational Creditors form CoC: If the company undergoing resolution does not have financial creditors, the top 18 Operational Creditors are placed in the CoC. Assessing Officers should be aware of this arrangement and collaborate with operational creditors as necessary during the resolution process.

By following these action points, Assessing Officers can ensure that the department's interests are adequately represented and protected during the Corporate Insolvency Resolution Process

Priority to amount due to operational creditors over financial creditors:

As per regulation 38(1) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the amount payable under a resolution plan - (a) to the operational creditors shall be paid in priority over financial creditors; and (b) to the financial creditors, who have a right to vote under section 21(2) of Insolvency Code and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.

Section 30(2)(b)(i) of Insolvency Code provides that provision for payment of debts to operational creditors should be such that amount to be paid to such creditors shall not be less than amount to be paid to such creditors in the event of liquidation of corporate debtor under section 53 of Insolvency Code. [section 53 of Insolvency Code provides for distribution of assets in liquidation]. This Provision applies to PPIRP also, as per section 54K (3) of Insolvency Code.

Chapter-I

SPECIAL LEAVE PETITION(SLP)

— — — — —
Scope of Article 136
Applicability of a SLP
Rules for filing SLP
Provision relating to SLP
Grounds for filing a SLP
— — — — —

Introduction

A Special Leave Petition (SLP) is a legal remedy available in the Indian legal system, primarily under the jurisdiction of the Supreme Court of India. It is a discretionary remedy that allows individuals or entities to appeal to the Supreme Court for challenging decisions made by lower courts or tribunals.

Special Leave Petitions serve as an essential instrument in the Indian legal system, allowing litigants to approach the Supreme Court when substantial questions of law, errors in legal interpretation, or miscarriages of justice are involved. However, the Supreme Court exercises its discretion carefully when granting special leave, as it aims to balance the need for justice with the principle of judicial restraint. Indian case laws provide guidance on the scope and limitations of SLPs, ensuring that this discretionary remedy is applied judiciously. Understanding the provisions and precedents related to Special Leave Petitions is crucial for both legal practitioners and individuals seeking justice in India's complex legal landscape.

Scope of Article 136

The Supreme Court can grant Special Leave to appeal against any judgement, decree, determination, sentence, or order of any court or tribunal in the territory of India. It is not limited to any particular subject matter or court. The Supreme Court has the discretion to consider cases involving questions of fact, law, or both.

The text of Article 136 is as follows:

“136. Special leave to appeal by the Supreme Court.

(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant Special Leave to appeal from any judgement, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

(2) *Nothing in clause (1) shall apply to any judgement, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.*”

1. Applicability of a Special Leave Petition

A Special Leave Petition (SLP) can be filed in the Supreme Court of India against a final order passed by a High Court. Governed by the Civil Procedure Code, an SLP is considered by the Supreme Court if certain conditions are met. The Supreme Court typically entertains an SLP in the following cases:

Substantial Question of Law or Constitution

- Grave violation of constitutional provisions or human/fundamental rights.
- Error apparent on the face of the record.
- Misdirection by the High Court resulting in jurisdictional errors.
- Illegal or gross abuse of jurisdiction by the High Court.
- Decision contrary to well-settled legal principles.
- Decision contrary to established precedents.

The Supreme Court has the discretion to grant or deny an SLP, assessing the merits and potential success of the case.

2. Rules for Filing an SLP

The procedural rules for filing SLPs are governed by the Supreme Court Rules, 2013:

- **Rule 6:** Specifies the procedure for filing an SLP, including the required format and content of the petition.
- **Rule 5:** Requires obtaining a certificate from the concerned High Court, confirming that the case involves substantial questions of law.

Compliance with these rules is mandatory, and non-compliance can lead to rejection of the petition.

3. Time Frame for Filing an SLP

The time frame for filing an SLP in the Supreme Court of India varies:

- General Cases: 90 days from the date of the judgement or order being challenged.
- High Court Matters: 60 days when the SLP is filed against a High Court order refusing a certificate of fitness for appeal.

These time frames are mandated by the Supreme Court Rules, 2013. The Court may condone delays in exceptional circumstances if valid reasons are presented

Chapter-II

FILING OF SLP

1. Requirements for Filing a Special Leave Petition (SLP)

- Contents of SLP: An SLP must include all relevant facts for the Supreme Court's consideration, signed by the Advocate on Record (AoR).
- Declarations: The petitioner must declare no other petition is filed in the high court and that annexures are true copies of lower court pleadings.
- Judgement Attachment: The SLP must include the judgement being appealed against.

2. Pre-Requisites for Filing SLP

- I. Jurisdiction: SLPs should fall within the Supreme Court's jurisdiction, involving substantial legal questions or public interest issues.
- II. Adverse Judgement: There must be an adverse decision by a lower court, tribunal, or authority.
- III. Timing: File within 90 days of the judgement; 60 days for High Court certificate refusal cases.
- IV. Certificate: Obtain a fitness for appeal certificate if required, especially for High Court judgements.
- V. Format: Follow Supreme Court Rules, 2013 for drafting and content.
- VI. Paper Books: Prepare copies of relevant documents and lower court judgements.
- VII. Fees: Pay applicable court fees.
- VIII. Service: Serve notice to the opposite party.
- IX. Appearance: Attend Supreme Court hearings as required.
- X. Grounds: Clearly state grounds of appeal.
- XI. Formalities: Adhere to procedural requirements meticulously.

Chapter-III

IMPORTANT POINTS FOR SLP PROPOSALS

Points to be Taken into Consideration for Special Leave Petition (SLP) Proposals

1. Material Facts of the Case:

- Highlight the material facts of the case, ensuring that all relevant orders are enclosed.

2. Tax Effect:

- Ensure the tax effect, including surcharge and cess but excluding interest, is more than Rs. 2 Crore on disputed issues for each Assessment Year.

3. Revenue Audit Objection:

- Provide the Revenue Audit Objection and its acceptance note.
- If the Audit Objection is not accepted, determine whether an SLP is still required.

4. Comments on Department's Standing Counsel Assertions:

- Address the assertions made by the Department's Standing Counsel as recorded in the High Court order, such as:
- One or more questions not pressed by the Counsel.
- Applicability of SQL of another appeal/order.

5. Timeline Compliance:

- Strictly follow the timeline of 20 days from the date of the order.
- If the SLP proposal is delayed beyond 30 days, obtain approval from the Pr.CCIT with valid reasons.

6. Downloading High Court Order:

- Promptly download the High Court order without waiting for a certified copy.

7. SLP Filing Under Article 136:

- File the SLP under Article 136 of the Constitution, not under Section 261, which requires a fitness certificate from the High Court.

8. Legal Opinion from Standing Counsel:

- There is no need to seek a legal opinion from the Standing Counsel unless required.

9. Proforma-B Submission:

- Use Proforma-B for submitting the SLP proposal with complete annexures through the Offline Utility.

10. Question of Law vs. Question of Fact:

- Propose the SLP only on a Question of Law, not on Questions of Fact.
- Understand the difference between a Question of Law and a Substantial Question of Law, which can be the subject matter of an appeal.

11. Judicial Analysis of Substantial Question of Law:

- Recognize that second appeals to High Courts can arise only on substantial questions of law certified by the courts.
- A question of law will be substantial if it directly and substantially affects the rights of the parties, involves some doubt or difference of opinion, or has room for difference of opinion.
- If the law is well-settled by the Supreme Court, merely applying it to particular facts does not constitute a substantial question of law.

12. History of the Issue at Hand:

- Provide the history of the issue for the assessee.
- If the High Court decided any appeal based on an earlier year's decision, provide the status of that SLP or reasons why an SLP was not proposed in that year.

13. Prompt Removal of Defects and Vetting of Draft:

- Ensure prompt removal of any defects and proper vetting of the draft.

14. Orders/Notices Under Sections 147/148:

- If an order/notice under Sections 147/148 is quashed or set aside:
- Provide copies of the reasons recorded, the original assessment order, and the order disposing of objections.
- Provide the status of the order under Section 143(3) read with Section 147 (in case the notice is quashed), along with the status of any appeal.

15. Orders Under Section 263:

- If an order under Section 263 is set aside or quashed:

- Provide the status of the order under Section 143(3) read with Section 263 along with the status of any appeal against it.

16. Penalty Matters:

- Provide the fate of the quantum appeal in penalty matters.

17. Well-Framed Substantial Questions of Law (SQL):

- Ensure the SQLs are well-framed and necessarily relate to issues adjudicated by the High Court.

By considering these points, the assessing officer can ensure that the SLP proposal is thoroughly evaluated and justified before submission, adhering to the legal standards and procedural requirements.

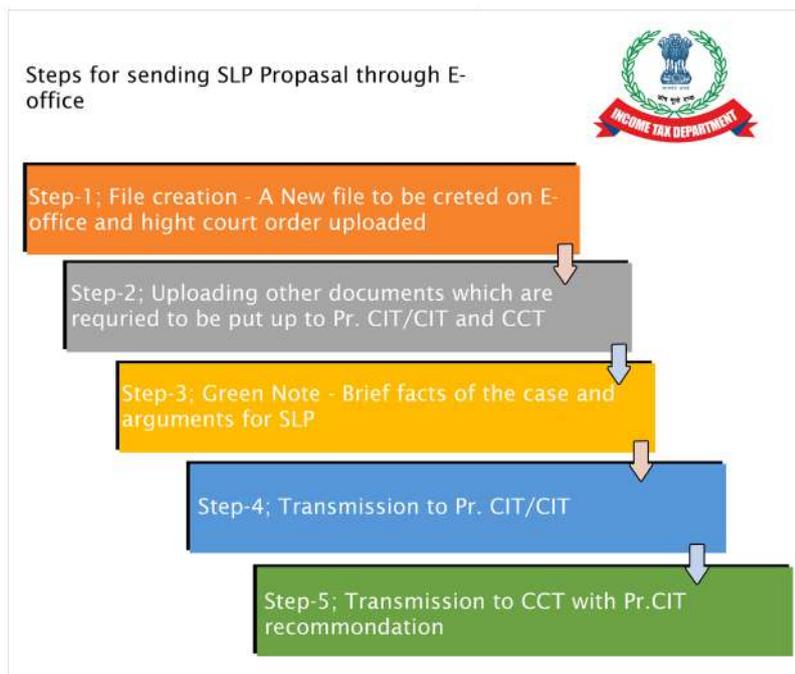
Chapter-IV

CHECKLIST AND STEPS RELATING TO SLP

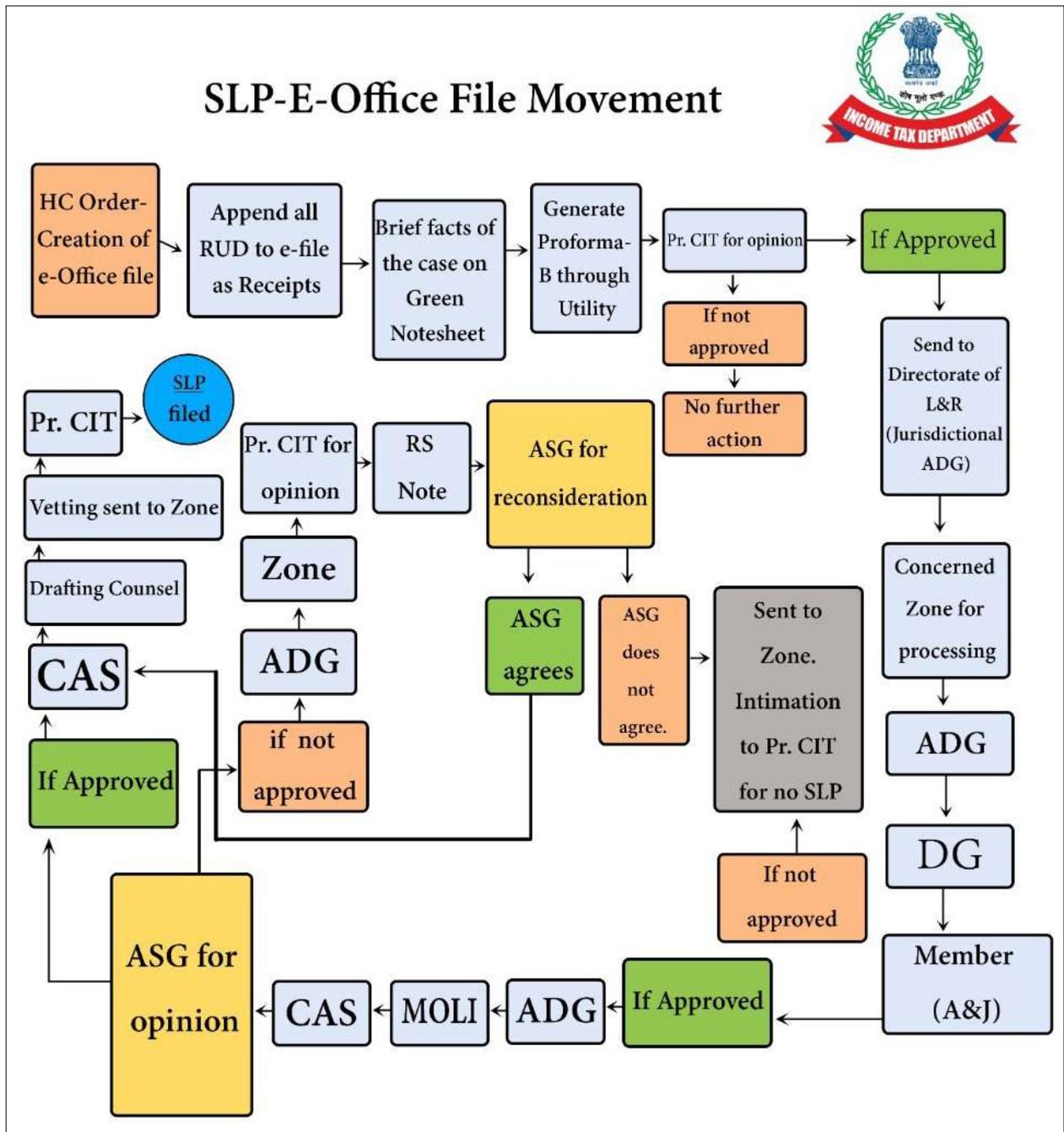
1. CHECKLIST:-

1. Assessment Order/Order under dispute
2. CIT(A) Order
3. ITAT Order
4. Copy of Appeal Memo under Section 260A/Writ Petition
5. High Court Order (downloaded from website, certified copy not required)
6. Proforma B (generated through the Utility developed by Directorate)
7. Substantial Question(s) of Law
8. Comments/Recommendation of Pr.CIT/CCIT
9. Opinion of Standing Counsel (if applicable)
10. Proforma B/Col. 11 – for relied-upon cases
11. Hyperlinked documents in e-office file

2. Steps for sending SLP Proposal through E-office: -



3. SLP- E-Office File Movement :-



4. Proforma B Utility:-

I. The offline utility developed by the L&R Directorate for generating PROFORMA B for SLP Proposals aims to reduce delays by addressing common queries. It offers the following features:

- i. Field officers can input all necessary data and attachments.
- ii. The utility includes built-in checks and validations to assist in filling out correct and complete information.

II. The standardized Proforma B and its annexures are generated in a single or multiple PDF files through this Utility, ensuring compatibility with E-Office. This process facilitates:

- i. Efficient processing of SLP proposals at the Pr.CIT/CIT level.
- ii. Validation during generation to ensure Proforma B is error-free.
- iii. The utility serves as a repository for all SLP proposals recommended/pending at the Pr.CIT/CIT level for future reference.
- iv. Field officers can search past proposals based on the assessee name, ensuring consistency in documentation.

Frequently Asked Questions

1. Time Limits for Appeals to Various Judicial Fora

Q: What are the time limits for filing appeals in different judicial forums?

A: - Appeal to ITAT: You have 60 days from the date of receiving the order from the Commissioner of Income Tax (Appeals) [CIT(A)] to file an appeal with the Income Tax Appellate Tribunal (ITAT).

- Appeal to High Court: After receiving the ITAT's order, you have 120 days to file an appeal with the High Court.
- Special Leave Petition (SLP): If you want to file a Special Leave Petition in the Supreme Court, you must do so within 90 days of receiving the order from the High Court.

2. Tax Effect Determination in Combined ITAT Orders

Q: How is the tax effect decided when there's a combined order from the ITAT?

A: - In cases where the ITAT issues a composite order involving multiple assessment years and common issues, you can file an appeal for those years where the tax effect from disputed issues exceeds the specified monetary limit.

- However, if the tax effect for a particular assessment year is below this monetary limit, no appeal can be filed by the department for that year.

3. Time Limit for Forwarding SLP Proposal to Board

Q: What is the timeframe for forwarding a Special Leave Petition (SLP) proposal to the Board?

A: The SLP proposal must be forwarded to the Board within 20 days through the E-Office system.

4. Appeal u/s 260A Against Dismissed ITAT Miscellaneous Application

Q: Can an appeal under section 260A be filed against an ITAT Miscellaneous Application (MA) that has been dismissed?

A: - According to a ruling by the Bombay High Court, an appeal under section 260A cannot be filed directly against an MA dismissed by the ITAT.

- Instead, a separate appeal process will have to be followed in such cases.

5. Engaging Standing Counsel Other Than PCIT Charge Counsel

Q: Can a Standing Counsel be engaged for representation other than the one assigned to the Principal Chief Commissioner of Income Tax (PCIT) charge?

A: - To engage any Standing Counsel other than the one allocated to the PCIT charge, permission must be obtained from the Principal Chief Commissioner of Income Tax (Pr CCIT).

6. Engaging ASG for Representation Before ITAT/High Court

Q: How can an Additional Solicitor General (ASG) be engaged for representation before the ITAT or High Court?

A:- The engagement of an ASG can be done with the approval of the concerned Chief Commissioner of Income Tax (CCIT).

- Subsequently, the consent of the ASG and approval from the Ministry of Law must be obtained.

7. Assignment of ASG from Different Region for ITAT/High Court

Q: Can an ASG from a different region be assigned to represent a case in the ITAT or High Court?

A:- If an ASG from a different region needs to represent a case, they must be appointed as a Special Counsel by the Board.

8. Appointment of Standing Counsel for ITAT Cases

Q: Is it possible to appoint a Standing Counsel to argue cases before the ITAT?

A: - Depending on the complexity of the case, a Standing Counsel can be engaged to represent the case in the ITAT.

9. Advance for Standing Counsels for Expenses

Q: Can Standing Counsels receive advances for drafting and other expenses?

A:- Yes, Standing Counsels can be given advances for out-of-pocket expenses, subject to approval from the concerned CCIT.

10. Engagement of Counsel for NCLT/NCLAT Outside Mumbai

Q: How can a Counsel be engaged for representing cases before the NCLT/NCLAT benches outside Mumbai?

A: - The concerned Principal Chief Commissioner of Income Tax (PCCIT) can engage a Counsel empanelled for the specific region where the case is being heard, with prior intimation to the Office of the PCIT (Judicial).

11. Appeal Against ITAT Decision

Q: Where should an appeal against an ITAT decision be filed?

A: - The Supreme Court, in a decision regarding Pr. Commissioner of Income Tax-I, Chandigarh v. M/s. ABC Papers Limited, [2022] 141 taxmann.com 332 (SC) stated that appeals against ITAT decisions should be filed in the High Court whose jurisdiction includes the Assessing Officer (AO who issued the assessment order.

- Even if cases are transferred under Section 127 of the Income Tax Act, the High Court with jurisdiction over the AO who made the order retains appellate jurisdiction.

ANNEXURES

ANNEXURES

ANNEXURE A1 : INSTRUCTIONS REGARDING STANDARD OPERATING PROCEDURE ON FILING OF APPEALS TO ITAT UNDER SECTION 253 AND RELATED MATTERS

INSTRUCTION NO. 08/2011[F NO. 279/MISC./M- 43/2011-ITJ], DATE 11.08.2011

1. SECTION 253 OF THE INCOME-TAX ACT, 1961 - APPELLATE TRIBUNAL - APPEALS to - Instructions regarding standard operating procedure on filing of appeals to ITAT under section 253 and related matters

With a view to streamline the process of filing appeals to ITAT and in suppression 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 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.

- i. Appeal Effect and Scrutiny Report
- ii. On receipt of the order of the CIT(A), the AO shall give appeal effect promptly and properly. The Range Head shall monitor correctness and timely appeal effect in respect of orders of CIT(A).
- iii. 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.
- iv. 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.
- v. 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.

4. 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.

5. Proper Judicial Record Management System

5.1 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.

5.2 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.

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

6.1. 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.

6.2. 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.

6.3 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.

7. 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.

8. 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. The 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.

9. Appeals/Cross Objections Filed by the Assessee

9.1 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.

9.2 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.

10. 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.

11. 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.

12. 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.

13. 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.

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

15. Hindi version of instruction to follow.

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

Annexure-I

TIMELINES FOR FILING APPEAL TO ITAT

| Sl. No. | Stages | No. of days | Total Time |
|---------|--|-------------|------------|
| 1. | Receipt of CIT(A)'s order in the office of 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 giving 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)'s order

Limitation to file appeal under section 253 expires on:

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

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

1. Particulars from the order under scrutiny

| | | |
|------|---|--|
| 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 ONLY WHERE ORDERS OF CIT(A) ARE ADVERSE TO REVENUE

2. Analysis of the order under scrutiny

| | | |
|------|--|--------|
| i. | Whether it is combined order for more than one assessment years | 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 assesseees for communication of stand taken on common issues? | |
| vi. | If the proceeding of order under scrutiny was dependent on some other proceedings (say order under section 263/set aside order/Registration under section 12A/Approval etc.), specify the present appellate status of the other proceedings along with ITA No./W.P. 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 grounds? | 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 the same? | Yes/No/ NA |

3. Scrutiny report on appellate order

- A. If the tax effect in l(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 recommendation 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):- |
| | Description of issue involved in brief, |
| | Basis of addition/disallowance made in assessment order, |
| | Reasons for grant of relief by CIT(A), |
| | (Relevant page/para No. of assessment order and CIT(A)'s order for each issue may also be specified) |
| 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? |
| | (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). |

| | |
|-------|--|
| 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 & 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 assessee in earlier years? If yes, status of appeal etc. may be indicated. |
| viii. | If 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 vii is extremely important, if applicable, (the involvement of issue in earlier year may already be indicated in assessment order or CIT(A)'s order)

4. General

| | | |
|------|--|-----------|
| i. | Aggregate of tax effects 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. | <i>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)</i> | |

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

Date:

Signature

Place:

Name & 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:- (issues involved to be mentioned in brief, for illustration- disallowance of interest for interest free loan given; repair expenses treated as capital; accrual of interest income on Bonds; deduction under section 80-IB etc.) | |
| ii. | Whether any additional evidence was admitted without granting opportunity to AO? If yes, give details. | |
| iii. | Whether any finding off act given by CIT(A) is inconsistent with material on record, making his 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 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 CITfor kind consideration & further action.

Date:

Signature of the Range head

Place:

Name & Designation

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 No1.

Issue No.2.....and soon

Aggregate tax 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 the 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 e-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 CBDT on monetary limits.
- iii. Authorization under section 253(2) of the I.T. Act is issued separately. Appeal to be
- iv. filed accordingly.

Date:

Name & 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 along with 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 date 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 off act and primary fact upon which that conclusion is based? If it is so, briefly state how it is so.
- d. When an authority draws a conclusion which can not be drawn by any reasonable person or authority on the material and facts placed beforfe it. (Sudarshan Silk & Sarees vs CIT 300 ITR 205 SC).

ANNEXURE B1: CIR.NO.8/2023 Revision of exceptions to monetary limits for filing appeals deferred under provisions of section 158AB dtd. 31.05.2023.

Circular No.8/2023

No. 279/Misc./M-93/2018-1TJ(Pt.)
 Government of India
 Ministry of Finance
 Department of Revenue
 Central Board of Direct Taxes, New Delhi

Dated the 31st May, 2023

| | |
|-------|---|
| Sub:- | Revision of exceptions to monetary limits for filing appeals deferred under provisions of Section 158AB—reg. |
| Ref:- | 1. CBDT letter F.N0.279/Misc.142/2007-1TJ(Pt.) dated 20.08.2018 2. CBDT letter F.N0.279/Misc./M-93/2018-1TJ(Pt.) dated 29.09.2022 3. CBDT Letter F.N0.279/Misc./M-93/2018-1TJ(Pt.) dated 24.01.2023 |

1. The Board has, from time-to-time, revised monetary thresholds for filing appeals before various judicial fora. The last such revision was through Circular No. 17/2019 dated 08.08.2019. Exceptions to the monetary limits are as per Board's letter F. No. 279/Misc.142/2007-1TJ(Pt.) dated 20.08.2018 and OM issued vide F. N0.279/Misc./M-93/2018-1TJ(Pt.) dated 16.09.2019.
2. In this respect the insertion of Section 158AB in the Income Tax Act, 1961 [hereinafter referred to as the Act] has led to queries on monetary limits and exceptions applicable in respect of cases falling within the purview of Section 158AB of the Act. In supersession of the letter dated 29.09.2022, referred to above, the following guidelines on the above subject are hereby issued:
3. At the outset it is clarified that references to collegiums constituted u/s 158AB of the Act for deciding on the deferral of appeal(s)/grounds of appeal(s) would be made having regard to the extant monetary limits read along with the exceptions to the same, as mentioned in para 1 above and the exceptions provided in para 6 below.
4. The following terminology is proposed in respect of para 5 below:
 - i. Yo: the current year in which appeal filing is under consideration, and
 - ii. Yf•. the year in which the final decision on the question of law is received in favour of Revenue in the 'other case' ('other case' being as referred to in section 158AB of the Act).

5. Scenarios on the applicability of monetary limits:

- i. In cases where only one ground is contested and where the tax effect is greater than the monetary threshold as per the extant monetary limits for filing appeals at relevant judicial fora, set by CBDT, and section 158AB is applicable to it, appeal may be deferred in the current year (Yo) in view of the provisions of section 158AB. The appeal is to be filed in the year in which the final decision on the identical question of law is received in favour of Revenue in Yf.
 - ii. In cases where multiple grounds are contested and where the total tax effect of all the disputed grounds (i.e., grounds to which Section 158AB is applicable and otherwise) is greater than the extant monetary limits for filing appeals at relevant judicial fora, set by CBDT, and Section 158AB is applicable only to certain grounds, the guidelines for filing appeal are as follows:
 - (a) in the current year (Yo),
 - i. filing of appeal on the grounds to which section 158AB is applicable may be deferred in view of the provisions of that section, and
 - ii. appeal may be filed on the residual grounds.
 - (b) in the year in which the final decision on the identical question of law is received in favour of Revenue in Vf, appeal is to be filed on the grounds to which section 158AB is applicable, irrespective of the monetary limit at that point in time.
6. In respect of deferring appeals u/s 158AB of the Act, while adhering to the guidelines as laid down in the preceding paras, it is to be ensured that when judicial finality is achieved in favour of Revenue in the 'other case', appeal in the 'relevant case' should be contested on merits subsequent to the decision in the 'other case' irrespective of the extant monetary limits. Further, if the judicial outcome in the 'other case' is not in favour of Revenue and is not accepted by the Department, appeal against the same may be contested on merits in the 'other case' irrespective of the extant monetary limits, to arrive at judicial finality.
7. The above shall come into effect from the date of issue of this letter and may be brought to the knowledge of all officers working in your region.
8. This issues under section 268A of the Income Tax Act.

(Devaki Niranjana)
DCIT(OSD),ITJ-II,CBDT

Copy to:

1. 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.

(Devaki Niranjana)
DCIT(OSD), ITJ-II,CBDT

ANNEXURE B2: Cir.No.F.No.279/Misc.142/2007/ITJ(PT) dated 15.3.2024 (Circular No 5/2024): In supersession of all earlier Circulars, the Board has vide this Circular amended the exceptions to filing appeals in all judicial fora.

Circular No. 5/2024

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

Government of India

Ministry of Finance

Department of Revenue

Central Board of Direct Taxes

New Delhi the 15th March, 2024

Subject: Circular u/s 268A of the Income-tax Act, 1961 for filing of appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court-measures for reducing litigation-Reg.

Ref 1: Circular No. 3/2018 dated 11.07.2018

Ref 2: Circular No. 17/2019 dated 08.08.2019

Ref 3: Board's letter in F.No.279/Misc. 142/2007-ITJ (Pt) dated 20.08.2018

Reference is invited to the above wherein monetary limits and other conditions for filing Departmental appeals under the Income-tax Act, 1961 (hereinafter referred to as the Act) before Income Tax Appellate Tribunals ('ITAT'), Hon'ble High Courts ('HCs') and Special Leave Petitions ('SLPs')/ appeals before Hon'ble Supreme Court ('SC') were specified by the Central Board of Direct Taxes ('CBDT' or 'Board').

2. In supersession of the above referred communications issued by CBDT, the following may be noted in respect of departmental appeals to be filed before ITATs and HCs and SLPs/ appeals before SC:

3.1. Monetary limits given in paragraph 4 with regard to filing appeal/SLP shall be applicable to all cases including those relating to TDS/TCS under the Act with the following exceptions where the decision to appeal/file SLP shall be taken on merits, without regard to the tax effect and the monetary limits:

- a. Where any provision of the Act or the Rules or notification issued thereunder has been held to be constitutionally invalid, or
- b. Where any order, notification, instruction or circular of the Board or the Government has been held to be illegal or ultra vires the Act or otherwise constitutionally invalid, or
- c. Where the assessment is based on information in respect of any offence alleged to have been committed under any other law received from any of the law enforcement or intelligence agencies such as CBI, ED, DRI, SFIO, NIA, NCB, DGGI, state law enforcement agencies such as State Police, State Vigilance Bureau, State Anti- Corruption Bureau, State Excise Department, State Sales/Commercial Taxes or GST Department, or

- d. Where the case is one in which prosecution has been filed by the Department in the relevant case and the trial is pending in any Court or conviction order has been passed and the same has not been compounded, or
- e. Where strictures/adverse comments have been passed and/or cost has been levied against the Department of Revenue, CBDT or their officers, or
- f. Where the tax effect is not quantifiable or not involved, such as the case of registration of trusts or institutions under sections 10(23C), 12A/ 12AA/12AB of the Act, order passed u/s 263 of the Act etc. The reference to cases involving sections referred here, where it is not possible to quantify tax effect or tax effect is not involved, is for the purpose of illustration only.
- g. Where addition relates to undisclosed foreign income/undisclosed foreign assets (including financial assets)/undisclosed foreign bank account, or
- h. Cases involving organized tax evasion including cases of bogus capital gain/loss through penny stocks and cases of accommodation entries, or
- i. Where mandated by a Court's directions, or
- j. Writ matters, or
- k. Matters related to wealth tax, fringe benefit tax, equalization levy and any matter other than the Income Tax Act, or
- l. In respect of litigation arising out of disputes related to TDS/TCS matters in both domestic and International taxation charges:-
- m. Where dispute relates to the determination of the nature of transaction such that the liability to deduct TDS/TCS thereon or otherwise is under question, or
- n. Appeals of International taxation charges where the dispute relates to the applicability of the provisions of a Double Taxation Avoidance Agreement or otherwise
- o. Any other case or class of cases where in the opinion of the Board it is necessary to contest in the interest of justice or revenue and specified so by a circular issued by Board in this regard.

3.2. Attention is drawn to Circular No. 8/2023 issued vide F.No. 279/Misc./M-93/2018-ITI(Pt.) dated 31.05.2023 in respect of deferral of appeals u/s 158AB of the Act. Exceptions in such cases operate as follows:

- a. When judicial finality is achieved in favour of Revenue in the 'other case', appeal in the 'relevant case' is contested on merits subsequent to the decision in the 'other case' irrespective of the extant monetary limits.
- b. If the judicial outcome in the 'other case' is not in favour of Revenue and is not accepted by the Department, appeal against the same may be contested on merits in the 'other case' irrespective of the extant monetary limits, to arrive at judicial finality.

4.1. Appeals/ SLPs, not falling in the exceptions as detailed in para 3 above, shall not be filed in cases where the tax effect does not exceed the monetary limits given hereunder:

| S. No. | Appeals/ SLPs in Income-tax matters | Monetary Limit (Z) |
|--------|-------------------------------------|--------------------|
| 1. | Before Appellate Tribunal | 50,00,000 |
| 2. | Before High Court | 1,00,00,000 |
| 3. | Before Supreme Court | 2,00,00,000 |

4.2. 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. The officers concerned shall keep in mind the overall objective of reducing unnecessary litigation and providing certainty to taxpayers on their Income-tax assessments while taking a decision regarding filing an appeal.

5.1. 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'). Further, 'tax effect' shall be tax including applicable surcharge and cess. 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.

5.2. Further, where income is computed under the provisions of section 115JB or section 115JC, for the purposes of determination of 'tax effect', tax on the total income assessed shall be computed as per the following formula-

(A-B) + (C-

D) where,

A = the total income assessed as per the provisions other than the provisions contained in section 115JB or section 115JC (herein called general provisions);

B = the total income that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of the disputed issues under general provisions;

C = the total income assessed as per the provisions contained in section 115JB or section 115JC;

D = the total income that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC was reduced by the amount of disputed issues under the said provisions:

However, where the amount of disputed issues is considered both under the provisions contained in section 115JB or section 115JC and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D.

5.3. 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 4.1. 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 4.1. Further, even in the case of 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, 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 4.1. In case where a composite order/ judgement involves more than one assessee. each assessee shall be dealt with separately. It is clarified that the contents of this paragraph are subject to para 3.2, above.

5.4. For calculating the tax effect of cases involving TDS/TCS, the cumulative effect, of all orders passed for an assessment year of a deductor, shall be taken into account and shall include interest u/s 201(1A) of the Act.

6.1. 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 Pr. Commissioner of Income-tax/ 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 the CBDT Circular dated”.

6.2. 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 and also bring to the notice of the Tribunal/ Court the provisions of sub section (4) of section 268A of the Act which read as under:

“(4) The Appellate Tribunal or Court, hearing such appeal or reference, shall have regard to the orders, instructions or directions issued under sub-section (1) and the circumstances under which such appeal or application for reference was filed or not filed in respect of any case.”

8. As the evidence of not filing appeal due to this Circular may have to be produced in courts, the judicial folders in the office of Pr.CsIT/CsIT must be maintained in a systematic manner for easy retrieval. In cases where appeals are not being filed due to low tax effect despite the judgment not being acceptable on merits or appeals are being filed despite low tax effect in view of exceptions, the Pr. CIT/CIT shall submit a monthly report, to the CIT(J)/Addl./Jt. CIT(J) office, as per Annexures-A 1 and A2, respectively of CBDT’s Instruction No. 1/2024 dated 09.02.2024 (issued in F.No. 279/Misc./33/2014-ITJ). Further, the CIT(J)/ Addl/Jt CIT(J) office shall collate and disseminate the departmental stand, as regards filing of appeals, in respect of the issues involved in such appeals, within the region.

9. The above may be brought to the notice of all concerned.

10. This issues under section 268A of the Act and shall come into effect from the date of issue of this Circular. This Circular will apply to SLPs/appeals to be filed henceforth before the SC/HCs/Tribunals.

11. Hindi version will follow.

(Tanay Sharma)
Jt.CIT(OSD)-ITJ, CBDT
New Delhi

Copy to:

1. The Chairman, Members and all 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. The Comptroller and Auditor General of India.
4. ADG (Vigilance), New Delhi.
5. The Joint Secretary & Legal Advisor, Ministry of Law & Justice, New Delhi.
6. All Directorates of Income-tax, New Delhi and DGIT (NADT), Nagpur.
7. Hindi Cell for translation.
8. Guard file.

Jt.CIT(OSD)-ITJ, CBDT
New Delhi

ANNEXTURE B3: INSTRUCTION 7/2016 *Revision of the Guidelines for engagement of standing counsels to represent the Income-Tax Department before High Courts and other judicial forums; revision of their Schedule of fees and related matters vide F. NO. 279/MISC/M-75/2011-ITJ(PART-II) dated 7 TH September, 2016.*

Instruction No. 7/2016

F No 279/Misc./M- 75/2011 -ITJ (Part-II)

Government of India

Ministry of Finance

Department of Revenue

Central Board of Direct Taxes

New Delhi the 7th September, 2016

To,

All Principal Chief Commissioners of Income-tax

Sub: Revision of the Guidelines for engagement of Standing Counsels to represent the Income-tax Department before High Courts and other judicial forums; revision of their Schedule of fees and related matters- regarding

1. With a view to ensure improved representation before the High Courts and other judicial forums and in supersession of Instruction No 3/2012 on the subject, Board has laid down following guidelines for engagement of Standing Counsels.
2. It must be ensured that the process for engagement of Standing Counsels should be initiated at least 6 months before the expiry of the panel. The size of the panel should be carefully decided based on the pendency of appeals (on an average one Senior Counsel can handle 450-500 appeals). A buffer of at least 25% of the required strength or a workable buffer should be considered while determining the size of panel. The panel of counsels proposed along with the buffer (hereafter called “extended panel”) shall be forwarded to Board. It must be noted that the buffer in the extended panel will not be entitled for any compensation or remuneration or retainership etc. The names in the extended panel would be considered in cases of exigencies like resignation/termination etc. of the counsel in the panel. Further, the names in the extended panel would be proposed by the Pr. CCIT/CCIT immediately following such exigency for regular empanelment to Board. The tenure of such counsel/s would be valid for the remainder of the tenure of the panel. Having this extended panel ready would ensure that time is not lost in re-doing the whole process of advertisement etc. for filling up one or two vacancies in the panel. It is further suggested that the ratio of senior counsel to junior counsel should normally be 1:1. However, the Pr.CCIT/ CCIT may decide otherwise depending on the local conditions.
3. The proposal of the Pr. CCIT/ CCIT shall invariably include:
 - a. Composition of the Screening Committee.
 - b. Pendency of appeals.

- c. Minutes of the meeting with details of selection procedure starting from placing advertisement to final evaluation.
 - d. List of existing Counsels along with number of cases handled by each and their outcome/performance evaluation and reasons for their non-inclusion in the fresh panel, if any.
 - e. Grading/evaluation list of the fresh panel.
4. The procedure for engagement of Standing Counsels, requisite qualifications and terms and conditions of their engagement shall be as per guidelines in Annexure I.
 5. The Standing Counsels will be engaged in accordance with the revised schedule of fees and related terms and conditions applicable to them as given in Annexure-II.
 - 5.1 These guidelines and the revised schedule of the fee and allowances shall come into effect from 07.09.2016.
 - 5.2 The Standing Counsels will be paid fee at the old rates in respect of their appearance and other work done by them prior to 07.09.2016 and at the revised rates in respect of the work done by them on or after 07.09.2016
 6. This issues with the concurrence of Ministry of Law and Justice vide their I.D. No J-11019/2/2016 Judl, dated 27.05.2016 and the Department of expenditure ID/ No. 9(4)/2012-E.II(B) dated 1st September,2016
 7. This Instruction may be brought to the notice of all Officers concerned.
 8. Hindi version of the Instruction will follow.

(D.S.Rathi)
DCIT(OSD)
(ITJ)C.B.D,T.

Copy to:

1. The Chairman, Members and other officers in CBDT of the rank of Under Secretary and above.
2. The Comptroller and Auditor General of India
3. DGIT(Vigilance), New Delhi
4. The Joint Secretary & Legal Advisor, Ministry of Law & Justice, New Delhi.
5. Department of Expenditure, Ministry of Finances New Delhi w.r.t. their I.D. No. 9(4)/2012-E.II(B) dated 1st September,2016
6. Principal Chief Controller of Accounts, 9th Floor, Lok Nayak Bhawan, Khan Market, New Delhi
7. The DGIT(Systems), ARA Centre, Jhandewalan Extension, New Delhi
8. DIT(PR, PP & OL), Mayur Bhawan, New Delhi for printing in the Tax Bulletin and for circulation.

(D.S.Rathi)
DCIT(OSD)(ITJ)
C.B.D.T,

ANNEXURE-I

PROCEDURE FOR ENGAGEMENT OF STANDING COUNSELS

1. Category of Standing Counsels

The Standing Counsels engaged/to be engaged by the department will fall into the following two categories:

- a. Senior Standing Counsel
- b. Junior Standing Counsel

In a station where counsels do not have sufficient experience to be engaged as Senior Standing Counsel, the CCIT may designate a Junior Standing Counsel to perform the functions of Senior Standing Counsel for that station. The Standing Counsel so designated shall perform the function or arguing cases before the Hon'ble High Court/ITAT in the absence of a Senior Standing Counsel.

2. Eligibility Conditions for engagement as Standing Counsel

The eligibility conditions for each category of counsels shall be as under:

2.1. Senior Standing Counsel: In order to be eligible for engagement as Senior Standing Counsel, person should

- a) be eligible to appear before the High Court as an advocate and
- b) have a minimum experience of five years of handling direct tax matters before High Courts or

ITAT as an advocate.

OR

have been a Junior Standing Counsel of the Department for three years OR

have been an officer of the Income-tax Department who is eligible to appear before the High Court as an advocate and has retired/resigned from the post of Addl. Commissioner/Director of Income-tax or any equivalent post after occupying such post for at least three years or any higher post or who has been a member of ITAT, provided that he has not been removed/dismissed or compulsorily retired from service on account of disciplinary action and no disciplinary proceeding under service rules or pension rules is pending against him.

2.2. Junior Standing Counsel: In order to be eligible for engagement as Junior Standing Counsel a person should

- a) be eligible to appear before the High Court as an advocate and
- b) have a minimum experience of three years of handling preferably direct tax matters before High Courts or ITAT.

OR

have been an officer of the Income-tax Department who retired/resigned from the post of Additional/ Joint CIT or below and is eligible to appear before the High Court as an advocate; provided that he has not been removed/dismissed or compulsorily retired from service on account of disciplinary action and no disciplinary proceeding under service rules or pension rules is pending against him.

3. Procedure for engagement of Standing Counsels

3.1. For the purpose of engagement, the CCIT will call for applications in **Proforma-A1 & A2 (as applicable)**, by advertisement in 1 (one) national and 2 (two) local newspapers, and from Bar Association of High Court. The advertisement shall also be placed on the notice boards in all the income-tax offices of the Region as well as Department's Official website. It should, however, be ensured that the process of engagement is transparent and broad based.

3.2. A Screening Committee headed by the CCIT and including at least two Officers not below the rank of PCIT/PDIT/CIT/DIT and CIT (J), wherever possible, shall be formed for the purpose of evaluation of proposals received. As far as possible, suitable representatives from fields like IT/ TP/ Exemptions shall also be included. In Delhi, Mumbai, Kolkata (WB & Sikkim), Chennai (Tamil Nadu) and Bangalore (Karnataka & Goa), a Joint Secretary Level Officer from Ministry of Law and Justice (MoLJ) may be requested to be part of the Screening Committee, In case there is no timely response from the MOLJ, the Screening Committee may proceed without any further delay.

3.3. Particulars of the applicants' expertise in handling direct tax matters, aptitude for interpretation and their suitability to represent the cases of the Department will be examined by the Committee in an interview conducted for the purpose and an evaluation report along with recommendation of the CCIT will be sent to the Board in Proforma-B. The evaluation shall be done on the parameters enumerated in Proforma B-1 and B-2 whereby marks would be awarded to each candidate. The Committee shall fix a minimum benchmark for selection of candidates at the beginning of the process. Candidates who are below the benchmark are not to be considered irrespective of the number of vacancies.

3.4. Sr. Standing Counsels should preferably be taken from amongst the panel of Jr. Standing Counsels of at least three years standing, subject to favourable assessment by the Screening Committee. In assessing suitability, the quality of drafting, assistance to the appearing counsels and co-ordination aptitude with the officers of the Department should be taken into account.

3.5. The engagement of panel shall normally be for a period of three years.

4. Performance review

4.1. The performance of the counsels shall be reviewed by the jurisdictional PCIT/CIT whose cases have been represented by the Standing Counsel, on a quarterly basis and a report in Proforma-C shall be submitted to CIT(Judicial) before 15th of the month following end of each quarter.

4.2. On the basis of the reports received from the CCIT, the CCIT/ CIT (J) shall review the performance of the counsels for every financial year and send an **annual report to the Board** 15i0n Pro forma-D before 30th June of the following year.

5. Allocation of Standing Counsels to PCIT/CIT Charges

5.1. The CCIT will be the overall in charge of entire litigation work on behalf of the Income-tax Department in his region before the High Court concerned. Allocation of panel of standing counsels to PCIT/CIT charges has to be done by the CIT (J) under instructions from/ approval of the CCIT. In places where post of CIT (J) is not provided for, this work should be undertaken by the Addl. CIT (J)/Technical working in the O/o Pr.CCIT under instructions from/ approval of the CCIT. Equitable distribution of 450-500 appeals to each Senior Standing Counsel must be ensured.

5.2. Normally, the Advocate from the panel of Sr. Standing Counsels should be authorized to argue cases. However, the CCIT concerned may authorize Junior Standing Counsels to argue in such matters as deemed fit. It must be ensured that 20% of cases are assigned to such Junior Standing Counsels, who have at least 1 year experience as Junior Standing Counsel, to be argued independently by him/her.

6. Termination of engagement/resignation/expiry of term

The engagement of the Counsel would be terminable through written intimation by either side without assigning any reason, The CCIT is authorized to act on behalf of the Department for the purpose under intimation to the Board. On expiry of the term or termination or resignation, the Standing Counsel shall immediately handover the briefs and other related papers to the PCIT/CIT concerned or the other Standing Counsels nominated by the CCIT for the purpose and the pending bills of the counsel shall be settled within three months of the submission of the bill

7. Duties of the Standing Counsel

A. The Counsel shall

7.1. draft Memorandum of Appeals and related petitions/applications within reasonable time, keeping in view the limitation period;

7.2. file the appeals/other petitions/applications as required, within limitation and communicate the particulars (Diary number, ITA number etc.) to the PCIT/CIT concerned;

7.3. communicate defects/office objections, if any, in the appeals etc and take prompt steps to rectify the same with the assistance of the PCIT/CIT;

7.4. appear on behalf of the department in the High Court/ other judicial forums, as required in the cases assigned to him;

7.5. keep the PCIT/CIT informed of the important developments in the case particularly with regard to dates of hearing, conclusion of hearing, date of judgment/order etc.;

7.6. when any case attended to by him is decided against the Department, apply for certified copy of the judgment within two working days of pronouncement and give his opinion regarding

the advisability of filing an appeal/SLP against such a decision within three days of taking delivery, He shall send an ordinary copy of the same, as soon as available, to the PCIT/CIT concerned, In other cases also the same time limits shall be applicable, though opinion will not be required;

7.7, if required, render all assistance to the law officers, Advocate General of the State Government, special or Senior Counsel, who may be engaged in a particular case before the Supreme Court, High Courts, ITAT, etc;

7.8. give legal advice to the Department on such civil, criminal and revenue matters pertaining to direct taxes and such matters arising in the course of administration of the Department as are referred to him by the Department including:

- a. examination and settling of drafts of legal nature;
- b. examination of trust deeds and draft rules of provident funds for recognition, and
- c. drafting of applications, petitions etc. to be filed in Courts of law and other statutory bodies;

7.9. send the case file and related papers to the PCIT/CIT concerned after the judgement/order in the case is passed but before submission of the final bill for professional services.

7.10. perform such other duties of legal nature, which may be assigned to him by the Department.

7.11. A monthly report shall be submitted by the Counsels as prescribed in the Proforma E.

B. Specific duties of Jr. Standing Counsel and related matters

7.12. The duties of Jr. Standing Counsel specifically include rendering meaningful assistance to St.

Standing Counsel in

- a) Drafting memo of appeal and consulting assessment records etc., if required.
- b) Removal of defects / office objections in the cases filed by the department.
- c) Research for preparation of cases for representation.
- d) Assist the Sr. Counsel in preparation and submission of the Monthly report.

C. Non- compliance/ non- adherence to the duties and responsibilities by the Standing Counsels

The CCIT may take appropriate action against the erring counsels in case of non-compliance and non-adherence by the Counsels.

8. Assistance to Standing Counsels by the Department

The CCIT has to ensure that the Judgment Database of the NJRS is made available to all Standing Counsels. The jurisdictional PCsIT/PDsIT/CsIT/DsIT shall provide all assistance to the Standing counsels such as providing briefs, assessment records, etc. in preparation of a case. In particular, copy of appeal scrutiny report in respect of the impugned order of the ITAT and copy

of paper book filed by the assessee before ITAT shall be provided to the counsel for assistance in drafting memo of appeal and preparation of case for representation. The PCsIT/CsIT/PDsIT/DsIT shall respond to communication from the standing counsels promptly and have regular interaction with them in order to keep a close watch on progress of the cases in the Court. The PCsIT/CsIT/PDsIT/ DsIT shall, while reviewing the quarterly performance of Counsels, look into the issues, if any, raised by the counsels and ensure their appropriate resolution,

9. Right to private practice

9.1 The Counsel will have the right of private practice, which should not, however, interfere with the efficient discharge of his duties as counsel of the Department but he shall not advise, hold briefs or appear against the Department before any authority, ITAT or Court in matters under the statutes relating to direct taxes,

9.2 If the Counsel happens to be a partner of a firm of lawyers or solicitors, it will be incumbent upon the firm not to take up any case against the Department in the High Court concerned or before any authority/ITAT falling within the jurisdiction of the said High Court or any case against the department in other courts arising out of the matters falling within the jurisdiction of the said High Court.

Note: CCIT referred to in this annexure will mean Chief Commissioner of Income Tax in charge of Judicial work in the Pr. CCIT region.

Proforma "A" of Annexure I

Particulars to be furnished by an advocate applying for engagement as Jr./Sr. Standing Counsel

1. Name of the person
2. Permanent Account Number
3. Father's Name
4. Date of Birth
5. Address for correspondence including e-mail, Telephone/Mobile no.
6. Permanent address
7. Educational Qualification *
8. Category of counsel for which applied (Jr. Standing Counsel/Sr. Standing Counsel)
9. Date of enrolment as an advocate in the State Bar Council and Registration No.
10. If a partner in a firm, name(s) of the firm(s) and other partners
11. Number of cases relating to Direct Taxes dealt with during last 3/5 (Jr./Sr.) years as an Advocate
12. Number of cases published in Journals/Newspapers, etc.
13. Income from Professional Practice (copy of the latest I.T. return to be attached)

Verification

I.....S/o....., do hereby declare that whatever has been stated in the above application is true to the best of my knowledge and belief.

Signature

Date:

Place.

Applicant to submit documentary proof with respect to aforesaid items/information.

Undertaking

I.....S/o....., do hereby declare that if engaged by the department, shall fully abide by the terms and conditions of the engagement.

Signature

Date:

Place:

Proforma 'A2 of Annexure I

Pro forma for application by an officer who has retired/resigned from the Income-tax Department or has been a member of ITAT

1. Name of the person
2. Permanent Account Number
3. Father's Name
4. Date of Birth
5. Address for correspondence including e-mail, Telephone/Mobile no.
6. Permanent address
7. Educational Qualification*
8. Date of joining Government Service in Income-tax Department
9. Designation and office address of the last post held
10. Date of retirement/resignation from the
11. Date of enrolment as an advocate in the State Bar Council and Registration
12. If a partner in a firm, name(s) of the firm(s) and other partners
13. Category of counsel for which applied (Jr: Standing Counsel/Sr. Standing Counsel)

Verification

I.....S/o..., do hereby declare that whatever has been stated in the above application is true to the best of my knowledge and belief. I further declare that I have not been removed from the service due to any disciplinary proceeding and no disciplinary proceedings under service rules or Pension Rules -are pending against me as on date,

Signature

Dated:

Place:

***Applicant to submit documentary proof with respect to aforesaid items/information.**

Undertaking I.....S/o....., do hereby declare that if engaged by the department, I shall fully abide by the terms and conditions of the engagement.

Signature

Date;

Place:

forma-'B' Annexure I

Particulars/evaluation report of a person applying for engagement as Jr./Sr. Standing Counsel

1. Name
2. Category (Junior/Senior)
3. Date of enrolment as an advocate in the State Bar Council and Registration No.
4. Number of cases relating to Direct Taxes dealt with during last 3/5 (Jr./Sr.) years as an Advocate
5. Number of cases published in Journals/Newspapers etc.
6. Income from Professional practice
7. CCIT's recommendations on the overall suitability based on the cases dealt by the applicant with regard to the flair for Direct Tax emanating from the presentation by the Counsel and other factors.

Chief Commissioner of Income-tax

Proforma-'B-1' of Annexure 1

For those applying for Sr Standing counsel

| Name of the candidate | Qualification & Division obtained at the degree level | Whether practiced IT matter for the requisite period | Whether articles etc. published in any Law journal, Books published etc. | Knowledge of Tax Laws (Max. 20 Marks) | Interpretational ability/ Advocacy skill's pertaining to Direct Taxes (Max. 20 Marks) | Flair for Advocacy (overall) (Max. 25 Marks) | If a Jr./Sr. Counsel, marks for past performance and co-ordination with the field etc. (Max, Marks in scale of O -10) | Total Marks obtained (Max. 100 Marks) |
|-----------------------|--|---|--|---------------------------------------|---|--|---|---------------------------------------|
| | LLM- 2 mark M. Phil/Ph. D.- 3 marks Academic record (marks scored in LLB): >70%- 7 marks >60%- 6 marks >50%- 5 marks >40%- 2 marks | (Yes is mandatory as minimum eligibility) However, additional marks for experience: No. of years: >15 years- 5 marks 11-15 years - 4 marks 5-10 years- 3 marks | Max. 10 Marks | | | | | |

Proforma-'B-2' of Annexure I

| For those applying for Jr Standing counsel | | | | | | | | |
|--|--|--|--|---------------------------------------|---|------------------------------------|---|---------------------------------------|
| Name of the candidate | Qualification & Division obtained at the degree level | Whether practiced IT matter for the requisite period | Whether articles etc. published in any Law journal, Books published etc. | Knowledge of Tax Laws (Max. 20 Marks) | Interpretational ability/ Advocacy skills (Max. 20 Marks) | Flair for Advocacy (Max. 25 Marks) | If a Jr./Sr. Counsel, marks for past output (Max, Marks in scale of 10) | Total Marks obtained (Max. 100 Marks) |
| | LLM- 2 mark M. Phil/Ph. D.- 3 marks Academic record (marks scored in LLB): >70%- 7 marks >60%- 6 marks >50%- 5 marks >40%- 2 marks | No of years > 10 years-5 marks 5-10 years - 4 marks <5 years- 3 marks | Max. 10 Marks | | | | | |

Pro forma- 'C' of Annexure I

| S. No. | Name of the Case | ITA No | Tax effect | Result of the case | Drafting Skills | Initiatives of Counsel | Interaction with AO/Addl. CIT/DRs | Result as attributable to St. Counsel |
|--------|------------------|--------|------------|--------------------|--|------------------------|-----------------------------------|---------------------------------------|
| | | | | | (Marking to be done on a scale of 1-10) (Maximum Marks-40) | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |

Overall Remarks for the quarter based on above:

Commissioner of Income tax

Proforma- 'D' of Annexure I

Annual performance report of the counsel for the Fin. Yr. _____

| | | | |
|-----|--|---------|-------|
| 1. | Name of the Region/Charge | | |
| 2. | Name of the Counsel | | |
| 3. | Category (Sr./Jr.) | | |
| 4. | Date of birth | | |
| 5. | Date of 1st engagement | | |
| 6. | Date of expiry of tenure | | |
| 7. | Ref. No, of CBDT's sanction letter vide which last renewal was granted. | | |
| 8. | Number of cases handled during the period under report | Appeals | Writs |
| | | | |
| 9. | Number of cases decided by the High Court (a) in favour of the Department (b) against the Department | | |
| 10. | Number of cases handled before the IT AT/other Courts | | |
| 11 | Number of cases out of those in col. 10 above: decided in favour of the Department against the Department | | |
| 12. | Whether prompt in applying for certified copy and furnishing the same to the department | | |
| 13. | Quality of written opinion | | |
| 14. | Does the counsel take keen interest in his work and is generally alert and responsive to the Department's interest in litigation entrusted to him? Comments should also be made on the quality of drafting/opinion etc. Specific comments should be given about his promptness in, (a) Informing the department from time-to-time regarding hearing of cases, supply of copies of judgments etc. (b) Taking steps for vacation of stay | | |
| 15. | General assessment on overall performance | | |

Proforma –E of Annexure I

Monthly report to be submitted by the Counsel to CIT (J)/Addl. CIT (J) for the month of.....

Name of the Counsel:

| Sl.no | Name of the Case and Appeal No | CIT Charge/AO concerned | Status of the case | Remarks |
|-------|--------------------------------|-------------------------|--------------------|---------|
| | | | | |
| | | | | |
| | | | | |

Comments- if any.,,.....

Date/Place

(Signature)

Copy to:

CIT (concerned)

Annexure-II

SCHEDULE OF FEES AND ALLOWANCES AND TERMS OF PAYMENT

The fees and allowances payable to Senior Standing Counsels are given hereunder:

1. For appearance in the High Court (subject to exceptions in para 9 & 10 below)

| | |
|--|---|
| 1.1. In respect of appeal under section 260A of the Income-tax Act or Civil or Criminal Writ Petition under Articles 226 and 227 of the Constitution or Civil or Criminal appeals or revision petition, for first substantial and effective hearing at admission stage | Rs. 3,000 |
| 1.2. In respect of each subsequent substantial and effective hearing up to admission stage | Rs. 1,500 |
| 1.3. In respect of appeal admitted under section 260A of the Income-tax Act or reference including application under section 256(2) of the Income-tax Act or Civil or Criminal Writ Petition under Articles 226 and 227 of the Constitution, on first substantial and effective hearing following the completion of pleadings. | Rs. 6,600 Rs- 2,400 |
| 1.4. In respect of each substantial and effective hearing, following the first hearing | |
| 1.4.1. In respect non- effective hearing (subject to Para 11 .3 below) | Rs 500 subject to maximum of 3 hearings |
| In respect of obtaining certificate of fitness under section 261 of the Act, including drafting and typing of the petition | Rs. 3000 (each application) |
| 1.6. In respect of Civil Miscellaneous application, including drafting and typing (other than those filed with the appeal memo) | Rs. 2400 (per case) |

2. For Drafting

| | |
|---|---------------------------|
| 2, 1. For drafting of each appeal memo/writ petition/ counter affidavit or any other pleading of similar nature involving original work (including drafting of condonation petition/ notice of motion etc.) | Rs. 6,600 per appeal/writ |
| 2.2. For drafting each rejoinder/ written submission/any other pleading in answer in case of identical affidavits, written statements, etc., -in connected cases, one drafting fee will be payable in the main case and 1/6th of the drafting fee will be payable in each of the connected case | Rs- 3,600 |
| 2.3. Written opinion: Other than what is referred in Para 7.6 of Annexure I) | RS. 3600/ (per case) |

3. For Conference

| | |
|---|--|
| Conference fees (with Assessing officer or above) | 1200/- per conference not exceeding Rs. 3,600 per case |
|---|--|

A substantial and effective hearing is one in which either one or both the parties. involved in a case are heard by the Court. {if the case is mentioned and adjourned or only directions are given or only judgment is delivered by the Court, it would not constitute a substantial and effective hearing.

The Junior Standing Counsel rendering assistance to the Sr. Standing Counsel shall be entitled to 1/3rd of the amount specified against each item of works The Junior Standing Counsels performing the functions of Senior Standing Counsels or arguing cases independently as per the orders of CCIT shall be entitled to the full amount specified above against each item of work.

4. Retainership

The Standing counsel shall be entitled to a retainer fee at the following rates:

| | |
|--------------------------|--|
| Senior Standing Counsels | Rs. 20,000 p.m. (for Delhi and Mumbai) Rs. 15,000 p.m. (for other stations) |
| Junior Standing Counsels | Rs. 10,000 p.m. (for Delhi and Mumbai) Rs. 7,500 p.m. (for other stations) |

No separate establishment charges including telephone, etc, shall be payable.

5. Clerkage

Clerkage at the rate of 10 per cent of the appearance fee and drafting fees shall be payable to the counsel, **subject to a maximum of Rs. 8,000/- in a case or a batch of cases**

6. Out of pocket expense

The amount required for Court fees at the time of filing a case and other miscellaneous expenses including expenses for obtaining certified copies of judgement/order should be paid to the Counsel in advance by the Chief Commissioner. An account of the expenses incurred shall be rendered by the counsel to the Chief Commissioner while presenting the final bill.

7. For appearance before any other Court, ITAT, other statutory bodies, etc:

The Standing Counsel shall be entitled for fee etc. as under

a. At headquarters (the seat of High Court for which the counsel is engaged): Same as payable for appearance before the High Court.

b. Out of headquarters: When the Counsel is required to go out of headquarters in connection with any litigation matter, e.g., for conference with a Senior Counsel, Special Counsel or with the Law Officer or for appearance in any Court/ITAT/Statutory Body, etc., outside the headquarters, he will be entitled to a daily fee of Rs. 5, 100/- per day for the days of his absence from the headquarters including the days of departure from, intervening holidays and arrival back at the headquarters. However, no fee will be paid for the day of departure if he leaves headquarters after Court hours and for the date of arrival if he arrives at the headquarters before the Court hours. The daily fee will be in addition to the normal appearance fee prescribed at para 1 supra.

c. Travel/Hotel expenses: in addition to the daily fee, the Counsel will be entitled to travel expenses for travel by air (economy class) or first class AC by train. Road mileage for the journey from his headquarters to the Airport/railway station and vice versa and from the airport/railway station to the place of his stay out of headquarters and vice versa will be paid at the rates admissible to Class I officers of the Central Government having grade pay of Rs. 10,000/- in case of Sr. Standing Counsels and Grade pay of Rs. 8,700/- in case of Jr. Standing Counsels. He will also be paid a lump sum amount of Rs. 900/- as conveyance charges for performing local journey while outside the headquarters, He will also be entitled to actual expenses for stay in hotel, subject to a maximum for Rs. 5,000/- per day for Sr. Standing Counsels and Rs. 3,000/- per day for Jr. Standing Counsels.

8. Appearance fee in special circumstance

The CCIT may entrust specific duties relating to the Departmental work in the High Court for attending to duties which are not specifically covered in this instruction (such duties to be specified) to any Standing Counsel on the panel. The fees for such specified work, however shall not exceed Rs. 2,000/- per day.

9. Appearance fee in connected/covered cases

9.1. When more than one case involving identical questions/issues are heard together and decided by the High Court, the counsel shall be paid full appearance fee in the main case and Rs. 1,000/- in each of the other connected cases.

9.2. Similarly, in covered cases (where the judgement in the relevant case is squarely based upon earlier decision of the same High Court or of the Supreme Court) the counsel shall be paid only Rs. 1,000/- per case as the appearance fee. However, in case the counsel has argued the relevant case to the effect that the case was not a covered one and such arguments duly find a mention in the judgement, the case will not be considered a covered one and the counsel shall be entitled for full appearance fee.

10. Uncontested matters

A case shall be regarded as uncontested if the same is withdrawn by the plaintiff/appellant or dismissed in limine or otherwise decided by the court exparte. In uncontested cases, the fee shall be 1/3rd of the appearance fees as applicable to the stage of the case, otherwise payables but if such a case is later on restored and decided in contest, the remaining 2/3rd of the fee will be payable.

11. General

11.1. The rates specified above are primarily applicable to income-tax cases but will apply, mutatis mutandis, to cases relating to other direct taxes and any other matters assigned by the department. In all cases effective appearance is necessary for the Counsel to claim fee,

11.2. No fee will be payable in cases where no legal work is required to be done. For examples cases in which the interest of the department is to be watched pending instructions, the cases involving transmission of records to the Supreme Court inspection of the Court record for ascertaining the position of the case or other information needed etc.

11.3. No fees for adjournment - No fee will be payable to the Counsel if an advance notice

about the adjournment has been circulated or the case has been adjourned at his request due to the reasons personal to him.

11.4. If the Counsel appears at the instance of the Union of India or for parties other than the Union or India whose scales of fee are not inconsistent with that of the Union of India, he will be entitled to only one set of fees.

11.5. When the Counsel does not argue the case himself but assists the Law Officer or any other special Counsel, he will be entitled to the same fee as is payable to him as if the case has been argued by him.

11.6. When cases argued before a Single Judge are referred to a Division Bench or to a Full Bench, separate fee at the rates prescribed at Para I of this Annexure will be paid for appearance before each Bench.

11.7. Late submission of certified copies of the judgment

11.7.1 20% of the appearance fees would be deducted if the application for certified copy is not made within two working days, excluding the date of pronouncement of the judgement.

11.7.2 Further, 20% of the appearance fees shall be deducted if certified copy of the judgement is not handed over to the jurisdictional Commissioner/Director of Income-tax within three working days of the judgement being ready for delivery. In case where the jurisdictional Commissioner/Director of Income-tax is stationed at a different city/town from the one where the High Court bench is located, the time limit for delivery of certified copy of judgment would be, five working days of the judgment being ready for delivery.

Provided clause 11.7.2 shall not be enforced if the counsel intimates the Commissioner/Director concerned or the officer nominated by him, of the conclusion of hearing giving particulars of appeal and makes available to him an ordinary copy of the judgement as soon as the same is available (but before the date of judgement being ready for delivery) along with the copy of receipt of making application for certified copy within period stipulated at 11.7.1 above.

12. Procedure for submission and payment of bills to Standing Counsels

12.1. The Counsel should submit professional bills in pro forma 'X' of this annexure by the 10th of every Month:

12.1.1. Bills for drafting should be submitted in the month succeeding the month in which the appeal etc. was filed,

12.1.2 Bills for appearance for admission and regular hearings as referred in Para I of annexure II should be submitted in the month succeeding the month in which relevant orders/judgements are received.

12.2. Bill claiming retainer fee as referred in Para 4 of annexure II should be submitted in the

month succeeding the month of retainership.

12.3. Wherever Jr. Standing Counsel has assisted a Sr. Standing Counsel, a combined bill should be submitted by the Counsels.

12.4. The bills shall be scrutinized within 30 days of receipt and deficiency or excess claim if any shall be communicated to the counsel within a week of such scrutiny. The scrutiny of bills should not be kept pending due to non-availability of funds,

12.5. After passage, the Bill should be arranged in seriatim of receipt, for payment.

12.6. The cheque should be sent to the counsel concerned giving particulars of bills covered by the payment,

12.7. In order to resolve any issues pertaining to bills, the PCsIT/CsIT should have periodical, preferably quarterly meetings with the counsels

Proforma-'X' of Annexure - II

Bill for claim of professional fees by Standing Counsels (casewise) to be submitted to the PCIT/CIT concerned/CIT (J)

PRE-RECEIPTED

| | Name of the Counsels | Senior | Junior |
|---|----------------------|--------|--------|
| 1 | CIT Charge | | |
| 2 | Case Title | | |
| 3 | Asst. Yr. Involved | | |
| 4 | ITA No./WT No. etc. | | |

in case Counsel has assisted the Senior Counsel in z case, both the names should be mentioned and combined bill to be submitted

PART A (Bill for Drafting), as applicable

(Amount in Rs.)

| | | Senior | Junior |
|---|---|--------|--------|
| 1 | Appeal memo u/s 260A | | |
| 2 | Writ petition | | |
| 3 | Counter affidavit or any other pleading of similar nature involving original work | | |
| 4 | Rejoinder/written submission or any other pleading in answer | | |
| 5 | Written opinion | | |
| | Total | | |

PART B (Bill for appearance etc.), as applicable

(Amount in Rs.)

| | | Senior | Junior |
|----|--|--------|--------|
| 1 | Admission stage (Whether Connected or Covered case- Yes / No | | |
| 2 | First substantial and effective hearing after admission (Whether Connected or Covered case- Yes / No) | | |
| 3 | Subsequent substantial and effective hearing (Whether Connected or Covered case- Yes / No | | |
| 4 | Certificate of fitness (Para of annexure II) | | |
| 5 | Civil Miscellaneous application (Para 1.5 of annexure II) | | |
| 6 | Date of Judgement | | |
| 7 | Date of making application for certified copies | | |
| 8 | Deduct 20% of (1)+(2)+(3) if date at (7) is more than 2 days from (6), excluding the date of judgement | (-) | (-) |
| 9 | Date of judgement ready for deliver | | |
| 10 | Date of furnishing ordinary copy to the CIT concerned/CIT Judicial (if applicable) | | |
| 11 | Date of furnishing certified copy to the CIT concerned/CIT Judicial | | |
| 12 | Deduct 20% of (1)+(2)+(3) if date at (11) is more than 3 (5 for outstation) days from (9), excluding the date or order ready for delivery. (Not applicable if the counsel intimates the CIT/DIT concerned of the conclusion of hearing giving particulars of appeal and makes available to him an ordinary copy of the judgement as soon as the same is available (but before the date of certified copy being ready for delivery) along with the copy of receipt of making application for certified copy within period stipulated at Para 11.7.1 of annexure II. | (-) | (-) |
| 13 | Conference fees | | |
| 14 | Clerkage | | |
| 15 | Out of pocket expenses | | |
| 16 | For appearance at any other Court(ITAT/Statutory bodies (as per Para 7 of annexure II) | | |
| 17 | Appearance fee in special circumstances (as per Para 8 of annexure I.I | | |
| | Total | | |

Certified that the above information is correct and in accordance with the terms of engagement. The above claims have not been made earlier,

Revenue
Stamp

Received Payment

Signature and Name

Signature and Name of Jr. Standing Counsel
of Sr. Standing Counsel Mobile/Tel. No.
Mobile/Te1. No.

For office use only

| Deduction as applicable | | Senior | Junior |
|-------------------------|--|--------|--------|
| 1 | Connected/Covered cases (as per Para 9 | | |
| 2 | Uncontested cases (as per Para 10 | | |
| 3 | Late submission of certified copies | | |
| 3a | As per Para 11.7,1 of Annexure II | | |
| 3b | As per Para 113.2 of Annexure II | | |
| 4 | Others (specify`) | | |
| 5 | Total deduction | | |

Total Bill

| | Senior St. Counsel | Junior St. Counsel |
|--|--------------------|--------------------|
| Part A | | |
| Part B | | |
| Total Amount claimed | | |
| Deductions, if any (for office use) | | |
| Amount assed for payment (for office use) | | |

The counsel shall be intimated of the deductions made before payment of the bill.

Signature and Name of the D.D.O.

***ANNEXURE B4: CBDT LETTER NO. F. NO. 278/M-23/2021-ITJ
DATED 9TH JUNE, 2021 - for engagement of Additional Solicitor
General(ASG).***

F.No.278/M-23/2021-ITJ
Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Direct Taxes
ITJ Section

Room No.12, 5th Floor,
Jeevan Vihar Building,
Parliament Street, New Delhi
Dated the 9th June, 2021

To,

All Principal Chief Commissioners of Income Tax,

Sub: - Engagement of Additional Solicitor General (ASG) to defend matters on behalf of
CBDT/Department - Clarification - reg.

Madam/Sir,

1. The CBDT has been receiving proposals for the engagement of ASG as Special Counsel for representing the Department in important cases before various High Courts as per Instruction No. 3/2008. In view of the notification dated 01.10.2015 of Ministry of Law & Justice (Department of Legal Affairs), it is clarified that the proposals for the engagement of ASG to defend matters on behalf of CBDT/Department in a Court within her or his jurisdiction on normal terms and conditions as specified in Ministry of Law & Justice's Notification dated 01.10.2015 (copy enclosed) are not required to be sent to the Board for approval.
2. The concerned Pr. CCIT/CCIT may appoint ASG directly under intimation to the Board provided that she/he is satisfied that the following conditions are met:
 - a. Important/complex question(s) of substantial law having wide ramification(s) is/are involved, or
 - b. any statutory provision is under challenge.
3. This issues with the approval of Member (A&J), CBDT.

Yours faithfully,

Encl: as above.

(Smriti Bharadwaj)

Joint Commissioner of Income Tax (OSD), CBDT

Copy to: Data Base Cell with a request to upload on "<https://www.irsofficersonline.gov.in>".

***ANNEXURE B5: THE CBDT LETTER NO. F. NO. 278/MISC/M-23/2021-ITJ
DATED 18TH AUGUST, 2021 - Revised Guidelines – Appointment of Special Counsels
to represent Income Tax Department before Courts and Tribunals***

F. No.278/M-23/2021-ITJ
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
(Audit & Judicial Division)

Dated the 18 August, 2021

To

The Principal Chief Commissioners of Income-Tax,
The Principal Directors General of Income Tax and
The Directors General of Income Tax (Investigation)

Respected Madam/Sir,

Subject:- Appointment of Special Counsels to represent Income Tax Department before Courts and Tribunals; Revised Guidelines.

1. In order to streamline the procedure for engagement of Special Counsels and to bring about uniformity in the proposals being submitted to the Central Board of Direct Taxes; in supersession of the Instruction No. 3/2008 dated 25.03.2008 and letters and clarifications issued on the subject, the revised guidelines are as under:-
2. As the Standing Counsels are empanelled through a rigorous selection process involving the levels of the Pr. Chief Commissioner of Income-tax, Central Board of Direct Taxes, Minister of State (Finance) and concurrence of Ministry of Law & Justice, as far as possible Standing Counsels should be engaged to represent the cases before Courts and Tribunals. Request should be made for appointment of Special Counsels only in exceptional circumstances.
3. The proposal should be submitted along with duly filled in Proforma-A and Proforma-B of these guidelines.
4. The PCCIT/CCIT/DGIT/PCIT/PDIT/CIT/DIT recommending the proposal should ensure that the Counsel being recommended for engagement as Special Counsel has exceptional expertise and experience in handling the nature of the issues in dispute.
5. The Proposal must necessarily be sent only with the approval of the Pr. CCIT of the region.

6. The proposal must be sent well in advance, giving adequate time for processing the same, as the proposal for appointment of a Special Counsel is to be approved by the Minister of State (Finance) with concurrence of the Ministry of Law & Justice.
7. No case should be assigned to any Counsel other than a Standing Counsel. The cases may be assigned to the Special Counsel only after the sanction order of appointment is issued by the Judicial Section of Central Board of Direct Taxes.
8. These guidelines are being issued with the approval of the Central Board of Direct Taxes: Chairman & All the Members.
9. These guidelines may kindly be brought to the knowledge of all the officers in your region.

With regards,

Yours sincerely,

(ANKUR GOYAL)

Under Secretary to Government of India

Room No. 12, Jeevan Vihar Building,

Sansad Marg, New Delhi - 110001

Enclosed: Proforma-A & B

Copy to:

- a. PS to MoS(F)/PS to Revenue Secretary
- b. The Chairman, and Members, CBDT
- c. JCIT, Data Base Cell for uploading on irsofficersonline.gov.in
- d. Guard File

F. No.278/M-23/2021-ITJ

PROFORMA - A

FOR ENGAGEMENT OF SPECIAL COUNSEL

| | | | |
|-----|-------|--|--------|
| 1 | | Name of case | |
| 2. | | PAN | |
| 3. | | Assessment year(s) | |
| 4. | | Appeal No./Case No./WP No. | |
| 5. | | Appeal/Writ/SLP by Department (D) or Assessee (A) | |
| 6. | | Court/Tribunal where matter is to be contested | |
| 7. | | Issue(s) involved in brief, (Separate annexure may be attached, as deemed fit) | |
| | | Reason(s) as to why a Special Counsel is required to be appointed | |
| 8. | | List of current Standing Counsels or Special Public Prosecutor (SPP) empanelled by the Department | |
| | | Reason for not appointing Standing Counsel/SPP from the empanelled list | |
| | | Name and address of the Special Counsel | |
| | (ii) | Written consent of the Special Counsel and her/his availability to represent the Department's case (Consent letter to be enclosed) | Yes/No |
| | (iii) | Fee of engagement of the Special Counsel for: (a) Appearance (b) Conference (c) Opinion (d) Vetting of written submissions (e) Others, if any | |
| | (iv) | Bio-data highlighting the professional excellence of the Counsel enclosed | Yes/No |
| | (v) | Performance of Counsel as Special Counsel for the Department in last 3 Financial Years in Proforma-B enclosed | Yes/No |
| 10. | | Next scheduled date of hearing before the Court/Tribunal | |
| 11 | | Any other information | |

Name and Signature of CCIT/DGIT/PCIT/PDIT/CIT/DIT

(Recommending Officer) Date:

Name and Signature of Pr. CCIT, Date:

PROFORMA-B

PERFORMANCE OF THE COUNSEL AS SPECIAL COUNSEL ON BEHALF OF
THE DEPARTMENT IN LAST THREE FINANCIAL YEARS

| S.No/ F.Y. | Number of Cases Assigned/ No. of cases decided | Number of Cases decided in favour of Revenue | Number of Cases decided against Revenue | Number of Cases setaside | Percentage of Success (Favour-100%, against-0%, Set-aside-50%) |
|-------------------|---|---|--|---------------------------------|---|
| A | B | C | D | E | F |
| 1 . | | | | | |
| 2. | | | | | |
| 3. | | | | | |

ANNEXURE B6: CONTACT LIST OF COUNSELS Allocated Pr. CCIT,
Mumbai Region as dated 01.11.2023.

Contact List of Counsels as on 01.11.2023

| Sr. No. | Junior Standing Counsels | Mobile No. |
|----------------|--|--|
| 1 | Ms. Shilpa Goel A-63, Mamta Apartments, Appasaheb Marathe Marg, Prabhadevi, Mumbai-400025 | 8452097640 shilpagoel.kcl@gmail.com |
| 2 | Ms. Sneha Prabhu B-1602, Sukhada Building, Sir Pochkhanawala Road, Worli Sea Face, Mumbai-400018 | 9819025885 snehacprabhu@gmail.com |
| 3 | Shri Vipul Arun Bajpayee Off.-09, 1st Floor Om Kripa Apt, New Station Road Kalyan (West) 421301 | 9967345924 vipul.bajpayee@gmail.com |
| 4 | Ms. Sangeeta Yadav 60-D, 4th Floor, Bhupen Chamber, Dalal Street, Fort, Mumbai-400001 | 9699663810 sy1276711@gmail.com |
| 5 | Ms. Mohinee Prakash Chougule Off. No.3, Doshi Building Com-pound, Sunderbaugh Lane, Kurla (W), Mumbai- 400070 | 8452027029 mohineecho u- gule1989@gmail.com |
| 6 | Ms. Samiksha Kanani KK Chamber, Ground Floor, Sir PT Marg, Behind ICICI Bank, Off D N Road, Fort, Mumbai-400001 | 9833003057 samik-shashah86@gmail.com samikshakanani@gmail.com |
| 7 | Ms. Swapna Gokhale Office- CAT Bar Association, 3rd Floor, Prescott Road, Fort, Mumbai-400001. Resi—202, Rama-Laxmi CHS, Off. Gokhale Road, Mulund (East), Mumbai 400 081. | 9220793799 advswapnago-khale@gmail.com |
| 8 | Ms. Anuradha A. Mane Building no. 125, Shree Dattakrupa CHS, B/603, Nehru Nagar, near Ganesh Hall, Kurla West, Mumbai -400024 | 9323802255 adv.anuradha.mane@gmail.com |

| | | |
|----|---|--|
| 9 | Shri Siddharth S. Chandrashekhar 1st floor, 'A' Block, Amarchand Mansion, Madame Cama Road, Mumbai-400001 | 9820415067 sid.cshekhar@gmail.com |
| 10 | Shri Pritish Chatterjee Sea Glimpse Apartment, 1st Floor, Petro's Guest House, Colaba, Mumbai-400001 | 8600867702 adv.pritishchatterjee@gmail.com |
| 11 | Shri Ruju R. Thakker 79, Chamber No. 9, N M Road, Fort, Mumbai-400001 | 9699055550 advrujuthak-ker@gmail.com |
| 12 | Ms. Maya Majumdar Jeevan Vihar Building, Room No. 4, Ground Floor, 75, Mumbai Samachar Marg, Fort, Mumbai-400001 | 9022228611 9433175030 maya.roy1@gmail.com |
| 13 | Shri Mahesh Vinod Rajpopat Office No.1, Neelkunj, Near Asha Hospital, Daftary Road, Malad(East), Mumbai-400097 | 9870918709 maheshrajpopat18@gmail.com |
| 14 | Jay Kamal Vora A-802, Vrindavan, Rambaug lane, off SV Road, Borivali West, Mumbai-400092 | 9920988484 advocatejayvora@gmail.com |
| 15 | Eshaan Saroop Bungalow No. 6(Ground Floor), Customs Quarters, Adenwala Road, Five Gardens, Matunga East, Mumbai-400019 | 8128231269 eshaansaroop@gmail.com |
| 16 | Dhananjay Balkrishna Deshmukh 5, Apeejay House, Ground Floor, 130, Mumbai Samachar Marg, Fort, Mumbai-400023 | 9869182800 dhananjaybdeshmukh@gmail.com |
| 17 | Amar Shyamprasad Mishra 306, Vardhman Chambers, 17-G, Cawasji Patel Street, Fort, Mumbai-400001 | 9821029453 9702277799 amar.mishra810@gmail.com |
| 18 | Netturi Chinna Ranganayakulu 77, Nagindas Master Road, Prakash Chamber, TVS-3, 2nd Floor, Fort, Mumbai-400023 | 9820177317 nitturiranga@gmail.com |
| 19 | Hussain Ishak Dholkawala Lentin Chambers, Cabin No. 10, Gr. Floor, Casablanca Trade Place Pvt. Ltd. Shop No. 4, Next to BSE, Kala Ghoda, Fort, Mumbai-400001 | 8097224512 cshussain01@gmail.com |

| | | |
|----|--|---|
| 20 | Mayank Joshi Office No. 207, Arjun Centre, BS Devashi Marg, Govandi Stn. Road, Govandi East, Mumbai-400088 | 9867307983 advmayankjoshi@gmail.com |
| 21 | Prathmesh Prakash Bhosle C/o. MNSQ Legal, 4th floor, Building No. 5, Rajabhadur Compound, Fort, Mumbai-400001 | 9619998386 advocateprathmesh@gmail.com |
| 22 | Dhanalakshmi Sankaranarayanan Krish-naiyer 1407, Garden View CHS, Royal Palms Estate, Goregaon East, Mumbai-400065 | 9833185363 diyer2009@gmail.com |
| 23 | Mr. Deval K. Anja 701/C, Vrindavan, Vrajbhoomi Complex, Link road, Kandivali West, Mumbai-400067 | 9930393335 devalanja@lawyer.com |
| 24 | Devendra Babulal Harnesha 123, C Shanti Bhavan, 2nd floor, Office No. 11, V.P. Road, Girgaon, Mumbai-400004 | 8767608001 7977109511 Devendra.harnesha@gmail.com |

| Sr. No. | Senior Standing Counsel | Mobile No. |
|---------|--|---|
| 1 | Shri P.C. Chhotaray B/903, Gundecha Hills, Near S.M. Shetty School, Chandivali Road, Powai, Mumbai- 400 072 | Tel. Nos. 28577549 (R/O) & 9869407549(M) pcchhotaray@ya- hoo.in |
| 2 | Shri Suresh Kumar Modi House, 4th floor, Bora Masjid Street, Near Old Handloom House, Fort, Mumbai- 400 001. | Tel. Nos. 22984902 (O) & 9323972436 (M) skthakur2@ya- hoo.com |
| 3 | Shri Akhileshwar Sharma Office: 1) 4/25, Kamal Mansion, 1st Floor, V.S. H. Complex, Arthur Bunder Road, Near Radio Club, Colaba, Mumbai-400005. 2) Unit No. 48, 1st Floor, Grand Building Annexe, Strand Road, Colaba, Mumbai 400005. | Tel No. 22837216, 22850284 (O) 26846077 (Resi.) 9619444162 akhil2406@gmail. com |
| 4 | Shri Nirmal Chandra Mohanty Flat No. 907/B, Adityavardhan Bldg, 186-B, Saki Vihar Road, Andheri East, Mumbai-400 072 | 9004685340 mohantynirmal@ya- hoo.co.i n |
| 5 | Ms. Sushma Nagaraj 218, DBS Business Center, 213, Raheja Chambers, 2nd Floor, Free Press Journal Road, Nariman Point, Mumbai-400021 | 9886834499 sushma@converselaw.in |

| | | |
|----|---|--|
| 6 | Shri Manoj Laxman Shirsat Address 1:- Room No.7, First Floor, Western India House, Sir P.M. Road, Fort, Mumbai-400001 Address 2:- 501, Hamam House, 36, Hamam Street (Ambalal Dhoshi Marg), Fort, Mumbai-400023 | 9769847670 juristmanoj@rediffmail.com |
| 7 | Shri Subir Kumar No. 155, 1 5th floor, Maker Chamber- III, Nariman Point, Mumbai- 400021 | 9769441090 subirkumar@sdsadvocates.com |
| 8 | Shri Devvert Singh 22/43, Raja Bahadur Compound, Tamarind Lane, Above Garden Jolly Restaurant, Fort, Mumbai-400001 | 9930999409 adv.devarya@gmail.com |
| 9 | Shri Yogeshwar S. Bhate Om Dnyanesh C.H.S. Ltd., Flat no.-5, Ground Floor, S. G. Barve Marg, Kurla(W), Mumbai-400070 | 9920473770 9869073770 yogeshbhate@yahoo.co.in |
| 10 | Arjun Gupta 107, Jolly Bhavan No. 1, 10, New marine Lines, Mumbai-400020 | 9820070060 arjung5198@gmail.com |
| 11 | Ms. Prachi Navneet Wazalwar 308, Jolly Bhavan No. 1, 10, New Marine Lines, Mumbai-400020 | 9930112354 prachimanekar@gmail.com |
| 12 | Yashodeep Pradeep Deshmukh Office No. 39A, ground floor, Readymony Mansion, Teekay Shopping Centre, Next to Akbarallys, Veer Nariman Marg, fort, Mumbai-400001 | 7738520325/8080519024 ypdchambers@gmail.com |
| 13 | Mr. Vikas T. Khanchandani A-604, Garden Estates, Off. Link Road, Laxmi Nagar, Goregaon West, Mumbai-400104 | 9967879122 Khanchandani.vikas@gmail.com |
| 15 | Pranil K. Sonawane 106, Yusuf Building, 1st floor, Opp. Zara Store, Hutatma Chowk, Fort, Mumbai-400001 | 9619646233 pranil@klslegal.in |

| | | |
|----|--|---|
| 16 | Mrs. Anamika Malhotra 501, Dosti Florentine, Dosti Acres, wadala east, Mumbai-400037 | 9820698770 Malhotraanamika20@yahoo.i n |
| 17 | Mamta Ramchandra Omle B-37, A-402, Surbhi, RMMS, Gokuldharm, Goregaon East, Mumbai-400063 | 9869334968 Mamta.omle@gmail.com |
| 18 | P. A. Narayanan C-1403, Odyessey, Bhakti Park, Wadala east, Mumbai-400037 | 9820279948 narayananpa@gmail.com |
| 19 | Ravi Subash Rattesar Office No. 23, ground floor, Plot No. 43, Raja Bahadur Compound, Opp. Garden Jolly Restaurant, Tamarind Lane, Fort, Mumbai-400001 | 9324404854 advravi1978@gmail.com |
| 20 | Mrs. Shehnaz (Sheroo) Vispy Bharucha Nee Sheroo P Daruwalla Jewellers Apartments, Flat No. 1, 56 pedder road, Mez floor, Mumbai-400026 | 9821332584 /9820225748 svbharucha@gmail.com |
| 21 | Dinesh Ramesh Gulabani Office No. 5A/B, 2nd floor, Kamanwalla Chambers PM road, Near Horniman Circle, fort, Mumbai- 400001 | 9823056635 /9765007976 gulabanidineshr@gmail.com |
| 22 | Jasbir Singh Saluja 1, Krishna Niwas, ground floor, bhawani Shankar road, dadar west, Mumbai-400028 | 9819466208 Jasbirsaluja.067@gmail.com |

ANNEXURE B7 : [F. No. 272/M-26/2015(ITJ)] DATED 07.12.2018 -Non-removal/ delay in removal of defects of pending appeals before Hon'ble High Courts

URGENT

F. No. 272/ M-26/2015(ITJ)
Government of India
Ministry of Finance
Department of Revenue
Central Board Direct Taxes
Audit & Judicial Division

New Delhi, 7th December, 2018 To

All Principal Chief Commissioners of Income Tax,

Madam/ Sir,

Sub: Non-removal/ delay in removal of defects of pending appeals before Hon'ble High Courts — reg.

Kindly refer to the above

2. Non-removal/ delay in removal of defects in pending appeals before the Hon'ble High Courts is a matter of great concern for the Board, In many cases, Departmental appeals pending before High Courts have been dismissed due to non-removal/ delay in removing of defects as pointed out by the Registry of the High Court, The Hon'ble Supreme Court has also started taking serious view of the delay in filing of the SLPs. In some recent case where there was inordinate delay in removing objections at the level of High Courts, Hon'ble Supreme court has directed that officers responsible who failed to remove the objections must be identified & their names be disclosed in affidavits.

3. In this backdrop I am directed to inform the following:

- a. PCIT/CIT is personally responsible as per Instruction No.7 of 2011 to ensure proper filing of appeals in High Courts & consequential w up action, Proper filing of appeals implies that defects / office objections raised by High Court's Registry, if any, should be promptly removed within 7 days, to ensure that the memorandum of appeal is accepted by Court Registry & it gets numbered & listed for hearing before the High court, Any lapse in this regard will be viewed seriously.

- b. High Court Cell Shall take daily updates w, appeals filed on any day & check for any defects/ office objections raised by the Court's Registry. If objections are raised, it shall procure the copy of objections from Standing counsel or the Court's Registry and inform the concerned PCIT/CIT in writing to address the defects/ office objections and get them removed within 7 days. High Court Cell shall keep a follow up until the defects/ office objections are removed & matter is listed before High Court,
- c. The PCTT/CTT shall coordinate with standing counsel and shall ensure that all defects are removed in time.

4. It may be brought to the notice of all officers in your region,

This issues with the approval of Member (A&J)

Abhishek Gautam,
DCIT (OSD), ITJ-1, CBDT
Tel 23741832

ANNEXURE C1 : INSTRUCTION NO.7/2011[F.No. 279/MISC/M-42/2011-ITJ] DATED 24.05.2011.

Section 260A of the Income Tax Act, 1961 – High Court – Appeal to – Instructions regarding standard operating procedure on filing of appeals to High Court under section 260A and related matters.

INSTRUCTION NO 7 /2011 [F.NO. 279/MISC./M-42/2011-ITJ], DATED 24-5-2011

1. The Government has formulated the National Litigation Policy 2010, for conduct of litigation on its behalf. The policy declares:

“Government must cease to be a compulsive litigant. The philosophy that matters should be left to the courts for ultimate decision has to be discarded. The easy approach, ‘let the court decide’, must be eschewed and condemned.”

2. In furtherance of the above stated policy and to achieve the ‘**zero delay regime**’ in matters of filing appeals and in suppression of the existing Instructions on the subject of filing of appeals to High Court, in general, and Instruction No. 1038 dated 3-2-1977; Instruction No. 1777 dated 4-11-1987; Instruction No. 1957 dated 22-12-1998; Letter Dy No. 111 /Ds (J)/2004-ITJ dated 25-3-2004; Letter No. 272/77/2007- ITJ dated 24-9-2008; Letter No. 279/Misc.142/2008-ITJ(Pt) dated 23-10-2008; Letter No. 279/ Misc/142/2008 dated 19-11-2008 and Letter No. 279/Misc/M-29/2010-ITJ dated 31-8-2010, in particular, the following Instructions are issued herewith for compliance by all concerned:

1. Responsibility for Filing of Appeal to High Court

Subject to the Instructions for the time being in force on the monetary limits for filing appeals issued by CBDT under section 268A, the jurisdictional CCIT shall be the authority to decide whether to contest an order of the ITAT, in the light of the facts and circumstances of a particular case and the statutory provisions. He shall take a view in the matter after taking into consideration the recommendations of the authorities below. Once the CCIT communicates his decision to contest a particular order of ITAT, it shall be the responsibility of the CIT to ensure timely and proper filing of appeal in the High Court and consequential follow up actions.

2. Time Lines for Filing of Appeals in the High Court under section 260A of the Act

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

3. Appeal Effect and Scrutiny Report:

- i. On receipt of the order of the ITAT, the Assessing Officer (Assessing Officer) shall ensure that appeal effect is given timely and properly. The Range Head and the CIT shall monitor timely appeal effect in all the orders of the ITAT.
- ii. With a view to provide relevant inputs to the decision making authority, a format **for scrutiny report** is prescribed herewith at **Annexure-II**, which envisages basic record based information to be filled-in by the Assessing Officer and inferential analysis

- beginning at the level of the Range Head. The parts to be filled-in by the Assessing Officer and Range Head have been specified. However, the CIT may, in his discretion, allow the Assessing Officer to fill up the sections meant for Range Head or vice versa, if the situation so demands, to avoid delay.
- iii. In respect of appeals decided in favour of revenue, the Assessing Officer shall submit only Part I of the proforma in Annex II to the CIT through Range Head and there will be no need to fill in other parts of the proforma in such cases.
 - iv. Appeal effect should be particularly monitored by the CIT in the cases in which the ITAT has decided certain issues in favour of the assessee and set-aside/ remanded back other issues to the Assessing Officer. The set-aside issues must be decided on priority.

4. Quality of Appeals:

- i. An appeal to the High Court or the Supreme Court can be filed **only on 'Substantial Questions of Law'**. The CCsIT/ CsIT have to bestow their personal attention on this issue while taking decision to file appeal under section 260A of the Act. The Substantial Questions of Law arising out of the order of ITAT must be clearly identified and suggested draft question of law should be sent to the Standing Counsels for their consideration
- ii. Although the expression 'substantial question of law' has not been defined anywhere in the statute, the Supreme Court in the case of *Sir Chunilal Mehta & Sons v. Century Spinning & Mfg. Co. Ltd. AIR 1962 SC 1314 (applied by the Apex Court in M Janardhana Rao v. JCIT 273 ITR 50)*, has laid down the following tests to determine whether a 'substantial question of law' is involved:
 - a. Whether the issue directly or indirectly affects substantial rights of the parties?
 - b. Whether the question is of general public importance?
 - c. Whether it is an open question in the sense that the issue has not been settled by pronouncement of Supreme Court?
 - d. Whether the issue is not free from difficulty?
 - e. Whether it calls for a discussion for alternative views?
- iii. Perversity of facts also constitutes 'Substantial Question of Law' as it falls in (d) and (e) above. Hon'ble Supreme Court in *Sudarshan Silk & Sarees v. CIT 300 ITR 205* has laid down the **attributes of perversity** by holding that an order or finding is perverse on facts if it falls under any of the following categories:
 - a. The finding is without any evidence.
 - b. The finding is contrary to the evidence.
 - c. There is no direct nexus between the conclusion of fact and primary fact upon which that conclusion is based?
 - 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.

5. Proper Judicial Record Management System:

- i. A proper judicial record management system is essential for meaningful conduct of litigation. The CIT has to, *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, the remand report of the Assessing Officer on the order of the CIT(A), if any, and the scrutiny report submitted by the authorities below.
- ii. This folder should be retrieved as soon as the order of ITAT in the case is received. The scrutiny report on the order of the ITAT may be processed through this folder (where other relevant papers including the scrutiny report while filing appeal to ITAT should be available). If the appeal to High Court is filed under section 260A, the relevant papers (scrutiny report, memo of appeal etc) should also be linked to the same folder.
- iii. These judicial folders should be easily retrievable once the judgment of the High Court in the case is received, so that the decision to file SLP is taken without making reference to the Assessing Officer / Range Head and proposal to file SLP is processed in the office of the CIT timely.
- iv. Likewise, a separate judicial folder should be maintained in case of assessee's appeal under section 260A / writ petitions filed in High Court, which should contain relevant documents including copy of counter & rejoinder affidavits filed in the Court proceedings.
- v. The CIT should evolve a system through which a digital copy of relevant documents such as Appeal Memo and its enclosures (assessment order, CIT(A)'s order, ITAT order etc.) are retained for use at the time of sending SLP proposal in the case, if the need arises.

6. Preparation of Memorandum of Appeals / Papers etc.

The CIT shall evolve a system in his charge to ensure that:

- i. There is proper vetting of Memorandum of Appeals as regards relevant facts therein before the appeal is actually filed;
- ii. Necessary particulars including the correct PAN and CIT charge is mentioned;
- iii. All annexures including copies of orders of authorities below are properly typed as per High Court Rules to avoid defect/office objections.
- iv. In case, any document like agreement, depositions etc. crucial to the issue 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.

An illustrative list of precautions to be taken to avoid defective appeals/objections being raised in filing appeals to High Court and guidelines for typing of appeal papers etc. are enclosed as **Annexure-III** to this Instruction. However, the Standing Counsels representing the Department's case may be further consulted on procedural aspects, wherever considered necessary.

7. Filing of Appeal and Subsequent Monitoring

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

- i. The appeal is filed in the registry of High Court within prescribed time limit as in **Annexure-I**.
- ii. Diary Number / Lodging Number and ITA 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 ITAT order at **Annexure-II**.
- iii. In case, the registry of the High court notifies any defect or office objection, immediate steps are taken to remove the same with the assistance of the filing Counsel and compliance is reported to him.
- iv. One set of appeal memo is sent to the Assessing Officer for linking the same with the relevant assessment record.
- v. In case, the assessee files counter affidavit, the appearing counsel makes available the same to the CIT/Assessing Officer to file Rejoinder affidavit to rebut the contention of the assessee.
- vi. The appeals are followed up and the Department is effectively represented at every hearing/stage.
- vii. Proper coordination with the appearing counsel is maintained at every stage.
- viii. The details and information called for by the High Court/ appearing counsels should be furnished (in quadruplicate) at the earliest and, in any case at least three days before the date fixed for hearing before the High Court.

8. Appeal/Writ Petition Filed by the Assessee.

As soon as the memo of appeal / writ petition 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. / WP No. allotted by the High Court. Factual comments on the memo of appeal / writ petition and judicial precedents in support of the Revenue's stand should be forwarded by the CIT to the Departmental Counsel for drafting counter-affidavit. The CIT should ensure that the counter-affidavit is filed within time allowed by the Court and further follow up actions taken in consultation with the counsel.

9. Power to defend Union of India, Ministry of Finance, Secretary (Revenue), Chairman CBDT etc. in cases before High Court

All the cases before High Court, pertaining to Direct Taxes, wherein Union of India, Ministry of Finance, Secretary (Revenue), Chairman CBDT, or any of these figure as respondents, should be defended by the CCIT/DGIT concerned. Powers may be delegated to appropriate officers nominated for the purpose stated above.

The Board may be approached immediately for guidance/ Instructions in case any difficulty is experienced in exercising these powers. In Writ matters against orders under section 119(2) of the IT Act, 1961 etc, appropriate instructions may be obtained from the concerned division of the Board under intimation to ITJ section.

10. Compliance of High Court Directions

The CIT shall personally ensure compliance of directions of the High Court like Dasti service, filing of counter or rejoinder affidavit or other specific directions within timeframe to avoid adverse observations.

There should be close co-ordination between field officers and Standing Counsels in the High Court so that directions are communicated in time and proper compliance is made to the satisfaction of the Court.

11. Judgments of High Court containing strictures etc.

Judgments of the High Court containing strictures or 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 CCIT/DGIT under intimation to ITJ section of the Board.

12. Assistance to Departmental Counsels

The CIT should ensure that whenever the Departmental Counsel seeks Instructions / clarifications in a case, the same are attended to by the officers concerned promptly. The counsel should be briefed properly to strengthen Revenue's case. The CIT should personally involve himself in cases involving intricate issues of facts / law having wide ramifications or involving high revenue stake.

A copy of the scrutiny report for filing appeal to High Court should invariably be made available to the appearing counsel for his assistance in preparation of the case and arguments.

13. Monitoring Mechanism:

- i. The CCIT/ CIT shall ensure due adherence to this instruction. In order to facilitate monitoring, a **Register** shall be maintained in the office of CIT as per the format prescribed at **Annexure-IV** to this instruction.
- ii. **Quarterly Report** of appeals filed in the High Court as prescribed at **Annexure-V** to this Instruction shall be furnished by the CIT to the CCIT (CCA) through his controlling CCIT by the 15th of the month following each quarter. The CCIT (CCA) in turn shall compile the report and send to the DGIT (L&R) at **DELHI_DGIT- L&R@incometax.gov.in** in digital form by E-mail before end of the month following each quarter. The DGIT (L&R) shall put up an analysis of such reports to the Member (A&J) with his comments.

14. This Instruction shall apply in all the appeals being filed in High Courts and matters related thereto with effect from 1-6-2011.

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

Annexure-I**TIMELINES FOR FILING APPEAL TO HIGH COURT**

| Sl. No. | Stages | No. of days | Total Time |
|---------|---|-------------|------------|
| 1 | Receipt of ITAT order in the office of CIT | 0 day | 0 day |
| 2 | Entry in relevant register in the office of CIT & linking with old appeal folder of the case from where appeal to ITAT was authorized | 1 day | 1 day |
| 3 | Sending the order to Assessing Officer for necessary action along with a copy to Range head | 2 days | 3 days |
| 4 | Submission of scrutiny report in prescribed proforma by Assessing Officer to Range head after giving appeal effect.* | 30 days | 33 days |
| 5 | Submission of scrutiny Report by Range head to CIT | 15 days | 48 days |
| 6 | Decision making by the CIT including consultation with the Standing counsel, if needed & submission to CCIT | 20 days | 68 days |
| 7 | Decision of the CCIT on recommendations of CIT | 7 days | 75 days |
| 8 | Sending appeal folder to the standing counsel for drafting appeal memo by CIT | 2 days | 77 days |
| 9 | Drafting of Appeal memorandum by the counsel | 20 days | 97 days |
| 10 | Obtaining Appeal Memorandum from Counsel, Vetting, preparation of sets with annexures in the o/o CIT and sending to the standing counsel for filing | 15days | 112 days |
| 11 | Actual filing in the HC registry | 3 days | 115 days |
| 12 | Intimation of Diary/ Lodging No to the O/o CIT/ CIT(J) / HC cell | 3 days | 118 days |

*The CIT shall monitor separately the appeal effect in cases where some issues have been set-aside/remanded back by ITAT to the Assessing Officer.

Annexure - II Proforma for ‘Scrutiny Report’ on ITAT’s order

Limitation to file appeal under section 260A expires on:.....(Parts 1 to 4 are to be filled-in by the Assessing Officer and 5 to 6 by Range Head. However the CIT may in his discretion, allow items in part 5 & 6 to be filled-in by Assessing Officer instead of Range Head if the circumstances so demand)

TO BE FILLED IN ALL THE CASES OF ORDERS OF ITAT 1. Particulars from the order under scrutiny

| S.No. | Points | Particulars |
|-------------|--|--|
| <i>i</i> | Name and address of the assessee | |
| <i>ii</i> | PAN | |
| <i>iii</i> | Assessment Year | |
| <i>iv</i> | ITA No. and date of the order | |
| <i>v</i> | Date of receipt of the order in the office of CIT | |
| <i>vi</i> | Who was the Appellant (Please tick the applicable) | Department or Assessee or Both in cross appeal/ cross objections |
| <i>vii</i> | Date of giving appeal effect | |
| <i>viii</i> | Overall Tax effect of the order | |

TO BE FILLED IN ONLY IN THE CASES OF ORDERS OF ITAT ADVERSE TO REVENUE

2. Information relevant to decision making for filing further appeal by the CIT, in whichever cases applicable

| | | |
|------------|---|---------|
| <i>i</i> | Whether it is combined order for more than one assessment years | Yes /No |
| <i>ii</i> | If yes specify assessment years involved and identify specific issues related to different assessment years for filing separate appeals. Use Annexure, if required. | |
| <i>iii</i> | Whether it is combined order for more than one assessee | Yes/No |
| <i>iv</i> | If yes, whether jurisdiction of all assessees falls in the same Range? | Yes/No |
| <i>v</i> | If reply to (iv) above is no, identify the Assessing Officer/Range/CIT having jurisdiction over other assessees for communication of stand taken on common issues? | |
| <i>vi</i> | If the proceeding of order under scrutiny was dependent on some other proceedings (say order under section 263/set aside order /Registration under section 12A/Approval etc), specify the present appellate status of the other proceedings along with ITA No./ W.P. No. etc. | |

Details of issues on which relief allowed by ITAT

| | | |
|----------|--|-----|
| <i>i</i> | For each issue on which relief is allowed by the ITAT specify :- | (a) |
|----------|--|-----|

| | | |
|------|--|-----------------------|
| | <ul style="list-style-type: none"> Issue involved before ITAT | (b) |
| | <ul style="list-style-type: none"> Relevant page / para No. of | |
| | (i) assessment order, | (c) |
| | (ii) CIT(A)'s order and | |
| | (iii) ITAT's order | |
| | <i>(issues involved to be mentioned in brief, for illustration - disallowance of interest for interest free loan given; repair expenses treated as capital; accrual of interest income on Bonds, deduction under section 80IB etc)</i> | (c) |
| ii | Tax effect in respect of each issue on which relief is allowed by ITAT: | (a)..... (b) (c)..... |
| iii | Whether any factual finding given by ITAT is contrary to material on record? If yes, specify in detail indicating specific para of order under scrutiny & material on record contradicting such a finding. | |
| iv | Whether similar issue involved in the case of assessee in earlier year? If yes, then mention the year and present status of appeal. | |
| v | If same issue is involved in subsequent years in the case of assessee, stand taken by the Assessing Officer/status of appeal, if any. | |
| vi | Has ITAT relied upon any judicial decision? If yes, has a copy | Yes/No/Not |
| | 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.) | applicable |
| vii | Whether the issue arises out of audit objection ? | Y/N |
| viii | If yes, whether audit objection is included in Draft Para? Also state whether Audit objection has been accepted by the department or not. | |
| ix | Is any prosecution proceeding pending or contemplated in the case on the issue on which the appeal is sought to be filed? | |

Item (iv) is extremely important, if applicable, (the involvement of issue in earlier year may already be indicated in assessment order or CIT(A) / ITAT order)

General

| | | |
|----|---|--|
| i | If aggregate tax effect in 3(ii) above is below the limit prescribed for filing of appeal in CBDT Instruction No. 3/2011? Whether the case falls in any of the exception laid down in the said Instruction? If so, specify clause No. | |
| ii | <i>Due date for submission of report to Range head (33 days from the date of receipt of ITAT order in CIT office)</i> | |

Submitted to the Addl./Jt. CIT, Range-....., for kind consideration & further action.

The assessment records in volumes are also sent herewith.

| | |
|---------------|---|
| <i>Date:</i> | <i>Signature</i> |
| <i>Place:</i> | <i>Name & Designation of the A.O.</i> |

Scrutiny report on ITAT order to be prepared by Range Head

- A. If the tax effect in 4(i) above is below prescribed limit and case does not fall in any exception of Instruction No. 3/2011, detailed scrutiny may not be taken up and only general recommendation as to whether decision of ITAT is prima facie acceptable on merits or not, may be given.
- B. In cases other than at 'A' above, the Range head will cover following points, as may be applicable, on each issue where relief is allowed by ITAT, in his scrutiny report in a separate Annexure.

| | | |
|------|---|------------------------------|
| i | <ul style="list-style-type: none"> • Description of issue involved in brief, • Basis of addition/ disallowance made, • Reasons for grant of relief. | |
| ii | Whether issue involves finding of fact only? | Reasons for grant of relief. |
| iii | If yes, whether the finding of fact is inconsistent with material on record, rendering the order of ITAT perverse? | |
| iv | If (iii) above is yes, explain which parameters of perversity are satisfied and how? | |
| v | If (iii) above is no, whether the decision of ITAT is acceptable or a miscellaneous application /Petition (MA/ MP) needs to be filed for correction of mistakes apparent from record? | |
| vi | Whether any 'Substantial Question of Law' (SQL) arises from the order of ITAT? | |
| vii | If yes, 'Substantial Question of Law' proposed to be referred to High Court, to be drafted by the Range head for assistance of CIT | |
| viii | Are judicial precedents available in support of the question framed? Mention citation. | |

Final Summary of report

| | |
|-------------------------------------|------------------------|
| Appeal is recommended on issues No. |,, &, |
|-------------------------------------|------------------------|

| | |
|--|--|
| Aggregate tax effect on issues on which appeal is recommended | |
| Due date for submission of report in CIT office <i>(48 days from the date of receipt of ITAT order in CIT office)</i> | |

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

7. Recommendation of the CIT on the scrutiny report:

- A. Issue wise recommendation of the CIT, as to whether decision of ITAT is acceptable or not, may be recorded with reasons:

Issue (a)

Issue (b) and so on

| | |
|--|--|
| Aggregate tax effect on issues proposed to be contested in the High-Court | |
| If tax effect is below prescribed limit, and appeal is recommended in view of the exceptions in Instruction No. 3 of 2011 dated 9-2-2011, specify clause No. | |

- B. Substantial Question of Law’ to be proposed to High Court, is to be framed in respect of the issues not accepted by CIT.
- C. In case of a consolidated order of ITAT 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 cases.

| | |
|--------|-----------------------------|
| Date: | Signature of the Range head |
| Place: | Name & Designation |

8. Decision of the CCIT on the recommendation of CIT:

The CCIT shall take final decision as regards filing of appeal to High Court under section 260A of the IT Act.

- i. The CCIT may approve or modify the ‘Substantial Question of Law’ proposed by the CIT or accept the order of High Court giving reasons.
- ii. In case where CIT has not recommended filing of appeal and the CCIT is not in agreement with the CIT, he may record reasons for differing with the CIT and direct filing of appeal after drafting / indicating the ‘Substantial Question of Law’ involved.

Note: While taking decision on filing of appeal where item (7)C above is applicable, the CCIT shall take steps to resolve the conflict, if any, in the stand taken by different CsIT on common issues

| | |
|--------|--------------------|
| Date: | Signature |
| Place: | Name & Designation |

9. Categorization of the final decision of the CCIT (to be recorded by CIT):

A. *The appeal is not to be filed*

- i. As the order is acceptable on merits, or
- ii. 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 CBDT Instruction No. 3 of 2011,

B. *Appeal is to be filed on the 'Substantial Question of Law' framed above*

- i. As the order is not acceptable on merits and 'Substantial Question of Law' arise, or
- ii. Though tax effect is below the prescribed limit, the case falls in exceptions (to be specified) of the Instruction No. 3 of 2011.

| | |
|--------|--------------------|
| Date: | Signature |
| Place: | Name & Designation |

10. Actual Filing of appeal:

The CIT shall ensure that further steps for filing of appeal are taken so as to meet the limits as indicated in the time line. After filing of appeal the following details shall be recorded:

Diary No. / Lodging No.:dated:

ITA No.: of

Annexure - III ILLUSTRATIVE LIST OF PRECAUTIONS TO BE TAKEN TO AVOID DEFECTIVE APPEALS/OBJECTIONS BEING RAISED IN FILING THE APPEALS BEFORE THE HIGH COURT Dates:-

- i. The dates should be written correctly and no blanks should be left.
- ii. The relevant assessment year, dates of appellate orders along with ITA No. and the date of its receipt in the CIT's office should be mentioned.
- iii. The date of order should be mentioned on the concerned exhibits.
- iv. The dates of orders in the index, in averment of appeal and in exhibits should not mismatch.

Exhibits:-

- i. All exhibits should be marked in the margin on the left side in the Memo of Appeal, whenever an exhibit is introduced.
- ii. All exhibits should be marked separately in the index along with dates.
- iii. The exhibits should be clear and copies attached should be legible.
- iv. Certified true copies of exhibits should bear the signature of the person making the averment of the correctness of the appeal filed.
- v. There should be no mistake in typing and a comparison should be made of the typed copy with the original before filing.

Time-barred appeals:-

- i. If appeals are time barred by limitation, an application for condonation of delay along with the affidavit explaining the delay should be attached.
- ii. In cases of extraordinary delay, a detailed affidavit explaining each day of delay should be attached.

Appeal title:-

- i. The Appeal title should show specific CIT charge and place for example CIT-III Chennai or CIT-XII Delhi or DIT (Exemption), Ahmedabad or CIT(C)-II, Mumbai etc.
- ii. The ITA number, that is, the appeal number given by the Appellate Tribunal should be correctly mentioned in appeal title in the memo of appeal.
- iii. The relevant section under which appeal is filed should be mentioned in the title.

Numbering of pages:-

- i. The pages should be correctly numbered and no blanks should be left either in the pages or in the index.
- ii. All pages should be initialled.

Note of appearance:-

- i. The note of appearance must be dated by the counsel (the lawyer who files the

Vakalatnama)**Flagging of relevant papers:-**

- i. The proforma, synopsis, prayers, impugned orders and exhibits should be duly flagged.
- ii. The prayer clause must be flagged.

Other details:-

- i. The synopsis should be complete and should contain a list of case laws relied upon.
- ii. Details of disputed claim must be given in rupees.
- iii. Valuation clause for Court fee payment to be written.
- iv. Denomination of Court fee stamps to be given.
- v. Confirmation of Court fee payment should be made.
- vi. The original set should be carefully prepared and no part of duplicate sets should come into or be made a part of original sets.
- vii. The paras in the appeal memo must be correctly numbered

GUIDELINES FOR TYPING AND PREPARATION OF APPLICATION U/S 260A

- i. Typing should be in double space throughout on full-scape paper. One and a half space may be used, but single space typing is forbidden.
- ii. A margin of two inches on the left and right side of the paper and at least one inch on the top and bottom of paper should be left.
- iii. The pleadings to be filed in the High Court are stitched on the left side and proper space should be left for stitching, so that the typed matter should not get hidden inside the stitches.
- iv. All the blanks regarding dates, names etc. should be filled in after minutely checking up the matter. No blanks should be left.
- v. The signing officer should write at the end of each Exhibit- “True Copy” and put his signature and name below it.
- vi. In all the exhibits, on the first page, the exhibit number should be written in good handwriting on the top right hand corner.
- vii. In the body of the petition when an exhibit is first introduced, a clarification must follow as to what it is - e.g. “ hereto annexed and marked as ‘Exhibit - A’ being a copy of the order of the Assessing Officer.....”. Therefore, the words “Exhibit - A” should be written on the left hand margin. At the end of each exhibit, the date of passing of the order (of the relevant exhibit) should be written.
- viii. The signing officer should sign both sets of papers which are meant for judges.
- ix. The High Court rules require advance service of appeal/Writ petition, reply affidavit, counter affidavit, rejoinder etc. and attachment of proof of service. The proof of service is to be attached with the original set.

- x. Certified true copy of the impugned order should be attached with the original set. In case of common order disposing off a number of appeals, a separate application seeking permission of the court for not filing the original copy of ITAT order should be moved.
- xi. Court fees stamps should be affixed on the right top corner and not in the margin.
- xii. Any cuts or erasures on the application should be initialled by the Signing Officer in the presence of the Court Officer while filing the appeal.
- xiii. Each and every section of the application should be duly flagged..

Annexure - IV Format for Register to be maintained in office of CIT

| Sr. No | Name of Assessee | PAN | A.Y. | Date of order of ITAT | ITA No. | Result of appeal | Date of receipt of order in CIT office | Date of limitation | Date of giving appeal effect | Date of filing of appeal | Diary/ lodging No. of appeal filed | Delay in filing of appeal (in number of days) |
|--------|------------------|-----|------|-----------------------|---------|------------------|--|--------------------|------------------------------|--------------------------|------------------------------------|---|
| | | | | | | | | | | | | |
| | | | | | | | | | | | | |
| | | | | | | | | | | | | |

Annexure - V QUARTERLY REPORT ON APPEALS TO HIGH COURT

CCIT (CCA) Region :

Quarter & the year for which details are furnished :

| | |
|---|--|
| Appeals before High Courts: | |
| Total no. of appeals filed before High Court during the Quarter as per Format-I Annexed. | |
| No. of appeals filed within statutory time limit | |
| No. of appeals filed with delay beyond 30 days as per Format-II Annexed. | |

Format-I: Particulars of appeals filed during the quarter ending

| Sr. No. | Name of assessee | A.Y. | Date of order of Tribunal | ITA No. | Question of law raised | Tax effect. (Rs. in lakhs) | Provision of the Income tax Act involved | CCIT Region | CIT Charge |
|---------|------------------|------|---------------------------|---------|------------------------|----------------------------|--|-------------|------------|
| | | | | | | | | | |
| | | | | | | | | | |

Format-II: Particulars of delayed appeals filed during the quarter ending

| Sr. No. | Name of assessee | of | No. of days of delay | Tax effect involved. (Rs. in lakhs) | CCIT Region | CIT Charge | Name of the CIT | Reasons of Delay | Action taken |
|---------|------------------|----|----------------------|-------------------------------------|-------------|------------|-----------------|------------------|--------------|
| | | | | | | | | | |

ANNEXURE C2 : F.NO, CIT(NaFAC)-1/58/2021-22/333 DATED 26.07.2021.

Standard Operating Procedure (SOP) for handling Writ Petitions where assessment is made under the Faceless Assessment Scheme 2019 (FAS,19)/section 144B of the IT Act, 1961(the Act) and or penalty is passed under Faceless Penalty Scheme(FPS), 2021, where NaFAC/CBDT is one of the respondents.

| | |
|---|--|
|  सत्यमेव जयते | National Faceless Assessment Centre, Delhi 2nd Floor, Eramp Delhi-110003 Jawaharlal Nehru Stadium, Delhi-110003 |
|---|--|

Dt.26.07.2021

To,

All Principal Chief Commissioners of Income-tax

Sub:- Standard Operating Procedure (SOP) for handling writ petitions where assessment is made under the Faceless Assessment Scheme 2019 (F A S ' 19)/section 144B of the I T Act, 1961(the Act) and or penalty is passed under Faceless Penalty Scheme (FPS), 2021, where NaFAC/CBDT is one of the respondents-Reg.

Madam/Sir,

1. The Central Board of Direct Taxes (CBDT)has issued detailed guidelines for the implementation of FAS 2019 dated 14.08.2020 vide F. No. 173/165/2020-ITA-I which *inter-alia* mandate that the field formations of jurisdictional charges outside t h e National Faceless Assessment Centre (NaFAC)/ Regional Faceless Assessment Centers (R e F A C s) hierarchy shall perform the j u d i c i a l functions including defending w r i t petitions.
2. The FAS 2019 has been incorporated into the Act vide the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 as section 144B of the Act with effect from 01.04.2021. In pursuance to the said amendment, the CBDT had passed order u/s 119 of the Act dated 31.03.2021 enabling all orders, circulars, instructions, guidelines and communications issued in order to implement the Scheme henceforth *mutatis mutandis* be applicable to the Faceless Assessment u/s 144B of the Act. Hence, in pursuance of the above two administrative directions, all judicial functions including defending writ petitions shall be performed by the jurisdictional Income tax Authorities, considering the original jurisdiction lies with the Jurisdictional Assessing Officer (JAO) with concurrent jurisdiction being vested in the Na FAC under sub-section (5) of section 120 of the Act for the limited purpose of assessment.

3. It is being observed that NaFAC is one of the respondents in most of the writs, because all orders under FAS 2019 or u/s 144B of the Act are issued from NaFAC. As such NaFAC has no primary role in defending the writ except in case where the scheme itself is challenged or a wider policy issue is involved. Hence, for this purpose, in each such case, the NaFAC shall authorize the Pr. CIT (Jurisdictional) as the authority to defend the case before the Hon'ble High Courts.
4. Further, the C13DT lays down the following SOP on the above subject for clarity and step-by-step guide on the matter:-

A. SOP for PCIT jurisdictional Charge being Nodal Coordinating Authority for defending writ petitions arising from the assessment/ penalty proceedings pending before NaFAC:

PCIT (Jurisdictional) has to handle the writ petition matters with assistance from office of the Pr. CCIT, CIT (Judicial) of the Region and PCIT (ReFAC) (AU) concerned. In such situation, inputs and parawise comments shall be provided by PCIT (ReFAC) (AU) as the case records during the pendency of proceedings before NaFAC will not be visible to the POT (Jurisdictional). In such cases:-

1. Information about filing of a WP before the Jurisdictional High Court shall be forwarded by CIT (Judicial) or PM (Jurisdictional) to CIT (NaFAC)-3, New Delhi as soon as possible and without any delay and on identification, the writ petition will be referred to the PCIT (ReFAC)(AU) concerned.
2. On receipt of the information from concerned Pr. CCIT (Jurisdictional)/High Court Cell/ Website of the High Court/ any other source, the CIT (NaFAC)-3, New Delhi would request ITBA for identification of the PCIT (ReFAC) (AU) involved immediately without any delay and on identification, the writ petition will be referred to PCIT(ReFAC)(AU) concerned.
3. The PCIT (ReFAC) (AU) shall examine the Writ Petition in the context of facts of the case and applicable law. The PCIT (ReFAC) (AU) can view all the case records including case history noting through the status monitor.
4. The PCIT (ReFAC) (AU) shall examine the petition of the petitioner and record parawise comments with reference to the issues involved in the writ petition and cross verify it with the information available on record for the case on ITBA. On any technical issue/ process, if required, the PCIT (ReFAC) (AU) may seek clarification/information from CIT ITBA.
5. Parawise comments so received from PCIT (ReFAC) (AU) shall be forwarded to the PCIT (Jurisdictional) and office of Pr. CCIT with the request to take necessary measures to defend the case before the Hon'ble High Court.

6. The POT (ReFAC) (AU) would make a reference for seeking specific comments to the NaFAC in the following circumstances:
 - i. Any provision related to FAS 2019 or section 144B of the Act is challenged in the writ or during the course of arguments.
 - ii. Specific inputs are required on any policy issue.

Such reference to NaFAC for comments shall be in the prescribed format as per Annexure-A and should include parawise comments of the PCIT (Jurisdictional) / PCIT (ReFAC) (AU) on the writ petition supported with necessary documents such as writ petition, assessment order, case history noting etc.

7. Reference to NaFAC on specific policy issues and on specific provisions of FAS, 2019 / section 144 B of the Act challenged, shall be made in exceptional circumstance requiring specific advice on policy matters and not on the issues related to facts of the case. This should ideally be done within 5 days of receipt of the Writ petition in the O/o PCIT (Jurisdictional) or immediately if the writ is coming up earlier.
8. The practice of seeking general comments/directions from NaFAC must be avoided.
9. The PCIT (Jurisdictional) shall be authorized by NaFAC to defend the case, give directions regarding the arguments and decide on the stand to be taken before the Hon'ble higher courts. The parawise comments/inputs/instructions to counsel (if required) shall be provided by PCIT (ReFAC) (AU) to PCIT (Jurisdictional) in such cases.
10. Till the utility for communication between PCIT (Jurisdictional) and PCIT (ReFAC) (AU) is made functional, the coordination between both the officers shall be done through office of CIT (NaFAC)-3, New Delhi. E- mail ids of the officers of CIT (3) , NaFAC are given at the end of this SOP.

B. SOP for PCIT (Jurisdictional) Charge being Nodal Coordinating Authority for defending writ petitions arising from the assessment / penalty orders completed by NaFAC :

1. On receipt of the Writ Petition, the PCIT (Jurisdictional) shall examine the Writ Petition in the context of facts of the case and applicable law. The JA0 can view all the case records including 'case history notings' through the status monitor and furnish its comments considering all the facts and legal issues involved.
2. The POT (Jurisdictional) shall examine the petition of the taxpayer and record parawise comments with reference to the issue involved in the writ petition and cross verify it with the information for the case available on record in ITBA. On any technical issue/process, if required, the PCIT (Jurisdictional) may seek clarification/information from CIT ITBA.
3. If the facts so warrant, the PCIT (Jurisdictional) may seek the comments of the PCIT (ReFAC) (AU) under whose Jurisdiction the assessment order had been passed. The PCIT (Jurisdictional) shall record reasons in writing and make reference for unmasking of the AU concerned to the NaFAC (on email <delhi.cit3neac@incometax.gov.in>

with a copy marked to Addl.CIT-3(1) NaFAC<delhi.addlcit3.1.neac@incometax.gov/in>) & DCIT 3(2) (2)NaFAC<delhi.dcit3.2.2.neac@incometax.gov.in>). After unmasking, the PCIT (Jurisdictional) and PCIT (ReFAC) (AU) may coordinate amongst themselves through email/faceless communication facility in ITBA as and when available

4. The PCIT (Jurisdictional) will make refer en cefor seeking sp ecific comments to the NaFAC in the following circumstance:
 - i. Any provision related to FAS 2019 or section 144B of the Act or FPS, 2021 is challenged in the writ or during the course of arguments.
 - ii. Specific inputs are required on any policy issue.

Such references to NaFAC are to be handled in the same manner as mentioned in para (A)(6). These references to NaFAC on specific policy issues and on specific provisions of FAS, 2019 or section 14413 of the Act or FPS 2021, challenged shall be in exceptional circumstances requiring specific advice on policy matters and not on the issues related to facts of the case. This action should ideally be done within 5 days of receipt of the writ in the O/o PCIT (Jurisdictional) or immediately if the writ is coming up earlier.

Again, the practice of seeking general comments/directions from NaFAC is to be avoided.

5. A number of writs have been filed because of apparent violation of principles of natural justice. In many such cases, the High Courts have setaside the cases back to the file of the Assessing Officer for giving a fresh opportunity and for taking into consideration the submissions of the a ssesse. When such an order is received in any case, the PCIT (Jurisdictional) will direct the JAO to immed iately create a set aside proc eedings in ITBA. After creating of the proceedings, the ITBA may be requested to reallocate the case to FAO.
6. In case of unfavorable order of Ho'ble High Court, the decision on filing of appeal or stay application before division bench if the order is of single bench or filing of SLP or otherwise shall be taken by the Pr. CIT (Jurisdictional) in acc ordan ce with existing guidelines issued by Pr. DGIT9 L&R) and CBDT f rom time to time.
7. If unfavorable order of Hon' ble High Court received in a case where proceedings are pending b efore NaFAC , inputs and comments of Pr. CIT (ReFAC)(AU) shall be obtained by PCIT (Jurisdictional) for taking a decision on acceptability or otherwise of the order.

C. SOP for Standing Counsels and CIT (Judicial) of the relevant jurisdiction:

1. The standing counsels or the O/o CIT (Judicial) shall seek comments/directions from the concerned PCIT (Jurisdictional) only. They shall not refer the writ petition directly to NaFAC.
2. During the course of defending a writ petition, if certain directions/comments are required from the NaFAC, the request for the same shall be made by the concerned PCIT (jurisdictional) as per SOP Para B.4 and not directly by the standing counsel. The standing counsel shall make a request to the concerned PCIT (Jurisdictional) for the same.

D. SOP for PCIT (ReFAC) (AU) concerned:

1. On receipt of request for giving comments on the writ, the PCIT (ReFAC) (AU) shall ensure that the AU concerned examines the petition of the taxpayer with reference to the issue involved in the writ. The AU shall cross verify and record parawise comments with the information available with the office concerned, within a time limit specified for this purpose.
2. The Pr. CIT (ReFAC)(AU) will supervise and monitor the process of framing parawise comments in accordance with FAC, 2019 / section 144B of the Act or FPS, 2021 and the orders, circulars and notifications issued thereunder. The parawise comments will be approved by Pr. CIT (ReFAC)(AU) and CCIT (ReFAC) and before they are sent to PCIT (Jurisdictional).
3. PCIT (ReFAC) (AU) concerned may coordinate with PCIT (Jurisdictional) themselves email/faceless communication facility in ITBA as and when available. This action should ideally be completed within 5 days of receipt of the writ in the o/o PCIT (ReFAC) (AU).

E.SOP for NaFAC:

1. On receipt of a writ petition directly from the petitioner or the Standing Counsel or the High Court or the CIT (Judicial) concerned, a copy shall be forwarded to the PCIT (Jurisdictional), in case, proceedings are completed and to PCIT (ReFAC) (AU) where proceedings are pending [with copy to PCIT (jurisdictional)] within 5 days of receipt for necessary action as per Para A. In view of CBDT communication vide F. No. 1730 65/2020-1TA-I dated 14-08-2020 the NaFAC shall authorize the PCIT (Jurisdictional) as the Authority to defend the case before the Hon'ble High Courts.
2. On receipt of request from PCIT(Jurisdictional) for unmasking of AU, the Na FAC shall forward the request to the Directorate of Systems for unmasking of the AU concerned and provide such details of the PCIT (ReFAC) (AU) concerned to the PCIT (jurisdictional).
3. On receipt of request from the PCIT (Jurisdictional) for specific inputs on policy matters or provisions related to FAS 2019/section 144 of the Act or FPS, 2021 being challenged, the NaFAC shall:-
 - Examine whether the request is accompanied by terms of reference for seeking comments of NaFAC as per prescribed template. Prescribed template is enclosed as Annexure - A.
 - Analyse the writ petition and respond on broad policy issues. If required, NaFAC may refer the petition to the CBDT and Directorate of Legal and Research and obtain comments from the relevant division before sending a response to the PCIT (Jurisdictional).

F. SOP for CIT (ITBA), Directorate of Systems:

1. On receipt of request for unmasking of the AU from NaFAC, the ITBA team shall give the details of PCIT (ReFAC) (AU) concerned.

If the modification to returned income is done by the new AU after modification suggestions reported by the Review Unit, details of both the AUs (original and new) shall be provided.

2. A number of writs have been filed because of apparent violation of principles of natural justice. In many such cases, the High Courts have set aside the cases back to the file of the Assessing Officer for giving a fresh opportunity and taking into consideration the submissions of the assessee. On receipt of such set aside request as per para B.5 from the PM (Jurisdictional), the ITBA shall ensure that:
3. The work item shall be transferred automatically to the same ReFAC in which the case was originally assessed for the completion of the same. If the modification to returned income is done by the new AU after modification suggestions reported by the Review Unit, the work item shall be transferred automatically to the original ReFAC AU in which the case was originally allocated at the first instance for the completion of the same.

The work item is to be completed by the ReFAC AU concerned.

4. This SOP may be brought to the notice of all Pr.CsIT and other field officers for necessary action.

This issues with the approval of Central Board of Direct Taxes (CBDT).

(Jaishree Sharma)
Addl. Commissioner of Income-tax (NaFAC)-1 (1),
New Delhi

Copy forwarded to:-

- i. Chairman, CBDT and all Members, CBDT.
- ii. Pr. DGIT(Systems), New Delhi.
- iii. ADG (Systems)-4, New Delhi, for placing on the website: Incometaxindia.gov.in.
- iv. Addl. CIT, Data base Cell for uploading on "<https://www.irsofficersonline.gov.in>".

Addl. Commissioner of Income-tax (NaFAC)-1 (1),
New DelhiAC).- (1)
New Delhi

ANNEXURE C3: F.NO.NaFAC/Dehli/CIT-3/2022-23/339/76 DATED 01.08.2022
Standard Operating Procedure (SOP) for handling Writ Petitions against Assessment Proceedings conducted under section 144B of the IT Act, 1961 or Penalty Proceedings under Faceless Penalty Scheme(FPS), 2021.

Government of India
Ministry of Finance
Central Board of Direct Taxes
National Faceless Assessment Centre
New Delhi

Dated: 01.08.2022

Subject: Standard Operating Procedure (SOP) for handling Writ Petitions against Assessment Proceedings conducted under Section 144B of the Income Tax Act, 1961 or Penalty Proceedings under FPS 2021

As per the guidelines issued by the CBDT for implementation of the Faceless Assessment Scheme 2019, dated 14/08/2020 (issued vide F. No. 173/165/2020-ITA-I), the responsibility for defending writ petitions has been assigned to jurisdictional hierarchy. Hence, all judicial functions including defending the interest of revenue, on behalf of all respondents, is to be discharged by the concerned Jurisdictional PCIT, under the concerned PCCIT(CCA).

To facilitate exchange of inputs between jurisdictional and faceless charges and also for seeking comments of the CBDT and NaFAC on policy matters involving Faceless Assessment and/or Faceless Penalty Scheme (FPS), Principal Chief Commissioner of Income Tax, National Faceless Assessment Centre, with the prior approval of the Central Board of Direct Taxes, New Delhi, lays down the following SOP for handling Writ Petitions challenging ongoing/completed assessment/penalty proceedings under Faceless Assessment Scheme/Section 144B/Faceless Penalty Scheme. This SOP is in supersession of the earlier SOP dated 26.07.2021 bearing F.No. CIT(NaFAC)-1/58/2021-22/333 and is applicable with immediate effect.

A. Nature of Writ Petition (WP)

A.1. Writ Petitions challenging assessment/penalty proceedings may pertain to:

A.1.1 Completed assessment/penalty proceedings;

A.1.2 Ongoing assessment/penalty proceedings.

B. Procedure for handling WP against completed assessment/penalty cases

B.1. It shall be the responsibility of the concerned jurisdictional PCIT to handle WP against completed assessment/ penalty cases. This includes:

a. Uploading/ attaching Writ Petition in Insight, using VRU functionality;

- b. Preparation of affidavit/ counter affidavit/ para wise comments;
- c. Timely filing before the High Court;
- d. Briefing the Standing Counsel;
- e. Maintaining details of proceedings;
- f. Ensuring appearance on the date of hearing;
- g. Obtaining copy of High Court order;
- h. Uploading /attaching interim orders / final order/ other judicial correspondences in Insight, using VRU functionality;
- i. Complying with or enabling implementation of the directions of the High Court, as the case may be, including creation of a new/set aside work-item and request to NaFAC for assignment of case to AU, and uploading order of stay/ vacation of stay order against pending penalty work-item in ITBA;
- j. Taking decision on acceptance of the order or filing SLP in the Supreme Court or filing Review Petition in the High Court.

B.2 Upon receipt of WP, the Jurisdictional Assessing officer (JAO), under the direction of the jurisdictional PCIT, shall take following actions:

B.2.1. Prepare affidavit /counter affidavit/para-wise comments on the basis of information available in Case History Noting, accessed through Status Monitor functionality of ITBA.

B.2.2. Comments may be obtained by JAO from the Directorate of Systems, if system/ technical issues are under challenge and the same is not discernible from the Case History Noting.

B.2.3. Comments may be obtained by JAO from NaFAC only when:

B.2.3.1. SOP for assessment/ penalty issued by NaFAC, is under challenge;

B.2.3.2. Interpretation or constitutionality of Faceless Assessment Scheme, 2019; Section 144B; Faceless Penalty Scheme, 2021; Faceless Penalty (Amendment) Scheme, 2022 and/ or Notification/Instruction, issued by the CBDT in respect thereto, is under challenge.

B.2.4. Communication with NaFAC, seeking comments as per Para B.2.3 shall be made through the following emails:

[delhi.cit3.neac@incometax.gov.in;](mailto:delhi.cit3.neac@incometax.gov.in)

[delhi.addlcit3.1.neac@incometax.gov.in;](mailto:delhi.addlcit3.1.neac@incometax.gov.in)

[delhi.addlcit3.2.neac@incometax.gov.in;](mailto:delhi.addlcit3.2.neac@incometax.gov.in)

delhi.dcit3.2.2.neac@incometax.gov.in

B.2.5. No request for unmasking the AU/PU shall be made to NaFAC, except where the Court seeks personal affidavit/ attendance or personal compliance, of the officers of the AU/PU;

B.2.6. Request for unmasking the AU/PU shall be made to NaFAC, through emails referred in Para B.2.4, citing the reasons for unmasking;

B.2.7. Where unmasking is done, upon receipt of particulars of the AU/PU:

B.2.7.1. JAO shall correspond directly with the AU/PU, with copy to NaFAC for information on the emails as per Para B.2.4.

B.2.7.2. AU/PU shall provide the requisite details with the approval of the PCIT of the AU/PU;

B.2.7.3. AU/PU shall use the designation based e-mail to respond directly to JAO, with copy to NaFAC for information on the emails as per Para B.2.4;

B.2.8. Upon receipt of inputs from AU and Directorate of Systems/NaFAC/CBDT, as the case may be, JAO shall prepare affidavit/counter affidavit/ para-wise comments.

C Procedure for handling WP against pending or ongoing assessment/penalty cases

C.1. It shall be the responsibility of the concerned jurisdictional PCIT to handle WP against pending or ongoing assessment/ penalty cases. This includes:

- a. Uploading the Writ Petition immediately on the ITBA, using the common function module;
- b. Preparation of affidavit, counter affidavit, para-wise comments with the inputs /para-wise comments, provided by the AU;
- c. Timely filing before the High Court;
- d. Briefing the Standing Counsel;
- e. Maintaining details of proceedings;
- f. Ensuring appearance on the date of hearing;
- g. Obtaining copy of High Court order;
- h. Uploading the High Court interim order/order on the ITBA immediately, using the common function module;
- i. Complying with or enabling implementation of the directions of the High Court, including communication to NaFAC immediately about stay/vacation of stay order;
- j. Taking decision on acceptance of the order or filing SLP in the Supreme Court or filing Review Petition in the High Court.

C.2. Upon receipt of WP, the Jurisdictional Assessing officer (JAO), under the direction of the jurisdictional PCIT, shall take following actions:

C.2.1. Request for unmasking shall be made to NaFAC, through the following emails:

delhi.cit3.neac@incometax.gov.in

delhi.addlcit3.1.neac@incometax.gov.in;

delhi.addlcit3.2.neac@incometax.gov.in;

delhi.dcit3.2.2.neac@incometax.gov.in

C.2.2. Unmasking shall be limited to the PCIT of the AU/PU.

C.2.3. Where unmasking is done, upon receipt of particulars of PCIT of the AU/PU:

C.2.3.1. JAO shall correspond through his PCIT with the PCIT of the AU/ PU with copy to NaFAC for information on the emails as per Para C.2.1;

C.2.3.2. PCIT of the AU/PU shall provide the requisite details without mentioning the specific AU/PU details;

C.2.3.3. PCIT of AU/PU shall use the designation based e-mail to respond directly to PCIT of JAO with copy to NaFAC for information on the emails as per Para C.2.1.

C.2.4. Comments may be obtained by JAO from the Directorate of Systems, if system/ technical issues are under challenge.

C.2.5. Comments may be obtained by JAO from NaFAC when:

C.2.5.1. SOP for assessment/ penalty issued by NaFAC, is under challenge;

C.2.5.2. Interpretation or constitutionality of Faceless Assessment Scheme, 2019; Section 1448; Faceless Penalty Scheme, 2021; Faceless Penalty (Amendment) Scheme, 2022 and/ or Notification/Instruction, issued by the CBDT in respect thereto, is under challenge.

C.2.6. Upon receipt of inputs from PCIT of AU/PU and Directorate of Systems/ NaFAC/ CBDT, as the case may be, JAO shall prepare affidavit/ counter affidavit/ parawise comments.

This issues with the approval of Central Board of Direct Taxes.

(Puja Jindal)

Commissioner of Income Tax -3, NaFAC

New Delhi

Copy to:

1. Chairman and all Members of the CBDT.
2. All Pr. Chief Commissioners of Income Tax with a request to bring to the attention of all officers under their charge.
3. DG (Systems), New Delhi.
4. All CIT (Judicial)
5. CIT (NaFAC) —1,2 & 4
6. Data Base Cell, with the request for uploading on “<https://www.irsufficiersonline.gov.in>”.

(Puja Jindal)

Commissioner of Income Tax -3, NaFAC

New Delhi

ANNEXURE: D1: CIRCULAR NO.24/2019 [F. No. 285/08/2014- IT(INV. V)/349] DATED 09-09-2019.

Procedure for identification and processing of cases for prosecution under Direct Tax Laws-reg.

Circular No. 24 /2019

F.No.285/08/2014-IT (Inv. V)/349
Government of India
Ministry of Finance Department of Revenue
(Central Board of Direct Taxes)

Room No. 515, 5th Floor, C-Block,
Dr. Shyama Prasad Mukherjee Civic Centre, Minto Road, New Delhi -110002.

Dated: 09.09.2019

Subject: Procedure for identification and processing of cases for prosecution under Direct Tax Laws-reg.

1. The Central Board of Direct Taxes has been issuing guidelines from time to time for streamlining the procedure of identifying and examining the cases for initiating prosecution for offences under Direct Tax Laws. With a view to achieve the objective behind enactment of Chapter XXII of the Income-tax Act, 1961 (the Act), and to remove any doubts on the intent to address serious cases effectively, this circular is issued.
2. Prosecution is a criminal proceeding. Therefore, based upon evidence gathered, offence and crime as defined in the relevant provision of the Act, the offence has to be proved beyond reasonable doubt. To ensure that only deserving cases get prosecuted the Central Board of Direct Taxes in exercise of powers under section 119 of the Act lays down the following criteria for launching prosecution in respect of the following categories of offences.
 - i. **Offences u/s 276B: Failure to pay tax to the credit of Central Government under Chapter XII-D or XVII-B.**
Cases where non-payment of tax deducted at source is Rs. 25/- Lakhs or below, and the delay in deposit is less than 60 days from the due date, shall not be processed for prosecution in normal circumstances. In case of exceptional cases like, habitual defaulters, based on particular facts and circumstances of each case, prosecution may be initiated only with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers as mentioned in Para 3.
 - ii. **Offences u/s 276BB: Failure to pay the tax collected at source.**
Same approach as in Para 2.1 above.
 - iii. **Offences u/s 276C(I): Wilful attempt to evade tax, etc.**
Cases where the amount sought to be evaded or tax on under-reported income is Rs.25 Lakhs or below, shall not be processed for prosecution except with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers as mentioned in Para3.

Further, prosecution under this section shall be launched only after the confirmation of the order imposing penalty by the Income Tax Appellate Tribunal.

iv. Offences u/s 276CC: Failure to furnish returns of income.

Cases where the amount of tax, which would have been evaded if the failure had not been discovered, is Rs. 25 Lakhs or below, shall not be processed for prosecution except with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers as mentioned in Para 3.

3. For the purposes of this Circular, the constitution of the Collegium of two CCIT/DGIT rank officers would mean the following-

As per section 279(1) of the Act, the sanctioning authority for offences under Chapter XXII is the Principal Commissioner or Commissioner or Commissioner (Appeals) or the appropriate authority. For proper examination of facts and circumstances of a case, and to ensure that only deserving cases below the threshold limit as prescribed in Annexure get selected for filing of prosecution complaint, such sanctioning authority shall seek the prior administrative approval of a collegium of two CCIT/DGIT rank officers, including the CCIT/DGIT in whose jurisdiction the case lies. The Principal CCIT(CCA) concerned may issue directions for pairing of CCIT/DGIT for this purpose. In case of disagreement between the two CCIT/DGIT rank officers of the collegium, the matter will be referred to the Principal CCIT(CCA) whose decision will be final. In the event the Pr.CCIT(CCA) is one of the two officers of the collegium, in case of a disagreement the decision of the Pr.CCIT(CCA) will be final.

4. The list of prosecutable offences under the Act specifying the approving authority is annexed herewith.
5. This Circular shall come into effect immediately and shall apply to all the pending cases where complaint is yet to be filed.
6. Hind version shall follow.

Encl: As above

(Mamta Bansal)
Director to the Government of India

Copy to:

1. P. S. to Finance Minister
2. P.S. to Revenue Secretary
3. The Chairman and all the Members, CBDT
4. All the Pr. Chief Commissioners/Chief Commissioners /Pr. Director Generals/ Director Generals of Income-tax
5. All the officers of the rank of Joint Secretary/CIT and above in the CBDT
6. CIT (Media and Technical Policy), CBDT
7. ADG (Systems)-4/ Web Manager for placing it on www.incometaxindia.gov.in
8. Addl. CIT, Data Base Cell- for placing it on www.irsofficeronline.gov.in
9. The Guard File

Director to the Government of India

Annexure

| Section | Nature of default | Approving Authority |
|---------|--|--|
| 275A | Contravention of order made under section 132(1) (Second Proviso) or 132(3) in case of search and seizure | Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGTT rank officers |
| 275B | Failure to afford necessary facility to authorized officer to inspect books of account or other documents as required under section 132(1)(iib) | Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers |
| 276 | Removal, concealment, transfer or delivery of property to thwart tax recovery | Sanctioning Authority with the previous administrative approval of the Collegium of two CICIT/DGJT rank officers |
| 276A | Failure to comply with provisions of section 178(1) and (3)- reg. company in liquidation | Sanctioning Authority with the previous administrative approval of the Collegium of two CICIT/DGJT rank officers |
| 276AB | Failure to comply with provisions or sections 269UC, 269UE and 269UL reg. purchase of properties by Government | Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGJT rank officers |
| 276B | Failure to pay to credit of Central Government (i) tax deducted at source under Chapter XVII-8, or (ii) tax payable u/s 115-0(2) or second proviso to section 194B - | - |
| | (a) where non-payment of TDS exceeds Rs. 25/- lakhs | Sanctioning Authority |
| | (b) in other case | Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers |
| 276BB | Failure to pay to the credit of Central Gov- ernment the tax collected a source under sec-tion 206C | - |
| | (a) where non-payment of TCS exceeds Rs. 25 lakhs | Sanctioning Authority |
| | (b) in other case | Sanctioning Authority with the previous Administrative approval of the Collegium of two CCIT/DGJT rank officers |

| | | |
|---|--|---|
| 276C(1) | Willful attempt to evade tax, penalty or interest or under-reporting of income- | - |
| | (a) where tax which would have been evaded exceeds Rs 25 lakh | Sanctioning Authority |
| | (b) in other case | Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers |
| 276C(2) | Willful attempt to evade payment of any tax, penalty or interest - | - |
| | (a) where payment of any tax, penalty or interest exceeds Rs. 25/- lakhs | Sanctioning Authority |
| | (b) in other case | Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers |
| 276CC | Willful failure to furnish returns of fringe benefits under section 115WD/115WH or return of income under section 139(1) or in response to notice under section 142(1)(i) or section 148 or section 153A- | - |
| (a) where tax sought to be evaded exceeds Rs 25 Lakhs | | Sanctioning Authority |
| (b) in other case | | |
| 276CCC | Willful failure to furnish in due time return of total income required to be furnished by notice u/s 158BC(a) | Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers |
| 276D | Willful failure to produce accounts and documents under section 142(1) or to comply with a notice under section 142(2A) | Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers |
| 277 | False statement in verification or delivery of false account or statement etc. - | - |
| | (a) where tax which would have been evaded exceeds Rs 25 lakhs | Sanctioning Authority |
| | (b) in other case | Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers |

| | | |
|------|---|---|
| 277A | Falsification of books of account or document, etc., to enable any other person to evade any tax, penalty or interest chargeable/leviable under the Act | Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers |
| 278 | Abetment of false return, account, statement or declaration relating to any income or fringe benefits chargeable to tax - | - |
| | (a) where tax, penalty or interest which would have been evaded exceeds Rs 25 lakhs | Sanctioning Authority |
| | (b) in other case | Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers |
| | | |

ANNEXURE D2 : CIRCULAR NO. 5/2020 [F.NO. 285/08/2014-IT (INV.V)/712], DATED 23-01-2020 Section 276C, Read With Sections 276B, 276BB, 276CC Of The Income-Tax Act, 1961 -Offences And Prosecution - Wilful Attempt To Evade Tax, Etc. - Procedure For Identification And Processing Of Cases For Prosecution Under Direct Tax Laws - Amendment In Circular No. 24/2019 [F.No. 285/08/2014-It(Inv.V)/349], Dated 09-09-2019.

Circular No. 5/2020

F.No.285/08/2014-IT(Inv. V)/712
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Direct Taxes)

Room No. 501, 5th Floor, C-Block,
Dr. Shyama Prasad Mukherjee Civic Centre,
Minto Road, New Delhi -110002.
Dated: 23.01.2020

Subject: Clarification regarding Circular No. 24/2019 F. No. 285/08/2014-IT (Inv. V)/349 dated 09.09.2019-Reg.

1. The CBDT has issued a Circular No. 24/2019 dated 09.09.2019 ('the Circular') for laying down criteria for identification and processing of cases for launching prosecution under the Income-tax Act, 1961. Clarifications have been requested with regard to the applicability of para 2(iii) of the aforesaid Circular to the cases where penalty has not yet been confirmed by the Income Tax Appellate Tribunal.
2. The matter has been examined by the CBDT and in partial modification of the Circular No. 24/2019, it is hereby clarified that the prosecution may be launched in deserving cases, including cases covered u/s 132/ 132A/ 133A, at any stage of the proceedings before an Income-tax Authority with the prior approval of the Collegium of two CCIT/DGIT rank officers as mentioned in para 3 of the Circular and the requirement of confirmation of penalty by the Income Tax Appellate Tribunal shall not apply to such cases. Accordingly, the existing para 2(iii) of the aforementioned Circular is modified as under:

“ iii. Offences u/s 276C (1): Willful attempt to evade tax, etc.

Cases where the amount sought to be evaded or tax on under-reported income is Rs. 25 lakhs or below, shall not be processed for prosecution except with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers as mentioned in Para 3.

Further, prosecution under this section shall be launched ordinarily after the confirmation of the

order imposing penalty by the Income Tax Appellate Tribunal. Further, prosecution in other cases, including cases covered u/s 132/132A/ 133A, may be launched at any stage of the proceedings before an Income-tax Authority, with the previous approval of the Collegium of two CCIT/DGIT rank officers as mentioned in para 3 of the Circular.”

3. Further, clarifications have also been requested regarding the applicability of the Circular to cases, where the prosecution has already been launched before the date of issue of the Circular. In this connection, it may be noted that in para 5 of the Circular, it is stated that the Circular shall apply to all pending cases where complaint is yet to be filed. Therefore, the Circular is applicable to only those cases where the prosecution complaint is to be filed after the date of issuance of the Circular, i.e. 09.09.2019.
4. This clarification shall be read as part of the Board’s Circular No. 24/2019 F. No. 285/08/2014-IT (Inv. V)/349 dated 09.09.2019.
5. The Pr.CCsIT/Pr.DGsIT/CCSIT/DGsIT are requested to circulate the clarification among all the officers of their region for compliance.

Deepak Tiwari
Commissioner of Income Tax (OSD)(INV.),CBDT

Copy to:

1. P.S. to Finance Minister
2. P.S. to Revenue Secretary
3. The Chairman and all the Members, CBDT
4. All the Pr. Chief Commissioners/Chief Commissioners /Pr. Director Generals/
Director Generals of Income-tax
5. All the officers of the rank of Joint Secretary/CIT and above in the CBDT
6. The CIT (Media & Technical Policy), CBDT
7. ADG (Systems)-4/ Web Manager for placing it on www.incometaxindia.gov.in
8. Addl. CIT, Data Base Cell for placing it on “www.irsofficersonline.gov.in”
9. The Guard File

(Deepak Tiwari)
Commissioner of Income Tax (OSD)(INV.), CBDT

ANNEXURE D3 : Instruction No. 6/2016 [F.No. 279/Misc./M-77/2011-ITJ]

DATED 07-09-2016 Guidelines for engagement of Special Public Prosecutors (SPPs) to represent the Income Tax Department before Courts of Session and its subordinate Courts; revision of their schedule of fees and related matters-instructions regarding.

Instruction No. 6 /2016

F.No. 279/Misc./M-77/2011-ITT
Government of India
Ministry of Finance
Department of Revenue
Central Board Direct Taxes
(ASLI Division)

New Delhi, the 7th September, 2016

Sub: Guidelines for engagement of Special Public Prosecutors (SPPs) to represent the Income Tax Department before Courts of Session and its subordinate Courts; revision of their schedule of fees and related matters — instructions regarding.

1. With a view to streamline the process of engagement of Special Public Prosecutors (SPPs) by the Department to represent before Courts of Session and its subordinate Courts in prosecution cases and in supersession of the existing Instructions of the CBDT on the subject matter in general and Instruction No. 1880 dated. 30.01.1991 and Instruction No. 1925 dated 31.03.1995 in particular, the following instructions are issued herewith for compliance by all concerned:-
2. Procedure for engagement

The procedure for engagement of Special Public Prosecutors, renewal of their terms, requisite qualifications and terms and conditions of their engagement shall be as follows:

2.1. Qualification of Special Public Prosecutors In order to be eligible for engagement as an SPP, a person should:

- a. be eligible to appear before the court as an Advocate and
- b. have a minimum experience of 7 years as a Practicing Advocate, in criminal matters. Adequate experience of handling trials relating to Direct Taxes is desirable.

2.2. Procedure for engagement of Special Public Prosecutors

- a. For the purpose of engagement, the CCIT shall call for applications in Proforma P1 either by advertisement in local newspapers or from Bar Association. It should, however, be ensured that the process of engagement is transparent and broad based,
- b. A five-member Screening Committee headed by a Pr.CIT/Pr.DIT shall be formed by the CCIT for the purpose of evaluation of proposals received. The Screening Committee shall have representatives from DGIT (Inv.) and DGIT (Intelligence & Criminal Inv.). CIT (J) shall also be part of the Screening Committee wherever possible. Officer looking after prosecution matters may work as Member-Secretary of the Committee. The particulars of

the applicants' experience in handling criminal cases and their suitability to represent the prosecution cases of the Department will be evaluated by the Committee. It shall have interaction with the applicants to assess their suitability for the purpose of engagement. The CCIT shall forward the proposal to the Board with his recommendation along with the report of the Screening Committee and copies of applications received in Proforma P1.

- c. The First engagement of SPP shall normally be for a period of 18 months. Such engagement will be renewable on receipt of recommendation of the CCIT along with annual performance appraisal on completion of first 12 months of the engagement.

2.3. Renewal of the term of engagement performance review

2.3.1. The performance of the SPPs shall be reviewed by the jurisdictional Pr. CsIT/ Pr. DsIT/ CsIT/DsIT whose cases have been represented by the SPP, on an annual basis and a report in Proforma-P2 shall be submitted to CIT (J)/CCIT before 31st May of the following year. The CCIT shall submit the annual performance of the SPP (Proforma-P2) to the Board so as to reach before 30th June of the year.

2.3.2. The CCIT shall submit a proposal for renewal of period of engagement to the Board at least three months before the expiry of the term, if the performance of the SPP is found to be satisfactory. The performance appraisal should be sent along with the proposal in ProformaP3. The renewal of the term shall normally be for a period of 3 years.

2.4. Allocation of cases to Special Public Prosecutors

The CCIT shall be the overall in charge of entire prosecution work on behalf of the Income Tax Department in his Region. Work allocation amongst the SPPs in a Pr. CCIT Region shall be done by the CCIT/DGIT. However, a copy of the list of SPPs and the cases assigned to them shall also be forwarded to the CIT (J)/Addl CIT (J)/ Technical in the O/o the Pr. CCIT for maintaining a centralized database for prosecution cases in the Region.

2.5. Termination of engagement/resignation/expiry of term

The engagement of SPP can be terminated through written intimation by either side without assigning any reason. The CCIT is authorized to act on behalf of the department for the purpose. On expiry of the term or termination or resignation, the SPP shall immediately handover the briefs and other related papers to the Pr. CIT/Pr. DIT/CIT/ DIT concerned or the other SPPs nominated by the CCIT for the purpose and the pending bills of the SPP should be settled within three months of the end of the term.

2.6. Duties of the Special Public Prosecutors Duties of the Special Public Prosecutors shall include:

1. To represent the Department personally and effectively in conduct of trial for prosecution matters in the Trial courts/ Courts of Session.
2. To give opinion when it is sought about the feasibility of filing a prosecution case or any other prosecution matter.

3. To draft complaints and assist in compliance of the technical requirements.
4. To intimate criminal complaint number to the officer concerned/ complainant.
5. To intimate the Assessing Officer/ officer concerned about the outcome of each hearing and the date of next hearing, immediately after the hearing.
6. To assist the witnesses of the Department before their evidences and guide them in facing cross examination. The SPP should prepare each witness and its statement in such a manner that there is consistency in the stand of the Department.
7. To apply for the certified copy within 3 days of the judgement and deliver it to the Pr. CIT/Pr. DIT/CIT/DIT concerned within 10 days (excluding the time taken by the Courts).
8. When a case represented by him/her is decided against the Department., to apply for certified copy of the judgment within three working days of pronouncement and give his opinion regarding the advisability of filing an appeal against such a decision within seven days of taking delivery. In other cases, also the same time limits shall be applicable, though opinion will not be required.
9. To draft revision petition, if required or to draft reply to the revision petition, if preferred by the accused.
10. To represent the Department in revision matters before the Court of Session.
11. To furnish a statement of the cases handled to the Pr. CIT/Pr, DIT/CIT/DIT concerned, by 30th April of every year, indicating the performance in preceding financial year in 'Pr.
12. To perform such other duties of legal nature as may be assigned to him/her by the Department.

2.7. Assistance to Special Public Prosecutors by the Department

1. The Investigation or Assessing Officer having jurisdiction over the case or the Directorate of Criminal Investigation (DCI), shall provide all assistance to the SPPs such as providing original records; producing the Departmental Officers as witness, etc.
2. The SPP shall be kept informed of the decisions of Appellate Authorities having bearing on prosecution cases.

3. Schedule of Fees, Allowances and Terms of Payment:

- 3.1. The SPPs will be engaged in accordance with the revised schedule of fees and related terms & conditions applicable to them as given below:

| Sr.No | Activity | Fees Payable |
|-------|--|--|
| 1. | Effective Hearing | Rs. 2,000/- per day per case (there shall be no ceiling per day, irrespective of the number of cases heard on a day) |
| 2. | Non-effective Hearing | Rs. 500/- per day per case (subject to the payment for maximum 5 noneffective hearings in a case/ connected cases). |
| 3. | Drafting Complaints' | Rs. 2,000/- per complaint |
| 4. | Drafting Revisions, Replies, Written Arguments, Affidavits, etc.' | Rs. 1,000/- per case |
| 5. | Conference fees (With Assessing Officer or above) | Rs. 750/- per conference limited to payment for a maximum of 5 conferences in a case/connected cases |
| 6. | Clerkage | 10% of fee at Si. No. 1 to 4 above. |
| 7. | Opinion fees (written opinion in cases/matters, other than those where adverse orders have been passed by the Court in the cases represented by the SPP) | Rs. 2,000/- per case/connected cases |

- I. A substantial and effective hearing is one in which either one or both the parties involved in a case are heard by the Court. If the case is mentioned and adjourned or only directions are given or only judgement is delivered by the Court, it would not constitute an effective hearing.
- II. If substantially identical complaints, affidavits etc. are drafted in connected cases (as defined in Para 3.2), drafting fees of Rs. 2,001/- will be paid for the main case only. For other cases drafting fees of Rs. 750/- per case will be paid.
- III. If substantially identical Revisions, Replies, Written Arguments etc. are drafted in connected cases, drafting fees of Rs. 1,000/- will be paid for the main case only. For other cases drafting fees of Rs. 5001- per case will be paid.

3.2. Appearance fee in connected cases

When more than one complaint involves substantially identical issues, where the arguments are heard in the main case and the other cases are decided accordingly, such complaint in which the arguments are heard shall be treated as the main case and the others as connected cases irrespective of the fact whether all the cases are heard together or not. The SPP shall be paid appearance fee as per para 3.1 above in the main case and only Rs. 750/- in each of the connected cases for every effective hearing.

3.3. Out of pocket expenses

The amount required for court fees at the time of filing a case and other miscellaneous expenses including for obtaining certified copies of judgement/order shall be reimbursed to the SPP on receipt of the claim.

3.4. For matters outside Headquarters

(The headquarters of the SPP shall be the station where the Trial Court for which the SPP is engaged is stationed)

3.4.1. When the SPP is required to go out of headquarters in connection with any litigation or for conference outside the headquarters, he will be entitled to a daily fee of Rs. 3,000/- per day for the days of his absence from the headquarters including the days of departure from, intervening holidays and arrival back to the headquarters. However, no fee will be paid for the day of departure if he leaves headquarters after court hours and for the date of arrival if he arrives at the headquarters before the court hours. The daily fee will be in addition to the normal appearance fee as prescribed in para 3.1 above.

3.4.2. Travel/ Hotel Expenses: In addition to the daily fee, the SPP will be entitled for travel expenses by train in First Class/AC 2 Tier. Road mileage for the journey actually performed by Bus/Taxi/Own Car will be paid as per Mileage Allowance in the T.A. Rules applicable to Central Government Servants at the rate admissible to officers drawing grade pay of Rs. 6,600/- He will also be paid a lump-sum amount of Rs. 750/- as conveyance charges for performing local journey while outside the headquarters. He will also be entitled to actual expenses for staying in hotel, subject to maximum of Rs.3,000/- per day.

3.5. Late submission of certified copies of judgement

If the certified copy of the judgement is not delivered to the office concerned within 10 days (excluding the time taken by the Courts) from the date of judgement, 20% of the hearing fees payable to the SPP shall be deducted.

3.6. Procedure for submission and payment of bills to Special Public Prosecutors

The SPPs should submit professional bills in proforma 'P4' of this Instruction by 10th of every month. The bills should enclose copy of documents drafted, in case of claim for drafting fee, and minutes/gist of proceedings or a copy of order/judgement where it is necessary in case of claim for appearance fee. The bills shall be scrutinized within 30 days of receipt and deficiencies or excess claim, if any., shall be communicated to the SPP within a week of such scrutiny. The scrutiny of bills should not be kept pending due to non-availability of funds.

After passage., the bill should be arranged in seriatim of receipt, for payment. The cheque should be sent to the SPP concerned giving particulars of bills covered by the payment.

4. Right to Private Practice

- i. The SPP will have the right to private practice, but he shall not appear in the prosecution matters against the Department in any court or be associated with any assessee in respect of any offence under the Direct Taxes laws in any manner.
- ii. If the SPP happens to be a partner of any firm of lawyers or solicitors, it will be incumbent on the firm not to take up any prosecution case against the Department in any court.

5. The CCIT referred to in this Instruction means the Pr. Chief Commissioner of Income-tax Chief Commissioner of Income-tax in charge of Prosecution matters in the CCA Region.

6. The Prosecution Counsels currently engaged by the Department on the basis of Instruction No. 1925 will henceforth be called as Special Public Prosecutors.

7. These guidelines and the revised schedule of fee and allowances shall come into effect from 07.09.2016.

8. The SPPs will be paid fee at the old rates in respect of their appearance and other work done by them on or before 06.09.2016 and at the revised rates in respect of the work done by them on or after 07.09.2016.

9. This issues with the concurrence of Ministry of Law and Justice vide their I.D. No. 3.1,11019/2/2016-Judl, Part (1) dated 24.06.2016 and the Department of Expenditure I.D. No. 9 (4)/2012-E. II(B)-Pt dated 29.08.2016.

(D.S. Rathi)

DCIT(OS D)(ITJ)

CBDT

Copy to:

1. The Chairperson, Members and other officers in CBDT of the rank or Under Secretary and above.
2. The Comptroller and Auditor General of India
3. Official Language section for Hindi translation

(D.S. Rathi)

DCIT(OSD)(C.B.D.T.)

ANNEXURE D4: [F.No. 279/Misc./M-77/2011-ITJ] DATED 18-10-2016

Modifications to the Instruction No. 6/2016 for engagement of Special Public Prosecutors (SPPs) to represent the Income Tax Department before Courts of Session and its subordinate courts-regarding.

F. No. 279/Misc/M-77/2011-ITJ
 Government of India
 Ministry of Finance
 Department of Revenue
 Central Board of Direct Taxes
 (A&J Division)

New Delhi, the 18th October, 2016

To,

All Principal Chief Commissioners of Income Tax. Madam/ Sir,

Sub: - Modifications to the Instruction No. 6/2016 for engagement of Special Public Prosecutors (SPPs) to represent the Income Tax Department before Courts of Session and its subordinate courts- Reg.

Ref: - CBDT Instruction No. 6/2016 dated 7th September 2016.

Kindly refer to the above.

1. Instruction No. 6/2016 of CBDT (hereinafter "Instruction") has revised the guidelines for engagement of Special Public Prosecutors(SPPs) to represent the Income Tax Department before various courts in supersession of the earlier Instruction No. 1880/ 1991 and Instruction No. 1925/ 1995 of the CBDT on the subject. Suggestions have been received from various authorities for modifications to the Instruction.

2. In this regard, after considering the suggestions received, the following modifications are hereby made to the Part B (Bill for appearance etc.) of the Proforma 'P4' of the Instruction, by adding the rows 7, 8 & 9.

The Part B of the Proforma 'P4' of the Instruction after modification is as follows:

Part B (Bill for appearance etc.), as applicable

(Amount in Rs.)

| | | |
|--|--|--|
| | Substantial and effective hearing (Whether Connected case - Yes/ No) | |
| | Non-effective hearing | |
| | Conference fees | |
| | Clerkage @10% | |

| | | |
|--|--|--|
| | Out of pocket expenses (particulars to be given) | |
| | For performing duties outside headquarters (as per para 3.4) | |
| | Date of Judgement. | |
| | Date of furnishing the certified copy of the judgement to the office concerned. | |
| | Deduct 20% of (1. + 2.) above, if date at (8.) is more than 10 days (excluding the time taken by the courts) from the date at (7.) | |
| | Total | |

3. These modifications may be brought to the notice of all the officers concerned.

4. Hindi version of this will follow.

(K. Vamsi Krishna)
ACIT (OSD) (ITJ-II)

Tel: 26882637

Copy to:

- i. The Chairman, Members and other officers in CBDT of the rank of Under Secretary and above
- ii. OSD to Revenue Secretary
- iii. The Comptroller and Auditor General of India
- iv. Pr. DGIT (Vigilance), New Delhi
- v. The Pr. DGIT (Systems), ARA Centre, Jhandewalan Extension, New Delhi
- vi. ADG (PR, PP & OL), Mayur Bhawan, New Delhi for printing in the Tax Bulletin and for circulation.
- vii. The Joint Secretary & Legal Advisor, Ministry of Law & Justice, New Delhi.
- viii. The ADG-4(Systems) for uploading on ITD Website.
- ix. Database cell for uploading on www.irsolicersonline.gov.in.
- x. ITCC (3 copies)
- xi. Official Language section for Hindi translation.

(K. Vamsi Krishna)
ACIT (OSD)(ITJ-II)Tel: 26882637

Annexure E-1: Proforma Format for Presentation of Caveat before NCLT.

CAVEAT IN THE

*NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
NEW DELHI*

Caveat No. of

In the matter of appeal against order dated Passed by
..... expected to be instituted by
..... (By any person)

Against

..... (Applicant-Caveator)

To,

The Registrar
National Company Law Appellate Tribunal
3rd Floor, Pt. Deen Dayal Antyodaya Bhawan,
C.G.O. Complex, Lodhi Road, New Delhi - 110003.

Let no substantive order (here state in detail the precise nature of the order apprehended)
.....
..... be made in the above matter
without notice to the undersigned.

Name & address of the
Caveator & his counsel, if any

Filed on.....

By order of the Hon'ble Chairperson
-sd/-
Registrar

Annexure E-2: Form B Proof of Claim by Operational Creditors except Workmen and Employees.

PROOF OF CLAIM BY OPERATIONAL CREDITORS EXCEPT WORKMEN AND EMPLOYEES

(Under Regulation 16 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017)

[Date]

To

The Liquidator

[Name of the Liquidator]

[Address as set out in the public announcement]

From

[Name and address of the operational creditor]

Subject: Submission of proof of claim in respect of the voluntary liquidation of *[name of corporate person]* under the Insolvency and Bankruptcy Code, 2016.

Madam/Sir,

[Name of the operational creditor] hereby submits this proof of claim in respect of the voluntary liquidation of *[name of corporate person]*. The details for the same are set out below:

| | | |
|---|--|--|
| 1 | NAME OF OPERATIONAL CREDITOR (IF AN INCORPORATED BODY PROVIDE IDENTIFICATION NUMBER AND PROOF OF INCORPORATION, IF A PARTNERSHIP OR INDIVIDUAL PROVIDE IDENTIFICATION RECORDS* OF ALL THE PARTNERS OR THE INDIVIDUAL) | |
| 2 | ADDRESS OF OPERATIONAL CREDITOR FOR CORRESPONDENCE | |
| 3 | TOTAL AMOUNT OF CLAIM, INCLUDING ANY INTEREST, AS AT VOLUNTARY LIQUIDATION PROCESS COMMENCEMENT DATE AND DETAILS OF NATURE OF CLAIM | |

| | | |
|----|---|--|
| 4 | DETAILS OF ANY DISPUTE AS WELL AS THE RECORD OF PENDENCY OF SUIT OR ARBITRATION PROCEEDINGS | |
| 5 | DETAILS OF HOW AND WHEN DEBT INCURRED | |
| 6 | DETAILS OF ANY MUTUAL CREDIT, MUTUAL DEBTS, OR OTHER MUTUAL DEALINGS BETWEEN THE CORPORATE PERSON AND THE OPERATIONAL CREDITOR WHICH MAY BE SET-OFF AGAINST THE CLAIM | |
| 7 | DETAILS OF ANY RETENTION OF TITLE IN RESPECT OF GOODS OR PROPERTIES TO WHICH THE DEBT REFERS OR ANY OTHER SECURITY | |
| 8 | DETAILS OF ANY ASSIGNMENT OR TRANSFER OF DEBT IN HIS FAVOUR | |
| 9 | DETAILS OF THE BANK ACCOUNT TO WHICH THE OPERATIONAL CREDITOR'S SHARE OF THE PROCEEDS OF LIQUIDATION CAN BE TRANSFERRED | |
| 10 | LIST OUT AND ATTACH THE DOCUMENTS RELIED ON IN SUPPORT OF THE CLAIM. | |

| |
|--|
| Signature of operational creditor or person authorised to act on his behalf (Please enclose the authority if this is being submitted on behalf of the operational creditor) |
| Name in BLOCK LETTERS |
| Position with or in relation to creditor |
| Address of person signing |

*PAN, Passport, AADHAAR Card or the identity card issued by the Election Commission

of India.

AFFIDAVIT

I, [*name of deponent*], currently residing at [*address of deponent*], do solemnly affirm and state as follows:

1. The above named corporate person was, at liquidation commencement date, that is, the _____ day of _____ 20____ and still is, justly and truly indebted to me [or to me and [*insert name of co-partners*], my co-partners in trade, or, as the case may be] for a sum of Rs. _____ for _____ [*please state consideration*].
2. In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below:

[*Please list out the documents relied on as evidence of debt.*]

3. The said documents are true, valid and genuine to the best of my knowledge, information and belief.
4. In respect of the said sum or any part thereof, I have not, nor have my partners or any of them, nor has any person, by my/our order, to my/our knowledge or belief, for my/our use, had or received any manner of satisfaction or security whatsoever, save and except the following:

[*Please state details of any mutual credit, mutual debts, or other mutual dealings between the corporate person and the operational creditor which may be set-off against the claim.*]

Solemnly, affirmed at _____ on _____ day, the _____ day of _____ 20____

Before me,

Notary / Oath Commissioner

Deponent's signature

VERIFICATION

I, the Deponent hereinabove, do hereby verify and affirm that the contents of para ___ to ___ of this affidavit are true and correct to my knowledge and belief. Nothing is false and nothing material has been concealed therefrom.

Verified at _____ on this _____ day of _____ 201____

Deponent's signature

Annexure E-3: Form C-Proof of Claim by Financial Creditors to be filed before NCLT.

PROOF OF CLAIM BY FINANCIAL CREDITORS

(Under Regulation 17 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017)

[Date]

To
 The Liquidator
 [Name of the Liquidator]
 [Address as set out in the public announcement]

From
 [Name and address of the registered office and principal office of the financial creditor]

Subject: Submission of proof of claim in respect of the voluntary liquidation of [name of corporate person] under the Insolvency and Bankruptcy Code, 2016.

Madam/Sir,

[Name of the financial creditor] hereby submits this proof of claim in respect of the voluntary liquidation of [name of corporate person]. The details for the same are set out below:

| | | |
|---|--|--|
| 1 | NAME OF FINANCIAL CREDITOR (IF AN INCORPORATED BODY PROVIDE IDENTIFICATION NUMBER AND PROOF OF INCORPORATION, IF A PARTNERSHIP OR INDIVIDUAL PROVIDE IDENTIFICATION RECORDS* OF ALL THE PARTNERS OR THE INDIVIDUAL) | |
| 2 | ADDRESS AND EMAIL OF FINANCIAL CREDITOR FOR CORRESPONDENCE. | |
| 3 | TOTAL AMOUNT OF CLAIM, INCLUDING ANY INTEREST, AS AT THE LIQUIDATION COMMENCEMENT DATE AND DETAILS OF NATURE OF CLAIM (WHETHER TERM LOAN, SECURED, UNSECURED) | |
| 4 | DETAILS OF ANY ORDER OF A COURT OF TRIBUNAL THAT HAS ADJUDICATED ON THE NON-PAYMENT OF DEBT | |

| | | |
|----|---|--|
| 5 | DETAILS OF HOW AND WHEN DEBT INCURRED | |
| 6 | DETAILS OF ANY MUTUAL CREDIT, MUTUAL DEBTS, OR OTHER MUTUAL DEALINGS BETWEEN THE CORPORATE PERSON AND THE FINANCIAL CREDITOR WHICH MAY BE SET-OFF AGAINST THE CLAIM | |
| 7 | DETAILS OF ANY SECURITY HELD, THE VALUE OF THE SECURITY, AND THE DATE IT WAS GIVEN | |
| 8 | DETAILS OF ANY ASSIGNMENT OR TRANSFER OF DEBT IN HIS FAVOUR | |
| 9 | DETAILS OF THE BANK ACCOUNT TO WHICH THE FINANCIAL CREDITOR'S SHARE OF THE PROCEEDS OF LIQUIDATION CAN BE TRANSFERRED | |
| 10 | LIST OUT AND ATTACH THE DOCUMENTS BY REFERENCE TO WHICH THE DEBT CAN BE SUBSTANTIATED AND IN SUPPORT OF THE CLAIM. | |

| | |
|---|--|
| Signature of financial creditor or person authorised to act on his behalf (please enclose the authority if this is being submitted on behalf a financial creditor) | |
| Name in BLOCK LETTERS | |
| Position with or in relation to creditor | |
| Address of person signing | |

*PAN, Passport, AADHAAR Card or the identity card issued by the Election Commission of India.

AFFIDAVIT

I, *[name of deponent]*, currently residing at *[address of deponent]*, do solemnly affirm and state as follows:

- The above named corporate person was, at the voluntary liquidation commencement date, that is, the _____ day of _____ 20____ and still is, justly and truly indebted to me [or to me and *[insert name of co-partners]*, my co-partners in trade, or, as the case may be] for a sum of Rs. _____ for*[please state consideration]*.
- In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below:

[Please list the documents relied on as evidence of debt and of non-payment.]

7. The said documents are true, valid and genuine to the best of my knowledge, information and belief.
8. In respect of the said sum or any part thereof, I have not, nor have my partners or any of them, nor has any person, by my/our order, to my/our knowledge or belief, for my/ our use, had or received any manner of satisfaction or security whatsoever, save and except the following:

[Please state details of any mutual credit, mutual debts, or other mutual dealings between the corporate person and the financial creditor which may be set-off against the claim.]

Solemnly, affirmed at _____ on _____ day, the _____ day of _____ 20_____

Before me,
Notary / Oath Commissioner.

Deponent's signature.

VERIFICATION

I, the Deponent hereinabove, do hereby verify and affirm that the contents of para ___ to ___ of this affidavit are true and correct to my knowledge and belief. Nothing is false and nothing material has been concealed there from.

Verified at _____ on this _____ day of _____ 201____.

Deponent's signature.

ANNEXURE F1 : Standard operating procedure (SOP) on filing of Appeals/Special leave petition (SLPs) by the Income Tax Department in the Supreme Court (SC) and related matters.

Instruction No. 2/2022

F.No.279/Misc./M-72/2022-ITJ

Government of India

Ministry of Finance

Department of Revenue

Central Board of Direct Taxes

To

All the Principal Chief Commissioners/Chief Commissioners of Income Tax

All the Principal Director Generals/Director Generals of Income Tax

Subject:- Standard operating procedure on filing of Appeals/Special leave petition (SLPs) by the Income Tax Department in the Supreme Court and related matters: instruction regarding.

Sir/Madam,

1. Several instructions and directions have been issued by CBDT from time to time emphasizing upon the need for timely filing of appeals/SLPs in the Supreme Court and proper conduct of litigation. However, a number of SLPs are being filed with inordinate delay. In the wake of the Hon'ble Supreme Court's directions to adopt ICT (Information and Communication Technology) initiatives to streamline, monitor and provide seamless integration of all stages in government revenue litigation across the board, a LIMBS Committee and a High- Powered Committee were constituted. The High- Powered Committee has suggested to the board for changes in SLP proposal initiation, timely sending of SLP proposal to DoLA and use of single file instead of initiating fresh files through e-office by different authorities to cut down the delay. The High Powered Committee has advised the Board to work towards a "Zero Delay Regime" in the matter of filing of appeals/ SLPs.

2. In view of the above and with a view to ensure filing of appeals/SLPs within the period prescribed, following instructions are issued in supersession of all earlier instructions on the subject.

Time Lines for processing of proposals for filing SLPs

3. With a view to ensure timely filing of appeals/SLPs in the Supreme Court, the timelines for processing proposals at different levels are modified and enclosed as per Annexure-A, for strict adherence by all concerned.

3.1 . Responsibility to ensure timely processing of proposals – The Pr.CCIT/CCIT and Pr.CIT/ CIT concerned shall all ensure timely processing of proposals and their submission to the Directorate of L&R as per the timelines given in Annexure A. Any deviation from the timelines will have to be duly explained and delay without proper explanation or due to negligence will be viewed adversely.

4. Institutional mechanism for processing proposals for appeals/ SLPs to the Supreme Court:

- i. The Pr. CCIT/CCIT having jurisdiction over the station having Bench of the High Court, shall ensure a proper institutional mechanism for timely dissemination of downloaded copy/ certified copy of High Court's order/judgment, whichever is available first, to Pr.CsIT/CsIT having jurisdiction over respective cases.
- ii. The Pr. CCIT/CCIT, shall set-up a High Court Cell at each station within their jurisdiction where a Bench of the High Court is situated. Such cell shall be headed by a DCIT/ ACIT/ITO (as decided by the Pr.CCIT/CCIT, depending upon availability of manpower and the work load) with adequate number of Inspectors and other support staff and appropriate infrastructural facilities to make it properly functional. Appropriate monitoring and supervision mechanism of the High Court Cell shall be prescribed by the Pr. CCIT/CCIT under intimation to the Pr. DGIT (L&R).
- iii. The High Court Cell shall obtain particulars of cases finally heard from Standing Counsels at the end of each working day and intimate particulars of the cases, such as the name of the case, Assessment Year, Name of the Standing Counsel etc. with a summary of the proceedings to the Pr. CIT/CIT concerned without any delay. For outstation Pr. CsIT/ CsIT, such information shall be sent through e-mail/Fax.
- iv. The Cell shall also track orders/judgments pronounced on daily basis. Such information should be compiled from the daily cause list, Senior Standing Counsels and from Court room/registry of the High Court. The information so compiled should be transmitted to Pr. CIT/CIT concerned immediately on a regular basis through personal delivery/e- mail/fax.
- v. The Administrative Pr. CsIT/CsIT shall also set up proper institutional mechanism in their respective charges to access the website of the High Court to download orders/ Judgments relating to their charge as soon as these are uploaded. The orders can be downloaded from websites such as indiancourts.nic.in or www.court.nic.in where link of all High Courts is provided. An officer of the charge should this purpose. Such officer shall access the website everyday and keep a log of the same. The nominated officer shall also maintain regular co-ordination with the High Court Cell(s) dealing with the cases of the charge.

Processing of proposals for appeal/SLP on receipt of the order of High Court

5. The following important issues need to be noted in processing proposals for SLPs for due compliance:

- i. For filing SLP, period of limitation begins from the date of judgment/order of the High Court.

- ii. In case an application for grant of certificate of fitness u/s 261 of the Income-tax Act, 1961 is made, the limitation to file Civil Appeal/SLP is 60 days from disposal of the application.
- iii. The proposal for SLP against the High Court's order shall be initiated on the basis of an ordinary copy/ the copy of the order downloaded from the website (as referred to above) of the Court without waiting for the certified copy of the order. The certified copy of the order shall be sent separately as soon as it is received to determine the exact date of limitation. The timeline for processing the SLP proposal at the level of Pr.CIT concerned, shall not in any case, exceed 20 days from the date of judgment.
- iv. In order to avoid delay, the Pr.CCIT/Pr.CsIT should consider the SLP proposals as per their judicial appreciation of the impugned order/judgment of the High Court and need not seek legal opinion in every case from the Standing Counsels as the Ministry of Law & Justice and Ld. Law officers of the Government of India are consulted in appropriate cases before filing the SLPs.
- v. The process of filing SLP proposal should invariably be initiated only at the level of jurisdictional Principal Commissioner/ Commissioner in the field. Pr.CIT/CIT is the custodian of all the records while litigation in High Court is on and is responsible for initiating the process for filing of SLP.
- vi. After due consideration, the proposal for SLP must be sent by the Pr. CsIT/CsIT to the Directorate of Income-tax (L&R) within the time-limits prescribed in Annexure-A. In case of delay, detailed justification should be furnished along with the corrective action taken to prevent recurrence of delay in future.
- vii. The revised Proforma B, enclosed as Annexure B to this instruction, duly filled-in along with one set of required documents annexed to it, should be sent with the proposal. The proposal along with soft copy of all annexures is to be sent to the Directorate of L&R necessarily through email / e-office.

SLP filed by the assessee

6. If the Hon'ble Supreme Court directs issue of notice on the SLP filed by the assessee, Registry of the Supreme Court serves the notice along with the Special Leave Petition to the respondent Pr.CIT/CIT or other respondent officer directly. The Pr.CIT/CIT or such other respondent officer, through his Pr.CIT/CIT, should submit the following documents to the Directorate of Income-tax (L&R) for entering appearance before the Hon'ble Court and for filing counter affidavit:

- i. A copy of the notice along with the paper book served by the Registry.
- ii. Para wise comments on the Special Leave Petition placed in the paper book.
- iii. A Vakalatnama duly executed in favour of Assistant Government Advocate, Central Agency Section, Ministry of Law.

The aforesaid documents should be submitted strictly within three weeks from the receipt of the notice to the Directorates of Legal and Research.

Processing of SLP proposals in the Directorate of L & R

7. The Pr. DGIT (L&R) shall ensure the following:

- i. After due consideration of the proposal within the Directorate of L&R, the proposal is sent to the Ministry of Law within 20 days of the receipt, if approved by the Board and;
- ii. Time-lines mentioned in the Annexure-A to this Instruction for timely filing of SLPs are adhered to strictly.

Compliance of directions of Hon'ble Supreme Court

8. Directions issued by the Hon'ble Supreme Court must be complied with, within the time allowed. The Pr.CIT/CIT shall personally ensure compliance of directions relating to Dasti service, filing of counter or rejoinder affidavit or other specific directions, to avoid adverse observations.

Quality of SLP Proposals

9.1. The quality of proposal sent by the Pr.CIT/CIT is extremely important for efficient and effective litigation management in the Department. The Pr.CIT/CIT must ensure that the complete proforma B along with all requisite documents is submitted along with the SLP proposal. Any deficiency in this regard causes avoidable delays in processing of the proposals.

9.2. It must also be noted that appeal to the High Court and the Supreme Court can be filed only on 'Substantial Questions of Law'. It has, however, been observed that many SLP proposals involve only 'questions of fact'. The CCsIT shall ensure that the proposals for SLPs are well examined and forwarded to the Directorate of L&R only in those cases where 'substantial questions of law' are involved.

9.3. All High Court orders which are against the revenue but found acceptable by the Pr. Commissioner/Commissioner will be put up to the jurisdictional Chief Commissioner within 15 days of pronouncement of the judgment for his concurrence. In case, the CCIT directs submission of SLP proposal in a case, the same shall be done within time frame prescribed in Annexure A.

Assistance to Law officers/Appearing Counsels

10. The Pr. CIT/CIT concerned should ensure that the Law Officer/Appearing Counsel representing the case is briefed properly before the hearing. Whenever, Law officer/Appearing Counsel seek instructions/clarifications in a case, the same must be provided by the Pr.CIT/CIT on priority.

Monitoring Compliance of this Instruction

11.1. The Pr. DGIT (L&R) shall monitor the compliance of time lines for submission of SLP proposals and send a quarterly report to the Member (A&J), CBDT giving list of cases where the proposal for filing SLP was received beyond the prescribed time lines. Due dates of the quarterly

reports are – 15th July, 15th October, 15th January and 15th April. The report shall indicate the Pr.CCIT/CCIT region, the Pr.CIT/CIT charge and number of days of delay along with the action taken and/or proposed to be taken.

11.2. In the quarterly report, the Pr. DGIT (L&R) shall also report cases of delays beyond the prescribed time lines for

- i. Sending the SLP to Ministry of Law;
- ii. Vetting of draft SLP; and
- iii. Filing of SLP by the CAS after vetting.

Reasons of delay in such matters and the steps taken/proposed to be taken shall also be mentioned in the report. Delays, if any, on the part of counsels and CAS etc. shall be brought out clearly to be taken up with the Law Ministry appropriately.

12. This Instruction shall apply in respect of the orders/judgments of High Courts pronounced on or after the date of issue of this Instruction. Necessary concurrence of Ministry of Law & Justice has been obtained.

Note: Reference to Pr.CIT/CIT/Pr.CCIT/CCIT in this instruction includes Pr.DIT/DIT/Pr.DGIT/DGIT wher ever applicable.

Yours faithfully,
(Tanay Sharma)
DCIT(OSD)(ITJ)-I, CBDT

Copy to:

1. The Chairman, Members and all other officers in CBDT of the rank of Under Secretary and above.
2. The Comptroller and Auditor General of India.
3. DIT(Vigilance), Mayur Bhawan, New Delhi.
4. The Joint Secretary & Legal Advisor, Ministry of Law & Justice, New Delhi.
5. All Directors of Income-tax, New Delhi and DGIT(NADT), Nagpur
6. Database call for uploading on www.irsofficensonline.gov.in

(Tanay Sharma)
DCIT(OSD)(ITJ)-I, CBDT

ANNEXURE – A

Timelines for filing SLP to Supreme Court

The Special Leave Petition against the judgment of High Court has to be filed in Supreme Court within 90 days of date of pronouncement of the order. The timeline will start from the date of judgment. Timelines for various stages of the process are given below:

I. TimeLine to be observed in the office of the Pr.CIT/CIT:

++ : This activity should begin as soon as Pr.CIT/CIT takes a view to propose SLP.

Timeline to be observed in the Directorate of Income Tax (L&R)

| Sr. No | | No. of Days | Cumulative Days |
|--------|---------------------------------|-------------|-----------------|
| 1. | Directorate of Income Tax (L&R) | 16 | 36 |
| 2. | Member (A&J) | 3 | 39 |
| 3. | Transit to MOL | 1 | 40 |

V. Time line to be observed in the Ministry of Law/Central Agency Section (Internal breakup of the timelines may be decided by DoLA/Id. ASG)

| Sr. No | | No. of Days | Cumulative Days |
|--------|--|-------------|-----------------|
| 1 | Analysis by DoLA, Opinion of Law officer and drafting of SLP | 30 | 70 |
| 2 | Transit to the Directorate | 1 | 71 |
| 3 | Vetting in Directorate | 7 | 78 |
| 4 | Transit back to CAS | 1 | 79 |
| 5 | Paper book preparation, Affidavit/AOR, Filing of SLP | 6 | 85 |

The observance of timeline in the MOL and CAS will be monitored by the Ministry of Law other than step at Si.No. 3 above which relates to the Directorate (L&R).

Revised Proforma for submission of proposal to file SLP PROFORMA: B

1. a. ITA No./WP No. of the Judgment
- b. Unique 16 digit 'Case Number Record' (CNR) No.
- c. High Court LIMBS ID

Whether there are multiple appeals involved in the order of High Court. Y/N If yes: –

2. a. No. of appeals involved in the composite order of High Court
b. Whether SLP is proposed against all the appeals involved Y/N
c. If no, reason for not proposing SLP against all the appeals involved
3. i. Name of the assessee
ii. Address of the assessee
4. a. Assessment Year'
b. Income declared by the assessee in ITR
c. Income assessed u/s 143(3)/147/153(A)/153C
5. a. Aggregate of Tax effect on issues to be disputed.
b. Tax effect Issue wise involved in the SLP proposal.

Is the Tax effect below the limits prescribed in instruction on monetary limits for filling SLP?

6. If yes, please specify the exception provided in the instruction in which the proposal is covered.
 - a. Details of exception clause
 - b. In case of Audit Objection, whether the same has been accepted or not by the department (including relevant documents)
 - c. Confirmation that CBDT Instruction No. 07/2017 related to Revenue Audit Objection has been adhered
7. i. Date of High Court order
ii. Date of Limitation for filing SLP
iii. If proposal to Directorate of Income-tax (L&R) is sent beyond 20 days from the date of order, reasons for delay.
8. a. Are the following documents, in one set of hard copy, enclosed
 - i. Certified copy of High Court's judgment /order Y/N
 - ii. Copy of memo of appeal u/s 260A filed before the High Court Y/N

- iii. Copy of order of ITAT YIN
- iv. Copy of the order of CIT(A) YIN
- v. Copy of the Assessment Order/s YIN
- vi. In case of reopening u/s 148 copy of notice, copy of reason recorded and approval of PCIT,objection filed by assessee and reply of the objection.
- vii. if, any documents are relied upon/referred into for proposing SLP, copy of the same
- viii. Any other relevant documents
- b. The soft copy of the documents is sent on e-office as well as through email. Y/N

- 9. (i) Facts of the case in brief (in about 300 words: In the separate sheet.
- 10. (ii). Information regarding SQsL before the High Court.

| Sr. No. | Substantial Question of Law(SQL) raised before | Decision of High Court on the SQL (held in favour or High Court Revenue) | Relevant Para of the High Court order | Whether the SQL is sought to be agitated be- fore the | Remarks, if any the Supreme Court (Yes/No) |
|---------|--|--|---------------------------------------|---|--|
|---------|--|--|---------------------------------------|---|--|

- iii. Whether all the question of law (QoL) raised before High Court have been answered in the order of High Court. If no proposed action for the same.
- iv. Whether the issue of perversity has been taken as a ground before ITAT/HC. If yes please indicate the relevant para of the order of CIT(A)/ITAT/HC.
- v. If the disputed issue under consideration is involved in other assessment years, then assessment year wise status of litigation in all such appeals.
- 11. The ‘Substantial Questions of Law to be proposed in the SLP’
- 12. a. If the judgment, to be contested, has relied upon another judgment, then a copy of there lied upon judgment & its present status of litigation, if ascertained.
- b. Has the relied upon judgment been accepted on merits or has not been accepted but not contested further on account of tax effect being less than the limit prescribed by the Board.

[The information relating to status of the relied upon judgment as indicated in (a) & (b) maybe mentioned in the note to be enclosed as per Sl. No. 8(viii) above]

13. (i) Name and present communicable address of all the respondents against whom SLP is sought to be filed

14. (ii) E-mail addresses of all respondents

15. Communication details of PCIT/CIT

- i. Name
- ii. Telephone Number
- iii. Fax number
- iv. Mobile number
- v. Official E-mail id

16. Specific comments of the CCIT for recommending SLP to be separately enclosed with the proposal for consideration of Board.

Date :

Place :

Signature

Name & designation of the PCIT/CIT

Note: In case of writ petitions, copy of writ petition, copy of counter & rejoinder affidavits filed in the High Court and any other document crucial to the adjudication of issue.

1. The delay due to time taken in ascertaining the present status would be attributable to the PCIT/CIT forwarding proposal without the same as this is very crucial to proceed further.
2. The PCIT/CIT has to ensure that every page of the annexure is legible

Notes:

1. Separate Proforma 'B' to be filed for each Assessment Year



Central Board of Direct Taxes
Directorate of Income Tax (Legal & Research)
Drum Shaped Building, I.P. Estate, New Delhi 110002.
Phone No. 011-2337902

F.No.DDIT(L&R)(Hq.)/2024-25/02

Date: 21.05.2024

To,

All Pr. Chief Commissioners of Income Tax /Director General of Income Tax,

Sir/Madam,

Subject: Submission of Deficiency-Free SLP Proposals on E office for Timely Processing- req

There is a pressing need to expedite the processing of SLP proposals of the department especially considering the adverse outcome of cases filed before the Apex Court with delay as well as keeping in mind the increasing number of SLP proposals received in the Directorate from field. This makes it imperative that deficiency free SLP proposals are sent from the field to the Directorate so that these can be taken up promptly for processing in the Directorate.

2. A major issue encountered in SLP proposals received from the field is incomplete SLP proposals lacking necessary annexures listed as prerequisite in para 8 of Proforma B, such as Assessment Orders, Orders of the CIT(A), the ITAT and such other relevant Orders and documents. This leads to a considerable amount of delay in arranging the annexures of SLP proposals.

3. It may be noted that the MoL&J has instituted a specific requirement wherein it has been advised that proposals submitted by the Department to MoL&J may not be considered for processing if relevant orders, documents and annexures are not **hyperlinked** in the notesheet side.

4. Accordingly, it is reiterated and requested that it may be ensured that SLP proposal(s) are sent on '**e-office**' only with following details and documents **hyperlinked** on the notesheet side of the communication column:-

- (i) Revised Proforma B (already circulated vide letter F. No. Pr.DGIT(L&R)/HQ./Proforma B/2021-2022/ dated 17.01.2022. A copy is also annexed).
- (ii) Assessment order/Penalty order/ or any order being the subject matter of challenge.
- (iii) Order u/s 263 (if applicable)

- (iv) Order of CIT(A)
- (v) Order of ITAT
- (vi) Order of High Court
- (vii) MA order by Tribunal
- (viii) Review order by High Court
- (ix) Appeal Memo before ITAT & before High Court.
- (x) Copy of referenced & relied upon judgments by the field offices
- (xi) Status of referenced/relied upon judgments in the orders to be impugned in the SLP proposals.
- (xii) Any other documents which may be relevant for filing SLP.

5. It is also intimated that henceforth in cases of deficient SLP proposal(s) received on '**E- office**' without relevant annexures which are a prerequisite as per Proforma B as highlighted above, the entire SLP proposal file on E- office may be returned back to the field. The Directorate will process only those proposals which are defect-free and contains all the requisite documents as annexures in e-office.

6. The field authorities may be advised to furnish specific comments in the proposal as to how & why the relied upon order(s)/judgment(s) mentioned in the High Court order is not acceptable. A mere statement that it is distinguishable on fact will not be sufficient for finality of the proposals.

7. SLP proposals being submitted on the premise of falling under the exception provided in Circular 03 of 2018 and now amended Circular No. 05 of 2024, may necessarily be justified on **merit of the case as well**.

8. Therefore, in order to streamline the processing of SLP proposals within stipulated timelines, it is requested that the above may be communicated to all the officers concerned in your jurisdiction for necessary action.

This letter is issued with the approval of Ld. Member (A&J), CBDT.

Yours Sincerely,

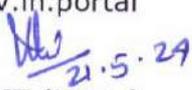
-sd-

(Chajat Lowang)
DDIT (Hqrs.),

Directorate of Legal & Research, Delhi.

- Copy to: 1. The Chairman, CBDT
2. All Members of CBDT
3. The CIT(A&J), CBDT.

- ✓4. The Data Base Cell for uploading on the irsofficeronline.gov.in portal


21.5.24
DDIT (Hqrs.),

Directorate of Legal & Research, Delhi.

