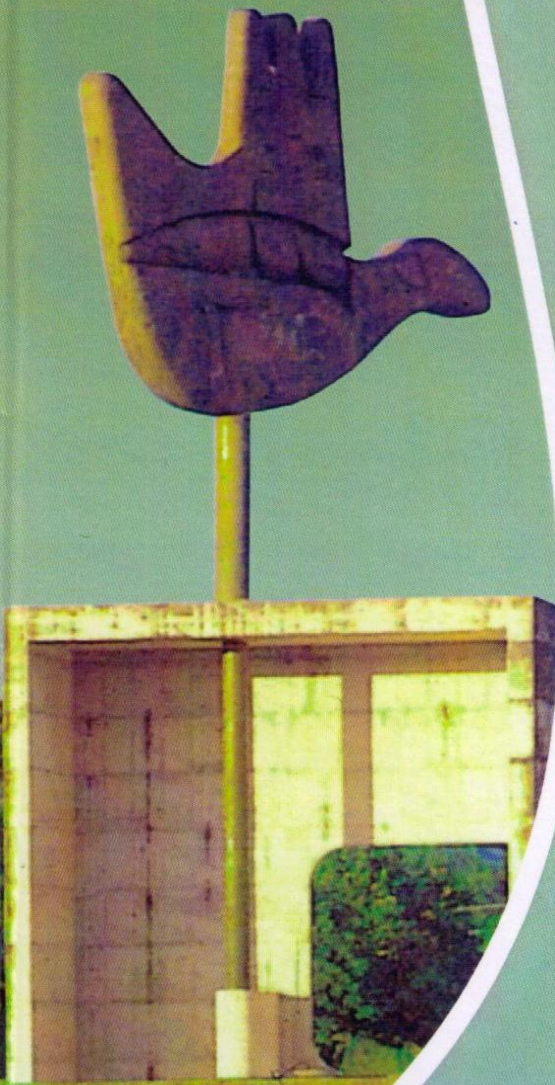




DTRTI Chandigarh/ 2010-11/ Departmental Publication Series/ Vol.-II

Manual for Filing of Appeals in High Court and Supreme Court



प्रत्यक्ष कर क्षेत्रीय प्रशिक्षण संस्थान, चण्डीगढ़ का ध्येय प्रशिक्षण द्वारा अच्छे से बेहतर बनाना है।

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Preface



Chairman CBDT in his address during the July 30th Video conference stated that, "There has been considerable delay in filing appeals especially before the Supreme Court of India. This has been adversely commented upon by the Chief Justice and therefore such delays should be avoided in future".

The Board has issued Instruction F.No. 279/Misc./24/2010 issued in March 2010, following the observations of the Apex Court in the case of Urban Improvement Trust Bikaner Vs. Mohal Lal, (**Refer Annexure 9.1**) asking officers, "to desist from filing frivolous appeals". Further special care is to be taken while proposing substantial question of law u/s 260A as the Apex Court in CIT, Bhopal Vs HEG Ltd. {2010} 228 CTR 495 {SC} (**Refer Annexure 9.2**) has opined that if question is not framed properly, the confusion results in wrong answers.

P&H High Court and the Delhi High Court have also dwelt in separate decisions (**Refer Annexure 9.3**) on the need for the Department to streamline our machinery for filing of appeals in the High Court and Supreme Court and stated that the Court will consider imposing damages.

It hardly bears reiteration that the cutting edge of our deterrence as a Tax department lies in our assessments and their confirmation in appeal. If we fail to defend good assessments or lose

these in appeal purely because of delays in filing appeals clearly there exists a case for some introspection and indeed streamlining of our work practices and hence this Workshop.

While instances of good work practices are many, what is lacking in most offices is Institutional memory, and here a Handy Ready-Referencer, suitably updated can act as an effective aide to those discharging duties pertaining to any area of work and particularly in this case which is Filing of Appeals in High Court and Supreme Court- Hence this compilation, to mark this the second of DTRTI Chandigarh's workshops, on "Streamlining of filing of Appeals in High Courts and Supreme Courts".

There may be scope for further improvement and possibly some unintended errors might have crept in. Corrections and suggestions can be e-mailed to rtichandigarh@gmail.com or faxed at 0172-2620569.

GG Shukla

Director General, NADT, Nagpur



“Streamlining of Filing of Appeals before High Court and Supreme Court” : Workshop on 27th September 2010 at RTI Chandigarh.

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1.1 Extract from the Record of proceedings of Video Conference on 30 July 2010 and Chairman's Address therein

Chairman CBDT

Mr SSN Moorthy Chairman CBDT in his address stated that, "There has been considerable delay in filing appeals especially before the Supreme Court of India. This has been adversely commented upon by the Chief Justice and therefore such delays should be avoided in future. He also informed that to facilitate prompt communication between the department and the Solicitor General (SG), E-mail IDs of all CsIT have been provided to the SG. All CsIT must therefore, regularly attend to the e-mail and reply to the SG/ASG promptly as and when a communication is received."

Member (A & J)

Sh. Durgesh Shankar, Member (A &J) in his address expressed concern over delay in filing appeals in the High Court. He informed that in a recent decision, Hon'ble Chief Justice of India has expressed deep concern over this issue in three cases involving large amount of revenue. The Hon'ble Finance Minister has also directed to fix responsibility wherever there is undue delay in filing appeal. He briefly analyzed the reasons for delay which is primarily due to non availability or absence of the relevant assessment records. He suggested that;

- a) The assessment record in high revenue cases be kept in personal custody of the officer concerned during pendency of appeals.
- b) All CCsIT/DsGIT shall evolve a strategy as to how to deal with this situation and give their feedback.
- c) The officers concerned may take stock of those cases where department is in appeal and suggested that the assessment records should be page numbered and kept in personal custody of the officer.

- d) Whenever there is delay in sending proposal for filing of appeals to the Supreme Court the reasons for delay must accompany the proposal to the DGIT (L & R) so that the delay can be explained to the court.

The Member (A & J) also raised issue of representation of cases before the Hon'ble High Courts. He requested the CCsIT/DsGIT to ensure attendance of officers of the level of Addl. CIT/DCIT in court hearings, to take notes and act as an effective channel between the standing counsel and the department.

The Member (A & J) also stressed that a mechanism to improve representation before the judicial authorities should be in place. He suggested the need for performance appraisal of the departmental standing counsels and to take necessary remedial action if the performance is below par. He also expressed his concern that inspite of a request to acknowledge his letter dated 14/06/2010, only very few offices have acknowledged it.

1.2 Extract from Minutes of Chief Commissioners Conference June 2010

18. SLP PRESENTATION

DGIT (L & R) Shri. Akhilesh Prasad informed the house that the major factors leading to delay in filing of SLPs include delay in communication of order of the High Court by the Sr. Standing Counsel or delay in obtaining opinion of the Counsel, lack of monitoring of the High Court judgment by the CIT, typing of voluminous annexure in prescribed format in CAS. In some cases, delay is due to sheer negligence. The measures to curb delay include the rule of the High Court Cell, which must compile the particulars of judgments pronounced on daily basis & immediately inform the concerned CIT, the CIT should obtain a copy of the judgment from the Counsel/HC website and should scrutinize the judgment of the High Court and initiate proposal, if need be. The Annexure i.e. orders of AO, Cit (A), ITAT & High Court along with Memo of Appeal filed u/s 260 A should be legible. One soft copy of the annexure in MS Word 2007 or 2003 format in a CD should be sent with proposal. SLP proposal should be forwarded by the CCIT with his specific comments. A large number of proposals raise only questioning of facts which put avoidable burden on the judicial system/Departmental resources.

The Board has issued Instruction F.No. 279/Misc./24/2010 issued in March 2010, following the observations of the Apex Court in the case of Urban Improvement Trust Bikaner Vs. Mohal Lal, asking officers to desist from filing frivolous appeals. The field must disclose the status of litigation in earlier years especially in those cases where CIT(A)ITAT has specifically referred to or relied upon decisions rendered in those years. The field should enclose copy of judgment (s) relied upon by the High Court Revenue implication is to be properly analyzed as there is no point pursuing an appeal, if matter is revenue neutral/academic in nature. Special care is to be taken which proposing substantial question of law u/s 260A as the Apex Court in CIT, Bhopal Vs HEG {2010} 228 CTR 495 {SC} has opined that if question is not framed properly, the confusion results in wrong answers.

1.3 Extract from D.O. F.No. DGIT(L & R)/Member(A & J)/ Delay/SLP/2010-11 dt 14 June 2010 regarding Subject: Filing of SLPs and compliance of directions - Hon'ble Supreme Court of India - regarding-

You may kindly recall the discussion on the above subject on 10th June, 2010 during the Chief Commissioner's conference. To recapitulate, it was impressed upon all Chief Commissioner/Directors General that the time for filing of SLP against judgment of High Court/Tribunal is 90 days from the date of pronouncement of judgment operated against. It was also informed to all assembled Chief Commissioners/Director General that lately, SLP proposals were being received very late or incomplete in vital details, leading to avoidable delay in filing of SLP. The Apex Court, or indeed all High Courts also, are extremely critical of the Department in this regard. The CBDT has viewed this with high concern and has decided to fix personal responsibilities of officers concerned for these avoidable delays.

2. In view of the above, it is directed as below:

- a) A **designated officer** will monitor the date of pronouncement of Orders of the High Court/Supreme Court over internet, download the same and immediately inform all concerned officers for appropriated action. Where the order is pronounced in the Court, but does not appear on website, the Standing Counsel should alert the CCIT/DGIT office/designated officer immediately.
 - b) The Standing Counsel will be immediately alerted to apply for certified copies of the Order. The delay in obtaining the certified copy shall no longer be considered a valid excuse.
 - c) The Standing Counsel may be directed to give their views wherever the judgment is against the revenue.
 - d) The complete docket with the Standing Counsel will be obtained, to be sent to the O/o DG (L & R) for the preparation of the paper-book. In case, all relevant documents, copies of orders etc. are already available in the O/o Chief Commissioner/Director General, this step can be avoided.
 - e) The reasons for which the Order is not found acceptable should be clearly and unambiguously brought out. The CC/DG should frame to bring out a draft of the substantial question(s) of law proposed to be referred.
 - f) All copies of Orders and documents should be sent to DGIT (L & R) in hard copy (1 set) and also on a CD, using MS word programme and observing prescribed margins. The CC/DG should strive to send the full and complete proposal, as outlined in preceding paragraphs within 45 days of its pronouncement.
3. The Hon'ble Supreme Court of India, in respect of SLPs and other appeals pending, often issues interim directions requiring compliance by dates specified therein. The compliance must be carried out and its report, along with copies of any Orders passed or any further action taken should reach the O/ o DG (L & R) 5 days before the specified date.

1.4 Letter of Under Secretary (ITJ) of March 2010 enclosing therewith Hon'ble Supreme Court's order dated 30.10.2009 in SLP (C) no. 29852 of 2009 titled Urban Improvement Trust Bikaner Vs Mohan Lal - Increase of frivolous and unjust litigation by Government and Statutory authorities regarding.

F.No. 279/Misc./24/2010-S)-ITJ
Government of India
Ministry of Finance, Deptt. Of Revenue, CBDT
Hudco Vishala Bldg. 7th Floor, ITJ Sector, 14 Bhikaji Cama Place,
New Delhi-110066

Dated 03.2010

To

The Chief Commissioner of Income Tax (CCA)
All Director General of Income Tax concerned.

Subject: Hon'ble Supreme Court's Order dated 30.10.2009 in SLP No. 29852/099 titled Urban Improvement Trust Bikaner Vs Mohan Lal- Increase of frivolous and unjust litigation by Government and Statutory Authorities - reg.

Sir,

Kindly refer to the subject cited above.

I am directed to enclose a copy of O.M. No. 03(06)/2009-JUdl dated 22.12.09 alongwith enclosures from Ministry of Law & Justice through ITCC section on the subject cited above for information and necessary action.

Further it is to be stated that appeals should be preferred before tribunals and courts after due application of mind. The judgments of the courts on the issue, the extant instructions of CBDT (viz instruction on monetary limits for filing appeals No. 05/08 and other pertinent instructions) must also be duly considered, before recommending further appeals in any case. This may be brought to the knowledge of officers concerned within your administrative region/Charge.

Encl: As above.

Yours faithfully,

(Pradeep K Meel)
Under Secretary (ITJ)
Ph.No. 26177534

No. 03(06)/2009- Judl
Government of India
Ministry of Law & Justice
Department of Legal Affairs
Judicial Section.

New Delhi dated the 22nd December, 2009

Sub:- Hon'ble Supreme Court's order dated 30.10.2009 in SLP (C) no. 29852 of 2009 titled Urban Improvement Trust Bikaner Vs Mohan Lal - Increase of frivolous and unjust litigation by Government and Statutory authorities regarding.

The undersigned is directed to enclose herewith a copy of Hon'ble Supreme Court order dated 30.10.2009 on the subject cited above and to say that the Hon'ble Supreme Court has expressed concern on the increase of frivolous and unjust litigation by Government and Statutory authorities, Hon'ble Supreme Court has observed as follows:-

"....it is matter of concern that such frivolous and unjust litigation by government and statutory authorities are on the increase. Statutory Authorities exist to discharge statutory functions in public interest. They should be responsible litigates. They cannot raise frivolous and unjust objections, nor act in a callous and highhanded manner. They can not behave like some private litigants with profiteering motives. Nor can they resort to unjust enrichment. They are expected to show remorse or regret when their officers act negligently or in an overbearing manner. When flaring wrong acts by their officers is brought to their notice, for which there is no explanation or excuse, the least that is expected is restitution/restoration to the extent possible with appropriate compensation. Their harsh attitude in regard to genuine grievances of the public and their indulgence in unwarranted litigation requires to be corrected....."

The reluctance to take decisions, or tendency to challenge all orders against them, is not the policy of the governments or statutory authorities, but is attributable to some officers who are responsible for taking decisions and/or officers in charge of litigation. Their reluctance arises from an instinctive tendency to protect themselves against any future accusations of wrong decision making, or worse, of improper motives for any decision making. Unless their

insecurity and fear is addressed, officers will continue to pass on the responsibility of decision making to courts and Tribunals. The Central Government is not attempting to deal with this issue by formulating realistic and practical norms for defending cases filed against the government and for filing appeals and revisions against adverse decisions, thereby, eliminating unnecessary litigation. But, it is not sufficient if the Central Government alone undertakes such an exercise. Vexatious and unnecessary litigation have been clogging the wheels of justice, for too long making it difficult for courts and Tribunals to provide easy and speedy access to justice to bonafide and needy litigants."

2. In a reply to the Rajya Sabha Unstarred Question no. 2694 for 14.12.2009, Hon'ble MLJ has stated that necessary instruction/advise are being issued to all Ministries/Departments to avoid such frivolous litigations.

3. The observation of Hon'ble Supreme Court are accordingly brought to the notice of all Secretaries of all the Ministries/Departments of UOI as well as to all Chief Secretaries of State Governments/UTs for necessary compliance. It is requested that necessary steps may be taken in order to avoid such frivolous and unjust litigations.

4. This issues with the approval of Hon'ble MLJ.

(Ashok Kumar)

Additional Legal Adviser to the Government of India

To

1. The Secretaries, All Ministries/Departments of UOI
2. The Chief Secretaries, All State Governments.
3. The Administrators, All Union Territories.

2 The Central Scrutiny Report (CSR)

Scrutiny Report

2.1 Scrutiny Report: Its Role in Streamlining Litigation

The Central Scrutiny Report (CSR), as it is called here, is essentially a report on the examination of the appeal orders be it that of the CIT (A) or the ITAT or the High Court. The quality of CSR particularly those relating to the orders of CIT (A) and that of ITAT are crucial so far as the litigation in High Courts and the Supreme Court are concerned.

The AO has to carefully go through the appellate order being scrutinized to find out that the facts have been correctly noticed and properly appreciated therein. Thereafter the application of law should be seen. If the finding of fact recorded therein is contrary to the materials on record or conclusion drawn is at variance, then such perversity has to be specifically highlighted.

Of late, the department has been at the receiving end of considerable adverse comment in Courts and Tribunals for filing frivolous appeals in large numbers. It is the declared policy of the Government to curb the tendency of filing appeals indiscriminately. The Delhi High Court has even imposed costs on the department for filing appeals in cases, having tax effect below monetary ceiling prescribed by the Board. Ultimately this led to the insertion of section 268A of the Act. Even afterwards, such trend has continued whenever it finds that the given appeal was filed without due application of mind.

That this aspect requires priority in the discharge of work cannot be emphasized enough. A serious introspection has to be carried out within the department to develop and improve core competence particularly at higher levels to carefully screen and filter out frivolous appeals.

The scrutiny of the CIT (A)'s order is important in so much as it is the first stage that marks the beginning of the litigation. At this stage new facts are also introduced and by and large the contours of future litigation take shape. The scrutiny of his order has to be carefully

carried out. Only when there is adequate reason(s) to contest the decision, the appeal should be authorized.

The need for conducting a seminar on this topic has been acutely felt for reasons such as:

- (a) delay in filing appeals in High Courts,
- (b) delay in submitting SLP proposals,
- (c) filing of appeals in cases of tax effect below the monetary ceiling prescribed and proposing SLPs in this category of cases in the name of involvement of substantial question of law,
- (d) filing of frivolous appeals in High Courts and submission of SLP proposals in many undeserving cases.

The CSR is in the root of all these ills. The kind of effort that is required in going through the assessment records and thereafter application of mind at all levels is perhaps missing in the whole process culminating in filing of an appeal u/s 260 A or sending a proposal for SLP.

Preparation of Appeal Scrutiny Report

A. Time Frame

The limitation to file appeal in ITAT is 60 days from the receipt of the appeal order by the CIT & this period for filing appeal in the High Court is 120 days from the receipt of ITAT's order by the CIT having jurisdiction over the case. The limitation to file SLP in the Supreme Court is 90 days from the pronouncement of the order. The period between the date of applying for certified copy and date on which it was ready for delivery is excluded for computing the period of 90 days.

The office procedure does not lay down any time line for sending Appeal Scrutiny Report by the AO to the Range and there from to the CIT. The Board has prescribed the flow chart for movement of a proposal for SLP. This system has brought about some discipline in movement of SLP proposals and the defaulting point is identifiable at a glance.

There is hardly any case in Delhi where appeal to ITAT is filed after limitation. Same is by and large true for appeal to High Court but not the whole truth. There is a problem and that needs to be addressed once for all so far as the time line of filing appeal is maintained. Many counsels file appeal knowing fully well that it is defective but just to beat the limitation. After filing, the AO loses track or interest in pursuing the matter. In a number of cases, defects are not removed within the time allowed. This is as good as filing appeal after expiry of limitation. Proposed time line for sending appeal scrutiny report and for action thereafter is enclosed for discussion.

B. Content of the Report

The CSR should broadly conform to following parameters.

1. The issue involved should be concisely stated as is recorded in the assessment order.
2. If any additional evidences have been relied upon to decide the issue adversely, without affording the AO an opportunity to examine the same, it should be so stated. If the AO was provided an opportunity then there can be no grievance on this count.
3. If a finding of fact has been recorded, which is contrary to the evidences on record, then such perversity should be clearly demonstrated in the scrutiny report.
4. The ratio of judicial precedents relied upon by the appellate authority is appropriate i.e. factual matrix of cases relied upon and that of the case at hand are identical.
5. If a particular issue is recurring from earlier years, then the latest status must be ascertained. If finality has been reached on that issue in the meanwhile, then further appeal should not be recommended.
6. **Most importantly, non-acceptance of the appellate decision on any point must be backed up by valid reasons.**

The AO should suggest the proposed grounds of appeal. If there are several observations in respect of an issue which are adverse but not acceptable, these should be separately challenged under sub paragraph of the main ground. Usually the grounds of appeal are drafted by the ITO(Judicial) in the o/o CIT in a mechanical manner.

If AO suggests the proposed grounds of appeal, the CIT would have better input to draft/approve the grounds of appeal.

C Role of the Range Head

There is a perception amongst the Addl./Joint CIT that they have a role of post office. The CSR received from the AO is merely forwarded by way of endorsement to the CIT with contributing even one sentence in a large number of cases. This is not at all a responsible attitude on the part of the middle management officers.

The Range head is expected to critically examine the CSR with reference to its factual and legal content. A real and meaningful assistance to the CIT has to come from this level by way of citation of judicial precedents relevant to the issue under consideration. In fact, apart from the quality of assessments framed by an officer, the comments on CSRs and on audit objections indicate his/her technical competence in real sense.

Rajnish Kumar, IRS CIT (L&R)

2.2 Quality Scrutiny Reports, Streamlining Litigation, and pruning unnecessary SLPs

Pre-appellate order action Check List

CIT(A) Stage

- Furnishing of Form No. ITNS 51, duly filled by Assessing Officer(A.O.), to CIT(A)
- Personal representation by the A.O. before CIT(A) in important cases
- Timely submission of Remand Report by A.O. duly approved by the Range head to CIT(A)

ITAT stage

- Preparation of paper book by A.O.
- Furnishing of brief by A.O. to the D.R.
- Filing of cross objections, wherever required

General

- Is tax effect above limits prescribed by CBDT?
- Whether Revenue audit objection in the case has been accepted by the Board ?
- Whether constitutional validity of any provision of the Act is under challenge?
- Is CBDT's Order, Notification, Circular or Instruction the subject matter of the adverse order?
- Whether prosecution proceedings are contemplated against the assessee?

CIT (Appeals)'s Orders

- Has CIT (A) admitted additional evidence without giving opportunity to A.O.
- Averments of the assessee which have been accepted by CIT (A), to be checked for actual inaccuracies.
- Factual inaccuracies in recording of facts by CIT (A).
- Have the correct provisions of law been applied by CIT(A)?
- Are case laws relied by CIT (A) relevant? Distinguishable on facts?
- All issues to be challenged in appeal including general observations which would adversely affect Revenue's case.
- Also general prayer to amend, alter, etc. grounds later
- What is the operative part of the order ?

Grounds of Appeal

- Should be brief and specific
- Should not be argumentative
- Should avoid repetition

- Should not contain intemperate language
- Should not refer to case laws unless binding decisions

ITAT's Orders

- Has the ITAT adjudicated on all grounds raised in the appeal? Has it travelled beyond the grounds raised in appeal?
- Is the finding of fact given by ITAT correct or contrary to facts on record?
- Has the ITAT considered all relevant and material facts and evidences?
- Is the conclusion drawn by ITAT such that a reasonable person would reach?
- Has the ITAT made some observations which would adversely affect the case of Revenue if left unchallenged?
- Have the correct provisions of law been applied by ITAT?
- Are case laws relied by ITAT relevant?
- Distinguishable on facts? Any Special Bench / jurisdictional High Court/ Supreme Court decision ignored?
- Is application for rectification required?
- Can the ITAT order be challenged on the grounds of perversity ?
- If yes, a specific question on perversity to be raised before High Court.
- Questions of law to be correctly drafted
- All issues to be challenged including general observations which would adversely affect Revenue's case.

High Court

- All the above points to be seen.
- Has the High Court adjudicated on all questions of law raised in the appeal?
- Has it travelled beyond the questions raised in appeal?
- Are case laws relied by High Court relevant? Distinguishable on facts? Any Full Bench High Court/ Supreme Court decision ignored?
- Is a review required? If yes, it has to be filed within 30 days of the date of order.
- SLP not to be recommended lightly.
- First frame the substantial question of law which arises from High Court's order. This helps achieve clarity.

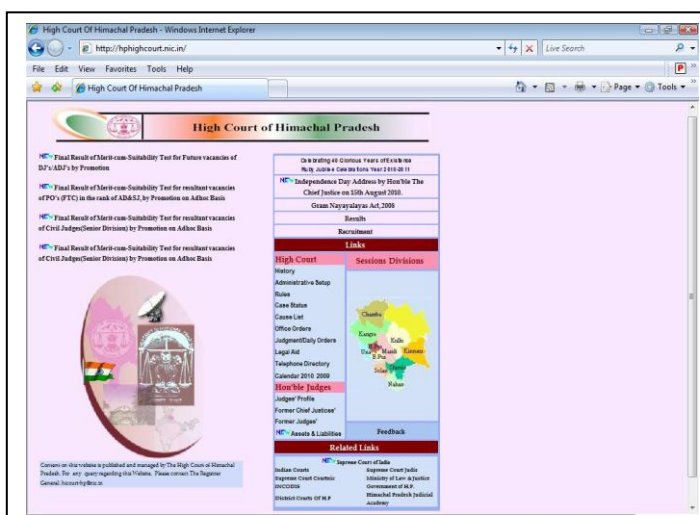
Relevant instructions

- Instruction No. 5/2007 dated 15.05.2008
- OM dated 23.10.2008 issued from F. No. 279/Misc.142/08-ITJ (Pt.)
- Letter dated 19.11.2008 issued from the above file
- Instruction No. 3/2008 dated 5.03.2008
- Extracts from Chapter 18 of Manual of Office Procedure, Vol. II (Technical), published in February, 2003 regarding Appeals

3 REGARDING FILING OF APPEALS IN THE HIGH COURT



High Court Appeals



3.1 Statutory Provisions of Section 260A and 260B

The filing of appeals in the High Court against the orders of the Income Tax Appellate Tribunal (ITAT) is governed by Sections 260A and 260B of the Income Tax Act, 1961. Where the High Court is satisfied that a substantial question of law is involved, it will formulate the same. It then, after hearing the case, will decide the question of law so formulated and deliver its 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.

3.2 The Statutory Provision of Section 260A

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 Chief Commissioner or the 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 Chief Commissioner or Commissioner.*
 - (b) *..... omitted.*
 - (c) *In the form of a memorandum of appeal precisely stating therein the substantial question of law involved.*
- 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 judgment thereon containing the grounds on which 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 (1).*
- 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.*

3.3 The Statutory Provision of Section 260B

As per Section 260B

- (1) *When an appeal has been filed before the High Court u/s.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. The relevant provisions of the Code of Civil Procedure relating to appeals to the High Court would be applicable mutatis mutandis to all appeals filed under section 260A.*
- (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.*

3.4 Who can file an Appeal to the High Court ?

Appeals to the High Court can be filed by the Chief Commissioner of Income-tax (CCIT) or the Commissioner of Income-tax (CIT) or an assessee aggrieved by the order of the Appellate Tribunal.

3.5 What is a Substantial Question of Law ?

- (a) 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.
- (b) Although the expression "**substantial question of law**" has not been defined anywhere in the Act, the Apex Court in the case of Sir Chunilal V. Mehta and Sons

V/s. Century Spinning and Manufacturing Company Limited (AIR 1962 SC 1314) has laid down the following tests to determine whether a substantial question of law is involved :

- (i) whether it directly or indirectly affects the substantial rights of the parties,
- (ii) whether it is of general public importance.
- (iii) whether the issue has not yet been settled by the Supreme Court.
- (iv) whether it is not free from difficulty.
- (v) it calls for a discussion for alternative view.

These observations were recently reiterated by the Supreme Court in the case of **M. Janardhana Rao v/s. Jt. C.I.T.** (2005) 273 ITR 50 (SC).

(c) the Apex Court recently in the case of Boodireddy V/s. Angela Laxmi, apparently, relying on dictionary meaning of the term has said that 'substantial' means "having substance, essential, real or sound worth, important or considerable". It is in view of this requirement of the statute that departmental appeals are to be filed only in matters involving "substantial question of law" that the CCIT is expected to screen out CIT / A.O's proposals for filing appeals based purely on question of fact or even on questions of law that are not 'substantial'.

(d) Perversity is a substantial question of Law. Further Apex Court in the case of Sudarshan Silks (300 ITR 205) has stated that on grounds of perversity appeal would lie.

3.6 Limitation of Appeals to the High Court

a. The appeal should be filed within 120 days from the date on which the order appealed against is received by the CCIT or the CIT.

b. It is often debated whether the date of limitation should be calculated from the date of receipt by the CIT who first receives the order of the ITAT or the date on which the order of the ITAT reaches the jurisdictional CIT. The statute is silent on the issue.

c. The consensus that emerges after discussion with various officers is, that the **limitation date be calculated from the date on which the order of the ITAT is first served on any CIT-** since ITAT takes the view that onus lies on the department to keep them updated about jurisdiction and ensure correct service at first instance. In this view of the matter, delays will entail, a filing of a notice of motion, wherein the time taken for the order to reach the jurisdictional CIT can be easily explained.

d. However **Delhi High Court** in decisions reported at **193 ITR pgs 330 and 335** have held in the context of references that limitation is to be reckoned from the date of the receipt by the concerned (jurisdictional) Commissioner.

3.7 Some Supreme Court Rulings regarding S 260A and "Substantial Question of Law"

1. The question whether liquidated damages received by the assessee on account of breach of contract are a part of the profits received from its industrial undertaking and the assessee is entitled to deduction thereon under section 80HH and 80-IA is a substantial question of law. {CIT v Alpine Solvex Ltd. (2003) 259 ITR 719 (SC)}
2. The conditions mentioned in section 260A must be strictly fulfilled before an appeal can be maintained under that section. Such an appeal cannot be decided on merely equitable grounds. {Janardhana Rao (M) v Joint CIT (2005) 273 ITR 50 (SC)}
3. It is essential for the High Court to first formulate the question of law and thereafter proceed with the matter. It is against the scheme of the Act to formulate the question subsequently after conclusion of the arguments for the purpose of adjudication. {Janardhana Rao (M) v Joint CIT (2005) 273 ITR 50 (SC)}
4. The tests for determining whether a substantial question of law is involved in an appeal are: (i) whether directly or indirectly it affects substantial rights of the parties; or (ii) the question is of general public importance; or (iii) whether it is an open question in the same that the issue is not settled by a pronouncement of the Supreme Court or the Privy Council or by the Federal Court; or (iv) the issue is not free from difficulty; or (v) it calls for a discussion for alternative view. {Janardhana Rao (M) v Joint CIT (2005) 273 ITR 50 (SC)}
5. In exercise of the powers under section 260A, the findings of fact of the Appellate Tribunal cannot be disturbed: there is no scope for interference by the High Court with a finding recorded, when such finding can be treated to be a finding of fact. {Janardhana Rao (M) v Joint CIT (2005) 273 ITR 50 (SC)}

6. Though in an order of affirmation in an appeal under section 260A, repetition of the reasons elaborately may not be necessary, the arguments advanced/points urged have to be dealt with. Reasons for affirmation have to be indicated, though in appropriate cases they may be brief. {Mangalore Ganesh Beedi works v CIT (205) 273 ITR 56 (SC)}

3.8 Monetary Limits for Filing Appeals to the High Court

The Central Board of Direct Taxes (CBDT) has prescribed monetary limits for filing of appeals u/s. 260A before the High Court. **CBDT Instruction No 5 dated 15 May 2008, (Placed at Annexure 7.2)** raised the revised monetary limits prescribed by earlier instructions¹ to Rs. 4,00,000/-. Monetary limits do not apply to writ matters. This instruction applies to appeals filed on or after 15th May 2008 (**For older Circulars Annexure 7.12 may be referred to**) and clarifies that:

- Appeals will be filed only in cases where the tax effect exceeds stated monetary limits.
- 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 issue against which appeal is intended to be filed (hereafter disputed issues).
- Tax will not include any interest thereon.
- In loss cases, notional tax effect is to be taken into account.
- In case of penalty orders tax effect will mean quantum of penalty deleted or reduced in the the order to be appealed against.
- Tax effect is to be calculated separately for every assessment year and if the disputed issue arises in more than one year, appeal shall be filed in respect of such assessment year in which the tax effect in respect of the disputed issue exceeds the monetary limits.

¹ *Instruction No.1979 dated 27.03.2000, Instruction No.1903 dated 28.09.1992 and Instruction No. 1777 dated 04.11.1987 placed at **Annexure 6.15***

- No appeals shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limits specified. i.e. appeals will be filed only with reference to the tax effect in the relevant assessment year, except in case of a composite order.
- The aforesaid instruction also prescribed certain exceptions where the case is to be contested irrespective of revenue effect:
 - i) Where revenue audit objection has been accepted by the Department.
 - ii) Where Board's order, notification, instruction or circular is the subject matter of an adverse order.
 - iii) Where the constitutional validity of the provisions of the Act is under challenge.

3.9 Some Decisions regarding Monetary Limits For Filing Appeals

The Bombay High Court in the cases of *CIT V/s. Cameo Color Co.* (2002) 254 ITR 565 (Bom) and in *CIT V/s. Pithwa Engg. Works* (2005) 276 ITR 519 (Bom) held that an appeal cannot be entertained by the High Court where tax effect is less than what has been prescribed in the Instructions issued by the CBDT for filing of appeal in the High Court. Department not having contested these decisions, the High Court has been insisting that all appeals filed by the Department, where tax effect is below the Board's prescribed limit, should be withdrawn forthwith failing which the Court shall dismiss them and award cost for wasting Court's time. The Court has, in a few cases, even issued show cause notices for contempt, because in absence of filing SLP in Supreme Court against the two earlier decisions of the Court, these decisions of the Court in aforesaid cases is binding on the Department.

However, the Punjab and Haryana High Court in the case of *CIT V/s. Abhishek Industries Ltd.* (286 ITR 1), considered both the decisions of the Bombay High Court and held, following Supreme Court decision in the case of *CIT V/s. Hero Cycle Pvt. Ltd.* (228 ITR 463) that **CBDT Circulars will bind only the ITO, but not the Tribunal, the Appellate**

Authority or the Court or even the assessee. Now again in the recent case of Oscar Laboratories the P& H High Court has held against the Department. However the Income tax Department however shall not be precluded from filing an appeal against the disputed issues in the case of the same assessees 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 in view of the clear cut provisions of S 268A of the Income Tax Act 1961.

3.10 Withdrawal of an Appeal V/s Dismissal of an Appeal

The technical distinction between withdrawal of an appeal and dismissal of an appeal is that wherever an appeal is withdrawn, the appellant i.e. the Department, is entitled to a refund of stamp duty paid at the time of the filing of the appeal to the extent of 75% thereof. However, no refund is entitled to the appellant when the appeal is dismissed.

3.11 Filing of Appeals below monetary limit

A separate ground of appeal be included in the appeal memo stating why the appeal was being filed inspite of the low tax effect involved. In appeals already filed, an additional ground of appeal may be taken and attention of the Standing Counsel may be drawn towards it. This will prevent the appeal from being dismissed out rightly by the Court due to low tax effect in a *prima facie* manner.

CBDT Instruction No 5 dated 15 May 2008 (Placed at Annexure 7.2) clarifies that in a case where appeal before a Tribunal or Court is NOT filed only on account of the tax effect being less than this monetary limit specified above, the Commissioner of Income tax shall specifically record that even though the decision is not acceptable, appeal is not being filed only on the consideration that the Tax effect is less than the monetary limit specified in this instruction and that 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 assessees 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 in view of the clear cut provisions of S 268A of the Income Tax Act 1961.

3.12 Erroneous Withdrawal of Appeals

In some cases, the Standing Counsels have withdrawn appeal involving low tax effect on the instructions of the Bench without taking authorisation from the concerned CCIT. As the decision to file an appeal is taken by the CIT after taking prior approval of the concerned C.C.I.T., such practice should be discouraged and a Standing Counsel should withdraw an appeal only after due authorisation of the CIT. If an appeal is erroneously withdrawn the Bench should be informed within a reasonable time through the Standing Counsel about the facts of the case and restoration of the appeal may be prayed before the Bench.

3.13 Procedure For Filing Of Appeals In High Court

3.13.1 Assigning the case to Standing Counsel / Advocate-on-Record for Drafting of Appeal.

The CIT, after receiving the file from the CCIT, who has approved the proposal of filing of appeal, will designate Standing Counsel / Advocate-on-Record for drafting of appeal. The case will be assigned to the Senior Standing Counsel by drawing a docket in his name.

3.13.2 Regarding assigning the Case to Standing Counsel

The schedule of fees payable to the Standing Counsel, conditions of their appointment and renewal of term as circulated by Board's F.No.279/Misc-145/2006-ITJ dated 30.08.2007 is enclosed as **Annexure 7.5**

A list of Senior and Junior Standing Counsels on the panel of the department as on 30-8-2010 and their telephone numbers is enclosed as per S No 11 of this compilation.

3.14 Guidelines for CIT's Regarding Filing of Appeals u/s 260A

Check List for CIT's to File the Appeal

- a) CIT shall prepare a draft of the
 - (i) Statement of facts,
 - (ii) Question of Law
 - (iii) Grounds of Appeal &
 - (iv) Prayer for relief;
- b) Sign authorization for filing of appeal to the Assessing Officer
- c) Sign affidavit to be filed.

The Commissioner of Income-tax shall send all the documents, as referred to above along with the docket referred to below to the designated Standing Counsel, through the concerned Assessing Officer, who, in turn, shall ensure that the drafting of the appeal is in accordance with the set law and procedure. He shall return these documents, after making necessary modifications / amendments, to the CIT, through the Assessing Officer.

3.14.1 Guidelines for Typing Application of Appeal u/s 260A

a) Guidelines for typing and preparation of application u/s.260A

- (i) Two copies of appeal which are to be filed in the High Court should be typed on green paper and five copies on white paper.
- (ii) Typing should be in double space throughout. One and a half space may be used, but single space typing, is forbidden.
- (iii) Photocopies of documents should not be attached as exhibits.
- (iv) 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 the paper should be left.
- (v) The pleadings to be filed in the High Court are stitched on the left side - proper space should be left for stitching, so that the typed matter should not get hidden inside the stitches.
- (vi) All the blanks regarding dates, names etc. should be filled in after minutely checking up the matter. No blanks should be left.
- (vii) The signing officer should write at the end of each Exhibit - "True Copy" and put his signature and name below it and affix his seal.
- (viii) In all the exhibits, on the first page, the exhibit number should be written in good handwriting on the top right hand corner.
- (ix) 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.
- (x) The signing officer should sign both sets of green papers .which are meant for Judges, (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 initialed 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.

3.14.2 List of Precautions to be taken to Avoid Objections being raised in Filing the Appeals

3.14.2.1 Regarding Dates

- i. The dates should be written correctly and no blanks should be left.
- ii. The dates of assessment and appellate orders should be mentioned, and not the date of its receipt in the CIT's office.
- 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.

3.14.2.2 Regarding 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 legible copies.
- iv. Certified true copies of exhibits should bear the signature of the person making the averment of the correctness of the appeal filed.

3.14.2.3 Regarding Time-barred Appeals

- i. If appeal is time barred by limitation, a notice of motion for condonation of delay alongwith the affidavit explaining the delay should be attached.
- ii. In cases of extraordinary delay, a detailed affidavit explaining every day of delay should be attached.

3.14.2.4 Regarding Appeal Title

- i. 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.
- ii. The relevant sub-section of section 260A should be mentioned in the title.

3.14.2.5 Regarding Numbering of Pages

- i. The pages should be correctly numbered and no blanks should be left either in the pages or the index,
- ii. All pages should be initialed.

3.14.2.6 Regarding Other Details

- i. The synopsis should be complete and should contain the list of authorities to be 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 sets 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.

3.15 Check List for Standing Counsels to Prepare the Brief

3.15.1 Checklist for Brief

Thereafter he shall prepare the Brief and ensure that it contains *in ter-alia*:

- (i) Index of order
- ii) Proforma Sheet, Refer **Annexures 12.1/12.2 Sample 260A and SLP Filings**
- (iii) Synopsis in a tabular form giving dates and events (G & H)
- (iv) Appeal Memo duly page-numbered (starting from Page No.1) and signed by C.I.T.
- (v) Copy of
 - a) Assessment order - (Exhibit A)
 - b) Form No. 35 - (Exhibit B)
 - c) CIT(A)s appellate order(True Copy)- (Exhibit C)
 - d) Form No.36 - (Exhibit D)
 - e) ITATs impugned appellate order - (Exhibit E)
 (both in original and a retyped copy)
- (vi) Verification
- (vii) Authorisation letter to be signed and sealed by concerned CIT.
- (viii) Note of appearance containing signature and full address of Standing Counsel.
- (ix) Advocate Certificate regarding whether appeal is filed in time or not.

- (x) Stamps for Court Fee to be pasted on Brief. (Delhi does not have its own Act Central Court Fee Rules apply)
- (xi) Presentation Form
- (xii) Memo of parties and Proof of service
- (xiii) Docket sheets for Lodging Number (Three)

A Sample S 260A filing is placed at Annexures 12.1

3.15.2 Checklist for Assessing Officers for Filing the Appeal

The concerned Assessing Officer and office of the concerned CIT shall check whether

- the draft is in proper format as required by High Court Registry,
- proper indexing has been made,
- Exhibits are properly displayed,
- proper court fee stamp is affixed,
- running page numbers are given and
- also do proper flagging.
- Copies of the assessment order, order of the CIT(A) and that of ITAT are to be certified as 'True Copy' by the Assessing Officer and enclosed as annexure to the appeal..

After ensuring completion of above paper work properly, the concerned Assessing Officer shall

- put up all the documents for the signature of the CIT (the Authority to file appeal under section 260A) and
- Effect service on the other side.

3.16 Regarding Filing of the Appeal in the High Court

3.16.1 Report of Caveat

The Counsel before finalising the brief will ensure that he obtains **the Report of Caveat** for the purpose of stay.

3.16.2 Assessing Officers Role in Filing Appeal

a) The concerned Assessing Officer shall take the assistance of the Advocate-on-record / Standing Counsel for filing the appeal in the High Court and latter shall be obliged to render all assistance. The Assessing Officer shall obtain Advocate-on-record / Standing Counsel's signature and then file the appeal in the High Court (Two sets) and after affirmation, shall collect the lodging number. The appeal papers are filed in the registry for checking up for shortcomings, if any, on the basis of which objections are raised. The Assessing Officer shall make necessary entries in the records of his office under intimation to the CIT office. These entries shall be made in the records of the CIT office maintained in the annexure as discussed above.

b) The concerned CIT must mark a copy of docket (referred to in Para 2 above) to the CIT (Judicial) informing the name of the Counsel engaged in each case. This will help the office of the CIT(J) to clear the bills of the Counsel in time.

c) After filing of appeal, one copy of the brief shall be retained by the Counsel and another copy by the concerned Assessing Officer for his record. Two copies of the brief shall be retained by the ITO/ACIT(Tech.)(HQrs.) of the concerned CIT.

d) Seventh copy of the appeal along with notice of motion, if any, duly signed by the concerned CIT / Advocate-on-record / Standing Counsel should be served upon the assessee by the concerned Assessing Officer through his Inspector.

e) The seventh is however is an advance copy- **Eighth copy** is again served on assessee after incorporating the notice of hearing issued by the High Court. If a notice of hearing is issued **dasti** the Inspector shall draft **an affidavit of service**, get it approved by the Counsel.

d) If the appeal filed is found to be in order, the Registry of the High Court will allot an I.T. Appeal No. The same should be obtained by the Income-tax Inspector and intimated to the concerned CIT **under intimation to the Office of the CIT(J)**.

f) In a case where there is any objection raised by the Registry of the Court, the I.T. Appeal No. will not be allotted. In such a case, the concerned Assessing Officer should contact the Registry and obtain details of the objection(s) raised. The objection(s) raised by the Registry should be removed ideally within 7 days, by the concerned Assessing Officer but the cumulative **time permitted before it is treated as a fresh filing is 1 month**. After removal of objection, the Counsel / Assessing Officer shall obtain the IT Appeal No. and shall intimate the concerned CIT and CIT(J).

3.17 Removal of Objections in Filing Appeal

- a) The process of filing of Appeal u/s 260A starts with physical filing of papers in the form of Appeal and reaches the point of finality only after the IT. Appeal No (ITA in case of IT Appeal and WTA 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) Standing Counsel/ High Court Cell intimates the respective 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, a 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 objection, 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.

g) 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.**

h) 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.

3.18 Hearing Of Appeal And Passing Of Order By The High Court

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 the following three lists.

- 1) **Urgent Motion List**
- 2) **Motion list**
- 3) **Regular List**
- 4) **Taken up List**

1) Urgent Motion List :

This list is issued daily every evening. This list has cases which are listed for preliminary hearing. These lists are issued every evening and sent to the Standing Counsels. They are also available on the High Court Site highcourtchd.gov.in.

2) Motion List

This list is issued daily every evening also. This list has cases where High Court has issued notice of motion and the case is fixed either for appearance of parties or filing replies or arguments on admission of the case.

3) Regular List

The Delhi High Court has two sessions; one from January to May and the other from July to December. Listing is done in January and June for all regular matters. This list contains all matters which have been admitted and listed for final hearing. This may also be called advance list. These cases then get updated in the daily Taken Up List.

4). **Taken Up List:**

This list is published and circulated every day in the evening and shows the regular cases listed in the regular list which will be taken up on the next day by the regular bench.

3.18.1 **Categorisation of Cases and their Significance**

These lists categorise the cases into different classes carrying the following abbreviations with their number -

(i) **Writ Petition :-{It appears in the list as C.W.P./123 (No.given by the Writ Section of High Court)/ 2009 (Year of filing)}**

Writ Petitions are constitutional remedies and are generally filed by the assessee. Exceptionally, they can be filed by the Department against the order passed by the ITAT or Settlement Commission. Writs are generally filed when there is no other legal remedy available with the petitioner.

(ii) **Civil Misc Application (CMA) :-{It appears in the list as CMA/123 (No. given by the Registry Office) / 2009 (Year of filing of notice of motion)}**

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 fa) of sub-section (2) of section 260A of the I.T. Act, 1961, a miscellaneous application is required to be filed. This 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) **ITA :- {It appears in the list as ITA/ 123 (No. given by the Registry office/2009 (Year of filing of appeal)}**

- At the time of Lodging of Income Tax Appeals, **diary number** is given at the time of filing of appeal u/s. 260A of the I.T.Act, 1961 in the High Court.

- This number will cease after the new permanent number (the ITA) is given which will replace it after removal of objections, if any, and remain till the disposal of appeal.

- (iv) **ITC:-** *{It appears in the list as ITC/123 (No. given by the registry /2000 (Year of filing of application))}*

It refers to Income Tax Application filed in the High Court on reference as per the provision of Section 256(2) of the I.T.Act, 1961.

- (v) **ITR :-** *{It appears in the cause list as ITR/123 (No. given by the registry /2000 (Year of filing of I. T. Reference))}*

This refers to Income Tax Reference filed in the High Court as per the provisions of Section 256(1) of the I.T.Act, 1961.

- (vi) **WTR:***{It appears in the cause I 1st as WTR/123 (No. given by the registry/2000 (Year of filing of W. T. Reference))}*

This refers to Wealth Tax Reference filed as per the provision of section 27 of Wealth Tax Act, 1957.

- (vii) **WTA :-** *{It appears in the cause list as WTA/123 (No. given by the registry /2007i.e. year of filing of W. T. Appeal)}*

It refers to Wealth Tax Appeal filed as per the provision of Section 27A of Wealth Tax Act. 1957.

3.19 Procedure After Listing and the High Court Cell in O/o CCIT (CCA), NWR

In NWR intimation of listing is given by the Standing Counsel but could also be given by the ITO High Court Cell, located in Court No 7, in High Court and on second floor in CR Building, Phone 2725928. Shri Vinod Kaushik is Inspector cell no 9888336930.

3.19.1 High Court Cell: The Mumbai Model --For Discussion of Open House

NWR's High Court Cell is relatively new. The Mumbai Charge however has a fine model which has been in implementation for some years now. A brief overview is presented for the consideration of the Open House and a view regarding its implementation in NWR may be taken.

- After obtaining the cause-list, the Income-tax Officer high Court Cell and his Inspector act swiftly due to paucity of time at their disposal. They identify the CIT-wise jurisdiction of cases and also make 19 -20 copies of kuccha cause list for circulation in various Commissionerate charges of NWR as per List .
- The cases pertaining to charges outside Chandigarh can be informed telephonically by them.
- The Income-tax Officer (HC Cell) / Income-tax Inspector intimates the designated Liason officer in the respective C's.I.T. Office about the likelihood of the cases coming up for hearing the next day, for further intimation to the concerned Assessing Officer and the Standing Counsel.
- Mobile/residential telephone numbers of such Officers are also maintained with the ITO(HC Cell) so that they can be contacted at a short notice. List compiled is placed in booklet
- The liason Officers in the Head Quarters of the concerned CIT are also advised that without wasting any further time, they should directly intimate the Assessing

Officer and the Standing Counsel so that the brief is handed over by the Assessing Officer to the Standing Counsel, who will prepare the case for the next days hearing.

- A fresh docket is then issued by the CIT in the name of the Senior Standing Counsel who will represent and argue the case in the Court. The name of the Junior Standing Counsel, preferably who drafted the appeal, may also be put in the docket for rendering assistance to the Senior Standing Counsel.
- A copy of the docket is marked for disbursement of fees to the Counsel.

3.20 Assessing Officers Role in providing Assistance to Standing Counsel

After handing over the brief alongwith its enclosures to the Standing Counsel, the Assessing Officer to

- ensure proper assistance to the Counsel prior to and at the time of hearing.
- brief the Counsel about the salient points involved in the case and should be ready with the information, if any, required by the Standing Counsel.
- the Income-tax Inspector should be present in the Court at the time of the hearing.
- the Inspector who is deputed to attend the Court should be conversant with the facts of the case and the issues involved. He should also have the mobile / telephone number of the Standing Counsel readily available with him for easy communication. If necessary, the Income-tax Inspector may carry the assessment records with him for rendering assistance to the Standing Counsel.
- The Income-tax Inspector / Assessing Officer attending the hearing in the Court should maintain the record of date of hearing, arguments raised, date of adjournment, etc. These details should also be entered

date-wise on the note sheet of the Assessing Officers file containing a copy of the brief.

- Standing Counsel should also be provided with a copy of scrutiny report of the assessing officer so as to know the basic facts about the case such as the tax effect involved and whether it is a covered issue which the subject matter of appeal.
- In case of a covered issue information such as appeal no., assesment year involved, outcome of the earlier appeal etc. should also be briefed to the Standing Counsel.

3.21 Procedure After Disposal of the Case

a. The Assessing Officer should also keep in touch with the Standing Counsel for obtaining the certified copy of the order after disposal of the case and in case the Departmental appeal is dismissed, he should take immediate steps to get it restored or to file the SLP with the Supreme Court.

b. 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, etc. The milestones of progress of case should also be recorded in the appeal control register maintained in the CIT's Office.

4 The Role of CIT(J) and Maintenance of a Databank

CIT(J) and Maintenance of Databank

4.1 Maintenance of a databank

- a. In order to maintain the data base for questions of law filed before the High Court and to observe consistency in approach of the department in taking matters to the Supreme Court, **Instruction No.4/2002** placed at **Annexure 7.1** and issued by the CBDT requires a data base to be maintained at the level of CIT(J) in each of the 4 Zones (Northern, Western, Southern and Eastern) where such posts have been created after restructuring of the department.
- b. The data base is to be maintained in respect of questions of law filed before the High Court on the basis of inputs received from various offices of the CCIT / CIT in the region of CIT(Judl).
- c. All the Zonal Cs.l.T. (Judl) are expected to keep each other informed of questions of law on which the department has moved the High Court and the section of the Act involved therein.

There are three stages in which data have to be compiled at the office of CIT(J). These are :

1. Databank of question of law filed u/s 260A of the I.T.Act.
2. Databank of question of law decided by the High Court and accepted by the Department.
3. Databank of question of law decided by the High Court but not accepted by the CCIT and where proposal for appeal u/s.261 of the I.T.Act or the SLP has been forwarded to the Board.

4.1.1 Question of Law Database of CIT(J)

In order to provide inputs for such database, the CCIT / CIT is required to inform the Zonal CIT(Judl) on any question of law decided by the High Court which has been accepted by him for not being contested further before the Supreme Court. Besides, he is also required to give details of questions of law in which SLP / Appeal has been filed in the Supreme Court. This practice is to be observed on a regular basis so that

uniformity in the departmental stand on a particular issue is ensured. The instruction provides for reference to the Board in cases of any contradiction on any issue between two zones of CIT(Judicial).

4.1.2 Format of Database of CIT(J) regarding Question of Law

This database is required to be maintained by CIT in a columnar form in excel format containing the following heads :

1. ITA No. - The appeal No. of ITAT
2. Name of the assessee
3. Assessment Year
4. Permanent Account Number - This is very important. The cause list of the cases of the High Court does not disclose the address of the assessee. Many a time the jurisdiction of the appellant CIT is also not revealed. In such a situation, the PAN of the assessee is only source of proper identification of jurisdiction of case.
5. Section of the IT. Act - By including the section of the IT. Act, at a glance we can ascertain how many cases are covered. These cases can be clubbed together for speedy disposal and also a unified stand can be taken.
6. Question of Law - As per the Instruction No.4, the administrative decision to file appeal before the High Court will rest on respective CCIT / CIT. However, all the questions of law so framed would be communicated to CIT(J)'s office who will compile databank of all such questions of law and ensure that there is uniformity in the Departmental stand on a particular issue.
7. Tax Effect
8. Whether the issue is recurring in nature.

4.2 Bunching of Appeals based on Databank

In nutshell, the maintenance of databank is of prime importance for uniformly and coherently enforcing the departmental view regarding the interpretation of the I.T.Act. It is also important for bunching of appeals involving same / similar issues. Often the High Court insists that the department should bunch similar appeals together for facilitating common and uniform view. The criteria for such bunching could be

- i. same question of law involved
- ii. group assessments of different family members or sister concerns.
- iii. involvement of large number of assesses showing credits from same hawala
- iv. all cases connected with a particular search and seizure operation.
- v. the issue involved has been decided by the jurisdictionat High Court or Supreme Court.

Maintenance of data bank by the office of the Commissioner of Income-tax (Judicial), Mumbai facilitates such bunching of appeals. Thus, in order to ensure that the database maintained in the office of the CIT (Judicial) is comprehensive, the field formations are required to inform that office on a regular basis, the questions of law accepted / not accepted by the Department. The questions of law referred to Supreme Court in SLP should also be intimated to the office of CIT(Judicial). The outcome of appeal / SLP before the Supreme Court should also be informed to the Judicial Section on a regular basis, so that the decision of the Supreme Court should be followed on a uniform basis all over the country.

5 COD Matters: The Committee on Disputes

The Committee on Disputes (COD)

5.1 Over view of COD

The Committee on Disputes (COD) was constituted in compliance of the directions of Hon'ble Supreme Court in Civil Appeal Nos. 2058-59 of 1988 (IA Nos. 1 & 2) dated 11.10.1991 (734 KB) between ONGC and Collector of Central Excise and a clarificatory order passed in No. Civil Appeal Nos. 2058-59/1988 (IA Nos. 3 & 4 of 1992) dated 7.1.1994. Composition, purpose and procedure for submission of cases for consideration by the Committee are laid down in Cabinet Secretariat Office Memorandum (OM No.53/3/6/91-Cab Dated 31.12.91 and 53/3/6/91-Cab. Dated 24.1.1994 (781 KB) and others) issued from time to time.

Objective: The prime objective of COD is to reduce litigation between two arms of the Union Govt. by ensuring that no litigation of unnecessary and frivolous nature or involving petty matters and issues between Central Govt. Departments or Central Public Sector Undertakings or between a Central Govt. Department and a Central Public Sector Undertakings reached a Court or a Tribunal without the matter having been first examined by it. The Committee is a forum to provide to the disputing parties an opportunity of in-house conciliation. It hears the parties to the dispute to ascertain whether the issues in dispute involve questions of facts and/or law, needing adjudication by a Tribunal or a Court. It strives to resolve disputes through mutual understanding by administrative measures and mechanisms, avoiding litigations.

5.2 COD Circulars

- Procedural requirements to be met while preparing/submitting notes for the Committee on Disputes.
- Settlement of Disputes Between the Ministries/Departments or between the Public Sector Enterprises of between a Public Sector Enterprise and Ministry/Department of Government of India, dated 13.07.2005.

- Settlement of Disputes between the Government Department and another and one Government Department and a Public Enterprises and Public Enterprises and another, dated 24th January, 1994.
- Settlement of Disputes between one Government Department and another and one Government Department and a Public Enterprises and Public Enterprise and another, dated 31st December, 1991.
- In the Supreme Court of India, Civil Appellate Jurisdiction, I. A. NOS. 1 and 2 in Civil Appeal NOS. 2058-59 of 1988.
- In the Supreme Court of India, Civil Appellate Jurisdiction, I. A. NOS. 3 and 4 of 1992 in Civil Appeal NOS. 2058-59 of 1988.

Taken From Website http://cabsec.nic.in/committee_on_disputes.php

5.3 Procedure for Litigation Involving Dispute between one Government Department and another, a Government Department and Public Sector Enterprise and one Public Sector Enterprise and another- The Committee on Disputes or COD

Clearance of the High Powered Committee in the Cabinet Secretariat is required to be obtained by Public Sector Undertaking for pursuing litigation in respect of dispute between Government Department and other PSUs.

Circular No 515/11/2000-CX New Delhi, dt 18th February, 2000 regarding the Committee on Disputes between Govt. and PSUs and the Proforma for forwarding Proposals is placed as below. Reference is also invited in this regard to Board's F.No. 390/140/93-JC (Cir.No. 27/27/94-CX.dt.2.3.94 and 390/257/96-JC dt. 19.11.96 wherein instructions were issued requiring the Commissioners to forward self-contained proposals in the prescribed proforma to Member (L&J) enclosing copies of relevant documents viz. Order-in-Original, Order-in-Appeal, Memorandum of Appeal etc; immediately after filing of appeal for obtaining the clearance of the committee.

The Cabinet Secretariat has now revised the proforma for forwarding the proposals to the High Powered Committee. A copy of letter C.No. 1/126/6-M/99-LC dt. 4.1.2000 issued in this connection is enclosed herewith. Commissioners are required to forward proposals in the revised proforma with all relevant enclosures such as the following to Member (L&J) immediately after filing of the appeal, for obtaining the clearance from the High Power Committee.

- Order-in-Original,
- Order-in-Appeal,
- Memorandum of Appeal etc. (12sets)

As such proposals are required to be sent within one month of filing the appeal etc; Commissioners are required to ensure that all such proposals are forwarded to Member (L&J) within one week of filing the appeal. It may please be noted that this instruction applies to Reference Application cases also, as communicated in Board's F.No. 390/17/99-JC (PF) dt.3.3.99.

5.4 Committee on Disputes Circular 515/11/2000-CX dt 18 Feb 2000 and Format

Circular No 515/11/2000-CX

F.NO. 390/16/2000
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

New Delhi, the 18th February, 2000

Subject: - Committee on Disputes between Govt. and PSUs -Proforma for Forwarding Proposals revised

As you are aware clearance of the High Power Committee in the cabinet Secretariat is required to be obtained by Public Sector Undertaking for pursuing litigation in respect of dispute between Government Department and other PSUs.

Reference is invited in this regard to Board's F.No. 390/140/93-JC (Cir.No. 27/27/94-CX.dt.2.3.94 and 390/257/96-JC dt. 19.11.96 wherein instructions were issued requiring the Commissioners to forward self-contained proposals in the prescribed proforma to Member (L&J) enclosing copies of relevant documents viz. Order-in-Original, Order- in-Appeal, Memorandum of Appeal etc; immediately after filing of appeal for obtaining the clearance of the committee.

The Cabinet Secretariat has now revised the proforma for forwarding the proposals to the High Power Committee. A copy of letter C.No. 1/126/6-M/99-LC dt. 4.1.2000 issued in this connection is enclosed herewith. Henceforth Commissioners may forward proposals in the revised proforma with all relevant enclosures such as O-in-O, O-in-A, Memorandum of Appeal etc. (12sets) to Member (L&J) immediately after filing of the appeal, for obtaining the clearance from the High Power Committee. As such proposals are required to be sent within one month of filing the appeal etc; Commissioners are requested to ensure that all such proposals are forwarded to Member (L&J) within one week of filing the appeal. It may please

be noted that this instruction would apply to Reference Application cases also, as communicated in Board's F.No. 390/17/99-JC (PF) dt.3.3.99.

Enclosure

**Copy of Cabinet Secretariat Letter No.126/6-M/1999-LC dt. 4.1.2000
With proforma**

Office Memorandum

Subject: Proforma for making a reference to the High Power Committee (Committee on Disputes) set up in pursuance of the Orders of the Hon'ble Supreme Court dated 11.10.91-matter regarding.

The undersigned is directed to refer to this Secretariat O.M.No.53/3/10/94 -Cab (LC) dt. 24th January 1994 and 21st March'95 indicating, inter-alia, the procedure for making reference to the Committee on Dispute and to say that henceforth, the reference to the Committee may please be made in the revised **proforma as annexed**.

A reference not conforming to the prescribed proforma is liable to be returned for necessary modification/correction. Further, the reference to the Committee should have the approval of the Secretary, if the appellant is Ministry/Department of Government of India and of the Chief Executive Officer, if the appellant is Public Sector Undertaking of the Central Government.

Annexure to

O.M.No. 1/126/1-M/1999-LC dt. 4.1.2000

Proforma for making Reference to the High Power Committee set up in the Cabinet Secretariat in Pursuance of the order of the Hon. Supreme Court dated 11.10.91 for Authorising Public Sector Undertaking/Ministries to Initiate/Pursue Litigation in Court/Tribunal

1. Parties to the dispute
2. (a) Name of the Court/Tribunal where the appeal is to :
be filed/is pending.

(b) Subject matter of the dispute (not exceeding 25 words) :

(c) Amount involved :

3. (a) (i) number and date of the order-appealed/to be appealed against.

(ii) Name of the quasi-judicial authority which passed the order

(iii) the order-appealed against in brief (copy of the order also to be enclosed).

(b) any other documents referred to in support of the claim, need not be annexed. However, it may be produced in the meeting of the Committee.

(c) in the event of the reference being of deferred cases, it should reflect the reason for deferment, the action taken in pursuance to the direction of the Committee and justification for resubmission of the matter for the consideration of the Committee.

4. (a) Date on which, the reference is made to the Committee and the relevant documents, sent to the respondent i.e. CBEC/CBDT/any other party to the dispute.

(b)Is the reference submitted within one month of filing appeal in the: yes/no Court/Tribunal (refer to Supreme Court order dt. 7.1.94)

(C) If No, the reasons thereof

5. Background of the dispute (not exceeding one page)-it shall include the question of fact or of law involved in the dispute with brief description of the issues involved.

6. The reference has the approval of Secretary/CE

7. Any other issue considered relevant to the case

5.5 CBDT Instruction No 1 /2003 dt 22 April 2003, regarding COD references in the case of PSUs - Annexure to the Revised COD proforma-regarding

INSTRUCTION NO 1 /2003, dated : April 22, 2003

Subject : COD references in the case of PSUs - Annexure to the Revised COD proforma-regarding.

I am directed to refer to the above-subject and to request that while sending COD proposals, dispute matters between the CBDT and PSUs for consideration of the Board/Committee on Dispute, the following information should be sent as on Annexure to the revised COD proforma alongwith revised COD proforma.

Annexure to the Revised referral proforma for approval of COD-

1. Tax effect involved year wise on the issues in which COD Approval is being sought:
2. Reasons for making the addition in assessment orders:
3. Reasons why the CIT (A)/ITAT have deleted the additions made in the order, for which appeal is pending:
4. Detailed reasons in about 500 words may be given why order against which appeal is being filed is erroneous or legally incorrect. (Please do not repeat reason mentioned in point no. 2):
5. If the order against which appeal is being filed is based on any previous order of the same authority then:
 - (a) The fate of such order by way of further appeal.
 - (b) Previous reference if any to the CBDT on the issue and the file No through which the decision of the CBDT was communicated.
6. Is the order under appeal based on some previous order of any higher Appellate Authority?

If Yes:

 - (a) The fate of such relied upon order.
 - (b) If the order relied upon has been accepted by the department, reasons for making the present reference to the COD.

7. Any other comments: **F.No.**

279/Misc-365/02-ITJ

SURESH YADAV
Under Secretary to the Government of India

5.6 The Position regarding State PSU's and Whether they require COD clearance?

The Supreme Court in the case of *Chief conservator of Forests, govt. of A.P. vs Collector and Others* reported in (2003)3 Supreme Court Cases 472 had held as follows :-

" Disputes between Government Departments cannot be contested in Courts. State/Union of India must evolve a mechanism for resolving interdepartmental controversies. Constitution of Committees suggested which should consist of Chief Secretary, Secretaries of the departments concerned, Secretary of Law and Secretary of Finance (where financial commitments are involved) whose decision should be binding on all departments concerned".

The apex Court had also held that it shall be the obligation of every Court and every Tribunal where such a dispute is raised hereafter to demand a clearance from the committee in case it has not been so pleaded and in the absence of the clearance, the proceedings would not be proceeded with. The same has been reiterated in the latest decision of the Supreme Court in the case of *CIT, Delhi VI v. M/s. Oriental Insurance Co. Ltd.*, in Civil Appeals Nos. 4529 of 2008 etc. decided on July 18, 2008 = (2008-TIOL-141-SC-IT).

The apex Court, in the case of *ONGC v. City and Industrial Development Corporation, Maharashtra Ltd.*, (2007) 7 SCC 432 ; *ONGC (II) v. CCE*, 1995 Supp (4) SCC 541; *ONGC (III) v. CCE*, (2004) 6 SCC 437; **(For Full text of CIDCO judgement refer Annexure 9.4)** in which directions have been issued to set up governmental committee to resolve the dispute between the intra-governmental or intergovernmental disputes involving Government Departments or Government owned companies of the Central and State Government, rather than adjudicating the same before Court of law, and having regard to the fact of the particular case, that the matter was pending since 1990 and considering the nature of the controversy, which is a recurring feature, directed that a Committee be formed to sort out the differences between the Central Government and the State Government entities.

The composition of the committee has also been laid down by the Apex Court in the said decision.

Relevant Extract : For Full text of CIDCO judgement refer Annexure 9.4

"..... The matter is pending since 1990. Considering the nature of the controversy which is a recurring feature we direct that a committee be formed to sort out the differences between the Central Government and the State Government entities. The composition of such committee shall be as follows:

- (1) *The Cabinet Secretary of the Union;*
- (2) *Chief Secretary of the State;*
- (3) *Secretaries of the concerned departments of Union and the State; and*
- (4) *Chief Executive Officers of the concerned undertakings.*

5.7 Recent Developments regarding COD Clearance for State PSU's

Gujarat High Court in the case of *GMDC Ltd V ITAT*, SLP No 27735 with Tax Appeal no 26 to 29 of 2007, dt 19 Feb 2009 has held that there is, therefore, no requirement for a State Government Undertaking to approach the COD for obtaining its clearance for filing appeal before ITAT in respect of its dispute with the Income-tax Department. (Refer Annexure 9.5)

Cross appeals were filed in this case by the assessee, a State Govt. undertaking, and the department which were dismissed by the Tribunal on the ground that the parties had not obtained the approval of the Committee on Disputes ("COD"). The assessee as well as the department challenged the decision of the Tribunal.

HELD, reversing the decision of the Tribunal:

(1) Four judgments of the Supreme Court (*ONGC vs. CCE* 1992 Supp (2) SCC 432, *ONGC vs. CCE* 1995 Supp (4) SCC 541, *ONGC vs. CCE* 2004 (6) SCC 437 and *MTNL vs. CBDT* 267 ITR 647) deal with disputes between public sector undertakings of the Central Government and a Department of the Central Government, while the fifth judgement (*Chief Conservator of Forests vs. Collector* (2003) 3 SCC 472) deals with a dispute was between two Departments of the State Government. The directions made by the Apex Court have to be read in context and in backdrop of the controversy before the Apex Court. **There is not a single order made**

by the Apex Court which relates to a dispute between Union of India and a State, or a Department of Union of India and a State, or a Public Sector Undertaking of Union of India and a State. Hence, it is not possible to expand the scope of directions made by the Apex Court so as to include a dispute between a Department of the Central Government and a State Government Undertaking. Therefore, the impugned order of Tribunal suffers from an error apparent in law and cannot be sustained.

(2) Apart from the above, a more fundamental aspect of the matter is that the Tribunal is a creature of statute. Under sections 252 to 254 and connected provisions, **the Tribunal does not have the power to determine whether an appeal should be admitted or not** except on the ground of limitation. **The Tribunal has no right of holding that an appeal cannot be admitted.**

What must be highlighted here is that the Court's attention was not drawn to the judgement in ONGC vs. CIDCO (2007) 7 SCC 39 where it was held that even disputes between the Central Government and State Government entities had to be first cleared by a specially formed committee before being referred to Court for adjudication.

5.8 The Position under the Direct Taxes Code Bill 2010

The position regarding COD clearances etc changes under the DTC bill 2010 considerably. No appeal shall lie to the Appellate Tribunal against the order of the Commissioner (Appeals) or the Commissioner, as the case may be, in the case of a public sector company. Appeals shall lie to the Authority as referred to in section 257.

5.8.1 Extract from the direct Taxes Code bill 2010

183. (1) An assessee may prefer an appeal to the Appellate Tribunal, where he is aggrieved by an order passed by-

(a) A Commissioner (Appeals) under section 180;

(b) A Commissioner under section 98 and section 191;

(c) A Commissioner or Commissioner (Appeals) in respect of levy of penalty under Chapter XIV relating to Penalties;

(d) An Assessing Officer in consequence of an order of the Commissioner under section 191;

(e) An Assessing Officer in pursuance of the directions of the Dispute Resolution Panel; and

(f) The income-tax authorities referred to in clauses (a) to (e) above, under section 161, in respect of the orders mentioned in the said clauses.

(2) The Commissioner may, if he is not satisfied with the order passed by the Commissioner (Appeals), direct the Assessing Officer to prefer an appeal to the Appellate Tribunal against such order.

(3) Notwithstanding anything in sub-sections (1) and (2), no appeal shall lie to the Appellate Tribunal against the order of the Commissioner (Appeals) or the Commissioner, as the case may be, in the case of a public sector company, irrespective of the fact whether the order is prejudicial to the company or the revenue, which shall lie to the Authority as referred to in section 257.

5.8.2 Extract from DTC Bill 2010, Chapter XIV for Advance Rulings and Dispute Resolution ie regarding Section 256 to section 267

CHAPTER XIV

ADVANCE RULINGS AND DISPUTE RESOLUTION

256. An applicant or appellant, specified in column (2) of the Table given below, may seek a ruling or, as the case may be, a resolution of dispute on matters specified in the corresponding entry of column (3) of the said Table:

TABLE

Serial Number	Applicant/Appellant	Scope of ruling and dispute Resolution
(1)	(2)	(3)
1.	Non-resident.	A determination in relation to a transaction which has been undertaken, or is proposed to be undertaken, by the applicant, and such determination shall include the determination of any question of law, or of fact, specified in the application.
2.	Resident.	A determination in relation to the tax liability of a non-resident arising out of a transaction which has been undertaken, or is proposed to be undertaken, by the applicant with such non-resident and such determination shall include the determination of any question of law, or of fact, specified in the application.
3.	Any class of residents, as notified by the Central Government in this behalf.	A determination in respect of an issue relating to computation of tax bases which is pending to computation of tax bases which is pending before any income-tax authority, or the Appellate Tribunal, and such determination shall include the determination of any question of law or of fact relating to such computation of tax bases specified in the application.
4.	Public Sector company or	A resolution of any dispute relating to Company Commissioner computation of tax bases or any other issue arising from— (i) an appellate, penalty or rectification order of the Commissioner (Appeals); (ii) a revision, penalty or rectification order of the Commissioner, felt in the case of a public sector company.
5.	Public Sector Company.	A resolution of any dispute relating to computation of tax bases or any other issue arising from the order of an Assessing Officer passed in pursuance of the direction of the Dispute Resolution Panel, or any rectification order in relation to such order.

257. (1) The Central Government shall constitute an Authority for Advance Rulings and Dispute Resolution (hereinafter referred to as the Authority) for the purposes of pronouncing an advance ruling and resolution of disputes.

(2) The Authority shall consist of a Chairperson and such number of Vice-chairpersons, legal Members and revenue Members as the Central Government may appoint.

(3) A person shall not be qualified for appointment as—

(a) The Chairperson unless he has been a Judge of the Supreme Court;

(b) The Vice-chairperson unless he has been a Judge of a High Court;

(c) A revenue Member unless he is an officer of the Indian Revenue Service and is a Chief Commissioner;

(d) A legal Member unless he is an officer of the Indian Legal Service and is an Additional Secretary to the Government of India.

(4) The salaries and allowances payable to, and the terms and conditions of service of, the Members shall be such as may be prescribed.

(5) The Central Government shall provide to the Authority such officers and staff, as may be necessary, for the efficient exercise of the powers of the Authority under this Code.

(6) The powers and functions of the Authority may be discharged by its Benches constituted by the Chairperson of the Authority from amongst the members thereof.

(7) A Bench shall consist of the Chairperson or the Vice-chairperson and one legal Member and one revenue Member.

(8) The principal Bench of the Authority shall be located in National Capital Territory of Delhi and other Benches of the Authority shall be located at such places as is deemed fit by the Central Government.

(9) No proceeding before, or pronouncement of advance ruling or order or direction on appeal for resolution of dispute by, the Authority shall be questioned, or shall be invalid, on the ground merely of the existence of any vacancy, or defect, in the constitution of the Authority.

258. (1) An applicant may make an application for seeking advance ruling, under this Chapter, stating the question on which the advance ruling is sought.

(2) The application shall be made in such form and manner and be accompanied by such fees as may be prescribed.

(3) An applicant may withdraw an application within a period of thirty days from the date of filing of the application.

(4) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the Commissioner and, if necessary, call upon him to furnish the relevant records.

(5) The Authority may, after examining the application and the records called for, by an order in writing, either allow or reject the application.

(6) No application shall be rejected under sub-section (5) unless an opportunity of being heard has been given to the applicant and reasons for such rejection shall be given in the order.

(7) The Authority shall not allow the application where the question raised in the application—

(a) Is already pending before any income-tax authority, Appellate Tribunal or any court;

(b) Involves determination of fair market value of any property;

(c) Relates to a transaction or issue which is designed *prima facie* for the avoidance of income-tax.

(8) Notwithstanding anything in sub-section (7), in the case of any person falling within the class of persons notified under section 256, the Authority may allow the application even if the question raised therein is pending before any income-tax authority or Appellate Tribunal.

(9) A copy of every order made under sub-section (5) shall be sent to the applicant and to the Commissioner.

(10) The Authority shall, in a case where an application is allowed under sub-section (5), pronounce its advance ruling on the question specified in the application, after examining such further material as may be placed before it by the applicant or the Commissioner or obtained by the Authority.

(11) The Authority shall, before pronouncing its advance ruling, provide an opportunity of being heard to the applicant or to the Commissioner.

(12) The Authority shall pronounce its advance ruling in writing within a period of six months of the receipt of the application.

(13) A copy of the advance ruling pronounced by the Authority, duly signed by the Members and certified in such manner as may be prescribed, shall be sent to the applicant and to the Commissioner, as soon as may be, after such pronouncement.

259. No income-tax authority, or the Appellate Tribunal, shall proceed to decide any issue in respect of which an application has been made by a person falling within the class of persons notified under section 256.

260. (1) The advance ruling pronounced by the Authority under section 258 shall be binding only—

(a) On the applicant in whose case the advance ruling has been pronounced;

(b) In respect of the transaction in relation to which the advance ruling has been pronounced;
and

(c) On the Commissioner, and the income-tax authorities subordinate to him, in respect of the applicant and the said transaction.

(2) The advance ruling referred to in sub-section (1) shall not be binding, if there is a change in law, or fact, on the basis of which the advance ruling has been pronounced.

261. (1) The Authority may, by order, declare an advance ruling to be void *ab initio* if it finds that the ruling has been obtained by the applicant by fraud or misrepresentation of facts.

(2) Upon declaring the ruling to be void *ab initio*, all the provisions of this Code shall apply (after excluding the period beginning with the date of such advance ruling and ending with the date of order under this sub-section) to the applicant as if such advance ruling had never been made.

(3) A copy of the order made under sub-section (1) shall be sent to the applicant and the Commissioner.

262. (1) An appellant may prefer an appeal against the orders referred to in serial numbers 4 and 5 of the Table given in section 256 for seeking resolution of a dispute.

(2) Every appeal under sub-section (1) shall be preferred within a period of sixty days from the date on which the order sought to be appealed against is communicated to the appellant.

(3) The respondent, on receipt of notice that an appeal against the order of the Commissioner (Appeals) has been preferred under sub-section (1) by the other party, may file a memorandum of cross objections against any part of the order of the Commissioner (Appeals) within a period of thirty days of the receipt of the notice.

(4) The memorandum of cross objections shall be disposed of by the Authority as if it were an appeal preferred within the time specified in sub-section (2).

(5) The Authority may admit an appeal, or a memorandum of cross objections, after the expiry of the period specified in sub-section (2) or sub-section (3), if—

(a) It is satisfied that the appellant had sufficient cause for not preferring it within that time; and

(b) The delay in filing the appeal does not exceed a period of one year.

(6) The appeal, or the memorandum of cross objections, shall be in such form and manner and be verified in such manner as may be prescribed.

(7) The appeal by the public sector company shall be accompanied by such fees as may be prescribed.

(8) The Authority may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.

(9) A copy of the order passed by the Authority shall be sent to both the parties.

(10) Every appeal preferred under this section shall be heard and disposed of by the Authority as expeditiously as possible and endeavour shall be made to dispose of such appeal within a period of two years from the end of the financial year in which the appeal is preferred.

(11) The order or direction of the Authority in the matter of an appeal shall be final and binding on both the parties.

263.

(1) A public sector company may make an application to the Authority for stay of demand relating to the appeal preferred by it under section 256 and such application shall be accompanied by such fees as may be prescribed.

(2) The Authority may, after giving both the parties to the appeal an opportunity of being heard and having considered the merits of the case, pass such orders on the stay application as it deems fit.

(3) The Authority may pass an order of stay under sub-section (2) for a period not exceeding one hundred and eighty days from the date of passing of the order for stay and the Authority shall dispose of the appeal within the said period of stay specified in that order.

(4) The Authority may, on an application made by the public sector company seeking extension of the period of stay, extend the period of stay allowed under sub-section (2), if it is satisfied that the delay in disposing of the appeal is not attributable to the company.

(5) The aggregate of the period originally allowed under sub-section (2) and the period or periods extended under sub-section (4) shall not, in any case, exceed three hundred and sixty-five days from the date of passing the order of stay under sub-section (2).

(6) The Authority shall dispose of the appeal during the period of stay allowed under sub-section (2) or the period or periods extended under sub-section (4), notwithstanding that the delay in disposing of the appeal is not attributable to the company and where the Authority fails to do so, the stay order shall stand vacated.

264. (1) The Authority may, either *suo motu* or the mistake on being brought to its notice by the public sector company or the Commissioner or the Assessing Officer, with a view to rectifying any mistake apparent on the face of record, amend any order passed by it under section 258 or section 262.

(2) No order under sub-section (1) shall be passed after a period of four years from the date on which order sought to be amended was made.

(3) The Authority shall not make an amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the public sector company without giving the said company an opportunity of being heard.

265. (1) The Authority shall, for the purpose of exercising its powers, have all the powers of a civil court under the Code of Civil Procedure, 1908 as are referred to in section 134 of this Code.

(2) The Authority shall be deemed to be a civil court for the purposes of section 195 of the Code of Criminal Procedure, 1973, but not for the purposes of Chapter XXVI of the said Code.

(3) Every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code, and for the purpose of section 196 of the said Code.

266. The Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure in all matters arising out of the exercise of its powers under this Code.

267. In this Chapter, unless the context otherwise requires,—

(a) "Advance ruling" means a ruling by the Authority on a question raised by the applicant under section 258 within the scope as specified under section 256;

(b) "Appellant" means a public sector company or the Commissioner who prefers an appeal under sub-section (1) of section 262;

(c) "Applicant" means any person who makes an application under sub-section (1) of section 258;

(d) "Application" means an application made to the Authority under sub-section (1) of section 258;

(e) "Authority" means the Authority for Advance Rulings and Dispute Resolution constituted under section 257;

(f) "Chairperson" means the Chairperson of the Authority;

(g) "Member" means a Member of the Authority and includes the Chairperson and Vice-chairperson;

(h) "Vice-chairperson" means the Vice-chairperson of the Authority

6 Appeals to the Supreme Court

Supreme Court Appeals



6.1 Appeals u/s 261 rw S 256, and S 260A, of the Income Tax Act 1961

Section 261 provides for filing of an appeal to the Supreme Court from any judgement of the High Court on a reference made u/s. 256 (before 1-10-1998) or an appeal made u/s. 260A. On behalf of the Department, it is the Board that can file the appeal to the Supreme Court.

At present, the monetary limit prescribed by the Board for filing an appeal to the Supreme Court is a tax effect exceeding Rs.10 lakhs. Instruction No.5 dated 15 May 2008 of CBDT which is placed as **Annexure-7.2** may be referred to.

6.2 Certificate for Appeal

The appeal to Supreme Court would lie only when the High Court certifies that the case is a fit one for appeal u/s. 261. The Certificate for appeal to the Supreme Court can be granted by the High Court suo motu or on an application by a party. Such an application is to be made within 90 days from the date of the pronouncement of the judgement of the High Court (and not from the date of receipt of the copy thereof). The application for the certificate must state the reasons why the case is sought to be certified as a fit one for an appeal to the Supreme Court. The application should also state the grounds of appeal which the party proposes to take before the Supreme Court.

6.3 Special Leave Petition

The High Court may refuse to grant a certificate. In that event, the aggrieved party may make an application within 60 days to the Supreme Court under Article 136 of the Constitution. A special leave petition (SLP) can also be made directly to the Supreme Court in prescribed form No. 28 within 90 days from the date of the High Court's judgement. **Filing of SLP is governed by Order XVI of the Supreme Court of India Rules, 1966. These Rules are placed in this booklet at S No 10.** The time period from the date of application for certified copy of the High Court order till the date when the certified copy is ready for delivery, is excluded while counting the period for

filing SLP / Appeal. However, it may be noted that the limitation starts from the date of pronouncement of the judgement by the High Court and if an application for a certified copy is made immediately, it is possible to contend that the time taken for obtaining the copy should be excluded. In other words, there should not be inordinate delay in obtaining the certified copy of the judgement of the High Court.

6.4 Step-by-step procedure for filing of SLP / Appeal in the Supreme Court

Procedure To File Appeal In The Supreme Court

- Section 261 of the income tax act provides for appeal to the supreme court where the high court certifies that its judgment in an appeal filed under section 260a of the act is fit one for appeal to the supreme court .
- Article 136 of the Constitution of India provides for an alternative mechanism of appeal to the Apex Court by seeking the leave of the Supreme Court to appeal against the Judgment of the High Court /Tribunal.
- The preferred route of appeal to the Supreme Court is under Article 136 of the Constitution which in popular parlance is referred to as Special Leave Petition (SLP).
- **Order XVI (Refer Annexure Annexure 10)** of the Supreme Court Rules, 1966 which lays down the procedure of filing SLP including the time limit of 90 days from the date of the pronouncement of Judgment by the High Court/Tribunal. But in case a certificate of fitness was applied for and rejected by the High Court, then period of limitation is 60 days from the date of such rejection.
- Any appeal to the Supreme Court by the Union of India or any of its agents is to be filed through the Ministry of Law.

6.4.1 Examination of SLP Proposal by Directorate of (L&R)

When any order of the High court is to be contested, the proposal received from the CCIT is examined in the **Directorate of Income Tax(Legal & Research) {Refer S No 8 for formats used in the Directorate}** particularly from the following point of view :

- (i) Whether any substantial question of Law is involved?
- (ii) Whether similar issue has been agitated before the Apex Court earlier, if yes, then result thereof?
- (iii) Whether the proposal is as per the parameters of the instruction dated the 15th May 2008?
- (iv) Whether similar issue was involved in the earlier year, then fate thereof?
- (v) Whether all relevant and required documents are enclosed with the proposal?

6.4.2 Approval of SLP by Member

The proposal is then put up to the Member (A&J) with the views of the Directorate. If the proposal is not approved, the same is sent back to the Directorate and the concerned CCIT is duly informed of the fate of the proposal.

6.4.3 Approval By Ministry of Law

a. The proposals approved by the Member (A&J) are sent to the Advice 'B' section of the Ministry of Law for their advice. The Addl. Legal Advisor prepares a note and sends the file to Central Agency Section (CAS) to obtain the opinion of one of the law officers i.e. either the Attorney General or the Solicitor General or the Addl. Solicitor General of India.

b. If the Law officer opines that a particular judgment need not be contested, then the proposal is sent back to the Directorate. The same is then dropped with the approval of the Member (A&J) and the CCIT is intimated the fate of the proposal.

c. In case, the Law officer advises filing of SLP, then the proposal is transferred to the Asst. Government Advocate of the CAS, the division of the Ministry of Law with its office in the Supreme Court Compound for drafting of the SLP.

6.4.4 Vetting and Preparation of Annexures by Directorate (L&R)

The drafted petition is received in the directorate for vetting and preparation of Annexures. If any document is missing, the concerned officer is requested to make it available. The vetted draft and required annexures are sent back to the CAS for preparation of the Paper Book. The preparation of the Paper Book is the most time consuming part of the entire exercise. When the SLP is ready for filing, the DCIT/ACIT from the Directorate affirms the affidavit as per the requirement of clause (e) of Rule 4 of the order XVI of the SC Rules 1966.

The Advocate on record (AOR) i.e. the Asst. Govt. Advocate files an affidavit in terms of Rule 4(2) of order XVI of the SC Rules 1966 stating that either no petition was filed earlier against the impugned judgment or if filed then fate thereof. At the time of filing of SLP, the registry of the Supreme Court gives Diary Number (Dy. No.) and if there is no defect, then the petition is allotted a SLP No. If there is any defect in the petition so filed, then it has to be removed and filed again within the stipulated period.

Step-by-step procedure for filing of SLP / Appeal in the Supreme Court as per the flow chart is detailed in the letter of Member, CBDT, dated 20th September, 2005 addressed to the CCsIT / DGsIT alongwith its enclosures at **Annexure 7.4**. Letters of DGIT/ Director (I&R)/ and Law Secretary dealing with this subject are placed at **Annexure- 7.8 regarding Certified Copies, 7.10 regarding Timely filing of SLPs and 7.11 regarding Schedule for Processing of File respectively.**

6.5 Check List For filing SLP's in Supreme Court

- | | | |
|-----|---|--------------------------|
| 1. | Assessment Order/CIT/DIT's order | <input type="checkbox"/> |
| 2. | CIT (A) order | <input type="checkbox"/> |
| 3. | ITAT's order | <input type="checkbox"/> |
| 4. | Copy of Appeal Memo u/s 260A/ Writ Petition | <input type="checkbox"/> |
| 5. | Original certified copy - High Court/ Settlement
Commission/ AAR order | <input type="checkbox"/> |
| 6. | Proforma B | <input type="checkbox"/> |
| 7. | Question of Law | <input type="checkbox"/> |
| 8. | CIT' comments | <input type="checkbox"/> |
| 9. | CCIT' specific comments | <input type="checkbox"/> |
| 10. | | <input type="checkbox"/> |
| 11. | Copy of opinion of Standing Counsel | <input type="checkbox"/> |
| 12. | Related/Connected order | <input type="checkbox"/> |
| 13. | | <input type="checkbox"/> |

6.6 Engaging Special Counsel And Contingencies Arising During the Pendency Of Appeals

Sometimes the issue before the Special Bench can be very complex and may have widespread repercussions involving large revenue. If the Commissioner of Income Tax feels that the interest of the Department will be better served if a senior counsel is engaged, he should take up the matter in advance with his Chief Commissioner so that the counsel is engaged well before the date of hearing. A proposal in this regard should be made by the Chief Commissioner of Income Tax to the Central Board of Direct Taxes directly under intimation to Commissioner of Income Tax (Judicial). On engagement, the fees of the special counsel are to be charged to the budgetary grant of respective C.I.T.

However, it should be noted that the process of engaging special counsel is time-consuming because the approval of the Finance Minister and the Law Minister has to be taken through the C.B.D.T.

6.7 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. Some of 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 or 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 member of the family 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 BO, there may be dissolution	Erstwhile partners of the firm or members of the AOP or BOI
5.	In the cas 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.

6.8 Delays in filing of SLP's and instructions of the CBDT

Delays in filing of SLP's led the CBDT to issue instructions to obtain the certified copy of the High Court order immediately after the order is passed. Letters of Member / DGIT/ Director/ and Law Secretary dealing with this subject placed at Annexure-7.7, 7.8, 7.10 and 7.11 respectively may be referred to.

Directions were issued that the SLP proposal should be initiated on the basis of the uncertified (katcha) copy of the order to avoid delay in the field in processing the file as it passes through different stages from the Assessing Officer to the CCIT/ DGIT. While the time limit of 90 days for filing SLP is counted from the date of the order of the High Court, the period from the date of application for certified copy of the order to the date on which the certified copy is prepared / ready-for-delivery is excluded for calculation of the time limit of 90 days. Therefore, it is essential that the Standing Counsel / Govt. Counsel applied for the certified copy of the order on the very day the judgement is passed by the High Court and obtains the certified copy immediately after it is prepared / ready - for delivery. Any delay on the part of the Standing Counsel / Govt. Counsel either in applying for certified copy or in obtaining the same after it is ready for delivery would eat into the overall time limit of 90 days. Therefore, all the Standing Counsel / Govt. Counsels were advised to ensure that there is no lapse on their part in timely applying for and obtaining the certified copy of the order. They were also required to immediately send the uncertified (katcha) copy of the order, on the basis of which the SLP proposal can be initiated. **However, while sending the SLP proposal to the CBDT / DIT (L & R), the certified copy of the order should be enclosed.**

Member(A&J)'s earlier letter dated 20.9.2005, placed at Annexure 7.4 conveyed a flow-chart proforma to ensure timely processing of the SLP proposal in the field. 15 days time had been allotted to the field office to send the SLP proposal ie (*counted from the date of the order of High Court and it will only exclude the period from the date of application for certified copy to the date on which the certified copy of the order is prepared / ready-for-delivery.*).

While the Proforma-B and the flow-chart devised by the CBDT has to be enclosed with each SLP proposal, the new table devised by the Ministry of Law (**Annexure 7.11**) was also to be submitted with each case. The columns 1 (a), 1(b) and 1(c) of the new table should be filled in by the field office.

6.9 Monitoring Unit to be established in the Office of each CCIT / DGIT

As instructed in para 5 & 6 of the Law Secretary's D.O. dt 6 sept 2006 placed at **Annexure- 7.11**, a Monitoring Unit should be established in the office of each CCIT / DGIT to monitor the passing of the orders by the High Court and timely initiation of SLP proposals in suitable cases.

6.10 Factors contributing to the delay in filing SLPs

Factors contributing to the delay in filing SLPs are broadly as under:

- (1) Delay in sending proposal awaiting receipt of certified copy of the Judgment.
- (2) Delay in sending proposals for other reasons like AO being on leave or excessive workload etc.
- (3) Delay in communication of order of the High Court by the Sr. Standing Counsel / High Court cell/o/o CIT(J)
- (4) Voluminous annexures, which are required to be typed on the legal paper in the court prescribed format in CAS.
- (5) Confusion about the current jurisdiction of the case.
- (6) In some cases, it may be pure negligence. There are instances that proposal was received in a case but it was not sent in other linked case assessed elsewhere.

6.11 Measures To Ensure Filing Of SLP's In Time

- (1) The CIT must sensitise the judicial section of his office about the implication of delay in filing appeal at any level more particularly in the High Court and in sending SLP proposals to the Directorate of L&R within 15 days of pronouncement of judgment.
- (2) The judicial section of the CIT's office should keep a watch on the web site of the respective High Court and identify the judgments relating to the charge. The examination of the judgment should start forthwith on the basis of the downloaded

copy. This exercise should also be done by the High Court Cell wherever it exists or the o/o CIT(J) in metro charges and intimate the CIT concerned.

- (3) In case, the certified copy is not received with the opinion of the Sr. Standing Counsel, the proposal should be sent if CCIT approves the same.
- (4) The certified copy and the opinion of the counsel should be forwarded as soon as the same is received.
- (5) The Assessment Order, CIT (A)'s order, ITAT order and the memo of appeal filed u/s 260A should be sent with a digital copy.
- (6) A system should be devised in the judicial section of the o/o CIT or CIT (J) to maintain a digital copy of these documents at the time of filing of appeal u/s 260A which can be retrieved while sending SLP proposal.

The feasibility of these measures may be discussed by the Open house so that a draft proposal for making suitable amendments in the existing procedure be submitted to the Board with the ultimate aim of filing SLPs in time so that assessment orders with merit are not lost because we failed to defend them.

6.12 Measures Taken By Directorate (L&R) To Reduce Delay In Filing Of SLPs

1.
 - a. Check list at initial stage ensuring all relevant documents received.
 - b. Deficiency letters (**Formats placed at S No 8 on this Manual**) being issued by Zonal ITOs - format on all computers.
 - c. Reminder by Addl. DIT through letters/phone.
 - d. Explanation for delay letter being issued.
2. Computerization of SLP proposal movement details.
3. Generation of list cases not received for vetting - after 21 days. (every Friday).
4. Generation of list of cases in which affidavit sworn in - but SLP not filed as per SLP register of CAS.
5. Creation of post of ITO (SCC) & ACIT (SCC) for liaising with CAS, SG, ASG & Field formation.

6. Regular meetings of officers of Directorate with officers of CAS/ACIT, ITO (SCC) & Inspector meet on daily basis.

OTHERS MEASURES:

1. Computerization of earlier SLPs prior to 2009 - part progress.
2. Maintenance of assessee SLP registrar.

Points for discussion of OPEN House

Our performance in terms of limitation in filing of SLP or refiling is a cause for concern. If the court's daily list is seen, almost every SLP of the department is shown with petition for condonation of delay in filing and in many cases additionally with petition for condonation of delay in refiling also.

7 Annexures

Annexures

7.1 INSTRUCTION NO 4/2002, Dated: May 7, 2002 regarding Allocation of work amongst CIT (Judicial) and their jurisdiction.

1. Consequent upon restructuring of the Income Tax Department and creation of posts of CIT (Judicial) in the new Structure, it has become necessary to specify the work jurisdiction and the role of CIT (Judicial).
2. The Board has now decided the work jurisdiction of CIT (J), which is enclosed herewith.
3. I am directed to inform that CIT (Judicial) will function on the framework provided therein.

F.NO.277/109/2001-ITJ

(Amit Mohan Govil)
DEPUTY SECRETARY (JUDL)

Allocation of work amount CIT (judicial) and their jurisdiction

Objectives:

To uniformly and coherently enforce the departmental view regarding the interpretation of the Income Tax Act.

Structure:

Judicial System in the country will be divided into four Geographical Zones. Each Zone will be headed by CIT (J) who will coordinate the Intra Zonal Work as well as with Board and Other Zones. Each Zone will Consist of State-Wise High Court Cell. In addition, there will be a Supreme Court Cell under the administrative control of CIT (J), Delhi. Zones: There will be following four Zones for the High Courts as under:

1. North Zone:- HQ- Delhi

- (a) Delhi
- (b) Punjab & Haryana
- (c) Rajasthan
- (d) Jammu & Kashmir
- (e) Uttranchal
- (f) Uttar Pradesh

2. Western Zone: HQ. - Mumbai

- (a) Maharashtra with Mumbai
- (b) Gujarat
- (c) Chattisgarh
- (d) Madhya Pradesh

3. Southern Zone: - HQ. - Chennai

- (a) Tamil Nadu
- (b) Kerala
- (c) Karnataka
- (d) Andhra Pradesh

4. Eastern Zone:- HQ.- Kolkata

- (a) West Bengal
- (b) Bihar & Jharkhand
- (c) North East States
- (d) Orissa

Work:

- (1) The administrative decision to file appeal before High Court will vest on respective administrative CIT/CCIT. However, all the question of law so framed would be communicated to the CIT(J)'s office who will compile data bank of all such question of law and ensure that there is uniformity in the Departmental stand on a Particular Issue. The actual process of filling would continue to be the same.
- (2) Any work after filling of appeal before the High Court would be monitored by CIT (J) and any information required by the court would be made available by him/her. CIT (J) will also ensure that one official is present in the court at the time of hearing, for taking down Instruction. Any briefing of the Departmental Counsel would be coordinated by the Judicial section under CIT (J).
- (3) The question of law on which the department has moved the High Court would also be sent to other Zonal CsIT (J) as well as the Board. This would contain the exact question of law and the section of Act involved therein.
- (4) The order of the High Court would be circulated by CIT (J) within the Zone and brief information to that effect would be sent to other Zonal CsIT (J).
- (5) The present system of moving the Board for SLP by the CCIT would continue. However, a copy of the Proposal of the CCIT sent to the Board would be marked to the Zonal CIT (J) for creating a data bank.
- (6) The Concerned CCIT shall inform the Zonal CIT (J) of any question of law decided by the High Court accepted by him for creating a data bank. The CIT (J) will pass on such information to other Zones. In case of any contradiction on the issue between two Zones, the matter will be referred to the board.
- (7) After the proposal for filling the SLP has been sent to the Board, the Board will communicate with the CIT(J) of that Zone for any clarification required therein, The decision of the Board in this regard would be sent to the respective CIT(J), who would intur n inform all CCSIT of his Region regarding the same. This Decision would also be communicated to other Zonal CsIT (J).
- (8) In addition to the above, the CIT (J) at Delhi would also hold administrative jurisdiction of the Supreme Court Cell. After the Board has decided to file the SLP, all the activities relating to that SLP would be monitored by the CIT(J) at Delhi with the assistance of the Supreme Court cell. The CIT (J) Delhi would also coordinate with other Zonal CIT (J) for any information regarding the case. In case, any conference is required by the Departmental Counsel, the same would be coordinated by CIT (J) Delhi, CIT (J), Delhi would ensure that an official from the Supreme Court Cell would be present in the Supreme Court premises when tax appeals are being heard, for taking down necessary Instructions given by the Court. CIT (J), Delhi, with the assistance of the Supreme Court Cell, will also collate information required by the Departmental Counsel in this regard.

(Amit Mohan Govil)
DEPUTY SECRETARY (JUDL)

7.2 CBDT Instruction No 5 of 15th May 2008 and related OM's Regarding Monetary Limits and subsequent clarifications dt 23 Oct 2008 and 19 Nov 2008 reg

F.No.279/Misc.142/2007-ITJ
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

.....

New Delhi. the 15th of
May 2008

To

All Chief Commissioner of Income-Tax and
All Directors General of Income-Tax.

Subject: Revision of monetary limits for filing appeals by the Department before Income Tax Appellate Tribunals, High Courts and Supreme Court measures for reducing litigations.

Sir/Madam,

1. Reference is invited to Board's instruction No.1979 dated 27.3.2000, No. 1985 dated 29.6.2000, 6 of 2003 dated 17.7.2003, No 19 of 2003 dated 23.12.2003, No. 5/2004 dated 27.5.2004, No. 2/2005 dated 24.10.2005 and No. 5/2007 dated 16.7.2007, wherein monetary limits for filing Departmentals appeals (in Income-Tax matters) and other conditions were specified, for filing appeals before Appellate Tribunals, High Courts and Supreme Court.

2. In supersession of the above instructions, it has been decided by the Board that departmental appeals will be filed before Appellate Tribunals, High Courts and Supreme Court as per the monetary limits conditions specified below.

3. Appeals will henceforth be filed by only in cases where the tax effect exceeds monetary limits given under:-

Sr No.	Appeals in Income-Tax matters	Monetary Limit (In Rs.)
1.	Appeal before Appellate Tribunals	2,00,000/-
2.	Appeal under section 260A before High Court	4,00,000/-
3.	Appeal before Supreme Court	10,00,000/-

4 For this purpose, "tax effect" means the difference between the tax on the total income assessed he tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issue against which appeal is intended to be filed (hereafter referred to as "disputed issues"). However, the tax will not include any interest thereon. Similarly, in loss cases notional tax effect would be taken into account. In the cases of penalty orders, the tax effect will mean aquarium of penalty ed or reduced in the order to be appealed against.

5 The Assessing Officer shall calculate the tax effect separately for every assessment year in respect disputed issues in the case of every assessee. If, in the case of an assessee, the disputed issues arise more than one assessment year, appeal shall 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 then the monetary limit specified in para 3. In other words, henceforth, appeals will be filed only with reference to the tax effect in the relevant assessment year. However, in case of a composite order of any high court, appellate authority, which involves more than one year, appeal shall be filed in respect of all assessment years even if the "tax effect" is less than the prescribed monetary limits in any of the year(s) in which "tax effect" exceeds the monetary limit prescribed.

6 In a case where appeal before a Tribunal or a Court is not filed only on account of the tax effect les then the monetary limit specified, the Commissioner of Income-tax shall specifically that "even though the decision is not acceptable, appeal is not being filed only on the consideration e tax effect is less than the monetary limit specified in this instruction". Further, in such cases, there no presumption that the income-tax Department has acquiesced in the decision on the disputed. The Income-Tax Department shall not be precluded from filing an appeal against the disputed in the case of the same assessee for any other assessment year, or in the case of any other assessee 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 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 case of any other assessee for the same or any other assessment year by not filing an appeal on the disputed issues. The Departmental representatives/counsel must make every effort to bring to the of the Tribunal or the Court that the appeal in such cases was not filed or not admitted only by virtue of the tax effect being less than the specified monetary limit and therefore, no interference should be 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.

8 Adverse judgments relating to the following should be contested irrespective of the tax effect.

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

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

10 The monetary limits specified in para 3 above will not apply to writ matters.

11 This instruction will apply to appeals filed on or after 15th of May 2008. However, the cases where appeals have been filed before 15th of May 2008 will be governed by the instructions on this subject, operative at the time when such appeal was filed.

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

Yours faithfully,

(Madhukar Kumar Bhagat)
Deputy Secretary to the Govt. of
India.

F.No. 279/Misc, -142/2008-ITJ (Pt)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, the 19th November, 2008

To

All Chief Commissioner of Income Tax/
Director General of Income Tax

Subject: - Revision of monetary limit for filling appeal by the Department before High Courts U/S 260A- measures for reducing litigation clarification-reg.

Sir,

I am directed to refer to the Board's letter of even number dated the 23rd October 2008 (copy enclosed) and to state that Instructions given therein shall apply to the appeal filed u/s 260-A of Income Tax Act only.

This issues with the approval of Member (A & J).

(Arun- Kumar Gurjar)
Under Secretary to the Govt. of India.

F.No. 279/Misc, -142/2008-ITJ (Pt)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, the 23rd October, 2008

OFFICE MEMORANDUM

To

All Chief Commissioner of Income Tax/
Director General of Income Tax.

Sub:- Revision of monetary limits for filling appeal by the Department before Income Tax Appellate tribunals, High Courts and Supreme Court measures for reducing litigation- Clarification reg.

I am directed to refer to Board's Instruction No. 05/2008 dated 15.05.2008 on the above subject and to clarify that in cases where the tax effect is above the monetary limits laid down in Board's Instruction No. 5/2008, and the CIT does not propose to file further appeal, the matter should be brought to the notice of the CCIT concerned.

This issues with the approval of Member (A & J).

(Arun- Kumar Gurjar)
Under Secretary to the Govt. of India.

7.3 Instruction No. 2 dt 06.02.2002 Revised Proforma 'B' for filing of SLP**F. No. 2797 Misc. 165 / 2001-ITJ****Government of India**

Ministry of Finance Department of Revenue

Central Board of Direct Taxes

North Block, New Delhi

Dated : 06.02.2002

To,

All CCIT's/ DGIT's

Subject : Revised Proforma 'B' for filing of SLP

It has come to the notice of Board that some of the SLP Proposals being sent to the Board, are being sent in a very casual manner. In spite of various Instructions / proforma regarding procedure for filing of SLP and the time limit, the same are not being adhered to. Moreover in many cases the columns in Proforma 'B' is being kept blank thereby making it extremely difficult for the board to process the proposal in time. Incomplete Information is leading to unnecessary communications thereby making it difficult to file the SLPs in time.

It is also noticed that Board's Instruction Nos. 1979 and 1985 regarding monetary limit for filing of SLPs are not being adhered to and proposals are being sent in contravention of the Instructions. This leads to unnecessary paperwork and waste of time in Board.

Taking into consideration all the above facts the Board has now decided to revise the Proforma 'B' (attached herewith) for strict compliance at the time of sending of the SLP proposal. It has also been decided that an SLP proposal without the Proforma 'B' for the SLP or with Incomplete Proforma 'B' will be sent back to the CCIT and the delay on this account would be held attributable to the CCITs office.

It is also re-iterated that the SLP proposals should be sent so as to reach Board at least 45 days before the limitation date for filing SLP.

This instruction comes into immediate effect.

Yours faithfully.

Sd/-

{Suresh Yadav}

Under Secretary (ITJ)

Proforma 'B': For SLP

1		Name of the assessee	
2		Asstt. year(s) involved	
3	a)	Tax effect	
	b)		
	i)	Is it below the limits prescribed in instruction on monetary limits (Instruction No. 1979 dt. 27.3.2000 & Instruction No 1985 dt. 29.6.2000 for filing SLP	
	ii)	If yes, then why the said proposal is being sent	
4.	i)	Date of High Court's Judgment / Order	
	ii)	Date of making application for certified copy	
	iii)	Date on which certified copy was ready for delivery	
	iv)	Date of receipt of certified copy	
	v)	Date of Limitation (To be calculated with reference to the date at 4(i) excluding the time taken between 4(ii) & 4(iii)	
	vi)	Datewise movement of SLP from (i) above till date (kindly attach the Flow-chart proforma)	
	vii)		
	a)	Has the proposal been sent so as to reach the Board within 15 days of the High Court's order (excluding the period between 4(ii) & 4(iii)	
	b)	If not, the reasons therefore	
5		Are the following documents enclosed	
	a)		
	i)	Original copy of High Court's judgement / order	
	ii)	Copy of paper book	
	iii)	Copy of the order of AAC/CIT(A)	
	iv)	Copy of the Asstt. Order	
	v)	ITAT's Orders (Original as well as reference)	
	vi)	Copy of the opinion of standing counsel / Branch Secretariat of Ministry of Law	
	vii)	Memo of Appeal (statement of case) as signed by the CIT which was filed before the High Court	
	viii)	Copy of all affidavits / documents filed in the case before the High Court	

	b)		
	i)	Are the documents in 5(a) (ii) to (vii) legible	
	ii)	Has English translation been provided for orders which are not in English	:
6		Board's previous reference if any (Please quote Board's F. No.)	
7		Facts of the case in brief (in about 300 words)	
8	i)	The substantial question of law sought to be referred to the Apex Court	
	i)	If so, reference no. and details (Please give list of audit objection and action taken thereon)	
	iii)	Is any prosecution proceedings going on in the case on the issue on which the SLP is sought to be filed?	
10	a)	Is the appellate order under consideration for SLP based on any previous judgments?	
	b)	Is so, the name of the judgment alongwith a copy of it	
	c)	The fate of the relied upon judgment (by way of further appeal or decision thereof)	
	d)	Has the relied upon judgment been accepted on merits (and not on account of Board's instructions regarding filing of appeal on account of low tax effect)	
11		Name and present communicable address of all the respondents against whom SLP is sought to be filed	
12		Telephone and fax No. of Senior Officer(s) conversant with the case	
13		Comments / recommendations of the CIT with detailed reasons	
14		All the primary documents referred to / relied upon by the Courts below which may be necessary for an effective adjudication of the matter (To be enclosed)	

7.4 Instruction of Member CBDT regarding Macro level Flow Chart for processing of SLP's

Sudhakar Mishra
Member, CBDT & Ex-Officio
Addl. Secy. to the Govt. of India
Tel: 23093356



Central Board Direct Tax
Department of Revenue
Ministry of Finance
Government of India
New Delhi - 110001

Dear CCIT/DGIT,

New Delhi 20th September, 2005

Subject: Filling of SLP/Appeal to the Hon'ble Supreme Court-matter reg-

The Board is deeply concerned on account of loss of revenue caused due to dismissal of delayed SLP/Appeal on non-condonation of delay by the Apex Court. In order to increase the effectiveness of litigation mechanism, it was considered appropriate to modify the various time limits at different stages pertaining to processing of SLP/Appeal proposals.

The time available for filing appeal to Hon'ble Supreme Court U/s 261 of I.T. Act is 60 days where the appeal is to be filed after obtaining certificate from the High Court that it is a fit case of filing appeal. In case of filing of SLP to the Hon'ble Supreme Court, the time available is 90 days from the date of judgment of the High Court. The time period from the date of application for certified copy of the High Court order till the date when the certified copy is ready for delivery, is excluded while counting the period for filing SLP/Appeal.

In consultation with MOL and the Additional solicitor General, it has been decided that the entire process of filing SLP/Appeal would be completed in 48 days as per the flow-chart enclosed herewith. The MOL/CLA would require 16 days for processing the file from step-10 to Step-15 and further 7 days for steps-17 & 18 as per the Flow-Chart.

The proposal from the field should reach the directorate (Legal & Research) within 15 days of the order of the High Court as per steps 1 to 6 in the flow-chart, excluding the period from the date of application for certified copy till it is ready for delivery (time between steps 2 and 3 in the flow-chart). It should be ensured that the SLP/Appeal proposal is sent by speed post so as to avoid the postal delay. The processing of SLP/Appeal in the field by the CIT/CCIT may be initiated on the basis of the Katcha copy of the High Court's order, but while forwarding the proposal to the Directorate (L&R), the same must be accompanied with the certified copy of the order.

The time-schedule of 15 days allowed to the CIT and CCIT sending the SLP proposal to the Directorate (L&R) should be strictly adhered to. A revised proforma 'B' incorporating the above nge in time schedule is also enclosed herewith. It may be noted that item 3(b) of Proforma 'B' will be modified to include the instruction of the Board on the subject.

The contents of this letter may please be brought to the notice field formation under your jurisdiction and the Zonal CIT official for strict compliance. I am sure that the officers in you will appreciate the gravity of the matter and will take visible action in this regard.

(Sudhakar Mishra)

All the Chief Commissioners of Income-Tax.

7.4.1 Macro Level FLOW CHART (In the I.T. Department)

SR. NO.	EVENTS	Date Of Completion	Permissible Period (days)	Initial of the Officer Concerned
	↓			
1	Date of Order of High Court		0	
	↓			
2	Date of Application for certified copy by Counsel		01	
	↓			
3	Date of obtaining certified copy after it is ready		01	
	↓			
4	Date of opinion of Standing Counsel		01	
	↓			
5	Processing for filing of SLP by CIT/CCIT and date of mailing		07	
	↓			
6	Time consumed for postal transit (speed post)		05	
	↓			
7	Processing in Directorate (L & R)		06	
	↓			
8	Approved by Member (A & J)		01	
	↓			
9	File record in Directorate (L & R) and endorsed to MOL		01	
	↓			
	In between steps 10 to 15 to be taken in MOL / CLA			
	↓			
16	Vetting by Directorate & endorsed to CLA			

7.4.2 Macro Level FLOW CHART (In the MOL / CLA)

SR. NO.	EVENTS	Date Of Completion	Permissible Period (days)	Initial of the Officer Concerned
	↓			
	Steps 1 to 9 taken in the I.T. Department			
	↓			
10	Opinion of MOL & endorsement to CLA			
	↓			
11	Endorsement by CLA to Law Officer for Opinion			
	↓			
12	Opinion by Law Officer & endorsement to JS, CLA			
	↓			
13	Allocation for drafting			
	↓			
14	Drafting by Counsel & endorsement to CLA			
	↓			
15	CLA to Directorate for vetting			
	↓			
	Steps 16 (vetting taken in I.T. Department)			
	↓			
17	Complete set handed over by CLA to concerned Advocate for Filing			
	↓			
18	Actual filing to SLP by Advocate			48

TOTAL : 23 Days

7.5 Instruction No. 8/2007 dated 30/08/2007 : Revision of Schedule of fees payable to Standing Counsels for the Income-tax Department before various High Courts - Appointment of Counsels Guidelines regarding

F. No. 279 / Misc. 145 / 2006-ITJ

Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, the 30th August, 2007

To,
All Chief Commissioners of Income-tax and
All Director Generals of Income-tax (Investigation)

Sub : Revision of Schedule of fees payable to Standing Counsels for the Income-tax Department before various High Courts - Appointment of Counsels Guidelines regarding

1. The President is pleased to sanction revised rate of fees and allowances (along with terms and conditions) payable to the Senior Standing Counsel / Standing Counsel / Junior Standing Counsel of the Income-tax Department which is annexed as annexure-I. The revised Schedule of the fee and allowances will come into effect from 30.8.2007.
2. The procedure for appointment of counsels and renewal of their terms has also been prescribed by specifying the requisite qualification and terms and conditions of their engagement which is annexed as Annexure-II.
3. This issues with the concurrence of Ministry of Law and Justice vide their Disp. No. D44/2007 dated 19.07.2007 and the Department of Expenditure I.D. No. 9(11)/99-E-II(B) dated 21.08.2007 in supersession of Instruction No. 1986 dated 3.7.2000 and may be brought to the notice of all officers in your charge.
4. Hindi version of the Instruction follows.

(Madhukar K. Bhagat)
Deputy Secretary (ITJ)
C.B.D.T.

7.5.1 Schedule Of Fees And Allowances

The fees and allowances payable to Senior Standing Counsels are given hereunder. The Standing Counsels and Junior Standing Counsels shall be entitled to only 1/3rd of the amount specified against each item of work (except Item no. 7). The Junior Standing Counsel shall not be entitled to retainership payable to Sr. Standing Counsel and Standing Counsel.

1. **For appearance (on disposal) in the High Court**
 Appeals u/s 260A of the Income Tax Act or reference including Rs. 4.500/-
 application u/s 256(2) of the Income Tax Act or Civil or Criminal
 Writ Petition under Articles 226 and 227 of the Constitution, orders
 made in such petition, including appearance at admission stage.
 However, for each substantial and effective hearing, following the first hearing, an
 additional fees of Rs. 2000/ - per substantial and effective hearing may be paid as
 refresher fees.
2. **Certificate of fitness** Rs. 1,500/-
 (for each application)
3. **For Civil Miscellaneous application** Rs. 1,500
 (per case)
4. **For Civil or Criminal revision petition** Rs. 2.100/-
 (per case)
5. For drafting pleadings, written statements in suites, counter affidavits /Rs. 1.500/-
 returns / answers pleading to the writ petition, grounds of appeal, etc. (per case)
 application for leave to appeal to Supreme court
 If substantially identical affidavits, written statements etc. are drafted in connected
 cases, only one drafting fee will be payable in the main case and no separate drafting
 fee will be payable in connected cases
6. **Written opinion**
 Other than what is referred n Para 7(iii) of Annexure II Rs. 900/-per case)
7. **Retainership**
 The senior Standing Counsel and Standing Counsel will be entitled to a retainership of
 Rs. 6,000/- per case (which will includes charges for staff, office rent, postage and all
 other establishment charges.
8. **Clerkage**
 Clerkage at the rate of 10% of the hearing fees subject to a maximum of Rs. 3.600/- in
 a case or batch of cases before the High Court.
9. **Out of pocket expense**
 The amount required for court fees at the time of filing of case and other
 miscellaneous expenses should be paid to the Counsel in advance by the Chief
 Commissioner. An amount of the expenses incurred should be rendered to the Chief
 Commissioner while presenting the final bill.
10. **Perquisites**

The reimbursement of telephone expenditure, subject to a maximum of Rs. 1,000/- per month, shall be made by the Chief Commissioner to the counsel for calls that have been made in connection with Departmental litigation matters only.

11. For appearance before any other Courts, ITAT, other Tribunals / statutory bodies etc.
- (a) at headquarters : same as payable for appearing 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 Office or for appearance in any Court/Tribunal/ Statutory Bodies etc. outside the headquarters, he will be entitled to a daily fee of Rs. 3,600- per day for the days of his absence from the headquarters including the days of departure ¹ 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.
 - (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 the headquarters to the airport / railway station and vice versa and from the airport / railway station to the place for his stay out of headquarters and vice-versa will be paid at the rates admissible to Class I Officers of the Central Government {having basic + NPA + SI in the pay range Rs. 8000/- to Rs. 16399). He will also be paid a ' sum amount of Rs. 600/- 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. 1,200- per day.

12.1 General

The rates specified above are primarily applicable to Income-tax cases but will apply *mutatis-mutandis* to i.e. cases relating to other direct taxes and any other matter assigned by the Department. In all cases effective appearance is necessary for the Counsel to claim fee.

- 12.2 No fee will be payable in cases where no legal work is required to be done. For example 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 records for ascertaining the position of the case or other information needed.
- 12.3 If the Counsel appears at the instance of the Union of India or for parties other than the Union of India whose scales of fee are not in consistent with that of the Union of India, he will be entitled to only one set of fees.
- 12.4 Appeals, revision or petition arising from one common judgement or order will be considered together as one case if they are heard together.

12.5 Uncontested matters

In uncontested cases, the fee shall be 1/3rd of the fees otherwise payable but if such a case is later on restored and decided in contest, the remaining 2/3rd of the fee will be payable. A case shall be regarded as contested when a decision is given after hearing argument on both sides. The case shall also be deemed to be uncontested if the court decides that the case is a covered one. For example if the court follows its

own judgement or judgement of the Supreme Court, the case is considered to be a covered one in case of any dispute, the Chief Commissioner / Director General / Commissioner / Director shall decide whether the case is uncontested or not.

12.6 No fees for adjournment

No fee will be payable to the Counsel if an advance notice about the adjournment has been issued or the case has been adjourned at his request due to the reasons personal to him.

12.7 Late submission of certified copies of the Judgment

30% of the fee payable to the Counsel shall be deducted if certified copy of the judgement is not handed over to the Commissioner / Director of the Income-tax within ten days (excluding the time taken by the Counsel from the date of judgement)

12.8 Where there are two or more cases (but not more than 10 cases) involving substantially identical questions of law or facts, one such case will be treated as the main case and the others as connected cases. The fees in such cases will be regulated as provided in succeeding paras, irrespective of the fact whether or not such cases are heard together.

12.8.1 When the Counsel files separate and materially different affidavits, application or grounds of appeal etc. in more than one case but the argument is heard in the main case and the other cases are decided accordingly, the Counsel shall be paid the full fees in the main case and Rs. 200/- for each of the connected cases.

12.8.2 When the main case has been heard as in para 12.8.1, but in the connected cases either affidavit or grounds or appeal or petition similar to the one in the main case has been drafted, the Counsel shall be paid the full fees in the main case and Rs. 150/- only in each of the connected cases.

12.8.3 When Substantially different affidavits are drafting in connected but uncontested cases, the Counsel shall get 1/3rd fees in the main case and Rs. 300/- in each of the connected cases.

12.8.4 When the Counsel has drafted the affidavit, petition or ground of appeal in the main uncontested case and has not drafted them In the connected but uncontested cases or the drafts in the connected but uncontested cases are substantially similar to the one in the main case, the counsel shall get 1/3rd fees in the main case, and Rs. 150/- in each of the connected cases.

12.9 The fees to the Counsel will be paid on presentation of a stamped receipt, and on submission of a copy of the document drafted, if it is a drafting fees and submission of minutes or gist of proceeding, or a copy of order / judgement where it is necessary in case the claim is for appearance fee. The Counsel shall submit his bills within three months from the date of which the fees have accrued.

12.10 The fees will be payable in two stages, 1/3rd after substantial work has been carried out and the remaining 2/3rd fees after the case has been decided. If the high court decides that no question of law is involved, only 1/3rd of the fees shall be payable to the Counsel.

12.11 Where during the pendency of a proceeding, there is a change of Counsel, a fee commensurate to the work carried out by the outgoing Counsel, not exceeding 1/3rd of the total fee admissible for the case, may be paid to him. In such an event, only the

-
- balance of fee payable in the case will be paid to the new Counsel after completion of the case.
- 12.12 When the Counsel does not argue the case himself but only assists the Law Officer or any other special Counsel, he will be entitled to the same fee as is payable to him if the case has been argued by him.
- 12.13 No fee will be admissible for preparation of cases but the Government may consider payment of separate fee for preparation in special cases involving arduous work.
- 12.14 When cases argued before a single judge are referred to a division bench or to a full bench, separate fee at the prescribed rates will be paid for appearance before each bench.
13. The various terms used in these guide line will have the following meaning.
- 13.1 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 a substantial and effective hearing.
- 13.2 Uncontested case**
Cases shall be deemed to be uncontested if these are withdrawn by the plaintiff / appellant or are dismissed in limine or are otherwise decided by the Court ex-parte Covered cases shall also be deemed to be uncontested cases.
- 13.3 Covered cases**
Where an identical issue stands decided by the same High Court or by the Supreme Court and the judgement in the relevant case is squarely based on such earliest decision of the same High Court or by the Supreme Court, the case shall be deemed to be a covered case.
- 13.4 Substantial work**
Hearing of applications u/s 256(2) and admission matters u/s 260A(3) of the Income-tax Act shall be treated as substantial work. Where a case has been admitted by the court after hearing of preliminary objection or filing of affidavits / counter affidavits etc. by the Counsel, substantial work will be deemed to have been carried out.

Deputy Secretary
CBDT

7.5.2 Category And Qualification Of Counsels

Counsels are engaged by the department for representing the department before different High Courts / other judicial bodies in case relating to the Direct Taxes, The counsels engaged by the department will fall into three categories viz.

- a) Junior Standing Counsels
- b) Senior Standing Counsels
- c) Standing Counsels

Qualification of each category of counsel will be as under:

A. Junior Standing Counsel : In order to be eligible for appointment as Junior Standing Counsel a person should

- I. be enrolled / registered as an advocate with the High Court
- II. have a minimum experience of three years of handling preferably direct tax matters before High Court or Tribunals.

OR

Have been an officer of the Income-tax Department who retired / resigned from the post of Additional CIT or below and is enrolled / registered as an advocate in the High Court. Provided that he has not been removed / dismissed or compulsorily retired from service on account of disciplinary action against him and no disciplinary proceeding under service rules or pension rules is pending against him.

B. Senior Standing Counsels : In order to be eligible for appointment as Senior Standing Counsel a person should

- I. be enrolled / registered as an advocate with the High Court. ; .'
- II. have a minimum experience of five years of handling direct tax matters before High Courts or Tribunals.

OR

Have been a Junior Standing Counsel of the Department for three years.

OR

Have been an officer of the Income-tax Department who retired / resigned from the post of Commissioner of Income-tax or above or retired / registered as Member / Chairman of ITAT / Settlement Commission and is enrolled / registered as an advocate in the High Court. Provided that he has not been removed / dismissed or compulsorily retired from service on account of disciplinary action against him and no disciplinary proceeding under service rules or pension rules is pending against him.

C. Standing Counsels: In a station where counsels do not have sufficient experience to be appointed as Senior Standing Counsels, the senior most among the panel of Junior Standing Counsels of the Department at that station may be designated by the CCIT as the Standing Counsel while other Counsels should be categorized as Junior Standing Counsels. The Standing Counsel so designated shall perform the function of arguing cases before the Hon'ble High Court / ITAT in the absence of a Senior Standing Counsel.

2. **Appointment of Counsels**

- 2.1 For the purpose of appointment, the Chief Commissioner of Income-tax will call for applications in Proforma-A & A-1 (as applicable), either by advertisement in local newspapers, or from Bar Council of High Court of otherwise. Terms and conditions of appointment should be in accordance with the revised terms and conditions applicable to them w.e.f. 30.8.2007.
- 2.2 Particulars of the applicants' expertise in handling direct tax matters by the applicant will be examined by the Chief Commissioner of Income-tax and an evaluation report along with recommendation of the CCIT will be sent to the Board in Proforma-B.
- 2.3 The first appointment of each Counsel shall normally be for a period of three years.
- 2.4 The requirement of seeking recommendation of the Chief Justice as dispensed with by the Instruction No. 1986 dated 03.07.2000 shall continue to remain dispensed with.

3. **Performance review :**

The following procedure shall be adopted for reviewing performance of the counsels appointed by the department:

- a. The CIT having jurisdiction over a case shall submit a monthly report to the CIT (Judicial) / CCIT in proforma-C in respect of the cases represented by the Counsels.
- b. On the basis of the reports received from the CsIT, the CIT(Judicial)/CCIT will review the performance of the appointed counsels every year before 30th June of each year and send an annual report to the Board in proforma-D.

4. **Renewal of appointment:**

- 4.1 Proposals for renewal of Counsels should be submitted to the Board at least 3 months before the expiry of the existing term.
- 4.2 The renewal of a term of a Counsel can be made for a period of three years, if his performance is found to be satisfactory. Before making recommendation for renewal of appointment of the Counsel, the Chief Commissioner should necessarily make an evaluation of the performance of the Counsel during the preceding term and forward it to the Board along with the proposal for renewal in proforma-E.

5. **Allocation of cases to Counsel**

The Chief Commissioner of Income-tax will be overall in charge of entire litigation work on behalf of the Income-tax Department in his region before the High Court concerned. In respect of cases assigned in DGIT (Inv.)'s region, the DGIT concerned will be the in-charge. Allocation of cases to the Counsel may be made by the Chief Commissioner / Director General or by Commissioner / Director authorized by them or by the senior Standing . Counsel, if so authorized.

6. **Termination of appointment / resignation**

The appointment / empanelment of the Counsel would be terminable on one month's notice in writing by either side without assigning any reason.

7. **Duties of the Counsel**

The Counsel shall :

-
- (i) appear in the High court in the cases assigned to him and also appear, if so required on behalf of the Department, before the Supreme Court, other High Courts, Tribunals, Settlement Commission, Commissioner of Income-tax (Appeals) and other statutory bodies;
 - (ii) 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 officers of 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.
 - (iii) when any case attended to by him is decided against the Department, give his opinion regarding the advisability of filing an appeal against such a decision;
 - (iv) 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 High Courts, Tribunal etc.
 - (v) keep the Department informed of the important development, in the case from time to time particularly with regard to drafting, filing of papers, dates of hearing of the case, supplying copies of judgment etc;
 - (vi) furnish to the Department monthly statement about the cases represented by him before High Court or any other authority;
 - (vii) perform such other duties of legal nature, which may be assigned to him by the Income-tax Department.

8. Right to private practice

The Counsel will have the right of private practice, which should not however, interfere with the efficient discharge of work of the Department but he shall not advise, hold briefs or appear against the Department before any authority, tribunal or court in matters under the statutes relating to direct taxes.

If the Counsel happens to be a partner of the firm of lawyers or solicitors, it will be incumbent on the firm not to take up any case against the Department in the same High Court, before any authority, tribunal or any case arising in other courts out of those cases e.g. appeals and revision in the High court or the Supreme Court.

9. Discontinuation of practice of appointment of solicitor

To bring uniformity, the practice of appointing the Solicitor is hereby discontinued, the term of any solicitor shall not be renewed after the present term expires. The field officers should be encouraged to interact with Standing Counsel who actually defend the cases of the Department before the High Court.

Deputy Secretary
CBDT

7.5.3 Proforma- A: Particulars To Be Furnished By An Advocate / Other Eligible Person Applying For Appointment As Jr. / Sr. Standing Counsel

1. Name of the person
2. PAN - Permanent Account Number
3. Father's Name
4. Date of Birth
5. Address of correspondence
6. Permanent address
- 7*. Educational Qualification
8. Category of Counsel for which applied
(Jr. Standing Counsel / Sr. Standing Counsel)
- 9*. Date of enrollment in High Court as Counsel
- 10*. Date of empanelment as member of Bar Council of High Court
11. If a partner in a firm, name / names of the firm and other partners
- 12*. Number of cases relating to Direct Taxes
dealt with during last 3 years as an Advocate
13. Number of cases published in Journals / Newspapers etc.
14. Income from Professional Practice
(copy of the latest IT. return to be attached)

Verification

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

Signature

Dated :

Place :

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

7.5.4 PROFORMA-A-I: Proforma For Application By Officers Who Have Retired / Resigned From The Income-Tax Department Or Retired / Resigned As Member /Chairman Of ITAT / Settlement Commission

1. Name of the person
2. PAN - Permanent Account Number
3. Father's Name
4. Date of Birth
5. Address of correspondence
6. Permanent address
- 7*. Educational Qualification
8. Date of joining Government Service / Income-tax Department
9. Designation and office address of the last post held
10. Date of retirement/resignation from the service
- 11*. Date of enrollment in High Court as Counsel
- 12*. Date of empanelment as member of Bar Council of High Court
13. If a partner in a firm, name/names of the firm and other partners
14. Category of Council for which applied
(Jr. Standing Counsel / Sr. Standing Counsel)

Verification

I _____ S/o _____,

do hereby

declare that what ever 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 Rule.s are pending against me as on date.

Signature

Dated :

Place :

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

7.5.5 PROFORMA-B: Particulars / Evaluation Report Of A Person Applying For Appointment As Jr. / Sr. Standing Counsel

1. Name of the person
2. Date of enrollment in High Court as Advocate
3. Date of empanelment as member of Bar Council of High Court
4. Number of cases relating to Direct Taxes dealt with during last 3 years as an Advocate
5. Number of cases published in Journals / Newspapers etc.
6. Income from Professional Practice
7. CCIT's recommendations based on the cases dealt by the applicant with regard to the flair relating to Direct Tax knowledge emanating from the presentation by the Counsel and other factors.

(CHIEF COMMISSIONER OF INCOME-TAX)

7.5.6 Proforma - C: Proforma Reports To Be Sent By Jurisdictional CIT To CIT (Judl.) / CCIT For Cases Represented By A Counsel

1.	Name of the case	
2.	A.Y.	
3.	Court / Tribunal before which proceedings are pending	
4.	Particulars of CIT / Addl. CIT / A.O.	
5.	Issues involved	
6.	Tax Effect	
7.	Name of Sr. Standing Counsel representing the case	
8.	Name of Jr. Standing Counsel representing the case	
9.	(a) Whether proceedings are pending / case has been decided, if yes the out come, in brief (b) Number of adjournments taken	
10.	Comments of CIT (if any), about quality of drafting, interest taken by the Counsel(s) (at column 7 & 8) / time devoted in interaction with the AO / JCIT / CIT, overall representation of the case	

(COMMISSIONER OF INCOME-TAX)

7.5.7 Proforma-D: Annual Performance Report Of The Appointed Counsels

1.	Name of the Region / Charge	
2.	Name of the Counsel	
3.	Category	
4.	Date of birth	
5.	Date of 1st appointment	
6.	Date of expiry of tenure	
7.	Ref. No. of CBDT's sanction letter vide which last renewal was granted	
8.	Number of references handled during the period under report	
9.	Number of references decided by the High Court a. in favour of the Department b. against the Department	
10.	Number of Writ Petitions handled during the period under report	
11.	Number of Writ Petitions decided by the High Court a. in favour of the Department b. against the Department	
12.	Number of cases / appeals handled before the ITAT / other Courts	
13.	Number of cases out of those in col. 12 above, decided a. in favour of the Department b. against the Department	
14.	General assessment of overall performance	

(CHIEF COMMISSIONER OF INCOME-TAX)

7.5.8 Proforma-E: Report On The Performance Of The Counsel For The Period

..... To

PART - I

1.	Name of the Region / Chargei	
2.	Name of the Counsel	
3.	Category	
4.	Date of birth	
5.	Date of 1st appointment	
6.	Date of expiry of tenure	
7.	Ref. No. of CBDT's sanction letter vide which last renewal was granted	

PART - II

8.	Number of references handled during the period under report	
9.	Number of references decided by the High Court a. in favour of the Department b. against the Department	
10.	Number of Writ Petitions handled during the period under report	
11.	Number of Writ Petitions decided by the High Court a. in favour of the Department b. against the Department	
12.	Number of cases / appeals handled before the ITAT / other Courts	
13.	Number of cases out of those in col. 12 above, decided a. in favour of the Department b. against the Department	

PART - III (To be filled by the CCIT)

14.	Are you satisfied with the performance of the Counsel	
15,	Does he take keen interest in his work and is generally alert and responsive to the Department's interest in litigation entrusted to him. Specific comments should be given about his promptness in a. Informing the department from time-to-time regarding hearing of the case, supply of copies of judgment etc. b. Taking steps for vacation of stay	
16.	Would you recommend his continuance	
17.	Any other remarks regarding performance of the Counsel	

7.6 Appointment / Renewal of Standing Counsels of Income-tax Department before various High Courts

New Delhi, the 30th August, 2007

To
All Chief Commissioners of Income-tax
All Director Generals of Income-tax

Sir,

Reference may kindly be made to Instruction No. 8/2007 dated 30/08/2007 issued on the subject "Revision of schedule of fees payable to all Standing Counsels of Income-tax before various High Courts - Appointment of counsels -Guidelines etc." which has been issued in supersession of earlier instruction No. 1986 dated 3.7.2000.

I am directed to communicate that proposals for appointment of Counsels or renewal of their term should be sent to CBDT in accordance with the 'new instruction'. Further the proposals of appointment/renewal of term of counsels which have already been sent to CBDT and are awaiting approval should be sent afresh in terms of new instruction No. 8/2007 dated 30.08.2007 on the proformas enclosed therein.

Yours faithfully,

(Madhukar K. Bhagat)
Py. Secy (ITJ)

7.6.1 Guidelines for engagement of Special Counsels for representing the Income-Tax Department before High Court/ITAT/Other Courts INSTRUCTION NO 3/ 2008, CBDT., Dated: March 25, 2008

The CBDT has been receiving references for engagement of advocates as Special Counsels for representing the Department in important cases before various High Courts, ITATs and other Judicial fora. Engagement of Special Counsels require the approval of the competent authorities within the Ministry of Finance as well as the Ministry of Law and Justice.

2. In order to streamline the procedure for engagement of Special Counsels and to bring about uniformity in the proposals being forwarded to the CBDT, the following guidelines should be complied with:

- (i) Proposals for engagement of Special Counsels should be sent only in the cases where,
 - (a) important/complex question(s) of law having wide ramification(s) is/are involved or
 - (b) any statutory provision is under challenge or
 - (c) large quantum of revenue is at stake or
 - (d) other important issues are involved necessitating such engagement.
- (ii) Proposals should be forwarded on case to case basis. The name of the case, case no., assessment year, name of the Court etc. for which engagement of Special Counsel is proposed should be clearly mentioned in the proposal. All such proposals should be accompanied by Proforma-A enclosed herewith.
- (iii) The CCIT/CIT should ensure that the advocate being recommended for engagement as Special Counsel has adequate expertise and experience in handling the nature of issues involved in dispute.
- (iv) Prior consent of the advocate proposed to be engaged as Special Counsel and the terms of engagement should be duly obtained. Further his availability to represent the Departments case should also be ascertained before sending the proposals to the CBDT.
- (v) The engagement of Special Counsels require the approval of competent authorities within the Ministry of Finance as well as within the Ministry of Law and Justice. The proposals therefore must be sent to the Board at least a month before the scheduled/expected date of hearing.

This may be brought to the knowledge of all the officers concerned in your charge.

F.No.278/80/2007-ITJ

(Madhukar Kumar Bhagat)
Deputy Secretary (ITJ)

PROFORMA

—

A

PROFORMA FOR ENGAGEMENT OF SPECIAL COUNSEL

1	Name of the case	
2	Assessment years involved	
3	Appeal No./Case No.	
4	Court/Tribunal where matter is to be contested	
5	<p>Issues involved in brief, stating the reason why a Special Counsel is required to be engaged. It may also be clarified</p> <p>(a) Whether any statutory provisions is under challenge</p> <p>(b) Whether the case involves substantial question of law having wide ramifications-</p> <p>(c) Whether large quantum of revenue is at stake (quantities of revenue to be specified)</p> <p>(annexure may be attached, if necessary)</p>	
6	Name(s) and address of the counsel(s) recommended for engagement	
7	Whether consent of the counsel has been taken and availability ascertained.	
8	Specify the terms of engagement	
9	Next scheduled date of hearing before the Court/Tribunal	
10	Any other information required to be furnished	

**Signature of CCIT/DGIT/CIT/DIT
(Recommending Officer)**

7.7 Letters of Members Board, regarding delays in filing of SLP and application for obtaining Certified copies of HC Orders -reg

D.O. F.No. DGIT(L & R)/Member(A & J)/ Delay/SLP/2010-11

Government of India
MINISTRY OF FINANCE/DEPARTMENT OF REVENUE
Central Board of Direct

Durgesh Shankar, IRS
Taxes

Member
Tele : 23093356
Fax : 23093340

North Block, New Delhi - 110001

The 14th June, 2010

To

All the Chief Commissioners/Directors General of Income Tax
(By Name)

Subject: Filing of SLPs and compliance of directions - Hon'ble Supreme Court of India - regarding-

Sir/Madam,

You may kindly recall the discussion on the above subject on 10th June, 2010 during the Chief Commissioner's conference. To recapitulate, it was impressed upon all Chief Commissioner/Directors General that the time for filing of SLP against judgment of High Court/Tribunal is 90 days from the date of pronouncement of judgment operated against. It was also informed to all assembled Chief Commissioners/Director General that lately, SLP proposals were being received very late or incomplete in vital details, leading to avoidable delay in filing of SLP. The Apex Court, or indeed all High Courts also, are extremely critical of the Department in this regard. The CBDT has viewed this with high concern and has decided to fix personal responsibilities of officers concerned for these avoidable delays.

2. In view of the above, it is directed as below:

- g) A designated officer will monitor the date of pronouncement of Orders of the High Court/Supreme Court over internet, download the same and immediately inform all concerned officers for appropriated action. Where the order is pronounced in the

-
- Court, but does not appear on website, the Standing Counsel should alert the CCIT/DGIT office/designated officer immediately.
- h) The Standing Counsel will be immediately alerted to apply for certified copies of the Order. The delay in obtaining the certified copy shall no longer be considered a valid excuse.
 - i) The Standing Counsel may be directed to give their views wherever the judgment is against the revenue.
 - j) The complete docket with the Standing Counsel will be obtained, to be sent to the O/o DG (L & R) for the preparation of the paper-book. In case, all relevant documents, copies of orders etc. are already available in the O/o Chief Commissioner/Director General, this step can be avoided.
 - k) The reasons for which the Order is not found acceptable should be clearly and unambiguously brought out. The CC/DG should frame to bring out a draft of the substantial question(s) of law proposed to be referred.
 - l) All copies of Orders and documents should be sent to DGIT (L & R) in hard copy (1 set) and also on a CD, using MS word programme and observing prescribed margins. The CC/DG should strive to send the full and complete proposal, as outlined in preceding paragraphs within 45 days of its pronouncement.
3. The Hon'ble Supreme Court of India, in respect of SLPs and other appeals pending, often issues interim directions requiring compliance by dates specified therein. The compliance must be carried out and its report, along with copies of any Orders passed or any further action taken should reach the O/ o DG (L & R) 5 days before the specified date.
4. It is requested that the above directions may be informed to all the authorities below you. It is also requested that all concerned be asked to implement the above scrupulously.

With best wishes,

Yours

(Durgesh Shankar)

Sh. B.S. Dhillon
CCIT, Chandigarh
C.R. Building, Himalaya Marg,
Sector 17-E, Chandigarh

Khan, IRS
 CBDT & Ex-Officio
 Secy. to the Govt. of India

File No. 279/Misc-59/2008-
 ITJ



Central Board Direct Tax
 Department of Revenue
 Ministry of Finance
 Government of India
 New Delhi - 110001

To

All Chief Commissioners of Income-tax
All Director Generals of Income-tax

New Delhi the 6th June, 2008

Subject:- Filing of SLPs-delay in obtaining certified copies of High Court orders by the Standing Counsels.

.....

1. While reviewing the conduct the litigation in Income-Tax Department on 27.5.2008, the Hon'ble Finance Minister expressed displeasure at long delays in filing of SLPs. One of the reasons for this is the delay on the part of Departmental Standing Counsels before various High Courts. In applying for certified copy of High Court order and subsequently, further delay in forwarding of the certified copy of High Court order after the same is ready for delivery.
2. In this context, the Departmental guidelines/instructions are quite clear and the Standing Counsels are expected to act with promptness in ensuring compliance in this regard, particularly in respect of adverse High Court orders. Accordingly, it is requested hat all Standing Counsels may be directed to apply for certified copy of the High Court order within one day of the date of pronouncement of the order by the High Court and, receive as well as transmit the same to the Department within one day from the date when it becomes ready for deliver.
3. Failure to comply with the above time-frame may be seriously viewed. In cases of gross non-compliance suitable deductions may be made from the fees and appropriate comments may be made in their annual performance report
4. This my please be brought to the notice of all Senior and Junior Standing Counsels before the respective High Courts.

Yours faithfully,

(S.S. Khan)

7.8 Letter of DGIT (L&R) regarding application for obtaining Certified copies of HC Orders delay in filing of SLP-reg

SHUKLA
I.R.S.

GOVT. OF INDIA
Director General of Income Tax (Legal & Research)
Telephone: 23379424 / Fax : 23379425

F.NO. DGIT (L&R)/SLP delay/2008-09/86
DATED: 20.8.2008

To
The All Chief commissioners of Income Tax (By Name)
Directors General of Income Tax

Sub: Application for obtaining Certified copies of HC Orders delay in filing of SLP-reg,

.....

The Apex court has recently observed that a large number of departmental SLPs are being dismissed at the admission stage itself on account of delays, resulting in loss to revenue.

In order to file SLP within the prescribed period of limitation, the following necessary steps are required to be taken at the field level:-

1. It is seen that in group matters decided by the common order of the High Court, the Departmental Counsel applies for certified copy only in one or two cases, at his own instance or at the instance of the AO/CIT/CCIT. However he should be directed to simultaneously apply for certified copy in all cases, so that the AOs of the other cases of the group also simultaneously begin to process the case for filing of SLPs. This will substantially reduce the delay in filing of SLP in group matters.
2. The delay in applying for certified copy of HC order by the Standing Counsel does not exonerate the field formation from its responsibility in adhering to the 'Limitation' prescribed for filing of SLP as the limitation period commences from the date of the High Court order itself. Therefore, effective mechanisms may please be evolved to monitor this aspect. All counsels may be advised on this issue and in case of default, CCIT may take necessary action as directed by Member (A&J), CBDT vide his letter No. 279/Misc-59/2008-ITJ dated 06.06.2008 (copy enclosed)
3. For filling of SLP, filing of certified copy of the High Court order is a mandatory requirement under the Supreme Court Rules. Despite this well known legal requirement, some field formation still send only a photocopy of the certified copy of the High Court order. This naturally results in delay in filing of SLP as the Directorate has to pursue Receipt of the order from the concerned CIT. Please advise/direct the CITs to ensure that the certified copy of the High Court is enclosed with the proposal.
4. In a recent meeting held with the Law Secretary, senior officers of the Law Ministry and this directorate, for effective representation of the Department's case before the Apex Court, it was decided that the ground of appeal filed before the ITAT & Memo of appeal filed in High Court shall be

send by the Department with the proposal file. While the memo of appeal filed in High Court is being received with most of the SLP proposals, the grounds of appeal filed in ITAT need to be send as a matter of practice.

5. In most cases the SLP proposal is being received in 4 sets. The Directorate needs only 1 set. Therefore, please send only 1 set. However at the AO level due care may taken to ensure that all related orders (including copies of relied upon/connected order)/documents are enclosed. The orders that are send to the Directorate must be clearly legible and neat.

The dismissal of Departmental SLPs on account of delay in filing is a matter of serious concern and it must be ensured that the time schedule prescribed for processing the file as per Proforma forwarded by the Member (A&J), CBDT vide his letter dated 20.9.2005 is strictly adhered to at all levels.

Encl: As above.

Yours faithfully,

(N.K. SHUKLA)

Instruction No. 05/2008

Sunita Kaila, IRS
 Member, CBDT & Ex-Officio
 Addl. Secy. to the Govt. of
 India
 Tel: 23093356



Central Board Direct Tax
 Department of Revenue
 Ministry of Finance
 Government of India
 New Delhi - 110001

D.D.F.No.DIT(L&R)/CCsIT/DGsIT/2007-08
 2008

7th January,

Dear

Sub.: Filing of SLPs in the Supreme Court of India-Regarding.

- Ref.: 1. Law Secretary's Do letter dated 06.09.2006 as forwarded vide DIT (L&R) letter dated 18.09.2006.
2. Hon'ble Supreme Court's judicial order passed on 07.12.2007 as communicated vide member (A&J)'s DO letter dated 14.12.2007.

Kindly refer to the above.

2. As you may be aware, SLPs are required to be filed before the Hon'ble Supreme Court within 90 days of the passing of the High Court order. However, It has been observed that there is undue delay in receipt of the SLP proposals from the field & often they are incomplete. Many a times SLP/appeals are dismissed in the Hon'ble Supreme Court merely on account of law of limitation even though on merit good grounds exist in the case. You will appreciate that the loss of revenue on account of such dismissals is a matter of concern.

3. In this context, the then Member (A&J) vide his DO letter dated 20.9.2005 had laid down a detailed time schedule and prescribed a format for timely processing/submission of SLP proposals. Thereafter, the law Secretary, Vide his DO letter dated 6.9.2006, adversely commenting upon the delay in filing of SLPs and their consequent dismissal, had observed that there was an urgent need for streamlining the procedure so that the time-frame for filing of appeals is strictly adhered to. He had also suggested the procedure to be followed at various levels while processing so that the SLP proposals are filed within time. A proposal to set up a Monitoring Unit in the office of the Head of Department was also advised by him.

4. In spite of the above communications, there seems to be very little improvement in the situation & instructions regarding timely submission of SLPs are not being complied with in most cases. Moreover, the reasons/explanation for each day of delay called for at the instance of the Hon'ble Supreme Court & with the approval of the then Member (A&J) are not being received. This has put the Department to considerable embarrassment before the Apex Court & the Law Ministry.

5. It is, therefore, essential that the time schedule laid down in the aforementioned letters is strictly adhered to. If done, it will take care of timely processing of the SLP proposals. Moreover, the processing may be initiated on the basis of the 'Katcha' copy of the High Court order but while forwarding the proposal to the Directorate (Legal & Research) the same should be accompanied with the certified copy of the order. The Standing Counsels/Govt. Counsels should be advised to apply for the certified copy of the order on the very day of judgment is passed by the High Court and obtain the certified copy immediately after it is ready for delivery as any delay on their part either in applying for certified copy or obtaining the same would eat into the overall time limit of 90 days. Adequate monitoring by your judicial wing can go a long way in achieving this. Lastly, to meet the requirement of the juridical order of the Hon'ble Supreme Court, it is suggested that the judicial wing is suitably strengthened.

I would request you to personally review the follow up action on SLP matters and ensure timely and proper submission of duly completed SLP proposals, in suitable cases, in prescribed formats. Copies of letters referred to in the foregoing paras are enclosed herewith for ready reference.

Yours

Encl: As stated above

(Sunita Kaila)

All CCsIT

7.9 Letter of Member CBDT Regarding Furnishing Synopsis of Relied upon cases in SLP Proposal

Sunita Kaila, IRS
Member, CBDT & Ex-Officio
Addl. Secy. to the Govt. of India
Tel: 23093356



Central Board Direct Tax
Department of Revenue
Ministry of Finance
Government of India
New Delhi - 110001
14th December, 2007

D.O.F.No.DIT(L&R)/CCsIT/DGsIT/2007-08

Dear

Sub: Furnishing of synopsis of the relied upon cases while forwarding SLP proposals.

The Hon'ble Supreme Court during the hearing of an SLP matter on 7/12/2007 passed a judicial order directing, inter-alia, that the Registrar of the Hon'ble Court would not number Revenue cases unless the position of connected cases is made clear in the forefront of the synopsis of the case(s) for which SLP is being filed.

In this context, while noting the Hon'ble Supreme Court's aforesaid order for strict compliance, you should please immediately ensure that, hit heretofore, each SLP proposal being forwarded from your region/charge must invariably be accompanied by a self-contained statement of the status of relied upon matters, connected matters and other judgments referred to by the Tribunal or the High Court in the Proforma enclosed herewith. An SLP proposal without/incomplete Proforma will be sent back and any delay on this account would be attributal to your office.

It is requested that this area of work, especially compliance to the apex Court's judicial order, is monitored by you at your personal level.

With

Yours sincerely,
(Sunita Kaila)

Proforma for Statement of Relied upon & Connected Matters and other**Judgements referred to by the Tribunal or High Court**

1. Name of the assessee:

2. Assessment year involved:

3. Relied upon by ITAT in its Order No. _____ dated _____

a. ITAT orders(s)

ITS No.(s)& Accepted or not	Brief reasons for acceptance	If not accepted, Present status of Proceedings of High court
(i)		
(ii)		
(iii)		

b. High Court judgments

Citation(s)	TA No.(s)	Accepted or not	Brief reason for acceptance	If not accepted, present status of proceedings
(i)				
(ii)				
(iii)				

c. i) Connected matters with complete relevant details

ii) Brief comments along with Departmental position

4. Referred to by the High Court in its judgment (Citation/TA No./Date)

a. ITAT orders

ITS No.(s)& Date	Accepted or not	Brief reasons for acceptance	If not accepted, present status of Proceedings in High Court
(i)			
(ii)			
(iii)			

b. High Court judgements

Citation(s)/ TA No(s) &	Accepted or not	Brief reasons for acceptance	If not accepted, present status of Further proceedings
(i)			
(ii)			
(iii)			

c. (i) Connected matters with complete relevant details

(ii) Brief comments alongwith departmental position

7.10 Letter of Director (L&R) regarding timely filing of SLPs / Appeals before the Hon'ble Supreme Court- Monitoring Unit to be established in the office of each CCIT / DGIT regarding

F. NO. DIT (L&R) / SLP / 2006 / 477-586
**OFFICE OF THE
DIRECTOR OF INCOME-TAX (LEGAL & RESEARCH)
DRUM SHAPE BUILDING
NEW DELHI**

DATED: 18.04.2006

To,

Chief Commissioner of Income-tax and Director Generals of Income-tax

Sir,

Subject: Timely filing of SLPs / Appeals before the Hon'ble Supreme Court - matter regarding

Enclosed please find herewith a copy of D.O. dated 06.09.2006 of the Law Secretary addressed to the Secretary (Revenue) on the above subject alongwith the copy of the proforma (Table) showing the schedule of processing of the file, which is required to be placed on the first page of the case file.

While attempts should be made to obtain the certified copy of the High Court order immediately after the order is passed, the SLP proposal should be initiated on the basis of the uncertified (katcha) copy of the order to avoid delay in the field in processing the file as it passes through different stages from the Assessing Officer to the CCIT/ DGIT. While the time limit of 90 days for filing SLP is counted from the date of the order of the High Court, the period from the date of application for certified copy of the order to the date on which the certified copy is prepared / ready-for-delivery is excluded for calculation of the time limit of 90 days. Therefore, it is essential that the Standing Counsel / Govt. Counsel applied for the certified copy of the order on the very day the judgement is passed by the High Court and obtains the certified copy immediately after it is prepared / ready - for delivery. Any delay on the part of the Standing Counsel / Govt. Counsel either in applying for certified copy or in obtaining the same after it is ready for delivery would eat into the overall time limit of 90 days. Therefore, all the Standing Counsel / Govt. Counsels should be advised to ensure that there is no lapse on their part in timely applying for and obtaining the certified copy of the order. They should also be asked to immediately send the uncertified (katcha) copy of the order, on the basis of which the SLP

proposal can be initiated. However, while sending the SLP proposal to the CBDT / DIT (L & R), the certified copy of the order should be enclosed.

As had already been decided and intimated to the CCsIT / DGsIT vide Member(A&J)'s earlier letter dated 20.9.2005, wherein a flow-chart proforma was enclosed to ensure timely processing of the SLP proposal in the field, 15 days time had been allotted to the field office to send the SLP proposal. It is reiterated that this time period of 15 days should be counted from the date of the order of High Court and it will only exclude the period from the date of application for certified copy to the date on which the certified copy of the order is prepared / ready-for-delivery.

While the Proforma-B and the flow-chart devised by the CBDT will continue to be enclosed with each SLP proposal, the new table devised by the Ministry of Law should also be submitted with each case. The columns 1 (a), 1(b) and 1(c) of the new table should be filled in by the field office.

As instructed in para 5 & 6 of the Law Secretary's D.O., a Monitoring Unit should be established in the office of each CCIT / DGIT to monitor the passing of the orders by the High Court and timely initiation of SLP proposals in suitable cases.

This issues with the approval of Member (A&J), CBDT.

Yours faithfully,

Sd/-

(N. C. MOHANTY)

Directorate of Income-tax (Legal & Research)

New Delhi

Encl: As above

7.11 Law Secretary's Letter dt 6th September 2006 regarding Schedule for Processing of File

Dy. No. 3649-J / LS / 2006

T. K. VISHWANATHAN
LAW SECRETARY

GOVERNMENT OF INDIA
MINISTRY OF LAW & JUSTICE
DEPARTMENT OF LEGAL AFFAIRS
SHASTRI BHAWN NEW DELHI - 110 001.
6 September, 2006

Dear Shri Chandrasekhar

It has been observed that many SLPs / Appeals are dismissed in the Hon'ble Supreme Court of India merely on account of bar of limitation even though good grounds exist on merits in the cases. There is an urgent need for streamlining the processing of filing of such cases so that the processing is adhered to strictly within the time frame and the filing of appeal is accomplished well before the expiry of limitation period.

2. Accordingly, it has been decided that the processing of the case file should be initiated immediately on receipt of uncertified copy of the order and a Table should be placed on the first page of the case file showing the schedule of processing of file according to the proforma enclosed.

3. Items 1 (a), (b), (d) and 1A of the Table should be filled in by the concerned officer in the first instance.

4. Later when certified copy of the order is received, it may be compared with the uncertified copy and changes, if any brought to notice immediately.

5. A Monitoring Unit should be established in the office of Head of Department, to which the intimation should be given by the concerned officer about the passing of the order by High Court / Tribunal. The Monitoring Unit shall maintain record of it and of particulars of the date specified under col. 1 (d) of the Table, i.e. the date by which the file is to reach the Head of the Department to enable him to take decision in the case. The back up of the files in the computer should always be readily available for retrieval purposes.

6. The Monitoring Unit will call for file in case the file is not put up to it before the scheduled date under column (d) and take decision in the matter by process of leapfrogging.

With Regards

Yours sincerely

(T.K. VISHWANATHAN)

Enclosed : As above

Shri K. M. Chandrasekhar
Secretary to the Government of India
Ministry of Finance, Department of Revenue
North Block,
New Delhi-110 001

TABLE

1. Limitation period : _____ days Expiring on :

- Out of total period of _____ days expiring on _____, No. of days
 available with the Department for processing of file. _____
days
- (a) Date of order of High Court / Tribunal
- (b) Date of receipt of uncertified copy of order
- (c) Date of receipt of Certified copy of the order
- (d) Date by which the file is to reach the Head of Department to
 enable him to take decision in the case
- (e) Date on which final decision of Head of Department is taken
- (f) Date on which the file is forwarded to Ministry of Law
- 1A. Out of the total period of Limitation of _____ days, expiring on _____ days
 _____, number of days available with : - The Deptt. of Legal
 Affairs; Ld. Law Officer and Central Agency Section for drafting
 by panel advocate and for filing of SLP / CA

Signature of the Concerned Officer:

Name & Designation :

7.12 Older CBDT Circulars Regarding Monetary Limits and filing of Appeals

Instruction No.	:	1979
Date of Issue	:	27.3.2000
Section(s) Referred	:	268
Statute	:	Income Tax Act

Subject : Revising Monetary limits for filing Departmental appeals / references before Income Tax Appellate Tribunal, High Courts and Supreme Court - Measures for reducing litigation - regarding -

1. Reference is invited to Board's Instructions No. 1903 dated 28th October, 1992 and Instruction No. 1777 dated 4th November, 1987 wherein monetary limits of Rs. 25,000/- for departmental appeals (in Income-tax matters) before the Appellate Tribunal, Rs. 50,000/- for filing reference to the High Court and Rs. 1,50,000 for filing appeal to the Supreme Court were laid down.
2. In supercession of the above instruction, it has now been decided by the Board that appeals will be filed only in cases where the tax effect exceeds the revised monetary limits given here under:-
(Tax effect)
 - (i) Appeal before the Appellate Tribunal (in income-tax matters) - Rs. 1,00,000/-
 - (ii) Appeal u/s 2607A reference u/s 256(2), Before the High Court - Rs. 2,00,000/-
 - (iii) Appeal in the Supreme Court - Rs. 5,00,000/-

The new monetary limits would apply with reference to each case taken singly. In other words, in group cases, each case should individually satisfy the new monetary limits. The working out of monetary limits will therefore not take into consideration the cumulative revenue effect as envisaged in Board's earlier Instruction referred to above.
3. Adverse judgements relating to the following should be contested irrespective of revenue effect :
 - (i) Where Revenue Audit objection in the case has been accepted by the Department,
 - (ii) Where Board's order, notification, instruction or circular is the subject matter of an adverse order.
 - (iii) Where prosecution proceedings are contemplated against the assessee
 - (iv) Where the constitutional validity of the provisions of the Act are under challenge.
4. Special Leave Petitions under Article 136 of the Constitution are filed before the Supreme Court only in consultation with Ministry of Law. Therefore, where the Chief Commissioner decides to contest an adverse judgement by filing special leave petition before the Supreme Court, they should send the proposal to the Board for further processing.
5. These instruction will apply to litigation under other Direct taxes also e.g. wealth-tax, gift-tax, estate duty etc.
6. These monetary limits will not apply to Writ matters.
7. This Instruction will come into effect from 1.4.20

Anuradha Goyal

Deputy Secretary to the Govt. of India

(F. No. 2797126798-ITJ dt. 27.03.2000 issued by CBDT, Deptt. of Revenue, New Delhi)

Instruction No. :	1985
Date of Issue :	26.06.2000

Subject : **Revision of monetary limits for filing Department appeals / references before various appellate authorities - clarification in respect of instrucion No. 1979 dated 27.03.2000 - regarding :**

Reference is invited to Board's Instruction No. 1979 dated 27th March 2000 wherein monetary limits for filing appeals / references before various appellate authorities have been prescribed. Clarification has been sought regarding certain issues discussed in the said instruction. . -

The Board have considered the issues raised and it is clarified that -

1. The monetary limits in the context of "each case take singly" would mean each assessment year for each assessee considered in the case of XYZ Limited for Assessment Year 1995 - 96 and 1996-97, the monetary limit as prescribed in Instruction No. 1979 would apply taking together the assessment years 1995-96 and 1996-97.
2. Even if the issues involved in an appeal under consideration are already pending in appeal before the appellate authorities, all subsequent appeals will now be filed for particular assessment year only as indicated in (i) above, if the tax effect exceeds the prescribed monetary limit.
3. In para 3(iii) of the Instruction, it has been stated that the adverse judgements should be contested irrespective of the revenue effect in a case where prosecution proceedings are contemplated against any assessee. However, it is possible that the prosecution proceeding may be contemplated against any assessee on points different from the issues disputed in appeal. For example, case under consideration may relate to assessment order u/s 143(3) whereas the prosecution proceedings may have been initiated on other point like TDS. It is clarified that, the adverse judgement should be contested only if the prosecution proceedings contemplated related to point under appeal and not on points unrelated to the issues in appeal.
4. This may be brought to the notice of all the officers working under your charge.

Sd/-

Sandip Pradhan

Under Secretary to the Govt. of India

[F. No. 279/126/98 - ITJ dt. 29-06-2000 issued by CBDT, deptt. of Revenue, New Delhi]

Instruction No. :	1903
Date of Issue :	28.10.1992

1. Reference is invited to refer to Board's Instructions No. 1573 and 1612 issued from R No. 279/26/83 ITJ on 12.7.84 and 6.4.85 respectively where in monetary limits of Rs. 10,000 for departmental appeal (in / Income-tax matters) before the ITAT, Rs. 30,000 for filing reference to the High Court and Rs. 60,000 for filing appeal to the Supreme Court were laid down.

2. The Board has since reconsidered the matter and it has been decided that the monetary limits be enhanced as follows :

Monetary limit	Rs.
(i) Appeal before the ITAT (Income-tax matters)	Rs. 25,000
(ii) Reference before the High Courts	Rs. 50,000
(iii) Appeal in the Supreme Court	Rs. 1,50,000

3. The above monetary limits will apply to appeals / references filed after 1.11.1992. The other guidelines as laid down in Board's Instruction No. 1777 dated 4.11.87 (F. No. 279/110/87-ITJ) for computing the tax effect etc. will continue to be applicable (except with regard to para 3(v)(c) regarding litigation with public sector undertakings for which instructions separately issued vide F. No. 279/22/91-ITJ dated 17.3.92 will have effect).

Instruction No. :	1777
Date of Issue :	4.11.1987

Delegation of functions to Chief Commissioners regarding acceptance or non-acceptance of adverse Judgments of High Court / ITAT

1. At present Board's approval is required for filing Reference Application under section 256(2) before the High Court where the application under section 256(1) is rejected by the Tribunal. Similarly, Board's approval is required for accepting or contesting any adverse order of the High Court or the Supreme Court, the adverse orders of the Settlement Commission or the Appellate Tribunal for Forefeited properties.
2. This area of the Board's function has been reconsidered. It has been now decided that the decision to accept or contest adverse judgements of High Courts / ITAT etc. will be taken by the concerned Chief Commissioner.
3. The Board desire that while deciding the question of filing an appeal / reference in respect of an adverse judgment of High Court / ITAT etc., the Chief Commissioner should be follow the following guidelines :

(i) Monetary Limits :

Filing of departmental appeals / reference should be selective. Guidelines were issued laying down monetary limits of revenue effect of Rs. 10,000/- for filing appeals before ITAT, Rs. 30,000/- for Reference before High Court and Rs. 60,000/- for appeals to Supreme Court (Instruction No. 1573 dated 12.7.84 and 1612 dated 6.4.1985). These guidelines should be adhered to subject to the exceptions given below. For the purpose of working out monetary limit, the cumulative revenue effect of the issue in the assessee's case for all the years upto the year for which returns have been filed should be taken into consideration. Where the same issue is involved in different cases of a group (e.g. industrial house, family, connected cases etc.), the revenue effect of the group and not the individual case should be taken into account for the purpose of the monetary limit. While applying the monetary limits, the effect of carry forward, effect of consequential addition/deletions in other years should be kept in view. In cases of firms / AOP the revenue effect in cases of partners / members be also taken into account.

(ii) Question of law :

Where a question of law arises for the first time before the High Court concerned, it should be contested irrespective of revenue involved. Where an adverse judgment is delivered by a High

Court in such cases, stay of the operation of the judgement should be obtained either from the High Court itself or from the Supreme Court.

(iii) Other adverse judgements which need to be contested irrespective of the revenue effect:

The judgement relating to the following should be contested irrespective of revenue effect :

- (a) Where prosecution proceedings are contemplated against the assessee;
- (b) Where strictures have been passed against the Department or its officers
- (c) Where Revenue Audit objection in the case has been accepted by the Department.
- (d) Where Board's order, notification, instruction or circular is the subject matter of adverse order.
- (e) Where in respect of one assessment year the order is contested in the case of an assessee for any reason, the adverse judgement for other years in issue in that case should also be contested irrespective of the amount involved so that Department's case on the issue is not prejudiced on the ground that in respect of some year the Department has already accepted the assessee's case.

A report to the Board should be sent in respect of the judgements containing strictures or which are contrary to Board's orders, notifications, instructions, circulars etc.

(iv) Adverse judgements which need not be contested:

- (a) Where the adverse judgement is in accordance with the view in the Board's instruction or circulars etc.
- (b) Where the adverse judgement is in respect of mere procedural failure of the assessee like non-signing of appeal memo by the appellant or Form 12 by one of the partners etc.
- (c) Adverse judgement in respect of protective order where the substantive order made by the department is upheld and becomes final.

(v) Adverse judgement where Board's prior approval is necessary for further contest:

- (a) Special leave petitions under Article 136 of the Constitution are filed before the Supreme Court only in consultation with Ministry of Law, Delhi and on the advice of senior law officers - AG, SG or ASG. Therefore, where the Chief Commissioner decides to contest the adverse judgement by filing special leave petition before the Supreme Court, they should send the proposal to the Board for further processing.

- (b) Where some Chief Commissioners have already accepted an adverse judgement on an issue but the concerned Chief Commissioner has some reservations about it and wants to contest that view, Board's approval may be obtained.

Similarly where other Chief Commissioners are contesting the adverse view but the concerned Chief Commissioner wants to accept that view, Board's prior approval may be obtained.

- (c) Where the assessee involved is a Public Sector Undertaking and the Commissioner wants to contest the adverse judgement, he should make a Reference to the Board. If there is no agreement between the undertaking and the Department at the Board's level, the matter will be referred to Ministry of Law whose opinion will be binding on the undertaking and the Department.
- (d) Where the revenue effect of the case is over Rs. 5 lakhs and there is disagreement between the Commissioner and the Standing Counsel in regard to acceptance or non-acceptance of the judgement, Board's approval may be obtained.

4. Where for exceptional reasons, the Commissioner wants to deviate from the above guidelines, he must approach the Board well in time keeping the period of limitation in mind.
5. An Integrated Judicial Reference Systems (ITRS) has been set up in the office of Chief Commissioner, Hyderabad and is now operative. The acceptance or otherwise of adverse judgements of High Court or Special benches of Tribunal should be communicated to this Centre every fortnight so that this information is available to all other Charges and there is uniformity in the approach of the Department in different charges.
6. These instructions will apply to litigation under other direct taxes also e.g. Wealth-tax, Gift-tax, Estate duty etc.
7. These instructions may please be brought to the notice of all the Commissioners in your Charge.

Instruction No. :	2
Date of Issue :	24.10.2005
Section(s) Referred :	Miscellaneous
Statute :	Income-Tax Act

Subject: Revision of Monetary limits for filing appeals by Department before various Appellate Bodies or Appellate Authorities - Clarification thereon regarding :

- Reference is invited to Boards Instruction No. 1979 dated, 27-3-2000 (F. No. 279/126/98-IT, dated 27.3.2000) and Instruction No. 1985, dated 29.6.2000 (F. No. 279/126/98-IT, dated 29.6.2000) wherein monetary limits for filing appeals references before various appellate authorities have been prescribed.
- In partial modification of the above instruction, it has now been decided by the Board that appeals will henceforth be filed only in cases where the tax effect exceeds the revised monetary limits given hereunder:

Sr. No.	Income-tax	
(i)	Appeal before Appellate Tribunal	Rs. 2,00,000
(ii)	Appeal u/s 260 A	Rs. 4,00,000
(iii)	Appeal before the Supreme Court	Rs. 10,00,000

- The Board has also decided that in cases involving substantial question of law of importance as well as in cases where the same question of law will repeatedly arise, either in the case concerned or in similar case, should be separately considered on merits without being hindered by the monetary limits.
- Subject to the paragraphs 2 and 3 above the Instruction No. 1979, dated 27.3.2000 as clarified subsequently in Instruction No. 1985, dated 29.6.2000, will continue to govern the decision for filing of departmental appeals.
- This Instruction will come into effect from 31.10.2005.

8 Formats used by DGIT (L&R)

Formats Used By Directorate of Legal & Research

8.1.1 Format for Intimating Deficiency in SLP Proposal

**DIRECTORATE OF INCOME TAX
(LEGAL AND RESEARCH)
DRUM SHAPE BUILDING.
NEW DELHI.**

To
The CCIT/CIT

Dated:

.....
.....
.....
.....

**Sub: Deficiency in SLP proposal in the case
ITA No. of High Court**

Kindly refer to the SLP proposal forwarded vide your letter no. ----- dated ----- in the above case.

While checking the completeness of the proposal, the following prescribed documents/ information has not been enclosed:

- | | |
|--|--------------------------|
| 1. Assessment Order/ Order in dispute | <input type="checkbox"/> |
| 2. CIT (A) order | <input type="checkbox"/> |
| 3. ITAT's order | <input type="checkbox"/> |
| 4. Copy of Appeal Memo u/s 260A/ Writ Petition | <input type="checkbox"/> |
| 5. Original certified copy – High Court/ Settlement Commission/ AAR order | |
| 6. Proforma B | <input type="checkbox"/> |
| 7. Statement of Question of Law | <input type="checkbox"/> |
| 8. CIT's specific comments | <input type="checkbox"/> |
| 9. CCIT' specific comments | <input type="checkbox"/> |
| 10. Opinion of Standing Counsel | <input type="checkbox"/> |
| 11. Proforma of relied upon cases | <input type="checkbox"/> |
| 12. Tax effect / Applicability of Board' Instruction
on monetary limits | <input type="checkbox"/> |
| 13. | |
| 14. | |

As the matter has to be processed immediately in view of the limitation involved, it is required that the aforesaid documents may kindly be sent by return of post.

Till the documents are received, it may not be possible to process the SLP proposal and the resultant delay will be attributable to your office.

(ITO) (NZ/SZ/EZ/WZ)

8.1.2 DGIT (L&R)'s Format for obtaining Parawise Comments

**DIRECTORATE OF INCOME TAX
(LEGAL AND RESEARCH)**
Room No. 2098, Drum Shaped Bldg.,
I.P. Estate, New Delhi 1100 02.

F.No. DIT/L&R/ITO/SZ/

Dated:

To,

The Chief Commissioner of Income Tax,

.....
.....
.....
.....

Sir,

Sub: _____

Kindly refer to the above.

I am directed to enclose herewith letter, and alongwith a copy of Counter Affidavit on behalf of Respondent, received from _____, AGA in the captioned case. You are requested to send the requisite parawise comments for filing of rejoinder in matter directly to _____, **Asstt.Govt.Advocate**, 124, Central Law Agency Section, Supreme Court Compound, New Delhi (Telephone No. 011-23381304 Mobile No. 9810514007) under intimation to this office.

Keeping in view limitation, this matter may please be treated as **MOST URGENT**.

Encl: As above.

Yours faithfully,

Income Tax Officer (South Zone)
O/o Directorate of Income Tax (L&R)
New Delhi

8.1.3 DGIT (L&R)'s Format for obtaining Current address

**DIRECTORATE OF INCOME TAX
(LEGAL AND RESEARCH)
Room No.307, Drum Shaped Bldg.,
I.P. Estate, New Delhi 1100 02.**

MOST URGENT

F.No.

Date:

To,

.....
.....
.....
.....

Sir,

Sub: SLP Nos. _____

Kindly refer to above mentioned subject. In this connection. I am directed to forward a letter dated _____ received from Shri B.V. Balram Dass, Asst. govt. Advocate, Ministry of Law and Justice, Dept, of Legal Affairs, Central Agency Section, Room No. 124, Supreme Court Compound, New Delhi in which you are requested to furnish the latest and fresh address of the sole respondent immediately.

This may kindly be sent directly to the above Central Agency Section under intimation to this office.

Yours faithfully,

Encl: As above

ITO (SZ), O/s. (L&R)
New Delhi

8.1.4 DGIT (L&R)'s Format for calling for explanation for delay in filing of SLP

DIRECTORATE OF INCOME TAX
(Legal & Research)
Room No.307, Drum Shape Building,
I.P. Estate, New Delhi – 1100 02

F.No

Dated

To

Sir,

Sub: Delay in submission of SLP in the case of _____

Kindly refer to your SLP proposal vide letter F.No. _____ dated _____
received in this office on _____.

I have been directed to bring to your kind notice that the SLP proposal was received in the Directorate on _____, just a few days before the expiry of limitation period.

It is therefore, requested, the necessary factual report in the matter may please be sent by return of post.

Yours faithfully,

ITO (SZ), O/s. (L&R)
New Delhi.

8.1.5 DGIT (L&R)'s Format for calling for documents for filing of SLP

**DIRECTORATE OF INCOME TAX
(LEGAL AND RESEARCH)
Room No.307, Drum Shaped Bldg.,
I.P. Estate, New Delhi - 1100 02.**

F.No.

Dated:

To,

The Commissioner of Income Tax

**Subject: Filling of SLP in the case of M/s
for A.Y.**

Ref No.	CAS	Dated
----------------	------------	--------------

Sir,

Kindly refer to above mentioned subject, in this connection I am directed to request you to send the following documents directly to Shri. B.V. Balram Dass, Asst. govt. Advocate, Ministry of Law and Justice, Deptt, of Legal Affairs, Central Agency Section, Room No. 124. Supreme Court Compound, New Delhi, under intimation this office.

Yours faithfully,

**Income Tax Officer (South Zone)
Directorate of (L&R), New Delhi**

Copy for information to Shri B.V. Balram Dass, CAS, New Delhi.

ITO (SZ), New Delhi

8.1.6 DGIT (L&R)'s Format for effecting service on Respondent

**DIRECTORATE OF INCOME TAX
LEGAL AND RESEARCH
307, Drum Shaped Building I.P. Estate
New Delhi -1100 02.**

F.No. Dasti/**/2006/**

Dated:

2006

To
The Chief Commissioner of Income Tax

Subject: SLP © no

Sir,

I am directed to enclose herewith Dasti notice received from the Registrar of Supreme Court in the captioned case. You are requested to take steps for effecting the Dasti notice on the respondent and send the original proof of service along with the affidavit of service directly to **Shri B.V. Balram Das, AGA, No. 124, Central Law Agency Section, Supreme Court, Compound, New Delhi**, under the intimation to this office.

Yours faithfully,

Enclo: as above

Income Tax Officer (S. Zone)
Directorate of (L&R), New Delhi

9 Extracts/ Text of Important Court Decisions under Reference and Supreme Court Rules 1966

Texts of / Extracts from
Some Important Court
Decisions
and
Supreme Court Rules 1966

9.1 Urban Improvement Trust, Bikaner Vs. Mohan Lal

Bench: R Raveendran, G Singhvi

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION[C] 29852 OF 2009 [CC NO.11768] Urban Improvement Trust, Bikaner Petitioner
Vs.

Mohan LalRespondent O R D E R

R. V. Raveendran J.

The petitioner before us is the Bikaner Urban Improvement Trust. It allotted a Plot (A-303) measuring 450 sq.ft. under its Karni Nagar Scheme to the respondent in the year 1991. Respondent paid the allotment price (lease premium) of Rs.3,443/- in 1992 and took possession in 1997. In the year 1998, the petitioner-Trust allotted to respondents and delivered possession of the adjacent strip measuring 150 ft.

2. Thereafter, the Trust without notice to the respondent and without resorting to any acquisition proceedings, laid a road in the said plot. The layout map prepared and made available by the Trust in the year 2002 did not show
2

the existence of Plot A-303 or its adjoining strip. Feeling aggrieved, the respondent met the officers of the Trust and complained to them. He also gave a written complaint seeking restoration of the plot. As there was no response, he approached the District Consumer Forum in 2005, praying for restoration of the plot or for allotment of an alternative site and award of damages of Rs.200,000/-. The District Forum disposed of the complaint directing refund of the allotment price paid with interest at 9% per annum. The State Commission allowed the appeal filed by the respondent and directed allotment of an alternative plot and also awarded Rs.5,000/- as compensation. The National Commission dismissed the revision petition filed by the petitioner Trust. Special leave is sought to challenge the said order of the National Commission.

3. The Trust does not dispute any of the facts. It has no explanation to offer for its negligence or highhanded action of taking over the allotted plot without notice, acquisition, or consent. Nevertheless, the Trust challenges the relief granted, on three technical grounds:

(i) As the respondent was negligent in protecting his possession and did not protest or complain when the Trust laid the road in his plot, he is not entitled to any relief.

(ii) The action of the Trust, even if it was an illegal encroachment, did not amount to 'deficiency in service' and therefore the respondent could not invoke the jurisdiction of the forum under the Consumer Protection Act, 1986.

(iii) The complaint was barred by limitation as it was filed beyond two years from the occurrence of the cause of action, and the respondent did not show sufficient cause for condonation of delay. These contentions have been rejected. The decision of the State Commission rejecting the above contentions is just and reasonable. The National Commission was justified in not interfering with the said decision. We are satisfied that no case is made out to grant special leave under Article 136 of the Constitution.

4. It is a matter of concern that such frivolous and unjust litigation by governments and statutory authorities are on the increase. Statutory Authorities exist to discharge statutory functions in public interest. They should be responsible litigants. They cannot raise frivolous and unjust objections, nor act in a callous and highhanded manner. They can not behave like some private litigants with profiteering motives. Nor can they resort to unjust enrichment. They are expected to show remorse or regret when their officers act negligently or in an overbearing manner. When glaring wrong acts by their officers is brought to their notice, 4

for which there is no explanation or excuse, the least that is expected is restitution/restoration to the extent possible with appropriate compensation. Their harsh attitude in regard to genuine grievances of the public and their indulgence in unwarranted litigation requires to be corrected.

5. This Court has repeatedly expressed the view that the governments and statutory authorities should be model or ideal litigants and should not put forth false, frivolous, vexatious, technical (but unjust) contentions to obstruct the path of justice. We may refer to some of the decisions in this behalf.

5.1) [In Dilbagh Rai Jarry vs. Union of India](#) [1973 (3) SCC 554] where this Court extracted with approval, the following statement (from an earlier decision of the Kerala High Court):

"The State, under our Constitution, undertakes economic activities in a vast and widening public sector and inevitably gets involved in disputes with private individuals. But it must be remembered that the State is no ordinary party trying to win a case against one of its own citizens by hook or by crook; for the State's interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an opportunity. The State is a virtuous litigant and looks with unconcern on immoral forensic successes so that if on the merits the case is weak, government shows a willingness to settle the dispute regardless of prestige and other lesser motivations which move private parties to fight in court. The lay-out on litigation costs and executive time by the State and its agencies is so staggering these days because of the large amount of litigation in which it is

involved that a positive and wholesome policy of cutting back on the volume of law suits by the twin methods of not being tempted into forensic show-downs where a reasonable adjustment is feasible and ever offering to extinguish a pending proceeding on just terms, giving the legal mentors of government some initiative and authority in this behalf. I am not indulging in any judicial homily but only echoing the dynamic national policy on State litigation evolved at a Conference of Law Ministers of India way back in 1957.

5.2 In *Madras Port Trust v. Hymanshu International by its Proprietor v. Venkatadri (Dead) by L.Rs.* [(1979) 4 SCC 176] held:

"2... It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well founded, it has to be upheld by the court, but what we feel is that such a plea should not ordinarily be taken up by a government or a public authority, unless of course the claim is not well-founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable...."

5.3) In a three Judge Bench judgment of *Bhag Singh & Ors. v. Union Territory of Chandigarh through LAC, Chandigarh* [(1985) 3 SCC 737]:

"3... The State Government must do what is fair and just to the citizen and should not, as far as possible, except in cases where tax or revenue is received or recovered without protest or where the State Government would otherwise be irretrievably be prejudiced, take up a technical plea to defeat the legitimate and just claim of the citizen."

6. Unwarranted litigation by governments and statutory authorities basically stem from the two general baseless assumptions by their officers. They are:

(i) All claims against the government/statutory authorities should be viewed as illegal and should be resisted and fought up to the highest court of the land. (ii) If taking a decision on an issue could be avoided, then it is prudent not to decide the issue and let the aggrieved party approach the Court and secures a decision.

The reluctance to take decisions, or tendency to challenge all orders against them, is not the policy of the governments or statutory authorities, but is attributable to some officers who are responsible for taking decisions and/or officers in charge of litigation. Their reluctance arises from an instinctive tendency to protect themselves against any future accusations of wrong decision making, or worse, of improper motives for any decision making. Unless their insecurity and fear is addressed, officers will continue to pass on the responsibility of decision making to courts and Tribunals. The Central Government is now attempting to deal with this issue by formulating realistic and practical norms for defending cases filed against the government and for filing appeals and revisions against adverse decisions, thereby, eliminating unnecessary litigation. But, it is not sufficient if the Central Government

alone undertakes such an exercise. The State Governments and the statutory authorities, who have more litigations than the Central Government, should also make genuine efforts to eliminate unnecessary litigation. Vexatious and unnecessary litigation have been clogging the wheels of justice, for too long making it difficult for courts and Tribunals to provide easy and speedy access to justice to bona fide and needy litigants.

7. In this case, what is granted by the State Commission is the minimum relief in the facts and circumstances, that is to direct allotment of an alternative plot with a nominal compensation of Rs.5000/- But instead of remedying the wrong, by complying with the decision of the Consumer fora, the Improvement Trust is trying to brazen out its illegal act by contending that the allottee should have been protested when it illegally laid the road in his plot. It has persisted with its unreasonable and unjust stand by indulging in unnecessary litigation by approaching the National Commission and then this Court. The Trust should sensitise its officers to serve the public rather than justify their dictatorial acts. It should avoid such an unnecessary litigation.

8. Delay condoned. The special leave petition is dismissed.

_____J.

(R. V. RAVEENDRAN)

_____J.

(G. S. SINGHVI)

New Delhi:October 30, 2009.

9.2 Commissioner Of Income Tax vs Heg Ltd.

Interest component will partake the character of "amount due" under Section 244A.

SUPREME COURT OF INDIA. CIT v. HEG Ltd.

Civil Appeal No. 8176 OF 2009
(Arising out of S.L.P.(C) No.18045/2009) With
Civil Appeal Nos 8177 & 8187 OF 2009
(Arising out of S.L.P.(C) No.18046/2009 &
S.L.P.(C) No. 34268/2009 (CC 10437/2009)

December 3, 2009

Delay condoned in S.L.P.(C) No...CC 10437/2009.

Leave granted.

In income tax matters, it is well settled that if the question is not properly framed, then, at times, confusion arises resulting in wrong answers. The present batch of Civil Appeals is an illustration of the proposition mentioned herein-above.

In the synopsis to the Civil Appeal arising out of S.L.P.(C) No.18045/2009, the question raised by the Department is whether the assessee was entitled to claim interest on interest under the provisions of Section 244A of the Income Tax Act, 1961. In our view, on facts, the question framed was totally erroneous.

Annexure P-1 is Income-tax Computation in Civil appeal arising from S.L.P.(C) No.18045/2009. On going through the Computation, we find that during the Assessment Year 1993-1994, the amount paid by the assessee towards TDS was Rs.45,73,528/-. The Tax paid after Original Assessment was Rs.1,71,00,320/-. The total of TDS amounting to Rs.45,73,528/- plus Tax paid after Original Assessment of Rs.1,71,00,320/- stood at Rs.2,16,73,848/-. In other words, the total tax paid had two components, viz., TDS + Tax paid after Original Assessment. The respondent was entitled to the refund of Rs.2,16,73,848/- (consisting of Rs.1,71,00,320/- and Rs.45,73,528/- which payment was made after 57 months and which is the only item in dispute).

The assessee claimed statutory interest for delayed refund of Rs.45,73,528/- for 57 months between 1.4.1993 and 31.12.1997 in terms of Section 244A of the Income Tax Act. Therefore, this is not a case

where the assessee is claiming compound interest or interest on interest as is sought to be made out in the civil appeals filed by the Department.

The next question which we are required to answer is What is the meaning of the words "refund of any amount becomes due to the assessee" in Section 244A? In the present case, as stated above, there are two components of the tax paid by the assessee for which the assessee was granted Refund, namely TDS of Rs.45,73,528/- and Tax paid after Original Assessment of Rs.1,71,00,320/-. The Department contends that the words "any amount" will not include the Interest which accrued to the respondent for not refunding Rs.45,73,528/- for 57 months. We see no merit in this argument. The interest component will partake of the character of the "amount due" under Section 244A. It becomes an integral part of Rs.45,73,528/- which is not paid for 57 months after the said amount became due and payable. As can be seen from the facts narrated above, this is the case of short payment by the Department and it is in this way that the assessee claims interest under Section 244A of the Income Tax Act. Therefore, on both the afore-stated grounds, we are of the view that the assessee was entitled to interest for 57 months on Rs.45,73,528/-. The principal amount of Rs.45,73,528/- has been paid on 31st December, 1997 but net of interest which, as stated above, partook the character of "amount due" under Section 244A.

For the aforesaid reasons, the Civil Appeal arising out of S.L.P.(C) No.18045/2008 filed by the Department fails and is dismissed, with no order as to costs.

In view of the above Order, Civil Appeals arising out of S.L.P.(C) Nos.18046/2009 and CC No.10437/2009, filed by the Department, are also dismissed, with no order as to costs.

9.3 Decisions of P&H high Court and Delhi High Court where Courts have Imposed strictures/ costs

Extract from decision of the HIGH COURT OF PUNJAB HARYANA, CHANDIGARH in ITA No. 871 of 2008, decision dated 1.07.2009 of Commissioner of Income Tax, Panchkula Vs Haryana Warehousing Corporation

"In fact, to our mind all the five issues taken into consideration by the Income Tax Appellate Tribunal, while passing the impugned order dated 4.10.2007, were individually sufficient to accept the claim of the respondent- assessee. We are satisfied, that the instant appeal was not filed after due application of mind. Even after passing of the order dated 11.2.2009 (extracted in paragraph 18 above), the appellant failed to examine the controversy in its correct perspective. Without any justification whatsoever, the appellant has pressed the instant appeal. As noticed hereinabove, we were convinced that the instant appeal was frivolous and ought not to have been filed. We had also made our intention clear that we would impose costs on the appellant if a reasonable cause was not shown. Pressing the instant appeal despite the expression of our verbal opinion also shows that the revenue shirked its responsibility of genuine decision making. We, for the present, refrain ourselves from imposing any costs on the appellant. This restraint is, because of our desire to awaken the revenue its responsibility. Costs are generally imposed by Courts, not as a measure of punishment, but as a matter of misuse of jurisdiction. A similar situation in the future may prompt us to take the next undesired step of imposing costs. We entertain the hope that in the future, the responsibility of genuine decision making, will be taken seriously: not only for the purpose of avoiding frivolous litigation and / or wasting Court time, but also for, avoiding unnecessary expense and harassment to an innocent litigant. Had we issued notice in the instant appeal and thereby summoned the respondent, we would have had no re-course, but to compensate the respondent by awarding appropriate costs. Since however, notice had not been issued to the respondent- assessee in the instant appeal, we feel that our note of caution and vigil, at the time of filing appeals, will suffice for the present.

For the reasons recorded hereinabove, the instant appeal is dismissed, without imposing any costs on the appellant-revenue. " (J.S. Khehar),(Ajay Tewari)

Extract from decision of The Honble High COURT OF DELHI in ITA No. 702/200, decision dated 13.07.2009 in the case of Commissioner of Income Tax Vs Airport Authority of India.

We, thus, find the present appeal is totally misconceived and is a misuse and abuse of the process of law. It gives an impression that the authorities have become totally oblivious to the requirement of Section 260 (A) of the I.T Act and are indiscriminately filing appeals. In this present case, even when aforesaid explanation was given by the authority which is a public sector undertaking and was not even disputed before ITAT appeal has been field and that too when approval of the COD has also been awaited. Be that as it may be, as we find that

the appeal is totally frivolous, we dismiss the same with costs of Rs. 25,000/- to be paid to the Delhi High court Mediation and conciliation Centre. A.K. SIKRI and VALMIKI. J. MEHTA

9.4 Text of decision in ONGC VS CIDCO, Supreme Court

CASE NO.:

Appeal (civil) 3143 of 2007

PETITIONER:

Oil & Natural Gas Corporation Ltd

RESPONDENT:

City & Indust. Dev. Corpn., Maharashtra and Ors

DATE OF JUDGMENT; 20/07/2007

BENCH:

Dr. ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGEMENT;

J U D G E M E N T

CIVIL APPEAL NO. 3143 OF 2007

(Arising out of SLP (C) No. 21047 of 2007)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of the Bombay High Court dismissing the Civil Writ Petition No. 4036 of 2001 with Civil Application No. 1583 of 2004. It was held that with reference to several judgments of this Court the writ jurisdiction should not be exercised in contractual matters. It was also held that there was no reason whatsoever for which a Government of India undertaking shall bypass the alternative remedy of a civil suit.

3. Background facts in a nutshell are as follows:

A writ Petition was filed by the appellant alleging inaction on the part of the City & Industrial Development Corporation of Maharashtra Limited (hereinafter referred to as 'CIDCO') in not execution the agreement of lease with the appellant- company. Prayer in the writ petition was for a direction by issuance of an appropriate writ requiring the CIDCO to execute the agreements. Prayer essentially was (i) to hand over the possession of plot of land admeasuring 24 hectares demarcated in favour of the appellant situated at Bhandkhal (Navghar), Taluka Uran alongwith approach road and water Supply till the boundary of the said plot of land : (ii) execute a lease agreement for the period sent out more particularly in the letter of allotment dated 5th march, 1984 in respect of the said plot of land: (iii) issue appropriate writ in respect of demand for service charge contained in the letter dated 24th July, 1990 and (iv) other reliefs.

4. The High Court referred to several correspondence exchanged between the parties but ultimately held that the issues related to contractual matters and the writ petition was not the appropriate remedy. Findings were also recorded regarding maintainability of the writ petition.

5. In support of the appeal, learned counsel for the Appellant submitted that High Court has lost sight of the fact that the dispute involved two public bodies. It was highlighted by learned counsel for the appellant that this Court in *M/s Popcorn Entertainment & Anr. V. City Industrial Development Corpn. & Anr.* (JT 2007) (4) SC 70 held in para 15 about the maintainability of the writ petition. In paragraph 42 of the judgment it was noted that there was no dispute and In fact there was concession regarding maintainability of the Writ petition. Reference

has also been made to National Highways Authority of India v. Ganga Enterprises and Anr. (2003 (7) SCC 410) and Rajureshwar Associates v. State of Maharashtra (2004 (6) SCC 362) to contend that in all contractual matters a writ application can be entertained. The three circumstances wherein relating to contractual matters writ applications can be entertained were set out in Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors. (1998(8) SCC 1).

6. Mr. Altaf Ahmad, learned senior counsel on the other hand submitted that in a dispute of this nature, the course indicated by this court in Oil and Natural Gas Commission and Anr. V. collector of Central Excise (1992 Supp (2) SCC 432 can be applied.

7. In the instant case, CIDCO is a State entity and the appellant is a central entity. The desirability of having a committee to sort out differences between public sector undertakings, State Governments, different Govt. Departments have been highlighted by this Court in several cases. In Chief Conservator of Forests, Govt. of A.P v. Collector and Ors.(2003 (3) SCC 472) it was inter alia as follows :

"14. Under the scheme of the Constitution, Article 131 confers original jurisdiction on the Supreme Court in regard to a dispute between two States of the Union of India or between one or more States and the Union of India. It was not contemplated by the framers of the Constitution or CPC that two departments of a State or the Union of India will fight litigation in a court of law. It is neither appropriate nor Permissible for two departments of a State or The Union of India to fight litigation in a court of law. Indeed, such a course cannot but be detrimental to the public interest as it also entails avoidable wastage of public money and time. Various departments of the Government are its limbs and therefore, they must act in coordination and not in confrontation. Filing of a writ petition by one department against the other by invoking the extraordinary jurisdiction on the High Court is not only against the propriety and polity as it smacks of indiscipline but is also contrary to the basic concept of law which requires that for suing or being sued, there must be either a natural or a juristic person. The state/Union of India must evolve a mechanism to set at rest all interdepartmental controversies at the level of the Government and such matters should not be carried to a court of law for resolution of the controversy. In the case of disputes between public sector undertakings and the Union of India, this Court in Oil and Natural Gas Commission v. CCE (1992 Supp (2) SCC 432) Called upon the Cabinet Secretary to handle Such matters. In Oil and Natural Gas Commission v. CCE (1992 Supp (4) SCC 541) This Court directed the Central Government to Set up a committee consisting of Representatives from the Ministry of Industry, The Bureau of Public Enterprises and the Ministry of Law, to monitor disputes between Ministry and Ministry of the Government of India, Ministry and public sector undertakings Of the Government of India and public sector Undertaking in between themselves, to ensure That no litigation comes to court or to a Tribunal without the matter having been first Examined by the Committee and its clearance For litigation. The Government may include a Representative of the Ministry concerned in a specific case and one from the Ministry of Finance in the Committee. Senior officers only should be nominated so that the Committee would function with status, control and discipline.

15. The facts of this appeal, noticed above, make out a strong case that there is a felt need Of setting up of similar committees by the State Government also to resolve the controversy Arising between various departments of the State or the State and any of its undertakings. It would be appropriate for the State Governments to set up a committee consisting of the Chief Secretary of the State, the Secretaries of the departments concerned, the Secretary of Law and where financial Commitments are involved, the Secretary of Finance. The decision taken by such a Committee shall be binding on all the Departments concerned and shall be the stand of the Government."

8. In Punjab and Sind Bank v. Allahabad Bank and Ors. (2006 (4) SCC 780) it was observed as follows:

"6. The matter was again examined in the case of Chief Conservator of Forest v. Collector (2003(3) SCC 472). In Para 14 and 15 it was noted as follows:

"Under the scheme of the Constitution, Article 131 confers Original jurisdiction on the Supreme Court in regard to a dispute between Two States of the Union of India or Between one or more States and the Union of India. It was not Contemplated by the framers of the Constitution or the C.P.C. that two departments of a State or the Union of

India will fight a litigation in a court of law. It is neither appropriate nor permissible for two departments of a State or the Union of India to fight litigation in a court of law. Indeed, such a course cannot but be detrimental to the public interest as it also entails avoidable wastage of public money and time. Various departments of the Government are its limbs and, Therefore, they must act in co-Ordination and not a confrontation. Filing of a writ petition by one Department against the other by Invoking the extraordinary Jurisdiction of a High Court is not only against the propriety and polity as it smacks of indiscipline but is also contrary to the basic concept of law which requires that for suing or being sued, there must be either a natural or a juristic person. The State/Union of India must evolve a Mechanism to set at rest all inter-departmental controversies at the level of the Government and such matters should not be carried to a court of law for resolution of the controversy. In the case of disputes between public sector undertakings and Union of India, this Court in *Oil and Natural Gas Commission v. collector of Central Excise* (1992 Suppl. (2) SCC 432) called upon the Cabinet Secretary to handle such Matters. In *Oil and Natural Gas Commission & Anr. v. Collector of Central Excise* (1995 Suppl. (4) SCC 541), this Court directed the Central Government to set up a Committee consisting of representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law, to monitor dispute Between Ministry and Ministry of the Government of India, Ministry and public sector undertakings of The government of India and public sector undertakings in between themselves, to ensure that no litigation comes to court or to a tribunal without the matter having been first examined by the Committee and its clearance for litigation. The Government may include a representative of the Ministry concerned in a specific case and one from the Ministry of Finance in the Committee. Senior officers only should be nominated so that the Committee would function with status, control and discipline.

The facts of this appeal, noticed above, make out a strong case that there is felt need of setting up of similar committee by the State Government also to resolve the controversy arising between various departments of the State or the State and any of its undertakings. It would be appropriate for the State Governments to set up a Committee consisting of a Chief Secretary of the State, the Secretaries of the concerned departments, the Secretary of Law and where financial commitments are involved, the Secretary of Finance. The decision taken by such a committee shall be binding on all the departments concerned and shall be the stand of the Government."

7. The directions as noted above were quoted in *Mahanagar Telephone Nigam Ltd. v. Chairman, Central Board, Direct Taxes* and another (2004 (6) SCC 431) and were adopted in paragraph 8. It was noted as follows:

" Undoubtedly, the right to enforce a right in a court of law cannot be effaced. However, it must be remembered that courts are overburdened with a large number of cases. the majority of such cases pertain to Government Departments and/or public sector undertakings. As is stated in *Chief Conservator of Forests' case* [2003] 3 SCC 472 it was not contemplated by the framers of the constitution or the Civil Procedure Code that two departments of a State or Union of India and/or a department of the Government and a public sector undertaking fight a litigation in a court of law. Such a course is detrimental to public interest as it entails avoidable wastage of public money and time. These are all limbs of the Government and must act in co-ordination and not confrontation. The mechanism set up by this court is not, as suggested by Mr. Andhyarujina, only to conciliate between Government Departments. It is also set up for purpose of ensuring that frivolous disputes do not come before court without clearance from the High Powered Committee. If it can, the High Powered Committee will resolve the dispute. If the dispute is not resolved the Committee would undoubtedly give clearance. However, there could also be frivolous litigation proposed by a department of the Government or a public sector undertaking. This could be prevented by the High Powered Committee. In such cases there is no question of resolving the dispute. The Committee only has to refuse permission to litigate. No right of the Department/public sector undertaking is affected in such a case. The litigation being of a frivolous nature must not be brought to court. To be remembered that in almost all cases one or the other party will not be happy with the decision of the High Powered Committee. The dissatisfied party will always claim that its rights are affected, when in fact, no right is affected. The Committee is constituted of highly placed officers of the Government, who do not have an interest in the dispute, it is thus expected that their decision will be fair and honest. Even if the Department/public sector undertaking finds the decision unpalatable, discipline requires that they abide by it. Otherwise the whole purpose of this exercise will be lost and every party against whom the decision is given will claim that they have been wronged and that their rights are affected. This should not be allowed to be done."

8. The ONGC I to III cases (supra), Chief Conservator's case (supra) and Mahanagar Telephone's case (supra) deal with disputes relating to Central Government, State Government and Public Sector Undertakings. They have no application to the facts of these cases as the High Court has not indicated any reason for its abrupt conclusion that the writ petitioners are Public Sector Undertakings. In the absence of a factual determination in that regard, the decisions can have no application."

9. The position has also been examined in U.P SEB and Anr. V. Sant Kabir Sahakari Katai Mills Ltd. (2005 (7) SCC 576 and Mahanagar Telephone Nigam's case (supra).

10. The matter is pending since 1990. Considering the nature of the controversy which is a recurring feature we direct that a committee be formed to sort out the differences between the Central Government and the State Government entities. The composition of such committee shall be as follows:

- (1) The Cabinet Secretary of the Union;
- (2) Chief Secretary of the State;
- (3) Secretaries of the concerned departments of Union and the State; and
- (4) Chief Executive Officers of the concerned undertakings.

11. As the matter is pending since long, we direct that the Committee shall be constituted forthwith to take a decision within 4 months from the date of receipt of copy of this judgment.

12. The appeal is disposed of with no order as to costs.

9.5 Gujarat Mineral Development Corpn. Ltd. V ITAT, SLP No. 27735 of 2007 with Tax Appeal No. 26 to 29 of 2007 dt February 19, 2009

Powers of ITAT to make an order regarding admissibility of an appeal filed by a State Government Undertaking without approval of Committee of Disputes (COD)

It is not possible to expand the scope of directions made by the Supreme Court in the cases of *ONGC v. Collector of Central Excise* ([1995] Supp (4) SCC 541); ([2004] 6 SCC 437) and *Chief Conservator of Forests, Government of AP v. Collector* ([2003] 3 SCC 472) so as to include a dispute between a Department of the Central Government and a State Government Undertaking; there is, therefore, no requirement for a State Government Undertaking to approach the COD for obtaining its clearance for filing appeal before ITAT in respect of its dispute with the Income-tax Department.

HIGH COURT OF GUJARAT

Gujarat Mineral Development Corpn. Ltd.

v.

Income-tax Appellate Tribunal

Special Civil Application No. 27735 of 2007 with Tax Appeal No. 26 to 29 of 2007

February 19, 2009

RELEVANT EXTRACTS:

** ** * * * * * * * * * * * * * * * * *

2. The petitioner of Special Civil Application is a Public Sector Undertaking of Government of Gujarat established in 1963. The appellant, in all the four appeals, is the Commissioner of Income-tax. The petition and the tax-appeals are taken up for hearing together as the controversy involved in all the matters is one and the same and arises out of a common order of the Income-tax Appellate Tribunal, Ahmedabad Bench 'A' (the Tribunal) dated 31.01.2006 in appeals filed both by revenue and the assessee before the Tribunal. The Assessment Years in question are 1988-89, 1994-95, 1996-97 and 1997-98. It is not necessary to set out the dispute between Income-tax Department and the assessee as the Tribunal has without going into merits of the matter non-suited the parties by refusing to admit the appeals filed before the Tribunal without approval of committee of disputes, referred to by the Tribunal as COD.

4. This is a classic case where the impugned order of the Tribunal has forced both the sides to approach the High Court and that too only in relation to approach of the Tribunal. The dispute is not in relation to the merits of the controversy between the parties. The question that is therefore, required to be posed and answered, both in the petition and the appeals is : "Whether Income-tax Appellate Tribunal has the powers to make an order as regards admissibility or otherwise of an appeal filed in the Tribunal?"

5. Before taking up this issue one may consider the case law, more particularly, the orders made by the Supreme Court of India from time to time to appreciate the reading of the said orders by the Tribunal, the understanding thereof by the Tribunal, and the consequential approach of the Tribunal.

6. The first in point of time is an order made by the Apex Court in the case of *Oil and Natural Gas Commission & Anr. Vs. Collector of Central Excise, 1992 Supp (2) SCC 432* whereby the order made as Record of Proceedings has been reproduced. On a dispute between ONGC, a Public Sector Undertaking of Central Government, and Central Excise Department of the Central Government, as to whether excise duty on lean gas supplied to consumers was leviable or not, the Apex Court made the following interim order:

"3. This Court has on more than one occasion pointed out that Public Sector Undertakings of Central Government and the Union of India should not fight their litigations in Court by spending money on fees of counsel, court fees, procedural expenses and wasting public time. Courts are maintained for appropriate litigations. Court's time is not to be consumed by litigations which are carried on either side at public expenses from the source. Notwithstanding these observations repeated on a number of occasions, the present cases appear to be an instance of total callousness. The letter of October 3, 1988, indicated that the Cabinet Secretary was looking into the matter. That has not obviously been followed up. As an instance of wasting public time and energy this matter involves a principle to be examined at the highest level.

4. The Cabinet Secretary is called upon to handle this matter personally and report to this Court within four weeks as to why this litigation is being conducted when the two sides are a public sector undertaking and the Union of India. The report of the Cabinet Secretary should be supported by an affidavit of a responsible officer. The matter be placed again before us on October 11, 1991."

7. Therefore, this order was merely an order calling upon the Cabinet Secretary to handle the matter personally as regards litigation between a Public Sector Undertaking of the Central Government and a Department of Union of India.

8. The next decision in line is between the same two parties viz. *Oil and Natural Gas Commission & Anr. Vs. Collector of Central Excise, 1995 Supp (4) SCC 541* whereby the following order came to be made by the Court after recording the report of the Cabinet Secretary in Paragraph No.2 of the order:

"1. We are happy to find that the Cabinet Secretary has taken the appropriate initiative as indicated in our order dated 11-9-1991 and has reported to us that the dispute between the Government Department and the public sector undertaking of the Union of India has been settled. In that view of the matter no further action is necessary on the petition."

3. We direct that the Government of India shall set up a Committee considering of representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law, to monitor disputes between Ministry and Ministry of Government of India, Ministry and public sector undertakings of the Government of India and public sector undertakings in between themselves, to ensure that no litigation comes to Court or to a Tribunal without the matter having been first examined by the Committee and its clearance for litigation. Government may include a representative of the Ministry concerned in a specific case and one from the Ministry of Finance in the Committee. Senior officers only should be nominated so that the Committee would function with status, control and discipline.

4. It shall be the obligation of every Court and every Tribunal where such a dispute is raised hereafter to demand a clearance from the Committee in case it has not been so pleaded and in the absence of the clearance, the proceedings would not be proceeded with.

5. The Committee shall function under the ultimate control of the Cabinet Secretary but his delegate may look after the matters. This Court would expect a quarterly report about the functioning of this system to be furnished to the Registry beginning from 1-1-1992.

6. Our direction may be communicated to every High Court for information of all the courts subordinate to them."

17. Thus, the position as obtaining on a reading of all the five cases wherein the Apex Court has made orders or delivered judgment, makes it clear that in four matters the dispute was relatable to a Public Sector Undertaking of the Central Government and a Department of the Central Government, while in the fifth matter the dispute was between two Departments of the State Government of Andhra Pradesh. The directions made by the

Apex Court and the observations in the four orders and the judgment have to be read in context and in backdrop of the controversy before the Apex Court, including the litigants who were before the Apex Court. There is not a single order made by the Apex Court which relates to a dispute between Union of India and a State, or a Department of Union of India and a State, or a Public Sector Undertaking of Union of India and a State, or between two States *inter se*, the term 'State' here to mean and include the State Government, a Department of the State Government or an Undertaking of the State Government.

18. Hence, it is not possible to expand the scope of directions made by the Apex Court so as to include a dispute between a Department of the Central Government and a State Government Undertaking. Therefore, the impugned order of Tribunal suffers from an error apparent in law and cannot be sustained. It is also necessary to take note of the fact that none of the aforesaid five cases even remotely suggest that the Committee set up by the Central Government would have jurisdiction to consider resolution of such disputes between a State and the Union, respective Departments and Undertakings included.

21. However, apart from the aforesaid position in law emerging on a reading of various orders and judgment of the Apex Court, there is one more fundamental aspect of the matter which requires to be stated. The Tribunal is a creature of statute as can be seen from provisions of Section 252(1) of the Act. The said provision mandates that the Central Government shall constitute an Appellate Tribunal comprising of as many judicial and accountant members as the Central Government may think fit for the purpose of exercising the powers and discharge the functions conferred on the Appellate Tribunal by the Act. In other words, the Tribunal is constituted under the provisions of Section 252(1) of the Act by the Central Government. Such a constituted Tribunal is required to exercise powers and discharge the functions conferred on the Tribunal by the Act. The Tribunal, therefore, cannot exercise powers or discharge functions which are not conferred on the Tribunal by the Act.

31. A conjoint reading of the provisions of the Act noted hereinbefore and the ITAT Rules referred to hereinabove, it becomes clear that the Tribunal being a creature of the Statute, having been constituted under the provisions of the Act cannot exercise any powers beyond the powers available under the Act, and cannot discharge functions not provided under the Act, as well as the ITAT Rules which deal with the procedural part of filing and hearing an appeal. The Tribunal, therefore, cannot arrogate to itself the powers and jurisdiction which the Tribunal does not possess.

32. In the present case the impugned order reveals that the Tribunal has assumed powers which it does not have, for determining whether the appeal is to be admitted or not. The Tribunal has lost sight of the fact that, both the assessee and the revenue, are statutorily vested with a right under the Act by virtue of Section 253(1), 253(2) and 253(4) of the Act to file an appeal or cross-objections. Such right granted by the Statute cannot be divested by the Tribunal on an erroneous assumption of powers arrogated to itself under a mistaken belief of law.

33. There is therefore, no such requirement in the facts of the case to approach the Committee as the assessee herein and the Income Tax Department cannot be asked to go and obtain clearance from a Committee which has no jurisdiction over them. Even the provisions of the Act and the ITAT Rules do not permit exercise of such powers by the Tribunal.

34. The impugned order therefore cannot be sustained and is hereby quashed and set aside and both, the petition filed by the assessee, and the tax appeals filed by the revenue, are required to be allowed. The petition stands allowed in the aforesaid terms. Rule made absolute to the aforesaid extent. Tax Appeals filed by Revenue are also allowed. There shall be no order as to costs.

10 Extract from the Supreme Court Rules, 1966

10.1.1 ORDER X

DOCUMENTS

1. The officers of the Court shall not receive any pleading, petition, affidavit or other document, except original exhibits and certified copies of public documents, unless it is fairly and legibly written, type-written or lithographed in double-line spacing, on one side of standard petition paper, demy-foolscap size, 1[or of the size of 29.7 cm x 21 cm], or paper which is ordinarily used in the High Courts for the purpose. Copies filed for the use of the Courts shall be neat and legible, and shall be certified to be true copies by the advocate on record, or by the party in person, as the case may be.

2. No document in language other than English shall be used for the purpose of any proceedings before the Court, unless it is accompanied by:

(a) a translation agreed to by both parties; or

(b) a translation certified to be true translation by a translator appointed by the Court; or

(c) the said document is translated by a translator appointed or approved by the Court.

3. Every document required to be translated shall be translated by a translator appointed or approved by the Court:

Provided that a translation agreed to by both parties, or certified to be a true translation by the translator appointed or approved by the Court, may be accepted.

4. Every translator shall, before acting, make an oath or affirmation that he will translate correctly and accurately all documents given to him for translation.

1. Ins. by G.S.R. 410, dated 26th February, 1968 (w.e.f. 26-2-1968).

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1[Explanation: - The provisions of this rule shall, so far as may be, apply also to a document in English of which a part is in a language other than English.]

All plaints, petitions, applications and other documents shall be presented by the plaintiff, petitioner, applicant, appellant, defendant or respondent in person or by his duly authorised agent or by an advocate on record duly appointed by him for the purpose

Provided that a party, who had been adjudged to be 2[an indigent person] for the purpose of the proceedings in the courts below, may present the document before the Judicial authority of the place where the said party resides, and the said Judicial authority after attesting the document and endorsing thereon under his seal and signature the date of presentation, shall transmit the same to the Court by registered post, acknowledgement due at the expense of the party concerned. The date of presentation in this Court of the said document shall be deemed to be the date endorsed thereon by the said Judicial authority.

6. (1) All complaints, petitions, appeals or other documents shall be presented at the filing counter and shall, wherever necessary, be accompanied by the documents required under the rules of the Court to be filed along with the said complaint, petition, or appeal.

3[Provided that a complaint, petition or appeal not presented at the filing counter by the petitioner or by his duly authorised Advocate-on-Record shall not ordinarily be accepted, unless as directed by the Chief Justice of India or a Judge nominated by the Chief Justice of India for this purpose.]

(2) On receipt of the document, the officer in-charge of the filing counter shall endorse on the document the date of receipt and enter the particulars of the said document in the register of daily filing and cause it to be sent to the department concerned for examination. If, on a scrutiny the document is found in order, it shall be duly registered and given a serial number of registration.

(3) Where a document is found to be defective, the said document shall, after notice to the party filing the same, be placed before the Registrar. The Registrar may, by an order in writing, decline to receive the document if, in his opinion, the mandatory requirements of the rules are not satisfied. Where, however, the defect noticed is formal, the Registrar may allow the party to rectify the same in his presence; but, in other cases, he may require the party to obtain an order from the Court permitting the party to rectify the same and for this purpose may allow to the party concerned, such time as may be necessary but not exceeding twentyeight days in aggregate.

(4) Where the party fails to take any steps for the removal of the defect within the time fixed for the same by the Registrar, the Registrar may, for reasons to be recorded in writing, decline to register the document.

(5) Any party aggrieved by any order made by the Registrar under this Rule may, within fifteen days of the making of such order, appeal against it to the Judge in Chambers.

7. The Registrar may on an application by the party interested, order the return of a document filed in a suit, appeal or matter if the person applying therefore delivers in the office a certified copy thereof to be substituted for the original.

8. (1) Except as otherwise provided by these rules or by any law for the time being in force, the Court-fees set out in the Third Schedule to these Rules shall be payable on the documents mentioned therein, and no document chargeable with a fee under the said Schedule shall be received or filed in the Registry unless the fee prescribed has been paid on it. No copy of a document shall be furnished to any person unless the fee prescribed therefor has been paid.

1. Ins. by G.S.R. 1006, dated 2nd July, 1970 (w.e.f 11-7-1970).

2. Subs. by G.S.R. 994, dated 8th December, 1982 (w.e.f. 25-12-1982).

3. Ins. by G.S.R. 407, dated 9th December, 1997 (w.e.f. 20-12-1997).

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1[Provided, however, that no Court fees or process fee or copying fee shall be chargeable in respect of matters filed in this Court through the Supreme Court Legal Services Committee.]

(2) All fees referred to in sub-rule (1) shall be collected in Court fee stamp sold in Delhi in accordance with the provisions of the Court-Fees Act as in force in the Union Territory of Delhi.

(3) No document chargeable with a Court-fee shall be acted upon in any proceedings in this Court until the stamp thereon has been cancelled.

The officer receiving the document shall forthwith effect such cancellation by punching out the figure head so as to leave the amount designated on the stamp untouched and the part removed by punching shall be burnt or otherwise destroyed.

(4) Whenever a question of the proper amount of the Court-fees payable is raised, the Registrar or the Taxing Officer of the Court shall decide such question before the document or the proceeding is acted upon in the Registry and whenever it is found that due to a bona fide mistake the Court-fee paid is insufficient the Registrar shall call upon the party concerned to make good the deficiency within such time as the Registrar may think reasonable but not exceeding three months in any case.

(5) In case the deficiency in the Court-fee is made good within the time allowed, the date of the institution of the proceeding shall be deemed to be the date on which the proceeding was initially instituted.

(6) The Registrar may in a proper case on an application made by the party issue a certificate regarding any excess Court-fee paid under a mistake.

9. (1) The levy and collection of Court-fees under these rules shall be under the general superintendence of the Registrar of the Court who may be assisted in his supervision by the Assistant Registrars of the Court.

(2) Where at any time during the course of the pendency of a suit, appeal or proceedings, or even after the conclusion of such a proceeding it appears to the 1. Ins. by G.S.R. 96(E), dated 16th February, 1987 (w.e.f. 16-2-1987) and Subs. by G.S.R 307 dated 1st August, 2000 (w.e.f. 12-8-2000)

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Registrar or the Taxing Officer that through mistake or inadvertence, a document which ought to be stamped in a certain manner has been received and acted upon without its being stamped or that the Court-fee paid thereon initially was insufficient, the Registrar or the Taxing Officer shall record a declaration to that effect and determine the amount of deficiency in Court fee: Provided that no such declaration shall be made until the party liable to pay the Court-fee has had an opportunity of being heard.

(3) When a declaration has been recorded under sub-rule (2) and if that relates to a matter pending before the Court the procedure prescribed by sub-rule (3) shall be followed; if it relates to the proceedings which have already been disposed of the Registrar shall, if the deficiency is not made good within three months of the declaration made, forward a requisition for the recovery of the same to the Central Government which shall recover the amount of such Court-fee from the person liable to pay the same as if it were an arrear of land revenue.

10.1.2 ORDER XIII

JUDGMENTS, DECREES AND ORDERS

1. The Court, after the case has been heard, shall pronounce judgment in open Court, either at once or on some future day, of which due notice shall be given to the parties or their advocates on record, and the decree or order shall be drawn up in accordance therewith.

2. A member of the Court may read a judgment prepared by another member of the Court.

3. Subject to the provisions contained in Order XL of these rules, a judgment pronounced by the Court or by a majority of the Court or by a dissenting Judge in open Court shall not afterwards be

altered or added to, save for the purpose of correcting a clerical or arithmetical mistake or an error arising from any accidental slip or omission.

4. Certified copies of the judgment, decree or order shall be furnished to the parties on requisition made for the purpose, and at their expense.

5. Every decree passed or order made by the Court shall be drawn up in the Registry and be signed by the Registrar or Deputy Registrar and sealed with the seal of the Court and shall bear the same date as the judgment in the suit or appeal.

6. The decree passed or order made by the Court in every appeal, and any order for costs in connection with the proceedings therein, shall be transmitted by the Registrar to the Court or Tribunal from which the appeal was brought, and steps for the enforcement of such decree or order shall be taken in that Court or Tribunal in the way prescribed by law.

7. Orders made by the Court in other proceedings shall be transmitted by the Registrar to the judicial or other authority concerned to whom such orders are directed, and any party may apply to the Judge in Chambers that any such order, including an order for payment of costs, be transmitted to any other appropriate Court or other authority for enforcement.

8. In cases of doubt or difficulty with regard to a decree or order made by the Court, the Registrar or the Deputy Registrar shall, before issuing the draft, submit the same to the Court.

9. Where the Registrar or the Deputy Registrar considers it necessary that the draft of any decree or order should be settled in the presence of the parties or where the parties, require it to be settled, in their presence, the Registrar or the Deputy Registrar shall, by notice in writing, appoint a time for settling the same and

the parties shall attend the appointment and produce the briefs and such other documents as may be necessary to enable the draft to be settled.

10. Where any party is dissatisfied with the decree or order as settled by the Registrar, the Registrar shall not proceed to complete the decree or order without allowing that party sufficient time to apply by motion to the Court.

10.1.3 ORDER XVI

APPEALS BY SPECIAL LEAVE

Where '[Certificate of fitness] to appeal to the Court was refused in a case by the High court, a petition for special leave to appeal to the court shall, subject to the provisions of sections 4, 5, 12 and 14 of the Limitation Act, 1963 (36 of 1963) be lodged in the Court within sixty days from the date of the order of refusal and in any other case within ninety days from the date of the Judgement or Order sought to be appealed from :

Provided that where an application for leave to appeal to the High Court from the Judgment of a single Judge of that Court has been made and refused, in computing the period of limitation in that case under this rule, the period from the making of that application and the rejection thereof shall also be excluded.

Explanation :- For purposes of this rule, the expression 'order of refusal' means the order refusing to ²[grant the certificate under article 134A of the Constitution being a certificate of the nature] referred to in article 132 or article 133 of the Constitution on merits and shall not

include an order rejecting the application on the ground of limitation or on the ground that such an application is not maintainable.

Where the period of limitation is claimed from the date of the refusal of ²[a certificate under article 134A of the Constitution, being a certificate of the nature referred to in article 132 or article 133 of the Constitution, it shall not be necessary to file the order refusing the certificate, but the petition for special leave shall be accompanied by an affidavit stating the date of the Judgment sought to be appealed from, the date on which the application for a certificate of fitness to appeal to the Court was made to the High Court, the date of the order refusing the certificate, and the ground or grounds on which the certificate was refused and in particular whether the application for the certificate was dismissed as being out of time.

⁴[4.⁵(1)] (a) The petition for seeking special leave to appeal (SLP) filed before the Court, under Article 136 of the Constitution shall be in Form No. 28 appended to the rules. No separate applicaiton for interim relief need be filed. Interim prayer if any should be incorporated in Form No. 28.

(b) Alongwith the petition, list of dates in chronological order with relevant material facts or events pertaining to each of the dates shall be furnished.

(c) SLPs shall be confined only to the pleadings before the Court / Tribunal whose order is challenged. However, the petitioner may, with due notice to the respondent, and with leave of the Court urge additional grounds, at the time of hearing.

(d) (i) The petitioner may produce copies of such petition/documents which are part of the record in the case before the Court / Tribunal below if and to .the extent necessary to answer, the question of law arising for consideration in the petition or to make out the grounds urged in the SLP, as Annexures to the petition-numbering them as Annexure 1, 2, 3 and so on.

1. Subs, by G.S.R. 272, dated 17th June 1997 (w.e.f. 28.6.1997)

2. Subs, by G.S.R. 506, dated 21st May, 1981 (w.e.1. 30.5.1981)

3. Rule papers of the SLP shall be arranged in the following order :

4. Subs, by G.S.R. 272, dated 17th June, 1997 (w.e.f. 28.6.1997)

5. Rule 4 renumbered as sub-rule (1) thereof by G.S.R. 995, dated 8th December, 1982 (w.e.f. 25-12-1982)

(ii) If the petitioner wants to produce any document which was not part of the records in the Court below he shall make a separate application stating the reasons for not producing it in the Court / Tribunal below and the necessity for its production in the Court and seek leave of the Court for producing such additional documents.

(e) Every petition shall be supported by the affidavit of the petitioners or one of the petitioners as the case may be or by any person authorised by the petitioner in which the deponent shall state that the facts stated in the petition are true and the statement of dates and facts furnished along with the SLP are true to his knowledge and/or in formation and belief.

(f) The papers of the SLP shall be arranged in the following order:

(i) List of dates in terms of clause (b) of sub rule (1)

(ii) Certified copies of the judgement and order against which the leave to appeal is sought for :

- (iii) The special leave petition in the prescribed Form No. 28. (iv) Annexures, if any, filed alongwith the SLP.
- (g) If notice is ordered on the special leave petition, the petitioner should take steps to serve the notice on the respondent. Provided in the case of a special leave petition against an interlocutory order, the notice may be served on the advocate appearing for the party in the Court / Tribunal against whose order the leave to appeal is sought for.]
- ¹[(2) No petition shall be entertained by the Registry unless it contains a statement as to whether the petitioner had filed any petition for special leave to appeal against the impugned Judgment or order earlier and if so, with what result, duly supported by an affidavit of the petitioner or his Pairokar only.
- (3) The Court shall, if it finds that the petitioner has not disclosed the fact of filing a similar petitioner earlier and its dismissal by this Court, dismiss the second petition if it is pending or, if special leave has already been granted therein, revoke the same.]
- ²[(4) The petition shall also contain a statement as to whether the matter was contested in the Court appealed from and if so, the full name and address of all the contesting parties shall be given in the statement of facts in the petition.]
5. The Petition shall be accompanied by -
- (i) a certified copy of the Judgment or order appealed from; and
- (ii) an affidavit in support of the statement of facts contained in the petition.
6. No annexures to the petition shall be accepted unless such annexures are certified copies of documents which have formed part of the record of the case in the Court sought to be appealed from; provided that uncertified copies of document may be accepted as annexures if such copies are affirmed to be true copies upon affidavit.
7. The petitioner shall file at least seven spare sets of the petition and of the accompanying papers.
8. Where any person is sought to be impleaded in the petition as the legal representative of any party to the proceedings in the Court below, the petition shall contain a prayer for bringing on record such person as the legal representative and shall be supported by an affidavit setting out the facts showing him to be the proper person to be entered on the record as such legal representative.

1. Ins. by G.S.R. 995. dated 8th December, 1982 (w.e.f. 25.12.1982)

2. Ins. by G.S.R. 189, dated 15th March, 1991 (w.e.f. 30.3-1991)

9. Where at any time between the filing of the petition for special leave to appeal and the hearing thereof the record becomes defective by reason of the death or change of status of a party to the appeal or for any other reason, an application shall be made to the Court stating who is the proper person to be substituted or entered on the record in place of or in addition to the party on record. Provisions contained in rule 33 of Order XV shall apply to the hearing of such applications.
10. (1) Unless a caveat as prescribed by rule 2 of Order XVIII has been lodged by the other parties, who appeared in the Court below, petitions for grant of special leave shall be put up for hearing ex-parte, but the Court, if it thinks fit, may direct issue of notice to the respondent and adjourn the hearing of the petition :

Provided that where a petition for special leave has been filed beyond the period of limitation prescribed therefor and is accompanied by an application for condonation of delay, the court shall not condone the delay without notice to the respondent.

(2) A caveator shall not be entitled to costs of the petition, unless the Court otherwise orders.

Where a caveat has been lodged as aforesaid, notice of the hearing of the petition shall be given to the caveator; but a caveator shall not be entitled to costs of the petition, unless the Court otherwise orders.

¹[{3} Notwithstanding anything contained in sub-rules (1) and (2) above, the Respondents who contested the matter in the Court appealed from shall be informed about the decision on the petition after it is heard *ex-parte*, if the petition stands dismissed.]

²[10A. (1) Where the petitioner is not represented by an Advocate of his choice, the Court may in a proper case direct the engagement of an Advocate *amicus curiae* at the cost of the State. The fees of the Advocate so engaged shall be Rs. 2507- up to the admission stage and a lump sum not exceeding Rs. 500/- for the hearing of the appeal arising therefrom as may be fixed by the Bench hearing the appeal, and in an appropriate case the Bench hearing the case may, for the reasons to be recorded in writing, sanction payment of a lump sum not exceeding Rs. 750/- to the said Advocate.

(2) After the hearing of the petition or the appeal, as the case may be, is over, the Registrar or the Deputy Registrar shall issue to the Advocate *amicus curiae* a certificate in the prescribed form, indicating therein the name of the said Advocate engaged at the cost of the State, and the amount of fees payable to the said Advocate.

(3) The State concerned shall pay the fees specified in the certificate issued under sub-rule(2) to the Advocate named therein within three months from the date of his presenting before it his claim for the fees supported by the certificate. If the fees are not paid within the period aforesaid, the Advocate shall be entitled to recover the same from the State concerned by enforcement of the certificate as an Order as to costs under the Supreme Court {Decrees and Orders} Enforcement Order, 1954.

Explanation :- For the purposes of this rule, the term "State" shall include a Union territory.

11. On the grant of special leave, the petition for special leave shall, subject to the payment of additional Court-fee, if any, be treated as the petition of appeal and it shall be registered and numbered as such. The provisions contained in Order XV shall with necessary modifications and adaptations, be applicable to appeals by special leave and further steps in the appeal shall be taken in accordance with the provisions therefore :

1. Ins. by G.S.R. 189, dated 15th March. 1991 (w.e.f. 30.3.1991)

2. Added by G.S.R. 541, dated 26th June 1987 (w.e.f. 18.7.1987)

¹[Provided that if the respondent had been served with the notice in the Special Leave Petition or had filed caveat or had taken notice, no further notice is required after the lodging of the appeal.]

²[11A] The record of the appeal arising out of the petition for special leave shall normally consist of the petition of appeal and the paper book of the court below, if available, plus such additional documents that the parties may file from the record of the case, if the printed record of the Court below be not available. In that event, no fresh printing of the

record shall be necessary, and the original record will be called for, from the Court below for reference of the Court.

Provided however, that where in a particular case the Court feels that fresh printing of record is necessary, a specific order to that effect shall be made by the Court at the time of granting special leave to appeal, the provisions contained in Order XV relating to preparation of record shall with necessary modification and adaptation apply.]

³[12. While granting special leave in all matters in which the bench granting special leave is of the opinion that the matter is capable of being disposed of within a short time, say within an hour or two, it will indicate accordingly. The office shall maintain a separate register of such matters to enable the Chief Justice to constitute a Bench for the disposal of such matters.]

⁴{13.⁵[(1) Respondent to whom a notice in a Special Leave Petition is issued or who had filed a caveat shall be entitled to oppose the grant of leave or interim orders, without filing any written objections. He shall also be at liberty to file his objections within 30 days from the date of receipt of notice or not later than 2 weeks before the date appointed for hearing, whichever be earlier, but shall do so only by setting out the grounds in opposition to the questions of law or grounds set out in the SLP and may produce such pleadings and documents filed before the Court / Tribunal against whose order the SLP is filed and shall also set out the grounds for not granting interim order or for vacating interim order if already granted.]

(2) No separate application for vacating interim order need be filed. The respondent shall, however, be at liberty to file application for vacating stay separately before or after filing objections.

(3) (a) Where any statement of objection is filed by the respondent, it shall be supported by an affidavit of the party or any person authorised by him verifying to the correctness of the statements made therein and also to the effect that annexures produced are the true copies of the originals which formed part of record in the Court below.

(b) If respondent wants to produce any document which was not part of the record in the court below, he shall file an application seeking permission of the Court to produce such documents setting out the reason as to why it was not produced in the Court below as also the necessity of producing it before the Court.

(4) The respondent may, if considered necessary, file additional list of dates with material facts in addition to those furnished by the petitioners if he considers that the list of dates and facts by the petitioner is inaccurate or incomplete}

1. Ins. by G.S.R. 272, dated 17th June 1997 (w.e.f. 28.6.1997)

2. Added by G.S.R. 189, dated 15th March 1991 (w.e.f. 30.3.1991)

3. Ins. by G.S.R. 387, dated 13th March, 1978 (w.e.f. 18.3.1978)

4. Ins. by G.S.R. 272, dated 17th June, 1997 (w.e.f. 28.6.1997)

5. Subs, by G.S.R. 127(E), dated 22nd February, 2006 (w.e.f. 1.3.2006)

10.1.4 ORDER XX

MISCELLANEOUS

1. The filing of an appeal shall not prevent execution of the decree or order appealed against but the Court, may, subject to such terms and conditions as it may think fit to impose, order a stay of execution of the decree or order, or order a stay of proceedings, in any case under appeal to the Court.
2. A party to an appeal who appears in person shall furnish the Registrar with an address for service and all documents left at that address, or sent by registered post to that address, shall be deemed to have been duly served.
- 1[3. In cases where intervention is allowed by the Court, the intervener or interveners may file written submissions prior to the hearing of the matter shall but not be entitled to address any oral arguments, unless otherwise directed by the Court.]

10.1.5 ORDER XXI

SPECIAL LEAVE PETITIONS IN CRIMINAL PROCEEDINGS AND CRIMINAL APPEALS SPECIAL LEAVE PETITIONS

1. (1) Where leave to appeal to the Court was refused in a case by the High Court, a petition for special leave to appeal shall, subject to the provisions of sections 4, 5, 12 and 14 of the Limitation Act, 1963 (36 of 1963), be lodged in the Court within sixty days from the date of order of refusal and 1[in any other case not involving sentence of death, within ninety days from the date of Judgment or order sought to be appealed from and in a case involving sentence of death within sixty days from the date of Judgment or order sought to be appealed from]:

Provided that where an application for leave to appeal to the High Court from the Judgment of a single Judge of that Court has been made and refused, in computing the period of limitation in that case under this rule, the period from the making of that application and the rejection thereof shall also be excluded.

Explanation:- For purposes of this rule, the expression 'order of refusal' means an order refusing to grant 2[the certificate under article 134A of the Constitution, being a certificate of the nature] referred to in article 132 or article 134, as the case may be, of the Constitution on merits and shall not include an order rejecting the application on the ground of limitation or on the ground that such an application is not maintainable.

1. Subs. by G.S.R. 466, dated 22nd June, 1983 (w.e.f. 2-7-1983).

2. Subs. by G.S.R. 506, dated 21st May, 1981 (w.e.f. 30-5-1981).

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(2) Where the period of limitation is claimed from the date of refusal of a certificate, it shall not be necessary to file the order refusing a certificate, but the petition for special leave shall be accompanied by an affidavit stating the date of the Judgment sought to be appealed from, the date on which the application for a certificate was made to the High Court, the date of the order refusing the certificate and the ground or grounds on which the certificate was refused and in particular whether the application for a certificate was dismissed as being out of time.

1[***]

3. 2[(1)] The petition shall state succinctly and clearly all such facts as may be necessary to enable the Court to determine whether special leave to appeal ought to be granted and shall be signed by the advocate on record for the petitioner unless the petitioner appears in person. The petition

shall also state whether the petitioner has moved the High Court concerned for leave to appeal against its decision, and if so, with what result.

(2) No petition shall be entertained by the Registry unless it contains a statement as to whether the petitioner had filed any petition for special leave to appeal against the impugned Judgment or order earlier, and if so, with what result, duly supported by an affidavit of the petitioner or his pairakar only.

(3) The Court shall, if it finds that the petitioner has not disclosed the fact of filing a similar petition earlier and its dismissal by this Court, dismiss the second petition if it is pending or if special leave has already been granted therein, revoke the same.

3[(4) SLPs shall be confined only to the pleadings before the Court/Tribunal whose order is challenged and the other documents relied upon in those proceedings.

No additional facts, documents or grounds shall be stated or relied upon without express prior permission of the Court obtained on an application made for this purpose.]

4. The petition shall be accompanied by-

1. Rule 2 omitted by G.S.R. 1024, dated 9th August, 1978 (w.e.f. 19-8-1978).

2. Rule 3 renumbered as sub-rule (1) thereof by G.S.R. 995, dated 8th December, 1982 (w.e.f. 25-12-1982)

3. Added by G.S.R. 272, dated 17th June, 1997 (w.e.f. 28-6-1997). [In the G.S.R. 272, item 6, it should be sub-clause (4) instead of sub-clause (5) as sub-clause (4) does not exist.

Ed.]

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(1) a certified copy of the Judgment or order appealed from; and

(2) an affidavit in support of the statement of facts contained in the petition.

5. (1) No annexures to the petition shall be accepted unless such annexures are certified copies of documents which have formed part of the record in the Court or Tribunal sought to be appealed from provided that uncertified copies of documents may be accepted as annexures if such copies are affirmed to be true copies upon affidavit.

(2) The High Court or the Tribunal concerned shall, on application by a petitioner intending to apply for special leave, grant him free of cost a certified copy of the Judgment or order sought to be appealed from.

6. Where the petitioner has been sentenced to a term of imprisonment, the petition shall state whether the petitioner has surrendered. Where the petitioner has not surrendered to the sentence, the petition shall not be posted for hearing unless the Court, on a written application for the purpose, orders to the contrary. 1[Where the petition is accompanied by an application for exemption from surrendering, that application alone shall be posted for hearing orders before the Court in the first instance.]

7. Unless a caveat as prescribed by rule 2 of Order XVIII has been lodged by the other parties who appeared in the Court below, petitions for grant of special leave shall be put up for hearing ex-parte, but the Court, if it thinks fit, may direct issue of notice to the respondent and adjourn the hearing of the petition.

2[7A. The Respondent shall be at liberty to file his objections within 30 days from the date of receipt of notice or not later than 2 weeks before the date appointed for hearing, whichever be earlier.]

8. (1) If the petitioner is in jail and is not represented by an advocate on record, he may present his petition for special leave to appeal together with the certified copy of the Judgment and any written argument which he may desire to advance to the officer-in charge of the jail, who shall forthwith forward the same to the Registrar of this Court. Upon receipt of the said petition, the Registrar of the Court shall,

1. Subs. by G.S.R. 541, dated 26th June, 1987 (w.e.f. 18-7-1987).
2. Ins. by G.S.R. 127(E) dated 22nd February, 2006 (w.e.f. 1.3.2006).

whenever necessary call, from the proper officer of the Court or the Tribunal appealed from, the relevant documents for determination of the petition for special leave to appeal.

(2) 1[As soon as all necessary documents are available the Registrar shall, assign an Advocate from a panel of amicus curiae and thereafter place the petition and complete documents for hearing before the Court. The fee of the advocate so engaged shall be such, as may, from time to time, be fixed by the Chief Justice of India.]

2[(3) After the hearing of the petition or the appeal, as the case may be, is over, the Registrar or the Deputy Registrar shall issue to the Advocate amicus curiae a certificate in the prescribed form indicating therein the name of the said Advocate engaged at the cost of the State concerned and the amount of fees payable to the said advocate.

(4) The State concerned shall pay the fees specified in the certificate issued under sub-rule (3) to the Advocate named therein within three months from the date of his presenting before it his claim for the fees supported by the certificate. If the fees are not paid within the period above-said, the Advocate shall be entitled to recover the same from the State concerned by enforcement of the certificate as an order as to costs under the Supreme Court (Decrees and Orders) Enforcement Order, 1954.

Explanation: - For the purposes of this rule, the term "State" shall include a Union Territory.]

9. On the granting of the special leave, the petition for special leave shall be treated as the petition of appeal and shall be registered and numbered as such.

1. Subs. by G.S.R. 623 (E), dated 28th August, 2008 (w.e.f. 29-8-2008)
2. Added by G.S.R. 541, dated 26th June, 1987 (w.e.f. 18-7-1987)

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1[9A. While granting special leave, in all matters in which the Bench granting special leave is of the opinion that the matter is capable of being disposed of within a short time, say, within an hour or two, it will indicate accordingly. The office shall maintain a separate register of such matters to enable the Chief Justice to constitute a Bench for the disposal of such matters.]

10. Upon an order being made granting special leave to appeal, the Registrar shall transmit to the Court appealed from, a certified copy of the order together with a certified copy of the petition for special leave, and the affidavit, if any, filed in support thereof.

11. On receipt of the said order, the Court appealed from shall give notice of the order to the respondent and require the parties to take all necessary steps to have the record of the case transmitted to the Court in accordance with the directions contained in the order granting special leave. The Registrar of the Court appealed from shall certify to the Registrar of the Court that the respondent has received notice of the order of the Court granting special leave to appeal.

CRIMINAL APPEALS

12. 2[Every criminal appeal in which a certificate of the nature referred to in clause (1) of article 132 or sub-clause (c) of clause (1) of article 134 has been granted under article 134A of the Constitution] shall be lodged in the Court within sixty days from the date of the certificate granted by the High Court, and every appeal under article 134(1)(a) and (b) of the Constitution or under any other provision of law within sixty days from the date of the Judgment, final order or sentence appealed from:

Provided that in computing the period, the time requisite for obtaining a copy of the Judgment or order appealed from, and where the appeal is on a certificate, of the certificate, and the order granting the certificate shall be excluded:

Provided further that the Court may, for sufficient cause shown extend the time.

13. (1) The memorandum of appeal shall be in the form of a petition. It shall state succinctly and briefly, and as far as possible, in chronological order, the principal steps in the proceedings from its commencement till its conclusion in the High Court.

1. Ins. by G.S.R. 387, dated 13th March, 1978 (w.e.f. 18-3-1978).

2. Subs. by G.S.R. 506, dated 21st May, 1981 (w.e.f. 30-5-1981).

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1[(2) The petition of appeal shall be accompanied by a certified copy of the judgment or order appealed from and in the case of an appeal on a certificate also of the certificate granted by the High Court, and of the order granting the said certificate. In appeals falling under any of the categories enumerated in sub-rule (1)

of rule 15, however, in addition to the documents mentioned above, a certified copy (or uncertified copy if such copy is affirmed to be true copy upon affidavit) of the Judgment or order of the Court immediately below shall also be filed before the appeal is listed for hearing ex-parte. At least seven copies of the aforesaid documents shall be filed in the Registry.]

2[13A. Where the appellant has been sentenced to a term of imprisonment, the petition of appeal shall state whether the appellant has surrendered. Where the appellant has not surrendered to the sentence, the appeal shall not be registered, unless the Court, on a written application for the purpose, orders to the contrary. Where the petition of appeal is accompanied by such an application, the application shall first be posted for hearing before the Court for orders.]

14. Where the appellant is in jail, he may present his petition of appeal and the documents mentioned in rule 13 including any written argument which he may desire to advance to the officer-in-charge of the jail, who shall forthwith forward the same to the Registrar of the Court.

1[15. (1) The petition of appeal shall be registered and numbered as soon as it is 3[found to be in order]. Each of the following categories of appeals, on being registered, shall be put for hearing ex-parte before the Court, which may either dismiss it summarily or direct issue of notice to all necessary parties, or may make such orders, as the circumstances of the case may require, namely:

(a) an appeal from any Judgment, final order or sentence in a criminal proceeding of a High Court summarily dismissing the appeal or the matter, as the case may be before it;

(b) an appeal on a certificate granted by the High Court 4[under article 134A of the Constitution being a certificate of the nature referred to in clause (1) of article

1. Subs. by G.S.R. 705, dated 8th May, 1971 (w.e.f. 1-7-1971).

2. Ins. by G.S.R. 466, dated 22nd June, 1983 (w.e.f. 2-7-1983).

3. Subs. by G.S.R. 466, dated 22nd June, 1983 (w.e.f. 2-7-1983).

4. Subs. by G.S.R. 506, dated 21st May, 1981 (w.e.f. 30-5-1981).

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132 or sub-clause (c) of clause (1) of article 134 of the Constitution or] under any other provision of law if the High Court has not recorded the reasons or the grounds for granting the certificate.

1[***]

2[(e) an appeal under clause (b) of sub-section (1) of section 19 of the Contempt of Courts Act, 1971 (70 of 1971).]

(2) On the registration of the appeal and in the appeals falling under sub-rule (1) as soon as notice is directed to be issued, the Registrar shall send a copy of the petition of appeal and the accompanying papers, if any, to the High Court or the Tribunal concerned; and shall cause notice of the appeal to be given, where the appeal is by a convicted person to the Attorney-General for India or to the Advocate General or the Government Advocate of the State concerned, or to both as the case may require, and in cases where the appeal is by the Government to the accused and in cases under section 467B of the Code of Criminal Procedure, 1898 to the respondent.]

16. The respondent may enter appearance in the Court 3[within thirty days of the service of the notice of lodgment] of the petition of appeal on him.

Explanation : For the purposes of this rule, the term "State" shall include a Union Territory.)

11. Allocation of Work and Directory of Standing Counsels

Allocation of Work and Directory of Standing Counsels And Designated Officers

11.1 Allocation Of Work Amongst NWR Standing Counsels and their Telephone Numbers

No.CC/CHD/JUDL/2008-09/Misc.-13/2315

Dated: 29.07.2010

OFFICE ORDER

Sub:- Work allocation amongst Senior/Junior Standing Counsels of the Income Tax Department functioning in Hon'ble Punjab & Haryana High Court- Regarding-

In view of Board's order F.No. 278/49/2007-ITJ dated 15.06.2010 and 18.06.2010 and in partial modification of this office's earlier orders on the above subject, I, the Chief Commissioner of Income Tax, North Western Region, Chandigarh hereby order that the distribution of work amongst the Standing Counsels of the department shall be as under:-

S.No.	Name of the Senior Standing Counsel S./Sh/Smt./Ms	Name of the junior Standing Counsel S/Sh/Smt/Ms	Work allocated to Senior/Junior Standing Counsel pertaining to the area falling within the jurisdiction of the office(s)
1.	S.K. Garg	--	The Chief Commissioner of Income Tax, Chandigarh and all officers functioning under him except the Commissioner of Income Tax-I,II, Chandigarh & Patiala and all offices functioning under them.
2.	Yogesh Putney	--	i) The Chief Commissioner of Income Tax, Haryana and all officers functioning under him except Commissioner(s) of Income Tax, Karnal, Rohtak & Hisar and all offices functioning under them. ii) All offices in Punjab, Haryana and Chandigarh functioning under the Director General of Income Tax (International Taxation), New Delhi. iii) All cases of Corporations, Boards, Market Committees, Govt. Undertakings, PSUs, Trusts etc. of Govt. of Haryana.

3.	Krishan Kumar Mehta	--	<p>i) Office of the Chief Commissioner of Income Tax, Ludhiana and all officers functioning under him except Commissioner of Income Tax -I, II & III, Ludhiana and Commissioner of Income Tax-I & II, Jalandhar and all officers functioning under them.</p> <p>ii) The Commissioner of Income Tax (RTI) and DIT (CIB) Chandigarh and all offices functioning under them.</p>
4.	Urvashi Dhugga	--	The Commissioner of Income Tax-I & II, Chandigarh and all offices functioning under them.
5.	Rajesh Sethi	--	Office of the Director General of Income Tax (Inv.) Chandigarh and all offices functioning under him except Commissioner of Income Tax (Central), Ludhiana and all offices functioning under him.
6.	Naveender P.K. Singh	--	Office of the Chief Commissioner of Income Tax, Amritsar except Commissioner of Income Tax-I & II, Amritsar and Commissioner of Income Tax, Bathinda and all offices functioning under them.
7.	--	Vivek Sethi	The Commissioner of Income Tax I & II, Jalandhar and all offices functioning under them.
8.	--	Savita Sexena	The Commissioner of Income Tax, Bathinda and all offices functioning under him.
9.	--	Sanjiv Kaushik	The Commissioner of Income Tax, Hissar and all offices functioning under him.
10.	--	Aman Bansal	Any specific work assigned from time to time by this office.
11.		Sukant Gupta	The Commissioner of Income Tax, I & II, Amritsar and all offices functioning under him.

12.	--	Rajesh Katoch	(i) The Commissioner of Income Tax (Central), Ludhiana and all offices functioning under him. (ii) The Commissioner of Income Tax - I, Ludhiana and all the offices functioning under him.
13.	--	Inderpreet Singh	The Commissioner of Income Tax, Rohtak and all offices functioning under him.
14.	--	Dinesh Goyal	The Commissioner of Income Tax -II & III, Ludhiana and all offices functioning under them.
15.	--	Tajender Joshi	The Commissioner of Income Tax, Patiala and all offices functioning under him.

All category of cases not specifically allocated as per the above distribution shall be handled by Shri Yogesh Putney, Senior Standing Counsel.

Whenever a counsel is unable to take up a case for personal reasons or on account of conflict of interest, the said case will be handled by Shri Yogesh Putney, Senior Standing Counsel. **In respect of cases where Shri Yogesh Putney, for similar reasons is unable to take up the case, the said case shall be handled by Shri Rajesh Sethi, Senior Standing, Counsel.**

All cases of central circles, which have since been decentralized, will be handled by counsels attached with the Commissioner to whom the cases have been transferred.

The Standing counsels exercising jurisdiction in cases pertaining to Commissioner of Income Tax, Panchkula, Rohtak and Patiala will check the cases marked in the name of respective Commissioners and shall make the necessary arrangements to intimate the cases to the present jurisdictional standing counsels, in case it does not pertain to them as per present jurisdiction.

Standing counsels exercising jurisdiction in cases pertaining to Commissioner of Income Tax-I, Chandigarh, Commissioner of Income Tax-I, Ludhiana, Commissioner of Income Tax-I, Jalandhar and Commissioner of Income Tax-I, Amritsar will check the cases marked in the name of Commissioners of Income Tax, Chandigarh, Ludhiana, Jalandhar and Amritsar respectively and shall make the necessary arrangements to intimate the case to the present jurisdictional standing counsels in case it does not pertain to them.

The standing counsels are requested to take the assistance of Sh. Amit Sharma, ITO (High Court) wherever the same is required.

This order shall take effect from 9th August 2010.

Sd/-
(B.S. Dhillon)
Chief Commissioner of Income Tax,
N.W.R, Chandigarh

Copy for information to:-

1. The Registrar, Punjab & Haryana High Court, Chandigarh.
2. The Member (A & J), Central Board of Direct Taxes, North Block, New Delhi with reference to Board's letter F.No. 278/49/2007-ITJ dated 15.06.2010 & 18.06.2010.
3. The Chief Commissioner of Income Tax, Panchkula, Shimla, Ludhiana, Amritsar and Director General of Income Tax (Inv.), Chandigarh.
4. The Commissioners of Income Tax, Chandigarh-I, II, (TDS), (ITAT-I & II) and Patiala.
5. The Commissioner of Income Tax, (A & J), CBDT, New Delhi.
6. The Counsels concerned. The list of files may be prepared by the Standing Counsels and handed over to the present jurisdictional standing counsels on priority by 13th August 2010 positively. In case of any non-transfer of files, the said counsel who has not transferred the file will be responsible for any consequences due to non representation of the department.

-sd-
(Rakesh Goyal)
Addl. Commissioner of Income Tax, Hq (Judl)
Chandigarh.

11.2 Appointment Order Of Standing Counsel of Jammu and Kashmir High Court

(Mr. Gurjar)
Deputy Commissioner (AS)
06/11/09

F.No. 278/43/2004-ITJ
Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Direct Taxes

New Delhi, the 12th October, 2009

To,
The Chief Commissioner of Income Tax,
Amritsar.

Sub:- Ex-post facto renewal of terms of Sh. D.S. Thakur, Advocate as Standing Counsel and further appointment as Sr. Standing Counsel for the Income Tax Department before the Jammu Bench of J&K High Court - reg.

Sir,

Reference is invited to your letter No.CCIT/ASR/ITO(J)/2008-09/4398 dated 2.3.2009 on the subject mentioned above and to convey the sanction of the President of India regarding the ex-post facto engagement of Shri D.S. Thakur, Advocate as Standing Counsel w.e.f. 31.08.2004 to 30.08.2007 and his further engagement as Senior Standing Counsel for a period of three years w.e.f. 31.8.2007 to 30.8.2010 before the Jammu Bench of J&K High Court on the terms and conditions as per Instruction No.08/2007 dated 30.8.2007.

The expenditure involved shall be met out of grant of your charge under sub-head "A(2)(1)(6)" payment for professional and other Special Services".

This issues with the concurrence of Ministry of Law(Judicial Section) vide their FTS No.81/Judl./2009-Judl.

Yours faithfully,

(A.K. Gurjar)
OSD/JCIT(ITJ)

Copy to:-
1. The Principal & Chief Control of Accounts C.B.D.T., New Delhi.
2. ZAO/CBDT, C/O Chief Commissioner of Income Tax, Amritsar.
3. Ministry of Law (Judicial Section), Shastri Bhavan, New Delhi.
4. Sanction Folder.

Chief Commissioner of Income Tax
Amritsar
मुख्य आयकर आयुक्त, अमृतसर

06 NOV 2009

Dy. No. /कम संख्या.....
AMRITSAR/अमृतसर

(A.K. Gurjar)
OSD/JCIT(ITJ)

Aug 27 2010 11:34AM HP LASERJET FAX

11.3 Telephone Numbers Of Standing Counsels for Punjab and Haryana High Court (As on July 2010)

SR. STANDING COUNSELS

S.No.	Name & Address	Tel./Mobile no.
1.	Sh. Yogesh Putney, 756/22A, Chandigarh	2708362, Mobl. 98140-57267
2.	Sh. S.K. Garg, 2208/21C, Chandigarh	2728028, Mob. 98140-44861
3.	Sh. Krishan Kr Mehta 1174/15B, Chandigarh	2772568, 98724-01174
4.	Sh. Rajesh Sethi, 469/ Sector 20A, Chandigarh	2727600, 98156-00061
5.	Ms. Naveender P.K. Singh, 197, Shvalik Enclave, NAC, M. Majra	6451197, 98146-77112
6.	Ms. Urvashi Dhugga, 250/Sec. 6, Panchkula & 795, Ph. 3B1, Mohali	9876800028

JR. STANDING COUNSEL

S.No.	Name & Address	Tel./Mobile no.
1.	Sh. Vivek Sethi, 386/12A, Pkl	98761-23386
2.	Ms. Savita Sexena, Lawyer's chamber No. 104, District Court Complex, Sec. 17, Chd. Res. 301/GH-64, Sec. 20, Pkl.	2551906/94170-05633
3.	Sh. Sanjiv Kaushik, 385/Sec. 17, Pkl.	2574384/2562385 94172-33385
4.	Sh. Rajesh Katoch, # 304, G.H.No. 41, Sec. 20, Panchkula	2520246, 24609253, 9888561590
5.	Aman Bansal H.No. 184, Block-11, Sprangle Heights, Opposite hotel Sun Park, Dhakoli, Zirakpur, Punjab	01762527032, 9888520452
6.	Sukant Gupta Advocate, H.No. 552, Sector 10D, Chandigarh	9815910552 2471386,2743552, 2742169 (Fax)
7.	Tajender Joshi, H.No. 2135, Sector 21-C, Chandigarh	5073480,2720480, 9814405432 tajenderjoshiassociats@rediffmail.com
8.	Inderpreet Singh # 795, Phase 3B1, Mohali	2227428, 2264258 inderpree@lawyer.com
9.	Dinesh Goyal, K. No. 146, Sector 17, Panchkula	2572344,2584977, 9814010057 deneshgoyal@satyam.net.in


11.4 Telephone Numbers Of Standing Counsels for J K High Court (As on July 2010)

S.No.	Name & Address	Tel./Mobile no.
1.	Mr D S Thakur Moti Lodge, Karam Nagar Jammu	0191-2542311/ 2579664 011-26838718/ 26311514 09419187734
2	Mr Javed A Kawoosa 133 RAWALPURA, HOUSING Colony Sanathnagar Srinagar	09419019264 0194-2431074 0194-2430062 fax

11.5 Telephone Numbers Of Standing Counsels for Himachal Pradesh High Court (As on July 2010)

S.No.	Name & Address	Tel./Mobile no.
1.	Vinay Kuthiala, Senior Standing Counsel Bhagwati Villa, Lower Jakhu, Shimla	01772658315/2653730 R 09418311108
2	Vandana Kuthiala, Junior Standing Counsel	

11.6 CCIT (CCA's) Instructions offices responsible to make Payments of Bills of Standing Counsels


 भारत सरकार/Govt. of India
 आयकर विभाग/Income Tax Department
 मुख्य आयकर आयुक्त, उ.प. क्षेत्रा, केंद्रीय राजस्व भवन, सेक्टर-17ई, चण्डीगढ़।
Chief Commissioner of Income tax, NWR, C.R. Building, Sector- 17-E, Chandigarh.

F. No.CCIT/Addl.CIT(Judl)/Misc.13/2008-09/ 1297-98 Dated: 23rd May, 2008
 To

The Chief Commissioner of Income tax,
 Panchkula, Shimla, Ludhiana and Amritsar
 The Director General of Income tax (Inv), Chandigarh
 The Director General of Income tax (International Taxation), New Delhi.

Sir/Madam,

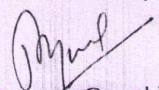
Sub.: Payment of bills of Sr./Jr.Standing Counsels- Regarding.
Ref.: Instruction No. 8/ 2007 dated 13th August, 2007 of CBDT

Kindly refer to the above.

I have been directed to submit that in view of allocation of work among Counsels vide letter F.No. CC/Chd/Judl/Misc-13/2008-09/1182 dated 19th May, 2008, it has been decided that the retainership charges and reimbursement of incidentals [as per Instruction No. 8/ 2007 dated 13th August, 2007 of CBDT, New Delhi (copy enclosed)] will be made by the following offices:

S.No.	Name of the Counsel (S/Shri/Smt./Ms.)	Office responsible to make payment
1.	S.K.Garg	CCIT, Chandigarh
2.	Sanjiv Bansal	CCIT, Ludhiana
3.	Yogesh Putney	CCIT, Panchkula
4.	Krishan Kumar Mehta	DGIT(Inv.), Chandigarh
5.	Kashmiri Lal Goyal	CCIT, Chandigarh
6.	Rajesh Sethi	CCIT, Ludhiana
7.	Naveender P.K.Singh	CCIT, Amritsar
8.	Vivek Sethi	CCIT, Amritsar
9.	Munish Singal	CCIT, Ludhiana
10.	Urvashi Dhugga	CCIT, Chandigarh
11.	Savita Saxena	CCIT, Amritsar
12.	Sanjiv Kaushik	CCIT, Panchkula.

The regular bills pertaining to the filing, hearing of the cases etc. will be submitted to the jurisdictional Commissioner of Income Tax in whose jurisdiction the case is presently being assessed. The Counsels have been asked to submit the bills accordingly.

Yours faithfully,

 (Rakesh Goyal)
 Addl. Commissioner of Income Tax (HQ)(Judl)
 Chandigarh

11.7 Details Of Designated Officers notified in NWR To Monitor High Courts' Pronouncements in compliance of Members(A&J) Letter dt 14-6-2010 .

Sr. No.	CCIT Charge	CIT Charge	Name/ Address/ Tel. No./ Mob. No./Fax No./Email. ID of the Designated Officer appointed in consequence of CBDT Member's Letter No. DGIT(L&R)/ Member (A&J)/ Delay/SLP/2010-11 dated 14 June 2010			
			Name and designation Mr./Ms.	Telephone	Mobile	E mail id
1.	CCIT AMRITSAR	CIT-I AMRITSAR	Varinder Mehta, Addl. CIT	0183-2502241	095010-81819	mehta_varinder@yahoo.com
			Mann Singh, ACIT	0183-2507868	098727-16315	----
2.		CIT-II AMRITSAR				
3.		CIT JAMMU				
4.		CIT BATHINDA				
5.	DGIT (INV.) PANCHKULA	CIT (C) LUDHIANA				
6.	CCIT LUDHIANA	CIT-I LUDHIANA	K.R. Saini, ITO (Hq),(Judl)	0161-2310028	098145-90111	sainikuldeeprai@gmail.com
7.		CIT-II LUDHIANA	Naresh Kumar Bhagat, ITO (Hq),(Judl)	0161-2304937	098728-60775	Bhagat.naresh@gmail.com
8.		CIT-III LUDHIANA	Hutesh Dogra DCIT (Hq),(Judl)	0161-2304081	094174-26391	huteshdogra@gmail.com
9.		CIT-I JALANDHAR	S.S. Saini, ITO (Hq),(Tech)	0181-2224971	097810-27104	surindersinghsaini@yahoo.in
10.		CIT-II JALANDHAR	Ram Ji Dass, ITO (Hq),(Judl)	0181-2223129	093177-11002	ramjidass93@yahoo.com
11.	CCIT CHANDIGARH	CIT-I CHANDIGARH	G K Kohli ITO	0172-2711965	9023789788	gireeshkumarkohli@gmail.com
12.		CIT-II CHANDIGARH	Ashok gupta ITO	0172-2728509	9915987300	ashokguptaito@gmail.com
13.		CIT PATIALA	Raman Garg ACIT	0175-5030918	9417588189	ramangarg@hotmail.com
		CIT TDS	Madan Gopal ITO	0172-2720006	9780150219	
14.	CCIT PANCHKULA	CIT PANCHKULA	M K Julka, DCIT 0172-256745(F)	0172-2586729 01732-201603	098960-07663	-
15.		CIT KARNAL	B R Taneja, ITO	0180-2640840 0180-2644477(F)	094169-51565	-
16.		CIT ROHTAK	Hardev Singh, ITO	01262-268236 01262-257949(F) 01262-230682(F)	088001-15743	
17.		CIT FRIDABAD	T D Gulati, ITO	0129-2410154 0129-2412418(F)	098108-08436	-
18.		CIT HISAR	S C Kumar, ITO	01662-278980	094161-78150	-
19.	CCIT SHIMLA	CIT SHIMLA	V.K. Sood ITO (Judicial)	0177-2650770	098050-20451	v.k.sood@hotmail.com

11.8 High Court Cell in the O/o CCIT (CCA) NWR

In NWR the ITO High Court Cell, is generally available in

- Court No 7, in Punjab and Haryana High Court and
- On second floor in Room No 203, CR Building, Phone 2725928.

Sr. No.	CCIT Charge	CIT Charge	Name/ Address/ Tel. No./ Mob. No./Fax No./Email. ID of the Designated Officer appointed in consequence of CBDT Member's Letter No. DGIT(L&R)/ Member (A&J)/ Delay/SLP/2010-11 dated 14 June 2010			
19.	CCIT CHANDIGARH					

While there is no ITO High Court Cell presently, Shri Vinod Kaushik is Inspector and is available at cell no 9888336930.

11.9 High Court Cell in the O/o CCIT (CCA) Shimla for Himachal Pradesh High Court

Sr. No.	CCIT Charge	CIT Charge	Name/ Address/ Tel. No./ Mob. No./Fax No./Email. ID of the Designated Officer appointed			
19.	CCIT SHIMLA					

11.10 High Court Cell in the O/o CCIT (CCA) Amritsar for J&K High Court

Sr. No.	CCIT Charge	CIT Charge	Name/ Address/ Tel. No./ Mob. No./Fax No./Email. ID of the Designated Officer appointed			
19.	CCIT Amritsar					

12 Directorate of Income Tax L&R Numbers

Sr. No.	CCIT Charge	Address/ Tel. No./ Mob. No./Fax No./Email. ID			
1.	DGIT (L&R)	Room No 309	011-23379421		
2	DIT-1	Room No 306	011-23378302		
3.	Addl Dir -1	Room No 301 D	011-23378627		
4	DCIT 1 Supreme Court Cell	Room No 317 Drum Shaped Building IP Estate New Delhi -2	011-23379215		
5	DCIT 2 Supreme Court Cell		011-23379550	Skitd58@gmail.com	
6	ITO Supreme Court Cell		011-23379550		

13 CAS or Central Agency Section Numbers

Sr. No.	AGA AOR	Address/ Tel. No./ Mob. No./Fax No./Email. ID			
1.	B G Balram Das	Room No 124 Supreme Court Compound New Delhi -1	011-23381304		

14 CIT Judicial North Numbers

Sr. No.	CIT (J)	Address/ Tel. No./ Mob. No./Fax No./Email. ID			
1.	CIT J	Himalini Kashyap	Room No 317B 3 rd Floor CR Building ITO, IP Estate New Delhi -2	011-23378863 011 23379308 Fax	
2	Addl CIT (J)	Jayant kumar		011-23370469	JK1989irs@yahoo.co.in

15 A Sample 260A and SLP Filing

Sample 260 A and SLP Filings

15.1 Sample 260 A filing before P&H High Court**IN THE HIGH COURT OF PUNJAB & HARYANA,
CHANDIGARH**

I.T. Appeal No. _____ of 2009

The Commissioner Of Income Tax
Chandigarh **(Appellant)****Versus**
M/s PZ Pvt. Ltd.
Chandigarh **(Respondent)**

Assessment Year 2006-07

<u>LIST OF ENCLOSURES:</u>			
S.No.	Description of Document	Date	Pages
1	Application u/s 151 CPC Seeking exemption	31.08.09	A-1, A-2
2.	List of events	31.08.2009	1
3.	Affidavit of CIT Chandigarh.	31.08.2009	2-3
4.	Appeal u/s 260A of the I.T. Act, 1961	31.08.2009	4-7
5.	True copy of A.O.'s order u/s 143(3) of the Income tax Act, 1961 (Annexure A-1)	31.03.2008	8-14
6.	True copy of A.O.'s order u/s 271(1)(c) of the Income tax Act, 1961 (Annexure A-2)	30.09.2008	15-27
7.	True copy of CIT(A)'s order (Annexure A-3)	28.11.2008	28-30
8.	True copy of ITAT's order (Annexure A-4)	24.04.2009	31-38
9.	Vakalatnama of Standing Counsel	31.08.2009	39-40

Note: - Whether caveat petition has been filed in the case? NoCHANDIGARH
DATED: 31.08.2009SIGNATURE
of Appellant

ADVOCATE'S

Counsel

**IN THE HIGH COURT OF PUNJAB & HARYANA,
CHANDIGARH**

I.T. Appeal No. _____ of 2009

The Commissioner Of Income Tax
Chandigarh

(Appellant)

Versus

M/s P Z Pvt. Ltd.
Chandigarh

(Respondent)

Assessment Year : **2006-07**

LIST OF EVENTS:

Date	Events
29.11.2006	Return declaring a loss of Rs 5396517/- was filed on 29.11.2006
31.03.2008	Order u/s 143(3) of the Income Tax act, 1961 was passes by the Assessing Officers
30.09.2008	Order u/s 271(1)(c) of Income Tax Act, 1961 was passed by the Assessing Officers
28.11.2008	Commissioner of Income Tax (Appeals) passed the order u/s 250(6) of the Income Tax Act, 1961 deleted the penalty imposed by A.O.
24.04.2009	The Hon'ble ITAT, Chandigarh dismissed the appeal of the revenue.

No appeal in this case is pending before the Hon'ble High Court of Punjab & Haryana.

CHANDIGARH
DATED: 31.08.2009

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Commissioner of Income Tax-I
Chandigarh.

**IN THE HIGH COURT OF PUNJAB & HARYANA,
CHANDIGARH**

I.T. Appeal No. _____ of 2009

The Commissioner Of Income Tax
Chandigarh

(Appellant)

Versus
M/s P Z Pvt. Ltd.
Chandigarh

(Respondent)

Assessment Year : **2006-07**

Affidavit of Shri _____ Commissioner of Income Tax Chandigarh in the case of **M/s. P Z Pvt. Ltd.**, Chandigarh.

I, _____ Commissioner of Income Tax, Chandigarh, do hereby solemnly affirm and declare:-

1. That the applicant is filling the accompanying Income Tax Appeal under section 260A of Income Tax Act, 1961 against the order of INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH, BENCH 'A' PASSED IN ITA No. _____ chd/2009 DATED _____ FOR THE ASSTT. YEAR ____ in the case of **M/S P Z Pvt. Ltd.**, Chandigarh.
2. That the order of the Hon'ble Income Tax Appellate Tribunal refer to (1) above was served upon the Appellant on _____. Thus limitation of file appeal under section 260A of Income Tax Act, 1961, Expires on _____. The appeal is filled in time.
3. That on the facts and circumstances of the case and in law the hon'ble ITAT has erred in dismissing the appeal of the revenue and upholding the order of the Id. CIT(A) primarily on the ground that there was no intention of the assessee has not been set off against any income. Besides, no benefit has been claimed by the assessee on the account of any loss shown by virtue of claim of bad debts. That the Hon'ble ITAT has Erred in confirming the cancellation of the penalty imposed under Section 271(1)(C) of Income Tax Act, 1961.
4. That the appeal Attached to the affidavit contains the true facts which are in accordance with the facts on records of this Office.

DATED: 31.08.2009
PLACE: CHANDIGARH

(_____)
Commissioner of Income Tax
Chandigarh.

VERIFICATION

I, _____ the above noted deponent do hereby solemnly affirm the contents of my above declaration are true to the best of my knowledge derived from the official record. That it conceals nothing and that no part of it is false.

DATED: 31.08.2009
PLACE: CHANDIGARH

(_____)
Commissioner of Income Tax,
Chandigarh.

to the company as the claim of losses expired due to closure of business. Besides that there was no intention of assessee to evade tax as even the loss shown by the assessee has not been set off against any income and no benefit has been claimed by the assessee on the account of any loss shown by virtue of claim of bad debts.

(True Copy of CIT(Appeals)'s order in Appeal No. P/08-09 dated 28.11.2008 against order under section 271(1)(C) of Income Tax Act, 1961, is attached as per Annexure 'A-3').

- 3.) The department filed 2nd appeal before the Hon'ble ITAT which has upheld the order of the Id.CIT(A) by agreeing with his observations that no benefits has accrued to the company as the claim of losses expired due to closure of business. Besides that there was no intention of the assessee to evade tax as even the loss shown by the assessee has not been set off against any income as no benefits has been claimed by the assessee on account of any loss shown by virtue of claim of bad debts.

(Copy of ITAT's order in ITA No. Chd/2009 and ITA No. /Chd/2009 dated 24.04.2009 is attached as per Annexure 'A-4')

- 4.) The decision of the Hon'ble ITAT s not acceptable. The assessee has created bad debts only for the purpose of enhancing losses and it was has been held in 56 ITD 307(Del) that a bad debts written off could be disallowed and not a good debts. The effort has been only to reduce the tax obligation by the assessee. Further this attempt by assessee results in loss of revenue and as such this action is subject to penal provisions of I.T.Act, 1961 {explanation 4 of sub section (a) of Sec.271(1)(C)} and for this reliance has been placed on 306 ITR 277(SC) in case of UO Vs Dharmendra Textiles. The following substantial question of law arises from the order of Hon'ble ITAT:

“ Whether on facts and in circumstances of the case, the Hon'ble ITAT was justified in law in upholding the order of the first appellate authority canceling the penalty u/s 271(1)(C) of the Income Tax Act, 1961 especially when the loss declared was disallowed and the assessee was assessed to taxable income?”

- 5.) The order of ITAT was received by this office on **11.05.2009**. The limitation to file appeal under section 260-A of Income Tax Act, 1961 expires on **07.09.2009**. Thus, the appeal is being filed in the time.
- 6.) It, is therefore, respectfully prayed that the Hon'ble High Court would be pleased to formulate the substantial question of law referred to above and/or any other substantial question of law, as the Hon'ble Court may deem fit in view of the facts and circumstances of the case. It is further prayed that the appeal be allowed by quashing the impugned order passed by the Tribunal.

DATED: 31.08.2009
PLACE: CHANDIGARH

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Commissioner of Income Tax
Chandigarh.

15.2 Sample SLP filing before Hon'ble Supreme Court

Sample SLP Filing

IN THE SUPREME COURT OF INDIA

**CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION**

SPECIAL LEAVE PETITION (Civil) No. _____ OF 2010

WITH PRAYER FOR INTERIM RELIEF

BETWEEN:

Position of the Parties

In the High Court.

In this Court

Commissioner Income Tax-

Appellant

Petitioner

AND

Respondent

Contesting

Respondent

To

The Hon'ble Chief Justice of India
And His Companion Justices of the
Supreme Court of India,

The Humble petition of the
Petitioners above named.

MOST RESPECTFULLY SHOWETH:

1 The petitioner above named respectfully submits this petition seeking special Leave to appeal from the final order dated _____ of the High Court of Judicature at Bombay in Income Tax Appeal No. _____ wherein, the Hon'ble High Court dismissed the Appeal filed by the petitioner by relying upon the judgment reported in 301 ITR 191 (Bom.) CIT Vs. Manjara Shetkari Sahakari Sakhar Karkhana Ltd.

2 QUESTIONS OF LAW

The following important question of law of general public importance arises for the consideration of this Hon'ble court in the instant Special Leave Petition:

a Whether the Hon'ble High Court was justified in holding that the provisions of Sec.40 (2) (b) of the income Tax Act are not applicable to payment made by the cooperative society to members towards purchase price of cane supplied.

- b Whether sugarcane price paid to members and non- members over and above the statutory minimum prices is not excessive and unreasonable and whether such payment is wholly and exclusively for the purpose of business and allowable u/s 37(1) of the Income Tax Act.
- c Whether the Hon'ble High Court was justified in holding that Khodki Charges are incurred for Business purpose and hence the said expenses are allowable.
- d Whether the Hon'ble High court was justified in holding that sale of sugar at concessional rates to members is not a diversion of profit, when restricted to members only.

3. DECLARATION IN TERMS OF RULE 4(2)

The petitioner states that he has not filed any other petition seeking leave to appeal from the impugned judgment and Order.

4. DECLARATION IN TERMS OF RULE 6

The annexures produced along with the special leave petition are true copies of the documents which formed part of the records of the case in the Courts below against whose Order the Leave to appeal is sought for in this petition.

5. GROUNDS

The petitioner submits that leave to appeal is sought for on the following grounds:

- i The judgment of the Hon'ble High Court is erroneous, against law, the facts and circumstances of the case and statutory provisions.
- ii The Hon'ble High Court ought to have seen that excessive cane price paid for sugarcane to members u/s 40A (2) (b) is nothing but the distribution of surplus or in the nature of dividend income which is otherwise an application of income and cannot be allowable as expenditure relating to business.
- iii The Hon'ble High Court ought to have seen that additional cane price paid to non-members was rightly disallowed u/s 37(1) of the Act as the quantum of profit is getting devaluated in the process of final payment of sugarcane price to the extent of such additional payment representing in the nature of profit to non- members is non- business expenditure.
- iv The Hon'ble High Court ought to have seen that the final price paid by the assessee inclusive of profit element which is ultimately declared by the commissioner of sugar and the differential amount between actual price paid to non-member over SMP cannot be said to be allowable business expenditure u/s 37(1) of the Income Tax Act.
- v The Hon'ble High Court ought to have seen that this Hon'ble Court in Shri Malprabha Coop Sugar Factory Ltd. Vs Union of India & Ors. (1994) SSC 648 has held that additional cane price paid in Maharashtra is of a profit sharing nature.
- vi The Hon'ble High Court ought to have seen that in the relied upon case of CIT Vs. Manjara Shetkari SSK Ltd. 301 ITR 191, by referring to the judgment of this Hon'ble Court in Maharashtra RSSK Sangh Ltd. Vs. State of Maharashtra held that final cane price paid by

assessee as per SAP fixed by the state Government cannot be said to be excessive or appropriation of profit/bonus and consequently no disallowance could be made on that behalf ; however, the issue involved in the present case is not whether SAP is binding or not but whether for that reason alone, the additional cane price would cease to be sharing/appropriation of profit.

- vii The Hon'ble High Court failed to see that payment of Khodki charges to the cultivators for the purpose of cleaning the field after the sugarcane is cut, could have been made by the society only after sending a proposal in this regard which has to be cleared by the Commissioner of Sugar.
- viii The Hon'ble High Court failed to see that sale of sugar at concessional rate to members is distribution of profits.
- ix The Hon'ble High Court Ought to have been that CBDT Circular No. 117 dated 22.08.1973 is not applicable to the issue to taxability of concessional price, but relates to rebate on purchase and not with sale at concessional price. SLP (C) No. 15638/09 CIT Aurangabad Vs. _____ on the same issue is pending consideration of this Hon'ble Court.

6. GROUND FOR INTERIM RELIEF:

The Hon'ble High Court , by the impugned judgment, has dismissed the appeal filed by the petitioner by relying upon the judgments of the Hon'ble High Court in CIT Vs. Manjara Shetkari Sahakari Sakhar karkhana Ltd. (2008) 30 ITR 191 and judgment dated 30.06.2009 in ITA No. 930/08, CIT Vs, Kisanveer Satar Sakar Karkhana Ltd. Similar SLP (C) No. 14577/08, SLP (C) No. 7044/09 and batch are pending consideration of this Hon'ble Court. Special Leave petition has also been filed from relied upon judgment in CIT Vs. Manjara Shetkari Sahakari Sakhar Karkhana Ltd. (2008) 30ITR 191. In view of the substantial question of law involved, and as the instant case involved substantial revenue and in view of the ground taken in the Special Leave Petition, if the impugned judgment is not stayed pending decision in the instant Special Leave Petition in this Hon'ble Court, it will lead to grave and irreparable loss. The balance of convenience lies in the favour of the petitioner.

7. MAIN PRAYER

It is, therefore, just and necessary, and the petitioner respectfully prays that this Hon'ble Court may be pleased to:-

- i grant special leave under Article 136 of the Constitution of India to appeal from the final judgment and order dated 30.06.2009 of the High Court of Judicature at Bombay in Income Tax Appeal No. _____ of 2007; and,
- ii pass such further or other order or orders as may be just and necessary under the circumstances of the case.

8. INTERIM RELIEF

The petitioner respectfully prays that this Hon'ble Court may be pleased to:

- i stay the operation and implementation of the final judgment and Order dated _____ of the High Court of Judicature at Bombay in Income Tax Appeal No. ____ of 2007
- ii pass an ad interim ex-parte stay in terms of prayers (i) above pending notice to the respondents;
- iii make it absolute after notice to the respondent, and,
- iv pass such further or other order or orders as may be just and necessary under the circumstances of the case.

Filed by

Filed By

Advocate
New Delhi

Advocate for the petitioner
Filed on: 2010

16 National Litigation Policy released on 24 June 2010

National Litigation Policy Document

NATIONAL LITIGATION POLICY

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I. INTRODUCTION

Whereas at the National Consultation for Strengthening the Judiciary toward Reducing Pendency and Delays held on the 24th and 25th October, 2009 the Union Minister for Law and Justice, presented resolutions which were adopted by the entire Conference unanimously.

And Wherein the said Resolution acknowledged the initiative undertaken by the Government of India to frame a National Litigation Policy with a view to ensure conduct of responsible litigation by the Central Government and urges every State Government to evolve similar policies.

The National Litigation Policy is as follows:-

I. THE VISION/MISSION

1. The National Litigation Policy is based on the recognition that Government and its various agencies are the pre-dominant litigants in courts and Tribunals in the country. Its aim is to transform Government into an Efficient and Responsible litigant. This policy is also based on the recognition that it is the responsibility of the Government to protect the rights of citizens, to respect fundamental rights and those in charge of the conduct of Government litigation should never forget this basic principle.

“EFFICIENT LITIGANT” MEANS

- Ø Focusing on the core issues involved in the litigation and addressing them squarely.
- Ø Managing and conducting litigation in a cohesive, coordinated and time-bound manner.
- Ø Ensuring that good cases are won and bad cases are not needlessly persevered with.
- Ø A litigant who is represented by competent and sensitive legal persons: competent in their skills and sensitive to the facts that

Government is not an ordinary litigant and that a litigation does not have to be won at any cost.

“RESPONSIBLE LITIGANT” MEANS

- Ø That litigation will not be resorted to for the sake of litigating.
- Ø That false pleas and technical points will not be taken and shall be discouraged.
- Ø Ensuring that the correct facts and all relevant documents will be placed before the court.
- Ø That nothing will be suppressed from the court and there will be no attempt to mislead any court or Tribunal.

2. 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.
3. The purpose underlying this policy is also to reduce Government litigation in courts so that valuable court time would be spent in resolving other pending cases so as to achieve the Goal in the National Legal Mission to reduce average pendency time from 15 years to 3 years. Litigators on behalf of Government have to keep in mind the principles incorporated in the National mission for judicial reforms which includes identifying bottlenecks which the Government and its agencies may be concerned with and also removing unnecessary Government cases. Prioritisation in litigation has to be achieved with particular emphasis on welfare legislation, social reform, weaker sections and senior citizens and other categories requiring assistance must be given utmost priority.
4. The Stakeholders:
 - A) In ensuring the success of this policy, all stake holders will have to play their part – the Ministry of Law & Justice, Heads of various Departments, Law Officers and Government Counsel, and individual officers all connected with the concerned litigation. The success of this policy will depend on its strict implementation. Nodal Officers will be appointed by Heads of Department.
“Head of Department” means the administrative person ultimately responsible for the working of the Department or Agency, as the case may be.
 - B) The appointment of Nodal Officers must be done carefully. The Nodal Officer has a crucial and important role to play in the overall and specific implementation of this Policy, including but not limited to the references made hereinafter. Every Ministry must be mindful of the responsibility to appoint proper Nodal Officers who have legal background and expertise. They must be in a position to pro-actively manage litigation. Whilst making such appointments, care must be taken to see that there is continuity in the incumbents holding office. Frequent changes in persons holding the position must be avoided. Nodal Officers must also be subjected to training so that they

are in a position to understand what is expected of them under the National Litigation Policy.

- C) Accountability is the touch-stone of this Policy. Accountability will be at various levels; at the level of officers in charge of litigation, those responsible for defending cases, all the lawyers concerned and Nodal Officers. As part of accountability, there must be critical appreciation on the conduct of cases. Good cases which have been lost must be reviewed and subjected to detailed scrutiny to ascertain responsibility. Upon ascertainment of responsibility, suitable action will have to be taken. Complacency must be eliminated and replaced by commitment.
- D) There will be Empowered Committees to monitor the implementation of this Policy and accountability. The Nodal Officers and the Heads of Department will ensure that all relevant data is sent to the Empowered Committees. The Empowered Committee at the National level shall be chaired by the Attorney General for India and such other members not exceeding six in number as may be nominated by the Ministry of Law with an Additional Secretary to be the Member Secretary. There will be four Regional Empowered Committees to be chaired by an Additional Solicitor General nominated by the Ministry of Law. It shall include all the Assistant Solicitors General of the Region and such other members including a Member Secretary nominated by the Ministry of Law. The Regional Committees shall submit monthly reports to the National Empowered Committee which shall in turn submit Comprehensive Reports to the Ministry of Law. It shall be the responsibility of the Empowered Committee to receive and deal with suggestions and complaints including from litigants and Government Departments and take appropriate measures in connection therewith.

II. GOVERNMENT REPRESENTATION

- A) While it is recognized that Government Panels are a broad based opportunity for a cross section of lawyers, Government Panels cannot be vehicles for sustaining incompetent and inefficient persons. Persons who recommend names for inclusion on the Panel are requested to be careful in making such recommendations and to take care to check the credentials of those recommended with particular reference to legal knowledge and integrity.
- B) Screening Committees for constitution of Panels will be introduced at every level to assess the skills and capabilities of people who are desirous of being on Government Panels before their inclusion on the Panel. The Ministry of Law shall ensure that the constitution of Screening Committees will include representatives of the Department concerned. The Screening Committees will make their recommendations to the Ministry of Law. Emphasis will be on identifying areas of core competence, domain expertise and areas of specialisation. It cannot be assumed that all lawyers are capable of conducting every form of litigation.

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- C) Government advocates must be well equipped and provided with adequate infrastructure. Efforts will be made to provide the agencies which conduct Government litigation with modern technology such as computers, internet links, etc. Common research facilities must be made available for Government lawyers as well as equipment for producing compilations of cases.
 - D) Training programs, seminars, workshops and refresher courses for Government advocates must be encouraged. There must be continuing legal education for Government lawyers with particular emphasis on identifying and improving areas of specialization. Law schools will be associated in preparing special courses for training of Government lawyers with particular emphasis on identifying and improving areas of specialization. Most importantly, there must be an effort to cultivate and instill values required for effective Government representation.
 - E) National and regional conferences of Government advocates will be organized so that matters of mutual interest can be discussed and problems analysed.
 - F) Advocates on Record must play a meaningful role in Government litigations. They cannot continue to be merely responsible for filing appearances in Court. A system of motivation has to be worked out for Government advocates under which initiative and hard work will be recognised and extraordinary work will be rewarded. This could be in the form of promotions or out of turn increments.
 - G) It will be the responsibility of all Law Officers to train Panel lawyers and to explain to them what is expected of them in the discharge of their functions.
 - H) Panels will be drawn up of willing, energetic and competent lawyers to develop special skills in drafting pleadings on behalf of Government. Such Panels shall be flexible. More and more advocates must be encouraged to get on to such Panels by demonstrating keenness, knowledge and interest.
 - I) Nodal Officers will be responsible for active case management. This will involve constant monitoring of cases particularly to examine whether cases have gone “off track” or have been unnecessarily delayed.
 - J) Incomplete briefs are frequently given to Government Counsel. This must be discontinued. The Advocates-on-Record will be held responsible if incomplete briefs are given. It is the responsibility of the person in charge of the Central Agency concerned, to ensure that proper records are kept of cases filed and that copies retained by the Department are complete and tally with what has been filed in Court. If any Department or Agency has a complaint in this regard it can complain to the Empowered Committee.
 - K) There should be equitable distribution of briefs so that there will be broad based representation of Government. Additional Solicitors General will be associated with regard to distribution of briefs in the High Court. Complaints that certain Panel advocates are being preferred in the matter of briefing will be inquired into seriously by the Empowered Committee.
 - L) Government lawyers are expected to discharge their obligations with a sense of responsibility towards the court as well as to Government. If concessions are made on issues of fact or law, and it is found that such concessions were not justified, the matter will be reported to the Empowered Committee and remedial action would follow.

- M) While Government cannot pay fees which private litigants are in a position to pay, the fees payable to Government lawyers will be suitably revised to make it remunerative. Optimum utilisation of available resources and elimination of wastage will itself provide for adequate resources for revision of fees. It should be ensured that the fees stipulated as per the Schedule of Fees should be paid within a reasonable time. Malpractice in relation to release of payments must be eliminated.

III. ADJOURNMENTS

- A) Accepting that frequent adjournments are resorted to by Government lawyers, unnecessary and frequent adjournments will be frowned upon and infractions dealt with seriously.
- B) In fresh litigations where the Government is a Defendant or a Respondent in the first instance, a reasonable adjournment may be applied for, for obtaining instructions. However, it must be ensured that such instructions are made available and communicated before the next date of hearing. If instructions are not forthcoming, the matter must be reported to the Nodal Officer and if necessary to the Head of the Department.
- C) In Appellate Courts, if the paper books are complete, then adjournments must not be sought in routine course. The matter must be dealt with at the first hearing itself. In such cases, adjournments should be applied for only if a specific query from the court is required to be answered and for this, instructions have to be obtained.
- D) One of the functions of the Nodal Officers will be to coordinate the conduct of litigation. It will also be their responsibility to monitor the progress of litigation, particularly to identify cases in which repeated adjournments are taken. It will be the responsibility of the Nodal Officer to report cases of repeated and unjustified adjournments to the Head of Department and it shall be open to him to call for reasons for the adjournment. The Head of the Agency shall ensure that the Records of the case reflect reasons for adjournment, if these are repeated adjournments. Serious note will be taken of cases of negligence or default and the matter will be dealt with appropriately by referring such cases to the Empowered Committee. If the advocates are at fault, action against them may entail suspension/removal of their names from Government Panels.
- E) Cases in which costs are awarded against the Government as a condition of grant of adjournment will be viewed very seriously. In all such cases the Head of Department must give a report to the Empowered Committee of the reasons why such costs were awarded. The names of the persons responsible for the default entailing the imposition of costs will be identified. Suitable action must be taken against them.

IV. PLEADINGS / COUNTERS

- A) Suits or other proceedings initiated by or on behalf of Government have to be drafted with precision and clarity. There should be no repetition either in narration of facts or in the grounds.

- B) Appeals will be drafted with particular attention to the Synopsis and List of Dates which will carefully crystallise the facts in dispute and the issues involved. Slipshod and loose drafting will be taken serious note of. Defaulting advocates may be suspended/removed from the Panels.
- C) Care must be taken to include all necessary and relevant documents in the appeal paper book. If it is found that any such documents are not annexed and this entails an adjournment or if the court adversely comments on this, the matter will be enquired into by the Nodal Officer and reported to the Head of Department for suitable action.
- D) It is noticed that Government documentation in court is untidy, haphazard and incomplete, full of typing errors and blanks. Special formats for Civil Appeals, Special Leave Petitions, Counter Affidavits will be formulated and circulated by way of guidance and instruction as a Government Advocates Manual. This will include not only contents but also the format, design, font size, quality of paper, printing, binding and presentation. It is the joint responsibility of the Drafting Counsel and the Advocate on Record to ensure compliance.
- E) Counter Affidavits in important cases will not be filed unless the same are shown to and vetted by Law Officers. This should, however, not delay the filing of counters.

V. FILING OF APPEALS

- A) Appeals will not be filed against ex parte ad interim orders. Attempt must first be to have the order vacated. An appeal must be filed against an order only if the order is not vacated and the continuation of such order causes prejudice.
- B) Appeals must be filed intra court in the first instance. Direct appeals to the Supreme Court must not be resorted to except in extraordinary cases.
- C) Given that Tribunalisation is meant to remove the loads from Courts, challenge to orders of Tribunals should be an exception and not a matter of routine.
- D) In Service Matters, no appeal will be filed in cases where:
 - a) the matter pertains to an individual grievance without any major repercussion;
 - b) the matter pertains to a case of pension or retirement benefits without involving any principle and without setting any precedent or financial implications.
- E) Further, proceedings will not be filed in service matters merely because the order of the Administrative Tribunal affects a number of employees. Appeals will not be filed to espouse the cause of one section of employees against another.
- F) Proceedings will be filed challenging orders of Administrative Tribunals only if
 - a) There is a clear error of record and the finding has been entered against the Government.

- b) The judgment of the Tribunal is contrary to a service rule or its interpretation by a High Court or the Supreme Court.
- c) The judgment would impact the working of the administration in terms of morale of the service, the Government is compelled to file a petition; or
- d) If the judgment will have recurring implications upon other cadres or if the judgment involves huge financial claims being made.
- G) Appeals in Revenue matters will not be filed:
 - a) if the stakes are not high and are less than that amount to be fixed by the Revenue Authorities;
 - b) If the matter is covered by a series of judgments of the Tribunal or of the High Courts which have held the field and which have not been challenged in the Supreme Court;
 - c) where the assessee has acted in accordance with long standing industry practice;
 - d) merely because of change of opinion on the part of jurisdictional officers.
- H) Appeals will not be filed in the Supreme Court unless:
 - a) the case involves a question of law;
 - b) If it is a question of fact, the conclusion of the fact is so perverse that an honest judicial opinion could not have arrived at that conclusion;
 - c) Where public finances are adversely affected;
 - d) Where there is substantial interference with public justice;
 - e) Where there is a question of law arising under the Constitution;
 - f) Where the High Court has exceeded its jurisdiction;
 - g) Where the High Court has struck down a statutory provision as ultra vires;
 - h) Where the interpretation of the High Court is plainly erroneous.
- I) In each case, there will be a proper certification of the need to file an appeal. Such certification will contain brief but cogent reasons in support. At the same time, reasons will also be recorded as to why it was not considered fit or proper to file an appeal.

VI. LIMITATION : DELAYED APPEALS

- A) It is recognized that good cases are being lost because appeals are filed well beyond the period of limitation and without any proper explanation for the delay or without a proper application for condonation of delay. It is recognized that such delays are not always bonafide particularly in cases where high revenue stakes are involved.
- B) Each Head of Department will be required to call for details of cases filed on behalf of the Department and to maintain a record of cases which have been dismissed on the ground of delay. The Nodal Officers must submit a report in every individual case to the Head of Department explaining all the reasons for such delay and identifying the persons/causes responsible. Every such case will be investigated and if it is found that the delay was not bonafide, appropriate action must be taken. Action will be such that it operates as a deterrent for unsatisfactory work and malpractices in the conduct of Government litigation. For this purpose, obtaining of the data and fixing of

- responsibility will play a vital role. Data must be obtained on a regular basis annually, bi-monthly or quarterly.
- C) Applications for condonation of delay are presently drafted in routine terms without application of mind and resorting to word processed “boiler plate.” This practice must immediately stop. It is responsibility of the drafting counsel to carefully draft an application for condonation of delay, identifying the areas of delay and identifying the causes with particularity. Drafting advocates who fail to adhere to this may be suspended/removed from the Panel.
- D) Every attempt must be made to reduce delays in filing appeals/applications. It shall be responsibility of each Head of Department to work out an appropriate system for elimination of delays and ensure its implementation.
- E) Belated appeals filed beyond the period of limitation cannot be approached merely from the point of view that courts have different approaches towards condonation of delay. Since some courts liberally grant condonation of delay, a general apathy seems to have taken over. The tendency on the part of Government counsel to expect leniency towards Government for condonation of delay must be discouraged. The question of limitation and delay must be approached on the premise that every court will be strict with regard to condonation of delay.

VII. ALTERNATIVE DISPUTE RESOLUTION/ ARBITRATION

- A) More and more Government departments and PSUs are resorting to arbitration particularly in matters of drilling contracts, hire of ships, construction of highways, etc. Careful drafting of commercial contracts, including arbitration agreements must be given utmost priority. The Ministry of Law and Justice recognizes that it has a major role to play in this behalf.
- B) The resort to arbitration as an alternative dispute resolution mechanism must be encouraged at every level, but this entails the responsibility that such an arbitration will be cost effective, efficacious, expeditious, and conducted with high rectitude. In most cases arbitration has become a mirror of court litigation. This must be stopped.
- C) It is recognized that the conduct of arbitration at present leaves a lot to be desired. Arbitrations are needlessly dragged on for various reasons. One of them is by repeatedly seeking adjournments. This practice must be deplored and stopped.
- D) The Head of Department will call for the data of pending arbitrations. Copies of the roznama, etc. (record of proceedings) must be obtained to find out why arbitrations are delayed and ascertain who is responsible for adjournments. Advocates found to be conducting arbitrations lethargically and inefficiently must not only be removed from the conduct of such cases but also not briefed in future arbitrations. It shall be the responsibility of the Head of Department to call for regular review meetings to assess the status of pending arbitration cases.
- E) Lack of precision in drafting arbitration agreements is a major cause of delay in arbitration proceedings. This leads to disputes about appointment of arbitrators and arbitrability which results in prolonged litigation even before

the start of arbitration. Care must be taken whilst drafting an arbitration agreement. It must correctly and clearly reflect the intention of the parties particularly if certain items are required to be left to the decision of named persons such as engineers are not meant to be referred to arbitration.

- F) Arbitration agreements are loosely and carelessly drafted when it comes to appointment of arbitrators. Arbitration agreements must reflect a well defined procedure for appointment of arbitrators. Sole arbitrator may be preferred over a Panel of three Arbitrators. In technical matters, reference may be made to trained technical persons instead of retired judicial persons.
- G) It is also found that certain persons are “preferred” as arbitrators by certain departments or corporations. The arbitrator must be chosen solely on the basis of knowledge, skill and integrity and not for extraneous reasons. It must be ascertained whether the arbitrator will be in a position to devote time for expeditious disposal of the reference.
- H) It is found that if an arbitration award goes against Government it is almost invariably challenged by way of objections filed in the arbitration. Very often these objections lack merit and the grounds do not fall within the purview of the scope of challenge before the courts. Routine challenge to arbitration awards must be discouraged. A clear formulation of the reasons to challenge Awards must precede the decision to file proceedings to challenge the Awards.

VIII. SPECIALISED LITIGATION

- A) Proceedings seeking judicial review including in the matter of award of contracts or tenders.
Such matters should be defended keeping in mind Constitutional imperatives and good governance. If the proceedings are founded on an allegation of the breach of natural justice and it is found that there is substance in the allegations, the case shall not be proceeded with and the order may be set aside to provide for a proper hearing in the matter. Cases where projects may be held up have to be defended vigorously keeping in mind public interest. They must be dealt with and disposed off as expeditiously as possible.
- B) Cases involving vires, or statutes or rules and regulations.
In all such cases, proper affidavits should be filed explaining the rationale between the statute or regulation and also making appropriate averments with regard to legislative competence.
- C) **PUBLIC INTEREST LITIGATIONS (PILS)**
Ø Public Interest Litigations must be approached in a balanced manner. On the one hand, PILs should not be taken as matters of convenience to let the courts do what Government finds inconvenient. It is recognized that the increase in PILs stems from a perception that there is governmental inaction. This perception must be changed. It must be recognized that several PILs are filed for collateral reasons including publicity and at the instance of third parties. Such litigation must be exposed as being notbonafide.

Ø PILs challenging public contracts must be seriously defended. If interim orders are passed stopping such projects then appropriate conditions must be insisted upon for the Petitioners to pay compensation if the PIL is ultimately rejected.

D) PSU LITIGATIONS

Ø Litigation between Public Sector Undertakings inter se between Government Public Sector Undertakings is causing great concern. Every effort must be made to prevent such litigation. Before initiating such litigation, the matter must be placed before the highest authority in the public sector such as the CMD or MD. It will be his responsibility to endeavour to see whether the litigation can be avoided. If litigation cannot be avoided, then alternative dispute resolution methods like mediation must be considered. Section 89 of the Code of Civil Procedure must be resorted to extensively.

IX. REVIEW OF PENDING CASES

- A) All pending cases involving Government will be reviewed. This Due Diligence process shall involve drawing upon statistics of all pending matters which shall be provided for by all Government departments (including PSUs). The Office of the Attorney General and the Solicitor General shall also be responsible for reviewing all pending cases and filtering frivolous and vexatious matters from the meritorious ones.
- B) Cases will be grouped and categorized. The practice of grouping should be introduced whereby cases should be assigned a particular number of identity according to the subject and statute involved. In fact, further sub-grouping will also be attempted. To facilitate this process, standard forms must be devised which lawyers have to fill up at the time of filing of cases. Panels will be set up to implement categorization, review such cases to identify cases which can be withdrawn. These include cases which are covered by decisions of courts and cases which are found without merit withdrawn. This must be done in a time bound fashion.

17 Discussion Paper for Seminar on "Streamlining of Filing of Appeals in High Court and Supreme Court"

Discussion Paper

18 INSTRUCTION NO. 4/2011 [F. NO. 279/MISC./M-20/2011-ITJ], DATED 9-3-2011

Several instructions and directions have been issued by the 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 repeated displeasure expressed by the Hon'ble Supreme Court on the present state of affairs, Ld. Attorney General for India 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 enclosed as per Annexure-A, for strict adherence by all concerned.

3.1 Responsibility to Ensure Timely Processing of Proposals – The CCIT and CIT concerned shall 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 the delay without proper explanation or due to negligence would be viewed adversely.

4. Institutional Mechanism for Processing Proposals for Appeals/ SLPs to the Supreme Court:

i. The CCIT (CCA)/CCIT, having jurisdiction over the station having Bench of the High Court, shall ensure a proper institutional mechanism for timely dissemination of certified/downloaded copy of High Court's order/judgment, whichever is available first, to CsIT having jurisdiction over respective cases.

ii. The CCIT (CCA)/CCIT, shall set-up a High Court Cell at each station within his jurisdiction where a Bench of the High Court is situated. Such cell shall be headed by a DCIT/ACIT/ITO (as decided by the 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 CCIT (CCA)/CCIT under intimation to the 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 CIT concerned without any delay. For outstation 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 CIT concerned immediately on a regular basis through personal delivery/e-mail/fax.

v. The Administrative 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 www.indiancourts.nic.in or www.court.nic.in where link of all High Courts are provided. An officer of the charge should be nominated for 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.

5. Processing of Proposals for Appeal/SLP on Receipt of the Order of High Court

The following important issues need to be noted in processing proposals for SLPs for due compliance:

i. For filing SLP, period of limitation of 90 days begins from the date of judgment/order of the High Court and not from the date of receipt of certified copy by the CIT.

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. While certified copy of order of the High Court is not a pre-requisite for filing appeal/SLP, the Departmental Counsels must be advised to make an application for a certified copy on the date of pronouncement of the order or on the following day. This action will be useful in the cases where ordinary copy of the High Court's order is not available immediately.

iv. 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.

v. In order to avoid delay, the CCIT/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.

vi. While assistance of the Assessing Officer and Range Head may be taken by the CIT, if necessary, the practice of obtaining scrutiny reports from them on receipt of the High Court's orders must be dispensed with because inputs of the Assessing Officer and Range Head on the scrutiny of relevant ITAT order obtained at the time of filing appeal under section 260A, or para-wise comments & counter affidavit in case of assessee's appeal, should be available in the judicial folder maintained in the office of the CIT.

vii. After due consideration, the proposal for SLP must be sent by the 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 alongwith the corrective action taken to prevent recurrence of delay in future.

viii. The revised Proforma B, enclosed as Annexure B to this instruction, duly filled-in alongwith one set of required documents annexed to it, should be sent with the proposal. The soft copy of annexures to proforma B should be sent in MS Word 2003/2007 program.

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 alongwith the Special Leave Petition to the respondent CIT or other respondent officer directly. The CIT or such other respondent officer, through his 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 alongwith 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 DIT (L&R) I or II as the case may be.

Processing of SLP Proposals in the Directorate of L&R

7. The 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 Commissioners of Income tax 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. The quality of proposal sent by the Commissioner, is extremely important for efficient and effective litigation management in the Department. It must 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.

All High Court orders which are against the revenue but found acceptable by the Commissioner will be put up to the jurisdictional Chief Commissioner within 15 days of the receipt 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 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 CIT on priority.

Monitoring Compliance of this Instruction

11. The DGIT (L&R) shall send a quarterly report to the Member (A&J), giving list of cases where the proposal for filing SLP was received beyond 40 days from the date of order/judgment of the High Court. Due dates of the quarterly reports are – 15th July, 15th October, 15th January and 15th April. The report shall indicate the CCIT region, the CIT charge and number of days of delay alongwith the action taken and/or proposed to be taken.

In the quarterly report, the DGIT (L&R) shall also report cases:

- i. Where SLP proposal received in the Directorate was sent to Ministry of Law beyond 25 days of receipt
- ii. Where vetting of draft SLP took more than 15 days
- iii. Where SLP was filed by the CAS after 30 days of vetting of the SLP

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 10-3-2011.

Note: Reference to CIT/CCIT in this instruction includes DIT/DGIT wherever applicable.

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 for various stages of the process is given below:

I. Time-Line to be observed in the office of the CIT:

S. No		No. of Days	Cumulative Days
1.	Date of pronouncement of the Judgment	0	
2.	Making application for certified copy of the judgment by the standing counsel	3	
3.	Obtaining copy of the judgment from web site	4	4
4.	Scrutiny of the judgment by the CIT to take a view to contest or accept the same	7	11
5.	CCIT's view & specific comment	3	14
6.	Preparation of proposal with annexure ++	3	17
7.	Transit to Directorate of Income tax (L&R)	4	21

++ : This job should begin as soon as CIT takes a view to propose SLP.

Timeline to be observed in the Directorate of Income Tax (L&R)

S. No		No. of Days	Cumulative Days
1.	Directorate of Income Tax (L&R)	15	36
2.	Member (A&J)	3	39
3.	Transit to MOL	2	41

II. Time line to be observed in the Ministry of Law/Central Agency Section (As per suggestion of Ld. ASG)

Sl. No		No. of Days	Cumulative Days
1.	Advice section of MOL	5	46
2.	Transit to CAS	2	48
3.	Marking to Law officer	2	50

4.	Advice by Law officer	7	57
5.	Transit to CAS	1	58
6.	IT unit of CAS (opening of file)	2	60
7.	Transit to drafting counsel	2	62
8.	Drafting of SLP	10	72
9.	Transit to the Directorate	2	74
10.	Vetting in Directorate	7	81
11.	Transit back to CAS	2	83
12.	Paper book preparation	5	88
13.	Affidavit/AOR	1	89
14.	Filing in Registry	1	90

The observance of timeline in the MOL and CAS will be monitored by the Ministry of Law other than step at Sl. No. 10 above which relates to the Directorate (L&R).

ANNEXURE – B

Revised Proforma for submission of proposal to file SLP

PROFORMA : B

1.	ITA No./WP No. of the Judgment	
2.	i. Name of the assessee	
	ii. Address of the assessee	
3.	Assessment Year(s) involved	
4.	(a) Aggregate of Tax effect on issues to be disputed.	
	(b) Is it below the limits prescribed in instruction on monetary limits (Instruction No. 3 of 2011 dtd 09/02/2011) for filling SLP	
	(c) If yes, please specify the exception provided in the instruction in which the	

	proposal is covered.	
5.	i. Date of High Court's Judgment/Order	
	ii. Date of making application for certified copy	
	iii. Date on which certified copy was ready for delivery **	
	iv. Date of receipt of certified copy **	
	v. Date of Limitation for filing SLP [To be calculated with reference to the date at 5(i) excluding the time taken between 5(ii) & 5(iii)]**	
	vi. If proposal to Directorate of Income-tax (L&R) is sent beyond 21 days from the date of order, reasons for delay	
6.	(a) Are the following documents, in one set of hard copy, enclosed ++	
	i. 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	Y/N
	iv. Copy of the order of CIT(A)	Y/N
	v. Copy of the Assessment Order	Y/N
	vi. Copy of all affidavits/documents filed in the case before the High Court	
	(b) Are the documents in 6(a)(i) to (vi) legible	Y/N
	(c) The soft copy of the documents 6(a)(i) to (vi) typed in MS Word 2003 or 2007 is sent in CD	Y/N
7.	Facts of the case in brief (in about 300	In the separate sheet

	words) :	
	(i) The note must indicate how CIT(A)/ITAT/HC has erred on fact or Law, instead of mere narration of course of events.	
	(ii) If the disputed issue under consideration is involved in other years, then status of litigation for such other years must be indicated. @	
8.	The 'substantial questions of law' to be proposed in the SLP.	
9.	(i) Whether the issue arises out of audit objection?	Y/N
	(ii) If yes, whether audit objection is included in Draft Para? Also state whether Audit objection has been accepted or not.	
	(iii) Is any prosecution proceeding pending or contemplated in the case on the issue on which the SLP is sought to be filed?	
10.	(a) If the judgment, to be contested, has relied upon another judgment, then a copy of the relied upon judgment & its present status of litigation, if ascertained.	The information relating to status of the relied upon judgment as indicated in (a) & (b) may be mentioned in the note to be enclosed as per Sl. No. 7 above
	(b) Has the relied upon judgment been accepted on merits or has not been accepted but not contested further on account of tax affect being less than the limit prescribed by the Board.	
11.	(i) Name and present communicable address of all the respondents against whom SLP is sought to be filed	

	(ii) E-mail addresses of all respondents	
12.	Communication details of CIT	
	(i) Name	
	(ii) Telephone Number	
	(iii) Fax number	
	(iv) Mobile number	
	(v) Official E-mail id	
13.	Specific comments of the CCIT for recommending SLP to be separately enclosed with the proposal for consideration of Board	

Signature

Name & designation of the CIT

Date :

Place :

**In case, proposal is being submitted on the basis of ordinary copy of the judgment, then these columns may be left blank and the certified copy should be forwarded as soon as received.

++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.

@The delay due to time taken in ascertaining the present status would be attributable to the CIT forwarding proposal without the same as this is very crucial to proceed further.

The CIT has to ensure that every page of the annexure is legible.

19 CBDT INSTRUCTION NO. 7 /2011 DATED 24-5-2011

CBDT'S Inst Regarding Standard operating Procedure on Filing of Appeals to High Court

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

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:

3. 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.

4. 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.

5. 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. Appeal effect should be particularly monitored by the CIT in the cases in which the ITAT has decide certain issues and set-aside/remanded back other issues to the AO. The set-aside issues must be decided on priority and entire appeal effect including decision on set aside issues should be through one order.
 - iii. The Range head shall keep a record of cases where the date of giving appeal effect is not shown in the scrutiny report and endeavor that the same is done within tow moths. Any pendency in this regard beyond two months should be reported to the CIT in the DO reporting monthly activities of the Range.
 - iv. 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.
 - v. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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 time frame 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.

13. 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.

14 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.

15. 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.

16. This Instruction shall apply in all the appeals being filed in High Courts and matters related thereto with effect from 1-6-2011.

17. Hindi version of instruction to follow

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

Yours faithfully,

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

Copy to:

1. The Chairman, Members and all other officers in CBDT of the rank of Under Secretary and above.
2. DIT(PR, PP & OL), Mayur Bhawan, New Delhi for printing in the quarterly Tax Bulletin and for circulation as per usual mailing list.
3. The Comptroller and Auditor General of India
4. The (Vigilance), Mayur Bhawan, New Delhi
5. The Joint Secretary & Legal Advisor, Ministry of Law & Justice, New Delhi
6. All Directors of Income Tax, New Delhi and DGIT(NADT), Nagpur
7. ITCC(3 copies)
8. The DIT(Systems), ARA Centre, Jhandewalan Extension, New Delhi

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

Annexure-I**TIMELINES FOR FILING APPEAL TO HIGH COURT**

Sl. No.	Stage	No of days	Total Time
1.	Receipt of ITAT order in the office of the 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.	2 days	3 days
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 AO 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 from 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 standing counsel for filing	15 days	112 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.	Name of address of the assessee	
ii.	PAN	
iii.	Assessment Year	
iv.	ITA No and date of the order	
v.	Date of receipt of the order in the office of CIT	
vi.	Who was the appellant (Please tick the applicable)	(i) Department or (ii) Assessee or (iii) Both in cross appeal/cross objections
vii.	Date of giving appeal effect	
viii.	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.	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 sparate appeals. Use Annexure, if required	
iii.	Whether it is combined order for more then one assessee/group casd?	Yes/No.
iv.	If yes, whether jurisdiction of all assessee 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.	

3. Details of issues on which relief allowed by ITAT

i.	<p>For each issue on which relief is allowed by the ITAT specify:-</p> <ul style="list-style-type: none"> • Issue involved before ITAT • Relevant page/para No. of <p>(i) Assessment order,</p> <p>(ii) CIT(A)'s order and</p> <p>(iii) ITAT's order</p> <p>(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 of Bonds, deduction under section 80IB etc)</p>	<p>(a)</p> <p>(b)</p> <p>(c)</p>
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 details 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 AO/status of appeal, if any.	
vi.	Has ITAT relied upon any judicial decision? If yes, has a copy been annexed or citation given in case of reported decision? (note: Whether the relied upon decision has been challenged in further appeal? If so, the present status may be given)	Yes/No/Not 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)

4. 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.	Due date for submission of report to Range head (33 days from the date of receipt of ITAT order in CIT office)	

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 A.O.

5. 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?
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.

6. 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 (48 days from the date of receipt of ITAT order in Cit office)	

Submitted to CIT, _____, _____ for kind consideration & further action.

Date: _____ Signature of the Range head

Place: _____ Name & Designation

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 09.02.2011, 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:

Name & Signature

Place:

Commissioner of Income-tax

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:

Name & Signature

Place:

Chief Commissioner of Income-tax

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:

Name & Signature

Place:

Commissioner of Income-tax

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 initialed.

Note of appearance:-

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 initialed 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

Sl.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/loading 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.....

Sl.No.	Name of Assessee	A.Y.	Date of order of Tribunal	ITA No.	Question of law raised.	Tax effect (Rs. in lacs)	Provision of the Income Tax Act involved	CCIT charge	CIT Charge

Format-II: Particulars of delayed appeals filed during the quarter ending....

Sl.No.	Name of Assessee	No. of days of delay	Tax effect involved (Rs. in lacs)	CCIT Region	CIT Charge	Name of the CIT	Reasons of Delay	Action taken

Matter pertaining to disposal of appeals by CIT (A)			
Sr. No.	Date/File No./Type of Communication	Subject	Remarks/Gist of instructions
1	17.08.2001 D.O.F.No.187/5/2001-ITA-I D.O. of Chairman to CCsIT	Jurisdiction of CIT (A)	-CIT (A) in post restructuring scenario have jurisdiction over all appeals in respect of cases falling within jurisdiction of income tax authority specified in the corresponding entry. -It also circulates the basic jurisdiction of each CIT(A) in post restructuring scenario. -If the pending appeals with any new CIT (A) does not fall with the new jurisdiction, same is to be transferred.
2	06.02.2002 F.No.187/1/2002-ITA-I Letter to all CCsIT from ITA-I	Rationalization of work load amongst Commissioners of Income Tax Act (Appeals)	-Letter reiterates the need for Maintaining the basic jurisdiction of CIT (A) as sent by Board with the letter of Chairman dated 17.08.2011 (sr. No. 1). -CCsIT have been given power to redistribute cases amongst CsIT (A) within their jurisdiction with a view to have even distribution of work load, under intimation to the Board.
3.	21.03.2002 F.No. 167/1/2002-ITA-I Letter to all CCsIT from ITA-I	Rationalization of workload amongst CIT (A)-Reg.	-In a multiple Chief Commissioners region, whenever appeals are to be transferred from one Chief Commissioner's region to another, such transfer should be effected on mutual consent of all the Chief Commissioner concerned.
4.	DGIT (L&R)/11(1)/CSA/R SW/2008-09 D.O. from Member A&J to all CCsIT	Timely submission of monthly statistics of disposal of appeals by CIT (A)	-It states that "Monthly Telegraphic Report of disposal and pendency of appeals with CIT (A)" sent by all CsIT (A) to Chief Statistical Advisor in O/o DGIT (L&R) to be discontinued and to be merged with new format of CAP-II. -It further states that until the new format of CAP-II is operationalised, CIT (A) will send the report in the same proforma which is a part of new CAP-II format. -The reports should be sent by due dated i.e. 7 th of following month in electronic format on Excel Sheet using enclosed proforma by e-mail at csa@incometaxindia.gov.in . -Till system stabilizes signed hard copies of the report in proforma may be continued to be sent to Chief Statistical Advisor. -In case a CIT (A) is holding additional Charge (S), monthly report for each charge should be sent separately.
5.	23.06.10 F.No. 279/1/2010/ITJ Letter to all CCIT/DGIT	Central Action Plan for F.Y. 2010-11 for disposal of appeals by CsIT (Appeals)	Communication lays down the Central Action Plan for F.Y. 2010-11 for disposal of appeals by CsIT (Appeals).

Procedure for Appointment of Standing Counsel/Special Counsel/Prosecution Counsel			
Sr. No.	Date/File No./Type of Communication	Subject	Remarks/Gist of instructions
1	30.08.07 F.N.279/Misc.145/2006-ITJ Instruction No. 08/2007	Standing Counsel- Revision of Schedule of fee payable to Standing Counsels for Income tax Department before various high Courts-appointment of Counsels-guidelines regarding	The instruction specifies : -Procedure of appointment of counsels and renewal of their term. -Requisite qualification and terms & conditions of their engagement . -The revised rate of fee & allowance payable to senior standing Counsel/standing Counsel/Jr. Standing Counsels.
2.	08.01.08 f.No.279/Misc.145/2006-ITJ All CCIT/DGIT	Standing Counsel- Revision of Schedule of fee payable to Standing Counsels for Income tax Department before various high Courts-appointment of Counsels-guidelines regarding	It specifies that proposal for fresh engagement of counsels should be accompanied along with a 'panel of counsels' recommended by the CCIT (in order of Preference) for engagement in terms of instructions No. 8/07.
3	25.03.08 F.No.278/80/2007-ITJ Instruction No.3/2008	Special Counsel- Guideline for engagement of special counsel for representing the Income-tax Department before ITAT/High Court/Other Courts.	Guidelines for engagement of special counsels for representing the Income Tax Department before ITAT/High Court/Other Courts are provided along with requisite proforma for sending such proposals.
4	31.03.1995 F.No.278/13/88-ITJ Instruction No.1925	Prosecution Counsel- Schedule of fee payable to prosecution counsels for I.T. Department	Instruction specifies schedule of fee payable to prosecution counsels for I.T. Department along with conditions thereof.

COD References			
Sr. No.	Date/File No./Type of Communication	Subject	Remarks/Gist of instructions
1	31.12.1991 F.No.53/3/6/91-cab OM from Cabinet Secretary to FS	Settlement of disputes between one Government Department and another and one Government Department and a Public Enterprise and a Public Enterprise and another Public Enterprise	Disputes between one Government Department and another and one Government Department and Public Enterprise and a Public Enterprise and another Public Enterprise, should not go to the Courts/Tribunals without being first examined by the High Power Committee (Committee on Disputes).
2.	24.01.1994 F.No.53/3/10/94-cab OM from Cabinet Secretary to FS	Settlement of disputes between one Government Department and another and one Government Department and a Public Enterprise and another Public Enterprise	The Communication is reiteration of IOM dated 31.12.91. it is further instructed therein that before filing of appeal every endeavor should be made to get clearance from COD, however to save limitation, Department/Public Enterprise may file appeal but proposal for seeking approval should reach the Cabinet Secretariat within one month of the filing of appeal.
3	04.01.2000 OM No. 1/126/1-M/1999-LC OM from Cabinet Secretary to FS	Proforma for making reference to the High Power Committee (COD) set up in pursuance of the order of Hon'ble Supreme Court Dated 11.10.91.	Proforma for making reference to COD is given as per enclosed Annexure.
4.	22.04.03 F.N.279 Misc.365/02-ITJ Instruction No. 1/2003	COD references in the case of PSUs Annexure to the revised COD Proforma- reg	It circulates an Annexure to the revised COD proforma which is to be filled with main proforma as given by Cabinet Secretariat.
5.	23.12.03 F.No.279/Misc.50/03-ITJ Instruction No. 18/2003	In the case of PSUs documents to be enclosed while making ref. to the Board.	- Guideline for filling proforma/revised proforma for COD references is given. -The reference should include CCIT's comments, order in appeal, latest phone number etc.

COD Reference			
Sr. No.	Date/File No./Type of Communication	Subject	Remarks/Gist of instructions
6	13/7/2005 1/126/14(P)/2004-LC OM from Cabinet Secretary to FS	Settlement of disputes between one Government Department and another and one Government Department and a Public Enterprise and a Public Enterprise and another Public Enterprise.	The communication is reiteration of earlier OM that no dispute between two arms of government should go to court before examining the same by COD, and wherever appeal is made to save limitation, reference should be made within one month of the filing of appeal.
7	24.08.2009 F.N.279/Misc.129/2009-ITJ Letter to all CCIT/DGIT	COD Ref- Guidelines for submitting proposals seeking approval from COD.	This communication forwards two OM's from Cabinet Secretariat: (1) The first OM says that while making reference to COD: (2) –All 20 sets are to be numbered and indexed; (3) –Order in appeals is to be attached with each set. (4) –Earlier decisions of COD or any other judicial pronouncement having bearing should be mentioned on the cover page. (2) The 2 nd OM specifies that the decision of Hon'ble Apex court in ONGC Vs CIDCO has brought the state PSU/State Government Department cases under ambit of COD. A curative appeal has been filed against this decision which is pending for disposal.

Miscellaneous			
Sr. No.	Date/File No./Type of Communication	Subject	Remarks/Gist of instructions
1	07.05.02 F.N.279/Misc.365/02-ITJ Instruction No. 4/2002	Allocation of work amongst CIT (Judicial) their jurisdiction	This communication allocate work amongst CIT(J) and specifies their jurisdiction. Part of this allocation has ben amended by letter dated 17.05.2004, wherein work prior to filing of appeals vested with CsIT/CCsIT not CIT(J).
2	23.12.03 F.No. 279/Misc.53/03-ITJ Instruction No. 20/2003	Matter pertaining to CIT(A)/CIT (admin)/CCIT- Issue or appellate order within 15 days of last hearing-reg.	CIT(A)/CIT(admn)/CCIT should issue appellate order/order under varied sections like 80G, 263 or order under Rule 86 of second schedule and under other allied direct taxes within 15 days of the last hearing.
3	23.02.04 F.N.270/362-chd/03-ITJ(Pt.) Instruction No. 2/2004	Written submission in appeals/writ filed before the HC challenging the validity of search-reg.	It communicates that whenever validity of search is challenged, instruction are to be followed by Department & counsels while replying to the Court.
4	17.05.2004 Dy.no. 191-S(j)/2004-ITJ Letter to CCIT-I, New Delhi	Modification in Board Instructions No. 4/2002 dt. 7/5/2002	Specifies that the work prior to filing of appeal is vested with CsIT/CCsIT not CIT (J).
5	05.06.2007 F.No. 279/Misc.56/07-ITJ Letter to all CCIT in Mumbai, Pune, Nasik & Nagpur	Compliance with Board Instructions on filing of appeals before ITAT/HC/SC	-Boards instructions are to be adhered to while filing of appeals by the Department. - In the cases where appeals have been filed contrary to Boards instruction appeals are to be withdrawn.
6	24.10.2008 F.No. 279/Misc-112/08-ITJ OM to all CCIT	Litigation matters pertaining to Section 245HA-reg.	Writ petitions relating to 245HA pending in various High Courts are to be transferred to S.C. in consultation with DIT (L&R).
7	03.12.2008 F.No.279/Misc-04/2008-ITJ Letter to all CCsIT/DGsl	Creation of National Judicial Reference System and compilation of Information regarding filing of appeals before various judicial forums.	-Judicial Reference System (JRS) will comprise a repository database of all reported and unreported judgments of ITAT,High Courts , and Supreme Court, along with statutory provisions , allied laws, circular, Instructions etc in e-form. -JRS will also hve facility of tracking any particular case. -The details of all appeals being preferred is to be compiled in the office of each CIT as per proforma enclosed and whenever any appeal is preferred information in prescribed proforma to be sent to office of CIT(J), where same will be entered in the

			‘JRS’. -The details of the process of flow of information, responsibility of various officers and particulars of the informat/document required to be compiled and forwarded are given as annexure ‘A’ & ‘B’.
8	.03.2010 F.N.279/Misc.24/2010-ITJ Letter to all CCIT/DGIT	Hon’ble SC order dated 30.10.09 in SLP 29852/099 titled Urban Improvement Trust Bikhner vs. Mohan Lal Increase of frivolous and unjust litigation by Government & Statutory Authority	Appeals should not be routinely filed by Department before Tribunal and but only after due application of mind.
9	30.07.10 F.No. 279/M-12/210-ITJ Letter to all CCIT/DGIT	Delay in filing of Appeals –reg	-CCIT to setup a team of appropriate no’s of Add CIT/DCIT , each assisted by two ITI/STA, to ensure that relevant assessment records made available to law Officer/Counsel and the Counsels ate to be properly briefed. -CCIT (CCA) is to review the Performance of all Standing Counsels on half yearly basis as per Inst 08/07. -Request for engagement of Special Counsels is to be made well in advance..

Filing of Appeals/SLPs before Supreme Court

Sr. No.	Date/File No./Type of communication	Subject	Remarks/Gist of Instructions
1	06.02.02 F.N.219/Misc.165/01-ITJ Instruction No. 2/2002	Revised Proforma ‘B’ for filing SLP	Proforma B for filing of SLP is included in this instruction. Proforma enclosed here with continues to be applicable however it stands modified in terms of subsequent directions of Member (A&J) given vide letter dated 20.09..05 (Sr no. 2 below) and subsequent instruction on Monetary limits.
2	20.09.2005 D.O. of Member (A&J) to all CCsIT in Mumbai	Filing of SLP/Appeal to Hon’ble Supreme Court	The D.O. expresses concern over the loss of Revenue due to dismissal of S.L.Ps/ appeals on account of non condonation of delay by Supreme court. It includes a flow chart indicating the permissible time for

			each stage in sending proposal for filing SLPs.
3	18.04.2006 F.N.DIT(L&R)/SLP/2006/477-586 Letter to all CCIT/DGIT from DG (L&R)	Timely filing of SLP's appeals before Hon'ble Supreme Court	-This letter forwards to DO of Law Secretary dated 06.09.06 on the referred subject. - It specifies the requirements to be fulfilled while forwarding the SLP proposals. -It stipulates establishing a monitoring unit in the office of CCIT/DGIT to monitor the order passed by HC and timely initiation of SLP proposals in suitable cases.
4	14.12.2007 DOF No. DIT(L&R)/CCsIT/DGIT/2007-08 DO from Member (A&J) to all CCsIT	Furnishing synopsis of the relied upon cases while forwarding SLP proposal.	- Proforma for statement of relied upon and connected matters & other judgments referred to by the Tribunal & High Court in SLPs. -CCIT should ensure that the proforma is filled properly .
5	07.01.08 DDF No. DIT(L&R)/CCsIT/DGIT/2007-08 DO from Member (A&J) to all CCsIT	Filing of appeal in Supreme Court	Reiteration of Member's DO dated 20.09.05 and that of Law Secretary's DO 06.09.06, etc.
6	6.06.2008 F.N.279/Misc.59/2008-ITJ Letter to all CCsIT/DGsIT from Member (A&J)	Filing of SLP-delay in obtaining certified copies of High Court's orders by the Standing Counsels.	If counsel does not comply with directions regarding applying, obtaining and sending the certified copy , suitable deduction may be made from fee and appropriate comments in their annual performance appraisal report to be made.
7	20.08.2008 DGIT(L&R)/SLP delay/2008-09/86 Letter from DGIT(L&R) to all CCIT/DGIT	Application for obtaining certified copies of High Court orders/delay in filing of appeal.	Communication stipulates the requirements to be adhered to while submitting SLP proposal by CCsIt/DGsIT.
Filing of Appeals/SLPs before Supreme Court			
Sr. No.	Date/File No./Type of communication	Subject	Remarks/Gist of Instructions
8	10.12.2008 F. No. 279/Misc.120/2008-ITJ Letter to all CCIT/DGIT	Information pertaining to payment to be made for filing of appeals in Supreme Court.	For SLP/appeals/counter affidavits in Supreme Court, DD/Banker Cheque are issued in favour of PAO(LA). Copy of the same is to be sent to DGIT (L&R) instead of ITJ section, CBDT.
9	14.06.2010	Filing of SLP	-The proposal of SLP should reach

	DOF No. DIT (L&R)/Member (A&J)/Delay SLP/2010-11 Letter all CCIT/DGIT	and compliance of directions- Hon'ble Supreme Court of India-Reg.	<p>O/o DGIT (L&R) within 45 days of its pronouncement. This supersedes the time limits specified in earlier correspondence.</p> <ul style="list-style-type: none"> - It reiterates the concept of designated officer to monitor pronouncement of orders of HC/SC. - It requires that whenever SC gives interim directions requiring compliance by specified date, report along with copies of order or any action taken should reach office of DGIT (L&R) 5 days before specified date. - It also reiterates that wherever possible order of High Court/ Supreme Court should be down loaded from internet and appropriate action may be taken. In case same is not appearing on website then standing counsel should be alerted to obtain the certified copy.
10	20.10.2010 DGIT (L&R)/SLP & Compliance/2010-11/974 Letter to all CCIT (CCA)	Submission of proposal for filing Special Leave Petition (SLP) & compliance of direction of Hon'ble Apex Court-reg.	<ul style="list-style-type: none"> -Timely and proper filing of appeals. -One soft copy of MS word 2007 should also be sent. -Specifies the Common deficiencies found in SLP proposals. - Clarifies that SLP is prime responsibility of Cit. -It spells the directions to be followed when SLP's are filed by assessee. -Officers should get their lotus note activated and check their mails on daily basis.
11	31.08.2010 F.N.279/Mis./M-29/2010-ITJ Letter to All CCsIT/DGsIT	Proforma to be annexed with Monthly DO regarding	<ul style="list-style-type: none"> -Proper registers and statistics of appeal, filed/ proposal of SLPs should be maintained in

		Statistics of appeals filed/delayed before High Court/ Supreme Court	<p>the office of each administrative CIT.</p> <p>-The statistics of appeal filed/delayed before High Court & Supreme Court should be sent to the Zonal Member by CCsIT/DGsIT with monthly D.O.</p> <p>-In case of delay of more than 100 days in filing appeal/recommending SLPs, the CCsIT/DGsIT should give specific reasons along with action taken against those found responsible for undue delay.</p>
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Filing of Appeals/Writs in High Court			
Sr. No	Date/File No./Type of communication	Subject	Remarks/Gist of Instructions
1	22.12.1998 F. No. 272/61/98-ITJ Inst. No. 1957/1998	Creation of High Court Cell in each CCIT charge	<ul style="list-style-type: none"> - A high Court Cell is to be created in each CCIT charge. - High Court cell will work under AddCIT/JCIT for coordination between officers and standing counsels and for maintaining statistics, such as case-wise performance of Standing Counsel, payment of fee etc. - AddCIT/JCIT should be assisted by three or four ITIs, one or two full time Stenographers. -Add CIT/DCIT(Judicial) should provide infrastructure facilities like photocopier, telephone with STD/Fax, computers and access to legal library. - Staff car may be provided on, 'as and when' basis. - A report is to be submitted to the Board by 10th of every month including the list of all cases where appeals have been filed to the High Court along with fact of each case and tax effect in proforma attached.
2	25.03.2004 Dy. No. 111-DS(J)/2004-ITJ	Power to defend Union of India, Chairman, CBDT, Secretary Revenue, Ministry of Finance before High court	<ul style="list-style-type: none"> - All the cases before High Court, pertaining to Income Tax, wherein Union of India, Chairman CBDT, Secretary Revenue, and Ministry of Finance are figuring as respondent, should be defended by jurisdictional CCIT/DGIT. CCIT/DGIT may delegate the authority to an officer of their charge.
3	24.09.2008 F. No. 272/77/2007-ITJ Letter to all CCIT/DGIT	Delay in filing of Appeals u/s 260A-reg	<ul style="list-style-type: none"> - Timelines to be followed by AO, CIT for timely filing of appeal u/s 260A of I.T. Act. - CCsIT to introduce mechanism for fixing of responsibility of officers in case of delay. CCsIT are to ensure that sufficient numbers of counsels are engaged and also to monitor their performance on periodic basis.
4	31.08.2010 F. N. 279/Mis./M-29/2010-ITJ Letter to All CCsIT/DGsIT	Proforma to be annexed with Monthly DO regarding statistics of appeals filed/delayed before High Court/Supreme Court	<ul style="list-style-type: none"> - Proper registers and statistics of appeals, filed/proposal of SLPs sent should be maintained in the office of each administrative CIT. -The statistics of appeals filed/delayed before High Court & Supreme Court should be sent to Zonal Member by CCsIT/DGsIT with the monthly D.O. - In case of delay of more than 100 days in filing appeal/recommending SLPs, the CCsIT/DGsIT should give specific reasons along with action taken against those found responsible for undue delay.

Filing of Appeals in ITAT/ matters related to DRs			
Sr. No	Date/File No./Type of communication	Subject	Remarks/Gist of Instructions
1	23.12.03 F.N. 279/Misc.48/03-ITJ Instruction No. 17/2003	Request for priority hearing of appeal in ITAT in cases involving disputed demand of Rs. 10 crores and above-reg.	CCsIT/DGsIT (Inv) should request the ITAT for priority hearing of appeals wherever demand in dispute is more than Rs. 10 crores or more, so that early resolution of the dispute is done and recovery of disputed demand can also be made.
2	18.10.04 F.No. 279/Misc.65/04 ITJ Instruction No. 12/2004	Stay petitions before ITAT- Steps to be taken to protect interest of revenue- reg.	- Detailed instructions to be followed by DR when stay petition is filed by the assessee. - Instructions to CCIT/DGIT/CIT/DIT who are to examine the legal position of matter involved and to take steps for vacating the stay.
3	18.09.08 F. N.279/Misc-117/2006-ITJ Instruction No. 13/2008	Work allocation to CIT (DRs)/Sr. DRs regarding	Work allocation to CIT (DRs)/Sr. DRs along with proforma for reporting monthly performance.
4	25.11.2010 F.No.279/Misc 117/2006-ITJ (Part) Letter to all CCIT (CCA)	Statistics related to details of cases represented by CIT (DR)	-The statistics of representation of cases by CIT (DR)/Sr.DR is to be compiled and maintained in the office of CCIT (CCA)/CCIT concerned as per instruction No. 13/2008. - Statistics should be readily available and performance of CIT (DR)/Sr. DR to be monitored on basis of same by Zonal Members of CBDT and the Jurisdictional CCsIT.

Monetary Limits for filing appeals			
Sr. No	Date/File No./Type of communication	Subject	Remarks/Gist of Instructions
1	15.05.2008 F.N. 279/Misc-142/2008-ITJ Instruction No. 5/2008	Revision of monetary limits for filing appeal by the Department before Income Tax Appellate Tribunal, High Courts and Supreme Court-measures for reducing litigation-reg.	Instruction specifies monetary limits and other relevant condition for filing of appeals by the Department before I.T.A.T, H.Cs & S.C.
2	23.10.2008 F.No.279/Misc.142/08-ITJ(Pt.) Letter to all CCIT/DGIT	Revision of monetary limits for filing appeal by the Department before Income Tax Appellate Tribunals, High courts and Supreme Court-measures for reducing litigation-clarification reg.	Letter specifies that if CIT does not file an appeal where the tax effect is more than monetary limit, then the matter should be brought to the notice of the CCIT.
3	19.11.2008 F. No. 279/Misc.142/2008-ITJ (Pt) Letter to all CCsIT/DGsIT	Revision of monetary limit for filing appeal by the Department before High Courts U/S 260A- measures for reducing litigation- clarification reg	Letter clarifies that directions dated 23.10.2008 (F.No.279/Misc.142/08 ITJ Pt) applies to appeals u/s 260A only and not to writ petitions.