

How To Represent
Before
Income Tax Appellate Tribunal.

CHAPTER – XX(B)
SECTION 252 TO 255

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Section 253, Appeal to Appellate Tribunal.

Who can Appeal ?

Any assessee aggrieved by an order passed by Commissioner (A) u/s 250, 154, 271, 271A, 272A.

- Any assessee aggrieved by an order passed by AO u/s 115VZC(1).
- Any assessee aggrieved by an order passed by Commissioner u/s 263, 12AA, 80G5(vi), 271, 272A read with section 154.

Section 253, Appeal to Appellate Tribunal.

- Any assessee aggrieved by an order passed by CCIT, DGIT u/s 272A.
- An order passed by an AO u/s 143(3) or sec. 147 in pursuance of the directions of the Dispute Resolution Panel or an order passed u/s 154 in respect of such order. **[insertion by Finance (No.2) Act,2009,w.e.f 1-10-2009.**

Section 253, Appeal to Appellate Tribunal.

Appeal may be preferred in below mentioned situation.

- Where CIT(A) passed order without jurisdiction.
- Where an order has been passed rejecting the first appeal as time barred or defective, second appeal against such order lies to Tribunal.
- Assessing officer can file under direction of Commissioner of Income Tax as per Rule 15 of the ITAT Rules.

contd...

- *No appeal against order passed u/s 264.*
- *If the tax-effect was less than **Rs. 3 lakhs**, the appeal by Department is not maintainable in view of the instructions of the CBDT. [C.B.D.T. Instruction No. 3/ 2011, dated 09-02-2011] other than law point & appeals of repetitive nature.*

Note:

- *earlier the limit of tax effect for departmental appeal was Rs. 2 Lacs (Instruction No. 2/2005 dated 24-10-2005).*
- *Instruction No. 3/2011 is applicable to appeals filed on or after 09-02-2011.*

Section 253, Form of Appeal

- Form of Appeal – **Form No. 36**. Form **F** in Wealth Tax Act.
- Form for Cross objection – **Form No. 36A**. Form **G** in Wealth Tax Act.
- The memorandum of appeal has to be verified and signed by a person u/s 140.

Form of Appeal

- *Form of Appeal has to be accompanied below mentioned documents :*
 - *Certified True copy of Assessment order.*
 - *Certified True Copy of CIT (A) Order.*
 - *Certified True Copy of Form No. 35.*
 - *Challan of fees in original.*
- (Three Set of Form No. 36 has to be prepared)*

Issues

[2010] 2 DTLONLINE 299 (Delhi), DIT vs. Appreal Exports Promotion Council

Whether since appellant was not in a position to state whether any appeal was filed or not against order passed by Tribunal in respect of earlier assessment year and if filed, outcome thereof, it had to be presumed that order passed by Tribunal in earlier year had attained finality and, therefore, instant appeal was to be dismissed – Held, ye

Issues

CIT Vs. British Airways (Delhi High Court)
[2005] 274 ITR 418.

The Tribunal is not justified in dismissing in limine appeals filed by the Revenue only because the grounds are not mentioned in the memoranda of appeal in Form No. 36. In a matter like this, the Tribunal, instead of dismissing the appeals in limine, ought to reject the appeals under rule 12 of the Income-tax (Appellate Tribunal) Rules, 1963, or ought to return the same for being amended within such time as it may have allowed.

Issues

Rajpal and Co. vs. Commissioner of Income-tax (Delhi High Court) [2001] 250 ITR 0832

The assessee's first appeal was dismissed on the ground that it was not accompanied by a memorandum of appeal. The Tribunal upheld the action of the Commissioner of Income-tax (Appeals) in not entertaining the appeal, High Court held that The Tribunal ought to have heard the appeal on the merits without attaching any importance to the question as to whether the first appeal was competent and entertainable or not.

More cases for reference : Commissioner of Income-tax Vs. Protectron Electronics Pvt. Ltd. [2005] 274 ITR 420 (Kar)

Section 253, Time limit

- Time limit for filling appeal – 60 days from the date order sought to be appealed against is communicated to assessee or to the commissioner. [sec.253(3)]
- Time taken in obtaining a certified copy of such an order has to be excluded from the limitation period.
- Memorandum of cross objection may be filed within 30 days of receipt of notice of filing appeal.

Note: Memorandum of cross objections shall be disposed of by the Tribunal as if it were as appeal presented within a period of 60 days as prescribed by sec. 254(3).

Section 253, Condonation of delay

- If the assessee fails to file the appeal or memorandum of cross objection in time, then the same may accompanied by petition for condonation of delay.
- Tribunal may Condone the delay after being satisfied for sufficient reasons for such delay.
[s.sec.(5) of sec. 253]
- Petition should contain the explanation only for the period of delay.

Issues

- ◉ *Madhu Dadha v. ACIT [2010] 186 TAXMAN 8 (MAD.)*

Whether when in view of admitted facts there was no doubt that delay on part of assessee was deliberate and assessee was clearly guilty of culpable negligence, Tribunal rightly refused to condone delay in filing appeal - Held, yes

Issues

- *CIT v. Isher Singh*[2009] 316 ITR 0206(P& H)

In the absence of the application for condonation of delay and there being no sufficient cause for not presenting the appeal within the stipulated time, there was no other option but to dismiss the appeal preferred by the Department.

Issues

Hind Development Corporation vs. Income-tax Officer (Calcutta High Court) [1979] 118 ITR 0873.

Under s. 253(5), the Tribunal has jurisdiction to condone the delay in filing an appeal if it is satisfied that there was sufficient cause for the delay, whether it was so satisfied suo motu, or at the instance of the appellant.

Section 253(6)/(7), Fees for filling Appeal.

Fees for filling appeal –

- a) Fees of Rs. 500, where total income as computed by AO is up to Rs.100000/-.
- b) Fees of Rs. 1500, where total income as computed by AO is between Rs.100000 – 200000/-.
- c) Fees equal to 1% of income assessed by AO subject to the maximum of Rs. 10000 , where total income as computed by AO more than Rs.200000/-.

Section 253(6)/(7), Fees for filling Appeal.

- (d) Fees of Rs. 500, where subject matter of appeal is other than as specified above.
- (e) No fees if appeal is filed by revenue or in case of memorandum of cross objection.
- (f) Fees of Rs. 500 /- for application of stay of demand for each assessment year.
[S.253(7)].

Issues

Gilbs Computer Ltd. v. ITAT [2009] 317 ITR 159(Bom.)

Held allowing the petition, that the petitioner was not obliged to pay the fee in excess of Rs. 500. The petitioner had been admittedly assessed to loss. The income computed was less than Rs. 1,00,000 and, therefore, clause (a) of section 253(6) would apply. If, on the other hand, one took the view that clause (a) or (b) or (c) could not apply as they postulate assessment of a positive figure, only clause (d) could apply and, even so, the fee payable would be Rs. 500. The petitioner was right in paying court fee of Rs. 500.

Issues

Rajakamal Polymers P. Ltd. Vs. Commissioner of Income-tax. [2007] 291 ITR 314 (Kar).

That the Appellate Commissioner had rejected the appeal on the ground of limitation. Such an order would fall within clause (d) of section 253(6) of the Act. Hence, only a sum of Rs. 500 was payable in terms of section 253(6)(d). The appellant was liable to pay court fee at the rate of Rs. 500 for each one of the appeals for the purpose of maintaining the appeals before the Tribunal.

Kothari Departmental Stores P. Ltd. Vs. Assessing Officer [2005] 278 ITR (A.T.) 214 (ITAT – Jodh).

Fees for filing appeal shall be calculated on payable on income computed by Assessing Officer and not on income computed by Assessing Officer on direction of first appellate authority.

Issues

Sri Bidyut Kumar Sett Vs. Income-tax Officer [2005] 272 ITR (A.T.) 0075 (SB-ITAT (Cal.))

The Tribunal fee on an appeal against the order of penalty levied under section 271(1)(c) of the Act is governed by clauses (a) to (c) of section 253(6) i.e. Assessed income.

S. 254, Functioning of Tribunal

- The power of the Tribunal is limited to the subject matter of Appeal.
- Tribunal may pass an order as it may think fit.
- Tribunal has almost all powers similar to the powers of an appellate court under the code of civil procedure.
- Tribunal has all those incidental and ancillary powers which are necessary to make fully effective the express grant of statutory power.
- The Tribunal may allow the party to take up a new ground of appeal, but it should relate to the subject matter of appeal, and should not involve further investigations in to facts.
- May allow production of additional evidence.

S. 254, Functioning of Tribunal

- May remand the case to the competent authority to make the requisite order in accordance with law.
- May call a report from the lower authorities.
- May direct fresh assessment.
- May give direction to be followed during assessment afresh.
- May issue commissions.
- May determine status of an assessee.
- May grant stay.

Note : 1) Tribunal has no power to make protective assessment.

2) Tribunal has no power to Enhance the assessment.

Issues

[2010] 195 TAXMAN 76 (DELHI) Marubeni India (P.) Ltd. vs. CIT

- Whether jurisdiction of Tribunal is confined to passing of orders on subject-matter of an appeal, that is, those orders which are necessary for disposal of appeal and, therefore, Tribunal cannot give a finding in respect of an assessment year which is not subject-matter of appeal before it - Held, yes
- Whether, therefore, Tribunal can give a finding that particular deduction/income does not belong to relevant assessment year/years, but it cannot give a finding that said deduction/income belongs to another specified year, though it may incidentally find that said deduction/income relates to another assessment year - Held, yes

Issues

CIT vs. Hindustan Tin Works Ltd [2010] 187 TAXMAN 298 (DELHI)

Whether where assessment order as well as order of Commissioner (Appeals) showed that there was no material on record based on which provisions of section 14A could be invoked, Tribunal was justified in not permitting revenue to take up an additional ground pertaining to section 14A - Held, yes

[2011] 10 taxmann.com 139 (Cal.), Jasmine Commercials Ltd. v. CIT Tribunal cannot enhance scope of appeal by adjudicating upon grounds not raised by appellant in appeal before it .

Issues

CIT vs. Bharat Aluminium Co. Ltd. [2010] 187 TAXMAN 111 (DELHI)

Whether where issues, which were sought to be raised in additional grounds before Tribunal, arose out of tax proceedings of assessee for assessment year under consideration and also facts, that were necessary for adjudication on those additional grounds, were available on record, Tribunal was justified in allowing assessee to raise additional grounds - Held, yes

Issues

Dalmia Dairy Industries Ltd v. CIT[2009] 176 TAXMAN 169 (DELHI)

Whether a new ground can be permitted to be raised in appeal so long as relevant facts are on record and ground sought to be raised could not have been raised earlier for good reasons - Held, yes - Whether where by proposing additional ground, revenue was seeking to introduce a new source of income which was not there in assessment proceedings, Tribunal was correct in not permitting revenue to raise additional ground - Held, yes

S. 254(2A), Power to stay

May grant stay by passing an order :

- For a period not exceeding 180 days from the date of such order and the Appellate Tribunal shall dispose of the appeal within the period of stay specified in that order.
- Where such appeal is not disposed of as stated above, the Tribunal on an application made by assessee and upon satisfaction that the delay in disposing of the appeal is not attributable to the assessee, extend the period of stay, and pass an order of stay for a further period or periods as it thinks fit.

S. 254(2A), Power to stay

- The period originally allowed and extended period in no case shall exceed 365 days and the Tribunal shall dispose of the appeal within the period or periods of stay so extended or allowed.
- If such appeal is not so disposed within the period originally allowed and extended further, the order of stay shall stand vacated after the expiry of such period or periods.

Contd.....

- The stay application has to cover all the points as contemplated under Rule 35A of the ITAT Rules (Discussed later).
- This is a discretionary power of Tribunal
- There is no specific format for the application of stay.
- Common stay application can be filed for different assessment years, however stay fees for every assessment years should be deposited separately, however separate applications are preferable.

Contd.....

- While granting the stay of demand, the tribunal has not only to see the circumstances of the assessee and merits of his case but have also to secure the interest of the Revenue.
- Each stay application has to be listed for disposal by the Registrar on priority basis and the day, date and time of hearing of the same has to be communicated to the parties in advance.

Issues

Ashok Kumar Aggarwal vs. Income-tax Appellate Tribunal (Delhi High Court) [1997] 226 ITR 0490.

The power to consider and grant or refuse an application for stay in the first appeal before the Tribunal is an independent power which vests in the Tribunal. The Tribunal in law cannot decline to exercise the said power and refuse to examine an application for stay on the merits on the ground that the Commissioner of Income-tax has already granted stay of the demand.

- **[2011] 44 SOT 304 (Mum.), ITO v. Vodafone Essar Ltd.**

Whether power of Tribunal to grant stay is incidental or ancillary to power to dispose of appeal and is, thus, referable only to sub-section (1) of section 254 and not proviso to sub-section (2A) of section 254 - Held, yes . Therefore, an application under section 254(2) is maintainable against order passed by Tribunal granting stay .

- Power of Tribunal to pass an order of stay is not confined to a case where an appeal is pending before Tribunal, **but also extends to any proceedings relating to an appeal pending before it .**

S. 254, Functioning of Tribunal

➤ May rectify its order within four years from the date of order [S. 254(2)]

- Tribunal can correct the apparent error.
- Tribunal cannot take second opinion on merits.

However amendment which has effect of increasing the liability of assessee shall not be made unless the notice is given and proper opportunity of being heard is given to assessee.

Case law : Sree Ayyanar Spinning and Weaving Mills Ltd. Vs. Commissioner of Income-tax [2008] 301 ITR 434 (SC)

➤ Tribunal once having delivered a judgment, which has by operation of law become final, it is not entitled to review its decision.

Case law : CIT Vs. Vichitra Construction (P.) Ltd. [2004] 269 ITR 371 (Del.).

Issues

CIT vs. Aiswarya Trading Co. [2010] 192 TAXMAN 385 (KER.)

Whether appellate order issued under section 254(1) gets merged in rectification order only on issues raised in rectification application and on all other issues decided by Tribunal in appeal, appellate order under section 254(1) survives and is available for rectification again on any other issue on an application filed by either of parties - Held, yes

Whether, however, once rectification application filed by one of parties is considered and decided by Tribunal rightly or wrongly, another rectification application on same issue is not maintainable against order issued by Tribunal under section 254(1) - Held, yes

Issues

Gujarat Mineral Development Corpn. Ltd. v. ITAT [2009] 183 TAXMAN 317 (GUJ.)

Whether Tribunal does not have powers to determine as to whether an appeal should be admitted or not, except to extent provided by sub-section (5) of section 253 in a case where appeal or cross-objections are presented beyond prescribed period of limitation - Held, yes

Issues

- **Visvas Promoters Pvt. Ltd. vs. ITAT, ACIT [2009]185 Taxman 145(Mad.):**

Madras HC has decided two issues, one that no appeal lies against an order passed under section 254(2). In so far as second issue is concerned, it has been held that non consideration of non-jurisdictional high Court order did not constitute mistake apparent from records

- **CIT vs.V.L.S. Finance Ltd [2009] 178 TAXMAN 433 (DELHI)**

Whether non-consideration by Tribunal of a judgment of Supreme Court relevant to point in issue would give rise to a mistake apparent from record which can be rectified under section 254(2)
- Held, yes

Issues

Assistant CIT vs. Saurashtra Kutch Stock Exchange Ltd. (Supreme Court of India) [2008] 305 ITR 0227.

A patent, manifest and self-evident error which does not require elaborate discussion of evidence or arguments to establish it, can be said to be an error apparent on the face of the record and can be corrected while exercising certiorari jurisdiction. An error cannot be said to be apparent on the face of the record if one has to travel beyond the record to see whether the judgment is correct or not.

Issues

**CIT Vs. Ferro Concrete Construction (I) P. Ltd.(
Madhya Pradesh High Court) [2008] 303 ITR 462.**

That it was the duty of Tribunal to have taken up the case relating to each deduction claimed by the assessee and then looking to its nature and the claim of the assessee, it should have decided as to whether it was capable of being granted in favour of the assessee and if so, why and on what basis. Similarly, in the event of the question being decided against the assessee, the reasoning for rejection duly supported with decided judicial verdict on the issue should have been given.

Issues

Avery Cycle Industries Ltd. vs. Commissioner of Income-tax (P & H HC) [2007] 292 ITR 0493

An additional ground can always be raised under section 254 of the Income-tax Act, 1961, before the Tribunal if it involves a question of law, which emerges from facts on record in the assessment proceedings, although it might not have been raised before the Commissioner (Appeals).

Issues

Goetze (India) Ltd. Vs. Commissioner of Income-tax [2006] 284 ITR 0323 (SC).

The decision was restricted to the power of the assessing authority to entertain a claim for deduction otherwise than by a revised return, and did not impinge on the power of the Appellate Tribunal under section 254 of the Income-tax Act, 1961.

contd..

○ [2010] 3 ITR(TRIB.) 754 (MUM.) Franco-Indian Pharmaceuticals (P.) Ltd. v. ITO,

decision of the hon'ble Supreme Court in the case of *Goetze (India) Ltd.* [2006] 284 ITR 323 makes it clear that the powers of the Tribunal as laid down in the case of *National Thermal Power Co. Ltd. v. CIT* [1998] 229 ITR 383 are not affected by this decision. Thus, the Tribunal has the power to admit an additional ground or claim made by the assessee, when all the facts are on record

S. 254, Functioning of Tribunal

- Tribunal can recall and quash its own order in exceptional cases when it is shown that it was obtained by fraud or misrepresentation.
- Tribunal has to send the copy of order to the assessee and Commissioner concerned.
- Remedy : The aggrieved party can prefer an appeal before the High Court u/s 260A in respect of question of Law or mixed question of law.

Issues

- **K.D Wires (P.) Ltd. V. Union of India[2010] 187 Taxman 257(MP)**

Whether Tribunal quoting finding of Commissioner (Appeals) and simply upholding same without giving its own reasoning is not proper - Held, yes

- **MCorp Global (P.) Ltd. vs CIT [2009] 178 TAXMAN 347 (SC)**

Whether Tribunal can take back benefit granted to assessee by Assessing Officer - Held, no

Section.255, Procedure of Tribunal.

- The Powers and functions of the Appellate Tribunal may be exercised and discharged by benches constituted by the president of the ITAT from among the members thereof.[sec. 255(1)]
- A bench shall consist of one judicial member and one accountant member.[sec. 255(2)]
- Cases, where in assessed total income is up to Rs. 500000/-, is decided by the Single member.[se. 255(3)]
- The procedures of the benches is regulated through the office orders and also in accordance with ITAT rules.

Section.255, Procedure of Tribunal.

- Larger bench may be constituted by the president of ITAT for disposal of particular bench consisting of three or more members, one of such members should be a judicial member.
- If the members of the bench differ in opinion on any point, and the members are equally divided, the case shall be referred to the president for hearing on any such point by one or more of the members of the tribunal, and such point shall be decided according to the opinion of majority of the members.[sec. 255(4)]

Section.255, Procedure of Tribunal.

- Tribunal shall
 - Have all powers of Income Tax Authority referred to in section 131.
 - Any proceeding before the Appellate Tribunal shall be deemed to be the judicial proceedings with in the meaning of sections 193 and 228 of IPC.
 - For the purpose of section 196 of the Indian Penal Code (45 of 1860), and the Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and chapter XXXV of the CPC, 1898 (5 of 1898). [sec. 255(6)]

Issues

- **CIT vs Exim Securities & Credits (P.) Ltd.[2010] 187 Taxman 311 (Del.)**

Whether since violation of rule 46A(3) was not a ground raised before Tribunal, Tribunal could not be legally faulted in not taking said rule into consideration if it did not form a part of appeal at all - Held, yes

Issues

- **Tata Communications Ltd. v. Joint Commissioner of Income-tax|2009| 317 ITR(A.T) 0001**

Once the Tribunal is called upon to examine whether or not the assessee is entitled to a claim of deduction, there is no escape from its duty to ensure that the requirements of the section are fully complied with. The fact that the Assessing Officer rejected the claim on one ground did not mean that the other conditions were taken as complied with. There was no error in the order of the Tribunal.

That moreover, the question was pending before the High Court and it was not right for the assessee to agitate it before the Tribunal.

Issues

**DCIT Vs. Padam Prakash (HUF),
Fateh Singh (HUF) Vs. ITO [2007]
288 ITR 001 (ITAT – Del – SB).**

Order of Third Member where matter referred upon difference of opinion between two member, has same weightage as order of Special Bench, Where contradictory views on same subject held by Special Bench.

Issue

Rectified order of the Tribunal not appealable where no appeal is filed against the original order

[2011] 9 taxmann.com 174 (KER.), V.R. Sreekumar vs. CIT

Whether since Tribunal had merely corrected mistake in original order and no appeal was filed against original order of Tribunal, addition sustained in original order and confirmed by Tribunal could not be interfered with by High Court in an appeal filed against rectified order issued by Tribunal - Held, yes

THE INCOME TAX
(APPELLATE TRIBUNAL)
RULES, 1963.

Rules at a Glance....

Rule No.	Particular	Remark
1.	Short title and commencement.	Income Tax Appellate Tribunal Rules, 1963, came in to force at once.
2.	Definition.	Definition of Act, Authorized Representative, Bench, Member, Prescribed form, president, Registrar, Section, Senior Vice President, Tribunal, Vice President.
3.	Sittings of Bench.	At Headquarters or at such other place as may be authorized.
4.	Power of Bench.	<ul style="list-style-type: none">➤ Bench shall hear and determine the appeal, as the President may by general or special order direct.➤ In case two or more benches are working the president, or senior vice president, vice president, or senior most member as present may transfer the appeal or application form from one of such benches to any other.

Rules at a Glance....

Rule No.	Particular	Remark
4A	Powers and functions of the Registrar.	Details the Power of registrar.
5.	Language of the Tribunal.	The language of the Tribunal shall be English.
5A.	Filing of documents	Documents may be filed in Hindi, in the benches located in such states as may be notified by the president.
5B.	Use of Hindi in proceedings and orders.	The Tribunal in its discretion may permit the use of Hindi in its proceedings, or may pass orders in Hindi, provided that it shall be accompanied by an authorized English translation thereof.
6.	Procedure for filling appeals.	Form of appeal shall be presented by assessee or authorized representative to registrar or officer authorized, or sent by the registered post to the registrar. MOA sent by post shall be deemed to be received on the day it is received in the office of registrar or such officer.

Rules at a Glance....

Rule No.	Particular	Remark
7	Date of presentation of appeals.	The Registrar or authorized officer shall endorse and sign on every MOA the date on which it is presented or deemed to be presented under rule 6.
8	Contents of MOA	MOA should be written in English, Ground of appeal should not be argumentative or narrative, and should be consecutively numbered.
9.	What to accompany MOA.	<ul style="list-style-type: none">➤ MOA should be in triplicate.➤ Two copies of order appealed against (Certified true copy).➤ Two copies of AO's order (Certified true copy).➤ Two copies of GOA.➤ Two copies of SOF.➤ In case of penalty, Two copies of assessment order relevant to penalty.➤ In case of appeal against 143(3) read with 144B, Two copies of draft assessment order and two copies of Inspecting Assistant Commissioner's direction u/s 144B

Rules at a Glance....

Rule No.	Particular	Remark
9.	What to accompany MOA.	<ul style="list-style-type: none">➤ In case of assessment u/s 143(3) read with s. 144A, two copies of Inspecting Assistant Commissioner's direction u/s 144A.➤ In case of assessment u/s 143(3) read with s. 147, two copies of original assessment order if any.➤ The Tribunal may accept MOA if not accompanied by above mentioned documents. (Discretionary).➤ Challan of fees in original.
10.	Filling of affidavits.	Where a fact cannot be borne out by, or is contrary to, the record is alleged, it shall be stated clearly and concisely and supported by a duly sworn affidavit.
11.	Grounds which may be taken in appeal.	<p>The Appellant shall not except by leave of Tribunal, urge or be heard on any GOA unless set forth in MOA.</p> <p>Provided that the Tribunal shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of being heard on that ground.</p>

Rules at a Glance....

Rule No.	Particular	Remark
12	Rejection or amendment of GOA.	The Tribunal may reject a MOA if it is not in the prescribed form or return it for being amended with in such time as it may allow.
13	Respondent in an appeal by assessee.	The concerned Assessing Officer or Income Tax Officer shall be made a respondent to the appeal.
14	Respondent in an appeal by ITO.	Appellate Assistant Commissioner or Commissioner of Income Tax (Appeals).
15	What to accompany MOA u/s 253(2).	A certified true copy of the order of the Commissioner directing that an appeal be preferred.
16	Authorizing a representative to appear.	MOA should accompanied by a document authorizing the representative to appear for him and if the representative is a relative of the assessee, the relationship should be stated in a document.
17	Authorization to be filed.	If the document referred in rule 16 is not appended with MOA, that should be filed before commencement of hearing.

Rules at a Glance....

Rule No.	Particular	Remark
17A	Dress regulations for members and for the representatives.	<p>➤ <u>Male Members (ITAT):</u></p> <ul style="list-style-type: none">• Summer – White Shirt, White Pant, Black Coat, A Black Tie or a Buttoned up black coat.• Winter – Striped or Black Trousers may be worn in place of white trousers. <p>➤ <u>Female Members (ITAT):</u> The dress shall be black coat over white saree or any other sober saree.</p> <p>➤ <u>Authorized Representative :</u></p> <ul style="list-style-type: none">• <u>Male</u> – A suit with a tie or buttoned up coat over a Pant or national dress, i.e. a long buttoned up coat or dhoti or churidar pyjama. The colors of the coat shall preferably be black.• <u>Female</u> – Black Coat over white or any other sober colored saree.• <u>Lawyers or Chartered Accountants</u> - Prescribed dress for appearing in their professional capacity before any court.• <u>Any other person</u> – Should be properly dressed.

Rules at a Glance....

Rule No.	Particular	Remark
18	Preparation of Paper Books.	<ol style="list-style-type: none">1. If appellant or respondent rely on any document or statements or other papers on the file, he may submit a paper book in duplicate containing such papers duly indexed and paged at least a day before the date of hearing along with proof of service of a copy of the same on other side at least a week before. Provided Bench may condone the delay and admit the paper book.2. The tribunal may suo-moto direct the preparation of a paper book in triplicate by and at the cost of the appellant or respondent.3. Papers must be legibly written or type – written in double space or printed. If Xerox copy is filed, then the same should be legible. Each document of the Paper book should be certified by the appellant or his AR. Index should brief description of the relevance of the document, with page numbers and the authority before whom it was filed.

Rules at a Glance....

Rule No.	Particular	Remark
18	Preparation of paper book.	<ol style="list-style-type: none">4. Additional evidence if any shall not form the part of the paper book, and shall be separately filed.5. The parties shall not be allowed to file any supplementary paper book, except with the leave of the bench.6. Documents that are referred and relied upon by the parties during the course of argument shall alone be treated as part of the record of the Tribunal.7. Paper book not confirming above rules shall be ignored.
	Date and place of hearing.	<p>Date and place shall be notified by the Tribunal to the parties, it shall also send a copy of MOA either before or with such notice.</p> <p>Issue of notice in this regard shall not itself mean that appeal has been admitted.</p>

Rules at a Glance....

Rule No.	Particular	Remark
20	Fixation of date and place of appeal.	The date and place of hearing of the appeal shall be fixed with reference to the current business of the Tribunal and the time necessary for the service of the notice of appeal, so as to allow the parties sufficient time to appear and heard in support of or against the appeal.
21	Grant of time to answer in an appeal u/s 253(1).	For fixing the date for respondent to appear and answer to the appeal, a reasonable time shall be allowed for the necessary communication with the Commissioner through the proper channel and for the issue of instructions to an authorised representative to appear and answer on behalf of the respondent.

Rules at a Glance....

Rule No.	Particular	Remark
22.	Cross objections	A memorandum of cross objection filed u/s 253(4) shall be registered and numbered as an appeal.
23.	Hearing of the appeal	On the appointed date appellant shall be heard in support of the appeal. Then if necessary, hear the respondent against the appeal, and in such case appellant shall be entitled to reply.

Rules at a Glance....

Rule No.	Particular	Remark
24.	Hearing of appeal ex-parte for default by the appellant.	Where the appellant or AR does not appear in appeal, the Tribunal may dispose of appeal on merits after hearing the respondent. But if the Tribunal is satisfied that there must be some reasonable cause behind non attendance, it shall set make an order setting aside the exparte order and restore the appeal.
25.	Hearing of appeal exparte for the default of respondent.	Where the respondent or AR does not appear in appeal, the Tribunal may dispose of appeal on merits after hearing the appellant. But it the Tribunal is satisfied that there must be some reasonable cause behind non attendance, it shall set make an order setting aside the exparte order and restore the appeal.

Rules at a Glance....

Rule No.	Particular	Remark
26	Continuation of proceedings after the death or adjudication of a party to the appeal.	In case of death or adjudication the appeal shall not abate may be continue against the executor, administrator, or other legal representative of the assessee or against the assignee, receiver, or liquidator.
27.	Respondent may support order on grounds decided against him.	The respondent, though he may not have appealed, may support the order appealed against on any of the grounds decided against him.
28.	Remand of the case by the Tribunal.	Tribunal may remand the case to ITO or authority passing such order with such direction as it think fit.

Rules at a Glance....

Rule No.	Particular	Remark
29	<p data-bbox="276 251 566 522">Production of additional evidence before the Tribunal.</p> <p data-bbox="276 632 571 1075">Power of Tribunal described in rule 29 is similar to order 41 rule 27 of C.P.C. 1908.</p>	<p data-bbox="633 251 1821 351">Tribunal is empowered to allow production of additional evidence if :</p> <ul data-bbox="658 375 1914 722" style="list-style-type: none"><li data-bbox="658 375 1914 536">➤ Tribunal require any document to be produced or any witness to be examined or any affidavit to be filed relevant for passing of order or for any other.<li data-bbox="658 558 1879 722">➤ Where assessee has not been provided with sufficient opportunity to adduce evidence either on points specified by them or not specified by them. <p data-bbox="658 743 1818 843">In context of exercise of power granted under rule 29, following principle should be borne in mind.</p> <ul data-bbox="658 865 1885 1222" style="list-style-type: none"><li data-bbox="658 865 1885 972">➤ Power granted under rule 29 is not an arbitrary one but it is a judicial one.<li data-bbox="658 993 1802 1100">➤ The Tribunal may allow additional evidence also if it requires such evidence to enable it to pass orders.<li data-bbox="658 1122 1885 1222">➤ The Tribunal May allow additional evidence if it requires such evidence for any other substantial cause.

Rules at a Glance....

Rule No.	Particular	Remark
30	Mode of taking additional evidence.	Such documents may be produced or such witness examined or evidence adduced before the Tribunal or before such It authority as the Tribunal may direct.
31	Additional Evidence to be submitted to the Tribunal	After compliance of direction of Tribunal the documents the record of the deposition of witness of the witness or the record of the evidence adduced to the Tribunal.
32	Adjournment of Appeal.	The Tribunal mat at nay stage and at terms it think fit may adjourn the hearing.
32A	Award of costs.	<ol style="list-style-type: none">1. Cost of appeal shall be at discretion of Tribunal.2. The cost so awarded shall be paid or recovered as if it were a tax payable or a refund due to a party.3. The Tribunal may in its discretion, direct such costs to be deposited in any other manner as it deems fit.

Rules at a Glance....

Rule No.	Particular	Remark
33	Proceedings before the Tribunal.	Proceedings before the Tribunal are open to the public, except in particular case as per discretion of ITAT.
34.	Order to be signed and dated	<ol style="list-style-type: none">1. The order of the bench shall be in writing and shall be signed and dated by the members constituting it.2. In absence of members constituting the bench by Vice President, Senior Vice President, or the President may mark an order fit for publication.3. In case or reference to other member it shall be signed by such member.4. The Bench shall pronounce the order in the court.5. May pronounce the order immediately upon the conclusion of the hearing.6. Bench may also give a date for such pronouncement in open court.

Rules at a Glance....

Rule No.	Particular	Remark
34.	Order to be signed and dated	<p>7. Pronouncement should be tried to made within 60 days of hearing, however if not possible on the ground of exceptional and extraordinary circumstances of the case, the bench should fix a future day for pronouncement of the order, and such date shall not ordinarily be a day beyond a further period of 30 days and due notice of the day so fixed shall be given on the notice board.</p> <p>8. Member who heard the appeal shall pronounce the order, and in its absence VP, SVP, SM, or any other member directed by president.</p> <p>9. Bench may advance the date of pronouncement if the order is ready, put the information on notice board about such date. However if the order could not be pronounced, it may be deferred subject to rule mentioned above.</p>

Rules at a Glance....

Rule No.	Particular	Remark
34A	Procedure for dealing with Application u/s 254(2).	<ol style="list-style-type: none">1. Application shall clearly and concisely state the mistake apparent from the record.2. Application should be in triplicate and procedure for filling the same is mutatis mutandis with that of appeal.3. The bench that originally heard except in special cases shall dispose it after giving both the parties a reasonable opportunity of being heard.4. It shall not necessary to post miscellaneous application for hearing if it prima facie appears to be a petition for review.5. An order disposing of appeal should be in writing and give reasons for decision.
35	Order to be communicated to parties.	To Assessee and to the Commissioner.

Rules at a Glance....

Rule No.	Particular	Remark
35A	Procedure for filling and disposal of Stay petition.	<ol style="list-style-type: none">1. Application for stay of tax, interest, penalty, fine, estate duty should be presented in triplicate.2. Application should be sent by the applicant or AR at the headquarters of Bench.3. Separate application for stay of demand under different enactment.4. Application should be in English, should set forth concisely the following :-<ol style="list-style-type: none">(a) Short facts and exact amount of tax, interest, penalty, fine, estate duty, amount undisputed and amount outstanding.(b) Result of Appeal before CIT(A).(c) Date of Filling of Appeal and Appeal No.(d) Evidence of Stay proceedings at earlier stages.(e) Reasons in brief for seeking stay.(f) If applicant is offering any security and in which form.(g) Prayers should be mentioned clearly and concisely.(h) The contents of the application should be sworn by affidavit by the applicant or AR.

Rules at a Glance....

Rule No.	Particular	Remark
36 to 48	Relating to application for reference u/s 256(1).	Not relevant as Section 256(1) is omitted by the National Tax Tribunal Act, 2005 w.e.f. 28/12/2005.
49	Scale of Copying fees	<ul style="list-style-type: none">➤ For full page or part there of Rs. 10 irrespective whether the copy is typed or Xeroxed.➤ in case copies are supplied urgently than Rs. 20 per page, if copies are typed than 50% of fess so charged shall be paid to the official who typed such copies.➤ for publisher for purpose of publication, fess shall be Rs. 15 per page.➤ Copying fees for supply of certified copies, whether typed or Xeroxed should be paid in advance in cash
50	Fees for inspection of records.	<p>For first hour or part thereof – 80nP For every hour or part thereof – 50nP Fess of inspection Should be paid in advance. No fees shall be charged for inspecting records of pending appeal or application by a partu thereto.</p>

Rules at a Glance....

Rule No.	Particular	Remark
51	Repeal and saving.	The Appellate Tribunal Rules, 1946, are hereby repealed except as to proceedings to which the Indian Income-tax Act, 1922, applies.
52	Application of Rules	These rules shall apply mutatis mutandis to proceedings under all such Acts which provide for adjudication of disputes by the Income-tax Appellate Tribunal.

ISSUES

- [2011] 197 TAXMAN 128 (Delhi), CIT v. Text Hundred India (P.) Ltd.
- Whether under rule 29 Tribunal has discretion to admit additional evidence in interest of justice once Tribunal affirms opinion that doing so would be necessary for proper adjudication of matter; this can be done even when application is filed by one of parties to appeal and it need not to be a suo motu action of Tribunal - Held yes
- Whether, however, this rule would not apply where with existing evidence on record appellate court can pronounce a satisfactory judgment - Held, yes

TIPS FOR
REPRESENTATION AND
PLEADINGS

PRECAUTIONS IN FILING OF APPEAL

- Ground of Appeal should not be Argumentative.
- All grounds relating to mat, bf loss, set off of loss, as on day untenable looking claims, DVO appointment, reopening, opportunity of hearing, denial of liability to be assessed, alternative claims, challenging assessment legally should be taken
- Ground taken can be withdrawn at any time

Precaution during representation

- Written submissions preferably be filed, however it is not necessary.
- Instant query should be answered on spot, if possible.
- Past history-an important evidence-but to be used carefully at this stage.
- Representation of information based on information already filed is possible.
- Details given in past assessment can be made part of paper book.
- Procedure for representation - Argument by appellant, than reply by defendant there upon rejoinder by appellant.

Do's.....

- File Power of attorney. (CA has to file its POA at stamp paper of Rs. 50, however stamps could not be used to pay court fee, An Advocate may file POA with stamp of Rs. 12.65/- stamp paper not required.)
- Give due importance to facts.
- Furnish paper book.
- File affidavit, where ever required.
- Get acquainted with the latest law and decision, also see judgments in against.
- Facts in against should be recollected and points to defend the same should be determined.

Do's.....

- Use tact – You must know how the judge reacts to your argument.
- Act solely on reason not on emotion.
- Be courteous.
- Be fair.
- Should have good sense of humour.
- Be reasonably brief.
- Make the arguments in summarized manner.
- Show importance to ITAT members and authorities.

Don't's

- Ignore summons or notices.
- Take adjournment – on frivolous basis.
- Lie – Statement can be recorded on Oath.
- Mislead.
- loose temper (keep calm even in difficult situations)
- Make haste (Proceed carefully observing the mood of the authority)

THANK YOU!!!

assisted by: CA Monika Jain