

**-COPY OF-
INCOME TAX INSTRUCTION
NO. 4/2011
DATED 9-3-2011**

IT- Instructions regarding Standard Operating Procedure on filing of Appeals/Special Leave Petitions (SLPs) by the Income Tax Department in the Supreme Court and related matters

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.courtnic.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.	Name of the assessee	
	Address of the assessee	
3.	Assessment Year(s) involved	
4.	Aggregate of Tax effect on issues to be disputed.	
	Is it below the limits prescribed in instruction on monetary limits (Instruction No. 3 of 2011 dtd 09/02/2011) for filing SLP	
	If yes, please specify the exception provided in the instruction in which the proposal is covered.	
5.	Date of High Court's Judgment/Order	
	Date of making application for certified copy	
	Date on which certified copy was ready for delivery **	
	Date of receipt of certified copy **	
	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)]**	
	If proposal to Directorate of Income-tax (L&R) is sent beyond 21 days from the	

	date of order, reasons for delay	
6.	Are the following documents, in one set of hard copy, enclosed ++	
	copy of High Court's judgment /order	Y/N
	Copy of memo of Appeal u/s 260A filed before the High Court	Y/N
	Copy of order of ITAT	Y/N
	Copy of the order of CIT(A)	Y/N
	Copy of the Assessment Order	Y/N
	Copy of all affidavits/documents filed in the case before the High Court	
	Are the documents in 6(a)(i) to (vi) legible	Y/N
	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 words) :	In the separate sheet
	The note must indicate how CIT(A)/ITAT/HC has erred on fact or Law, instead of mere narration of course of events.	
	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.	Whether the issue arises out of audit objection?	Y/N
	If yes, whether audit objection is included in Draft Para? Also state whether Audit objection has been accepted or not.	
	Is any prosecution proceeding pending or contemplated in the case on the issue on	

	which the SLP is sought to be filed?	
10.	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
	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.	Name and present communicable address of all the respondents against whom SLP is sought to be filed	
	E-mail addresses of all respondents	
12.	Communication details of CIT	
	Name	
	Telephone Number	
	Fax number	
	Mobile number	
	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.

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