APPEAL PROCEDURES TO INCOME-TAX APPELLATE TRIBUNAL

AMIT KUMAR GUPTA[1]

Introduction

The Income-tax Appellate Tribunal is a quasi-judicial institution set up in January, 1941 and specializes in dealing with appeals under the Direct Tax Act. The Income-tax Appellate Tribunal is the second appellate authority. Appeals to Income-tax Appellate Tribunal can be filed by either of the aggrieved party, i. e., Assessing Officer or assessee. The orders passed by the Income-tax Appellate Tribunal are final ; however, an appeal lies to the High Court only if a substantial question of law arises for determination.

Appealable orders to the Appellate Tribunal

As per section 253 of the Income-tax Act "any assessee aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order—

(a) an order passed by a Deputy Commissioner (Appeals) before the 1st day of October, 1998 or, as the case may be, a Commissioner (Appeals) under section 154, section 250, section 270A, section 271, section 271A, section 271J or section 272A ; or

(b) an order passed by an Assessing Officer under clause (c) of section 158BC, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, after the 30th day of June, 1995, but before the 1st day of January, 1997 ; or

(ba) an order passed by an Assessing Officer under sub-section (1) of section 115VZC ; or

(c) an order passed by a Principal Commissioner or Commissioner under section 12AA or under clause (vi) of sub-section (5) of section 80G or under section 263 or under section 270A or under section 271 or under section 272A or an order passed by him under section 154 amending his order under section 263 or an order passed by a Principal Chief Commissioner or Chief Commissioner or a Principal Director General or Director General or a Principal Director or Director under section 272A ; or

(d) an order passed by an Assessing Officer under sub-section (3), of section 143 or section 147 or section 153A or section 153C in pursuance of the directions of the Dispute Resolution Panel or an order passed under section 154 in respect of such order ;

(e) an order passed by an Assessing Officer under sub-section (3) of section 143 or section 147 or section 153A or section 153C with the approval of the Principal Commissioner or Commissioner as referred to in

1. Advocate, Delhi High Court.

sub-section (12) of section 144BA or an order passed under section 154 or section 155 in respect of such order ;

(f) an order passed by the prescribed authority under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10.

(2) The Principal Commissioner or Commissioner may, if he objects to any order passed by a Deputy Commissioner (Appeals) before the 1st day of October, 1998 or, as the case may be, a Commissioner (Appeals) under section 154 or section 250, direct the Assessing Officer to appeal to the Appellate Tribunal against the order.

(3) Every appeal under sub-section (1) or sub-section (2) shall be filed within sixty days of the date on which the order sought to be appealed against is communicated to the assessee or to the Principal Commissioner or Commissioner, as the case may be :

Provided that in respect of any appeal under clause (b) of sub-section (1), this sub-section shall have effect as if for the words "sixty days", the words "thirty days" had been substituted.

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

(5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (3) or sub-section (4), if it is satisfied that there was sufficient cause for not presenting it within that period.

(6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, in the case of an appeal made, on or after the 1st day of October, 1998, irrespective of the date of initiation of the assessment proceedings relating thereto, be accompanied by a fee of,—

(a) where the total income of the assessee as computed by the Assessing Officer, in the case to which the appeal relates, is one hundred thousand rupees or less, five hundred rupees,

(b) where the total income of the assessee, computed as aforesaid, in the case to which the appeal relates is more than one hundred thousand

rupees but not more than two hundred thousand rupees, one thousand five hundred rupees,

(c) where the total income of the assessee, computed as aforesaid, in the case to which the appeal relates is more than two hundred thousand rupees, one per cent. of the assessed income, subject to a maximum of ten thousand rupees,

(d) where the subject matter of an appeal relates to any matter, other than those specified in clauses (a), (b) and (c), five hundred rupees :

Provided that no fee shall be payable in the case of an appeal referred to in sub-section (2), or, sub-section (2A) as it stood before its amendment by the Finance Act, 2016, or, a memorandum of cross objections referred to in sub-section (4).

(7) An application for stay of demand shall be accompanied by a fee of five hundred rupees.

Section 252 : Appellate Tribunal

(1) The Central Government shall constitute an Appellate Tribunal consisting of as many judicial and accountant members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.

(2) A judicial member shall be a person who has for at least ten years held a judicial office in the territory of India or who has been a member of the [Indian] Legal Service and has held a post in Grade [II] of that Service or any equivalent or higher post for at least three years or who has been an advocate for at least ten years.

Explanation.—For the purposes of this sub-section,—

(i) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate or has held the office of a member of a Tribunal or any post, under the Union or a State, requiring special knowledge of law ;

(ii) in computing the period during which a person has been an advocate, there shall be included any period during which the person has held judicial office or the office of a member of a Tribunal or any post, under the Union or a State, requiring special knowledge of law after he became an advocate.

(2A) An accountant member shall be a person who has for at least ten years been in the practice of accountancy as a chartered accountant under the Chartered Accountants Act, 1949 (38 of 1949), or as a registered accountant under any law formerly in force or partly as a registered accountant and partly as a chartered accountant, or who has been a mem-

ber of the Indian Income-tax Service, Group A and has held the post of Additional Commissioner of Income-tax or any equivalent or higher post for at least three years.

(3) The Central Government shall appoint—

(a) a person who is a sitting or retired judge of a High Court and who has completed not less than seven years of service as a judge in a High Court ; or

(b) the Senior Vice-President or one of the Vice-Presidents of the Appellate Tribunal, to be the President thereof.

(4) The Central Government may appoint one or more members of the Appellate Tribunal to be the Vice-President or, as the case may be, Vice-Presidents thereof.

(4A) The Central Government may appoint one of the Vice-Presidents of the Appellate Tribunal to be the Senior Vice-President thereof.

(5) The Senior Vice-President or a Vice-President shall exercise such of the powers and perform such of the functions of the President as may be delegated to him by the President by a general or special order in writing.

Section 255 : Procedure of Appellate Tribunal

(1) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the President of the Appellate Tribunal from among the members thereof.

(2) Subject to the provisions contained in sub-section (3), a Bench shall consist of one judicial member and one accountant member.

(3) The President or any other member of the Appellate Tribunal authorised in this behalf by the Central Government may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member and which pertains to an assessee whose total income as computed by the Assessing Officer in the case does not exceed fifty lakh rupees, and the President may, for the disposal of any particular case, constitute a Special Bench consisting of three or more members, one of whom shall necessarily be a judicial member and one an accountant member.

(4) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President of the Appellate Tribunal for hearing on such point or points by one or more of the other members of the Appellate Tribunal, and such point or points shall be decided according to the opinion of the majority of the members of the Appellate Tribunal who have heard the case, including those who first heard it.

(5) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

(6) The Appellate Tribunal shall, for the purpose of discharging its functions, have all the powers which are vested in the income-tax authorities referred to in section 131, and any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and 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 Code of Criminal Procedure, 1898 (5 of 1898).

Form of Appeal to Income-tax Appellate Tribunal and signatory authority

Form No. 36 shall be used to file any appeal with Income-tax Appellate Tribunal. In case of appeal by the taxpayer, the form of appeal, the grounds of appeal and the form of verification are to be signed and verified by the person authorised to sign the return of income under section 140. In other words, the Form of appeal is to be signed by the following persons :

1. In case of appeal by the individual taxpayer, by the individual taxpayer himself or by a person duly authorised by him who is holding a valid power of attorney

2. In case of a Hindu Undivided Family by the Karta of the family or if Karta is absent from India or is not capable for signing, by any other adult member of such family.

3. In case of a company by the Managing Director or if Managing Director is not available or where there is no Managing Director by any director of the company.

4. In case of a firm by the Managing Partner or if Managing Partner is not available or where there is no Managing Partner by any partner (not being a minor)

5. In case of a LLP by the Designated Partner or if Designated Partner is not available or where there is no Designated Partner by any partner.

6. In case of a Local Authority by the Principal Officer thereof

7. In case of a Political Party by the Chief Executive Officer of such party.

8. In case of any other Association by the Principal Officer thereof or by any member of the Association.

9. In case of any other Person by that Person or by some person competent to act on his behalf.

Time limit for filing the appeal

As per section 253(5), an appeal can be allowed by Income-tax Appellate Tribunal beyond the period of limitation if it is satisfied that there was sufficient cause for not presenting the appeal within time. However it is required to file application with the appeal explaining the reasons for delay supported by evidence. Negligence, inaction or mala fides would not constitute sufficient cause.

Instances, where the delay is due to wrong legal advice or because the assessee is critically ill at the relevant time are held to be sufficient cause for condonation of delay.

The observations of the Supreme Court in *Rafiq* v. *Munshilal* held that,

> "The disturbing feature of the case is that under our present adversary legal systems, where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed.
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> The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission or misdemeanour of his agent. The answer obviously is in the negative. May be that the learned advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted. Therefore, we allow this appeal, set aside the order of the High Court, both dismissing the appeal and refusing to recall that order. We direct that the appeal be restored to its original number in the High Court and be disposed of according to law."

The hon'ble Madhya Pradesh High Court in the *Hawkins Cookers Ltd.* v. *State of MP* held as under :

Examining the legal position relating to condonation of delay under section 5 of the Act of 1963, it may be observed that the Supreme Court in *Oriental Aroma Chemical Industries Ltd.* v. *Gujarat Industrial Development Corporation* [2010] 5 SCC 459 laying down the broad principles for adjudicating the issue of condonation of delay, in paras 14 and 15 observed as under :

We have considered the respective submissions. The law of limitation is founded on public policy. The Legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the Legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury.

At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing of the remedy within the stipulated time.

The expression "sufficient cause" employed in section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which subserves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate-*Collector, Land Acquisition* v. *MST. Katiji* [1987] 167 ITR 471 (SC) , *N. Balakrishnan* v. *M. Krishnamurthy* (1998) SC and *Vedabai* v. *Shantaram Baburao Patil* (2001).

The Supreme Court, in *Oriental Aroma Chemical Industries Ltd.* and *R. B. Ramlingam v. R. B. Bhavaneswari* (2009), held that the courts should adopt liberal approach where delay is of short period whereas the proof required should be strict where the delay is inordinate. Further, it was also observed that judgments dealing with the condonation of delay may not lay down any standard or objective test but is purely an individualistic test. The court is required to examine while adjudicating the matter relating to condonation of delay on exercising judicial discretion on individual facts involved therein.

There does not exist any exhaustive list constituting sufficient cause. The petitioner is required to establish that in spite of acting with due care and caution, the delay had occurred due to circumstances beyond his control and was inevitable.

The Supreme Court, in *Collector, Land Acquisition* v. *MST. Katiji* [1987] 167 ITR 471 (SC), has held that the court should have a pragmatic and liberal approach. The hon'ble Supreme Court, in *N. Balakrisnan* v. *M.*

Krishnamurthy, condoned delay of 883 days and has observed that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not provide discretion only in the cases of delay within a certain limit. The only criterion is the acceptability of the court being the adjudication of the disputes between the parties and to advance substantial justice; it is not enough to turn down the plea of the litigant and to shut the door against him for some lapses on his part, which has caused the delay. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. The Supreme Court, in *Vedabai v Shantaram Baburao Patil*, observed that the court has to exercise its discretion keeping in mind that the principle of advancing justice is of prime importance and the expression "sufficient cause" should receive liberal construction, as seen in a catena of decisions (see *State of West Bengal* v. *Administrator, Howrah Municipality* [1972] 1 SCC 366 and *Smt. Sandhya Rani Sarkar* v. *Smt. Sudha Rani Debi* [1978] 2 SCC 116. The approach of courts should be pragmatic so as to impart substantial justice.

Submission of additional evidence before the Tribunal

As per rule 29 of the Income-tax Appellate Rules, 1963 "The parties to the appeal shall not be entitled to produce additional evidence either oral or documentary before the Tribunal, but if the Tribunal requires any document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or , if the income-tax authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidence either on points specified by them or not specified by them, the Tribunal, for reasons to be recorded, may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be adduced."

In the case of *Abhay Kumar Shroff* v. *ITO* [1999] 237 ITR 75 (Patna), it has been held that if the additional evidence enables the Tribunal to pass order or for any other substantial cause, it could require the parties to do so. There is no gainsaying that while this power could be exercised by the Appellate Tribunal suo motu the jurisdiction vested in the Tribunal could be got invoked at the instance of one of the parties before it.

In the case of *Dalmia* v. *CIT* [1978] 113 ITR 522 (Delhi), the question was whether the source of cash credit in the account books of the assessee had been satisfactorily explained. The Assessing Officer had found certain cash entries and was of the opinion that since the assessee could not explain the same, he made additions on the ground that these were unexplained cash entries. It so happened that the assessee had received a sum

of Rs. 13.65 lakh from Bharat Union Agencies (P.) Ltd. ("BUA") in cash on August 3, 1953, and paid a sum of Rs. 13,64,250 to Jaipur Traders Ltd. ("JT") on August 7, 1953, also in cash. It was in this backdrop the assessee was asked to disclose the source from which this money came. The assessee was in control of both JT and BUA. Avoiding the details, with which we are not concerned, what is relevant is that, when the matter reached the Tribunal, counsel for the Revenue sought permission of the Tribunal to place on record the balance-sheet and the profit-and-loss account of JT for the relevant period as additional evidence. This request of the Revenue was opposed by the assessee. However, the Tribunal was of the opinion that additional evidence sought to be addressed was relevant and would assist the point in issue in deciding the appeal. It, thus, passed an order overruling the objection of the assessee and admitting the additional evidence. At the same time, the Tribunal thought it fair to give an opportunity to the assessee to explain the additional evidence and also certain other matters which it narrated in its order. Accordingly, it directed the Appellate Assistant Commissioner to record such further evidence as the Revenue may wish to produce and forward the same to the Tribunal, which, after examining the same, heard the assessee's appeal and by an elaborate order partly allowed the same. Against this order, the assessee came in appeal and also challenged the order of the Tribunal permitting the additional evidence. The court repelled this challenge holding that the Appellate Tribunal has a discretion to decide whether to admit the additional evidence or not and in the absence of any suggestion that it had acted on any wrong principle, no question of law can arise from the Tribunal's decision to admit the additional evidence and remand the case back to the Assistant Commissioner to give the Revenue an opportunity to produce the additional evidence as the Revenue might wish to produce and forward it to the Tribunal. The court also observed that no prejudice whatsoever was caused to the assessee as he was given full chance to not only rebut the additional evidence produced by the Revenue but also produce his own evidence.

Also, in *R. S. S. Shanmugam Pillai and Sons* v. *CIT* [1974] 95 ITR 109 (Mad), the High Court delved on the powers of the Appellate Tribunal to admit additional evidence at the appellate stage in the following manner (page 112) :

> "It is no doubt true that the Tribunal has got discretion either to admit the documents as additional evidence or to reject the same at the stage of the appeal. But the said discretion cannot be exercised in an arbitrary manner. If the Tribunal finds that the documents filed are quite relevant for the purpose of deciding the issue before it, it would be well within its powers to admit the evidence, consider the same or

remit the matter to the lower authorities for the purpose of finding out the genuineness of the letters and considering the relevancy of the same. But if the Tribunal finds that the evidence adduced at the stage of the appeal is not quite relevant or that it is not necessary for the proper disposal of the appeal before it, in that case, the Tribunal could straight away reject the evidence, which was sought to be produced for the first time at the stage of the appeal."

The Supreme Court, in the case of *K. Venkataramaiah* v. *A. Seetharama Reddy*, AIR 1963 SC 1526, that under rule 27(1) of Order 41 of the Code of Civil Procedure, the appellate court has the power to allow additional evidence not only if it requires such evidence "to enable it to pronounce judgment", but also for "any other substantial cause". There might well be cases where even though the court found that it was able to pronounce judgment on the state of record as it was, and so it could not strictly say that it required additional evidence to enable it to pronounce judgment, it still considered that in the interest of justice something which remained obscure should be filled up so that it could pronounce its judgment in a more satisfactory manner. Such a case would be one for allowing additional evidence for any other substantial cause under rule 27(1)(b) of Order 41 of the Code.

Grounds of appeal

Every memorandum of appeal/cross-objection shall be written in English (other than at stations where documents may be filed in Hindi) and shall set forth concisely and under distinct heads the grounds of appeal or cross-objection, without any argument or narrative, and such grounds shall be numbered consecutively.

The following are some tips for drafting the grounds of appeal :

1. The grounds of appeal should be concise and specific.

2. They should be neither narrative nor argumentative.

3. The grounds should be set in the order in which they are appearing in the assessment order and should be consecutively numbered.

4. The grounds should clearly explain the nature of dispute and the expected relief. Also for every dispute separate ground should be drafted.

5. In the grounds of appeal the assessee's grievance should be specifically included.

Preparation of paper book

(1) Under rule 18, the appellant or respondent may submit a paper-book in duplicate containing such papers duly indexed and paged at least a day before the date of hearing of the appeal along with proof of service of a copy of the same on the other side at least a week before. The Head Clerk

in custody of the file at this stage will keep a watch over the filing of paper books by the appellant/respondent and issue a reminder to the appellant/respondent, as the case may be, inviting the attention to the provisions of rule 18 of the Income-tax (Appellate Tribunal) Rules, 1963 with a request to file the requisite paper book.

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

Documents to be submitted with appeal

- Form No. 36 - in triplicate.
- Order appealed against - 2 copies (including one certified copy).
- Order of Assessing Officer - 2 copies
- Grounds of appeal before first appellate authority (i.e., Commissioner of Income-tax (Appeals)) - 2 copies.
- Statement of facts filed before first appellate authority (i.e., Commissioner of Income-tax (Appeals)) - 2 copies.
- In case of appeal against penalty order – 2 copies of relevant assessment order.
- In case of appeal against order under section 143(3), read with section 144A - 2 copies of the directions of the Joint Commissioner under section 144A.
- In case of appeal against order under section 143, read with section 147 - 2 copies of original assessment order, if any.
- Copy of challan for payment of fee.

Memorandum of cross-objection

A memorandum of cross-objections under sub-section (4) of section 253 to the Appellate Tribunal shall be made in Form No. 36A and where the memorandum of cross-objection is made by the assessee, the form of memorandum of cross-objections, the grounds of cross-objections and the form of verification. Person, who is competent to sign Form 36 (i. e., form of appeal), has to sign and verify the memorandum of cross-objections. After filing of the appeal to the Income-tax Appellate Tribunal by the taxpayer or by the Assessing Officer (as the case may be) the opposite party will be intimated about the appeal and the opposite party has to file a memorandum of cross-objection with the Income-tax Appellate Tribunal. The memorandum of cross-objection is to be filed within a period of 30 days of receipt of notice and there is no fee payable for filing this. The Income-tax Appellate Tribunal may accept a memorandum of cross-objection even after the period of 30 days, if it is satisfied that there was good,

sufficient or reasonable cause for not submitting the same within the prescribed time.

In case of appeals to the Income-tax Appellate Tribunal on or after October 1, 1998 (irrespective of the date of initiation of assessment proceedings), the following fees are payable :

Monetary limits for filing of Income-tax appeals before Income-tax Appellate Tribunal, High Court and Supreme Court increased further by the Central Board of Direct Taxes.

Circular No. 17/2019
F. No. 279/Misc. 142/2007-ITJ(Pt.)
Government of India
Ministry of Finance
Department of Revenue
Central Board Direct Taxes
Judicial section
New Delhi, August 8, 2019

Subject : Further enhancement of monetary limits for filing of appeals by the Department before Income-tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court – Amendment to Circular 3 of 2018 – Measures for reducing litigation.

Reference is invited to the Circular No. 3 of 2018 dated July 11, 2018 (the Circular) of Central Board of Direct Taxes (the Board) and its amendment dated August 20, 2018 vide which monetary limits for filing of income-tax appeals by the Department before Income-tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court have been specified. Representation has also been received that an anomaly in the said circular at para 5 may be removed.

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

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

3. Further, with a view to provide parity in filing of appeals in scenarios where separate order is passed by higher appellate authorities

for each assessment year vis-a-vis where composite order for more than one assessment years is passed, para 5 of the circular is substituted by the following para :

"5. The Assessing Officer shall calculate the tax effect separately for every assessment year in respect of the disputed issues in the case of every assessee. If, in the case of an assessee, the disputed issues arise in more than one assessment year, appeal can be filed in respect of such assessment year or years in which the tax effect in respect of the disputed issues exceeds the monetary limit specified in para 3. No appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit specified in para 3. Further, even in the case of composite order of any High Court or appellate authority which involves more than one assessment year and common issues in more than one assessment year, no appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit specified in para 3. In case where a composite order/judgement involve more than one assessee, each assessee shall be dealt with separately."

4. The said modifications shall come into effect from the date of issue of this Circular.

5. The same may be brought to the notice of all concerned.

6. This issues under section 268A of the Income-tax Act, 1961.

Income-tax (Appellate Tribunal) Rules, 1963

Notification.—(Notification No. I-AT/63, dated April 17, 1963)

In exercise of the powers conferred by sub-section (5) of section 255 of the Income-tax Act, 1961 (43 of 1961), the Appellate Tribunal is pleased to make the following Rules, namely :—

Rules to regulate the procedure of the Appellate Tribunal and the procedure of the Benches of the Tribunal.

1. Short title and commencement.

(1) These rules may be called the Income-tax (Appellate Tribunal) Rules, 1963.

(2) They shall come into force at once.

2. Definitions.

In these rules, unless there is anything repugnant in the subject or context,—

(i) "Act" means the Income-tax Act, 1961 (43 of 1961) ;

(ii) "authorised representative" means—

(a) in relation to an assessee, a person duly authorised by the assessee under section 288 to attend before the Tribunal ; and

(b) in relation to an income-tax authority who is a party to any proceedings before the Tribunal—

(i) a person duly appointed by the Central Board of Direct Taxes as "authorised representative" to appear, plead and act on behalf of the Income-tax Department ; and

(ii) a person duly authorised by the Chief Commissioner of Income-tax to appear, plead and act on behalf of the Income-tax Department ;

(iii) "Bench" means a Bench of the Tribunal constituted under sub-section (1) of section 255 read with sub-section (2) thereof and includes the President, Senior Vice-President, Vice-President or any other Member sitting singly under the provisions of sub-section (3) of the said section and a Special Bench constituted under the same provision ;

(iv) "member" means a member of the Tribunal ;

(v) "prescribed form" means a form prescribed in the rules made by the Central Board of Direct Taxes under section 295 ;

(vi) "President" means the President of the Tribunal ;

(vii) "Registrar" means the person who is for the time being discharging the functions of the Registrar of the Tribunal and includes a Deputy Registrar and Assistant Registrar where the context so requires ;

(viii) "section" means a section of the Act ;

(ix) "Senior Vice-President" means the Senior Vice-President of the Tribunal ;

(x) "Tribunal" means the Appellate Tribunal constituted by the Central Government under section 252, and includes, where the context so requires, a Bench exercising and discharging the powers and functions of the Tribunal ;

(xi) "Vice-President" means a Vice-President of the Tribunal.

4. Powers of Bench.

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

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

4A. Powers and functions of the Registrar.

(1) The Registrar/Deputy Registrar/Assistant Registrar shall have the custody of records of the Tribunal and shall exercise such other functions

including weeding out of old records as may be assigned to him under these rules by the President, Senior Vice-President, Vice-President of the concerned Zone or Senior Member of the Bench.

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

(i) to receive all appeals, miscellaneous applications, stay petitions as well as other documents including applications for early hearing, transfer of appeals, applications for adjournment ;

(ii) to endorse on such appeals and applications the date of receipt for the purpose of calculating limitation and the amount of fee received ;

(iii) to scrutinize all appeals and applications so received to find out whether they are in conformity with rules ;

(iv) to point out defects in such appeals and applications to the parties requiring them to rectify by affording reasonable opportunity and, if within the time so granted defects are not rectified, to obtain the orders of the Bench for the return of the appeals and applications ;

(v) to check whether the appeal or appeals are barred by limitation and, if so, intimate the party and place the matter before the Bench for orders ;

(va) to send the memo of appeals, applications, petitions along with enclosures to the opposite party (respondents) within a reasonable time from their institution by the applicant/Department and to receive cross objection on the appeal filed by the applicant/Department and to carry out similar functions as indicated in sub-rules (ii) to (v) of this rule ;

(vi) subject to the directions of the President, Senior Vice-President, Vice-President and Senior Member of the Bench, to fix the date of hearing of the appeals and applications and direct the issue of notices therefor ;

(vii) to ensure that sufficient number of cases are fixed before the Bench or Benches under the directions of the President, Senior Vice-President, Vice-President or Senior Member, as the case may be ;

(viii) to bring on record legal representatives, in case of death of any party, to the proceedings ;

(ix) to verify the service of notice or other processes and to ensure that the parties are properly served, after obtaining the orders of the Bench whenever required for substituted service ;

(x) to requisition records from the custody of any authority ;

(xi) to allow inspection of records of the Tribunal ;

(xii) to return the documents filed by any authority on orders of the Bench ;

(xiii) to consolidate the appeals relating to the same assessee or the same issue or for any reason on the direction of the President, Senior Vice-President, Vice-President or Senior Member ;

(xiv) to fix cases out of turn on the direction of the President, Senior Vice-President, Vice-President or Senior Member ;

(xv) to certify and issue copies of the orders of the Tribunal to the parties ;

(xvi) to grant certified copies of documents filed in the proceedings to the parties, in accordance with the rules ;

(xvii) to grant certified copies of the orders of Tribunal for publication, in accordance with the rules ;

(xviii) to segregate cases to be heard by Single Member and fix them for hearing separately ;

(xix) to ensure that remand reports are submitted in time whenever called for by the Bench by issuing necessary reminders to the authority concerned ;

(xx) to obtain orders of the Bench on applications for withdrawal of appeals and applications and put up before the Bench ;

(xxi) to refund the institution fee on the direction of the Bench.

5. Language of the Tribunal.

The language of the Tribunal shall be English.

5A. Filing of documents in Hindi.

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

NOTES

Vide Notification No. F. 186-Ad(AT)/71, dated March 5, 1974, documents drawn up in Hindi may be filed in the States of Gujarat, Maharashtra, Uttar Pradesh, Punjab, Chandigarh, Delhi, Madhya Pradesh, Rajasthan and Bihar at the following stations where Benches of the Tribunal are located, namely :— Ahmedabad, Bombay, Nagpur, Allahabad, Amritsar, Chandigarh, Delhi, Indore, Jabalpur, Jaipur, and Patna.

5B. Use of Hindi in proceedings and orders.

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

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

NOTES

New rule 5B, inserted by the Income-tax (Appellate Tribunal) (Amendment) Rules, 1975, permits the use of Hindi by the Appellate Tribunal in its proceedings and also enables them to pass order in Hindi in such States as may be notified by the President from time to time. However, where the order is passed in Hindi it shall be accompanied by an authorised English translation.

For this purpose, vide Notification No. F. 71-Ad(AT)/74, dated May 5, 1975, the President of the Appellate Tribunal has notified the States of Gujarat, Maharashtra, Uttar Pradesh, Punjab, Madhya Pradesh, Rajasthan, Bihar and the Union Territories of Chandigarh and Delhi and the following stations where Benches of the Tribunal are located, namely :—

1.	Ahmedabad,	7.	Delhi,
2.	Bombay,	8.	Indore,
3.	Nagpur,	9.	Jabalpur,
4.	Allahabad,	10.	Jaipur,
5.	Amritsar,	11.	Patna.
6.	Chandigarh,		

7. Date of presentation of appeals.

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

NOTES

Vide Order No. 1 of 1973, dated October 1, 1973, the Assistant Registrar of the Appellate Tribunal at Bombay, Allahabad, Madras, Calcutta, Delhi, Hyderabad, Patna, Cochin, Ahmedabad, Bangalore, Indore, Chandigarh, Nagpur, Cuttack, Jabalpur, Jaipur, Amritsar, Poona and Gauhati have been authorised to endorse on memorandum of appeal the date on which it is presented or deemed to have been presented under rule 6. However, if at the time of presentation of appeal, the Assistant Registrar is absent from office, the appeal or application may be presented to the Superintendent/ Assistant Superintendent/senior most Head Clerk during office hours. In case the applicant apprehends that it is last day of the limitation for presentation of his appeal and application, he may present it to the Assistant Registrar at his residence or any other place wherever he may be or to Member of the Tribunal at his residence or wherever he may be.

8. Contents of memorandum of appeal.

Every memorandum of appeal shall be written in English and shall set forth, concisely and under distinct heads, the grounds of appeal without any argument or narrative ; and such grounds shall be numbered consecutively.

9. What to accompany memorandum of appeal.

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

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

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

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

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

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

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

NOTES

It has been clarified by the President, Income-tax Appellate Tribunal, in his letter No. F. 38-JS (AT)/71, dated August 9, 1971, that a copy of the order appealed against bearing the signature of the issuing or authorised officer and seal of the office which issued the copies, will be treated as equivalent to a certified copy of the order appealed against.

9A. When to give revised Form No. 36

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

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

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

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

10. Filing of affidavits.

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

11. Grounds which may be taken in appeal.

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

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

12. Rejection or amendment of memorandum of appeal.

The Tribunal may reject a memorandum of appeal, if it is not in the prescribed form or return it for being amended within such time as it may allow. On representation after such amendment, the memorandum shall be signed and dated by the officer competent to make an endorsement under rule 7.

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

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

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

In an appeal by the Assessing Officer under sub-section (2) of section 253, the appellant before the CIT (Appeals) shall be made a respondent to the appeal.

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

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

16. Authorising a representative to appear.

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

NOTES

Where the power of attorney/vakalatnama is filed in favour of a firm, the constitution of the firm should also be intimated to the Tribunal vide Notification No. F. 161-Ad(AT)/70, dated May 8, 1973.

17. Authorisation to be filed.

An authorised representative appearing for the assessee at the hearing of an appeal shall, unless the document referred to in rule 16 has been appended, file such a document before the commencement of the hearing.

17A. Dress regulations for the members and for the representatives of the parties.

(i) Summer dress for the Members shall be white shirt, white pant with black coat, a black tie or a buttoned-up black coat. In winter, striped or black trousers may be worn in place of white trousers.

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

(ii) Dress for the authorised representatives of the parties other than a relative or regular employee pyjama. The colour of the coat shall, preferably, be black of the assessee appearing before the Tribunal shall be the following :

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

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

Where, however, the authorised representatives belong to a profession like that of lawyers or Chartered Accountants and they have been pre-

scribed a dress for appearing in their professional capacity before any court, Tribunal or other such authority, they may, at their option, appear in that dress, in lieu of the dress mentioned above.

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

18. Preparation of paper books, etc.

(1) If the appellant or the respondent, as the case may be, proposes to refer or rely upon any document or statements or other papers on the file of or referred to in the assessment or appellate orders, he may submit a paper book in duplicate containing such papers duly indexed and paged at least a day before the date of hearing of the appeal along with proof of service of a copy of the same on the other side at least a week before :

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

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

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

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

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

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

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

19. Date and place for hearing of appeal to be notified.

(1) The Tribunal shall notify to the parties specifying the date and place of hearing of the appeal and send a copy of the memorandum of appeal to the respondent either before or with such notice.

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

20. Date and place of hearing of appeal, how fixed.

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

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

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

22.Cross-objections.

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

23. Hearing of the appeal.

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

24. Hearing of appeal ex parte for default by the appellant.

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

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

25. Hearing of appeal ex parte for default by the respondent.

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

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

26. Continuation of proceedings after the death or insolvency of a party to the appeal.

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

Provided that :

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

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

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.

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

29. Production of additional evidence before the Tribunal.

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

30. Mode of taking additional evidence.

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

31. Additional evidence to be submitted to the Tribunal.

If the document is directed to be produced or witness examined or evidence adduced before any income-tax authority, he shall comply with the direction of the Tribunal and after compliance send the document, the record of the deposition of the witness or the record of the evidence adduced, to the Tribunal.

32. Adjournment of appeal

The Tribunal may, on such terms as it thinks fit, and at any stage, adjourn the hearing of the appeal.

32A. Award of costs

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

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

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

33. Proceedings before the Tribunal.

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

34. Order to be pronounced, signed and dated

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

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

(3) Where a case is referred under sub-section (4) of section 255, the order of the Member or Members to whom it is referred shall be signed and dated by him or them, as the case may be.

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

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

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

(a) The Bench may pronounce the order immediately upon the conclusion of the hearing.

(b) In case where the order is not pronounced immediately on the conclusion of the hearing, the Bench shall give a date for pronouncement.

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

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

(7) In the case where the order is ready in every respect and can be made available to the parties, the Bench may advance the date of pronouncement and put this information on the notice board and the order shall be pronounced accordingly.

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

34A. Procedure for dealing with applications under section 254(2).

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

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

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

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

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

35. Order to be communicated to parties

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

35A. Procedure for filing and disposal of stay petition.

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

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

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

(i) short facts regarding the demand of the tax, interest, penalty, fine, estate duty or any other sum, recovery of which is sought to be stayed ;

(ii) the result of the appeal filed before the CIT (Appeals), if any ;

(iii) the exact amount of tax, interest, penalty, fine, estate duty or any other sum demanded, as the case may be, and the amount undisputed therefrom and the amount outstanding ;

(iv) the date of filing the appeal before the Tribunal and its number, if known ;

(v) whether any application for stay was made to the revenue authorities concerned, and if so the result thereof (copies of correspondence, if any, with the revenue authorities to be attached) ;

(vi) reasons in brief for seeking stay ;

(vii) whether the applicant is prepared to offer security, and if so, in what form ;

(viii) prayers to be mentioned clearly and concisely (stating exact amount sought to be stayed) ;

(ix) the contents of the application shall be supported by an affidavit sworn by the applicant or his duly authorised agent.

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

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

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

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

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

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

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

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

40. Same Bench to hear the application.

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

41. Time for submission of reply by the respondent.

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

42. Contents of the reply.

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

43. Dismissal if no question of law arises.

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

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

Where the Tribunal is of the opinion that a question of law arises out of the order under sub-section (1) of section 254, it shall draw up a statement of the case.

45. What to accompany the statement of the case

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

46. Order on application to be communicated to the parties.

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

47. Same Bench to deal with requisition from High Court under section 256(2).

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

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

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

49. Scale of copying fees.

(1) Copying fees for supply of certified copies shall be charged as under :

(i) For a full page or part thereof, [Rs. 10] irrespective of whether the copy is typed or xeroxed.

(2) Except in cases where copies are supplied free under the rules or instructions for the time being in force and in cases covered by sub-rule (3), the scale of fees to be charged for the supply of copies urgently shall be twice those prescribed by sub-rule (1) where the copies are typed and in such cases, fifty per cent. of the fees so charged shall be paid to the official who types such copies.

(3) Where a party applies for immediate delivery of a copy of evidence taken down by a stenographer, the fee charged shall be twice those prescribed by sub-rule (1), and in case a typed copy is supplied, fifty per cent of the fees so charged shall be paid to the official who types such copies.

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

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

50. Fees for inspection of records.

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

(a)	For the first hour or part thereof	20
(b)	For every additional hour or part thereof	10

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

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

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.

NOTES

The Appellate Tribunal has, vide F. No. 114-Ad(AT)/69, dated April 13, 1970, laid down the following guidelines for the guidance of the assessees and their representatives :

1. In all communications addressed to the Tribunal by the parties with regard to appeals or applications or cross-objections the number thereof, or, if the number is not known, the date of filing thereof, should invariably be given. Failure to furnish the information will cause avoidable correspondence and needless delay in answering correspondence.

2. An application for adjournment of the hearing should be made at the earliest possible time. If it could be presented personally, it should be done so. If it cannot be presented personally, a stamped envelope with the address of the assessee or his representative should, as far as possible, accompany the application. If a reply is required telegraphically, the necessary postage stamps should accompany the application. If a telegram is sent asking for adjournment, arrangement should be made for a reply-paid telegram. The suggestion made in this paragraph is intended not so much as a measure of economy as a measure for greater efficiency. The Tribunal is not bound to reply to applications for adjournment. Replies will, however, be given as far as possible. Unless the assessee hears that his application for adjournment has been granted, he should remain present at the hearing of the appeal or application or cross-objection, as the case may be.

3. Whenever an appeal or application or cross-objection is filed which is connected with an appeal or application or cross-objection relating to the same party filed earlier, reference thereto should invariably be given with the latter appeal or application or cross-objection so that the various

connected appeals or applications or cross-objections could be linked up together. This will be for the convenience of the parties themselves.

(1) If any practitioner wishes that appeals and applications and cross-objections relating to different assessees in which he is engaged should be taken up on the same of consecutive days, he should intimate to the Tribunal the particulars of these appeals and applications and cross-objections including the dates of filing thereof, well in advance.

4. An application for an early hearing for an appeal should invariably give detailed reasons why the assessee wants that his appeal should be given preference over the appeals made by other assessees. The application should also state whether or not the tax has been paid and, if so, to what extent.

5. An application for sending the case of another assessee should also be made at the earliest possible opportunity. Cases will not ordinarily be sent for, for the purpose of making an assessment on the same basis in other cases.

6. Attention is invited to rule 10 of the Appellate Tribunal Rules, 1963. That rule provides that where a fact which cannot be borne out by or is contrary to record is alleged, it should be stated clearly and concisely and should be supported by a duly sworn affidavit. Complaints are at times made before the Tribunal that certain statements attributed to the assessees or their representatives were in fact not made. Unless rule 10 is complied with, it is not ordinarily possible to go outside the record. An application for time for filing an affidavit as required by rule 10 at the time of hearing of the appeal will not ordinarily be granted. The object of this suggestion is to save time in hearing and deciding appeals, applications and cross-objections.

7. If an appeal/reference application/cross-objection is barred by time, or if there are reasons for believing that it may be barred by time, an application for condoning the delay should be made well in advance before the hearing of the appeal/application/cross-objection. Such an application should ordinarily be supported by an affidavit and other documentary evidence, as for example, a medical certificate.

8. Three copies (typed, if possible) of the statements made by the assessee or the witnesses or of documents relied upon or of extracts of accounts, where necessary, should be produced at the time of the hearing of the appeal, application or cross-objection. As far as possible, all such documents and papers should be in English or translated into English. This suggestion has been accepted by many solicitors and auditors appearing before the Tribunal. This suggestion is intended to facilitate the hearing of

the appeal, application or cross-objection. Extracts of accounts should, if possible, be certified by the assessee's representative or by any other reliable person and be in English.

9. Books of account should be kept handy at the time of hearing of the appeal, application or cross-objection. If books of account of the year preceding or succeeding year of account are relevant, they should also be kept handy.

10. Assessees should, as far as possible, be present at the hearing of the appeal, application or cross-objection. This suggestion is made entirely in the interest of the assessees.

11. It has been noticed that requests are made to block the appeals to await decision of the High Court or the Supreme Court in similar points involved in the appeals. In order to avoid multiplicity in proceedings, the Appellate Tribunal acceded to such request. It is, however, found that in many of such cases, the particulars of the case involving the identical points are not on record so as to find out whether that case has been disposed of by the High Court/the Supreme Court or not. This results in prolonging correspondence between the Tribunal and the parties causing long and avoidable delay in the disposal of those blocked appeals/applications/cross-objections. It is, therefore, suggested that an application for keeping the appeals/applications/cross-objections blocked should invariably furnish the particulars of the case pending with the High Court/the Supreme Court involving identical points for which the appeals or applications or cross-objections are sought to be blocked. The assessees and the Departmental representatives should inform the Tribunal about the disposal of the case by the High Court or the Supreme Court immediately after its disposal so as to enable the Tribunal to dispose of such blocked cases soon thereafter. In this connection, it may be made clear that the Tribunal is not bound to keep such appeals/applications/cross-objections blocked for indefinite periods.

12. Whenever any appeal against the penalty order passed by the IAC is filed, the appellant should invariably inform the Tribunal in the forwarding letter whether any quantum appeal pertaining to the same assessment year is pending before the Appellate Assistant Commissioner concerned. The Tribunal should be informed immediately after the disposal of the said quantum appeal by the Appellate Assistant Commissioner. If the said quantum appeal has already been disposed of by the Appellate Assistant Commissioner at the time of filing of the penalty appeal before the Tribunal, the date of filing of the quantum appeal before the Tribunal may be intimated to enable it to link both the appeals and post them for hearing

on one date. In case no such quantum appeal is proposed to be filed before the Tribunal, the fact may be intimated to the Tribunal, so that the penalty appeal may be posted for hearing.

Standing order under Income-tax (Appellate Tribunal) Rules, 1963

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

S. No.	*Name and Number of Bench(es)*	*Districts/States/Union Territories*
(1)	(2)	(3)
1.	Agra Bench (1)	Districts of Agra, Aligarh, Etah, Etawah, Farrukhabad, Firozabad, Jalaun, Jhansi, Lalitpur, Mahamayanagar, Mainpuri and Mathura of Uttar Pradesh.
		Bhind, Datia, Guna, Gwalior, Morena and Shivpuri Districts of Madhya Pradesh.
2.	Ahmedabad Benches (3)	Gujarat (excluding the Districts of Amreli, Bhavnagar, Jamnagar, Junagarh, Kachchh, Rajkot and Surendernagar).
		Union Territory of Dadra and Nagar Haveli.
		Territory of Daman of the Union Territory of Daman and Diu.
3.	Allahabad Bench (1)	Uttar Pradesh (excluding the districts of Agra, Aligarh, Bahraich, Barabanki, Basti, Badaun, Bareilly, Bijnor, Bulandshahr, Etah, Etawah, Faizabad, Farrukhabad, Firozabad, Gautam Budh Nagar, Ghaziabad, Gonda, Hardoi, Jalaun, Jhansi, Jyotiba Rao Phule Nagar, Kanpur (Rural), Kanpur (Urban), Lalitpur, Lucknow, Lakhimpur, Kheri, Mahamayanagar, Mainpuri, Mathura, Meerut, Moradabad, Muzaffar Nagar, Pilibhit, Raibareilly, Rampur, Saharanpur, Seetapur, Shahjahanpur and Unnao).
		Uttaranchal (excluding the districts of Almora, Chamoli, Dehradun, Haridwar, Nainital, Pauri Garhwal, Pithoragarh, Tehri Garhwal, Udham Singh Nagar and Uttarkashi).
4.	Amritsar Bench (1)	Districts of Amritsar, Bhatinda, Faridkot, Firozpur, Gurdaspur, Hoshiarpur, Jalandhar and Kapurthala of Punjab.
		State of Jammu and Kashmir.
5.	Bangalore Benches (3)	Karnataka (excluding the Districts of Belgaum, Mangalore, Karwar and North Kanara).

6.	Calcutta Benches (5)	West Bengal.
		Sikkim
		Union Territory of Andaman and Nicobar Islands.
7.	Chandigarh Benches (2)	Punjab (excluding the Districts of Amritsar, Bhatinda, Faridkot, Firozpur, Gurdaspur, Hoshiarpur, Jalandhar and Kapurthala).
		Haryana (excluding the Districts of Bhiwani, Faridabad, Gurgaon, Hissar, Jhajjar, Karnal, Mohindergarh, Panipat, Rewari, Rohtak and Sonepat).
		Himachal Pradesh.
		Union Territory of Chandigarh.
8.	Chennai Benches (4)	Tamil Nadu.
		Union Territory of Pondicherry excluding Mahe.
9.	Cochin Bench (1)	Kerala.
		Union Territories of Lakshadweep, Minicoy and Amindivi Islands.
		Mahe of the Union Territory of Pondicherry.
10.	Cuttack Bench (1)	Orissa.
11.	Delhi Benches (7)	National Capital Territory of Delhi.
		Districts of Bhiwani, Faridabad, Gurgaon, Hissar, Jhajjar, Karnal, Mohindergarh, Panipat, Rewari, Rohtak and Sonepat of Haryana.
		Districts of Badaun, Bijnor, Bulandshahr, Gautam Budh Nagar, Ghaziabad, Jyotiba Rao Phule Nagar, Meerut, Moradabad, Muzaffar Nagar, Rampur and Saharanpur of Uttar Pradesh.
		Districts of Almora, Chamoli, Dehradun, Haridwar, Nainital, Pauri Garhwal, Pithoragarh, Tehri Garhwal, Udham Singh Nagar and Uttarkashi of Uttaranchal.
12.	Guwahati Bench (1)	Arunachal Pradesh.
		Assam.
		Manipur.
		Meghalaya.
		Mizoram.
		Nagaland.
		Tripura.
13.	Hyderabad Benches (2)	Andhra Pradesh (excluding the Districts of East Godavari, West Godavari, Guntur, Krishna, Srikakulam, Vishakhapatnam and Vizianagaram).

14.	Indore Bench (1)	Districts of Bhopal, Dewas, Dhar, Indore, Jhabua, Khandwa, Khargon, Mandsaur, Raisen, Ratlam, Sehore, Shajapur, Ujjain and Vidisha of Madhya Pradesh
15.	Jabalpur Bench (1)	Madhya Pradesh (excluding the districts of Bhind, Bhopal, Datia, Dewas, Dhar, Guna, Gwalior, Indore, Jhabua, Khandwa, Khargon, Mandsaur, Morena, Raisen, Ratlam, Sehore, Shajapur, Shivpuri, Ujjain and Vidisha).
16.	Jaipur Bench (1)	Rajasthan (excluding the Districts of Banswara, Barmer, Bhilwara, Bikaner, Chittorgarh, Churu, Dungarpur, Jaisalmer, Jalore, Jodhpur, Nagaur, Pali, Rajsamand, Sirohi, Sriganganagar and Udaipur).
17.	Jodhpur Bench (1)	Districts of Banswara, Barmer, Bhilwara, Bikaner, Chittorgarh, Churu, Dungarpur, Jaisalmer, Jalore, Jodhpur, Nagaur, Pali, Rajsamand, Sirohi, Sriganganagar and Udaipur of Rajasthan.
18.	Mumbai Benches (10)	Mumbai City, Mumbai Suburban and Thane Districts of Maharashtra.
19.	Nagpur Bench (1)	Akola, Amravati, Bhandara, Buldhana, Chandrapur, Gadchiroli, Nagpur, Wardha and Yeotmal districts of Maharashtra.
20.	Panaji Bench (1)	Goa.
		Belgaum, Mangalore, Karwar and North Kanara districts of Karnataka.
21.	Patna Bench (1)	State of Bihar
22.	Pune Bench (1)	Maharashtra (excluding the Districts of Bhandara, Chandrapur, Gadchiroli, Mumbai City, Mumbai Suburban, Nagpur, Thane and Wardha).
23.	Rajkot Bench (1)	Districts of Amreli, Bhavnagar, Jamnagar, Junagarh, Kachchh, Rajkot and Surendernagar of Gujarat.
		Territory of Diu of the Union Territory of Daman and Diu.
24.	Vishakhapatnam Bench (1)	Districts of East Godavari, West Godavari, Guntur, Krishna, Srikakulam, Vishakhapatnam and Vizianagaram of Andhra Pradesh.
25.	Lucknow (1)	The Districts of Barabanki, Bareilly, Basti, Bahraich, Faizabad, Gonda, Hardoi,
26.	Bilaspur Bench (1)	State of Chhattisgarh
27.	Ranchi Bench (1)	State of Jharkhand

2. All pending appeals and applications, except those in which orders have been reserved after hearing, will be governed by the above order. Appeals and applications already fixed for hearing will be heard by the Bench before which they are so fixed.

3. It is further directed that the reference applications, arising out of the orders passed by the Bench wherefrom the jurisdiction is transferred, shall be heard and decided by the Bench to which the jurisdiction now stands transferred.

4. The ordinary jurisdiction of the Bench will be determined not by the place of business or residence of the assessee but by the location of the office of the Assessing Officer.

5. All appeals and applications pertaining to the Rajkot, Panaji, Vishakhapatnam, Agra and Jodhpur Benches shall, however, be received at the Ahmedabad, Pune, Hyderabad, Delhi and Jaipur Benches respectively till the abovesaid newly created Benches become functional. All such appeals and applications shall be separately registered/entered in the relevant registers, meant for these newly created Benches, and shall be handed over to the concerned Bench(es) as and when the said Bench(es) become(s) functional.

Notification No. F. No. 63-Ad (AT)/97, dated September 16, 1997 as amended by Notification F. No. 63-Ad (AT)/2001, dated October 19, 2001, No. F. No. 63-Ad(AT)/2001, dated May 29, 2001 and No. F. No. 63-Ad(AT)/2009, dated March 16, 2009.

The above rules which have been discussed were applicable in physical hearing and now as the hearings are being conducted virtually new procedures are emerging to combat its requirements.