

Appeals & Procedures for Filing Appeals



Income Tax Department

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Tax Payers Information Series-42

APPEALS AND PROCEDURES FOR FILING APPEALS



INCOME TAX DEPARTMENT

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PREFACE

Taxpayers, particularly small taxpayers, are still not very well aware of the course of action available to them in case they do not agree with the decisions of the Income Tax Authorities. The book is our first endeavour to educate the taxpayers about the appellate proceedings under the Income Tax Act.


One Law Dictionary defines ‘appeal’ as a proceeding taken to rectify an erroneous decision of a court by submitting the question to a higher court or court of appeal. Right to appeal under the Income Tax Law is a creation of statute and is not an inherent right. Appeal can be filed only against orders listed in the Income Tax Act. Income Tax liability is determined at the level of Assessing Officer. When a taxpayer is adversely affected by orders as passed by the Assessing Officer, he can file an appeal before the Commissioner of Income Tax (Appeals) having jurisdiction over the tax payer. Income Tax Appellate Tribunal is the second appellate channel available for the taxpayers. On substantial questions of law, further appeal can be filed before the High Court and Special Leave Petition can be filed before the Supreme Court.

This booklet has been brought out for the first time under the Tax Payers Information Series. It is an attempt to educate the taxpayers about the provision and procedures relating to Filing the Appeals. The booklet lists out the Forms in which Appeals can be filed, how to fill the same, who will sign the Form, authority with whom appeals should be filed, language to be used in the Forms and fees to be paid etc. The author Shri Rajat Bansal, CIT-III, Baroda has taken great pains in authoring the first edition of this booklet, in a very simple and lucid language.

It is hoped that this publication will prove to be very useful for the readers. The Directorate of Income Tax (Public Relations, Printing & Publications and Official Language) would welcome any suggestions to further improve this publication.

New Delhi

Dated: 28.01.2013



(Amitabh Kumar)

Director of Income Tax (PR, PP & OL)

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INTRODUCTION

One Law Dictionary defines ‘appeal’ as a proceeding taken to rectify an erroneous decision of a court by submitting the question to a higher court, or court of appeal. Right to appeal under income tax law is a creation of statute and not an inherent right. Appeal can be filed only against orders listed in the Income Tax Act and not any order. Income tax liability is determined at the level of Assessing Officer first. A tax payer aggrieved by various actions of Assessing Officer can appeal before Commissioner of Income Tax (Appeals). Further appeal can be preferred before the Income Tax Appellate Tribunal. On substantial question of law, further appeal can be filed before the High Court and even to the Supreme Court.

APPEAL BEFORE COMMISSIONER **(APPEALS)**

Aggrieved tax payer can file appeal before the Commissioner (Appeals) having, jurisdiction over the tax payer. Designation of the Commissioner (Appeals), with whom appeal is to be filed is also mentioned in the notice of demand issued by the Assessing Officer under section 156 of Income Tax Act.

WHEN APPEAL CAN BE FILED BEFORE COMMISSIONER (APPEALS), i.e. APPEALABLE ORDERS:

Appeal can be filed before Commissioner (Appeals), when a tax payer is adversely affected by Orders as under passed by various Income tax authorities:

- (a) Order against tax payer where the tax payer denies liability to be assessed under Income Tax Act;
- (b) Intimation issued under Section 143(1) making adjustments to the returned income ;
- (c) Scrutiny assessment order u/s 143(3) or an ex-parte assessment .order u/s 144, to object to income determined or loss assessed or tax determined or status under which assessed,
- (d) Order u/s 115WE/115WF/115WG assessing fringe benefits;
- (e) Re-assessment order passed after reopening the assessment u/s 147/150;

- (f) Search assessment order u/s 153A or 158BC;
- (g) Rectification Order u/s 154/155;
- (h) Order u/ s 163 treating the taxpayer as agent of a non-resident;
- (i) Order passed u/s 170(2)/(3) assessing the successor to the business in respect of income earned by the predecessor;
- (j) Order u/s 171 recording finding about partition of Hindu undivided family(HUF);
- (k) Order u/s 115VP(3) refusing approval to opt for tonnage-tax scheme by qualifying shipping companies;
- (l) Order u/s 201(1)/206C(6A) deeming person responsible for deduction of tax at source as assessee in default on failure to deduct/ collect tax at source or to pay the same to the Government;
- (m) Order determining refund u/s 237;
- (n) Order imposing penalty u/s 221/271 /271A/271AAA/271F/271FB/272A/272AA/272BB/275(1A)/158BFA(2)/271B/271BB/271C/271CA/271D/271E

FORM OF APPEAL AND HOW TO FILL THE SAME:

Every appeal to the Commissioner (Appeals) is to be filed in Form No. 35, as per Annexure-1. In this form, details such as name and address of the tax payer, Permanent Account Number (PAN), assessment year, details of the order against which appeal is filed etc. are to be filled in.

- Against the column “Relief claimed in appeal”, amount of reductions sought in income or any other relief sought in appeal is to be mentioned.
- In the column “Statement of Facts”, relevant facts in respect of each subject matter of appeal are to be mentioned in brief. Nature of business or profession, account books maintained etc. may also be mentioned in this column.
- Against column “Grounds of appeal”, points on which relief is sought in appeal are to be mentioned in narrative form. For example, in an appeal against addition to the returned income by applying a gross profit rate on estimated turnover, the ground of appeal may be, “the Ld. Assessing Officer was not justified in rejecting the results as per regular books of account and in estimating the income by applying an ad-hoc rate of gross profit.”

WHO HAS TO SIGN FORM No. 35?:

Form no. 35 is to be signed and verified by the individual tax payer himself or by a person duly authorised by him holding valid power of attorney. In case of HUF, Form no. 35 is to be signed by the Karta and in case of a company, by the Managing Director and in case of a firm, by the Managing Partner.

PAYMENT OF ACCEPTED TAX LIABILITY MUST BEFORE FILING APPEAL:

An appeal will be admitted by Commissioner (Appeals) only if tax as per the returned income, where return of income is filed, or advance tax payable, where no return of income is filed has been paid prior to filing of appeal. In the latter situation i.e. where

return of income is not filed, tax payer can apply to the Commissioner (Appeals) for exemption from such condition for good and sufficient reasons.

APPEAL FEES:

Fees to be paid before filing appeal to the Commissioner (Appeals) depends upon total income determined by the Assessing Officer. Fees as under are to be paid and proof of payment of fee is to be attached with Form No. 35:

SI No.	Total Income determined by the Assessing Officer	Appeal Fee
1.	Less than Rs. 1,00,000/-	Rs. 250/-
2.	More than Rs.1,00,000/- but less than Rs.2,00,000/-	Rs. 500/-
3.	More than Rs. 2,00,000/-	Rs. 1,000/-

Where the subject matter of appeal relates to any other matter, fee of Rs. 250/- is to be paid.

Appeal fee can be paid in any branch of authorised bank/ State Bank of India/Reserve bank of India along-with challan. E-payment can also be made.

BY WHEN CAN APPEAL BE FILED BEFORE COMMISSIONER (APPEALS)?

Appeal is to be filed within 30 days of the date of service of notice of demand relating to assessment or penalty order or the date of service of order sought to be appealed against, as the case may be. The Commissioner (Appeals) may admit an appeal after the expiration of period of 30 days, if he is satisfied that there was sufficient cause for not presenting the appeal within the period of 30 days. Application for condoning the delay citing

out reasons for the delay along with necessary evidences should be filed with Form No. 35 at the time of filing of appeal. Commissioner (Appeals) can condone the delay in filing the appeal in genuine cases with a view to dispense substantive justice.

APPEAL PROCEDURE:

On receipt of Form no. 35, Commissioner of Income-tax (Appeals) fixes date and place for hearing the appeal by issuing notice to the tax payer and the Assessing Officer, against whose order appeal is preferred. The tax payer has a right to be heard either personally or through an Authorized Representative. The Commissioner (Appeals) would hear the appeal and may adjourn it from time to time till the hearing is over. During hearing, Commissioner (Appeals) may allow the tax payer to go into additional grounds of appeal, i.e. grounds not specified in the appeal memo, i.e. Form no. 35, on being satisfied that omission of those grounds from the form of appeal was not wilful or unreasonable. Before disposing of any appeal, Commissioner (Appeals) may carry out further enquiry himself or through the Assessing Officer. If such proceedings are conducted through the Assessing officer, the same are generally referred to as remand proceedings.

FILING OF ADDITIONAL EVIDENCE:

During appeal proceedings, the tax payer is not entitled to produce any evidence, whether oral or documentary other than what was already produced before the Assessing Officer. Commissioner (Appeals) would admit additional evidence filed only in following situations:

- (a) where the Assessing Officer has refused to admit evidence which ought to have been admitted; or
- (b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to be produced by the Assessing Officer; or
- (c) where the appellant was prevented by sufficient cause from producing before the Assessing Officer any evidence which is relevant to any ground of appeal; or
- (d) where the Assessing Officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

Normally, additional evidences are to be accompanied with an application stating the reasons for their admission, after which the Commissioner (Appeals) may admit the same after recording reasons in writing for its admission. Before taking into account the additional evidence filed, Commissioner (Appeals) is to provide reasonable opportunity to the Assessing Officer. For examining the additional evidence or the witness as well as to produce evidences to rebut additional evidences filed by the tax payer.

APPEAL DECISION:

After the hearing is concluded, Commissioner (Appeals) passes order in writing, disposing of the appeal and stating the decision on each ground of appeal with reasons. In case of assessment and penalty, Commissioner (Appeals) may confirm, reduce or enhance it. Before enhancing any assessment or penalty, Commissioner of Income-tax (Appeals) has to provide reasonable opportunity to the tax payer for showing cause

against such enhancement. While disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which order appealed against was passed, even if such matter was not raised by the tax payer.

APPEAL BEFORE INCOME TAX APPELLATE TRIBUNAL

Appeal against an order of Commissioner (Appeals) lies with the Income Tax Appellate Tribunal (ITAT). Both tax payer and the Assessing Officer can file appeal before the Appellate Tribunal. Several Benches of the Appellate Tribunal comprising judicial and accountant members have been constituted all over India. The jurisdiction of Benches is as per Standing Order under Income-Tax (Appellate Tribunal) Rules, 1963 (Annexure 4).

ORDERS AGAINST WHICH APPEAL CAN BE FILED BEFORE APPELLATE TRIBUNAL:

Tax payer can file appeal before the Income Tax Appellate Tribunal against the following orders:

- (i) Order by Commissioner(Appeals) u/s 250/154/271/271A/272A;
- (ii) Order by Assessing Officer u/s 158BC(c) in respect of search action initiated during 30.6.1995 to 1.1.1997;
- (iii) Order by Assessing Officer u/ s 115 VZC excluding the tax payer from tonnage tax scheme;
- (iv) Order by Commissioner u/s 12AA on registration application by a charitable or religious trust;
- (v) Order by the Commissioner u/s 80G(5)(vi) regarding approval of a charitable trust for donations made after 31.3.92;

- (vi) Order by Commissioner u/s 263 revising Assessing Officer's order considered prejudicial to the interest of revenue;
- (vii) Order by Commissioner u/s 154 to rectify an order u/s 263;
- (viii) Penalty order passed by Commissioners u/s 271 or section 272A;
- (ix) Penalty order passed by Chief Commissioner/ Director General/Director u/s 272A;
- (x) Order passed by Assessing Officer u/s 143(3)/147 in pursuance of direction of Dispute;

Resolution Panel (DRP) and rectification order passed u/s 154 in respect of such order. The Commissioner can also direct the Assessing Officer to file appeal against order of Commissioner (Appeals) before the Appellate Tribunal.

TIME LIMIT FOR FILING APPEAL BEFORE ITAT:

Appeal is to be filed before the Appellate Tribunal within 60 days of the date on which order appealed against is communicated to the taxpayer or the Commissioner, as the case may be.

FORM OF APPEAL:

An appeal to the ITAT is to be made in Form No. 36 as per Annexure-2 which is to be filed in triplicate and is to be accompanied by two copies of order appealed against (at least one out of which should be a certified copy), two copies of relevant order of the Assessing Officer, two copies of grounds of appeal before the first appellate authority i.e. Commissioner (Appeals) and two copies of statement of facts, if any, filed before the said first appellate authority. In case of appeal against

order levying penalty, 2 copies of relevant assessment order are also to be filed. In case of appeal against order u/s 143(3) r.w.s. 144A, two copies of directions of Additional Commissioner/Joint Commissioner u/s 144A are also to be filed and in case of appeal against order u/s 143(3) r.w.s. 147, two copies of original assessment order, if any are also to be filed. In case of appeal against penalty u/s 271(1)(C)/158BFA(2), the relevant assessment orders' copies are also to be filed.

WHO HAS TO SIGN FORM NO.36?

Form no. 36, the grounds of appeal and form of verification appended thereto is to be signed by the individual tax payer himself or by a person duly authorized by him holding valid power of attorney. In case of HUF, Form no. 36 is to be signed by the Karta and in case of a company, the Managing Director and in case of a firm, by the Managing Partner.

FEES TO BE PAID BY THE TAXPAYER FOR FILING APPEAL BEFORE THE ITAT:

Form No. 36 is to be accompanied with fee as under, which depends upon total income computed by the Assessing Officer in the case to which appeal relates.

	Total Income as computed by Assessing Officer	Fees
(i)	Less than Rs.1 lakh	Rs. 500
(ii)	More than Rs. 1 lakh but less than Rs. 2 lakh	Rs. 1,500
(iii)	More than Rs. 2 lakh	1% of assessed income, subject to maximum of Rs.10,000

Where the subject matter of appeal relates to any other matter, fee of Rs 500/- is to be paid.

An application for stay of demand is to be accompanied by fee of Rs. 500.

MEMORANDUM OF CROSS OBJECTIONS:

The tax payer or the Assessing Officer on receipt of notice that an appeal has been filed before the Appellate Tribunal against order of Commissioner (Appeals) by the other party can, within 30 days of receipt of notice, file a memorandum of cross objections in Form No. 36A as in Annexure-3. Such memorandum of cross objections can be filed even if no appeal is filed by the tax payer or the Assessing Officer himself. No fee is required to be paid for filing the memorandum of cross objections. The memorandum of cross objections is to be signed and verified by the person who was competent to sign Form 36. The memorandum of cross objections is disposed of by the ITAT like an appeal in Form 36.

LANGUAGE TO BE USED IN FORM NO. 36/36A:

The appeal/cross objections before the ITAT are to be in English except for states notified by the President of ITAT, where appeal can be in documents drawn up in Hindi also. As per Notification No. F. 186-Ad(AT)/71 dated 5.3.74, documents drawn up in Hindi may be filed in states of Gujarat, Maharashtra, Uttar Pradesh, Punjab, Chandigarh, Delhi, Madhya Pradesh, Rajasthan and Bihar for the following Benches of the Tribunal

Ahmedabad

Mumbai

Nagpur

Allahabad

Amritsar

Chandigarh

Delhi

Indore

Jabalpur

Jaipur

Patna

**CONDONATION OF DELAY IN FILING APPEAL/
MEMORANDUM OF OBJECTIONS:**

The Appellate Tribunal may admit an appeal or permit filing of memorandum of cross objections after the period of 60 days or 30 days, as the case may be, if it is satisfied that there was sufficient cause for not presenting it within the prescribed time.

WITH WHOM THE APPEAL IS TO BE FILED:

Normally appeal is to be filed with the Assistant Registrar or the Superintendent/ Assistant Superintendent/Clerk in the ITAT.

PROCEDURE FOLLOWED IN THE ITAT:

Filing of Paper Book:

The appellant or the respondent, as the case may be, may submit a paper book in duplicate containing documents or statements or other papers referred to in the assessment or

appellate order, which it may wish to rely upon. The paper book duly indexed and page numbered is to be filed at least a day before the hearing of the appeal along-with proof of service of copy of the same on the other side at least a week before. The Bench may in appropriate cases condone the delay and admit the paper book. The Tribunal can also, on its own direct preparation of paper book in triplicate by and at the cost of appellant or the respondent as it may consider necessary for disposal of appeal. Each paper in the paper book is to be certified as true copy by the party filing the same. Additional evidence, if any, should not be part of the paper book and it should be filed separately.

Hearing of the appeal:

The Appellate Tribunal fixes the date for hearing the appeal and notifies the parties specifying date and place of hearing of the appeal. A copy of memorandum of appeal is sent to the respondent either before or along with such notice. The appeal is heard on the date fixed and on other dates to which it may be adjourned. If the appellant does not appear in person or through an authorized representative when appeal is called on for hearing, the ITAT may dispose of the appeal on merits after hearing the respondent. However, where after disposal of appeal ex parte, the appellant appears afterwards and satisfies the Tribunal that there was sufficient cause for non appearance, the Tribunal can set aside the ex parte order and restore the appeal. Similar procedure is applicable where appeal is disposed in the absence of respondent.

Production of additional evidence before the Tribunal:

The parties to the appeal are not entitled to produce additional evidence of any kind, either oral or documentary before the Tribunal. However, if the Tribunal requires production

of any document, examination of any witness or filing of any affidavit to enable it to pass orders, it may allow such document to be produced, witness to be examined, affidavit to be filed and such evidence to be adduced.

Proceedings before the Tribunal to be open to public:

Normally the proceedings in the Tribunal are public except in cases decided to be otherwise by the Tribunal as per its discretion.

ORDERS OF THE APPELLATE TRIBUNAL:

Normally appeals are heard by a Bench comprising one judicial member and one accountant member. Appeals where total income computed by the Assessing Officer does not exceed Rs. 5 lakh may be disposed of by single member Bench. The President of ITAT is empowered to constitute Special Bench consisting of three or more than three members for disposal of any particular case, one of whom would necessarily be a judicial member and one an accountant member. If the members of the Bench differ in opinion on any point, decision is by majority. If members are equally divided in their opinion, the points of difference are stated by each member and the case is referred by the President of the ITAT for hearing such points by one or more of other members of the ITAT. Such point or points is decided according to opinion of majority of the members of ITAT who heard the case, including those who first heard it. The Bench normally pronounces its orders in Court. Where the orders are not pronounced in the Court, list of such orders showing results of appeal and signed by members is put on the notice board of the Bench.

MISCELLANEOUS APPLICATIONS:

The ITAT, at any time within four years from the date of order passed by it, can rectify any mistake apparent from record, if the same is brought to its notice by the tax payer or the Assessing Officer. A fee of Rs 50/- is to be paid for filing miscellaneous application.

PETITIONS SEEKING STAY:

On application by the tax payer, the Appellate Tribunal can pass an order of stay in any proceedings relating to an appeal filed before the Appellate Tribunal. The stay can be for a period up to 180 days, and the Appellate Tribunal is expected to dispose of the appeal within the period of stay. Where the appeal is not disposed of within the period of stay, the Appellate Tribunal may grant further stay; however, the total stay period cannot exceed 365 days.

The Appellate Tribunal has, vide F. No. 114-Ad(AT)/69, dated 13-4-1970, laid down guidelines for the assesses and their representatives as in Annexure-5.

APPEAL BEFORE HIGH COURT

Appeal against Appellate Tribunal's order lies with the High Court, Where the High Court is satisfied that the case involves a substantial question of law. Appeal to the High Court against Appellate Tribunal's order can be filed by the tax payer or the Chief Commissioner/Commissioner within 120 days of receipt of the order and in the form of memorandum of appeal, precisely stating the substantial question of law involved. If the High Court is satisfied that a substantial question is involved, it would formulate that question. High Court hears the appeal only on the question of law so formulated; however, the respondents can argue at the time of hearing that case does not involve such question of law. Appeal filed before High Court is heard by bench of not less than two Judges and decision is by majority.

APPEAL BEFORE SUPREME COURT

Appeal against High Court's order in respect of Appellate Tribunal's order lies with the Supreme Court in those cases, which are certified to be fit one for appeal to the Supreme Court.

Special leave can also be granted by the Supreme Court under Art. 136 of the constitution of India against the order of the High Court.

Annexure-1
FORM NO. 35

[See Rule 45]

Appeal to the Commissioner of Income Tax (Appeals)

Designation of the Commissioner (Appeals)

No.....of.....

Name and address of the appellant	
Permanent Account Number	
Assessment year in connection with which the appeal is preferred	
Assessing Officer/ Valuation Officer passing the order appealed against	
Section and sub-section of the Income-tax Act, 1961 under which the Assessing Officer/Valuation Officer passed the order appealed against and the date of such order	
Where the appeal relates to any tax deducted under section 195(1), the date of payment of the tax	
Where the appeal relates to any assessment or penalty, the date of service of the relevant notice of demand	

In any other case, the date of service of the intimation of the order appealed against	
Section and clause of the Income-tax Act, 1961 under which the appeal is preferred	
Where a return has been filed by the appellant for the assessment year inconnection with which the appeal is preferred, whether tax due on the income returned has been paid in full (if the answer is in the affirmative, give details of date of payment and amount paid)	
Where no return has been filed by the appellant for the assessment year in connection with which the appeal is preferred, whether an amount equal to the amount of advance tax payable by him during the financial year immediately preceding such assessment year has been paid (If the answer is in the affirmative, give details of date of payments and amount paid)	
Relief claimed in appeal	
Where an appeal in relation to any other assessment year is pending in the case of the appellant with any Commissioner (Appeals), give the details as to the - (a) Commissioner (Appeals), with whom the appeal is pending; (b) Assessment year in connection with which the appeal has been preferred;	

(c) Assessing Officer passing the order appealed against;	
(d) Section and sub-section of the Act, under which the Assessing Officer passed the order appealed against and the date of such order	
Address to which notices may be sent to the appellant	

.....

Signed
(Appellant)

STATEMENT OF FACTS

.....
GROUND OF APPEAL
.....

.....
Signed
(Appellant)

Form of verification

I, ,the appellant, do hereby declare that what is
stated above is true to the best of my information and belief.

Place
.....
Date..... Signature
.....
Status of appellant

Annexure-2

FORM NO. 36

[See Rule 47(1)]

Form of appeal to the Appellant Tribunal

In the Income-tax Appellate Tribunal.....

Appeal No.....of.....

Versus

.....

.....

APPELLANT

RESPONDENT

1.	The State in which the assessment was made	
2.	Section under which the order appealed against was passed	
3.	Assessment year in connection with which the appeal is preferred	
3A.	Total income declared by the assessee for the assessment year referred to in item 3	
3B.	Total income as computed by the Assessing Officer for the assessment year referred to in item 3	
4.	The Assessing Officer passing the original order	
5.	Section of the Income-tax Act, 1961, under which the Assessing Officer passed the order	

6.	The Deputy Commissioner (Appeals) in respect of orders passed before the 1 st day of October, 1998 Commissioner (Appeals) passing the order under section 154/250/271/271A/272A	
7.	The Deputy Commissioner or the Deputy Director in respect of orders passed before the 1 st day of October, 1998, or the joint Commissioner or the joint Director passing the order under section 154/272A/274(2)	
8.	The Chief Commissioner or Director General or Director or Commissioner, passing the order under section 154(2)/250/263/271/271A/272A	
9.	Date of communication of the order appealed against	
10.	Address to which notices may be sent to the appellant	
11.	Address to which notices may be sent to the respondent	
12.	Relief claimed in appeal	

GROUND S OF APPEAL

- 1.
- 2.
- 3.
- 4.etc

.....

Signed
(Authorized Representative,if any)

.....

Signed
(Appellant)

Verification

I,,the appellant, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today theday of.....

.....

Signed

Annexure-3

FORM NO. 36A

[See Rule 47(1)]

**Form of memorandum of cross-objections to the
Appellant Tribunal**

In the Income-tax Appellate Tribunal.....
Cross-objection No.....of.....
In Appeal No.....of.....
Versus

.....

.....

APPELLANT

RESPONDENT

1.	Appeal No. allotted by the Tribunal to which memorandum of cross-objections relates	
2.	The state in which the assessment was made	
3.	Section under which the order appealed against was passed	
4.	Assessment year in connection with which the memorandum of cross-objections is preferred	
5.	Date of receipt of notice of appeal filed by the appellant to the Tribunal	
6.	Address to which notices may be sent to the respondent (cross-objector)	
7.	Address to which notices may be sent to the appellant	
8.	Relief claimed in the memorandum of cross-objections	

GROUND OF APPEAL

- 1.
- 2.
- 3.
- 4. etc.

.....

Signed

(Authorized Representative, if any)

.....

Signed

(Respondent)

Verification

I,.....,the respondent, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today theday of

.....

Signed

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 17th July, 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 1st October, 1997, be heard and determined by the Benches specified in Column 2 of the Table below

<i>S.No. Name & Number of Benches)</i>	<i>Districts/States/Union Territories</i>
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 Bench(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
& 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, Laichimpur,
Kheri, Mahamayangar,
Mainpuri, Mathura, Meerut,
Moradabad, Muzaffar Nagar,
Pilibhit, Raibareilly, Rampur,
Saharanpur, Seetapur,
Shahjahapur and Unnao).
Uttaranchal (excluding the
districts of Almora, Chomoli,
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 & 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 Sonapat).
 - 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 of Territory of Delhi
 - Districts of Bhiwani, Faridabad, Gurgaon, Hissar, Jhajjar, Karnal, Mohindergarh, Panipat, Rewari, Rohtak and Sonapat of Haryana.
 - Districts of Badaun, Bijnor, Bulandshahr, Gautam Budh Nagar, Ghaziabad, Jyotiba Rao Phule Nagar, Meerut, Moradabad, Muzaffarnagar, 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 Saburban, 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 & Diu.
 24. Vishakhapatnam Bench(1) -Districts of East Godavari, West Godavari, Guntur, Krishna, Srikakulam, Vishakhapatnam and Vizainagram of Andhra Pradesh.
 25. Lucknow Bench(1) -The districts of Barabanki, Bareilly, Basti, Bahraich, Faizabad, Gonda, Hardoi, Kanpur(Rural), Kanpur (Urban), Lucknow, Lakhimpur, Kheri, Pilibhit, Raibareilly, Shahjahanpur, Seetapur, Unnao.
 26. Bilaspur Bench (1) -State of Chattisgarh
 27. Ranchi Bench (1) -State of Jharkhand
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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 Ahmadabad, 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 16-09-1997 as amended by Notification F. No. 63-Ad(AT)/2001, dated 19-10-2001, No. F. No. 63-Ad(AT)/2001, dated 29-5-2001 and No. F. No. 63-Ad (AT)/2009, dated 16-3-2009.

Annexure-5

The Appellate Tribunal has, *vide F. No. 114-Ad(AT)/69*, dated 13-4-1970, laid down the following guidelines for the guidance of the assesses 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 assesses 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 assesses 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. If any practitioner wishes that appeals and applications and cross-objections relating to different assesseees in which he is engaged should be taken up on the same or 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 assesseees. The application should also state whether or not the tax has been paid and, if so, to what extent.
5. An application for sending for 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 assesseees 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. Assessee 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 assessee.
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 assessee 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 AAC concerned. The Tribunal should be informed immediately after the disposal of the said quantum appeal by the AAC. If the said quantum appeal has already been disposed of by the AAC 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.