

AVOIDANCE OF REPETITIVE APPEALS

SECTION 158A: PROCEDURE WHEN ASSESSEE CLAIMS IDENTICAL QUESTION OF LAW IS PENDING BEFORE HIGH COURT OR SUPREME COURT

OTHER CASE

Assessment Year 2015-16 Assessing officer →CIT(A) → ITAT → HC → SC

Made order of assessment and made addition on Question of Law Z

Case of assessee is pending in High Court or Supreme Court on Question of Law Z

RELEVANT CASE

Assessment Year 2017-18 Assessing officer →CIT(A) → ITAT: Case pending before ITAT on Question of Law Z

Assessee can give prescribed declaration to ITAT

Assessment Year 2018-19 Assessing officer →CIT(A): Case pending before CIT (A) on Question of Law Z

Assessee can give prescribed declaration to CIT (A)

Assessment Year 2019-20 Assessing officer: Case pending before Assessing Officer and on same Question of Law Z

Assessee can give prescribed declaration to Assessing Officer

In the prescribed declaration, it shall be mentioned that if ITAT (Assessment year 2017-18), CIT (Appeal) (Assessment year 2018-19) or Assessing Officer (Assessment year 2019-20), agrees to apply final decision of High Court (if no appeal made to Supreme Court) or order of Supreme Court in the **other case** i.e., Assessment year 2015-16 to the relevant case, then assessee will not file an appeal in relevant case against their order (order of ITAT/ CIT(A)/ Assessing Officer respectively in above case.)

- ITAT (Assessment year 2017-18), CIT(A) (Assessment Year 2018-19) and Assessing Officer (Assessment year 2019-20) will **disallow the deduction** on

Question of Law Z **without waiting for the decision** in other case, and assessee will not file appeal against their order.

➤ When order in other case Assessment year 2015-16, becomes final.

CASE I and is against the assessee, → No action required

CASE II and is in favour of assessee → then ITAT (Assessment year 2017-18, CIT(A) (Assessment Year 2018-19) and Assessing Officer (Assessment year 2019-20) will modify their orders as per final decision in **other case**.

SECTION 158AB: PROCEDURE WHEN IN AN APPEAL BY REVENUE AN IDENTICAL QUESTION OF LAW IS PENDING BEFORE HIGH COURT OR SUPREME COURT

Illustration 1:

OTHER CASE

Assessment Year 2015-16 Assessing officer → CIT(A) → ITAT → HC → SC



Made order of assessment and made additions on Question of Law

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High Court gave decision in favour of assessee and allowed deduction/ held receipt is not taxable.

Department files an appeal to Supreme Court and appeal is pending in Supreme Court.

RELEVANT CASE

Assessment Year 2016-17, 2017-18, 2018-19, Assessing officer → CIT(A) → ITAT: ITAT follows High Court order of Assessment Year 2015-16 and allows deduction/ holds receipt is not taxable.

Assessing Officer to make application to High Court under section 158AB

1. The Collegium, if satisfied that Question of Law is identical in '**Other Case**' and '**Relevant Case**', will inform the Principal Commissioner of Income Tax/ Commissioner of Income Tax not to file an appeal to High Court against the order of ITAT in "**Relevant Case**".
2. The Principal Commissioner of Income Tax/ Commissioner of Income Tax after receiving the above direction from Collegium, shall direct the Assessing Officer not to file an appeal to High Court against the order of ITAT in '**Relevant Case**' and direct the Assessing Officer to make an application to High Court within 120 days from the date of receipt of order of ITAT in '**Relevant Case**', stating that an appeal on Question of Law in '**Relevant Case**' may be filed to High Court when the decision on Question of Law in '**Other Case**' (Assessment Year 2015-16) i.e., decision of High Court becomes final.
3. Suppose Supreme Court gave decision on 01.01.2023 in '**Other Case**' i.e., Assessment year 2015-16 that:

Case I: Deduction is allowed/ Receipt is not taxable

Case II: Deduction is disallowed/ Receipt is taxable

and the above order is received by Principal Commissioner of Income Tax/ Commissioner of Income Tax on 10.01.2023.

Now in Case I, nothing will happen as ITAT has already allowed the deduction/ has held that receipt is not taxable. **Therefore, Repetitive Appeals are avoided.**

In Case II, the Principal Commissioner of Income Tax/ Commissioner of Income Tax shall direct the Assessing Officer to file an appeal to High Court against the order of ITAT in '**Relevant Case**' i.e., Assessment year 2016-17, 2017-18 and 2018-19 and such appeal shall be filed within 120 days from 10.01.2023. The High Court will disallow the deduction/ will hold the receipt to be taxable following the Supreme Court order of assessment year 2015-16. (**'Other Case'**)

Note: The same procedure will also apply if the case of assessee is decided by Commissioner of Income Tax (Appeals) ('Relevant Case') following the High Court order and 'Other Case' is pending before Supreme Court.

Illustration 2:

OTHER CASE

Assessment Year 2015-16 Assessing officer → CIT(A) → ITAT → HC



Made order of assessment and made additions on Question of Law

ITAT gave decision in favour of assessee and allowed deduction/ held receipt is not taxable.



Department files an appeal to High Court and appeal is pending in High Court.

RELEVANT CASE

Assessment Year 2016-17, 2017-18, 2018-19 Assessing Officer → CIT(A): CIT(A) follows ITAT order and allows deduction/ holds receipt is not taxable.

Assessing Officer to make application to ITAT under section 158AB

1. The Collegium, if satisfied that Question of Law is identical in '**Other Case**' and '**Relevant Case**', will inform the Principal Commissioner of Income Tax/ Commissioner of Income Tax not to file an appeal to ITAT against the order of Commissioner of Income Tax (Appeals) in "**Relevant Case**".
2. The Principal Commissioner of Income Tax/ Commissioner of Income Tax after receiving the above direction from Collegium, shall direct the Assessing Officer not to file an appeal to ITAT against the order of Commissioner of Income Tax (Appeals) in '**Relevant Case**' and direct the Assessing Officer to make an application to ITAT within 120 days from the date of receipt of order of Commissioner of Income Tax (Appeals) in '**Relevant Case**', stating that an appeal on Question of Law in '**Relevant Case**' may be filed to ITAT when the decision on Question of Law in '**Other Case**' (Assessment Year 2015-16) i.e., decision of High Court becomes final.

3. Suppose High Court gave decision on 01.01.2023 in '**Other Case**' i.e., Assessment year 2015-16 that:

Case I: Deduction is allowed/ Receipt is not taxable

Case II: Deduction is disallowed/ Receipt is taxable

and the above order is received by Principal Commissioner of Income Tax/ Commissioner of Income Tax on 10.01.2023.

Now in Case I, nothing will happen as Commissioner of Income Tax (Appeals) has already allowed the deduction/ has held that receipt is not taxable. **Therefore, Repetitive Appeals are avoided.**

In Case II, the Principal Commissioner of Income Tax/ Commissioner of Income Tax shall direct the Assessing Officer to file an appeal to ITAT against the order of Commissioner of Income Tax (Appeals) in '**Relevant Case**' i.e., Assessment year 2016-17, 2017-18 and 2018-19 and such appeal shall be filed within 60 days from 10.01.2023. The ITAT will disallow the deduction/ will hold the receipt to be taxable following the High Court order of assessment year 2015-16. ('**Other Case**')

Note: If an appeal is filed to Supreme Court against the order of High Court for Assessment year 2015-16, above procedure shall be followed only after the decision of Supreme Court is pronounced.

KEY NOTES:

1. The above application under section 158AB can be filed only if assessee gives the acceptance that Question of Law in relevant case is identical with Question of Law in other case which is pending before the High Court or Supreme Court.
2. If assessee, does not give acceptance, then Department will file normal appeal to ITAT or the High Court as the case may be.
3. For the purposes of '**Other Case**', case of any other assessee might also be considered by the Collegium.

Therefore, it is not necessary that the '**Other Case**' should relate to the assessee. Even if '**Other Case**' i.e., the case which is pending before High Court or Supreme Court relates to any other assessee, the Collegium can follow the procedure laid in section 158AB.

Therefore, if case of Mr. Ahmed is pending before High Court/ Supreme Court in '**Other Case**' i.e., Assessment year 2015-16, and the case of Mr. Beta is decided by ITAT/ Commissioner Income Tax (Appeals) for Assessment year 2016-17, 2017-18 and 2018-19, then the Collegium can follow the procedure laid down under section 158AB in case of Mr. Beta if Question of Law pending in High Court/ Supreme Court in case of Mr. Ahmed is identical.