

RTI Discussion Paper for NWR on Streamlining of Filing of Appeals before High Court and Supreme Court

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1 Regarding Delays in Filing of SLP's

Extract from CCIT's Conference Minutes 2010

The Annexure i.e. orders of AO, CIT(A), ITAT & High Court along with Memo of Appeal filed u/s 260 A should be legible. One soft copy of the annexure in MS Word 2007 or 2003 format in a CD should be sent with proposal. SLP proposal should be forwarded by the CCIT with his specific comments. A large number of proposals raise only question of facts which puts avoidable burden on the judicial system/Departmental resources.

Members Letter dt 20 th sept 2005 placed at Annexure 7.4 is required to be updated by the timeline prescribed in letter no *D.O. F.No. DGIT(L & R)/Member(A & J)/Delay/SLP/2010-11 dt 14 June 2010 of 45 days and the requirement of soft copies.*

The matter of delays in filing SLP's is for discussion. Team DGIT (L&R) had emphasized that not a single application was unaccompanied by an application for condonation of delay.

While some Commissioners had given feedback of the pains taken by them in select cases with significant issues involved and highlighted the delays in typing the application in CAS. It was the unanimous view at the Delhi Seminar that Applications after going through various stages are held up in CAS and that vetting by the Law Ministry does not result in any value addition to the quality of appeals.

It was also observed that in certain cases the advocates' panel of the Law Ministry would return the application after one year or more and often the appeals are returned untyped even after long delays. This problem was stated to be chronic and insurmountable. DGIT(L&R) is in the process of getting the size of the advocates panel available with CAS enlarged.

2 Regarding defining the Role of High Court Cell in tracking listing and hearing of cases

Extract from CCIT's Conference Minutes 2010

DGIT (L & R) Shri. Akhilesh Prasad informed the house that the major factors leading to delay in filing of SLPs include delay in communication of order of the High Court by the Sr. Standing Counsel or delay in obtaining opinion of the Counsel, lack of monitoring of the High Court judgment by the CIT, typing of voluminous annexure in prescribed format in CAS, in some cases, delay is due to sheer negligence. The measures to curb delay include the role of the High Court Cell, which must compile the particulars of judgments pronounced on daily basis & immediately inform the concerned CIT, the CIT should obtain a copy of the judgment from the Counsel/HC website and should scrutinize the judgment of the High Court and initiate proposal, if need be.

The CIT's are often not informed regarding the listing of cases which results in assessment record etc not being supplied to Standing Counsels or AO's not being present to defend cases. Chandigarh be the first to start using e-mail addresses of all administrative CIT's who could be informed by the Standing Counsel via e-mail regarding fixation of cases. The High Court Cell could also additionally perform this task both via e-mail as also telephonically. CIT's should also encourage Liason officers to use the net to check cause lists fixation. The High Court Cell could also play an important role in application for certified copies.

In NWR intimation of listing is given by the Standing Counsel but should also be given by the High Court Cell. Details of High Court Cell and its role are a focus of Seminar on 27th Sept 2010

2.1.1 High Court Cell: The Mumbai Model --For Discussion of Open House

The Mumbai Charge has a fine model which has been in implementation for some years now. A brief overview is presented for the consideration of the Open House and a view regarding its implementation in NWR may be taken.

- After obtaining the cause list, the Income-tax Officer high Court Cell and his Inspector are required to act swiftly due to time bound nature of work. They identify the CIT-wise jurisdiction of cases and also make 19 -20 copies of kuccha cause list for circulation in various Commissionerate charges of NWR as per List .
- The cases pertaining to charges outside Chandigarh can be informed telephonically by them.
- The Income-tax Officer (HC Cell) / Income-tax Inspector intimates the designated Liason officer in the respective C's.I.T. Office about the likelihood of the cases coming up for hearing the next day, for further intimation to the concerned Assessing Officer and the Standing Counsel.
- Mobile/residential telephone numbers of such Officers are also maintained with the ITO(HC Cell) so that they can be contacted at a short notice. List compiled is placed in booklet
- The liason Officers in the Head Quarters of the concerned CIT are also advised that without wasting any further time, they should directly intimate the Assessing Officer and the Standing Counsel so that the brief is handed over by the Assessing Officer to the Standing Counsel, who will prepare the case for the next days hearing.
- A fresh docket is then issued by the CIT in the name of the Senior Standing Counsel who will represent and argue the case in the Court. The name of the Junior Standing Counsel, preferably who drafted the appeal, may also be put in the docket for rendering assistance to the Senior Standing Counsel.

3 Regarding Macro Flow Chart for Monitoring of and Accountability for timely filing of Appeals

The slippage in time for examining proposals for filing appeals at every level and the impact of paucity of time available to officers to ensure proper drafting of these. Draft Timeline wherein a Macro Flow Chart for monitoring filing of appeals had been attempted on the same lines as for filing of SLP's in the Supreme Court was discussed. The experience of using the Macro-flow chart suggests that it has introduced accountability for and cut back on delays in filing of SLP's. **The Draft timelines were agreed to by consensus of all Commissioners present at Delhi Conference in 2009.** The House agreed that this table should be placed on the first page of the Scrutiny Report and accompany the case file showing the schedule of processing of file according to the format hereunder. This is submitted to the CCIT's/CIT's for their consideration to examine and give their inputs.

TIMELINE FOR FILING APPEALS In HIGH COURT [DRAFT]

S.N.	Stages	No. of days	Total Time
1	Receipt of Appeal order In the o/o CIT Entry in relevant register	2 days	2 days
2	Receipt in Range office	2 day	4 days
3	Receipt in AO's office Linking with the records Appeal effect and Preparation of Scrutiny Report	35 days	39 days
4	Receipt in Range office Comment of Range head	10 day	49 days
5	Receipt in the o/o CIT	1 day	50 days
6	In case of appeal to HC, Consideration by CIT	7days	57 days
7	In case , CIT requires opinion of Sr. Standing Counsel	15 days	72 days
8	Tentative decision to file appeal by CIT	5 days	77 days
9	Approval of the CCIT	4 days	81 days

10	File to the Counsel for drafting	2 days	83 days AO to prepare annexures
11	Drafting by the counsel	15 days	98 days
12	Vetting by the CIT/ Approval by CCIT where CCIT instructions exist	3 days	101 days
13	Preparation of required no .of sets & hand over to counsel for filing.	7 days	108 days
14	Actual filing in the HC registry	4 days	112 days
15.	Intimation of Dy. No to the O/o CIT/ HC cell	2 days	114 days

- In case, the registry intimates any defect in the appeal for removal, it shall be the AO's responsibility to take necessary steps for removal of defect with the assistance of the counsel. Such defect must be removed within the time period allowed, otherwise the Court may dismiss the appeal as time barred.
- In case, the CIT does not require opinion of the Counsel as provided for at Sl.No. 7 , then the timeline thereafter would be 15 days earlier and appeals be filed accordingly.
- Any delay at any level shall have to be explained by the officer to the next higher authority till the CCIT.
- The time taken by the Counsels must be watched carefully so that appeal filing is not delayed.
- The AO must get annexure typed out as per the requirement of the High Court as soon as the CCIT approves filing of appeal u/s 260A.

4 Regarding Control Register in o/o CCIT and Sharing of resources by Chief Commissioners working under the same High Court and CIT(J)

On grant of approval by the office of the Chief Commissioner of Income Tax, for filing an appeal in the High Court, or on denial of approval, the details of the case could be entered in the control register for monitoring of appeals filed under section 260A in the office of the Chief Commissioner of Income Tax. The entries in this register may be made in the manner/ format suggested below.

Sr. No.	Name of the Case	ITA No. /WP No	CIT Charge and AO details	AY	Date of Receipt of CSR	Date of Despatch from o/o CCIT	Limitation for filing appeal in HC	Brief Gist of Grounds of Appeal	Sections Involved	Date of Filing of Appeal by CIT
1	2									

A similar Control Register but with greater detail needs to be maintained by the CIT's for effective monitoring- format supra. Progress at each step should be recorded in this register from time to time. This register could be computerized using any standard database package and would provide the following advantages:

- AO's filing an appeal can receive assistance for drafting of appeals already filed on the same issue- hence CCIT offices/ CIT(J) to allow access to AOs to database.
- Appeals can be bunched (Refer para 4.2) on the same issue and the Department could even ensure that appeals in well drafted orders are taken up first on a common issue.
- CCIT Offices working under the same High Court can ensure consistency on issues across the Department in the matter of filing as also drafting.

- Provide inputs to CIT(J) for ensuring that databank on questions of law is maintained by him for jurisdiction assigned.
- Obtain a bunched fixation of cases filed involving the same issue.

While the Judicial Referencing System would eventually incorporate these aspects, however for streamlining the existing system meanwhile, effective sharing of knowledge resources is the need of the hour and will also provide useful inputs for JRS.

4.1.1 Control Register format for CIT's For Filing of Appeals In The High Court

Sr.No.	Name of the Case	Date of approval of CCIT	Last date for filling of appeal	Date of assignment of case to Govt. Counsel for drafting & Name of the counsel	Date on which appeal is filed	Whether objection is raised & particulars thereof Date of removal of objection.	Appeal (L) ITA No. /WP No.	Whether case assigned to same counsel who has drafted. If not, name of the Sr. Govt. Counsel to whom the case is assigned	Whether the case is admitted	Bench who passed the order and date of order	Date of application for certified copy	Date on which certified copy is received	Brief gist of Issue involved	Section Involved
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15

Sr.No.	Date of Order of High Court Designated Officer to download copy and inform all concerned	Date of application for certified copy by Counsel	Date of Obtaining Certified Copy	Date of Opinion of Standing counsel who had brief in HC	Process for filing of SLP By CIT/ CCIT	Section Issue Involved	Postal Transit	Processing in Directorate L&R	Approval Communicated and cheque sent by CIT	Actual Filing of SLP by Advocate	Hearings/ Back reference Designated Officer' Assessing Officer to liase with DIT-1
Days	0	1	1	1	7		5 Total 15 days				

4.2 Criteria for bunching of Appeals Filed In The same High Court

Criteria for Bunching of appeals across CCIT charges for fixation etc suggested in the Manual and also reproduced here could be the following:

- i. same question of law involved
- ii. group assessments of different family members or sister concerns.
- iii. involvement of large number of assesses showing credits from same hawala
- iv. all cases connected with a particular search and seizure operation.
- v. the issue involved has been decided by the jurisdictional High Court or Supreme Court.

5 Some Issues for Consideration of CIT (DR)'s and Administrative CIT's

From discussions it has emerged that copy of appeals filed by Assessee does not reach Administrative CIT or even CIT (DR) which prevents proper preparation for appeals filed before the ITAT. This prevents CIT's from filing cross-objections.

CIT (DR)'s office also usually obtains a copy from the Registry of the ITAT. In some Benches of the ITAT informal instructions have been issued that before appeals are admitted, proof of service on CIT(DR) and administrative CIT is placed on record. Matter regarding service of orders every week rather than bunched together so that a large no of appeals do not get barred on the same date was also discussed. These matters need to be addressed and it is for discussion whether the matter be taken up with the President of the ITAT for conveying instructions across the country to all Benches to ensure that

- Before appeals are admitted, proof of service on CIT(DR) and administrative CIT is placed on ITAT record and
- Service of orders passed by the ITAT is evenly effected on administrative CIT's/CCIT throughout the month.
- Another alternative suggested may be to effect changes in Rule 13 of the Appellate Tribunal rules 1963 to facilitate the above.

5.1 Regarding Scrutiny Report

The CSR is extremely significant for the successful initiation of litigation. The kind of effort that is required in going through the assessment records and thereafter application of mind at

all levels is perhaps missing in the whole process culminating in filing of an appeal to ITAT, appeal u/s 260 A or sending a proposal for SLP.

- Reasons for filing appeal should be succinct with the AO bringing out all the facts and status of litigation in earlier/ subsequent years.
- Addl. CIT should concentrate on case laws/ law points, and distinguishing the case laws relied upon by CIT(A) besides bringing on record case laws that can be relied upon by the Department.
- These aspects can be addressed by administrative CIT's either through a formal communication or meeting with Additional CIT's/AO's.

6 Regarding AO's Role in Making a soft copy of all Assessment Orders and Annexures, Removal of Objections, Tracking the Case and support to Senior Standing Counsel

The significance of the role of the AO in filing of appeals, removal of objections, tracking the case and support to Senior Standing Counsel is significant. Checklists and writeups in the Manual would provide a starting point which Commissioners could take up with their officers. However one aspect that would facilitate appeal filing considerably was that the AO should store the digital / soft copies of assessment orders and all annexure in retrievable form. These are required at the time of filing of appeals and retyping of Annexures causes maximum delay in preparing 260A proposals as also SLPs.

- Assessment orders should be backed up on a CD or pen-drive AY wise, which should form a part of handing over of charge by AO's.
- AO's should be counselled by the administrative CIT's regarding **their role post filing of appeals** in removal of objections, tracking the case in High court via internet and perusal of cause-lists and support to Standing Counsel.

7 Regarding COD Matters

The CITs raised the following issues regarding COD matters:

- **Whether High Courts could rely on non-approval by COD as a grounds for granting relief to or dismissing appeals of the department?**

No -High Courts have to adjudicate the case on merits. The terms of reference before COD are limited. Cases wherein High Courts have used the order of the COD to grant relief should be pointed out to the CIT(J).

- **Whether COD approval was required for each separate case for each assessment year as well as for additional grounds?**

Yes- approval is required for each year, each case and each separate issue.?

- **Whether COD approval was required in cases pertaining to State PSU's also?**

Supreme Court decisions pertaining to COD indicate that the COD view is that State PSU's do not fall within the ambit of the COD. In fact in various decisions including ONGC v/s CIDCO wherein the operations of the COD have been lucidly discussed by the Supreme Court this aspect is clearly highlighted.

High Courts however have given varying judgements. Delhi, Chennai and AP High Courts support the view that COD clearance is essential even in the case of State PSU's. However Gujarat High Court has given its view that COD clearance is not required for State PSU's.

There needs to be a clarification issued by the Cabinet Secretariat which issued the original Circular so that there is clarity and uniformity on this issue.

For Consideration of Open House and Suggestions of Alternatives or Improvements

Areas for Discussion for Open House

- **Drafting the Appeal - defining the role of Jr Standing Counsel**

In all important cases, the appeal should be drafted by the Sr. Standing Counsel or should be drafted under his guidance and must have his approval.

- **Monitoring the Removal of Objections**
- **Monitoring the Progress of the Case after filing- defining the role of High Court Cell/ Jr Standing Counsel- Standing Counsel Liason with CIT's - The Mumbai Model**
- **Role of AO after fixation of case.**
- **Bunching of Cases by CIT(J)- Priority fixation - consolidated fixation on common issues to save time and litigation costs.**
- **Access to Databank of Question of Law by AO/s CIT/s modalities- assistance in drafting question of law.**
- **COD Matters**

8 Recommendations of CCIT(CCA) Chandigarh during Zonal Conference of CCIT's held at Kasauli on 20.05.2010

As per agenda for the conference, the following three issues are to be discussed:

- i) Care and caution before filing appeals with a view to avoiding infructuous and avoidable litigation;
- ii) Avoiding undue delays in filing the appeals, reply affidavits; and
- iii) Recommendation for effective monitoring mechanism to improve the situation in these crucial areas of Departmental functioning.

Care and caution before filing appeals

- The Department is authorized to file appeal at two levels i.e. Tribunal and Hon'ble High Court, and petition before the Hon'ble Apex Court. A lot of our time is consumed in dealing with these matters, however the results are not satisfactory. Therefore, to spare our invaluable time for revenue oriented matters, we have to be careful and cautious before filing appeals and during the appellate proceedings. It will help in avoiding infructuous appeals and will prevent avoidable litigations.
- The **Board's instruction No. 05/2008** issued on 15th May, 2008 vide F. No. 279/Misc.142/2007-ITJ on the subject of measures for reducing litigation should be followed in its true spirit.
- **Monetary limits** for filing appeal before the Tribunal and Hon'ble High Court should be adhered to. For determining the monetary limit in respect of the disputed issues in the case of every assessee should be taken separately.
- In case of **composite order** of any High Court or appellate authority, which involves more than one year, appeal shall be filed in respect of all the assessment years even if the tax effect is less than the prescribed monetary

limits in any of the year(s), if it is decided to file appeal in respect of the year(s) in which tax effect exceeds the monetary limit prescribed.

- If appeal is not filed in a particular year due to monetary limit, the **Commissioner concerned should record his/her findings** that no appeal has been filed due to monetary limit, though the decision has not been accepted by the revenue on merits.
- In **subsequent year**, when the appeal is filed on the **similar issue involving higher tax effect**, the D.R. / Standing Counsels should be categorically informed that in earlier years the decision has not been accepted on merit, but the appeal has not been filed due to monetary limit. It will prevent the assessee from taking undue advantage of not filing appeal by the revenue in earlier year on similar issue.
- Facts of the case should be gone through carefully and the **question of law or facts** involved should be framed **with utmost caution**.
- The order of the appellate authorities should be gone through carefully and a **proper interpretation** be drawn as to whether a question of law or of fact or both are involved.
- The **binding decisions of the Hon'ble Supreme Court and jurisdictional High Court** should be kept in mind while deciding the filing of appeal.
- Many a time **irrelevant and distinguishable case laws** are relied upon, which do not pertain to the facts of the case. Each and every case law mentioned in the appellate order should be gone through carefully and distinguished or rebutted.
- If an appeal is filed in a case for a particular assessment year, it should not be mandatory or binding to file appeal in the subsequent years on the same issue.
- In a case where the issue involved is with regard to the **provisions of Section 12A**, **quantum of the tax effect** involved cannot be ascertained.

It has recurring effect. Therefore, there should be no monetary limit for filing appeal in such cases and an amendment in this regard is required to be made in the Board's instruction on the subject.

- A time limit for disposal of appeals by the CIT(Appeals) may be fixed by amending the Act.

Avoiding undue delays in filing the appeals, reply affidavits :

- All the above could be possible only with **strict adherence to the time schedule fixed**. As we know, there are certain parameters fixed by the statute and the Board to deal with these matters. A set time frame has been fixed by the statute for filing appeals and petition. However, the same is not strictly adhered to. We should persuade our field offices to take up these matters expeditiously and send the proposals/reports in this regard on top priority.
- Many a time proposals are received from the subordinate offices for filing of **appeals on frivolous grounds** where no substantial question of law is involved. The same should be avoided.

Recommendation for effective monitoring mechanism to improve the situation in these crucial areas of Departmental functioning :

To improve the situation in these crucial areas of Departmental functioning, an effective monitoring mechanism is required. The following steps are required to be taken immediately:

- A **centralized record room** at CIT level should be maintained for handling assessment records pertaining to the cases where Department's appeal is filed. It is required for the reasons that many a time assessment record

demanding by the appellate authority is not traceable in the A.O.'s office. Such record room should be handled by a T.A., Sr.T.A. or Office Superintendent.

- A **timely action to obtain the legal opinion** of the Standing Counsel for filing SLP should be taken up.
- The **monetary limits** fixed by the Board for filing appeals and SLP needs enhancement. These should be revised to reduce the number of appeals and petitions.
- The Department should **publish a digest** containing those decisions of Tribunal, High Court and Hon'ble Supreme Court, which are favourable to revenue, so that while filing appeals and arguing the case the same can be used to strengthen the cases of the department.
- A **periodical workshop** of the Assessing Officers should be organized to disseminate the latest case law and judgments. In such workshops the implication of the land mark judgments should be discussed.
- A **software** should be developed which help in issue based **bunching of appeals**, which will help in expeditious disposal.
- The **fee of the Standing Counsels** were lastly revised vide Instn. No. 8/2007, now it needs further revision, so that competent and senior counsel should come forward to join panel of the Standing Counsels.
- A **Special Cell headed by a Law Officer** should be set up in the office of the CCIT, to examine the proposals and recommend as to whether further appeal should be filed or not.
- The CCA should be empowered to **engage Special Counsel** on case to case bases, looking into the gravity of the issue.