

HOW TO PRESENT CASE BEFORE INCOME TAX AUTHORITIES



BY
CA. ROHIT BHALLA
(B.COM (HONS), FCA, LL.B)

ETHICS OF PRESENTATION

Hargovind Dayal Srivastav Vs. G.N. Verma AIR 1977 S.C. 1334:

“ It is the duty of the lawyers to protect the dignity & decorum of the judiciary. If lawyers fail in their duty , the faith of the people in the judiciary will be undermined to a large extent. It is said that lawyers are the custodians of civilization. Lawyers have to discharge their duty with dignity, decorum & discipline.”

The lawyers & other representatives of the clients in the subordinate courts (before the Assessing Officer / CIT) and Tribunals are expected to conduct themselves in a manner which protects the dignity & decorum of judicial proceedings.

Use of words either verbally or in writing, i.e., that is representation should be such which upholds the dignity of our institution as well as the bench.

WHY SCRUTINY CASES ARE SELECTED....!!

- ◉ Procedure and criteria for selection of scrutiny cases.
- ◉ Annual information return mismatch.
- ◉ Form 26AS mismatch.
- ◉ Information obtained under section 133(6) of I.T. Act 1961.
- ◉ A.O. has reason to believe that Income has escaped assessment under section 147.

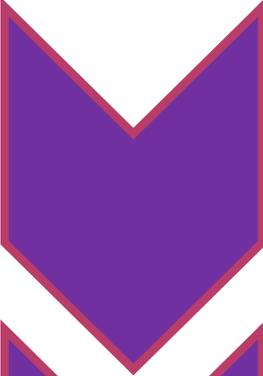


TYPES OF ASSESSMENT

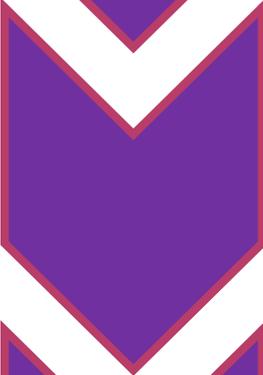
- ◉ Self assessment u/s 140A.
- ◉ Summary Assessment u/s 143(1)
- ◉ Scrutiny assessment u/s 143(3).
- ◉ Best judgment assessment u/s 144.
- ◉ Protective Assessment.
- ◉ Income escaping assessment u/s 147.
- ◉ Assessment in case of search u/s 153A



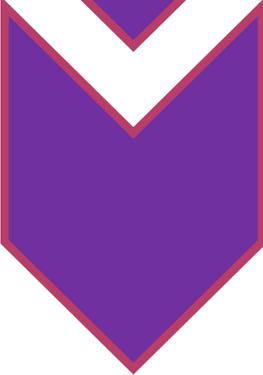
ASSESSING OFFICERS



- JOINT / ADDITIONAL COMMISSIONER

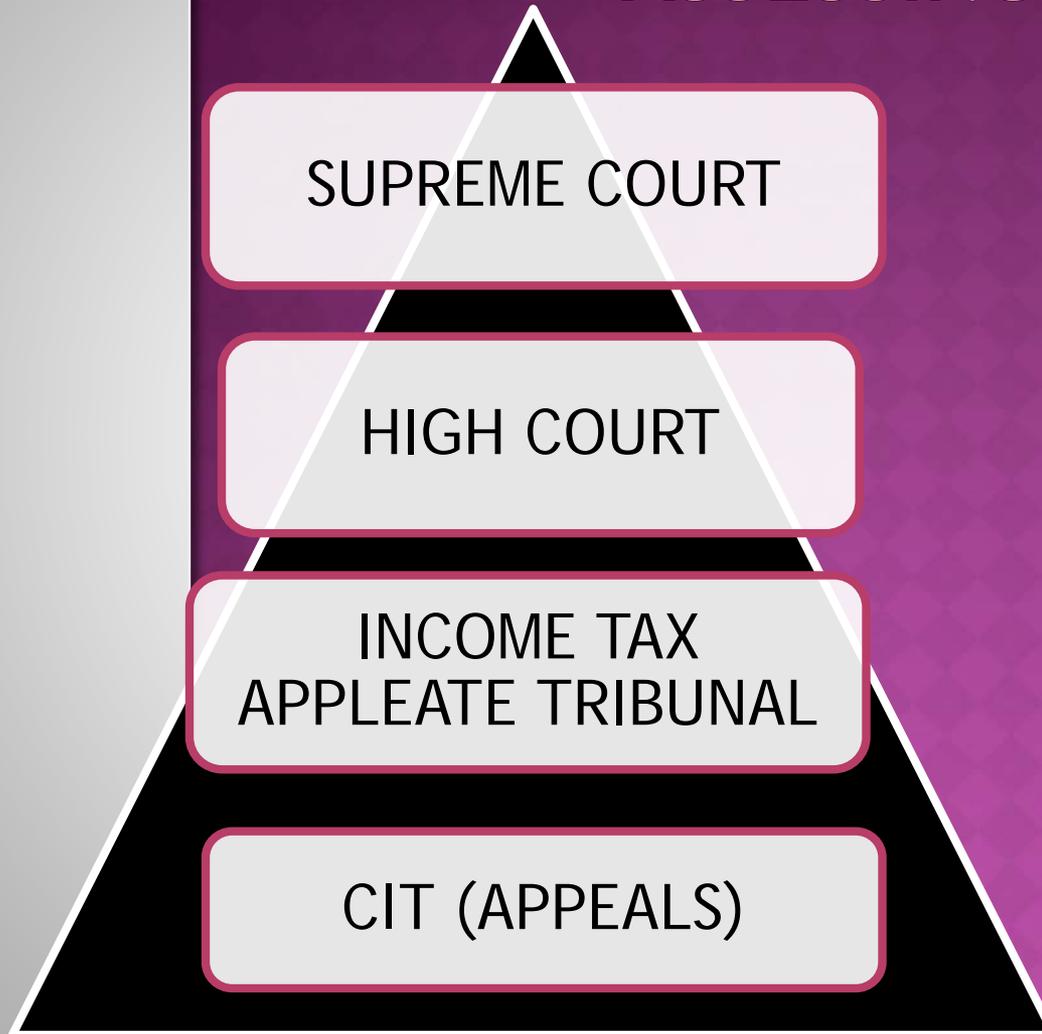


- ASSISTANT / DEPUTY COMMISSIONER



- INCOME TAX OFFICER

REMEDIES AGAINST THE ORDER OF ASSESSING OFFICER



PRINCIPLES OF GOOD REPRESENTATION

Do's

- ◉ Letter of Authority is a must
- ◉ Sincerity to work and good preparation
- ◉ Respect to the Chair
- ◉ Use Simple language
- ◉ Brevity and Precision
- ◉ Observe Decorum in the Court
- ◉ Listen all queries carefully without interruption and answering the same directly
- ◉ Know when to stop
- ◉ Adhere to the Dress Regulation if you are appearing before ITAT

Don'ts

- ⦿ Don't mislead Facts
- ⦿ Don't Under-estimate the other side
- ⦿ Never be over confident
- ⦿ Avoid Repetition
- ⦿ Don't lose your Temper whatever be the provocation
- ⦿ Don't get annoyed if interrupted

CONCEPT OF APPEAL



- ◉ Every law that provides for some form of adjudication also usually provides for appeal in one form or the other against orders passed by the lower authorities.
- ◉ This is based on the concept of equity and a recognition that every authority is fallible.
- ◉ The mechanism of appeal provides safeguard against erroneous, unjust or invalid orders.
- ◉ The appeal proceedings ordinarily embrace all proceedings whereby an appellate authority is called upon to review, revise, affirm, reverse or modify the decisions of the lower or subordinate authority.



FACTS ABOUT APPEAL

- ⦿ Appeal is a remedy against the order of A.O. instead of a right. Except where right of appeal is specifically granted, appeal cannot be filed.
- ⦿ Appeal once filed cannot be withdrawn by the appellant.
- ⦿ Appeal has to be filed within the time limit prescribed under income tax provisions.
- ⦿ Appeal before CIT (Appeals) are the continuation of the assessment proceedings.
- ⦿ The appeal will not abate on death of appellant and will continue against the executor, administrator or other legal representatives of the assessee or by or against the assignee, receiver or liquidator as the case may be.

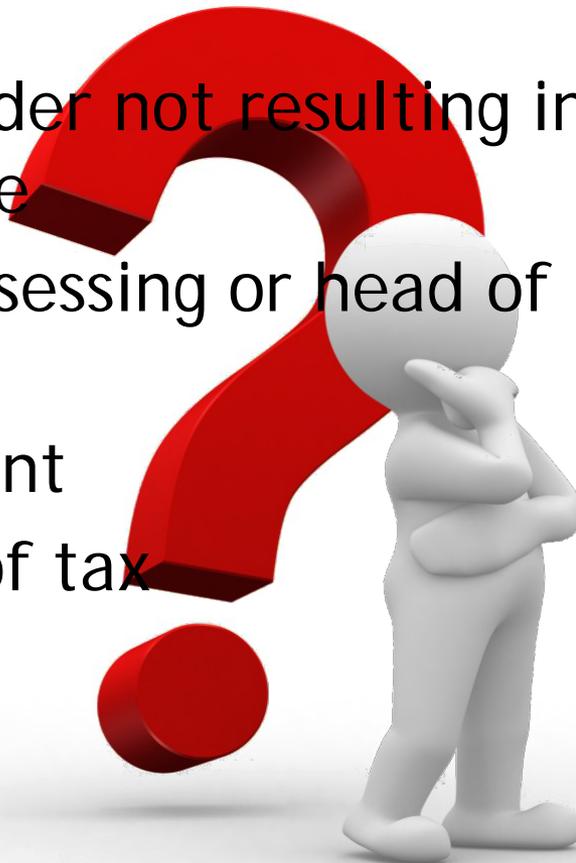
ELIGIBILITY TO FILE APPEAL

The next question to be considered is who can file appeal?

- Only a person aggrieved by an order would have a right to file an appeal.
- Any partner of a firm or any member of AOP can file appeal against adverse order in case of firm or AOP as aggrieved persons.
- In case of adverse order passed in the matter of deceased person, his legal heirs can file appeal.
- In case of HUF, Karta can file appeal. However, after the partition if any adverse order is passed in respect of pre partition HUF, erstwhile co-parceners can prefer an appeal.
- The representative assessee as defined u/s 160 is eligible to file an appeal.

CAN A PERSON BE AGGRIEVED BY

- an addition made with his consent (agreed addition)
- observations in an order not resulting in an addition to the income
- change in status of assessing or head of income
- A protective assessment
- Wrongful deduction of tax



FIRST APPEAL: CIT (APPEALS)

- Section 246A provides for appeal before the first appellate authority against the following orders:
 - a. An order against assessee who denies his liability to be assessed
 - b. Intimation u/s 143(1)/143(1b) .
 - c. Order u/s 143(3) / 144, 154 or 155. Rectification of mistake
 - d. Order u/s 143(3) r.w. an order of assessment, reassessment or recompilation under Section 147 or 150.
 - e. Order u/s ,170(2) or 170(3).
 - f. Order u/s 171.
 - g. An order of assessment or reassessment u/s 185(1b)/ 185(2)/ 185(5).
 - h. Order u/s 186(1)/ 186(2) -cancelling the registration.

- l) Order u/s 158BC/158BD/158BFA or u/s 237.
- j) Order u/s 163 - treating an assessee as representative assessee
- k) Order u/s 170(2) or (3),
- l) Order u/s 171,
- m) Order u/s 201, 271B/ 271BB.
- n) 271C ,271D or 271E.
- o) Order u/s 272A
- p) Order of penalty u/s 221, 271, 271A, 271AA, 271F, 271FB, 272, 272AA, 272B, 272BB 271C, 271D, 271E, 271 CA, 272A, 273, 275(1A)
- q) Penalty order under chapter XXI
- r) An order by the Assessing Officer other than Deputy Commissioner where so directed by the Board.

PREPARATION FOR FILING AN APPEAL: (RULES 45 & 46)

- Appeal is required to be filed within 30 days from the receipt of order to be appealed against.
- Documents for filing an appeal (In Duplicate):
 - ❖ Form 35
 - ❖ Memorandum of appeal
 - ❖ Statement of facts
 - ❖ Grounds of appeal
 - ❖ Form of verification
 - ❖ Copy of order appealed against
 - ❖ Notice of demand in original
 - ❖ Copy of appeal filing fee challan
 - ❖ A letter of authority in favor of the Chartered Accountant representing the assessee



NOTE:

1. Section 249(4): No appeal shall be admitted unless at the time of filing an appeal:
 - where return has been furnished by the assessee, the assessee has paid the tax due on the income returned by him.
 - where no return has been furnished, the assessee has paid an amount equal to the amount of advance tax which was payable by him. (i.e., tax assessed by A.O.).

- ⦿ Proviso to section 249 (4): where no return has been furnished, the CIT (Appeals) on an application made by the assessee may exempt the assessee from the condition of payment as stated in (b) above for good faith & sufficient reasons to be recorded in writing.
 - ⦿ But even then assessee is required to take stay of demand from the A.O. as otherwise the assessee shall be deemed to be assessee in default after the expiry of 30 days.
2. In computing the period of limitation prescribed for filing an appeal, the day on which order was served shall be excluded.

3. Additional evidence can be produced before the CIT (Appeals) only under the followings circumstances.

- a. Where A.O. has refused to admit additional evidence which ought to have been admitted.
- b. Where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the A.O.
- c. Where the appellant was prevented by sufficient cause from producing the evidence which is relevant to any ground of appeal.
- d. Where the A.O. has made the order appealed against without giving sufficient opportunity to produce evidence relevant to any ground of appeal.

SECOND APPEAL: APPELLATE TRIBUNAL

- ◉ Either party aggrieved by an order of the Commissioner of Income Tax (Appeals) can prefer an appeal to the Income Tax Appellate Tribunal (referred to as ITAT or Tribunal) u/s 253 of IT Act, 1961.
- ◉ The appeal to the Tribunal can arise on points of law or of facts or a combination of both.
- ◉ The tribunal is the last fact-finding authority under the Income Tax Act and this fact needs to be kept in mind when presenting matters before it.

PREPARATION FOR FILING AN APPEAL BEFORE ITAT

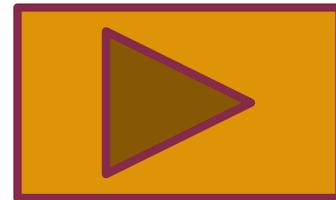
- Appeal is required to be filed within 60/30 days from the receipt of order to be appealed against.
- Documents for filing an appeal (In Triplicate):
 - Form 36
 - Grounds of appeal before ITAT
 - Order against which appeal has been filed.
 - Order of A.O.
 - Grounds of appeal & statements of facts before the first appellate authority.
 - Copy of challan, as proof of payment of prescribed fee.
 - ❖ A letter of authority in favor of the Chartered Accountant representing the assessee



NOTE:

- ◉ No statement of facts is required to be given to the ITAT as the statement of facts filed before the CIT (Appeals) is annexed to the appeal memo.
- ◉ According to Rule 18 of the ITAT Rules, a paper book has to be filed at least 7 days before the date of hearing.
- ◉ A paper book has to be filed in triplicate - two copies for the Honorable members and one copy for the departmental representative.
- ◉ The ITAT may 4 years from the date of order, with a view to rectify any mistake apparent from record, amend any order passed by it u/s 254(1).

INSIGHT TO
DECIDED IT AT
JUDGMENTS



ALL THE BEST

