

DISPUTE RESOLUTION PENAL (DRP)



**BY
H. N. MOTIWALLA**

OBJECT

- Effective from April 01,2009
- Appeals / Revision procedures are time consuming
- For speedy disposal – high demands
- Not served the purpose
- Appeals lie to ITAT

DRP

- Collegium comprising of three CIT's constituted by CBDT for this purpose.

ELIGIBLE ASSESSEE

- I) A person in whose case there has been variation on account of order of TPO u/s. 92CA(3)

- ii) Any foreign com.

PROCEDURE BY AO AND ASSESSEE

- AO shall forward a draft proposed order of assessment to eligible assessee, if he proposes to make any variation to income or / loss returned, which is prejudicial to the interest of assessee
- On receipt, the eligible assessee shall within 30 days file:
 - i) his acceptance of variation to AO or;
 - ii) his objection to variation: to (a) DRP and (b) AO
- AO shall complete the assessment on the basis of draft order; if
 - i) the assessee intimates the AO about acceptance of variation,
or

Contd.....

- ii) no objections within specified period
- In such case, the AO shall complete the assessment within one month from the end of the month of acceptance or no objection

PROCEDURE BY DRP

- In case of objection, DRP shall issue directions for the guidance of AO to enable him to complete the assessment.
- Before issuing directions, DRP would consider:
 - (a) draft order (b) objections (c) evidence furnished by assessee (d) report of AO, VO, TPO or any other authority (e) “record” relating to the draft order (f) evidence collected by or caused to be collected by it and (g) result of any inquiry made or caused to be made.
- The DRP may confirm, reduce, or enhance the variations. However, it shall not set aside any proposed variations or issue any direction for further enquiry.

Contd.....

- Power to enhance shall have power to consider any matter arising out of draft order irrespective of such matter raised or not by eligible assessee.
- If members of DRP differ in opinion on any point, the point shall be decided on the opinion of the majority of the members.
- No direction shall be issued which is prejudicial to the members unless an opportunity of being heard to the assessee. Similarly no prejudicial direction to the revenue, unless an opportunity of being heard to AO
- Every direction of DRP shall be binding on AO

Contd.....

- DRP cannot issue direction after nine months from the end of the month in which draft order is forwarded to eligible assessee
- On receipt of direction by AO, he shall pass an order within one month from the end of the month in which direction is received.
- The provisions of this section shall not apply if AO passes an order with prior approval of CIT u/s. 144BA(12)

RECTIFICATION OF MISTAKE

By
H. N. Motiwalla

MISTAKE APPARENT FROM THE RECORD

- Income tax Authority referred to in S. 116
- Amend any order passed by it
- Any intimation or deemed intimation u/s. 143(1)
- Any intimation u/s. 200A(1) – Statement of TDS
- Brought to the notice of authorities by the assessee or by its own motion.
- Rectification possible for more than Once

APPARENT

- Mistake should be obvious, clear and patent, glaring
- Not having two opinions, or debatable issue.
 - T.S. Balaram ITO Vs. Volkart Bros & Others [82 ITR 50(SC)]
- On law or facts
- Retrospective amendment
- Supreme Court decisions.

FROM THE RECORD

- Not merely assessment order but includes all proceedings and materials on which assessment is based
- Assessee's own record
- In case of partner of firm – S. 155 (1)
- In case of appeal, revision etc. – Rectification on any matter i.e. other than the matter which has been considered and decided.

OPPORTUNITY OF BEING HEARD

- If enhances an assessment or reduces a refund or otherwise increases the liability
- No opportunity of hearing for deletion of adjustments made u/s. 143(1)(a)
CIT Vs. Shaily Engg. [258 ITR 437 (SC)]
- Whenever the effect of the order is to touch the pocket of the assessee
Chockalingam Vs. CIT [48 ITR 34 (SC)]
- Rectification order should be in writing

NOTICE OF DEMAND

- Enhances the liability or reduce a refund already issued.
- No notice – if tax demand is reduced

LIMITATION

- Rectification within four years from the end of the financial year in which the order, sought to be rectified was passed.
- The word 'order' has not been qualified in any way and would not mean original assessment order, it could be any order including amended or rectified order
Hind Wire Ind. Vs. CIT [212 ITR 639 (SC)]
- Application of the assessee is in time – AO does not rectify within time. The Court may compel to do so even after the period of limitation.
V.K. Construction Works Ltd. Vs. CIT [215 ITR 26(SC)]

DISPOSAL OF APPLICATION

- S. 154(8) provides that the authority should pass an order within six months from the end of the month in which the application is received.
 - a) making the amendment, or
 - b) refusing to allow the claim

APPEALS

- S. 246A(c) - rectification order u/s 154 – appealable

OTHER AMENDMENTS

- S. 155 provides for them

Appeal Before the CIT(A)

By

H. N. Motiwalla

BACKDROP

- Sections covered – 246A, 248 to 251.
- Rules 45, 46 and 46A
- After an assessment – an assessee has two options either to file an appeal before CIT(A) or revision petition to CIT u/s. 264
- No right of appeal to Revenue or Department
- No inherent right of appeal. Right is given to an assessee.
- Absence of appeal provision in taxing statute may be vitiating
 - Suraj Mahal Mohta & Co. Vs. AVV Shastri [26 ITR 1 (SC)]

APPEALABLE ORDERS BEFORE CIT(A) –S.246A.

- Appeal = complain to higher authority
- Any assessee aggrieved by an order
- Aggrieved – Not agreed upon - Dissatisfied
- 25 clauses - enumerates different sections for filing an appeal
- Covers if any one denies his liability to be assessed e.g. below taxable limit, income not taxable u/s. 10 or deduction under chapter VIA.
- Partial denial is also covered.

CONTINUE

- Denies his liability to be assessed – can be claimed for the first time before CIT(A). Denial can be claimed at any stage.
 - a) CIT Vs. M. Pyngrope [200 ITR 106 (Gauh)]
 - b) CIT Vs. Orissa Cement Ltd. [215 ITR 409 (Del)]
- Even if the amount is included by the assessee in ROI – he can claim before CIT(A) that the said amount is not taxable or chargeable
 - i) Pt Sheo Nath Prasad Sharma Vs. CIT [66 ITR 647(All)]
 - ii) Champa Properties (P) Ltd. Vs. CIT [166 ITR 367(Cal)]
- Assessment order made by consent is appealable.
 - Gouri Sahai Guisa Ram Vs. CIT [120 ITR 338 (All)]

CONTINUE

- Levy of interest u/s. 234B/234C is appealable on the ground that assessee denies his liability to be assessed.
 - i) Jalgaon Dist. Central Co-op Bank Ltd. Vs. ITO [70 ITD 290 (Pune)]
- The assessee objects to making of adjustments or any order u/s. 143(3) or u/s. 144 or the amount of tax determined or the loss computed or to the status under which he is assessed; except an order passed in pursuance of direction of Dispute Resolution Panel (DRP) w.e.f. 01.10.2009 i.e. u/s. 144C.

CONTINUE

- On failure of revision petition u/s. 264 – An assessee can file appeal an appeal u/s. 246A after explaining delay in filing the appeal.
 - a) CIT Vs. D. Lakhminnarayana Pathi [250 ITR 187 (Mad)]
- Before invoking revisional jurisdiction, it is pre-condition that the appellate jurisdiction should not have been invoked, but, there is no such condition while invoking appellate jurisdiction.
- CIT passes the order exercising his jurisdiction u/s. 264, the AO's order merges with revision order
 - Orissa Rural Housing Dev. Corp. Ltd. Vs. CIT [343 ITR 316 (Orisa)]

APPEAL BY A PERSON DENYING LIABILITY TO DEDUCT TAX (S. 248)

- Any person who has deducted and paid tax in respect of any sum chargeable under the Act u/s. 195, other than interest, who denies his liability to make such deduction may appeal to CIT(A). This section comes into play where resident assessee bears the tax on amount of payment to a non-resident.
 - Covers payment by R to NR or FC
 - If R contains that he is not liable to deduct tax – either payee is not NR or NR has no chargeable income in India
 - The payer can appeal only after deducting and paying tax
S. K. Dutt Vs. Anglo - India Jute Mills Co. Ltd.
[33 ITR 866 (Cal)]

FORM OF APPEAL AND LIMITATION (S. 249)

- As per Rule 45, an appeal to CIT(A) shall be in Form No. 35.
- Form no. 35 requires (i) Grounds of appeal and (ii) Statement of facts
- Memorandum of appeal (F.35), Statement of facts and grounds of appeal should be submitted in duplicate to CIT(A) alongwith copy of the order appealed with notice of demand in original
- Non enclosure of notice of demand – technical irregularities but not fatal
[Chelamala Setti Adeyya Vs. CIT - 54 ITR 339(AP)]

CONTINUE

- The form of verification shall be signed by a person in accordance with the provisions of Rule 45(2) i. e. by the person who is authorized to sign the ROI u/s. 140 of the Act, as applicable to the assessee.
- Electronic mode :
 - ROI shall be verified & digitally signed
 - So signing requirement is done away
 - October 01,2014

FEES

- Total income computed by AO Amount (Rs.)
 - i) upto Rs. 1,00,000/- 250/-
 - ii) Bet. Rs. 1,00,000/- and Rs. 2,00,000/- 500/-
 - iii) Above Rs. 2,00,000/- 1000/-
- Not covered above 250/-
- Total income determined at negative figure- Minimum fees
[Gilbs Computer Ltd. Vs. ITAT - 317 ITR 159(Bom)]
Vs.
(Andhra Pradesh State Electricity Board Vs. ITO – 49 ITD
552(Hyd)]

TIME LIMITS FOR PRESENTATION OF APPEAL

- Appeal should be presented within 30 days from:
 - a) Appeal u/s. 248 – the date of payment of tax
 - b) Appeal relates to assessment or penalty – date of services of notice of demand
 - c) In any other case – the date on which intimation of the order is served
- Last day is holiday - next working day should be considered
- U/s. 249(3), the CIT(A) has power to admit belated appeal, if sufficient cause for not presenting the same in time is shown.
- Delay has to be explained daywise – “every days delay must be explained does not imply pedantic approach. Pragmatic necessary - Collector Vs. Mst Katiji & Others [167 ITR 471 (SC)]

APPEAL SHALL NOT BE ADMITTED UNLESS

- a) As per ROI, tax is paid
- b) Where no ROI is filed, paid an amount equal to the amount of AT payable.

The CIT(A) may for any good and sufficient reason recorded in writing exempt from payment of AT

- Even payment of tax as per ROI before filing the appeal or hearing of the appeal will not mar the appeal
[S. Alagarswamy Vs. ITO - 296 ITR 43 (Mad)]
[CIT Vs. Smt. G.A.Samanthakamani - 259 ITR 245 (Mad)]
[Bhumiraj Constructions Vs. ACIT [131 ITD 406 (Mum)]
- Tax does not include interest
CIT Vs. Manojkumar Beriwal - 217 CTR 407 (Bom).

PROCEDURE IN APPEAL (S. 250)

- Notice to AO and Assessee fixing a day and place of hearing
- Following shall have right to be heard:
 - a) the appellant in person or through his AR
 - b) the AO or his AR.
- CIT(A) has power to adjourn the hearing.
- Before disposing of the appeal, the CIT(A) has power to make further inquiry or may direct the AO to further inquire and report i.e. remand report.
- As there is no power to set aside the assessment after June 01,2001

CONTINUE

- The CIT(A) may allow to raise additional ground if he is satisfied that the omission of the ground was not wilful or unreasonable.
- The order of the CIT(A) should be in writing and shall state the point for determination, the decision thereon and the reason for the decision.
- The CIT(A) may, as far as possible, may hear and decide the appeal within a period of one year from the end of the financial year in which appeal is filed.

CONTINUE

- As per CBDT Instruction no. 1089 dt. 20.08.1977 and Instruction no. 1411 dated 15.09.1981, the CIT(A) should pass appellate order (i) within 10 days after the final hearing and (ii) in all duly heard cases before relinquishing charge on transfer/proceedings on leave
- The CIT(A) on disposal ; communicate a copy of order to AO and the assessee.
- After communication an appeal can be filed with ITAT within 60 days.

POWER OF CIT (A) (s. 251)

- Power of the CIT(A) are:
 - a) He may confirm, reduce, enhance or annul the assessment
 - b) If proceedings before the Settlement Commission u/s. 245HA has been abated, he may use the material and information produced before it.
 - c) In an appeal against an order imposing a penalty ; to confirm cancel or vary either to reduce or enhance the penalty.
 - d) In any other case, he may pass such orders in the appeal as he thinks fit.
- No power to set aside after June 01,2001

CONTINUE

- Power to call remand report and remand report to be given to appellant for his comments.
- His powers are co-terminus with AO. He can do what AO has failed to do and he can also direct AO to do
CIT Vs. Kanpur Coal Syndicate [53 ITR 225 (SC)]
- However, he cannot enhance an assessment or a penalty or reduce the amount of refund unless a reasonable opportunity is given to an assessee.
- The Explanation provides that CIT(A) may consider and decide any matter arising out of the proceedings, notwithstanding that such matter was not raised before the CIT(A).

CONTINUE

- Thus CIT(A) powers are very wide. The scope of his powers is conterminous with that of AO. He can do what AO can do and can also direct him to do what he has failed to do.
[CIT Vs. Kanpur Coal Syndicate 53 ITR 225(SC)]
- However he has no jurisdiction to assess a source of income which is not disclosed either in the ROI or in the assessment order. Thus it is not open to him to travel outside the record for finding out new source of income.
[CIT Vs. Rai Bahadur Hardutroy Motilal Chamaria – 66 ITR 443(SC)]
[CIT Vs. Shapoorji Pallonji - 44 ITR 891(SC)]
- In CIT Vs. Nirbheram Daluram [224 ITR 610] the Supreme Court held that the CIT(A) can make addition in respect of new source of income if it is not considered by AO.
- The view expressed in Shapoorji's and Raj Bahadur's is right
CIT Vs. Sardari Lal [251 ITR 864 (Del) (FB)].

CONTINUE

- An assessee has no power to withdraw the appeal filed before the CIT(A) as per 66 ITR 443(SC) (supra) but the CIT(A) or Appellate Authority is satisfied that there will be no prejudice to revenue may allow to withdraw.
[Bhartia Steel & Engineering Co. P. Ltd. Vs. ITO 97 ITR 154(Cal)]
- New claim before the CIT(A) or ITAT can be made if all facts are available on record, otherwise no.
[CIT Vs. Gujargnavures P. Ltd. [111 ITR 1(SC)]
- No power to review except power of rectification u/s. 154.
- No power to consider validity of Act or Rules
[CIT Vs. Straw Products Ltd. 60 ITR 156 (SC)]

CONTINUE

- Inherent power to stay the recovery
[ITO Vs. Mohammed Kunhi - 71 ITR 815 (SC)]
[Paulsons Litho Works Vs. ITO -208 ITR 676 (Mad)]
[Prem Prakash Tripathi Vs. CIT - 208 ITR 461 (All)]
- Refusal to stay should be speaking order
- “Any matter arising out of the proceedings”
It extends to all matters arising out of the proceedings which might have been considered and determined by the AO in the course of the assessment although such matters might not have been raised by the assessee. The competence of the appellate authority ranges over the whole assessment proceedings without restrictions on him. His jurisdiction is therefore, not confined to the subject matter of the appeal but extends to the subject matter of assessment.
[Ugar Sagar Works Ltd. Vs./ CIT -141 ITR 326 (Bom)]

ADDITIONAL EVIDENCE RULE 46A

- The Rule provides that the appellant shall not be entitled to produce before CIT(A) any evidence oral or documentary, other than evidence produced before him during the course of proceedings before AO except in the following circumstances viz:
 - a) AO has refused to admit evidence which ought to have been admitted, or
 - b) The appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the AO, or
 - c) The appellant was prevented by sufficient cause from producing before the AO any evidence which is relevant to any ground of appeal or

CONTINUE

- d) The AO has made the order without giving sufficient opportunity.
- No evidence shall be admitted unless CIT(A) records in writing the reason for its admission.
 - The CIT(A) shall not take into account any evidence unless the AO has been allowed a reasonable opportunity to examine the evidence or for rebuttal of the additional evidence.
 - Notwithstanding above, the CIT(A) has a power to direct the production of any document or the examination of any witness.

CONTINUE

- This Rule does not specifically exclude principles of natural justice and therefore these principles are necessarily to be read into provisions of Rules
[CIT Vs. United Towers (I) (P) Ltd. -296 ITR 106 (Del)]
- In CIT Vs. Poddar Swadeshi Udyog P. Ltd. [295 ITR 252 (Gauh)] has held that the Tribunal observed that the books of account were produced before the AO and the new details filed before the CIT (A) were in continuation of the original evidence, so it was not necessary to give an opportunity to AO.

APPELLATE TRIBUNAL (S. 252)

- S. 252 to 255 of the Income tax Act, 1961 & Rule 47
- Income tax (Appellate Tribunal) Rules, 1963
- Central Government shall constitute.
- Two members - judicial and Accountant Members
- Prescribes qualification for judicial and accountant members
- Provides for appointment of VP, Sr. VP and P.
- Sr. VP/ VP shall exercise such powers and functions as delegated by P
- ITAT not an Income tax authority – Ministry of Law.

APPEALS TO ITAT (S. 253)

- Both parties have right to Appeal
- Aggrieved assessee may appeal against following orders:
 - a) An order CIT(A) u/s. 154, or u/s. 250 or u/s. 271 or u/s. 271A or u/s. 272A
 - b) An order passed by AO u/s. 158 BC (Block assessment before January 01,1997.
 - c) An order passed by AO u/s. 115 VZC (exclusion from tonnage tax co)
 - d) An order of CIT u/s. 12AA or u/s. 80G(5) or u/s. 263 or u/s. 271 or u/s. 272A or u/s. 154
 - e) AO's order u/s. 143 or u/s. 147 in pursuance of direction of DRP
- CIT may appeal against any order of CIT(A)

TIME LIMIT

- Within 60 days from the receipt of order of CIT(A)
- Cross objection (CO) within 30 days from the intimation/notice that other party has filed the appeal
- No fee is payable, even though CO is filed by the assessee.
- The ITAT has power to admit an appeal or CO filed beyond the prescribed time if there was sufficient cause for not presenting within the prescribed time.

FEES

<u>Total income computed by AO</u>	<u>Fees (Rs.)</u>
a) Upto Rs. 1,00,000/-	500/-
b) Bet. Rs. 1,00,000/- & Rs. 2,00,000/-	1500/-
c) Over Rs. 2,00,000/-	1% of the assessed income but not exceeding Rs. 10,000/-
d) Application for stay of demand	500/-
e) Miscellaneous application u/s. 254(2)	50/-

CONTINUE

- In case of loss minimum fees i.e. Rs. 500/-
[Gilbs computer Ltd. Vs. ITAT - 317 ITR 159 (Bom)]
[Rajkamal Polymers Pvt. Ltd. [291 ITR 314 (Karn)]
- Exemption of payment of fees to pauper - posses less than Rs. 1000/-
[Yashashree Yogesh Naik Vs. DCIT [133 TTJ (Mum) 534

CBDT INSTRUCTION NO. 5 OF 2006 DATED 15.05.08:

- Dept. is prohibited to file an appeal , if tax effect is less than the following monetary limits per assessment year.

i)	Appeal before ITAT	Rs. 3,00,000/-
ii)	Appeal before HC	Rs. 10,00,000/-
iii)	Appeal before SC	Rs 25,00,000/-

Tax effect means tax on disputed issues.

- CBDT instruction above V/s. SC/HC decision
[CIT Vs. Concord Pharmaceuticals - 174 Taxman 529 (Guj)]
- The circular is not binding on appellate authority or ITAT or the assessee
[CIT Vs. Abhishek Industries Ltd. - 286 ITR 1 (P & H)]
- Instructions mentioned above is applicable at the time of filing an appeal to ITAT i.e. prospective
[CIT Vs. Chhajer Packing & Plastics Pvt.Ltd - 300 ITR 180 (Mum)]

CONTINUE

- The Dept. has to prove why appeal should be admitted when tax effect is lower than the amount mentioned in the circular.
- If Supreme Court or High Court has to decide on law point that on substantive law, then, it should be admitted. Substantive law should prevail over procedural formalities .

FORM OF APPEAL & PROCEDURE

- i) The memorandum of appeal (Form 36) must be triplicate alongwith two copies (at least one shall be a certified copy) of the order appealed against, two copies of the assessment order, two copies of grounds of appeal, two copies of statement of facts before CIT(A).
- ii) In case of an appeal against an order levying penalty, two copies of relevant assessment order.
- iii) Form 36 should be in English and should set forth, concisely and under distinct heads, the grounds of appeal without any argument or narrative and such grounds should be numbered consecutively. (Rule 8 of ITAT Rules, 1963).
- iv) Rule 45(2) appeal memo to be signed & verified by the person who is authorized to sign ROI u/s. 140 of the Act.

ORDERS OF ITAT (S. 254)

- Giving opportunity to both parties.
- Pass such orders thereon as it thinks fit.
 - i) very wide powers
 - ii) “thereon” suggest on the grounds or issue raised before it for the assessment year.
 - iii) It has power to set aside the assessment
 - Diff. Bet. Set aside and Remand.
- Final or ultimate fact finding authority should consider all facts and record. Decide the matter on cogent reason
[CIT Vs. Abhishek Industries Ltd. [286 ITR 1 (P & H)]
- No power of enhancement .

CONTINUE

- S. 254(2) provides ITAT may rectify any mistake brought to its notice by the assessee or the AO within four years from the date of the order. However, it cannot enhance an assessment or reduce refund or otherwise increase liability of the assessee unless a reasonable opportunity of being heard to the assessee is given.
- No party appearing before the Tribunal should suffer on account of mistake committed by the Tribunal
 - [Honda Siel Power Products Ltd. Vs. CIT -295 ITR 466 (SC)]
- Rectification Vs. Review
 - [CIT Vs. Earnest Exports Ltd. – 323 ITR 577 (Bom)]
- S. 255(3) - Single member may hear the appeal if total income is less than Rs. 5/- lakhs

TIME LIMIT

- I) May hear and decide the appeal within a period of four years from the end of the financial year in which appeal is filed.

 - II) May grant a stay of demand after considering merit of the case, for 180 days but not exceeding 365 days. The ITAT should decide the matter within that period. After that period a stay is vacated, even though delay is not attributable to the assessee.
[Jethmal Fanjimal Soni Vs. ITAT – 231 CTR (Bom) 332]
- ITAT has power to award cost.

 - A question of jurisdiction or time limit can be raised for the first time subject to S. 292BB from assessment year 2008/09.
[Kuber Tobacco Products Pvt. Ltd. Vs. DCIT – 28 SOT 292(Del)(SB)]
[NTPC Vs. CIT – 229 ITR 383 (SC)]

MISCELLANEOUS

- No power to dismiss appeal for default.
 - i) Rule 24 of the Income tax (Appellate Tribunal) Rules, 1963
 - ii) CIT Vs. Channiappa Mudaliar [74 ITR 41](SC)]
 - iii) Rajendra Prasad Borah Vs. ITAT [302 ITR 243 (Gauh)]
overruling
CIT Vs. Multiplan India (P). Ltd. [38 ITD 320 (Del)]
- Conflict of opinion bet., the members – may be referred to third member by the president
- Power of third member – limited to resolve the issue referred to him
- Sanctity of third member & Sp. Bench is the same
[P.C. Puri Vs. CIT – 151 ITR 584 (Del)]

CONTINUE

- Contradiction bet. Sp. Bench & Third Member SP Bench would prevail
[DCIT Vs. Oman International Bank Saog – 313 ITR 128 (Bom) (Mum) (SP)]
- Vires of Act or Rules can not be considered by the ITAT. However, the Tribunal can consider vires of notification issued by the Govt.
[Taylor Instrument Co. (India) Ltd. Vs. CIT 232 ITR 771(Del)]
- Tribunal bound to follow order of High Court even if it is not jurisdictional – unless contrary decision of other High Court
CIT Vs. Nirmalabai K. Darekar 186 ITR 242 (Bom)]
CIT Vs. Smt. Godavaridevi Saraf Vs. CIT – 113 ITR 589(Bom)]

CONTINUE

- Tribunal to pronounce judgement publicly and as per Rule 34 of ITAT Rules. [CIT Vs. Sudhir Choudhrie 278 ITR 490 (Del)]
- Limitation on ITAT:
 - i) can not confirm jurisdiction by ignoring bar of limitation
 - ii) Belated claim for relief can not be entertained
 - iii) Thereon –two fold limitations
 - a) Restricted to assessment year.
 - b) Confined to the matters raised in appeal.

CONTINUE

- Power to refix hearing to avoid miscarriage of justice
[Mafatlal Securities Ltd. Vs. JCIT 21 SOT 245 (Del)]
- As per Rule 11 of ITAT Rules – additional ground can be raised, if no new facts are required.
- Rule 29 of ITAT Rules, prohibits for production of additional evidence before ITAT unless it requires.
[Bimal Kumar Anant Kumar Vs. CIT 288 ITR 278 (All)]
- Status of cross objection
 - Rule 22 of ITAT Rules
 - No difference bet. an appeal and cross objection except time limit for submission
CIT Vs. Purbanchal Paribhan Gosthi [234 ITR 663 (Gauh.)]
- No fee payable on cross objection.

CONTINUE

- Power to grant stay subject to limitation under proviso to S. 254(2A)
[ITO Vs. M. K. Mohammed Kunhi 71 ITR 815 (SC)]
[CIT Vs. Bansi Dhar & Sons 157 ITR 665 (SC)]
- ITAT has power to allow withdrawal of appeal.
- Duty bound to pass reasoned order
[Babulal Patodia Vs. CIT 304 ITR 116 (MP)]

CERTAIN OTHER ITAT RULES

- Rule 5 – Language of Tribunal shall be in English
- Rule 5A – Notwithstanding above – the parties may file documents drawn in Hindi in Gujrat, Maharashtra, UP, Punjab, Chandigargh, Delhi, MP, Rajasthan, Bihar.
- Rule 5B- In the above states ITAT in its discretion may permit the use of Hindi in its proceedings or may pass orders in Hindi and it shall be accompanied by the authorized English translation.
- Even signature in Hindi is regarded as passing an order in Hindi.

CONTINUE

- Rule 10 provides that where a fact which can not 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.
- Rule 17 – Authorization of AR shall be filed before the commencement of the hearing.
- Rule 17A prescribes Dress regulations for members and for the representatives of the parties.
- Rule 18 provides for preparation of paper book and submission to ITAT

CONTINUE

- The ITAT vide F. No. 114 Ad (AT) 69 dt. 13.4.70 para 9 provides that Books of account should be kept handy at the time of hearing.
- Para 4 of the aforesaid notification provides that an application for an early hearing for an appeal should give reason why the assessee be given preference over the appeals made by other assessee and to state whether or not tax has been paid and, if so to what extent.
- Mobile
- Procedure followed by the Benches
- How to address the members

REVISION OF ORDERS PREJUDICIAL TO REVENUE

By
H. N. Motiwalla

OBJECT

- Dept has no right to appeal to the CIT(A) against any order passed by AO.
- Therefore this section gives a power to revise an order passed by AO
- The CIT may call for and examine the record of any proceedings under this Act.
- The CIT must mention the material on the basis of which he has ordered an enquiry in the matter

ERRONEOUS AND PREJUDICIAL TO REVENUE

- Twin conditions should be satisfied
 - a) AO's order is erroneous and
 - b) It is prejudicial to the interest of revenue

Marbar Industrial Co. Ltd. Vs. CIT [243 ITR 83 (SC)]
- Erroneous: An incorrect presumption of facts or incorrect application of law or non application of mind
- Prejudicial to the interest of revenue – view taken by AO is unsustainable in law.
- Loss of revenue as a consequence of an order of AO cannot be termed as prejudicial to the interest of revenue.

Contd.

- Every finding and conclusion of AO has to be supported by reasons; otherwise order is erroneous
CIT Vs. Infosys Technology Ltd. [341 ITR 293 (Karn)]
- Certain amounts are taxable in the hands of the assessee but offered in the hands of the relative of the assessee. Order is prejudicial to the interest of revenue.
Smt. Lajja Wati Singhat Vs. CIT [226 ITR 527 (All)]

RECORDS

- Explanation (b) to S. 263(1) provides that the word “record” would mean not only the record as it stands at when the order in question was passed by AO but also at the time of examination by CIT
- Not only the assessment order but entire records . A office note of AO can be treated as part of “records”.
- However, CIT has no jurisdiction to initiate proceedings u/s. 263 in respect of matters which have been considered by CIT(A) as per Explanation (c) to S. 263(1)

TIME LIMIT

- Within two years from the end of the financial year in which the order sought to be revised.
- Period of limitation excludes:
 - a) Time taken in giving an opportunity to assessee to be reheard u/s. 129 and
 - b) Any period during which any proceeding under this section is stayed.

APPEAL

- Against the order of S. 263, the assessee can file an appeal to ITAT
- Order giving effect to order S. 263, the assessee can file an appeal to CIT(A)

REVISION OF OTHER ORDERS
(S. 264)

By
H. N. Motiwalla

REVISION

- Alternate remedy to appeal to CIT(A)
- By assessee or suo-moto by CIT
- Order should have been passed by subordinate to CIT
- Not being prejudicial to assessee.

TIME LIMIT

- CIT has power to revise suo-moto only within a year of an order
- Assessee within one year from the date of communication
- CIT may admit the revision petition belatedly if there was sufficient cause.
- CIT shall pass an order within one year from the end of the financial year in which application is made by the assessee for revision.

CONDITION

- CIT shall not revise – till the time within which the appeal may be made expires;
- Assessee waives his right to appeal
- Once an order has been made subject to CIT(A) or Tribunal. CIT cannot exercised the power.
- Every application by an assessee for revision shall be accompanied by a fee of Rs. 500/-

Thank You