

WOW Series- Western India Regional Council

Keys to Drafting Submissions



Presented by Kinjal Bhuta

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The purpose of the first draft is not to get it right, but to get it written.

*John Dufresne*²

Legal Drafting 101:

- o Language shall be simple lucid and upto the point.
- o Ability to communicate analysis of complex legal issues.
- o Writer's perspective.
- o Readers perspective in prime most important.
- o Use of short sentences.
- o Basic Grammar skills.
- o Use of correct tone depending upon the reader.

Legal Drafting – Process of writing:

- o Remember- Madman, Architect, Carpenter and Judge Theory.
- o Prepare an outline.
- o Chronological order of facts.
- o Research well.
- o Jot down the most important points of submissions and then elaborate.
- o Revise and Editing.
- o Read and Re - read.

Reply to initial notices and questionnaires... 1:

- o Start by stating all undisputed facts of the case.
- o Reply to each question in the notice sequentially.
- o Put forth your arguments for each and every issue raised by the AO.
- o Co-relate your contentions with the documents filed.
- o Seek Adjournment whenever required.
- o Revert to each and every notice issued.
- o Read the notices carefully.

Reply to initial notices and questionnaires... 2 :

- o Time barring matters, notice the notice issued carefully.
- o All the submissions should be dated, should mention the basic details of clients like PAN, assessment year, and should mention specifically against which notice the assessee is responding.
- o If attachments are made with the written submissions, please mention the page number and annexure no in the written submission, cross referencing is essential.
- o Always maintain continuity by making reference to last letter or hearing.

Reply to show cause notices ... 1 :

- o Support your arguments by quoting relevant case laws- only if absolutely required.
- o Replies should be exhaustive and elaborate.
- o Do not hide any relevant facts.
- o Be consistent in your submissions.
- o This is the first submission and one needs to be very careful in facts reproduced before AO.
- o Avoid repetition.
- o Collect all evidences and documents.

Reply to show cause notices ... 2 :

- o Request for cross-examination whenever third party data used.
- o Request for 133(6) whenever data cannot be obtained from third parties.
- o Mention the history of the assessee if relevant to the case.
- o Don't depart from logic.
- o Make without prejudice submissions wherever required.
- o Refer to the other acts and regulations as the case may be.
- o Ask for physical hearing if too complicated matter

Practical Tips ..1 :

- o Three most important things when you make submissions – Facts, Facts and Facts.
- o Long written submissions and notes should be page numbered.
- o All the submissions should be written on covering letter which should be dated, signed and stamped wherever necessary and the list of details annexed should be in the covering letter.
- o Rule 14 of Income Tax Rules.
- o In case of limited scrutiny, only respond to the specific and relevant queries pertaining to the subject matter, refuse in writing to submit details beyond scope.
- o Verifications and fundamental factual details or declaration better to be taken on letter head of assessee.

Practical Tips ..2:

- o All the data submitted should be backed up and saved sequentially.
- o Name the folders and attachments appropriately.
- o Maintain all screen shots of technical confusions and uncertainties.
- o What to submit in return so that you don't get into trouble in E-assessments.
- o Avoid delaying the submissions till fag end.
- o Avoid making submission through mobiles or apps (in the scheme). Try to submit details from single system or fixed place of office.
- o Make use of grievance portal and other communication contacts.

Practical tips ..3:

- o Check the digital signature of AO, date and other particulars in all notices.
- o When system error in ITBA, always email the AO about the technical issues.
- o Never submit attachments without a forwarding letter or written note.
- o Use the Authorised Representative feature whenever essential.
- o Maintain a list of documents submitted during the assessment in office file, once the assessment is over.
- o Keep taking back ups regularly of your systems.
- o **Keep clients informed** about checking their emails and messages. – Ensure correct emails and contact details are submitted.

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Some tips for scanning:

- o The Scanning should be clear at least 300DPI.
- o The format of attachment should always be pdf so save files with that extension.
- o If files are truncated, please see that its legible before attaching.
- o Scan original documents and not photocopies.
- o The document should not be password protected.
- o If the documents are of various sizes, see that some data is not missed while scanning , like scanning a legal paper.
- o If many documents, than can sequentially scan and number documents and make it as one attachment.
- o Every document should be named and numbered if not numerically than atleast annexure wise.
- o Ensure to send correct attachments against description stated as difficult to redo the submission.

Effective Drafting - Unwritten Rules :

- o Formatting and presentation very pertinent.
- o **Sequence** your arguments from best to less weighted.
- o Perfect **balance** of writings- should be firm but at the same time not abusive.
- o Poor drafting may result in a good case being lost.
- o **Prompt response** to notices and letters should be ensured.
- o **Always comply** to the committed dates .
- o **Involvement with the case** is inevitable but involvement with the client is not desirable
- o *When you realize a mistake, take immediate steps to **rectify it**.*

Effective Drafting – Doctrine of Precedents:

- o When the principle/law laid down by the Supreme Court or the High Court in any case is applicable to the issue in the existing case then that is a **doctrine of precedents**.
- o **Ratio decidendi** is the reasoning on which the judgement is based
- o **Obiter dicta** is an observation or finding of the court in any judgement
- o A judgment is said to be **per incuriam** when it is rendered without appreciating certain relevant provisions of law which are important but not brought into the notice of Court by any of the parties.
- o A judgment of the Supreme Court is binding on all the authorities
- o In case of two contrary decisions by the Supreme Court, the judgment of a larger bench is binding.
- o In absence of any decision by the Supreme Court, the judgment of the jurisdictional High Court would be binding.
- o In absence of any decision by the Supreme Court and the jurisdictional High Court, the decision rendered by the High Court of any other state would be binding, only if there are no contrary decisions by High Courts of other states.

Effective Drafting – How to read an order:

- o Read the full judgment.
- o No judgment is in favour of against- the ratio laid down is relevant.
- o Avoid Cherry picking of words and sentences
- o Use search engines only to locate the judgments not for analysis.
- o Understand the facts, issues involved and the law laid down in the judgment before handing over the same to any authority.
- o The Supreme court in the case of **CIT vs M/s. Sun Engineering Works Pvt Ltd [1992] 198 ITR 297 (SC)** has held that
“It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete 'law' declared by this Court.”
- o Judgments are not always required to be relied upon. By quoting a wrong judgment you can lose your case.

“If you are not confused you have not learned”

- Nani Palkhiwala





THANK YOU !!!

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