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Origin & Procedures surrounding the I.T.A.T.

(‘Income Tax Appellate Tribunal’)

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1. Origin of Income Tax Appeals.

- Act of 1860 : Panchayat to make Assessment and Appeal there against would lie with the Collector of the District. Collector's Order was Final.

- Act of 1868 (Replaced the Act of 1860) Brought an improvement in the position by providing, in the first Instance, for a petition of objections to the Collector, and then, for an appeal from the order of the Collector of the district to the "Commissioner of Revenue of the Division". The order of the Commissioner of Revenue was final. No reference was available to the High Court under these Acts. The same basic position continued under the successor Acts of 1869. 1870, 1872, 1886, 1916 and 1917.

- "Income-tax Act" as such was, for the first time, instituted by the Act No. VII of 1918". It was more elaborate than its predecessors both as regards procedural and substantive law, It brought the High Courts into the picture in an advisory capacity.

Origin of Income Tax Appeals...

- Under the 1918 Act, appeal was to be filed before the Commissioner against an assessment and, from the order of the Commissioner, a revision petition before the Chief Revenue Authority. A provision was, however, inserted providing for a reference to the High Court by the Chief Revenue Authority on points of law. There were no further changes except for providing the Hierarchy in 1921 and 1922 Acts.

2. Formation of Income Tax Appellate Tribunal

On 25th January, 1941

3. Ideals which inspired the creation of ITAT

- "Sulabh Nyay & Satwar Nyay" which means "easy and quick justice".

4. Criteria for the working of the Tribunal :

- Inexpensive;
- Accessibility;
- Freedom from technicalities;
- Expedition; and
- An expert knowledge of their particular subject.

6. Income Tax Appellate Tribunal is the First ever Tribunal to be formed. The Tribunals under the Other Laws were formed thereafter -

- Encouraged by the record of the Income-tax Appellate Tribunal, the Government has constituted a similar Appellate Tribunal for Indirect Taxes, Customs, Excise and Gold (Control) Appellate Tribunal, Central Administrative Tribunal, Railway Claims Tribunal, Foreign Exchange Regulation Appellate Board and the Appellate Tribunal for forfeited Property.

7. ITAT is under the ministry of Law and Justice, Department of Legal Affairs of Government of India.

- ITAT is Headed by the President.
- 1 Sr. Vice President.
- 9 Vice Presidents and
- has the Strength of Total 126 Accountant & Judicial Members (Judges)
- Recently, in addition to the Current Strength of 69 Members, 31 Members have been newly appointed.

8. **The ITAT Head Office is situated in Mumbai.**

9. **There are Total 63 Benches functioning under 27 Stations all over India.**

10. **Necessary Qualification for election/ Appointment of the Members -**

- Judicial Members – 10 Years as Advocate or in Legal Service under the Government Departments.
- Accountant Members – 10 Years as Chartered Accountant or in the Post of Additional Commissioner in the IT Department.

11. Administrative Staff includes 1 Registrar, 7 Deputy Registrars, 27 Assistant Registrars and large number of working staff.

12. Area of Operation of ITAT (i.e. Appeals under Various Laws) -

- Not only Income Tax, but also,
- Wealth-tax,
- Gift Tax,
- Expenditure Tax,
- Estate Duty,
- Super Profits Tax,
- Companies (Profits) Sur-tax,
- Compulsory Deposit Scheme,
- Hotel Receipts Tax,
- Interest Tax Act

13. Procedure for filing Appeals – Forms :

Form No.	Description
Form 36	Form of Appeal to the ITAT under Income Tax Act.
Form 36A	Form of Cross Objection under Income Tax Act.
Form F	Form of Appeal to the ITAT under Wealth Tax Act

14. Procedure for Filing Appeals – Time Limit (Due Date) for Filing Appeals –

Appealable Orders	Passed Under Sections	Due Date / Time Limit for Filing Appeal
Passed by CIT-A	U/s. 154, 250, 271,271A or 272A	Within 60 days from the date of Intimation
Passed by Assessing Officer	After 30-06-1995 but, Before 01-01-1997 U/s 158BC, pursuant to Search u/s 132 or Requisition of Books of Accounts u/s 132A	Within 30 days from the date of intimation

14. Procedure for Filing Appeals – Time Limit (Due Date) for Filing Appeals (contd..) –

Appealable Orders	Passed Under Sections	Due Date / Time Limit for Filing Appeal
Passed by CIT / Principle CIT	U/S 12AA, 80G(5) clause (vi), 263, 271, 272A, S.154 amending his order under section 263, 272A	Within 60 days from the date of Intimation
Passed by Assessing Officer	U/S 143(3), 147, 153A, 153C in pursuance of the directions of the DRP, S.154 in respect of the order of the DRP	Within 60 days from the date of Intimation
Passed by Assessing Officer	U/S 143(3), 147, 153A,153C with the approval of the Principal CIT as referred to in S.144BA(12) or u/s 154/155 in respect of such order	Within 60 days from the date of Intimation
Passed by Prescribed Authority.	U/S 10(23C)(vi) or (Via)	Within 60 days from the date of Intimation

15. Information to be filled in the Appeal Memo -

- Name and Address of Appellant / Respondent, Date of Receiving the Order, PAN Number etc.

16. Person Authorised to Sign the Appeal Memo -

- a relative of the assessee,
- a person regularly employed by the assessee,
- a lawyer,
- an accountant or
- an income-tax practitioner.
- Thus, it brings the easy accessibility of the Tribunal not only to lawyers but also to accountants and other less qualified laymen combined with the simplicity and directness of the few rules framed by the Tribunal was calculated to provide an informal atmosphere and facilitate the smooth functioning of the Tribunal.

16. Person Authorised to Sign the Appeal Memo (contd..)

- ***34 ITR(T) 539 (Hyderabad - Trib.) - Suvistas Software (P.) Ltd.v. Income-tax Officer, Ward 3 (2), Hyderabad***

  - As per section 140, the return of income under section 139 has to be signed and verified, in the case of a company, resident in India, by the managing director thereof, or where for any inevitable reason such managing director is not able to sign and verify the return or where there is no managing director, by any director thereof. In the instant case, 'S' was neither managing director nor director of the assessee company when the present appeal was filed in the case of the assessee company. Therefore, he is not an authorized person to sign and verify the instant appeal filed in the case of the assessee company. The said appeal, not signed and verified by an authorized person, is not maintainable in law, as rightly contended by the revenue and the same, is liable to be dismissed at the very threshold.

17. Necessary Attachments to the Appeal Memo -

- Refer to Specimen Index and Acknowledgement.

18. Appeal Filing Fees has to be paid on basis of Income as per Assessment Order and not on basis of Returned Income seeking exemptions / deductions.

- *[2014] 45 taxmann.com 343 (Hyd ITAT) - Centre for Rural Studies & Development Madakasira v. Assistant Commissioner of Income-tax, Central Circle -1, Ananthapur -*
  - Whether requisite filing fees was to be paid on basis of assessment order and not on the basis that assessee had filed NIL return seeking exemption under section 11 - Held, yes
  - Whether since assessee's appeal was with regard to addition, it was required to pay appeal fees not in terms of section 253(6)(d) (Provides for Fees of Rs.500/-), but in terms of section 253(6)(c)

19. Appeal Filing Fees in case of Assessed Loss.

- ***317 ITR 159 (Bombay HC)-Gilbs Computer Ltd. v. Income-tax Appellate Tribunal, Mumbai***

  - On a plain interpretation of section 253(6), there can be no doubt that the assessee was not obliged to pay the fee in excess of Rs. 500/-. The words 'less and more' must be given the ordinary meaning. In the instant case, the assessee had been admittedly assessed to loss. In such a case, there were two possible ways of determining what was the total income computed by the Assessing Officer. The first was that the assessee was assessed to a nil income and has been permitted to carry forward a loss that was determined or, secondly, that the assessee was assessed to an aggregate loss of Rs. 9 crores. Whichever way one would look at it, the income computed by the Assistant Commissioner was less than one hundred thousand rupees and, therefore, clause (a) would apply. If, on the other hand, one took view that as the assessee was assessed at a loss, clause (a) or (b) or (c) could not apply as they postulate assessment out of a positive figure, then, it was only clause (d) which would apply and, even so, the fee payable would be Rs. 500/-.

  - In any view of the matter, it could never be said that the assessee's case fell within clause (c) as held by the Tribunal. For clause (c) to apply the total income of the assessee computed by the Assessing Officer had to be more than two hundred thousand rupees. The expression 'total income' is defined in section 2(45) to mean the total amount of the income referred to in section 5, computed in the manner laid down in the Act. It would, thus, be clear that in order for clause (c) to apply the total income assessed has to be in excess of two hundred thousand rupees. The use of the words 'more than' would also indicate that it has to be a positive figure in excess of two hundred thousand rupees.

20. Appeal Filing Fees in case of Penalty Orders.

- ***310 ITR 195 (PATNA) Dr. Ajith Kumar Pandey v. Income-tax Appellate Tribunal***

  - Appeal against penalty will be covered by clause (d) of section 253(6) and fee of Rs.500/- would be payable; Tribunal was not justified in calling for fees based on income assessed.

  - A look at sub-section (6) of section 253 would make it abundantly clear that in case an appeal is filed on or after 1-10-1998, the appeal must be accompanied by a fee of what has been provided in clauses (a), (b), (c) and (d) of the said sub-section. Clauses (a), (b) and (c) provides that fees as mentioned therein should be determined on the basis of total income of the assessee as mentioned in those clauses. Therefore, in the case of an appeal where the total income of the assessee is ascertainable from the appeal itself, i.e., when the appellant is seeking to challenge the assessment of his total income, fees as mentioned in clauses (a), (b) and (c) would be required to be paid. Clause (d) of the sub-section deals with other appeals. Imposition of Penalty under section 271 has no connection or bearing with the total income of the assessee. A person aggrieved by an order imposing penalty, if approaches the Tribunal by preferring an appeal, imposition of penalty having no nexus with the total income of the assessee, it would not be discernible what is the total income of the appellant and, accordingly, such an appeal will be covered by clause (d). Furthermore, the important words used in clauses (a), (b) and (c) of the sub-section are ‘total income of the assessee’. Therefore, the appellant must be an assessee and the appeal must demonstrate what is his total income. In the case of imposition of penalty that may not be discernible.

21. Condonation of Delay:

- ***373 ITR 464 (Madras) - Mrs. P.S. Rajeswari v. Assistant Commissioner of Income-tax, Central Circle- IV(2), Chennai*** **- Condonation of Delay: Denied –[Delay of 1,100 Days (3 Years-5 Days)]**

  - Since assessees were lackadaisical in their approach and in a non-chalant manner they tried to seek condonation of delay, Tribunal was justified in declining condonation of delay.

  - In Esha Bhattacharjee v. Managing Committee of Raghunathpur, Nafar Academy 2013 (5) CTC 547 Supreme Court has deprecated such practice of showing leniency in condoning the delay. The parameters laid down by the Supreme Court when not to condone delay get squarely attracted to the facts of the present case and there is no reason to condone the delay and the Tribunal was correct in dismissing the appeal on that score. The plea of illness, payment of tax at some point of time, adjustment of payment before the Sub-Court, are all matters on merit. That stage has not come. In any event, there is no reason to go into such issue, as there is the plea of condonation of delay of approximately more than 1100 days in filing the appeal before the Tribunal in each one of the case.

22.Dismissal of Appeal due to non-appearance on the date of Hearing and Restoration of such Appeals –

- ***[2013] 32 taxmann.com 342 (Gujarat) - Sanket Estate & Finance (P.) Ltd. v. Commissioner of Income-tax***

  - Section 254 of the Income-tax Act, 1961, read with Rules 19, 20 and 24 of the Income-tax (Appellate Tribunal) Rules, 1963 - Appellate Tribunal - Orders of [Decision on merit] - Assessment years 1998-99 and 1999-2000 - Whether Tribunal cannot dismiss appeal only for want of prosecution without same being decided on merit - Held, yes.

  - **Tribunal cannot dismiss an appeal for want of prosecution, without same being decided on merit.**

22. Dismissal of Appeal due to non-appearance on the date of Hearing and Restoration of such Appeals (contd..) –

- ***38 ITD 320 (DELHI)-Commissioner of Income-tax v.Multiplan India (P) Ltd.***

  - Section 256 of the Income-tax Act, 1961, read with rule 19 of the Appellate Tribunal Rules, 1963 - Reference - Question of law - Assessment year 1984-85- Revenue's appeal before Tribunal was fixed for hearing but on date of hearing nobody represented revenue nor any communication for adjournment was received - There was also no communication or information as to why revenue remained absent on that day - Assessee-firm also remained absent as notice issued by registered post at address given by revenue was returned by postal authorities as undelivered - Whether any question of law arose from Tribunal's order in treating appeal as unadmitted in view of rule 19 - Held, no.

23. Whether IT Department can file Appeals having Tax Effect less than Rs.4,00,000/-

- ***[2015] 58 taxmann.com 214 (Delhi - Trib.) Assistant Commissioner of Income-tax, Circle 3 (1), New Delhi v. Cyber Media (India) Ltd.*** **Section 268A has been inserted by the Finance Act, 2008 with retrospective effect from 1-4-1999.**
  - It is not in dispute that the Board's instruction or directions issued to the revenue authorities are binding on those authorities, therefore, the department ought not to have filed the appeal in view of the above said provisions mentioned in section 268A since the tax effect in the instant case is less than amount prescribed for not filing the appeal. It is noticed that the CBDT has issued Instruction No. 5 of 2014, dated 10-7-2014, by which the CBDT has revised the monetary limit to Rs. 4,00,000/- for filing the appeal before the Tribunal. Keeping in view the CBDT Instruction No. 5 of 2014, dated 10-7-2014 and also the provisions of section 268A, it is opined that the revenue should not have filed the instant appeal before the Tribunal.
  - The Delhi High Court in the case of CIT v. Delhi Race Club Ltd. in [I.T. Appeal No. 128 of 2008, dated 3-3-2011] held that such circular would also be applicable to pending cases. From the ratio laid down by the Delhi High Court, it is clear that the instructions issued in the Circulars by CBDT are applicable for pending cases also. Therefore, by keeping in view the ratio laid down in the aforesaid referred to case, it is held that Instruction No. 5/14, dated 10-7-2014 issued by the CBDT was applicable for pending cases also and in the said instructions, monetary tax limit for not filing the appeal before the ITAT is Rs. 4.00 lakhs. [Para 10]

24. Calculation of Tax Effect –

- ***COMMISSIONER OF INCOME TAX, KOLKATA-II vs. CHANAKYA FINVEST PVT LTD - (2014) 89 CCH 0088 Kol HC***

- 'Tax effect' means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issues against which appeal is intended to be filed. However, the tax will not include any interest thereon, except where chargeability of interest itself is in dispute. In case the chargeability of interest is the issue under dispute, the amount of interest shall be the tax effect. In cases where the returned loss is reduced or assessed as income, the tax effect would include notional tax on disputed additions. In case of penalty orders, the tax effect will mean quantum of penalty deleted or reduced in the order to be appealed against".

25. Hearing of Stay Applications and Granting Stay of Demand-Period-Extension of the Period of Stay –

- ***[2015] 57 taxmann.com 337 (Delhi) Pepsi Foods (P.) Ltd. v. Assistant Commissioner of Income-tax***

  - Where delay in disposing of appeal is not attributable to assessee, Tribunal has power to grant extension of stay beyond 365 days in deserving cases.

  - Section 254 of the Income-tax Act, 1961, which provides for the Power of Tribunal to Grant Stay – The third proviso to section 254(2A) and, particularly, amendment introduced therein by virtue of Finance Act, 2008, with effect from 1-8-2008, which added words 'Even if delay in disposing of appeal is not attributable to assessee' has to be struck down being violative of article 14 of Constitution of India.

26. Additional Ground of Appeal can be raised before ITAT –

- ***COMMISSIONER OF INCOME TAX vs. PRUTHVI BROKERS & SHAREHOLDERS (P) LTD. 349 ITR 0336 –Bom HC***

  - Additional ground—Deduction on payment basis—Powers of CIT(A) and Tribunal—Revised return—Inadvertent omission to claim deduction in return of income, claimed subsequently before the Assessing Officer—Whether CIT (Appeals) and/or the ITAT had the jurisdiction to consider a new/additional claim/deduction subsequently raised before the Assessing Officer which, through inadvertence, was not claimed in the return of income filed by the respondent—Held, even assuming that the Assessing Officer is not entitled to grant a deduction on the basis of a letter requesting an amendment to the return filed, the appellate authorities are entitled to consider the claim and to adjudicate the same—A long line of authorities establish clearly that an assessee is entitled to raise additional grounds not merely in terms of legal submissions, but also additional claims to wit claims not made in the return filed by it—Conclusion that the error in not claiming the deduction in the return of income was inadvertent cannot be faulted for more than one reason—It is a finding of fact which cannot be termed perverse—There is nothing on record that militates against the finding—Appellant has not suggested, much less established that the omission was deliberate, mala-fide or even otherwise—Inference that the omission was inadvertent is, therefore, irresistible—IT Department's Appeal dismissed.

26. Additional Ground of Appeal can be raised before ITAT (contd..) –

- ***[2009] 30 SOT 374 (Mumbai) (SB) - Mahindra & Mahindra Ltd. v. Deputy Commissioner of Income-tax, TDS Range 1(1), Mumbai***

  - Section 253 of the Income-tax Act, 1961 - Appellate Tribunal - Appeals to - Assessment year 1998-99 - Whether any party can raise additional ground on question of limitation before Tribunal for first time, as it is a legal ground not requiring investigation of fresh facts - Held, yes.

27. Admission of Additional Evidence –

- ***[2015] 58 taxmann.com 24 (Agra - Trib.) Assistant Commissioner of Income-tax, Central Circle, Agra v. Krafts Palace***

  - Section 250, of the Income-tax Act, 1961, read with rule 46A of the Income-tax Rules, 1962 - Commissioner (Appeals) - Procedure of (Admission of additional evidence) - Assessment year 2003-04 - Whether where facts of a case warrant that, before disposal of any appeal, Commissioner (Appeals) is required to make further inquiries, either on his own or through Assessing Officer, he is not denuded of powers to do so because of provisions of rule 46A - Held, yes.

  - Whether where assessee-firm could not produce complete books of account at assessment stage on account of prolonged and fatal illness of its managing partner, Commissioner (Appeals) was justified in allowing assessee's application filed under rule 46A of 1962 Rules and accepting additional evidence brought on record in course of appellate proceedings - Held, yes.

28. Whether Appeal can be dismissed in case of non-payment of Tax Payable as per return of Income – No - ITAT has no such Powers. However, for the same reason, CIT-A can deny Admission of the appeal u/s 249(4) of the Act. –

- ***190 Taxman 169 (SC) - Commissioner of Income-tax, Indore v. Pawan Kumar Laddha***

  - Chapter XX deals with 'Appeals and revisions'. Chapter XX is divided into headings 'A' to 'F'. Section 246 enumerates a list of orders of the Assessing Officer against which appeals(s) would lie. In that list of orders, an appeal to the Tribunal under section 253(1) is not mentioned. It is for the Parliament to specifically say that no appeal shall be filed or admitted or would be maintainable without the assessee(s) paying the admitted tax due. That has been done only in the case of an appeal under section 249(4)(a). One cannot read such a disenabling provision into section 253(1)(b).

29. Whether ITAT can enhance the assessed income. Or Whether ITAT can take back the relief already granted by the AO. – No Powers. CIT-A can make Enhancement. –

- ***178 Taxman 347 (SC) - MCorp Global (P.) Ltd. v. Commissioner of Income-tax, Ghaziabad.***

  - Appellate Tribunal cannot take back benefit granted to assessee by Assessing Officer. It has no power to enhance the assessment.

  - In the case of Hukumchand Mills Ltd. v. CIT [1967] 63 ITR 232 this Court has held that under section 33(4) of the Income-tax Act, 1922 [equivalent to section 254(1) of the 1961 Act], the Tribunal was not authorized to take back the benefit granted to the assessee by the Assessing Officer. The Tribunal has no power to enhance the assessment.

30. Mistakes Apparent from the Records –

- ***HONDA SIEL POWER PRODUCTS LTD. vs. COMMISSIONER OF INCOME TAX - 295 ITR 0466 – Supreme Court.***

  - The purpose behind enactment of s. 254(2) is based on the fundamental principle that no party appearing before the Tribunal, be it an assessee or the Department, should suffer on account of any mistake committed by the Tribunal. This fundamental principle has nothing to do with the inherent powers of the Tribunal. One of the important reasons for giving the power of rectification to the Tribunal is to see that no prejudice is caused to either of the parties appearing before it by its decision based on a mistake apparent from the record. "Rule of precedent" is an important aspect of legal certainty in rule of law. That principle is not obliterated by s. 254(2). When prejudice results from an order attributable to the Tribunal's mistake, error or omission, then it is the duty of the Tribunal to set it right. Atonement to the wronged party by the Court or Tribunal for the wrong committed by it has nothing to do with the concept of inherent power to review. In the present case, the Tribunal was justified in exercising its powers under s. 254(2) when it was pointed out to the Tribunal that the decision of the co-ordinate Bench was placed before the Tribunal when the original order came to be passed but it had committed a mistake in not considering the material which was already on record. The Tribunal has acknowledged its mistake, it has accordingly rectified its order. The High Court was not justified in interfering with the said order. For the aforestated reasons, the impugned judgment of the High Court is set aside and the order passed by the Tribunal allowing the rectification application filed by the assessee is restored.—CIT vs. **Honda** Siel Power Products Ltd. 293 ITR 0132 – Delhi HC **set aside**.

30. Mistakes Apparent from the Records (contd..) –

- ***171 Taxman 498 – SC – Sree Ayyanar Spinning & Weaving Mills Ltd. V. Commissioner of Income Tax.***

- Section 254(2) is in two parts. Under the first part, the Tribunal may, at any time within four years from the date of the order, rectify any mistake apparent from the record and amend any order passed by it under sub-section (1). Under the second part of section 254(2), reference is to the amendment of the order passed by the Tribunal under sub-section (1) when the mistake is brought to its notice by the assessee or the Assessing Officer. Therefore, in short, the first part of section 254(2) refers to suo motu exercise of the power of rectification by the Tribunal whereas the second part refers to rectification and amendment on an application being made by the Assessing Officer or the assessee pointing out the mistake apparent from the record. In the instant case, application for rectification was made within four years. Application was well within four years. It was the Tribunal which took its own time to dispose of the application.

31. Whether ITAT can review its own Order –

- ***173 Taxman 322 (SC) - Assistant Commissioner of Income-tax, Rajkot v. Saurashtra Kutch Stock Exchange Ltd.***
  - There was no dispute by and between the parties that if there is a 'mistake apparent from the record' and the assessee brings it to the notice of the Tribunal, it must exercise power under sub-section (2) of section 254. Whereas the revenue submitted that in the guise of exercise of power under sub-section (2) of section 254, really the Tribunal had exercised power of 'review' not conferred on it by the Act.
  - The assessee urged that the power exercised by the Tribunal was of rectification of 'mistake apparent from the record' which was strictly within the four corners of the said provision and no exception could be taken against such action. [Para 24].
  - **It is well-settled that the power of review is not an inherent power. Right to seek review of an order is neither natural nor fundamental right of an aggrieved party. Such power must be conferred by law. If there is no power of review, the order cannot be reviewed.**

32. **Website : itat.nic.in Refer to the Screenshot. It gives information regarding Appeals filed. Status of Appeals, ITAT Orders are also uploaded on this website and can be downloaded by filling in the required information).**

33. **Official Reporting Journal : ITD : w.e.f. 1982 - with a view to avoiding/ minimizing conflicting decisions at different benches, to bring uniformity in its decisions and reducing the unnecessary wastage of time in repetitive arguments.**

34. **ITAT Mumbai Bar Association Website : itatonline.org – Refer to the Screenshot. It provides the Cause List of the cases fixed for hearing and also the Soft Copies of useful information including Selected Orders of Supreme Court, High Court and ITAT etc.**

THANK YOU !!