

ANNEXURES

ANNEXURE-1

TERMS OF REFERENCE

F.No. 279/Misc./M-84/2014-(ITJ)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi the 17th July, 2014

Office Memorandum

Subject: Committee to study the appellate orders to examine the filing of appeals by the Department before various forums – Reg.

It has been decided to constitute a Committee to appraise the efficacy of existing dispute resolution forums of CsIT(A) & ITAT and to suggest steps to reduce litigation before these forums. The composition of the Committee is as follows:

Sl.No	Name	Designation	
1.	Ms. Rani S Nair	Chief Commissioner of Income tax-II, Ahmedabad	Chairperson
2.	Ms. Uma Singh	CIT(J), Mumbai	Member
3.	Shri Rakesh Goyal	CIT-XXI, Kolkata	Member
4.	Shri D K Mishra	CIT (J), Delhi	Member
5.	Shri Rajib Hota	CIT(TDS), Chennai	Member
6.	Shri D S Kalyan	CIT(ITAT)-V, Ahmedabad,	Member Secretary

1.2 The Chairperson may appoint an officer as Member Secretary. The Committee may co-opt other members as it deems fit to have proper representation, co-ordination and feedback from ITAT at non-metro stations.

2. The Committee shall submit its report within 8 weeks from the date of its constitution.

- 3.** The terms of reference of the committee will be as follows :
- (i) To carry out detailed analysis of appellate orders and assessment orders, on various aspects as suggested in Para 7 and recommend steps to reduce litigation before the CIT(A).
 - (ii) To study the efficacy of existing system of filing appeals to the ITAT by the Department and suggest steps to reduce litigation before the ITAT after analyzing various aspects as mentioned in Para 7.
- 4.** The Committee should examine the assessment orders, appellate orders and scrutiny report for the appeal to the ITAT related to orders selected as per guidelines mentioned in Para 5 below and give its recommendations for different income groups as defined in Para 6 separately for corporate and non-corporate assessees.
- 5.** Guidelines to select orders:
- (i) Sample should be drawn from the orders passed by the ITAT during the month of June, September, December and March of the FY 2013-14.
 - (ii) (a) Approximately 200 orders should be selected for study from each of the following 8 major cities: Delhi, Mumbai, Kolkata, Chennai, Hyderabad, Pune, Ahmedabad and Bangalore.
(b) Approximately 150 orders should be selected for study from each of the following stations: Chandigarh, Jaipur, Indore, Lucknow and Kochi.
 - (iii) As far as possible, orders in cases of corporate and non-corporate assessees should be selected in equal numbers, particularly in Metro charges whereas in non-metro, sample of non-corporate assessees may be larger. It must also be ensured that some orders in search cases are in select basket.
 - (iv) As number of appeals filed by the Department before ITAT is much larger than appeals filed by the assessee, the order in appeals filed by the Department and by the assessee may be selected in the ratio of 2:1.
- 6.** Analysis should be done and conclusions be drawn separately by categorising assessment orders in various income groups (returned income) as under:
- < 25 Lakh
 - 25 Lakh to 1 Crore
 - 1 Crore to 10 Crore
 - 10 Crore and above
- 7.** Within the overall terms of reference, an analysis on the following aspects should be conducted, along with any other that the Committee deems fit:
- (i) Assessment Orders: Nature of additions made in general, guidance of supervisory authorities, sustainability of additions in appeal, quality of addition made and average tax effect of additions made in each category at Para 6 above.

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- (ii) Orders of CIT (A): Whether relief allowed is based on proper marshalling of facts and legal position. The decisions are also to be analysed in the light of the order of the ITAT.
 - (iii) (a) Authorization by CIT: The filing of second appeal is to be examined as to whether the same is filed mechanically by applying the monetary limits or on sound grounds after examining the merits of each order.
 - (b) The Committee should ascertain from the orders of each CIT (A) received during the FY 2013-14 by each administrative CIT under the jurisdiction of CCIT-I & CCIT-VIII Delhi, CCIT-I Ahmedabad, CCIT-II Hyderabad the percentage of appeals filed by the Department in ITAT where the tax effect exceeds monetary limits.
 - (iv) The success rate of appeals filed by the Department/Assessee before the ITAT to be analysed.
 - (v) The Committee must also take inputs on relevant issues from DRs in the stations mentioned in Para 5.
- 8.** The Headquarters of the Committee will be in Delhi.

ANNEXURE-2

SUGGESTED CHANGES IN THE EXISTING FORMATS

In order to impress on the assessing officers the importance of making addition based on sound factual and legal basis, the following change in the format of assessment order may help to identify the sections under which the additions are made source of information etc. The AO would have to incorporate the sections of the IT Act and the legal precedents upon which additions were made.

Summary sheet of the additions made as a part of the assessment order is suggested as under:

Sections under which additions made	Source of Information, if any (Search/ Survey/AIR/ Third party/ Return & related Documents like Audit report &/ or Books of account etc)	Whether the addition is based on estimation	Amount added (Rs)	Brief reasons for the addition			
				Factual	Legal	Both factual and legal	others

Form No. 35 etc.

Normally in the appeal before the CIT(A), a tax payer has to provide the memorandum of appeal, the statement of facts (SOF) and Ground of Appeal in duplicate, apart from copy of order appealed and notice of demand in original, if any.

Thus appeals without the SOF are generally not required to be taken up for hearing so long as these defects are not removed. But at present SOFs are rarely filed at all or are not complete.

In the column “*Statement of facts*”, apart from indicating the matters such as the nature of the business or profession, the state of account books, etc; the appellant should mention the relevant facts in brief separately for each of the grounds which are subject matter of appeal.

The purpose of the statement of facts (**SOF**) is to bring the parties to definite issues thereby avoiding delay in disposal of the case. The purpose of the SOF is to highlight certain relevant and vital bare facts which are being disputed.

The taxpayers file paper books/ papers which may contain additional evidences. Most CIT(A) routinely send these papers to the AO without ascertaining whether these contain additional evidences. It is suggested that the appellant should file a **Synopsis of the Arguments**(as is the practice during the arguments before the ITAT) and a **checklist of the page number of the paper book /documents specifically referred to** for buttressing the arguments. A **certificate** should also be made by the appellant that all the papers in the paper book has been filed before the AO.

In form No.35 there should be a **declaration** that the papers submitted before the CIT(A) has already been submitted before the AO. There should be a column as to **whether there is any factual inconsistency or error in the order of the assessing officer and if so, specific instances should be highlighted in statement of facts.**

It is suggested that in the form No.35, a column should be inserted, **“whether additional evidences are being produced by the appellant? A similar column may be added in ITNS form also by which the issue of additional evidence will get adequate attention of CIT(A) and the AO.**

The CIT(A) should not decide cases where there is a delay in filing of appeal without an application for condonation. Hence to take care of this aspect, a column like **“Date of service of the order under challenge”** needs to be added.

Under the law it is mandatory for the appellant to pay tax liability admitted in the return of income. A column may be inserted as' under to take care of the basic legal requirement:

“Tax on income returned..... whether it is paid: Yes/No/partly”

Form No. 36 & 36B

In form no. 35 there is a specific requirement for the appellant to file SOF. But there is no such requirement to file SOF in the context of the appeals to be filed before the tribunal either as first appeal (from orders u/s. 12A, 263 & 264 etc.) or as second appeal (from the orders of CIT (Appeals). Thus existing form No. 36 is deficient to that extent.

Further it is suggested that in order to facilitate bunching/clubbing of the appeals for quicker and uniform disposal, the following column, similar to the one in form no.35 may be inserted.

Where an appeal in relation to another assessment year is pending in the case of the appellant with ITAT give the details as to the :

- (a) ITAT bench with whom the appeal is pending and the Appeal No, if any
- (b) assessment year in connection with which the appeal has been preferred
- (c) CIT/DIT passing the order appealed against

(d) Section and subsection of the Act, under which the CIT/DIT passed the order appealed against and the date of such order.

If the appellant or respondent is in appeal before the HC or SC /any other forum like ITSC/AAR etc for any other year on matter similar to the ground/issue in appeal, the details thereof like appeal no. etc.

Similarly **copy of the demand notice** should be filed alongwith the appeal memo to the ITAT to decide the admissibility of the appeal.

It is also suggested that the existing form no. 36 should be modified to meet the specific needs of litigation which is carried before the Tribunal in the first appeal. A suggested Form No. 36B is enclosed as Annexure-6.

ANNEXURE-3

ITNS-55

In the office of the Commissioner of Income Tax (Appeals)

Appeal No.:

Appellate order passed under section..... Of the IT Act 1961 on:

Instituted on..... from the order of the..... served on appellant on.....

01. Name and address of the appellant:
02. PAN No. Of the appellant
03. Assessment year:
04. Income returned:
05. (a) Tax on income returned:
(b) whether it is paid: yes/No/partly paid:
06. Income assessed:
07. Demand raised and assessed income:
08. Date of service of the order under appeal:
09. Section under which order under appeal was passed:
10. Dates of hearing:
11. Date of Service of notice on AO:
12. Whether any remand was made to AO:
13. Date of receipt of the remand report:
14. Whether any additional evidence has been produced by the Appellant: Yes/No:
15. Present for the appellant:
16. Present for the Department:

ANNEXURE-4

SUGGESTED FORM NO. 35

(See rule 45)

Appeal to the Commissioner of Income-tax (Appeals)

Designation of the Commissioner of Income-tax (Appeals)

No.of

Name and address of the appellant

Permanent Account Number

Assessment year, in connection with which the appeal is preferred

Assessing officer/valuation officer passing the order appealed against

Section and subsection of the income tax act 1961 under which the assessing officer/valuation officer passed the order appealed against and the date of such order

Where the appeal relates to any tax deducted at source under section 195(1) the date of payment of tax

When the appeal relates to any assessment and penalty the date of service of the relevant notice of demand

In any other case, the date of service of the intimation of the order appealed against Section in clause of the income tax act 1961 under which the appeal is preferred

Where a return has been filed by the appellant for the assessment year in connection with which the appeal is preferred, whether tax due on the income returned has been paid in full(if the answer is in the affirmative, give details of the date of payment and amount paid)

Section and clause of the Income Tax Act, 1961, under which the appeal is preferred

Where no return has been filed by the appellant for the assessment year in connection with which the appeal is preferred, whether an amount equal to the amount of advance tax payable by him during the financial year immediately preceding such assessment year has been paid (If the answer is in the affirmative, the details of date of payment and amount paid)

Relief claimed in appeal

Whether any additional evidence is being produced by the appellant

Where an appeal in relation to another assessment year is pending in the case of the appellant with Commissioner (appeals) give the details as to the-

- (a) Commissioner of Income Tax (Appeals) with whom the appeal is pending
- (b) assessment year in connection with which the appeal has been preferred
- (c) assessing officer passing the order appealed against
- (d) section and subsection of the act, under which the assessing officer passed the order appealed against and the date of such order.

Address in which notices may be sent to the appellant

.....
(Signed)
Appellant

STATEMENT OF FACTS

(With a Synopsis of the Arguments and a checklist of the page number of the paper book /documents specifically referred to)

Suggestive guideline for SOF to be prepared by the appellant.:

Outline of the facts relied on

Set out the facts on which you intend to rely to challenge the addition.

Outline of the documentary evidence relied on

Set out the documentary evidence that you would intend to rely on .

State the type and date of the document (if known) and any other unique identifying factor.

Outline of the issues arising

State the factual and legal questions arising from the additions contested , including the application of the laws the addition is based on. State the relevant sections of the Act, if possible.

You may raise several issues about one addition.

The propositions of law relied on

List the propositions of law (provisions/case laws) you consider against the additions.

(A proposition of law is a statement about the application or interpretation of the law. It may be based on statutes or case law, or other opinion. Propositions of law may also include a statement on the application or interpretation of law that has not been considered by the courts before.)

Wherever possible, you should state the authority for the proposition of law relied on, for example, the particular case it is drawn from.

GROUPS OF APPEAL

Form of verification

I,....., the appellant, do hereby declare that what is stated above is true to the best of my information and belief. It is also certified that all the papers in the paper book were also filed before the Assessing Officer.

Place.....

.....
(signature)

Date.....

.....

Status of the Appellant

Notes:

1. The form of appeal, grounds of appeal and the form of verification appended thereto shall be signed by a person in accordance with the provisions of rule 45(2).
2. The memorandum of appeal, statement of facts in the grounds of appeal must in duplicate and should be accompanied by a copy of the order appealed against and the notice of demand in original, if.
3. Delete the inappropriate words.
4. These particulars will be filled in the office of the Commissioner (Appeals).
5. Not to be filled in if the appeal relates to tax deducted under section 195 (1)
6. If the space provided herein is insufficient, separate enclosures may be used for the purpose.
7. If appeals are pending relation to more than one assessment year, separate particulars in respect of each assessment year may be given.
8. The memorandum of appeal shall be accompanied by a fee of:
 - (a) where the total income of the assessee as computed by the assessing officer in the case to which the appeal relates is one hundred thousand rupees or less, two hundred and fifty rupees.
 - (b) where the total income of the assessee, computed as aforesaid, to which the appeal relates to is more than one hundred thousand rupees but not more than two hundred thousand rupees, five hundred rupees.
 - (c) where the total income of the assessee, computed as aforesaid, in the case with appeal relates is more than two hundred thousand rupees, one thousand rupee.
9. The fee should be credited in a branch of the authorised bank or a branch of the State bank of India or a branch of the Reserve bank of India after obtaining a challan sent to the Commissioner of Income- tax (Appeals).

ANNEXURE-5

SUGGESTED FORM NO. 36

[See rule 47(1)]

Form of Appeal to the Income Tax Appellate Tribunal..... Bench

Appeal No.....of.....

Appellant.....versus.....Respondent

The state in which the assessment order was made	
Section under which the order appealed against was passed	
Assessment year in connection with which the appeal is preferred	
Permanent account number of the assessee	
Total income declared by the assessee for the assessment year referred to above	
Total income, if any, as computed by the AO for the Assessment year referred to above	
The Assessing Officer passing the original order	
Section of the Income-tax Act, 1961, under which the order was passed	
The Deputy Commissioner (Appeals) in respect of orders passed before the 1st day of October, 1998/Commissioner (Appeals) passing the order under section 154/250/271/271A/272A	
The Deputy Commissioner or the Deputy Director in respect of orders passed before the 1st day of October, 1998, or the Joint Commissioner or the Joint Director passing the order under section 154/272A/274(2)	
The Chief Commissioner or Director General or Director or Commissioner, passing the order under section 154(2)/250/263/271/271A/272A	
The Assessing officer in whose jurisdiction the appellant falls	

Date of Communication of the order under appeal	
Relief claimed in appeal	
Address to which the notice may be sent to the respondent	
Address to which the notice may be sent to the appellant	
Where an appeal in relation to another assessment year is pending in the case of the appellant with ITAT give the details as to the- (a) ITAT bench with whom the appeal is pending and the Appeal No, if any (b) assessment year in connection with which the appeal has been preferred (c) CIT/DIT passing the order appealed against (d) section and subsection of the Act, under which the CIT/DIT passed the order appealed against and the date of such order.	
If the appellant or respondent is in appeal before the HC or SC /any other forum like ITSC/AAR etc for any other year on matter similar to the ground/issue in appeal, the details thereof like appeal no.etc	

‡ GROUNDS OF APPEAL

Signed
(Authorized representative, if any)

Signed
(Appellant)

VERIFICATION

I, _____ the appellant, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today the _____ day of _____

Signed

Notes :

- The memorandum of appeal must be in triplicate and should be accompanied by two copies (at least one of which should be a certified copy) of the order appealed against, two copies of the relevant order of the Assessing Officer, two copies of the grounds of appeal before the first appellate authority, two copies of the statement of facts, if any, filed before the said appellate authority, **copy of original notice of demand** and also :-
 - in the case of an appeal against an order levying penalty, two copies of the relevant assessment order;

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- (b) in the case of an appeal against an order under section 143(3) read with section 144A, two copies of the directions of the Deputy Commissioner under section 144A;
 - (c) in the case of an appeal against an order under section 143(3) read with section 144B, two copies of the draft assessment order and two copies of the directions of the Deputy commissioners under section 144B;
 - (d) in the case of an appeal against an order under section 143(3) read with section 147, two copies of the original assessment order, if any.

ANNEXURE-6

SUGGESTED FORM NO. 36 B

(see Rule 47)

Form of Appeal to the Income Tax Appellate Tribunal..... Bench

Appeal No.....of.....

Appellant.....versus.....Respondent

The state in which the order appealed against was made	
Section under which the order appealed against was passed	
Assessment year in connection with which the appeal is preferred	
Permanent account number of the assessee	
Total income declared by the assessee for the assessment year referred to above	
Total income, if any, as computed by the AO for the Assessment year referred to above	
If the appellant is a trust or institution; mention the date of registration and the section of the Income Tax Act, 1961 under which it is registered	
The Commissioner of Income tax/Director of Income Tax whose order is under appeal and the Section of the Act under which the said order was passed	
Section of the Act under which the AO passed the order which is/was sought to be revised by the Commissioner/Director of Income Tax	
The Assessing officer in whose jurisdiction the appellant falls	
Date of Communication of the order under appeal	
Relief claimed in appeal	
Address to which the notice may be sent to the respondent	
Address to which the notice may be sent to the appellant	



<p>Where an appeal in relation to another assessment year is pending in the case of the appellant with ITAT give the details as to the-</p> <p>(a) ITAT bench with whom the appeal is pending and the Appeal No, if any</p> <p>(b) assessment year in connection with which the appeal has been preferred</p> <p>(c) CIT/DIT passing the order appealed against</p> <p>(e) section and subsection of the Act, under which the CIT/DIT passed the order appealed against and the date of such order.</p>	
<p>If the appellant or respondent is in appeal before the HC or SC /any other forum like ITSC/AAR etc for any other year on matter similar to the ground/issue in appeal, the details thereof like appeal no.etc</p>	

GROUNDS OF APPEAL

Signed
(Authorised Representative, if any)

Signed
(Appellant)

Signed
(Authorised representative, if any)

Signed
(Appellant)

VERIFICATION

I, _____ the appellant, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today the _____ day of _____

Signed

Notes :

The memorandum of appeal must be in triplicate and should be accompanied by two copies (at least one of which should be a certified copy) of the order appealed against, two copies of the relevant order of the Assessing Officer, if any.



ABBREVIATIONS

CBDT	Central Board of Direct Taxes
CCIT	Chief Commissioner of Income Tax
DGIT	Director General of Income Tax
SC	Supreme Court
HC	High Court
ITAT	Income Tax Appellate Tribunal
L&R	Legal and Research
CIT	Commissioner of Income Tax
CIT(A)	Commissioner of Income Tax (Appeals)
ADDL. CIT	Additional Commissioner of Income Tax
JCIT/JT.CIT	Joint Commissioner of Income Tax
DCIT/ACIT	Deputy/Assistant Commissioner of Income Tax
AO	Assessing Officer
DR	Departmental Representative
ITO	Income Tax Officer
ITI	Income Tax Inspector
SEBI	Security and Exchange Board of India
CMIE	Centre for Monitoring Indian Economy
FICCI	Federation of Indian Chamber of Commerce & Industries
ADR	Alternate Dispute Resolution
VAT	Value Added Tax
TDS	Tax Deducted at Source
CTC	Central Technical Committee
RTC	Regional Technical Committee
PE	Permanent Establishment
ROC	Registrar of Companies
NADT	National Academy of Direct Taxes
DTRTI	Direct Taxes Regional Training Institute
NJRS	National Judicial Reference System
ITR	Income Tax Reports
PAN	Permanent Account Number
SOP	Standard Operating Procedure