

## 5. Language of the Tribunal

As laid down in Rule 5 of the Income-tax (Appellate Tribunal) Rules, the language of the Tribunal is English. However Rule 5 A of the said rules provide that the parties may file documents written in Hindi, if they so desire, before the Tribunal located in the following states:

<u>States/ UT</u>	<u>Stations where Benches located</u>
Gujarat	Ahmedabad, Rajkot
Maharashtra	Mumbai, Nagpur, Pune
Uttar Pradesh	Allahabad, Agra, Lucknow
Punjab	Amritsar
Chandigarh	Chandigarh
Delhi	Delhi
Madhya Pradesh	Indore, Jabalpur
Rajasthan	Jaipur, Jodhpur
Bihar	Patna
Chhatisgarh	Bilaspur
Jharkhand	Ranchi

Rule 5B of the said Rules gives further discretion to the Tribunal to permit use of Hindi, in its proceedings and to pass orders in Hindi in the States mentioned above under the aforesaid notification. Where the order is passed in Hindi it shall be accompanied by an authorized English translation thereof while sending its copies to the parties and authorities concerned.

## *CHAPTER II*

### **INSTITUTION OF APPEALS AND MEMO OF CROSS OBJECTIONS**

#### **6. Authority to receive appeals etc.**

Rule 6 of the Income-tax (Appellate Tribunal) Rules, 1963 provides that a Memorandum of appeal to the Tribunal shall be presented by the appellant in person or by an agent to the Registrar at the headquarter of the Tribunal, at Mumbai, or to an officer authorized in this behalf by the Registrar, or sent by registered post addressed to the Registrar or to such officer.

The Deputy Registrar and the Assistant Registrars of the Appellate Tribunal at all the stations where the Tribunal is having its Benches have been authorized to endorse on Memorandum of appeal the date on which it is presented or deemed to have been presented under rule 6. However, if at the time of presentation of appeal the Deputy Registrar or the Assistant Registrar is absent from office, or is engaged in some other work, the appeal or application may be presented to the Superintendent/Assistant Superintendent/ Head Clerk/Senior-most clerk during office hours who has been authorized by the Deputy Registrar or the Assistant Registrar.

In case the applicant apprehends that it is the last day of limitation for presentation of his appeal and /or application, he may present it to the Assistant Registrar at his residence or any other place wherever he may be.

#### **7. Procedure for filing appeals etc.**

Appeals, memo of cross objection or other applications shall be presented by the appellant/cross objector/applicant in person or by an agent to the Registrar or the Assistant Registrar etc. as provided in para 6 above or sent by registered post addressed to the Registrar or to such officer.

#### **8. Date of presentation.**

The authority authorized under rule 6 to receive appeals, applications, cross objection or stay applications shall endorse on every memo of appeal, memo of cross objection or applications the date on which it is received and shall sign at the top of it. It shall be deemed to have been presented on the day on which it is received by the authority, viz. Registrar, Deputy Registrar, Assistant Registrar (or any other authorized officer of the Tribunal). Date of receipt must be given by him below his signature by the receiving officer.

A memorandum of appeal/application/memorandum of cross objection sent by post under rule 6(1) of the Income-tax (Appellate Tribunal) Rules, 1963 shall be deemed to have been presented to the Registrar or to the officer authorized by the Registrar on the date on which it is received in the office of the Tribunal.

The assessee has got the right to file appeal/applications etc., anywhere at the headquarters of any Bench in India, irrespective of the fact whether the appeal/reference application lies within the jurisdiction of that Bench or not. In such an event the Assistant Registrar is required to send immediately such appeals/ applications in the memo as at **APPENDIX II** to the Deputy/ Assistant Registrar of the Bench having jurisdiction over the appeal/application without allotting any number to it and under intimation to the appellant/applicant after writing the date of receipt by the Assistant Registrar, who actually received it. This date will be the date of presentation of the appeal/application to the Tribunal.

## **9. Contents of the memo of appeal and Cross Objection.**

Every memorandum of appeal/cross objection shall be written in English (other than at stations where documents may be filed in Hindi) and shall set forth concisely and under distinct heads the grounds of appeal or cross objection without any argument or narrative and such grounds shall be numbered consecutively.

## **10. Accompaniments of memo of appeal and cross objection.**

(a) ***Accompaniments of appeal*** -Every memorandum of appeal shall be in triplicate and shall be accompanied by the following documents:

- (i) Two copies of the order appealed against, at least one of which shall be a certified copy. It has been clarified by the President, Income Tax Appellate Tribunal, in his letter No.F.38-JS(AT)/71, dated 9-8-1971, that a copy of the order appealed against bearing the signatures of the issuing or authorized officer and seal of the office which issued the copies, will be treated as equivalent to a certified copy of the order appealed against;
- (ii) Two copies of the order of the Assessing Officer which was a subject-matter of appeal before the CIT(A);
- (iii) Two copies each of the grounds of appeal and the statement of facts, if any, filed before the said appellate authority ;
- (iv) In the case of appeal against the order of penalty, the memorandum of appeal shall also be accompanied by two copies of assessment order ;
- (v) In the case of appeal against the assessment under section 143(3) read with section 144A of the Income-tax Act, 1961, the memorandum of appeal shall also be accompanied by two copies of the Joint Commissioner's direction under section 144A ;
- (vi) In case the assessment is under section 143 read with section 147, the memorandum of appeal shall also be accompanied by two copies of the original assessment order, if any ;
- (vii) Where an appeal is filed by the authorized representative, necessary letter of authority, duly stamped as required under the rules ;
- (viii) Where the appeal is filed by the assessee or on his behalf, it shall be accompanied by a fee as provided in sub-section (6) of Section 253 of the Income-tax Act, 1961.

An appeal without payment of fee is not valid. Action to be taken on it is separately provided for.

The above provisions shall *mutates mutandis* apply to appeals filed under other enactments also.

(b) ***Accompaniments of Cross Objection-*** A memo of Cross-Objection under the provisions of Income-tax Act, 1961, Wealth-tax Act, 1957, Gift tax Act, 1958, Companies (Profits) Surtax Act, 1964 and Interest Tax Act, shall be in triplicate in the prescribed form and be treated like an appeal.

*N.B.* The fee should be deposited with a Branch of the Reserve Bank of India or any other authorized bank after obtaining a challan from the Assessing Officer and the triplicate portion of the challan be appended to the memorandum of appeal/application. The Appellate Tribunal will not accept cheques, drafts, hundies or other negotiable instruments. Fee in cash may be received by the Registrar/ Deputy Registrar/ Assistant Registrar on the last day of presentation of any appeal/ application or in exceptional cases, in case challan could not be obtained from the Assessing Officer's office. In case the assessee/appellant /applicant is of mofussil area and wants to present his appeal/application with fee in cash, it may be accepted. Printed receipt in T.R.5 is issued under the signature of the Registrar/Deputy Registrar/Assistant Registrar to the appellant/applicant or his representative after taking the recipient's signature on the counterfoil of the receipt. The receipt and the deposit of amount is shown in the cash book and in the Appeal fee register maintained by the Cashier. Cash entry is initialed by the Registrar/ Deputy Registrar or the Assistant Registrar in both the registers. Normally in cases where the appellant/applicant has not been able to secure challan in spite of his efforts and it is the last date of filing of appeal, the fee should be accepted in cash. In other cases payment of fee should be made by challan only.

**11. Period within which Appeals and Cross Objections are to be filed.**

(i) Appeals under all the taxation Acts are to be preferred within 60 days from the receipt of the order appealed against.

(ii) The Assessing Officer or the assessee, as the case may be, on receipt of notice of filing of an appeal against the order of the CIT(A) under section 253(1) or 253(2) may prefer cross objection within 30 days of the receipt of such notice.

**12. Number of appeals to be filed against consolidated order.**

Normally as many appeals are to be filed as the number of appeals have been disposed of by the order appealed against. However, when only one appeal is filed arising out of a consolidated order passed by the CIT(A), the Assistant Registrar is to ask the appellant immediately about the assessment year in respect of which the appeal is to be treated to have been presented. If no reply is received from the appellant or the reply given by him is unsatisfactory or evasive, the Assistant Registrar has to place it for orders before the Bench which has to decide the issue judiciously.

**13. Entry of appeals/applications in Kachha Register.**

i) All appeals and memos of cross objections so received are to be entered in the diary maintained for the purpose as soon as they are received towards the end of the office hours, the appeal clerk or the clerk-in-charge of preparation of appeals and applications will collect all the appeals and applications from the receiving officer or officers, as the case may be, and will enter them in the register of institutions of appeal and applications as at **APPENDIX III** and take the initial of the receiving officer as a token of verification and check the total number of receipts.

ii) Where there is more than one Bench at a station, the Assistant Registrar or the receiving officer will mark the Bench to which the particular appeal is allotted. Allotment to Benches is to be made in seriatum and Act-wise. In case the receiving officer recollects to have received any appeal of the same assessee on previous occasion the same Bench is to be allotted to the appeal received subsequently. If more than one appeal is filed involving same issue, they should generally be marked to one Bench.

**14. Forms of appeal and cross objection.**

Appeals and cross objections are to be filed in the prescribed forms and verified in the prescribed manner. Forms to be used are mentioned below:

- (a) (i) Appeal under Income-tax Act, 1961 - **APPENDIX IVA-1**
- (ii) Memorandum of Cross objection under the I.T.Act, 1961 - **APPENDIX IVA-2**
- (b) Appeal under section 24 or 26 of the Wealth-tax Act, 1957 - **APPENDIX IVB**
- (c) Appeal under the Gift-tax Act - **APPENDIX IVC**

## **CHAPTER III**

### **PREPARATION AND REGISTRATION**

#### **15. Preparation of appeals and cross objections.**

(a) The appeal clerk will arrange the papers in the following order in the first instance :

(i) First set (Original):

- (1) Memorandum of appeal and grounds of appeal;
- (2) Certified copy of the order appealed against;
- (3) Copy of the grounds of appeal and statement of facts, if any, before the first appellate authority ;
- (4) Copy of the order of the AO;
- (5) Triplicate portion of the challan.;
- (6) Letter of Authority, if filed ;
- (7) Covering letter ;
- (8) Envelope, if received by post ;
- (9) Miscellaneous paper, if any.

(ii) Duplicate set comprising of the following will be placed below the original set:

- (1) Copy of the memorandum of appeal ;
- (2) Ordinary copy of the order appealed against ;
- (3) Copy of the grounds of appeal and statement of facts, if any, before the first appellate authority;
- (4) Copy of the order of the AO;
- (5) Copy of the miscellaneous papers, if any.

(iii) Triplicate set will contain the memorandum of appeal and grounds of appeal and a copy of memorandum of appeal and grounds of appeal and a copy of miscellaneous papers, if to be sent to the respondent alongwith the memorandum of appeal.

(b) Memorandum of cross objection is arranged as under:

- (1) Original with enclosures ;
- (2) Letter of authority, if filed ;
- (3) Covering letter, if any ;
- (4) Envelope, if received by post ;
- (5) Miscellaneous papers ;
- (6) Duplicate with enclosures ; and
- (7) Triplicate with enclosures.

(c) The appeal clerk will page number the original set and on duplicate and triplicate sets he will write duplicate copy or triplicate copy, as the case may be.

(d) The same person will prepare the file cover and the order sheet and fill in the particulars and information required therein pertaining to each appeal or memorandum of cross objection. The order sheet shall be kept above the original set and rubber stamps of the first and second entries in the proforma as at **APPENDIX V** are to be affixed on the order sheet.

(e) Each appeal/cross objection will be placed in the file cover prepared for it.

## 16. Registration

Formerly the registration of appeals and applications etc. was being done only at the Head Office at Mumbai in order to have one series of numbers on all India basis and also for convenience in the matter of preparation of statistics of Institutions and Disposals. However, when the institutions of appeals etc. went up resulting in enormous increase in work load in the Head Office without consequential increase in the strength of the staff, it became difficult to cope up with the work load. Consequently, it was decided by the President that the system of one common series of number under the various Acts for appeals and one common series of number for Cross-Objections filed under those Acts be abolished with effect from 1-8-1968.

(A) Registration of appeals etc. is now being done in each office of the Benches of the Tribunal under the instructions contained in U.O. No.F.45Jd(AT)/68-69, dated the 27<sup>th</sup> July, 1969. Each Bench now has its own special series of numbers for appeals under each Act and a common number for cross objections filed under the various Acts. Each Bench has its own symbol as indicated below against each:

Sl.	Bench (es)	Symbol
1.	Mumbai Benches	MUM
2.	Pune Bench	PUN
3.	Nagpur Bench	NAG
4.	Panaji Bench	PAN
5.	Ahmedabad Benches	AHD
6.	Hyderabad Benches	HYD
7.	Bangalore Bench	BANG
8.	Chennai Benches	CHNY
9.	Cochin Bench	COCH
10.	Delhi Benches	DEL
11.	Chandigarh Bench	CHANDI
12.	Jaipur Bench	JP
13.	Jabalpur Bench	JAB
14.	Allahabad Benches	ALLD
15.	Indore Bench	IND
16.	Amritsar Bench	ASR
17.	Kolkata Benches	KOL
18.	Cuttack Bench	CTK
19.	Patna Bench	PAT
20.	Guwahati Bench	GAU
21.	Agra	AGR
22.	Bilaspur	BLPR
23.	Jodhpur	JODH
24.	Lucknow	LKW
25.	Rajkot	RJKT
26.	Vishakhapatnam	VIZ
27.	Ranchi	RCHI

*Example:* In respect of an appeal filed under the Income-tax Act in Allahabad its number will be given as "ITA No.1(ALLD)/1985". [*i.e.* Abbreviation used for the Act Appeal No, Station Symbol and year of filing].

(B) The Assistant Registrar at each station should take utmost care to see that the work is properly and carefully done according to the present procedure as the entire responsibility for the

correctness of the institution and other figures in the monthly statement is cast on the Assistant Registrar concerned.

(C) Under instructions contained in paragraph 5 of the U.O. referred to in (A) above, after registration a list of Appeals and Cross objections received by the Assistant Registrar pertaining to his Bench is to be sent every fortnight to the Head Office in the proforma as at **APPENDIX VI**.

(D) If the Assistant Registrar comes to know that any appeal or Cross Objection has not been registered by his office according to the date of its presentation through oversight on the part of the Assistant Registrar or his office, such appeal or Cross Objection should be registered on a subsequent date only after obtaining the specific orders of the Registrar/Senior/Seniormost Member of the Bench. The Assistant Registrar should take all necessary steps to see that such mistakes or omissions in the matter of registration do not occur.

(E) Separate registers for registering the appeals under different Acts are to be maintained in the form as at **APPENDIX VI(a)**. Similarly Cross-objections are also to be registered in a common register in the form as at **APPENDIX VI(b)**.

(F) The registration is done according to the date of institution, *i.e.*, the date of receipt by the receiving officer. Entries in each Register are to be made chronologically.

(G) Challan should be cancelled and the number of the Appeal should invariably be noted thereon.

(H) The State of origin of appeal/ Cross Objection will be the State in which the Assessing Officer's office was/is located whose assessment order gave rise to the filing of the appeal in question. The same should be written on the file cover and the relevant register against that appeal.

In a case where appeal is filed before a Bench not having jurisdiction to hear the appeal, the Assistant Registrar of that Bench should send immediately such appeal etc. in the memorandum as at **APPENDIX II** to the Assistant Registrar concerned of the Bench having jurisdiction over the appeal without allotting any number to it under intimation to the appellant/applicant, after writing the date of receipt by the Assistant Registrar who actually received it. This date will be the date of presentation of the appeal for the purpose of calculating period of limitation etc. The Assistant Registrar of the Bench having jurisdiction over the appeal will then register the appeal on the date it is received in his office and deal with it as if the appeal was instituted/presented before him.



## **CHAPTER IV**

### **SCRUTINY**

#### **17. Scrutiny of appeals.**

The appeals, after registration are submitted for scrutiny in convenient bunches. Scrutiny is done by the Assistant Registrar or any other responsible official authorized by the Assistant Registrar. The defects are shown in the order sheet of the Appeals, Cross Objections and the removal and/or compliance of the defect is indicated in the third column of the order sheet.

The following items should be checked at the time of scrutiny:

(a) In respect of appeals;

It should be seen whether:-

- (1) The appeal is in the prescribed form and is duly signed by the appellant;
- (2) The grounds of appeal are concise and are set out under distinct heads; the grounds are neither narrative nor argumentative;
- (3) The particulars required in form are properly and correctly filled in;
- (4) The memorandum of appeal is properly verified as required therein;
- (5) The memorandum of appeal is filed in triplicate;
- (6) The appeal is filed within the period of limitation as laid down in the Act. In case any appeal is time barred, an additional note is to be given on the file cover to invite special attention to the defect;
- (7) The certified copy of the order appealed against and an ordinary copy thereof are filed;

A copy of the order appealed against bearing signatures of the issuing or authorized officer and seal of the office which issued the copies, will be treated as equivalent to certified copy of the order appealed against;

- (8) Two copies of the order of the officer giving rise to the first/second appeal are filed;
- (9) Two copies of the grounds of appeal and the statement of facts, if any filed before the first appellate authority;
- (10) In the case of an appeal against the order of penalty, two copies of the assessment order are filed ;
- (11) In case the appeal is against the assessment under section 143(3) read with section 144A, two copies of the Joint Commissioner's directions under section 144A are filed :
- (12) In case the appeal is against the assessment under section 143 read with section 147, two copies of the original assessment order if any, are filed;
- (13) The fee payable under the Act is paid and copy of challan is filed. In the challan, amount received and dates of receipt are also to be seen. The correctness of the year of account given in challan. is also to be verified. In case the fee is not paid, the appellant is to be informed of the non-receipt and/or non-payment of the Tribunal fee by a letter as per **APPENDIX VII**. The fee is to be paid within the period of limitation. If the fee is paid after the expiry of limitation, the appeal will be treated as barred by time.

- (14) In case any person has signed the memorandum of appeal as authorized representative, the necessary letter of authority is filed and properly stamped as required under the rules;
- (15) In case any affidavit is filed, it is to be seen whether it is on a proper form and duly stamped.
- (16) Miscellaneous papers including affidavit other than those required under Tribunal Rules are to be taken on record only by the order of the Bench and necessary direction has to be given by the Assistant Registrar or the official concerned;
- (17) In the case of departmental appeals, it is the date on which the concerned Commissioner received the appellate order that has to be mentioned in the relevant column of the appeal and not the date of receipt of the appellate order by the Assessing Officer;
- (18) If the grounds of appeal are separately filed, they should be signed by the Appellant. They should be concise and serially numbered.
- (19) In the departmental appeals, a certificate from the Commissioner concerned as required under rule 15 of the Tribunal Rules, authorizing the officer to file an appeal to the Tribunal is filed.
- (20) In the appeals under the Income-tax Act, 1961 where the income, as assessed by the Assessing Officer is less than Rs.5,00,000 the appeal is to be marked as “Single Member Case”.
- (21) In an appeal by the assessee under any Act, the officer who assessed the assessee is to be made respondent (by designation and not by name). In the departmental appeal the appellant before the first appellate authority is to be made respondent.
- (22) In Wealth-tax appeals where valuation of any property is disputed or where there is reference to the report of the Valuation Officer, a letter should be addressed to the assessing officer, requesting him to give full particulars and address of the Valuation Officer/ Astd. Valuation officer and also details of the property involved.
- (b) In case any appeal is defective in any respect as stated above, the defect is to be communicated to the Appellant for rectification within ten days from the date of receipt of the defect notice in the proforma as at **APPENDIX VII (a)**.
- (c) In penalty appeal(s) preferred under the Income-tax Act, the following information is to be called for in the memorandum at **APPENDIX VII (a)(i)** within the prescribed period: -
- (i) Whether any quantum appeal/appeals is/are pending before the CIT(Appeals) concerned pertaining to the assessment year to which the penalty appeal relates ;
- (ii) Whether the aforesaid quantum appeal filed before the CIT(Appeal) has been disposed of. If so, the date of filing of quantum appeal(s) before the Tribunal may be intimated;
- (iii) What is the total income as computed by the Assessing Officer in the assessment to which the penalty appeal relates.

On receipt of the third information required in aforesaid memorandum as at (iii), the appeal is to be marked for Regular or Single Member Bench on the basis of the total amount computed for the assessment year(s) to which the penalty appeal(s) relate.

## **18. Scrutiny of Cross Objections**

It is to be seen that the:

- (1) Cross-Objection is filed in the prescribed form ;
- (2) Particulars required in the form are properly and correctly filled in;
- (3) Memorandum of Cross Objection and the grounds of Cross Objection are filed in triplicate;
- (4) Cross Objection is filed within the period of limitation. To check the period of limitation, the office should put up alongwith the Cross Objection the appeal file giving rise to the Cross Objection and the acknowledgement due card as token of receipt of the copy of Memorandum of Appeal issued to the respondent.

## **19. Persons competent to sign appeals etc.**

The form of appeal, the grounds of appeal and the form of verification, as also the statement of facts appended thereto shall be signed:

- (a) In the case of an individual, by the individual himself or by some person duly authorized by him in this behalf, and where the Individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf.
- (b) In the case of a Hindu undivided family, by the karta, and, where the karta is absent or is mentally incapacitated from attending to his affairs, by any other adult member of such family ;
- (c) In case of firm, by the managing partner thereof or where for any unavoidable reason such managing partner is not able to sign or where there is no managing partner as such, by any partner thereof, not being a minor ;
- (d) In case of a company, as provided in clause (c) of section 140 of the Income-tax Act, 1961.
- (e) In the case of a local authority, by the principal officer thereof ;
- (f) In the case of any other person, by that person or by some person competent to act on his behalf.
- (g) If the individual is dead, the legal heir or representative of the deceased individual or the official liquidator/receiver of the company, as the case may be, are to sign the appeal or the application.

## **20. Verification of date of communication of appeal order and removal of defects etc.**

- (1) In case the date of communication of the order appealed against is not furnished in the memorandum of appeals, the date of communication is asked for from the Commissioner (Appeals) or as the case may be, the Commissioner, by a letter as at **APPENDIX VII (b)**.
- (2) Other defects pointed out are communicated by a letter at **APPENDIX VII (a)**.

- (3) On receipt of papers and communications rectifying the defects necessary note should be made in the last column of the order sheet and the papers should be placed on the file. In the case of rectification of memorandum of appeal itself, a copy thereof should be sent to the respondent for information. It is further to be seen whether at the time of rectifying the defect, the appellant has preferred and/or added any new grounds of appeal and /or changed or substituted any ground. If so, it should be placed before the Bench for orders whether to place them on record subject to all just exception, that may be taken at the time of hearing regarding their/its admissibility etc. At the time of hearing, this fact shall be brought to the notice of the Bench by the Bench Clerk.
- (4) In case the triplicate portion of challan received with the appeal or application by the assessee does not show the nature of payment made, it is to be verified from the original portion when received. In case it is not indicated, a certificate to the effect that the amount so deposited pertains to appeal/application fee, is to be called for from the AO concerned.

## **21. Limitation.**

Calculation of limitation:

- (a) Under the various Taxation Acts, a period of limitation is prescribed within which the appeal/application/cross objection is to be filed. If the last day of presentation or filing of appeal/cross objection/application or a subsequent day/days is/are holiday(s) in the office where it is to be presented or filed, it may be presented on the next working day and it is treated as within time.
- (b) If the appeal/application is filed within the period of limitation but the fee paid is short or the requisite fee is paid after the expiry of the period of limitation, it is treated as time barred and notice in the form as at **APPENDIX VII (c)**, is sent to the appellant. The same form of show-cause notice is used in all time barred appeals and applications.
- (c) Rubber stamps of 'defective' and 'time barred' should be used for such appeals/memorandum of cross objections/applications.

**22.** Priority in scrutinizing Stay and other Applications should be given as these are to be fixed as soon as they are filed unless there is an order of the Bench to keep it pending *sine die*.

## **CHAPTER V**

### **INTIMATION OF FILING OF APPEAL/ APPLICATION TO THE RESPONDENT**

**23.** (a) (i) After scrutiny, intimation of filing of appeal/application is sent to the respondent for information. The triplicate copy of the memo of appeal along with grounds of appeal is endorsed to the respondent in the form as **APPENDIX VIII**.

(ii) Memorandum of Appeals filed during a fortnight/month are collected and sorted out Act-wise in the first instance. Copies of memo of appeals in appeals preferred by the assessee are sent direct to the Assessing Officer concerned with the letter as at **APPENDIX VIII(b)** under intimation to the Commissioner of Income Tax concerned. In case the appeal is under the Income-tax Act, 1961, attention of the respondent is invited to the provisions contained in section 253(4) of the aforesaid Act and the officer is requested to treat the aforesaid letter as notice required under section 253(4) *ibid*.

(b) In case, any copy of memo of appeal is returned unserved by postal authority, it is to be sent again with a letter as at **APPENDIX VIII(c)** through the Assessing Officer concerned for service on the respondent. He is also to be requested to send the receipt of the Memo of Appeal and the present full postal address of the respondent for future correspondence.

**24.** If any affidavit, Miscellaneous Application or other documents or additional grounds of appeal are filed, the same are to be placed before the Bench for order for placing them on record and for sending a copy thereof to the opposite party for information. If the Bench so directs, copy thereof is endorsed to the opposite party.

#### **25. Cross Objection**

Copy of the memo of cross objection, after registration and scrutiny, is to be endorsed for information to the opposite party (Appellant in the appeal) in the form at **APPENDIX VIII (d)**.

**26.** Entry should be made in the Order Sheet that a copy of the Appeal/Cross Objection has been endorsed. The date of despatch should invariably be given in the order sheet.

**27.** In case, any affidavit or other document is received and a copy thereof is to be sent to the opposite party after obtaining the order of the Bench to place it on the record, a note to that effect is to be recorded in the Order Sheet.

**28.** The Registrar, Deputy Registrar and Assistant Registrars of the Appellate Tribunal are empowered to administer oaths and affirmation to the witnesses and deponents of affidavits in proceedings before the Appellate Tribunal. No fee is charged for the purpose.

#### **29. Additional grounds of appeal.**

Under Rule 11 of the Income Tax (Appellate Tribunal) Rules, 1963, the appellant is not, except by leave of the Tribunal, to urge or be heard in support of any ground not set out in the Memo of Appeal. In case any additional ground is preferred, it is to be put up before the Bench for order and will be kept on the file subject to all just exceptions which may be taken at the time of hearing regarding its admissibility etc., and a copy thereof is to be sent to the respondent for information. It should be preferred in triplicate.

While deciding the appeal, the Tribunal is not to confine to the grounds of appeal set out in the memorandum of appeal or taken by leave under the aforesaid rule. The Tribunal shall also not rest its decision on any other grounds unless the party which may be affected thereby has had a sufficient opportunity of being heard on that additional ground.

**30. Preparation of paper book.**

(1) Under rule 18, the appellant or respondent may submit a Paper-Book in duplicate containing such papers duly indexed and paged at least a day before the date of hearing of the appeal along with proof of service of a copy of the same on the other side at least a week before. The Head Clerk in custody of the file at this stage will keep a watch over the filing of Paper Books by the Appellant/Respondent and issue a reminder to the Appellant/Respondent, as the case may be, inviting the attention to the provision of rule 18 of the Income-tax (Appellate Tribunal) Rules, 1963 with a request to file the requisite Paper Book.

(2) The Tribunal may *suo motu* direct the preparation of the Paper Book in triplicate by and at the cost of the Appellant or the Respondent containing copies of such statements, papers and/or documents as it may consider necessary for the proper disposal of the appeal.

## *CHAPTER VI*

### **BRINGING OF LEGAL HEIRS OR REPRESENTATIVES ON RECORD OR CHANGE OF THE DESIGNATION OF APPELLANT/RESPONDENT OFFICER**

**31.** During the pendency of an appeal/ application if the assessee, whether he be Appellant or Respondent dies or is adjudicated insolvent or in the case of a company, it goes into liquidation, the appeal/ application shall not abate [Please see Rule 26 of the Income Tax (Appellate Tribunal) Rules, 1963].

The legal representative/ heir or Liquidator/Receiver as the case may be, may apply to the Tribunal for continuing the appeal/ application and to bring him on record.

(a) In case the death/ liquidation of the Assessee/Appellant/ Respondent comes to the knowledge of the Tribunal and the legal heirs or Liquidator has not applied for bringing him on record he is asked by one of the letters as at **APPENDIX IX, IX-1 or IX-2**, as the case may be, to apply, if so advised, accompanied by a sworn affidavit to bring him on record of the Tribunal. The application and the affidavit should be filed in duplicate. On receipt of the application and affidavit a copy of the same is endorsed to the Assessing Officer concerned for his objection, if any, by a letter as at **APPENDIX IX (a)**.

(b) On receipt of intimation from the Assessing Officer concerned informing that the department has no objection in bringing the legal heirs or Liquidator as the case may be, on record, the application should be submitted to the Bench for orders.

After obtaining the orders of the Bench, necessary changes in the title of the appeal should be made in the Order Sheet, File Cover, Memo of Appeal and appeal/application register. The changes made shall be communicated to both the parties through a letter as at **APPENDIX IX (b)**.

(c) In such cases, fresh Vakalatnama/letter of authority should be called for and placed on record. An entry in the Order Sheet stating that the assessee died/went into liquidation and that legal heir or liquidator, as the case may be has been brought on record should be made.

**32.** Sometimes jurisdiction of the Assessing Officer is changed and the Commissioner of Income Tax/D.R. requests for change in the designation of the officer concerned. In such cases, a copy of the letter is endorsed to the assessee, appellant or respondent for objection, if any. On receipt of the intimation, the designation is changed after obtaining orders of the Bench and necessary changes are made wherever required. Commissioner of Income Tax is informed of the change made by a letter as at **APPENDIX IX (b)**.

## **CHAPTER VII**

### **STAY APPLICATION-PROCEDURE FOR FILING AND DISPOSAL**

**33.** Under Rule 35A of the Tribunal Rules, any assessee who has filed any appeal under the Taxation Laws before the Income-tax Appellate Tribunal, may prefer a Stay Application in the following manner :

(1) (A) Every application for Stay of recovery of demand of tax, interest, penalty, fine, or any other sum shall be presented in triplicate by the applicant in person, or by his duly authorized agent, or sent by Registered Post to the Registrar/ Deputy Registrar or the Assistant Registrar, as the case may be, at the Headquarters of a Bench or Benches having jurisdiction to hear the appeals in respect of which the Stay Application arises.

(B) Where the application for stay relates to demands, though for more than one assessment year but under only a single statutory enactment, then a single stay application would be sufficient in respect of demands for which stay is sought. However, separate applications shall be filed for stay of recovery of demands under different enactments. Every stay application is to be registered in the register as at **APPENDIX X**. The Assistant Registrar, on its receipt, will put his initials and date. He shall indicate the mode of presentation and direct the office for immediate action for preparation of the file cover, arrangement of papers and making three sets and registration etc.

The application for stay should, as far as possible, be filed in the form as per specimen as at **APPENDIX X (e)**.

(2) Every application shall be neatly typed on one side of the paper and shall be in English and shall set forth concisely the following:

(i) Summary of facts regarding the demand of the tax interest, penalty, fine or any other sum, the recovery of which is sought to be stayed ;

(ii) The result of the appeal filed before the Commissioner (Appeals), if any ;

(iii) The exact amount of the tax, interest, penalty, fine or any other sum demanded, as the case may be, and the amount undisputed therefrom and the amount outstanding ;

(iv) The date of filing the appeal before the Tribunal and its number, if known ;

(v) Whether any application for stay was made to the revenue authorities concerned and if so, the result thereof (copies of correspondence, if any, with the Revenue authorities to be attached) ;

(vi) Reasons in brief for seeking stay ;

(vii) Whether the applicant is prepared to offer security, and if so, in what form ;

(viii) Prayer to be mentioned clearly and concisely (stating exact amount sought to be stayed) ;

(ix) The contents of the application shall be supported by an affidavit sworn by the applicant or his duly authorized agent ;



In case any Stay Application does not contain or is not submitted with the above stated facts or enclosures, it is taken as defective and the defect is pointed out in the memo at **APPENDIX X (a)**.

- (3) An application which does not conform to the above requirements is liable to be summarily rejected.
- (4) The Stay Application, after registration, is put up before the Bench concerned immediately for order as to whether the Stay Application is to be posted for hearing in case the same is in order. In case it is defective, in any respect, it is to be posted for hearing when the Bench directs to do so after the defect is rectified. The stay application along with annexures, if any should be sent to the Departmental Representative along with the hearing notice.
- (5) When an order is passed in Stay Application and it is received in the office for issue, it is to be issued immediately. After the issuance of the order passed in Stay Application, in cases where stay is granted, the appeal(s) is / are to be fixed for hearing out of turn for disposal as per orders of the President conveyed by the Registrar in U.O. No. 29-JD (AT)/73, dated 26-4-1973.
- (6) In some Stay Applications an interim order is passed. In such cases, steps for finalizing and despatch of orders are to be taken immediately.
- (7) The Assistant Registrar has to furnish to the Head Office the necessary information in the Proforma as at **APPENDIX X(b)** for every quarter ending 31<sup>st</sup> march, 30<sup>th</sup> June, 20<sup>th</sup> September and 31<sup>st</sup> December each year so as to reach the Head Office not later than 15<sup>th</sup> of April, July, October and January respectively. The Assistant Registrar is to check up personally the amount of tax stayed. A similar statement is to be sent to the Head Office for each year also in the proforma as at **APPENDIX X(c)**.

## *CHAPTER VIII*

### **TRANSFER OF APPEALS/ APPLICATIONS ETC.**

**34.** The appellant/applicant may for reasons to be given, apply for transfer of his appeal or application from the Bench having the ordinary jurisdiction to any other Bench. In such cases, the appeal, if pending is called for from the Assistant Registrar concerned with the comments of the Bench to which allotted and a copy of the transfer application is sent to the Commissioner of the Income-tax concerned for his objection, if any. On receipt of his reply, the application for transfer is put up, with the replies received from the Assistant Registrar and Commissioner of the Income-tax to the President for passing order under Rule 4 and 40 of the Income-tax (Appellate Tribunal) Rules, 1963 and the same is communicated to the parties and authorities concerned in the form as **APPENDIX XI**. This special order is passed by the President in exercise of the powers vested in him under Rules 4 and 40 of the Income Tax (Appellate Tribunal) Rules, 1963. Where an appeal is transferred, the cross objection arising out of that appeal is automatically to be transferred alongwith that appeal.

**35.** Where any Bench (Regular or Single Member) camps at a place other than its/his headquarters and is required to hear appeals which are not under the ordinary jurisdiction of the touring Bench or the touring member, six copies of the list of such appeals/cross objections/applications fixed for hearing before the touring Bench or Member should be prepared and sent to Head Office for obtaining transfer order from the President from the original Bench to the touring Bench. On receipt of such lists, the Head Office will obtain the necessary transfer order in the form as at **APPENDIX XI** and communicate it to the Assistant Registrars, Departmental Representatives, Commissioners of Income-tax/CIT(Appeals) concerned. At the end of the list of cases fixed, an abstract (Statewise/Actwise) of the appeals/cross objections/ applications should also be furnished.

**36.** For this purpose a separate register in the form as at **APPENDIX XI (a)** is maintained in the Head Office. Entry of each transfer of appeal/cross objection/application is to be made therein. Where a list of number of cases fixed is received and transfer order is obtained, only one entry is made in the aforesaid register giving reference to the transfer order and the list annexed thereto.

**37.** As tours of Benches/Members are ordered by the President/Senior Vice-President/Vice-President as the case may be it is deemed that the cases heard by touring Benches/Members are deemed to have been transferred to them prior to hearing and the procedure in Para 35 is to be followed for the purpose of record. For purposes of statistics, therefore, disposal of touring Benches/Members will be the date of signature of the order by the last Member and will be shown as disposal in monthly statements without waiting for formal order of transfer to be passed on the list submitted.

## **CHAPTER IX**

### **GROUPING AND CLASSIFICATION OF CASES AND THEIR FIXATION FOR HEARING**

#### **38. Grouping and classification**

(a) After the issuance of the memoranda and the defect memoranda, the appeals are usually kept date-wise in bundles. Appeals/Applications belonging to the same assessee or interconnected, though instituted on different dates, are, as far as possible, linked together for posting before one Bench on one day.

Whenever an appeal or application is filed which is connected with an appeal or application relating to the same party filed earlier, reference thereto should invariably be made in the later appeal or application so that the various connected appeals or applications could be linked up together. This will be for the convenience of the parties themselves.

(b) If any practitioner wishes that the Appeals and /or Applications relating to different assessees, in which he is engaged, should be taken up on the same or consecutive days, he should intimate to the Tribunal the particulars of those appeals and applications including the dates of filing thereof, well in advance.

(c) In case the appeals/ applications from any particular area are earmarked for posting at a specific place or places, such appeals and applications are sorted out and kept separately, until the same are required for posting for hearing when the camp of a Bench to that/those place(s) is fixed and finalized.

**39.** In some Appeals, requests for early hearing are received. Such applications for early hearing should invariably state as to why the assessee/department wants that those appeals be given preference over the appeals preferred earlier. The Applications should state whether or not the tax has been paid and if so, to what extent. Such applications are to be put up before the Bench as quickly as possible. If the Bench accedes to the request made in such Applications, the Appeals in question are to be passed on for fixation for hearing on the earliest available date. In case of refusals, the applicant is informed by a letter as at **APPENDIX XII**.

One register in the form as at **APPENDIX XII (a)** is to be maintained for such Applications. As per decision contained in U.O. No.38-Jd (AT)/73 dated 16-4-1973, no Appeals /Applications should be posted for hearing out of turn except under the order of the Bench.

#### **40. Posting.**

Appeals are fixed in order of institution on all week days except Fridays. Third Member Cases, part-heard cases and miscellaneous applications are fixed on Fridays. Appeals in which early hearing is granted, are fixed on any of the earliest week days available other than Fridays. Friday cases are fixed before the same Members, if available. If only one of them is available, such cases are to be fixed before him and the Member who sat with him a day or two before. If no Member is available the case is fixed before the Bench as constituted a day or two, before that Friday.

Remand cases are also fixed like other Friday cases. If there are sufficient number of cases received, a day other than Friday is allotted for such cases after obtaining the order of the President/ Sr. Vice President, Vice President or the seniormost Member, as the case may be.

**41.** Before giving dates of hearing, appeals are rechecked whether the defects pointed out are removed or not or whether appeals are mature in all respects for posting. If appeals are from Mofussil areas, they are also arranged representative-wise to the extent practicable so that consecutive days may be given to those representatives who have to come from the places other than the place of hearing.

**42.** Dates on which Appeal/Applications/ Cross Objections are to be heard are marked on the order sheet and on the file cover of each Appeal/Application/Cross Objection. From this, a diary is maintained. This diary will show the number of Appeals/Applications/Cross Objections, name of the assessee, name of the place and person representing, if any. In case of departmental appeal, name of the assessee is written with a note, giving the latest position of each case fixed on a particular date by additions, subtractions or indication against each case. Approximate time likely to be taken by each appeal for hearing is also to be indicated, if possible, to gauge the work load of the Bench on that day.

**43.** If any counsel appearing on behalf of any assessee, requests to post cases of different assessees whom he will be representing before the Tribunal and if cases are mature and due for posting, they may be posted on the same day or on consecutive days. In case they are not due, order of the Bench is to be obtained and they are to be fixed for hearing, if so ordered.

**44.** Under the provisions made in Section 255(3), the President or any other Member of the Appellate Tribunal authorized in this behalf by the Central Government may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a Member and which pertains to an assessee whose total income as computed by the Assessing Officer does not exceed Rs.5,00,000. Formerly, regular assessment appeals coming under this category were also treated to be heard by the Single Member Bench. On the recommendations of the Rules Committee, President decided that appeals against the order of Penalty and registration etc. pertaining to an assessee whose total income, as computed by the Assessing Officer does not exceed Rs.5,00,000 should also be heard by Members authorized to hear Single Member Cases.

Where it is not apparent from the appeal papers whether any appeal comes within this category, enquiry as to what is the total income as computed by the Assessing Officer in the assessment, to which the penalty/registration appeals relate, is to be made.

Such Single Member appeals are to be sorted out and posted for hearing regularly before one Member/Members authorized to hear Single Member cases. In the diary, such appeals should be indicated separately.

In case, no Member constituting the Bench, is authorized to hear such appeals, they are to be posted, when due, before the regular Bench.

**45.** When different Benches have taken conflicting views on certain points, the President, under the provisions of Section 255(4), may, for the disposal of any particular case, constitute Special Bench consisting of three or more Members, one of whom shall necessarily be a Judicial Member and one an Accountant Member. Such cases are to be put up before the President for constituting Special Bench. Such cases may be fixed on any working day before those Members. While fixing such cases before the Special Bench, the Assistant Registrar/Head Clerk, posting such cases, shall request the Appellant to file as many more sets of documents (for preparation of brief) as there are additional Members in addition to the regular Bench constituting the Special Bench. The Assistant Registrar/Head Clerk shall write the names of the Members before whom such cases are posted for hearing.

**46. Posting of Miscellaneous Applications.**

Applications under section 254(2) of the Income-tax Act, 1961 or under corresponding sections of the other Acts, or other types of Miscellaneous Applications, if directed to be fixed for hearing on its receipt, are put up for order of the Members who passed the order. If it is ordered to be posted for hearing, it is fixed for hearing on Friday, before those Members. If none of the Members who passed the order, is available, the Miscellaneous Application is fixed before the Bench as constituted a day before.

**47.** The Assistant Superintendent/Head Clerk/U.D.C. entrusted with the posting of cases before the bench(es) shall maintain a diary for each Bench showing the number of Appeals/Cross Objections/Miscellaneous Applications or Stay Applications fixed on a particular date. This diary should be kept upto date indicating the latest position of each case *viz.*, adjourned, if so, to what date etc., time likely to be taken and the names of the Members before whom a particular case is fixed on Friday.

(a) The Assistant Registrar is to send a statement showing the total number of cases fixed for hearing before each Bench during the month in the Proforma at **APPENDIX XII (b)** in the third week of every month preceding the month to which the statement relates.

(b) Posting of old appeals should always be given priority. In case such appeals are adjourned, they should usually be refixed at an interval of about a month, unless otherwise directed by the Bench and should continue to be refixed, subject to any orders of the Bench till they are finally heard and disposed of.

## **CHAPTER X**

### **HEARING NOTICES**

**48.** As required under sub-section (1) of section 254 of the Income-tax Act, 1961 and corresponding sections of other Acts read with Rules 19 and 20 of the Income-tax (Appellate Tribunal) Rules, 1963, the Tribunal has to notify to the parties specifying the date and place of hearing of the Appeals, Cross Objections and Applications, etc. In appeals, a copy of Memo of Appeal which is also required to be sent, is sent earlier with memoranda as at **APPENDIX VIII (b)**. The date of hearing of Appeal, Cross Objections and Applications, etc., shall be fixed so as to allow both the parties sufficient time to appear and be heard in support of or against Appeals/ Applications etc.

- (a) As required under Rule 21, in an Appeal under section 253(1) of the Income-tax Act and under the corresponding sections of the other Acts, in fixing the date for the Respondent to appear and answer to the appeals, a reasonable time should be allowed for the necessary communication with the Commissioner through proper channel and for the issuance of instructions to an authorized representative to appear and answer on behalf of the Respondent.
- (b) The issuance of the notice shall not by itself be deemed to mean that the appeal has been admitted.

**49. Appeals/ Cross Objections.**

- (a) Notices of hearing in Appeals/ Cross Objections and Miscellaneous Applications are issued to the Appellant and the Respondent at the address given in the Memo of appeal in the Form as at **APPENDIX XIII**. Notices meant for the Assessing Officer or concerned officers under other Acts are sent through the Departmental Representative concerned.
- (b) Notice of hearing is prepared in Quadruplicate, one copy for the Appellant, one for the Respondent, one for the Deptt. Representative and the fourth one is used as office copy. When an appeal is fixed for hearing for the first time, the date of presentation of appeal, the number and date of the Order and the authority against whose order (*i.e.* CIT(Appeals) or CIT as the case may be) the appeal is filed is mentioned in the notice of hearing. In other cases, the date on which the Appeal was last fixed for hearing is given in the Notice of hearing.
- (c) In every notice of hearing the Appellant/ Respondent is asked *vide* note as at **APPENDIX XIII (a) (1)** to intimate whether any other appeal/appeals involving similar points is/are pending before the Tribunal. If any cross Appeal/Appeals has/have been filed by the other side, the date of filing the cross Appeal/Appeals is/are also to be intimated. The above required information is to be furnished within 8 days of the receipt of the notice of hearing so as to enable the issuing office to fix such Appeal/Appeals along with the Appeal/Appeals already fixed after obtaining the order of the Bench to do so.

(d) In case any Appeal/Appeals is/are time-barred, a Show Cause notice in the form as at **APPENDIX XIII (a)(2)** is to be enclosed with the notice of hearing.

(e) In all hearing notices a paragraph as under should invariably be incorporated (could be by rubber stamp also)

“Objection, if any to the publication of the Tribunal order in this case may be given to this Bench before hearing. This is without prejudice to the legal position in this regard.”

**50.** Notice is signed by the Assistant Superintendent or Head Clerk, who checks the date and other details from the respective files and the diary. Against each case, he has to initial in the diary to show that notice has been signed and issued.

**51.(a)** Notices are issued by Registered A.D. Post, through courier or through hand delivery in case the parties are local and the process adopted is cheaper, convenient and results in quick and sure delivery to the addressee (subject to note below). In later cases, peon books or the tear off slips are to be properly maintained. In former cases, A.D. Card is pasted on the back of the notice of hearing or placed on the relevant file.

(b) If notice of hearing is not served by the aforesaid methods of service, it may be served by affixation after obtaining the order of the Bench and issuing through Assessing Officer with appropriate direction.

**Note:** In view of the high registration expenses and as an economy measure, on the first occasion when the case is fixed for hearing, notice may be issued by ordinary post. In the normal course, it is expected that notices will reach the addressee and there will be compliance. In the event of non-compliance on the date of hearing, notice on the next occasion should be issued according to the procedure laid down above.

(c) Issue of notices should be in chronological order and they are to be issued at least four weeks in advance except in exceptional cases fixed at short notice under the order of the Bench.

(d) In some cases it is necessary to enclose certain other documents with the notice, if not endorsed before *e.g.* copy of the remand report, copy of the miscellaneous application, copy of the affidavit etc.

**52.** All appeal files are to be gone through thoroughly and carefully to find out whether all the documents required are available and whether necessary action on all the documents received, has been taken. If any document is not available, requisition is to be made in the notice of hearing. In case any action on any document has not been taken, it must be taken before the time of issue of hearing notice.

**53.** In case, notice meant for assessee appellant/ applicant or Respondent is received back, it should be again sent for service through the AO concerned, when no other address is available for proper service, with the letter in the form as at **APPENDIX XIII (b)** and the tear off slip received from the Assessing Officer is placed on the file like A.D. Card. If notice of hearing is not served by applying all the methods of service, it may be served by affixation after obtaining order of the Bench.

- 54.** When an appeal is fixed for hearing, a note is made on the Order Sheet as under :  
“The appeal will be heard on ..... Issue notice of hearing to parties.”
- 55.** (a) After issue of notices, files of fixed cases are arranged Benchwise (If at that place there is more than one Bench) and datewise and are handed over to the Bench Clerk/Clerks concerned.
- (b) Files are ordinarily not given to the Departmental Representative without obtaining orders from the Assistant Registrar/Bench. If so directed, the same procedure, as in the case of issuance of notices, is followed.

**56. Notices in Special Bench cases**

Same procedure of issuing notices of hearing is followed as laid down in para 49 above with the only addition to be made at the top of the notice as under :

“Special Bench Case”

Simultaneously, a note is added whereby the parties are requested to supply more sets of documents required for brief for the additional Members(s) on the Bench.

**57. Issue of Summons to Witness.**

Under the powers vested in the Tribunal under the provisions made under section 255(6) of the Income-tax Act and corresponding provisions under other Acts, the Tribunal may issue summons to witnesses in the same manner as is the practice in the Income-tax Department.



## APPLICATION FOR ADJOURNMENT/ ADVANCEMENT

**58.** Requests for adjournment are usually received in the form of written applications. Such applications are entered in a separate Register in form as at **APPENDIX XIV**. The application is put up as early as possible giving priority over other work with necessary information as prescribed in the form as at **APPENDIX XIV (a)**. In case the request for adjournment is granted, the notice of adjournment in the form as at **APPENDIX XIV(b)** is issued under Registered Post, if any date of hearing is given, otherwise notice of adjournment is sent under ordinary post. Where the time available is short, or where the parties have sent reply paid telegrams, the party concerned may be informed about the adjournment etc., telegraphically. In case the request for adjournment is refused, the applicant is informed by a letter as at **APPENDIX XIV(c)**.

**59.** If the request for adjournment/ advancement is made by some representative of the assessee, it should invariably be verified whether letter of authority is filed or not and a note to that effect should be given in the office note giving the information required in the form as at **APPENDIX XIV(a)**.

**60.** An application for adjournment of hearing should be made at the earliest possible time. If it could be presented personally, a stamped envelope with the address of the assessee or his representative should, as far as possible, accompany the application. If the reply is required telegraphically, necessary postage stamps should accompany the application. If a telegram is sent asking for an adjournment, arrangement should be made for a reply paid telegram. The Tribunal is not bound for a reply to application for adjournment. Replies will however, be given as far as possible. Unless the applicant is informed that his application for adjournment has been granted, he should remain present at the hearing of the appeal for application as the case may be.

**61.** A note in Order Sheet whether the case is adjourned/ advanced to ..... or *sine die* under the order of the Bench, is given with the date and number of the entry made therein.

**62.** (a) In case the appeals/applications are shifted to some other date at the instance of the Bench or due to some extraordinary circumstances and if there is short time for communication, the assessee of mofussil places should be informed telegraphically and if they are from the place of hearing, they are to be informed on telephone direct or through their authorized representative.

(b) In the notice of adjournment, the date on which the case was last fixed for hearing should be mentioned invariably. Necessarily consequential amendment/alteration should be made in the entry made in the diary or cause list.

(c) In case the appeal is by the assessee, notice of hearing, if not served by applying all the methods of service, is necessarily to be served by affixture after obtaining the order of the Bench.

## **CHAPTER XII**

### **PREPARATION OF CAUSE LIST, COURT HOURS AND HEARING OF CASES**

#### **63. (a) Weekly Cause List.**

On every Thursday or earlier, the Bench Clerk prepares a Cause List of cases fixed before the Bench for hearing during the following week in the proforma as at **APPENDIX XV**. This list is signed by the Assistant Registrar and copies of the list are given to the Members concerned and the Departmental Representative concerned and one copy is placed on the Notice Board.

(b) While typing out the Cause List for week days, cases fixed on a day are arranged in the following order:

(i) Stay Applications, if any;

(ii) The remaining cases are to be typed in order of institution;

(iii) In case light cases are fixed along with heavy cases, light cases are to be typed first chronologically before heavy matters;

(iv) Where mofussil cases are fixed for hearing along with local cases, mofussil cases are to be taken up first in order of institution and local cases thereafter, in the same order.

**64.** Cause list for Friday is typed separately if there are more than one Bench at any place, otherwise it is typed in the same Cause List.

While preparing the Cause List for Friday, cases fixed are arranged Benchwise, maintaining the seniority of the Members and marking the court rooms if there are more than one court rooms.

Matters fixed before each Bench are to be grouped according to the grouping of the Member and are typed in order of institution. In case mofussil cases are fixed before that group, they are to be typed first. Special Bench cases are to be typed on top, showing the names of the Members before whom these are fixed.

#### **65. Preparation of brief for the Members**

All cases fixed for hearing are arranged in two sets by the Bench Clerk and the original set is given to the Senior Member and the duplicate to the Junior Member sitting in the Bench concerned on the day preceding the date of hearing or as directed by the Members.

In the duplicate set, the number of appeal/ application, assessment year, section and the name of the assessee are given on a slip placed on top of the cover containing briefs. In both sets of briefs, it should be indicated if the Appeal/ Application is departmental and whether it is time barred and/or A.D. card has been received showing the service of the notice and if the letter of authority is filed or not. Briefs are to be arranged in the same order as typed in the Cause List. Miscellaneous papers (*e.g.* affidavits etc.) are to be flagged. In case any defect is recorded in the Order Sheet and it has not been removed, a slip should be attached to this effect on the file cover to draw attention of the Bench.

## **66. Court hours of the Tribunal**

The court hours for all the Benches shall be from 10:30 hrs. to 13:30 hrs. and from 14:30 hrs. to 16:30 hrs.

No change in the court hours should be made without prior approval of the President.

## **67. Filing of Letter of Authority.**

(a) On the day fixed for hearing, the assessee may be represented by a representative. The Bench Clerk has to indicate in the slip pinned on each case file whether the letter of authority is filed or not. If not filed, it is his duty to bring this fact to the notice of the Bench before the hearing commences.

(b) Section 288(1) of the Income-tax Act, 1961 permits an assessee to attend the Court by an authorized representative. Section 288(2) lays down certain qualifications, one of which must be possessed by the authorized representative. Therefore, a proper authority in favour of an individual or a joint authority in favour of two or more individuals only is required to be filed. The same may be filed before or at the time of the hearing. The Bench Clerk should check up whether it is in the proper form and stamped appropriately. If any deficiency is found, it must be brought to the notice of the person to enable him to rectify it. In case it is not rectified in spite of asking for it, the fact should be brought to the notice of the Bench.

(c) In an appeal by assessee, where the Memorandum of appeal is signed by his authorized representative, the assessee shall append to the Memorandum a document authorizing the representative to appear for him as required under Rule 16 and if the representative is a relative of the assessee the document shall state what his relationship is with the assessee, or if he is a person regularly employed by the assessee, the document shall state the capacity in which he is employed.

An authorized representative appearing for the assessee at the hearing of an appeal shall, unless the document has been appended earlier, file such document before the commencement of the hearing.

### ***(d) Proceedings before the Tribunal.***

Except the cases in respect of which the Central Government has issued notification under sub-section (2) of section 138 of the Income-tax Act, 1961, the proceedings before the Tribunal are open to public. However, the Tribunal may, in its discretion, direct that proceedings before it in a particular case shall not be open to public.

## **68. Dress Regulations**

According to the provisions contained in Rule 17A of the Income-tax (Appellate Tribunal) Rules, 1963, as amended from time to time, summer dress for the Members is white shirt, white pant with black coat, a black tie or a buttoned-up black coat. In winter, striped or black trousers may be worn in place of white trousers. In the case of female Members, the dress is black coat over white saree or any other sober saree.

Dress for the authorized representatives of the parties (other than a relative or regular employee of the assessee) appearing before the Tribunal is as under:

- (a) In case of male, a suit with a tie or buttoned-up coat over a pant or national dress, i.e long buttoned-up coat on dhoti or churidar pyjama. The colour of the coat shall, preferably, be black.
- (b) In the case of female, black coat over white or any other sober coloured saree.

Where, however, the authorized representatives belong to a profession like that of lawyers or Chartered Accountants and they have been prescribed a dress for appearing in their professional capacity before any Court, Tribunal or other such authority, they may, at their option, appear in that dress, in lieu of the dress mentioned above.

The rule further provides that all other persons appearing before the Tribunal should be properly dressed.

#### **69. Hearing of the Cases fixed**

- (a) On the day fixed, or any other day to which the hearing may be adjourned, the Appellant shall be heard in support of the appeal. The Tribunal shall then, if necessary, hear the Respondent against the appeal and in such a case the Appellant shall be entitled to reply.
- (b) The parties are called for hearing in accordance with the cause list unless otherwise directed by the Bench. In case, any party when called is not present, the next case would be called for with the permission of the Bench.
- (c) After an Appeal/Cross Objection/Application is heard by the bench, the rubber stamp as at **APPENDIX XVI** is to be affixed on the Order Sheet and the particulars required therein are to be filled in by the Bench Clerk.
- (d) Where on the day fixed for hearing or any other day to which the hearing may be adjourned, the appellant appears in person or through authorized representative and the Respondent does not appear when the appeal is called on for hearing or *vice versa* the Tribunal may decide the appeal on merits.
- (e) If the assessee is absent or nobody appears on behalf of the assessee when the case is called for hearing, a note in the Order Sheet should be made and the case should be submitted to the Bench for order. Entry in the Order Sheet should be made in such cases as required in the form as at **APPENDIX XVI** and against the column "representation for assessee" 'None' is to be written.

**70.** The Bench is required to maintain a Register called Daily Diary of the cases heard on each day in the proforma as at **APPENDIX XVI (a)**. All particulars required therein should be entered in the Register pertaining to each appeal/application daily. All cases fixed and heard on that day are to be entered in the order in which they were called for hearing.

**71.** If a case is adjourned or heard in part, the fact should be noted in the Order Sheet and the initials of the Members should be obtained therein.

**72.** On indication from the senior Member, the Bench Clerk will submit the appeals/applications for orders to the Members so allotted by the senior Member on the Bench. The case is submitted with the departmental records, where necessary. The initials of the Member to whom the case is allotted is noted in the Register as at **APPENDIX XVI (a)**.

**73. Production of additional evidence before the Tribunal**

(a) The parties to the appeal shall not be entitled to produce additional evidence either oral or documentary before the Tribunal, but if the Tribunal requires any document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or, if the Income-tax authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidence either on the points specified by them, or not specified by them, the Tribunal for reasons to be recorded, may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be adduced.

(b) Additional evidence to be submitted to the Tribunal :-

If the document is directed to be produced or witness examined or evidence adduced before any Income-tax authority, he shall comply with the directions of the Tribunal and after compliance, send the document, the record of the deposition of the witness or the record of the evidence adduced, to the Tribunal.

**74. (i) Filing of affidavit –**

When a fact which cannot be borne out by or contrary to record is alleged, it should be stated clearly and concisely and should be supported by a duly sworn affidavit. An application for time for filing an affidavit as required by Rule 10 of the Income Tax (Appellate Tribunal) Rules, 1963 at the time of hearing of the Appeal, shall not ordinarily be granted.

The Registrar, the Deputy Registrars and the Assistant Registrars are empowered to administer an oath to any witness or to a deponent of an affidavit in so far as the Tribunal is concerned. No fee is charged for this purpose.

**(ii) Filing of application-**

If an appeal/application is barred by time, or if there are reasons to believe that it may be barred by time, an application for the condonation of delay should be made well in advance before the hearing of the appeal. Such an application should, if necessary, be supported by documentary evidence, e.g., a medical certificate or an affidavit. The appellant should not wait till the last day of limitation for sending the appeal by post. He should be reasonably diligent.

(iii) The books of account should be kept ready at the time of hearing of the appeals. If books of account of the year preceding or succeeding the year of account are relevant, they should also be kept ready.

(iv) As far as possible, the assessee should be present at the time of the hearing of the appeal.

(v) The Bench Clerk should make a note in Order Sheet regarding documents filed at the time of hearing. He should also see that each document is filed in triplicate. One copy should be passed on to the Departmental Representative.

## *CHAPTER XIII*

### **DISPOSAL OF APPEALS, CROSS OBJECTIONS, MISCELLANEOUS APPLICATIONS AND STAY APPLICATIONS AND DESPATCH OF ORDERS TO THE PARTIES**

#### **Disposal**

**75.** Sub-section (5) of section 253 of the Income-tax Act, 1961 and corresponding sections of the other allied Acts provide that the Appellate Tribunal may admit an appeal or permit the filing of a Memorandum of Cross Objection after the expiry of the relevant period prescribed under the Act if it is satisfied that there was sufficient cause for not presenting it within that period.

**76.** Under sub-section (1) of section 254 of the Income-tax Act and under corresponding sections of the other Acts, the Appellate Tribunal may, after giving both the parties to the Appeal/ Cross Objection/Miscellaneous Application/ Stay Application, an opportunity of being heard, pass such orders thereon as it thinks fit. Such orders shall be in writing and shall be pronounced, signed and dated by the Member(s) constituting the Bench which heard it, as required under Rule 34. The Member who signs the fair order last will put the date on which he affixes his signature on the order. This date will be taken as the date of disposal of the Appeal/ Cross Objection/ Miscellaneous Application/ Stay Application.

**77. (i)** After the Members have signed the order, the Senior Private Secretaries/Private Secretaries will pass on the order with file to the Bench Clerk. The Senior Private Secretaries/Private Secretaries should maintain a note-book for this purpose and the signature of the Bench Clerk should be obtained in the note-book.

**(ii)** In order to know where and at what stage the delay has occurred and also to fix responsibility for the delay, it is necessary to know the movement of the file. For that purpose, a rubber seal as at **APPENDIX XVII**, provided to each Sr. Private Secretary/Private Secretary by the office, is to be affixed at the foot of each order with all blanks to be filled in by the Sr. Private Secretary/Private Secretary attached to the member who dictated the order, the Bench Clerk and/or the Head Clerk concerned. [D.O. No.P.33/68 dated 17-5-1968 read with Registrar's U.O.No.F.45-Jd(AT)/70, dated 25-9-1970].

**(iii)** Under instruction issued on the direction of the President in U.O. No.F.45-Jd(AT)/68, dated 24-11-1969, wherever possible, full address of the assessee is to be given in the cause title of the Tribunal order invariably in the order passed by the Bench.

**(iv)** The Bench Clerk should enter those cases received from the Sr. Private Secretary/Private Secretary in the disposal register as at **APPENDIX XVII (a)**. Entries in the cause list register as at **APPENDIX XVI (a)** are also to be filled up in on receipt of the orders passed by the Bench. Nature and date of disposal are also filled up in those registers and the respective appeals and applications registers.

**(v)** The Bench Clerk shall pass on the orders with relevant files to the Head Clerk-in-charge who, after checking, endorsement by the Assistant Registrar will pass on the files to the despatch clerk, for issuing copies of the order to the concerned parties. Before passing on the file to the Head Clerk, duplicate sets of the papers should be replaced in the original file.

## **78. Dissenting cases- How to be dealt with**

(a) When there is a difference of opinion between the two Members who heard the appeal on any point or points, the matter is referred to the President under section 255(4) of the Income-tax Act and the corresponding sections of the other Acts. The file alongwith a copy of the dissenting order and points of difference, are to be sent to the Head Office for placing the same before the President for assigning the case to one or more of the other Members of the Tribunal as required [*vide* instructions conveyed in U.O. No.12-Jd(AT)/73, dated 7-11-1974].

(b) On receipt of such cases in the Head Office, they are entered in the Register as at **APPENDIX XVIII** and placed before the President for passing order as required under section 255(4) of the Income-tax Act. In outlying Benches also, this register is maintained and entries required therein are made. If the case is of an outlying Bench, the case file is returned to the Assistant Registrar concerned after obtaining the orders of the President under section 255(4) of the Income-tax Act or under the corresponding sections of the other Acts. The Assistant Registrar has to fix on Friday the case before the Member to whom it is allotted, in case he is a local Member and if the Third Member is of some other Bench, the Assistant Registrar is to fix it before him, when the Member camps there for the purpose.

(c) Same action regarding preparation and issue of notices is taken, as in the case of regular appeals fixed for hearing. However, copies of the differing orders passed by the Members and the point of difference are to be issued to the parties immediately after nomination of the Third Member is received for the Head Office. The order would be sent with the covering note as at **APPENDIX XVIII (a)**.

(d) When the third Member has disposed of the case, the files together with the copies of Third Member's order are sent to the original Bench for passing final order in conformity with the majority decision.

Copies of the order passed by the third Member should be sent by name to the differing Members who have passed the dissenting orders in the matter. A copy of the dissenting order and point(s) of difference along with a copy of order passed by the third Member under section 255(4), should be sent to the Head Office for perusal and of the President and also to the ITD Publication Advisory Board at Delhi Benches, for publication in the 'Income-tax Tribunal Decisions.'

## **79. Procedure for referring cases for constitution of a Special Bench**

With a view to bring about uniformity in the procedure for referring cases to the President, Income-tax Appellate Tribunal, for constitution of Special Benches, consisting of three or more Members, instructions have been issued from time to time. For making such references, the concerned Bench should not pass an order similar to an order of the Tribunal in an appeal. The references should be made by the Bench as far as possible in the proforma as at **APPENDIX XVIII (b)**.

The reference by a Bench under section 255(4) of the IT Act, 1961, and under corresponding sections of other Acts is essentially an administrative matter, and, therefore, the said proforma, in duplicate, should be sent to the President along with the observations of the Vice-President of the concerned Zone. If in an appeal, there are number of issues and the Special Bench decision sought for is only in respect of one of the issues, the Bench should not dispose of the appeal in piece-meals and the appeal on all the issues involved should be kept pending for disposal by the Special Bench in full. The views of the Members on merits, facts or legal issues should not be expressed in the proforma but convincing reasons for constituting the Special Bench should be given.

When a Special Bench is constituted by the order of the President, a notice is displayed on the Notice Board and a copy is also sent to the Secretary, Bar Association of every Bench indicating the points involved for decision by the Special Bench. In case any assessee or counsel who responds to the notice, a list of such assessees and their counsels who file their letter of authority should be prepared and hearing notice should be issued to them also as intervener. In cases which are known to the office where the points involved are the same as are pending before the Special Bench, or any such case is brought to his notice by the Deptt. and/or authorized representative, the Assistant Registrar should write to the assessee a letter as at **APPENDIX XVIII(c)** asking him that in case he likes to be included as an intervener, he may remain present at the time of hearing. Copies of the order passed in such cases are forwarded to the interveners also. A copy of the order of the Special Bench is forwarded to the Head Office for the perusal of the President and another copy of the order is immediately sent to the ITD Publication, Advisory Board at Delhi Benches for publication in the 'Income-Tax Tribunal Decisions'.

#### **80. Weekly disposal statement**

On every 1<sup>st</sup>, 8<sup>th</sup>, 15<sup>th</sup> and 22<sup>nd</sup> of the month, the Bench Clerk has to prepare a statement of daily work done for each week ending with the last date of the previous month, 7<sup>th</sup>, 14<sup>th</sup> and 21<sup>st</sup> day of that month in proforma as at **APPENDIX XIX**. In this statement, the Bench Clerk has to furnish the information for every day the number of cases fixed, number of cases adjourned, number of cases heard, the time of commencement of the sitting, rising of the Court for lunch, its re-assembling and final rising. In this statement, number of working days and number of Appeals/Cross Objection/Applications disposed of during the week are also to be furnished. The information required is to be gathered from and prepared on the basis of the entries made in the register as at **APPENDIX XVI (a)**.

**81.** Bench Clerk should report to the Assistant Registrar/Assistant Superintendent/ Head Clerk-in-charge of posting and maintenance of diary, the number of cases heard or adjourned from day to day to keep the diary posted up-to-date.

#### **82. Communication of order**

(a) Copies of the Tribunal's order are issued expeditiously to the appellant/ applicant and the respondent, the Commissioner of Income-tax and the Departmental Representative in the form as at **APPENDIX XX** after putting the seal as at **APPENDIX XX (a)** on each page of the order issued. Where the appeal before the CIT (Appeals) has been restored and/or remanded to him, a copy of such order passed in such appeal is also to be sent to the CIT (Appeals) concerned.

(b) Each copy is issued under the signature of the Assistant Registrar.

(c) Entry regarding issue of the order in the form as at **APPENDIX XX (b)** is made in the Order Sheet of each file of the appeal/application disposed of.



(d) Copy of the order meant for the Assessing Officer other than those cases remanded to him, is issued through the Commissioner of Income-tax concerned. Copies to the assessee and the Commissioner of Income-tax are issued either under registered A.D. post or by hand delivery through Peon Book. If sent by post, it is sent to the address given in the Memo of Appeal. If no letter of authority is filed by one or more of those who appeared for the assessee, a copy meant for him will not be issued to him until he files the necessary letter of authority. The A.D. Cards received from the assessee or the Commissioner of Income-tax are filed or pasted on the back of the order kept on the relevant file and date of service of the order should be noted in the Order Sheet.

(e) Entries of issue of order are made in the Despatch Register as at **APPENDIX XX(c)**.

(f) Copies of remand order meant for the Assessing Officer or the CIT (Appeals), to whom the case is remanded, should be sent by registered post A.D. or by hand delivery through Peon Book.

(g) Whenever a Bench goes on tour, the Bench Clerk must be provided with seals, stamps, etc., so that orders when passed by the Bench are issued from the camping station itself. The orders need not necessarily be carried back to the Headquarters of the Bench [U.O.No.38-Jd(AT)/73, dated 28-8-1973].

### **83. Supply of copies of consolidated order.**

(1) When more than one appeal of the same assessee (preferred by assessee or department) are heard together and disposed of by a consolidated order, the parties should be supplied as many copies of the consolidated order as the number of appeals are consolidated and disposed of. However, the present practice of sending one copy to the parties is to continue so as not to overburden the typing section. In case, any party to the case asks for extra copies, the Tribunal's office has to supply free of charge, extra copies upto the number of orders consolidated [ U.O. No.38-Jd(AT)/74, dated 27-5-1974].

(2) If appeals or applications of several assesses have been consolidated, a copy of the order passed should be supplied to each one of the assesseees separately and as many copies are to be supplied to the Assessing Officer concerned.

### **84. Supply of the Order passed in Third Member cases**

In appeal(s) where dissenting orders are passed, a copy of each order passed by the Members who heard the appeals(s) with a copy of the points(s) of difference is to be sent to the President for passing order under section 255(4) of the Income-tax Act. After the nomination of the Third Member is received, copies of the differing orders passed by the Members and the point of difference are issued to the parties concerned along with a covering note as at **APPENDIX XVIII (a)**. When the appeal(s) is/are received back along with the orders passed by the Third Member, the original Bench has to pass an order in conformity with the majority decision in the case. A copy of the consequential orders passed by the Bench, is to be sent to all concerned in the same manner as order passed in other appeals are issued in the order as at **APPENDIX XX** with seal of the Tribunal. *A copy of the order passed by the Third Member along with the dissenting orders and point(s) of difference is to be sent to the President for his kind perusal and one copy is sent to the ITD Publication Advisory Board at Delhi Benches for publication in the "Income-tax Tribunal Decisions".*

### **85. Cases remanded for report.**

(a) When a case is remanded to the CIT (Appeals) or to the Assessing Officer, copies of orders are issued to all the authorities including the CIT (Appeals) and the assessee in the form as at **APPENDIX XX**.

(b) Every office of the Tribunal is to maintain a register for such cases in the form as at **APPENDIX XXI**.

(c) The CIT(Appeals) or the Assessing Officer should submit the Remand Report in triplicate within the period allowed by the bench in the remand order. In case the CIT (Appeals)/Assessing Officer apprehends that the remand report cannot be submitted within the stipulated period, he should make a request stating reasons for extension of time and he should mention therein, the specific time up to which he expects to submit the report. On receipt of such application, office is to place it immediately for orders of the Bench and the Bench's order is communicated to the officer concerned by a letter as at **APPENDIX XXI (a)**.

(d) In case the remand report is not received within the time fixed by the Bench, a reminder in a letter as at **APPENDIX XXI (b)** is issued by the office.

(e) On receipt of the remand report the appeal is to be fixed for hearing on any Friday before the same members who remanded the case. However, if number of such cases is large, these may be fixed for hearing on any other day also in the same manner as regular appeals after obtaining orders of the President, Sr.Vice-President, Vice-President or Senior Member.

(f) The report should be carefully examined whether it contains any confidential matter. A copy of the remand report is supplied to the assessee for his information alongwith the notice of hearing, if it does not contain confidential matter. This copy is supplied free of charge.

(g) The CIT (Appeals) and the Assessing Officers are not to include any confidential matter in the remand report submitted to the Tribunal pursuant to the Tribunal's order. The Income-tax authorities are held responsible if any confidential matter gets into the hands of the assessee through such report. If any confidential matter is to be brought to the notice of the Tribunal, it should be submitted separately as per decision contained in Central Board of Revenue's circular as at **APPENDIX XXI(c)**.

**86. Miscellaneous Application under section 254 or under corresponding sections of the other Acts.**

(a) Under the provision of section 254(2) of the Income-tax Act, 1961 and under corresponding sections of the other Acts, the appellant/ respondent may prefer Miscellaneous Application for rectification of any mistake(s) which is/are apparent from record and the Tribunal may, at any time within four years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it.

(b) Such Miscellaneous Applications are put up before the Members, who passed the order, for order. If the case is ordered to be fixed for hearing, it is fixed and entered in the diary and notices are issued in the same manner as in the Appeals.

(c) If the Application is under section 254 and the mistake/mistakes is/are apparent from record, draft order in the form as at **APPENDIX XXII** is put up for approval of the Bench. After approval, copies of the orders are issued to all concerned in the form as at **APPENDIX XX (b)**. Order passed after hearing the Miscellaneous Applications are also issued in the same manner as other orders.

**87. Miscellaneous Application withdrawing the Appeal/Cross Objection/ Application.**

On receipt of an Application from the Appellant/ Applicant or from the authorised representative of the Appellant/Applicant for withdrawal of Appeal/Application an order granting the withdrawal and dismissing the appeal for non-prosecution is passed by the bench. If necessary, draft order in the form as at **APPENDIX XXII** is submitted for approval. Copies of such orders are issued to the parties and authorities concerned as in other appeals with endorsement in the form as at **APPENDIX XX b)**.

**88. Communication of orders passed by Special Bench.**

Copies of the order passed by a Special Bench are to be issued in the same manner as in the case of orders passed in appeals.

**89. Publication of Tribunal Orders.**

The President of the Appellate Tribunal has constituted an Advisory Board at Delhi Benches of the Appellate Tribunal to select cases for publication in the 'Income Tax Tribunal Decisions' (ITD).

The Members constituting the Bench, or in the event of their absence by retirement or otherwise, the Vice-President or the President may mark an order as 'Fit for Publication'. Such orders should be immediately sent in the proforma as at **APPENDIX XX(d)** to the ITD Publication Advisory Board for its consideration for publication in the 'Income Tax Tribunal Decisions' under intimation to the Head Office.

A list of all such cases should also be placed on the notice board every month to enable authorized representatives of the other tax journals/ periodicals to apply for copy of the said order(s) on payment of requisite fee.

## *CHAPTER XIV*

### **AVOIDANCE OF REPETITIVE APPEALS**

**90.** Section 158A of the Income-tax Act, 1961, inserted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1<sup>st</sup> October, 1984 makes special provision for avoiding repetitive appeals. This section provides that where an assessee claims that any question of law arising in his case for an assessment year which is pending before the Assessing Officer or any appellate authority is identical with a question of law arising in his case for another assessment year which is pending before the High Court on a reference under section 256 or in an appeal under section 260A or before the Supreme Court on a reference under section 257 or in appeals under section 261, he may furnish to the concerned authority a declaration in the form as at **APPENDIX XXII (a)** which shall be verified in the manner indicated therein. The declaration and the verification shall be signed by the person competent to sign the appeal. Such declaration shall be furnished to the Appellate Tribunal in Triplicate.

On receipt of the declaration mentioned above, the Appellate Tribunal shall call for a report from the Assessing Officer on the correctness of the claims made in the declaration and where the Assessing Officer makes a request to the Appellate Tribunal to give him an opportunity of being heard in the matter, the Appellate Tribunal will allow him such opportunity.

As soon as application is received, the concerned appeal record together with the application should be put up to the Bench for orders in the form as at **APPENDIX XXII (b)**. On receipt of orders of the Bench, the letter in the proforma as at **APPENDIX XXII (c)** should be issued to the Assessing Officer and copy to the Departmental Representative and case posted for hearing on date fixed by the Bench for hearing.

Similar provisions are contained in Section 18C of the Wealth-tax Act, 1957 also and the same procedure as outlined above has to be followed.