

# **DRAFTING, FILING AND REPRESENTATION BEFORE INCOME TAX APPELLATE TRIBUNAL**

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**SPEAKER: K. GOPAL,  
ADVOCATE**

# Need of the Appellate Tribunal

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The Income Tax enquiry report of 1936 first time mooted the idea creating an appellate body which operates beyond the administrative control of the income tax department. Thus, the income tax appellate tribunal was constituted on 24th January, 1941. The track record of the appellate tribunal justified its creation. The appellate tribunal has been able to show that it has achieved its moto- Impartial, easy and speedy justice. (Nishpaksh, sulabh and satvar nyay.)

# CHAPTER XX – B - APPEALS TO THE APPELLATE TRIBUNAL

## SUMMARY OF SECTIONS AND RELEVANT RULES

Section / Rule	Heading	Particulars / Classification in PPT
252	Appellate Tribunal	Constitution & relevant provisions governing appointment of members of Tribunal
Section 253 - Appeals to the Appellate Tribunal		
253(1)	Appealable orders when the Assessee being aggrieved	Covered in the part of Procedure
253(2)	Empowers the revenue to file an appeal against the order passed by CIT(A) u/s 154 & 250	Same as above
253(3)	Time limit for filing an appeal for the Assessee and Revenue	Same as above

<b>Section/Rule</b>	<b>Heading</b>	<b>Particulars / Classification in PPT</b>
253(4)	Empowers the Assessee and Department to file Cross Objection	Covered in the part of Procedure
253(5)	Empowers the Tribunal to condone the delay and admit an appeal and cross objection on sufficient cause	Covered in the part of powers of the Tribunal
253(6)	Procedure to file an appeal including the payment of appeal filing fees	Covered in the part of Procedure
253(7)	Fees for filing stay application	Covered in the part of Procedure
<b>Section 254 - Orders of the Appellate Tribunal</b>		
254(1)	After giving both the parties an opportunity of being heard the Tribunal may pass order thereon as it may think fit	Covered in the part of powers of the Tribunal
254(2)	Empowers the Tribunal to rectify order passed u/s 154(1)	Covered in the part of powers of the Tribunal

Section/Rule	Heading	Particulars / Classification in PPT
254(2A)	Empowers the Tribunal to levy cost	Covered in the part of powers of the Tribunal
254(3)	Mandates the Tribunal to send a copy of the order to parties	Covered in the part of procedure
254(4)	The Tribunal order shall be final subject to the provisions of section 256 & 260A	-
<b>Section 255 - Procedure of the Appellate Tribunal</b>		
255(1)	Powers and functions of the Benches constituted by the President of the Tribunal	Covered in the part of procedure
255(2)	A Bench shall comprise of one Judicial member and one accountant member subject to section 255(3)	Same as above
255(3)	Provisions pertaining to the constitution of Single member and special bench	Same as above
255(4)	Provisions allowing the president to refer a matter to a larger bench in the case of difference of opinion	

Section/Rule	Heading	Particulars / Classification in PPT
255(5)	Empowers the Tribunal to regulate its own procedure	Covered in the part of procedure
255(6)	<ul style="list-style-type: none"> <li>➤ Empowers to invoke all the powers vested in income tax authorities u/s 131</li> <li>➤ Any proceeding before the Tribunal Shall be deemed to be judicial proceeding within section 193 &amp; 228 of IPC</li> <li>➤ Shall be deemed to be a civil court for all the purposes of section 195 &amp; chapter xxxv of Cr.P.C, 1898</li> </ul>	Same as above
<b>Some important Rules of the Income Tax (Appellate Tribunal) Rules, 1963</b>		
Rule 11	Grounds which may be taken in appeal	Covered in the part of powers of the Tribunal
Rule 18	Preparation of paper book	Covered in the part of procedure

<b>Section/Rule</b>	<b>Heading</b>	<b>Particulars / Classification in PPT</b>
Rule 24	Hearing of appeal ex parte for default by the appellant	Covered in the part of powers of the Tribunal
Rule 25	Hearing of appeal ex parte for default by the respondent	Same as above
Rule 27	Respondent may support order on grounds decided against him	Same as above
Rule 29	Production of additional evidence before the Tribunal	Same as above

- ❖ **Section 252 (1)** of the Act empowers the Central Government to constitute Appellate Tribunal comprising of judicial and accountant members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.
- ❖ **Section 252(2) & (2A)** – Appointment of persons as members of the Tribunal as Judicial members and accountant members:
  - ❑ **Judicial Member** is a person
    - who has held a judicial office minimum for 10 years in the territory of India or;
    - who has been a member of the Indian Legal Service and has held the post of grade II of that service or any equivalent service or higher post for at least 3 years or;
    - who had been an advocate for minimum 10 years
  - ❑ **Accountant Member** is a person who has been in a practice as a Chartered Accountant for minimum 10 year or who has been a member of the Indian Income-tax Service, Group A and has held the post of Additional Commissioner of Income-tax or any equivalent or higher post for at least three years.

❖ **Section 252(3) – How is the president of the Tribunal appointed?**

The central Government empowers to make appointment of a president of Appellate Tribunal who is

- a person who is sitting or retired judge of a High Court and has completed minimum 7 years of services as a judge in High Court or
- One of the vice presidents of the Appellate Tribunal

❖ **Status/relationship between the government and the Tribunal – As the president and other members are appointed by the government, to ensure the independence of the Tribunal and its members, the SC has laid down certain guidelines – **Ajay Gandhi Vs. B. Singh & others [2004] 265 ITR 451 (SC)****

❖ **Section 252(4) – empowers the Central Government to appoint one or two members of the Tribunal to be vice president(s) as the case may be.**

❖ **Section 252(5) – mandates the Vice president to perform such functions as delegated by the president by a general or special order in writing.**



❖ **Section 253(1) – Lists out orders against which the assessee may prefer an appeal.**

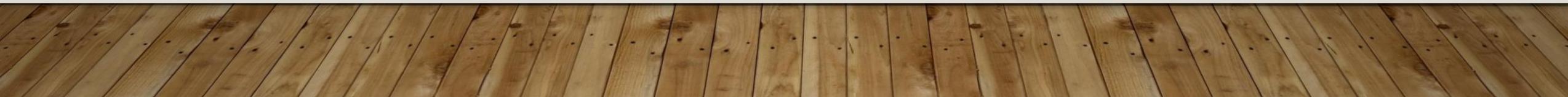
(The procedure including the prescribed form and relevant appeal filing fees is mentioned in later sections that are dealt separately.)

### Important aspects

- Third party who is liable to pay taxes by an order of any authority can file an appeal to the Tribunal- **Kikabhai Abdulali vs ITAT [1957] 32 ITR 762 (Bom) –**
- The assessee cannot be said to be aggrieved by an order that imposes no tax liability: **Nedlloyd B.V. vs. DDIT [2013] 144 ITD 236 (Mumbai –Tribunal)**
- Director in his individual capacity cannot file an appeal against the penalty order passed against the company in which he is a director if such order does not impose any liability on him. **R Subba Rao vs. ITO [2015] 58 taxmann.com (Hyderabad – Tribunal)**

## ❖ Section 253(2) –

- Empowers the revenue to file an appeal against the order passed by CIT(A) u/s 154 & 250.
- Monetary limits as prescribed by the CBDT are important to consider the applicability of section 253(2)
- As per the recent **CBDT circular no.17 of 2019, dated 8<sup>th</sup> August, 2019**, the tax effect for the revenue to prefer an appeal before the Tribunal must be more than Rs.50 Lacs
- The circular provides for different aspects such as calculation of tax effect, repetitive issues in multiple years, applicability of the monetary limit in the case of consolidated orders etc.
- Subsequent CBDT circular **no. 23 of 2019** dated **6<sup>th</sup> September, 2019** excludes the applicability of monetary limit of Rs.50 Lacs for the department to file an appeal before Tribunal such as penny stock

- **Section 253(3) – Time limit : within sixty days** from the date on which the order sought to be appealed against is communicated to the Assessee or Principle Commissioner or Commissioner.
  
  - **Section 253(4) – Cross objection:**
    - Any Assessee or the Assessing Officer can file a memorandum of cross objection on receipt of the notice that an appeal against the order of the Commissioner (appeals) has been preferred by the other party under section 253(1) & (2), if the Assessee or Assessing Officer has not filed any appeal against the such order of Commissioner (appeals) or any part thereof.
  
    - **Time limit: within thirty days** from the date of receipt of the notice intimating about filing of the appeal by the other party.
  
  - **Section 253(5) – Empowers the Tribunal to condone the delay and admit an appeal and cross objection on sufficient cause.** (discussed later-Powers of the tribunal)
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▪ **Section 253(6)- Procedural aspects regarding filing of an appeal to the Tribunal:**

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- **Rule 6 – (i)** A memorandum of appeal shall be presented by the appellant in person or by an agent to the registrar at the headquarters of the Tribunal at Bombay, or to a an officer authorized in this behalf by the Registrar, or sent by registered post addressed to the Registrar.
  
- (ii) A memorandum of appeal sent by post is deemed to have been presented to the Registrar or the respective authorized officer on the day on which is it received by the office of the Tribunal
  
- **Rule 7 – Date of presentation of appeal**  
Whoever receives the appeal sent by the appellant as per Rule 6 shall endorse the date on which it is presented and sign the same.
  
- **Rule 8 –** The memorandum of appeal shall be written in English and the grounds framed under the same should be in concise form with proper heading without any argument. The same should be numbered consecutively.



➤ **Rule 9** – The documents to be accompanied to the appeal Memo

The appeal shall be filed in triplicate by attaching following documents:

1. Form No. 36 duly signed by the person as specified in sec 140 of the Act along with Grounds of appeal
2. The order appealed against (e.g Order passed by the CIT(A) u/s 250 or 154, order passed u/s 263, order passed by the DIT(E) cancelling the registration granted u/s 12AA etc.) [at least one copy should be certified copy]
3. Form No. 35, Statement of facts and Grounds of appeal filed before Commissioner of Income Tax (Appeals)
4. Copy of the Assessment order (in case of penalty appeal also enclose the penalty order)
5. Challan of payment of appeal fees as per sec 253(6) (one copy shall be original)
6. If the appeal is against the order of DRP, the order of the TPO is to be filed

➤ **Rule 9A** – In case of change of address of the parties provided in column 10 & 11 of Form 36, the revised Form No. 36 should be filed before Tribunal mentioning the new address for the purpose of service of notice or orders. The same should be accompanied with covering letter and should specify the appeal no. as assigned to the appellant. If appeal no. is not provided then, the date of filing the appeal should be mentioned in the covering letter. (Ref: **Jagjivandas Nandlal & Co. vs. ITAT [2011] 333 ITR 274 (Bom)** )



**PERSON AUTHORISED TO SIGN APPEAL**

<b>Appeal and Cross Objection preferred by</b>	<b>To be signed by</b>
Individual	Himself
HUF	Karta and in his absence from India , by any other adult member of the family
Firm	Managing Partner, in the alternative, Partner
Local Authority	Principal officer
Association of Person	Member of the Association or the Principal Officer
Company	Managing Director or the Principal Officer
Member of the Association or the Principal Officer	Power of Attorney holder
Government managed company	Principal Officer thereof

❖ **Section 253(6) and (7): Appeal filing fees:**

Sr. No.	Description	Fees payable
1	Total income computed by the AO is up to Rs. 1 Lakh	Rs.500/-
2	Total income computed by the AO is between Rs.1 Lakh and Rs.2 Lakh	Rs.1500/-
3	Total income computed by the AO exceeding Rs.2 Lakh	1% of total income or Rs.10,000/- (whichever is minimum)
4	Subject matter of appeal relates to other matter (e.g penalty 271(1)(c) or against order u/s 263 etc)	Rs.500/-
5	Stay application under rule 35A	Rs.500/-
6	Rectification application u/s254(2)	Rs.50/-
7	On appeal by the revenue or cross objection	Nil

## Procedural aspects and other important points with regard to cross objection and cross appeal:

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- **Cross objection** - The cross objection can be filed challenging the issues decided against the Assessee or the Assessing Officer by the CIT(A) only on receipt of the intimation about filing of the appeal by the other party. (Form 36A)
- **Cross appeals** – When the Assessee and the Assessing Officer file appeals against the same order, such appeals can be considered as “Cross appeals” (Form 36)
- **Rule 22** of Income Tax Appellate Tribunal Rules 1963 provides that a memorandum of cross objections filed under section 253 (4) shall be registered and numbered as an appeal and all the rules shall be applied to such appeals.
- It is held that on a point of law that there is absolutely no difference between an appeal and a cross-objection. The only difference if at all one can be pointed out is that an appeal can be preferred within 60 days from the date of receipt of the order whereas a cross-objection can be filed within a period of 30 days of the date of service of appeal by the opposite party. **CIT vs. Purbanchal Paribahan Gosthi [1998] 234 ITR 663 (Gauhati)**. Further filing fees differ in cross objection and cross appeal.
- Assessee or AO can raise any issue in cross objection if the same was not raised before the CIT(A): **ACIT vs. DHL operations B V [2007] 13 SOT 581 (Mumba)/ [2007] 108 TTJ 152 (Mumbai) (SB), ITO vs. Jasjit Singh [2014] 52 taxmann.com 477 (Delhi - Trib.) and Fast Booking(I) Pvt. Ltd. vs DCIT [2015] 378 ITR 693 (Delhi)**

## Preparation of paper book: Rule 18

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- The Appellant or Respondent as the case may be wishes to rely on the documents or other papers may submit a paper book in duplicate.
- It must be indexed and paged and must be filed at least a day before of hearing of the appeal for the bench.
- Copy to the other side must be served at least a week before.
- The Bench may in an appropriate case condone the delay and admit the paper book.
- The Tribunal may suo moto direct to prepare a paper book. (Rule 18(2))
- Papers must be legible. Each paper should be certified as a true copy by the party filing the same, or his authorised representative and indexed in such a manner as to give the brief description of the relevance of the document, with page numbers and the Authority before whom it was filed.

- Power to pass an order as it may think fit after providing parties an opportunity of being heard - Section 254(1), Rule 24 and Rule 25
- Power to rectify its order passed u/s 254(1)- Section 254(2)
- Power to grant stay: Section 254(1) read with Section 254(2A)
- Power to condone delay in filing an appeal or a cross objection: Section 253(5)
- Power to admit and adjudicate additional ground: Section 254(1) read with rule 11
- Power to adjudicate on the contentions/grounds raised under Rule 27
- Power to admit additional evidence: Rule 29

## Power to pass an order as it may think fit after providing parties an opportunity of being heard – Section 254(I), Rule 24 and Rule 25

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- **Section 254(I)**: The Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.
- **Rule 24- Hearing of appeal ex parte for default by the appellant.**  
Where, on the day fixed for hearing or on any other date to which the hearing may be adjourned, the appellant does not appear in person or through an authorised representative when the appeal is called on for hearing, the Tribunal may dispose of the appeal on merits after hearing the respondent. The first proviso empowers the tribunal to set aside the ex parte order and restore the appeal provided the appellant appears afterwards and satisfies the Tribunal that there was sufficient cause for his non-appearance, when the appeal was called on for hearing, the Tribunal shall make an order setting aside the ex parte order and restoring the appeal.
- Tribunal cannot dismiss an appeal on account of non-appearance without disposing appeal on merits of case- **Smt. Ritha Sabapathy vs. DCIT [2019] 416 ITR 191 (Madras)**

- **Rule 25- Hearing of appeal ex parte for default by the appellant.**

Where, on the day fixed for hearing or any other day to which the hearing may be adjourned, the appellant appears and the respondent does not appear in person or through an authorised representative when the appeal is called on for hearing, the Tribunal may dispose of the appeal on merits after hearing the appellant. Tribunal cannot dismiss an appeal on account of non-appearance without disposing appeal on merits of case.

**Provided** that where an appeal has been disposed of as provided above and the <sup>29</sup>[respondent] appears afterwards and satisfies the Tribunal that there was sufficient cause for his non-appearance when the appeal was called on for hearing, the Tribunal shall make an order setting aside the *ex parte* order and restore the appeal

### ➤ Section 254(2):

(2) The Appellate Tribunal may, at any time within six months from the end of the month in which the order was passed], with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1), and shall make such amendment if the mistake is brought to its notice by the assessee or the Assessing Officer:

- ### ➤ Rule 34A of Income Tax (Appellate Tribunal) Rules, 1963. – Procedure for Miscellaneous Application-
- Application must be clear and concise pointing out a mistake apparent from record.
  - Application must be in triplicate.
  - The procedure for filing of appeals in these rules will apply mutatis mutandis to such application.
  - The Applicant shall also state whether any Miscellaneous Application under section 254(2) was filed earlier before the Tribunal against the same order and if so, the fate of such application and a copy of the order.
  - The Bench which heard the matter giving rise to the application (unless the President, the Senior Vice-President, the Vice-President or the Senior Member present at the station otherwise directs) shall dispose it after giving both the parties to the application a reasonable opportunity of being heard.
  - An order disposing of an application, under sub-rule (3), shall be in writing giving reasons in support of its decision.

- Difference between “power to rectify” and “power to review”- Section 254(2) permits power to rectify and not review.
- Change in period from 4 years to 6 months from 1-6-2016. (amendment vide Finance Act, 2016.)
- Whether a third party can apply for MA us 254(2)? – There seems to be no such a provision but in the case of “**Vijay Meghani vs. ACIT [2015] 155 ITD 623 (Mumbai - Trib.)**”. Though there is no specific observation on the said point, the ITAT has disposed off the MA preferred by the ICAI.
- MA that was filed within time but is disposed off by the tribunal after the prescribed period- **Sree Ayyanar Spinning & Weaving Mills Ltd vs. CIT [2008] 301 ITR 434 (SC)**
- How a period of limitation to be calculated? It commences from the date when the order is communicated to the party. **Pawan Kumar Jain vs. DCIT- [2013] 155 TTJ 14 (Mumbai - Trib.)**
- Whether MA can be preferred when ITAT on its own relies on decisions without giving an opportunity to an aggrieved party? Depends on facts and decisions relied upon by the ITAT- **Inventure Growth & Securities Ltd vs. ITO [2010] 324 ITR 319 (Bombay)**



- Whether ITAT can condone the delay in filing MA- There is no provision. However in the recent judgment of the Karnataka High Court in the case of “ **Muninaga Reddy vs. ACIT- (2019) 417 ITR 699**” has directed the ITAT to dispose off the matter after condoning the delay.
- Whether failure by Tribunal to consider an argument advanced by either party for arriving at a conclusion is an error apparent on record- No, **CIT vs. Ramesh Electric & Trading Co. [1993] 203 ITR 497 (Bombay)**. However, the High court in its subsequent decision in the case of **Sony pictures Networks India Pvt. Ltd. vs. ITO (WP-3508 of 2018)** has taken a different view based on peculiar facts.

- Inherent power to stay demand when an appeal is pending for adjudication: **ITO vs. M. K. Mohammed Kunhi [1969] 71 ITR 815 (SC)**
- **Implications of section 254(2A) and its proviso.**

[(2A) In every appeal, the Appellate Tribunal, where it is possible, may hear and decide such appeal within a period of four years from the end of the financial year in which such appeal is filed under sub-section (1) or sub-section (2) of [section 253](#) :

***Provided that the Appellate Tribunal may, after considering the merits of the application made by the assessee, pass an order of stay in any proceedings relating to an appeal filed under sub-section (1) of [section 253](#), for a period not exceeding one hundred and eighty days from the date of such order and the Appellate Tribunal shall dispose of the appeal within the said period of stay specified in that order:***



▪ **Rule 35A of Income Tax (Appellate Tribunal) Rules, 1963. – Procedural requirements:**

Every Stay Application shall be presented in Triplicate

A Separate Application shall be filed for stay of recovery of demand which should contain following:-

- Short Facts regarding the demand of the tax, interest, penalty, fine, estate duty or any other sum, recovery of which is sought to be stayed.
- Results of Appeal before CIT(A)
- Tax, interest, penalty etc demanded, amount undisputed therefrom and amount outstanding
- Date of Filing Appeal
- Result of any Stay Application to the lower Revenue Authorities
- Reasons for seeking stay
- Whether Applicant is prepared to offer security, and if so, in what form
- Prayers to be mentioned clearly and concisely
- Affidavit

Fees payable- Rs. 500/- **Section 253(7)**

## Some important issues and case laws:

- Order passed by the Commissioner (Appeals) on application seeking stay of demand is not a final order and, thus, such an order is not appealable before Tribunal.  
**[2015] 57 taxmann.com 3 (Lucknow - Trib.) (TM), Sale Mohd Padamsee & Co.vs. PCIT [2019] 112 taxmann.com 72 (Mumbai - Trib.)**
- Single application can be filed as long as the demands pertain to one and the same enactment. It would be unreasonable to insist that the assessee should pay the filing fees under section 253(7) not on the basis of number of applications but on the basis of the number of appeals or the number of assessment years involved. –  
**Chiranjilal Goenka vs WTO- [2000] 66 TTJ 728 (Mum), Elcid Co-op. Hsg. Society Ltd. vs. ITO- [2004] 2 SOT 553 (Mum). However, a contrary view is taken by the ITAT-Bangalore bench in the case of in Wipro Ltd.Vs ITO- [2003] 86 ITD 407 (Bangalore).**
- Stay application is maintainable even though it is directly filed before the ITAT considering the pendency of an appeal before it without preferring before assessing officer and commissioner-  
**DHL Express (India) Pvt. Ltd. [2012] 17 taxmann.com 40 (Mumbai) and Honeywell Automation India Ltd [2012] 49 SOT 333 (Pune).**

- Where delay in disposal of appeal is not attributable to assessee in any manner, Tribunal can grant extension of stay beyond 365 days in deserving cases:

**PCIT vs. BMW India (P) Ltd- [2019] 105 taxmann.com 136 (SC), PCIT vs. Carrier Air Conditioning & Refrigeration Ltd[2016] 387 ITR 441 (Punjab & Haryana), Narang Overseas (P.) Ltd. vs. ITO [2007] 295 ITR 22 (Bombay)**

- If an appeal before the ITAT against the order of CIT under section 263 is pending and the Assessing Officer proceeds to pass an order pursuant to an order under section 263, the Tribunal can stay the assessment proceeding.

**ITO vs Khalid Mehedi Khan- 110 ITR 79 (AP) and Puran Mal Kautia vs ITO - 98 ITR 39 (Patna).**

- Penalty proceedings can be stayed to await decision on quantum appeal so as to avoid multiplicity of proceedings & harassment to assessee. **CIT vs Wander Pvt Ltd – 358 ITR 408 (Bom), Uber India Systems (P.) Ltd vs JCIT- 173 ITD 68 and GE India Industrial (P.) Ltd vs CIT – 148 ITD 70**
- Parameters to be considered while deciding a stay application: **Mumbai Metropolitan Region Development Authority vs. DCIT- [2015] 55 taxmann.com 307 (Bombay)**

- **Section 253(5)** – The Appellate Tribunal may admit an appeal or permit the filing of a cross objection after the expiry of the relevant period provided under sub section (3) & (4), only if the Tribunal is satisfied that there is a **sufficient cause** for not presenting the appeal or cross objection within the prescribed period.
  
- **Principles laid down by the courts:**
  - i. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. Ordinarily, a litigant does not stand to benefit by lodging an appeal late. **Collector, Land Acquisition v. Mst. Katiji [1987] 167 ITR 471 (SC) & EBR Enterprises vs. UOI- [2018] 89 taxmann.com 194 (Bombay)**
  
  - ii. Liberal view may be taken to condone the delay as depriving the right to appeal may cause permanent damage affecting subsequent years (**Brihanmumbai Kreedha Ani Lalit Kala Pratishthan vs. ITO(E)- ITXA: 1429 OF 2016**)



## Rule 11 – Power to admit and adjudicate additional ground

- The appellant can not raise or be heard on any ground not taken in the grounds of appeal without seeking leave of the Tribunal. But, the Tribunal in deciding the appeal, shall not be confined to the grounds of appeal raised in the appeal memo or taken with the permission of the Tribunal under this rule.
- What is an additional ground? Whether a ground taken in original form 36 but not raised before the first appellate authority can be said to be an additional ground? **M/s. All Cargo Global Logistics Ltd. vs. DCIT- I.T.A Nos. 5018 to 5022 & 5059/M/10- Mumbai (SB)**
- Additional ground may be preferred orally during the course of the hearing: -
  - i. **Amines Plasticizers Ltd vs CIT - [1997] 223 ITR 173 (GAU.),**
  - ii. **Assam Carbon Products vs Commissioner of Income Tax [1997] 224 ITR 57 (GAU.) and**
  - iii. **VMT Spinning Co. Ltd vs Commissioner of Income Tax [2016] 74 taxmann.com 33 (Punjab & Haryana).**
- Additional ground being legal in nature requiring no adjudication of fresh facts may be taken at anytime before any forum including the tribunal- **National Thermal Power Co. Ltd Vs. CIT [1998] 229 ITR 383 (SC) & Ahmedabad Electricity Company Ltd.Vs. CIT [1993] 199 ITR 351 (Bom.) (FB).**

## Rule 27- Power to adjudicate on the contentions/grounds raised under Rule 27

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- The Respondent in any appeal, though may not have appealed, may support the order appealed against on any of the grounds decided against him.
- The applicability of section 253(4) (i.e. the procedure of filing a cross-objection) is distinct than the area of operation of rule 27 – **Hukumchand Mills Ltd. vs. CIT [1967] 63 ITR 232 (SC) and DCIT vs. Sandip M Patel [2012] 137 ITD 104 (Ahmedabad)**
- The Respondent in an appeal before Tribunal can invoke rule 27 only to support order appealed against on any of grounds decided against him and cannot seek any further or more relief than what has been granted to him by Commissioner (Appeals) - **Tongani Tea Co. Ltd. vs. JCIT [2018] 97 taxmann.com 47 (Kolkata - Trib.)**

## Power to admit additional evidence: Rule 29

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- Rule 29 of income Tax Appellate Tribunal Rules,
- Akin to order 41 Rule 27 of CPC- Velji Deoraj & Co. vs. CIT [1968] 68 ITR 708 (Bombay)
- Whether the ITAT can admit an application under Rule 29 at the instance of an Assessee or the Revenue?- Yes, **CIT vs. Ku. Pa. Krishnan [2012] 345 ITR 38 (Madras), Carburettors Ltd vs.ACIT [2016] 69 taxmann.com 384 (Madras)**
- Whether it is mandatory to prefer a written application for admission of additional evidence under Rule 29?- No, **Mascon Global Ltd. vs.ACIT- [2010] 37 SOT 202 (Chennai) (TM)**
- Whether there is any need to pass a separate order for admission or rejection of additional evidence? – **No, Rasiklal M Parikh vs.ACIT [2017] 393 ITR 536 (Bombay).**

- The additional evidence, if any, shall not form part of the same paper book.
- The parties shall not be entitled to submit any supplementary paper book, except with the leave of the Bench
- Documents that are referred to and relied upon by the parties during the course of arguments shall alone be treated as part of the record of the Tribunal.



**K GOPAL,ADVOCATE**

I-C, 1<sup>ST</sup> FLOOR, COURT CHAMBERS, 35  
NEW MARINE LINES, MUMBAI – 400 020

OFF NO: 22016828 / 6928

MOB: 9820050141

Presentation prepared by:

Neha Paranjpe and Tanmay Phadke,Advocates