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Procedure and practice before Income Tax (Appellate Tribunal)

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1. Objective

The Income Tax Appellate Tribunal was set up on 25th January 1941, as an independent quasi judicial body to hear second appeals from the decisions of the AAC [now CIT(A)]. The motto of the Income Tax Appellate Tribunal is “Sulabh Nyaya Satvar Nyaya” which means cheap and quick justice. Sections 252 to 255 of the Income Tax Act, 1961 and Sections 24 to 26 of Wealth Tax Act deal with the provisions relating to the appeals before the Appellate Tribunals. The Income Tax Appellate Tribunal has formulated its own Rules and Procedures - The Income Tax (Appellate Tribunal) Rules, 1963 in exercise of the powers conferred under section 255(5) of the Income Tax Act. The Income Tax Appellate Tribunal functions under the Union Ministry of Law and Justice.

The Headquarter of the Tribunal is located at Mumbai. The President of the Tribunal is the head of the institution. He exercises administrative control over all the Benches falling under 9 Zones located at Mumbai, Delhi, Calcutta, Chennai, Ahmedabad, Hyderabad, Lucknow, Chandigarh and Bangalore. Each zone has one Vice President. However, Mumbai has two Vice Presidents. There are at present 63 benches functioning at 27 places. Tribunal Benches all over India are considered as one Institution.

2. Constitution

The Appellate Tribunal is constituted by the Central Government u/s 252 of the Income Tax Act, 1961. The Tribunal comprises of the Judicial Members and Accountant Members appointed by the Central Government.

3. Qualifications for members

The qualifications of a person to be appointed as judicial or accountant member are laid down under sections 252(2) and 252(2A) respectively.

Judicial Member shall be a person who has for at least ten years held a judicial office in the territory of India or who has been a member of the Indian Legal Service and has held a post in Grade II of that Service or any equivalent or higher post for at least three years or an advocate in practice for at least ten years.

Accountant member shall be a person who has for at least ten years been in the practice of accountancy as a Chartered Accountant under the Chartered Accountants Act 1949, or as a registered accountant under any law formerly in force or partly as a registered accountant and partly as a Chartered Accountant, 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.

4. President/ Vice President

Section 252(3) states that the Central Government shall appoint the Senior Vice President or one of the Vice Presidents of the Appellate Tribunal to be the President thereof. As per section 252(4), one or more members of the Tribunal may be appointed as Vice President(s) by the Central Government. One of the Vice Presidents may be appointed as the Senior Vice President as per section 253(4A).

5. Appealable Orders

As per section 253, an assessee who is aggrieved by an order passed by CIT(A) or an order passed by a Commissioner u/s 12AA; or 80G(5); or 263; or 271; or 272A; or 154 amending an order passed u/s 263 or an order passed by the Chief Commissioner or a Director General or a Director u/s 272A; may prefer an appeal to the Tribunal. Similarly, the Commissioner may prefer an appeal to the Tribunal against the order of CIT(A). It has been held by High Courts that even a third party has a right of appeal if, as a result of any order passed in an appeal by the first appellate authority before whom he is not a party, he is saddled with a liability for any tax or other sum. This view is supported by the decision of Hon'ble Kerala High Court in the case of *Kikabhai Abdulali Vs. ITAT 234 ITR 617(Ker),* and that of Hon'ble Calcutta High Court in the case of *Benoy Kurian Vs. Agrl. ITO 144 ITR 557 (Cal).*

CBDT has issued instructions that the Commissioner should not file an appeal to the Tribunal if the tax effect is less than Rs.2,00,000/- [refer *Mrs. Pervez Wang Chuk Basi v JCIT 290 ITR 246 (Mumbai); CIT vs Digvijay Singh 292 ITR 314 (MP); CIT vs Pithwa Engineering Works 276 ITR 519 (Bom), CIT vs. Camco Colour Co. 254 ITR 565 (Bom), CWT vs S Annamalai 258 ITR 675 (Mad), CIT vs Income Tax Appellate Tribunal 232 ITR 207 (Del), CIT vs Ayurved Sewa Ashram Ltd. 225 ITR 778 (Raj), CIT vs Om Trading Co 220 ITR 149 (A.P.), CIT vs S.C. Nagpal 229 ITR 566 (P&H), CIT Vs Ashim Kumar Agarwal 275 ITR 48 (Jharkhand), CIT vs Bhagwan Cloth Stores, 170 Taxation 503 (M.P.), CIT vs. Krishan Security 304 ITR 48 (Del), CIT vs Rajanikant Schnelder and Associates P Ltd 302 ITR 22 (Mad), CIT vs Dinesh Chandra S Shah 317 ITR 391 (Guj), CIT vs Chandulal alias Vallabhdas Damji 317 ITR 426 (Guj), CIT vs S Sumathi 317 ITR 422 (Madras).*

Allahabad High Court took a contrary view in *CIT vs. Dhampur Sugar Mills Co. Ltd 270 ITR 576*. Bombay High Court in *CIT vs Pithwa Engg Works 276 ITR 519* held that mandatory limit will apply even for pending appeals. However, a contrary view has been taken by Delhi High Court in the case of *CIT vs Nanak Ram Jaisinghania 317 ITR 302 (Delhi),* in which it was held that revised limits prescribed after the date of appeal cannot be applied to an appeal already filed. The Board has also clarified that for ascertaining the tax effect, interest and penalty should not be taken into consideration. Calcutta Special Bench of ITAT in the case of *JCIT vs Peerless Developers Ltd 287 ITR (AT) 153 (Kol) (SB)* took the view that where finally the income is assessed at loss or nil even after the additions are made, since there will not be any tax payable - these instructions will be applicable and the Revenue cannot file appeal against the order of the CIT(A). Similar view has been taken by Delhi

High Court in the case of CIT V Manglam Ricinus Ltd 174 Taxman 186(Delhi). CBDT vide instruction no. 5 of 2008 dt. 15.5.2008 has clarified that the nominal tax effect on the addition has to be considered for applying the instruction. Hon'ble Gujarat High Court in the case of *CIT Vs Concord pharmaceuticals & Others* vide order dt. 5.8.08 that revenue has to follow the circular/instructions for filing the appeal.

6. Time Limit for filing an appeal

Every appeal u/s 253 shall be generally filed within 60 days (except as otherwise laid down) from the date of communication to the assessee of the order sought to be appealed against or to the Commissioner, as the case may be.

As per Rule 6 of ITAT Rules, the memo of appeal shall be presented by the appellant in person or by an agent or sent by registered post so as to reach before the due date.

Rule 7 of the ITAT Rules requires the authority receiving the appeal to endorse the date on which it is received and signed.

In case of emergency or it being the last day of filing the appeal, the appellant **may present the memo of appeal at the residence of either the Assistant Registrar or any Member of the Tribunal or at any other place wherever they may be, till the end of the hour of that day *(Order No.1 of 1973 dt. 1.10.1973).***

7. Condonation of Delay

As per section 253(5), the Tribunal may admit an appeal filed beyond the period of limitation if it is satisfied that there was sufficient cause for not presenting the appeal within time. It is desirable to file an application for condonation giving in detail reasons for delay supported by acceptable evidence/ affidavit along with the appeal. Negligence, inaction or malafide on the part of the appellant would not constitute sufficient cause.

Instances where delay was caused due to wrong legal advice or because the assessee was critically ill at the relevant time or that he was bonafidely pursuing a remedy which did not lie, were held to be sufficient cause for condonation of delay. Hon'ble Supreme Court in *Collection of Land Acquisition Vs. Mst. Katiji & others 167 ITR 471* has held that the Court should have a pragmatic and liberal approach while condoning the delay. In the case of *BalaKrishnan Vs. M. Krishnamurthy 7 SCC 123,* even the delay of 883 days was condoned and it was observed that condonation of delay is a matter of discretion of the Court. In the case of *Vedabai Vs. Shantaram Baburao Patil & Another 125 STC 375*, Hon'ble Apex Court observed that the Court has to exercise its discretion, keeping in mind that the principle of advancing justice is of prime importance and the expression "sufficient cause" should receive a liberal construction. In the absence of satisfactory explanation for condonation of delay, Hon'ble Supreme Court in the case of *CIT Vs PVAL Kulandagan Chettiar 300 ITR 5(SC)* did not condone the delay of 1027 days.

If the mistake of an advocate or consultant is bonafide, it shall constitute a "reasonable cause". In the case of *Rafiq C. Munshilal AIR 1981 SC 1400 (1401)*, it was observed "we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted." An appeal cannot be dismissed because the counsel failed to appear when the case was posted for hearing. In the case of *AREva T and D India Ltd Vs Joint Com. of IT 287 ITR 555(Mad)*, it was held that no hard and fast rule for condonation of delay are laid down. Prime Importance is advancing substantial justice. Delay on account of advice by counsel - Counsel refused to give affidavit - Affidavit filed by assessee. Tribunal was not correct in dismissing the appeal. The other relevant cases in this regard are:

- *Mahavir Prasad Jain Vs. CIT 172 ITR 331 (MP),*
- *Concord of India Insurance Co. Ltd Vs. Smt Nirmala Devi & others 118 ITR 507 (SC),*
- *Kripa Shankar Vs. CIT 181 ITR 183 (All)*
- *Dinesh Nagin Das Shah V. CIT 273 ITR 229 (Guj)*

Even in the case of *Municipal Corporation Vs. Ramcharan AIR (2003) SC 2164*, the Court held that failure of the counsel on account of confusion is a sufficient cause.

Allahabad High Court in the case of *Bharat Auto Centre Vs. CIT 282 ITR 366* held that the law of limitation is enshrined in the 'maxim interest reipublicae ut sit finis litium' (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties, rather the idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

In the case of *Surinder Kumar Boveja Vs. CWT 287 ITR 52 (Delhi)* it was held that where there is want of due care and attention or want of due diligence or sufficient cause, the delay cannot be condoned.

8. Memorandum of Appeal

The procedures in regard to the memorandum of appeal are specified under Rules 8, 9, 11, 12 and 15 of the ITAT Rules, 1963 and rule 47 of the Income Tax Rules.

a. Form of Appeal

The appeal has to be filed in form 36 as prescribed by Rule 47 of the Income Tax Rules read with section 253(6). The form of appeal is to be signed by the person authorised to sign the return of income under section 140.

b. Contents of Memo of appeal

Rule 8 of the ITAT Rules lays down that the memorandum of appeal has to be written in English and shall set forth, concisely and under the distinct heads, all the grounds of appeal. The grounds of appeal shall be without any argument/ narration and are to be numbered consecutively. In the case of *CIT vs. Giani Ram and Company 317 ITR 64 (P&H)* it was held that Tribunal could not have heard the issue which did not arise out of the order of the CIT(A), therefore, the grounds of appeal should arise out of the order of CIT(A).

c. Documents to accompany the Memorandum of Appeal

The memorandum of appeal has to be filed in triplicate, accompanied by the following documents as per rule 9 of the Income Tax Appellate Tribunal Rules:-

i. 2 copies (at least one of which shall be a certified copy) of the order appealed against.
ii. 2 copies of the order of ITO.
iii. 2 copies of the grounds of appeal filed before the first appellate authority.
iv. 2 copies of the statements of facts, if any, filed before the said appellate authority.
v. In the case of appeal against the order of penalty, 2 copies of the assessment order.
vi. In the case of appeal against the assessment u/s 143 (3) read with section 144B, 2 copies of the draft assessment order and 2 copies of the IAC directions u/s 144B.
vii. In the case of assessment u/s 143 read with section 144A, 2 copies of the IAC's directions u/s 144A.
viii. In the case of assessment u/s 143 (3) read with section 147, the memo of appeal shall also be accompanied by 2 copies of the original assessment order if any, and
ix. The challan for the payment of the fees.

The Tribunal may in its discretion accept a memorandum of appeal, which is not accompanied by all or any of the documents referred to in sub rule 9(1) of the ITAT Rules. In an appeal u/s 253(2) filed by revenue, a certified copy of the order of the Commissioner directing that an appeal be preferred, must be appended to the memorandum of appeal, because only the CIT is competent to file the appeal.

The meaning of the "certified copy" has been liberalised by the explanation added to Rule 9 of the ITAT Rules vide letter no. 5068 AT/46 dt. 17.12.1996. Copy of the order appealed against bearing the signature of the issuing or authorized officer and the seal of the office issuing the copy has been equated with the certified copy. A photocopy of such order duly authenticated as a true copy by the appellant or his authorized representative will be sufficient compliance.

Hon'ble Punjab & Haryana in the case of *CIT vs OCM (India) Ltd 291 ITR 96 (P & H)* held that the appeal cannot be dismissed merely on the ground of a technical defect in the memo of appeal. Tribunal is not expected to be hyper-technical in admission of appeal. Objection on grounds of appeal not filed, although CIT signed the form. High court referring to section 292B directed Tribunal to decide the appeal on merit.

d. Appellant and Respondent

The person who has preferred an appeal against the orders specified u/s 253(1) or 253(2) and is aggrieved from the orders is called appellant. As per rule 13 of the ITAT Rules, in an appeal by an assessee u/s 253(1), the AO concerned shall be made a respondent to the appeal while as per rule 14, in an appeal filed by revenue, appellant before CIT(A) shall be made a respondent to the appeal.

e. Authorised Representatives

As per rule 16, in any appeal by an assessee, where the memo of appeal is signed by his authorised representative, the assessee shall append to the memo of appeal a document (i.e. power of attorney/ vakalatnama) authorising the representative to appear for him and if the representative is a relative of the assessee, the document shall state the nature of relationship 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 has to file the authorization before the commencement of the hearing of appeal as per rule 17 of the ITAT Rules. However, non filing of the power of attorney/ vakalatnama does not make the order illegal – but it may be an irregularity, which is a curable defect.

9. Additional ground

Rule 11 of the ITAT Rules provides that the appellant shall not, except with the leave of the Tribunal, urge to be heard in support of any ground not set forth in the memorandum of appeal. However, the Tribunal is competent to allow the appellant to raise, at the hearing of the appeal, an additional ground even without a formal amendment of the memorandum of appeal. This view is supported by the decision of Hon'ble Supreme Court in the case of *CIT Vs. Nelliappan 66 ITR 722 (SC).*

The application for the admission of the additional ground should be made by the appellant in writing containing the additional ground, its necessity and reasons as to why it could not be taken earlier. It should be established that it goes to the root of the issue and is necessary for dispensation of justice. A copy of such application should be provided to the respondent and the Tribunal shall hear the respondent, before its disposal. Permission to raise the additional ground is discretionary. Reasons for the admission have to be recorded by the Tribunal and the discretion should be exercised judiciously and not arbitrarily so as to further the cause of justice.

So far as legal issues are concerned, additional grounds can be raised at any time. It need not arise out of the order of the CIT(A). The important case laws on the subject of power to allow a new ground of appeal to be raised are:-

- *National Thermal Power Co. Ltd. Vs. CIT 229 ITR 383(SC),*
- *Jute Corporation of India Vs. CIT 187 ITR 688 (SC)*
- *Godavari Sugar Mills Ltd. Vs. CIT 199 ITR (FB).*

- *CIT Vs. Mohd. Eqbal and others 221 ITR 481 (MP).*
- *Avery Cycle Industries Limited vs. CIT, 292 ITR 493 (P&H)*
- *Anam Venkata Krishna Reddy v. CIT 172 ITR 425 (A.P);*
- *B.R. Bamasi v. CIT 83 ITR 223 (Bom);*
- *Arundhati Balkrishna v. CIT 138 ITR 245 (Guj);*
- *CIT v. Dehati Coop Mkting-cum-Processing Socy 130 ITR 504 (P & H)*
- *Vahivatdars of Ambaji Temple V CIT 58 ITR 675(Guj).*

The grounds regarding limitation and jurisdiction can be raised at any time as they go to the root of the issue. Even in penalty appeal, the plea regarding the jurisdiction of assessment can be raised.

Leave to urge additional grounds may be sought either in writing or by oral prayer, as rule 11 of ITAT Rules states only "leave". This view is supported by the decision of Gauhati High Court in the case of *Amines Pasticizers Ltd Vs. CIT 223 ITR 173 (Gauhati) & also Assam Carbon Products Ltd. Vs. CIT 224 ITR 57 (Gau).* No specific form for raising additional ground of appeal has been prescribed under the Rules. In the case of *Ramgosria Constructions P. Ltd. Vs. ITO, 308 ITR 290 (Mad)*, it was held that where all the necessary materials are available, the Tribunal is not justified in remitting the matter for a decision in law to the CIT(A). In the case of *DCIT vs. Ansal Properties & Industries Limited 308 ITR (AT) 141 (Delhi)*, it was held that a legal issue by way of alternate plea, on the basis of materials on record, is bound to be entertained by the Tribunal even if it is raised for the first time. In case of *Dy. CIT vs. Turquoise Investment and Finance Limited 299 ITR 143 (MP),* the High Court has held that there is a difference in treatment as between admission of new fact, which is subject to rule 27 of the Income Tax (Appellate Tribunal) Rules and a question of law for which there is no bar in its admission.

In the case of *The Assam Tribune Vs. CIT 285 ITR 452(Gau)*, it was held that the tribunal has jurisdiction to go into every aspect of the assessment proceedings before the taxing authorities and into the question whether such assessment was made in accordance with law provided a ground is taken before the tribunal in that respect or an additional ground by way of amendment is allowed.

In the case of *CIT vs. Tollaram Hassomal, 298 ITR 22 (MP),* the Hon'ble High Court has held that the Tribunal may not be justified in deciding such additional ground so admitted, on the merits of the claim for the first time by itself without giving a fair opportunity to the other party. The best course is to restore the additional ground to the CIT(A).

10. <u>Dress Regulation - Rule 17A</u>

a. for members

Summer dress for the members of the Tribunal shall be white shirt, white pant with black coat, a black tie or a buttoned up black coat. In winter, striped or black trousers are to be worn in place of white trousers.

b. for authorized representatives

In the case of authorized representative other than a relative or regular employee of the assessee, for a8 male, a suit with a tie or buttoned up coat over a pant or national dress, i.e. a long buttoned up coat or dhoti or churidar pyjama is prescribed. The colour of coat shall preferably be black. In the case of female, black coat over white or any sober coloured saree.

However, if the authorized representatives belong to a profession and such profession has prescribed a dress for appearing in the 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.

11. Memorandum of Cross Objections – rule 22

According to sub section (4) of section 253 of the Income Tax Act 1961, the respondent on receipt of notice that an appeal has been preferred u/s 253(1) or section 253(2), notwithstanding that he may not have appealed against such order or any part thereof, file a memorandum of cross objections within 30 days in form 36A of the Income Tax Rules and verified in the prescribed manner against any part of the order of the Commissioner (Appeals), and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).

According to Rule 22 of the ITAT Rules, the memorandum of cross-objections filed under sub-section (4) of section 253 shall be registered and numbered as an appeal and all the rules, so far as may be, shall apply to such appeal.

This right to file a memorandum of cross objections is an independent right given to the respondent in an appeal, in addition to the independent right of appeal which may or may not be exercised by the assessee or by the assessing officer u/s 253(1) or 253(2).

Cross Objections need not be confined to the points taken by the opposite party in the main appeal.

12. Fees for filing appeal

As per Sections 253(6) & (7) of the Income Tax Act, an appeal/ stay application to Tribunal made on or after 1.10.1998, irrespective of the date of initiation of the assessment proceedings, shall be accompanied by a fee computed as under:

a- Where the total income of the assessee as computed by the AO, in case to which the appeal relates, is less than or equal to Rs. 1 lac - Rs.500/-.

b- Where the total income of the assessee, computed as aforesaid, in the case to which the appeal relates is more than Rs. 1 lac but less than Rs. 2 lacs – Rs. 1,500/-.

c- Where the total income of the assessee computed as aforesaid, in the case to which the appeal relates is more than Rs.2 lac, one per cent of the assessed income, subject to a maximum of Rs.10,000:

d- Where the subject matter of an appeal relates to any matter, other than those specified in clauses (a), (b) and (c) - Rs.500.

e- A fee of Rs. 500 shall accompany an application for stay of demand.

f- A fee of Rs. 50 shall accompany an application for rectification of mistake.

g- No fee is payable in the case of an appeal u/s 253(2) or a memorandum of cross objection referred to in section 253(4).

In *Vidyut Kumar Seth vs. ITO 85 TTJ 896* Special Bench of Tribunal, Calcutta, held that where appeal is filed against penalty imposed u/s 271(1)(c), the tribunal fees will be governed by clauses (a) to (c) of S. 253(6) of the Income Tax Act, and not by clause (d). Thus tribunal fees shall be paid on the basis of income assessed.

However Karnataka High Court in the case of *Rajakamal Polymers P Ltd v CIT 291 ITR 314 (Karn)* has taken the view that in case of appeal filed against any penalty imposed under the various provisions of Income Tax Act, fees shall be payable at the rate of Rs. 500/- and it will be covered by clause (d) of section 253(6) of the Act. Patna High Court also in the case of *Dr. Ajith Kumar Pandey vs. ITAT 310 ITR 295 (Patna)* held that filing fee of Rs.500 should be sufficient in case of penalty appeals.

In the case of *Jet Electronics Vs ACIT ita no.1336/Ahd/2007,* B Bench of Ahmedabad Tribunal vide order dt. 26.10.07 has taken the view that in an appeal filed against the order passed u/s 263, the fees payable will be Rs.500/- u/s 253(6)(d) of the Income Tax Act, 1961.

13. Paper Book (Rule 18)

If the appellant or the respondent, proposes to refer or rely upon any document or statements or other papers on the file of or referred to in the assessment or appellate orders, he may submit such documents or papers in form of a paper book in duplicate. The paper book should conform to the following rules otherwise it is liable to be rejected:

(a) The papers in the paper book should be duly indexed and paged.

(b) The papers referred to in sub-rule (1) above must always be legibly written or type-written in double space or printed. If zerox copy of a document is filed, then the same should 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.

(c) The additional evidence, if any, shall not form part of the same paper book. If any party desires to file additional evidence, then the same shall be filed by way of a separate paper book containing such particulars as are referred to in (b) supra accompanied by an application stating the reasons for filing such additional evidence.

(d) The parties shall not be entitled to submit any supplementary paper book, except with the leave of the Bench.

(e) Such paper book may be filed at least a day before the date of hearing of the appeal alongwith proof of service of a copy of the same on the other side at least a week before.

(f) The Bench reserves the right to condone the delay and admit the paper book in an appropriate case.

(g) The Tribunal has also been conferred with the right of suo motu directing the preparation of a paper book in triplicate by and at the cost of the appellant or the respondent containing copies of such statements, papers and documents as it may consider necessary for the proper disposal of the appeal.

14. Hearing/ Rehearing by the Tribunal

The hearing or rehearing by the Tribunal is governed by rules 19, 20, 21 and 23 of the ITAT Rules, 1963.

a. Date and place of hearing – rule 19

The Tribunal notifies the parties to the Appeal of the date and place of hearing. The copy of the memorandum of appeal is sent to the respondent either before or with such notice. The issue of the notice will not by itself be deemed to mean that the appeal has been admitted.

b. Fixation of hearing – rule 20

The date and place of hearing of the appeal shall be fixed with reference to the current business of the Tribunal and the time necessary for the service of the notice of appeal, so as to allow the parties' sufficient time to appear and be heard in support of or against the appeal.

c. Grant of time – rule 21

In an appeal under sub-section (1) of section 253, in fixing the date for the respondent to appear and answer the appeal, a reasonable time shall be allowed for necessary communication with the Commissioner through the proper channel and for the issue of instructions to an authorised representative to appear and answer on behalf of the respondent.

d. Hearing of the Appeal – rule 23

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 case the appellant shall be entitled to reply (rejoinder).

e. Opportunity of being Heard

The Income Tax Act casts an obligation upon the Appellate Tribunal by virtue of section 254(1) to give an opportunity of being heard to both parties before passing such orders as it may think fit. In the case decided by the Kerala High Court in the case of *Joseph Michael & Bros. Vs ITAT & Another [199 ITR 466],* the counsel appearing on behalf of the appellant before the Tribunal was out of station and he had made an application for the adjournment of the case through his junior. Since the Tribunal had granted the stay, it rejected the application for the adjournment and proceeded to decide the matter on the basis of the records available. The High Court held that the Tribunal committed a breach of the rule and had denied the opportunity of being heard to the appellant. The exparte order passed without giving an opportunity of being heard can be set aside.

In the case of *Tribhuwan Kumar and Others vs. CIT 294 ITR 401 (Raj)*, it was held that non-representation on the part of the assessee on the date of hearing would justify an ex-parte decision on merits, but where Tribunal did not hear the case on the merits, but dismissed the appeals as not maintainable, such order cannot be correct. Rules 19, 20 & 24 of the ITAT Rules, 1963 are clear on this point. If an appeal is not maintainable for any reason, separate notice should have been issued. Since no such notice was issued, the order could not be supported. The appeal, therefore, was restored back to the Tribunal.

In the case of *CIT vs. SAS Educational Society, 319 ITR 65 (P&H)*, the High court has held that power of remand to provide further opportunity for either party is an integral part of the judicial adjudication. But the question of further opportunity arises only where such opportunity had been denied. Where there is no such allegation of denial of opportunity and the tribunal without recording any such denial could not have remanded the matter.

f. Hearing of Inter Connected Appeals

When both parties to the appeal have filed an appeal against the order of the first Appellate Authority's order, the Tribunal should hear the two appeals at the same time. At the time of hearing of the appeal filed by the first party, the other party is duty bound to bring to the notice of the appellate Tribunal that he has also filed an appeal. Then the two appeals are interconnected and are heard together and at the same time by the Tribunal.

g. Adjournment of Hearing – rule 32

The Tribunal cannot make an exparte decision simply because of the non-presence of either of the parties. Therefore, the Appellate Tribunal has been conferred with a power under Rule 32 of the ITAT Rules that it may, on such terms as it thinks fit, and at any stage, adjourn the hearing of the appeal. The language of the rule has also conferred the Appellate Tribunal with a hidden power to refuse the adjournment of the hearing. In the case of *CIT vs. Avon Cycles Limited, 309 ITR 247 (P&H)*, Hon'ble High Court held that where both the parties request for adjournment in the absence of their respective Counsels, the Tribunal should consider their request or proceed to decide the matter on merit instead of dismissing the case.

h. Early Hearing of the Case

Either of the parties to the appeal may pray for the early hearing of the appeal. The Tribunal, at its discretion, can accept or reject such a petition. Generally, in cases where stay petition has been preferred by the assessee, then such appeals are fixed for hearing on a priority basis over and above the other appeals.

i. Continuation of Proceedings after the Death or Adjudication of A Party to the Appeal – rule 26

Where an assessee, whether he is the appellant or the respondent to an appeal, dies or is adjudicated insolvent or in the case of a company which is being wound up, the appeal shall not abate and may, if the assessee was the appellant, be continued by, and if he was the respondent be continued against, the executor, administrator or other legal representative of the assessee or by or against the assignee, receiver or liquidator, as the case may be.

j. Non Appearance of the Parties

Rules 24 and 25 deal with the hearing of an appeal ex-parte:

i) Non appearance of Appellant – rule 24

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. In case where an appeal has been so disposed of and 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. It has been held in the case of the *Sibnath Pramanick vs ITO (1993) 44 ITD 724 (Cal)* that such powers of restoration of appeals after being decided on merits under rule 24 are ancillary to the jurisdiction conferred on the Tribunal u/s 254. Delhi High Court in the case of *CIT Vs. SIEL 284 ITR 381(Del)* held that Rule 24 empowers tribunal to dispose of an appeal on merits in the absence of the appellant or its AR. The proviso to said rule, however, permits the tribunal to recall any such order if tribunal is satisfied for the nonappearance. But in the case of *CIT Vs. ITAT 293 ITR 118 (Del)*, same High court has taken the view that the tribunal do not have any power to recall order passed by it earlier.

In the case of *Rajendra Prasad Borah vs. ITAT 302 ITR 243 (Gauhati)* following the decision of Hon'ble Supreme Court in the case of *CIT vs. S. Chenniappa Mudaliar, 74 ITR 41 (SC)* held that Rule 24 of ITAT Rules, 1963 clearly provides for a decision on the merits even in the absence of the assessee, so that dismissal for default, which is a procedure recognized in Civil Court will not have application. The matter was, therefore, remitted back to the Tribunal to decide in accordance with law. Similar view was taken by Rajasthan High Court in the case of *Tribhuwan Kumar and others V CIT & others 294 ITR 401(Raj).*

In the case of *Harvinder Singh vs. DCIT (Assessment) 309 ITR 333 (M.P.),* where the representative withdrew his power from the case, it was held that if Tribunal decided appeal ex-parte on the basis of written argument and if the assessee asks for restoration of the appeal, the Tribunal is bound to reopen the matter since it is the right of the assessee to be heard in person.

ii) Non appearance of Respondent – rule 25

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 for hearing, the Tribunal may dispose of the appeal on merits after hearing the appellant.

The opportunity provided by rule 24 to the appellant to get the ex-parte order set aside and for restoration of the appeal is also available to the respondent as per rule 25.

Recall of an ex-parte order

Allahabad High Court in the case of *Kishal Lal vs. CIT 303 ITR 188 (All)* has held that where there is no representation on the date of hearing, the ex-parte order may well be passed after verification of service of notice. But where the assessee asked for recall of the order explaining the absence of his Counsel on the date of hearing, such explanation is bound to be considered in a reasonable manner with even humanitarian approach. Other relevant cases are given as under:-

- *CIT v Hemla Hosiery Mfg. Dyeing and Printing Mills P ltd 286 ITR 646(Del)*
- *CIT Vs. Focus Estates P Ltd 286 ITR 410(Del)*
- *Ravi Prakash Khemka Vs ITAT 288 ITR 362(Mad)*
- *Sourav Jhunjhun walla Vs. CIT 273 ITR 225(Cal)*

k. Supporting of the order of CIT(A) – rule 27

The respondent, though he may not have appealed, may support the order appealed against on any of the grounds decided against him. The ITAT in the case of *DCIT Vs. Capital Cars P. Ltd., 295 ITR (AT) 224 (Del)* decided that it is open to the respondent in a departmental appeal to support the order of the first appellate authority. In the case of *Guru Govind Singh Educational Society vs CIT 313 ITR (AT) 32 (Amritsar)*, it was held that in the case of appeal filed by the assessee, department cannot seek permission for filing additional ground. Even though the Revenue could support the order appealed against under Rule 27 of the ITAT Rules 1963, the Department could have filed Cross Objections. In the case of *DCIT Vs Turquoise Investment and Finance Ltd 299 ITR 143(MP),* while discussing Rule 27 it was held that if the material is on record on the basis whereof objection can be raised, the parties to the appeal cannot be precluded from raising such contention, especially the respondent, in view of rule 27 of the Income Tax Appellate Tribunal Rules.

15. Additional Evidence

Rule 29 of the ITAT Rules places a total bar on the parties to the appeal from producing additional evidence, either oral or documentary, before the Tribunal. But Tribunal has been vested with inherent discretion to allow the production of additional evidence in the following circumstances:

(i) 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;

(ii) If the Income-tax authorities have decided the case without giving sufficient opportunity to the assessee to advance evidence either on points specified by them or not specified by them.

On the existence of either of the circumstances mentioned above, the Tribunal for reasons to be recorded may allow such documents to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be adduced. The Tribunal has the discretion to permit to adduce additional evidence. The following case laws are relevant in this regard:-

- *ITO vs B.N. Bhattacharya (1978) 112 ITR 423, 427 (Cal.),*
- *CIT vs Motilal Hirabhai Spinning & Wvg. Co. Ltd (1978) 113 ITR 173, 179, 180 (Guj).*
- *CIT vs Smt. Kamal C. Mehboobhani (1995) 214 ITR 15 (Bom),*
- *Dy. CIT vs Vira Construction Co. (1997) 61 ITD 33 (Mum) (TM)*
- *ACIT vs. Hiromi Hirose, 298 ITR (AT) 269 (Delhi).*
- *Bimal Kumar Anant Kumar Vs. CIT(ALL) 288 ITR 278*

If evidence produced by assessee is genuine, reliable and proves the assessee's case, assessee should not be denied opportunity of it being produced for the first time before the appellate authority. This view is supported by the following case laws:-

- *Jagbir Singh vs ITGO (1987) 23 ITD 15 (Del.)*
- *Electra (Jaipur) (P) Ltd vs IAC (1988) 26 ITD 236 (Del)*
- *Smt. Prabhavati S. Shah vs CIT (1998) 231 ITR 1 ((Bom)*
- *Abhay Kumar Shroff vs ITO (1997) 63 ITD 144 (Patna) (TM)*
- *Jagannath Prasad Kanhaiya Lal vs CIT (1988) 171 ITR 596 (All)*
- *CIT vs Gani Bhai Wanab Bhai (1998) 232 ITR 900 (M.P.)*
- *Deep Chand Kothari Vs CIT (1988) 171 ITR 381 (Raj.)*
- *Controller of Estate Duty vs Narasamma (1980) 125 ITR 196 (A.P.)*
- *CIT Vs. Bank of Punjab Ltd. (P & H)286 ITR 630*

Meaning and Procedure to adduce Additional Evidence

Evidence which has not been produced before the Assessing Officer or Commissioner of Income Tax (Appeals) shall be considered as additional/fresh evidence. There is a distinction between additional evidence and supporting evidence. If certain material/ evidence has been placed before the lower authorities and further supporting evidence is placed before the Tribunal, it should not be considered as additional evidence. However, a thin difference exists between the two.

The appellant should make an application seeking permission to rely upon additional evidence. The application must give reasons, justify the necessity, prove its genuineness, its non-availability earlier or that there was no negligence, malafide intention, latches or inaction on the part of the appellant for not producing it before the lower authorities. The additional evidence should be annexed with the application and by way of an additional paper book. If possible, it should be supported by an affidavit of the appellant. A copy has to be provided to the respondent and the respondent should be given an opportunity of being heard. On being satisfied, the Tribunal should record its reasons admitting and rejecting the additional evidence. If the Tribunal fails to consider such evidence or the application, it amounts to a mistake rectifiable under S.254(2) and the matter must be restored to the Tribunal to dispose of the application as held by the Supreme Court in *Jyotsna Suri & Others vs ITAT (2003) 179 CTR 265 (SC).*

16. Procedure for Evidence

It was observed by the Gujarat High Court in *Tribhovandas Vithaldas v CIT (1986) 159 ITR 236 (Guj)* that it is axiomatic to say that the Income Tax Appellate Tribunal is a fact finding forum and, therefore, it is necessary for it that every fact for and against must have been considered with due care and the Tribunal is under an obligation to give its finding so as to clearly indicate as to precisely what were the questions arising for its determination, what was the evidence for and against on the record in regard to each one of these questions and what were its findings reached and on what evidence before it. It is a trite position in law that the conclusion reached by the Tribunal should not have been based on irrelevant considerations nor on suspicion, conjectures or surmises and they should be warranted in the evidence placed before it, which evidence should be relevant, and the Tribunal should not have improperly rejected any relevant material.

It was also observed that the Tribunal had failed to consider each and every fact for and against the assessee and did not give its finding in respect of evidence which had been adduced, nor has it considered, as it ought to have, the reasoning which compelled the Appellate Assistant Commissioner to reach the findings. Ultimately, the Tribunal was directed to rehear the appeal and dispose of the same according to the correct principles of law.

a. <u>Provisions of Evidence Act cannot be strictly adhered to</u>

In *Premier Suppliers (P) Ltd. V CIT (1979) 120 ITR 633 (Cal,)* it was held that the admissibility of a piece of evidence in proceedings before the Tribunal cannot be tested strictly by the Evidence Act. It was not the complaint of the assessee that the Tribunal collected evidence behind the assessee's back and that the assessee had inadequate opportunity to deal with the same.

But it does not mean that provisions of Evidence Act should not be followed at all. In *CIT v. Krishenaveni Ammal (1986) 158 ITR 826 (Mad)* it was held that law of evidence mandates that if the best evidence is not placed before the Court, an adverse inference can be drawn as against the person who ought to have produced it.

b. <u>Acceptance of evidence is in exercise of discretionary power</u>

In *S. Subramania Chetty v. CIT (1978) 114 ITR 283 (Mad),* it was held that acceptance or non acceptance of the evidence of alleged lender is a matter entirely within the jurisdiction of the Tribunal.

c. <u>Duties & Rights of Tribunal as regards evidence</u>

It was held in *CIT v Smt. Kamal C. Mehboobbani (1995) 214 ITR 15 (Bom)* that Tribunal has to record reasons to require any document to be produced or any witness to be examined or any affidavit to be filed. Further, as held in *Nihori Lal Prabhudayal v CIT (1951) 19 (ITR) 240 (All)*, in case a party on whom the burden of proof lies produces evidence, which is considered to be unsatisfactory and is, disbelieved, the fact that there is no evidence to the contrary does not provide the Tribunal to record a finding in favour of the party on whom the burden lies.

d. <u>Procedure as to record evidence</u>

In *Roshan Di Hatti v. CIT (1977) 107 ITR 938 (SC)* the members of the Tribunal, disregarding the prescribed procedure, put certain questions in an informal manner which was not authorised by the rules. It was held that the answers given by R would not form part of the record and therefore, the Tribunal was not entitled to rely upon the same in arriving at its findings of the fact.

e. <u>Procedure as to affidavit</u>

In *Smt. Gunwantibai Ratilal v. CIT (1984) 146 ITR 140 (MP,)* it was held that where there was material on record which was considered by the Tribunal alongwith the affidavits and the Tribunal found that no reliance could be placed on the affidavits, then a statement by a deponent could be held to be unreliable by the Tribunal either on the basis of cross examination of the deponent or by reference to other material on record leading to the inference that the statement made in the affidavit could not be held to be true. Assessee's SLP has been dismissed as has been reported in 156 ITR 43.

In the above case the Tribunal arrived at finding other than that stated in affidavits. If the veracity of the statements in the affidavits was according to the Tribunal disproved by the material on record, the finding of the Tribunal could not be held to be vitiated, because the Tribunal arrived at the finding by not placing reliance on the affidavits.

f. Opportunity of hearing to parties before receiving affidavit

It was held in *Anaikar Trades & Estates (P) Ltd. v. CIT (1991) 56 Taxman 170 (Mad)* that under rule 29 of the Income Tax (appellate Tribunal) Rules, if the Tribunal required any document to be produced or affidavit to be filed to enable it to pass orders or for any other substantial cause, it may allow the document to be produced or the affidavit to be filed.

17. Orders of the Tribunal

Rule 34(1) states that the order of the bench shall be in writing and shall be signed and dated by the members constituting it.

Where a case is u/s 255(4), the order of the member or members to whom it is referred to, shall be signed and dated by him or them, as the case may be.

Rule 35 states that the Tribunal shall after the order is signed, cause it to be communicated to the assessee and the commissioner.

On the basis of these rules, it is clear that unless the order of the bench is signed by all members constituting it and is dated, it does not constitute an order of the Tribunal *(ITAT Vs. V.K.Agarwal 235 ITR 175).*

Now the Tribunal has adopted the procedure of pronouncement of the order in view of the directions given by Delhi High Court. The draft order is therefore initialed by the author and sent to the other member who also initials the same if he agrees with the draft order of his colleague. The order is pronounced and signed by both the members on the date of pronouncement. However, where the bench is not functioning or for any other reason the pronouncement of order in the court is not possible or practicable, a list of such order(s) shall be prepared duly signed by the members showing the result of the appeal and the same would be put on the notice Board of the bench and it shall be deemed pronouncement of the order.

The Bench may pronounce the order immediately upon the conclusion of hearing or the bench shall give a date for pronouncement. In case no date of pronouncement is given by the bench, every endeavour shall be made by the bench to pronounce the order within 60 days from the date on which the hearing of the case was concluded but where it is not practicable so to do on the ground of exceptional and extraordinary circumstances of the case, bench shall fix a future date for pronouncement of the order, and such date shall not ordinarily be a day beyond a further period of 30 days and due notice of the day so fixed shall be given on the notice board.

The jurisdiction of the Tribunal is restricted to the grounds of appeal taken before it. Hon'ble Gauhati High Court in the case of *Assam Tribune vs CIT & another 285 ITR 452 (Gauhati)* has held that from the provision of section 254 of Income Tax Act and rule 11 of ITAT Rules, it is clear that Tribunal has jurisdiction to go into every aspect of the assessment proceedings before the taxing authorities including the question whether assessment was made in accordance with law provided the ground of appeal is taken before the Tribunal in that respect or additional ground is allowed by the Tribunal.

The Tribunal is duty bound to deal with each and every ground taken before it and to give the reasons for its decisions [refer *Vipul Fashions Pvt Ltd vs ACIT 284 ITR 332 (Guj); State Bank of Indore vs ITAT 284 ITR 125 (MP); CIT vs Palwal Sugar Cooperative Mills ltd 284 ITR 153 (P & H)*]

If the parties have relied on any case law in support of their ground and the Tribunal is of the view that the said judgment is not applicable, then the Tribunal has to give the reasons stating how the said judgment is not applicable [refer *ACIT vs Anantram 266 ITR 470 (Kar)*]. The Tribunal is duty bound to follow the decision of jurisdictional High Court - otherwise the order passed by the Tribunal will be invalid [refer *New Sorathia Engineering Co vs CIT 282 ITR 642 (Guj)*].

In the case of *Director of Income Tax (Exemptions) v Uma Maheshwar Parmarth Trust 292 ITR 352 (Delhi),* it was held that the Tribunal must record reasons for its decision while disposing of case. As the Tribunal had given no reason for dismissing the appeal of the Revenue, the matter was remanded. Madras High Court in the case of *CIT vs. Matrix Intel P. Ltd., 294 ITR 257* decided that the Tribunal should not be content with mere reference to a decision of another bench. If it is comparable, the gist of the case as well as its reasoning which it has accepted must be indicated.

This is a settled law that the bench is to follow precedent from any other bench and that if it does not agree with the same, it should require constitution of a larger bench. *DLF Universal Ltd Vs. CIT 306 ITR 271 (Del).*

Hon'ble Gauhati High Court in the case of *CIT vs India Carbon Limited 315 ITR 315 (Gauhati)* has held that as a quasi judicial body, it is expected from Tribunal to pass a judicial order after listing of arguments of either side for the issue to be decided.

In the case of *CIT vs MP Tyres Co. 316 ITR 202 (MP) and CIT vs Abhay Kumar Jain 281 ITR 431 (MP)* Hon'ble High Court has stated that even where the issue is covered by the Tribunal in the same case, it cannot merely follow the precedents without any discussion. The Tribunal to quote its reasoning already arrived at in the leading order in extenso in case the Tribunal does not wish to add any more reasoning.

Hon'ble Bombay High Court in the case of *Shivsagar Veg. Restaurant vs Asst. CIT 317 ITR 433 (Bom)* held that the Tribunal must pass order after recording reason and discussing propositions of law urged and the case law relied upon by the parties.

In the case of *Deputy Director of Income Tax (International) Taxation) vs. Pipeline Engineering GmbH (India Branch Office) 318 ITR (AT) 210 (Mumbai),* it was held that the Tribunal cannot entertain an argument striking down the provision.

In the case of *K.D. Wires P. Ltd. Vs. Union of India 319 ITR 359 (MP)*, the high court has pointed out that the Tribunal order should give reasons for its conclusion and not merely endorse the order of CIT(A) by mentioning that he has exhaustively dealt with the assessee's each and every contention in his order before arriving at the final conclusion.

18. Binding Nature of the Order

Hon'ble MP High Court in *Agarwal WareHousing & Leasing Ltd Vs CIT 257 ITR 235* held that the orders passed by the Tribunal are binding on all tax authorities functioning under the jurisdiction of the Tribunal.

Once Tribunal has rendered an order to the A.O., the A.O. does not have any jurisdiction to rectify the said order. *Karam Chand Thapar & Bros vs. ACIT, 295 ITR 355 (Cal).*

Third Member's power

Section 255(4) of the Income tax Act lays down that if the members of a bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President ITAT on such point or points by one or more of the other members of the Tribunal and such point or points shall be decided according to the opinion of the majority of the members of the Tribunal who have heard the case, including those who first heard it. The powers of the third member is only to answer the points of difference between the two members as had been decided in *ITO vs. Vice President, ITAT, 155 ITR 310 (Mad) and Jan Mohammed vs. CIT, 23 ITR 15 (All.).* Madras High Court has also taken the similar view in *Dynavision Ltd. vs. ITAT, 304 ITR 350 ITR (Mad)*

Third member's order

In the case of *DCIT Vs. Oman International Bank SAOG 100 ITD 285(Mum)(SB),* it was held that the third member decision has the same sanctity as the decision of Special bench has.

19. Rectification Application u/s254(2) (generally called Miscellaneous Application)

Rule 34A as inserted by the Income Tax (Appellate Tribunal) (Amendment) Rules, 1991 with effect from 25.7.1991 provides that the application for rectification should comply with the following:

(a) an application u/s 254(2) shall clearly and concisely state the mistake apparent from the record of which the rectification is sought.

(b) every application submitted u/s 254(2) shall be in triplicate and the procedure for filing of appeals as contained in Appellate Tribunal rules, 1963 will apply *mutatis mutandis* to such applications.

Such an application must be accompanied by a fee of Rs. 50/- and has to be made within 4 years. In the case of *A.S. Chinnaswamy Raju (HUF) vs. Asstt. CIT (Inv.) 300 ITR 96 (Karn)*, it was held that the Tribunal cannot entertain rectification application beyond the prescribed time limit.

Chennai Bench of ITAT in the case of *DCIT vs Hydraulics Ltd 282 ITR (AT) 191* has held that in case of miscellaneous application moved by the Revenue, its Assessing Officer only is competent to sign the miscellaneous application and not the senior departmental representative. Jodhpur Bench of ITAT in the case of *Bhavanva Path Nirman & Co. vs ACIT 284 ITR 130 (AT) (Jodhpur)* has held that once the order of the Tribunal is merged with order of the High Court, the power to consider and rectify mistake in the order of the Tribunal lies only with the High Court and not with the Tribunal. Where Tribunal failed to consider a fact on record by oversight or failed to consider an argument advanced by either party are mistakes, but not mistakes, which are capable of rectification u/s. 254. If these are allowed, it would tantamount to review or permitting reopening or re-arguing a matter which was decided. *Ras Bihari Bansal vs CIT 293 ITR 365 (Del)*. In the case of *CIT vs ITAT 293 ITR 119 (Del),* it was pointed out that it is impermissible for the Tribunal to recall an order on the ground that it had not noticed the earlier decision of another bench. Mumbai High Court in the case of *Safari Mercantile P Ltd Vs ITAT 294 ITR 64 (Mumbai)* held that Tribunal bound to consider omitted grounds on rectification. Similar view has been taken by Madras High Court in the case of *T. Jayabharathy vs ACIT 294 ITR 128 (Mad)*. Failure to consider the precedent be treated as a manifest error which require the issue to be freshly adjudicated. This was so held in the case of *Honda Siel Power Products Ltd. Vs. CIT, 295 ITR 466 (SC)*. Failure to follow the jurisdictional High Court's decision or the decision of Hon'ble Supreme Court tantamount to be mistake rectifiable under section 254 - *ACIT vs. Saurashtra Kutch Stock Exchanged Limited, 305 ITR 227 (SC) - CIT vs. S. Kumar Tyres Manufacturing Co., 305 ITR 360 (M.P.)*. In the case of *CIT vs. Mc Dowell and Company Limited, 310 ITR 215 (Karn)*, it was held that where a mistake is best corrected by recall of the order, it can be recalled. But that should not be an occasion of review of order in other aspects. Allahabad High Court has also taken the same view in the case of *CIT Vs Smt Shashi Modi 277 ITR 355 (ALL)* that tribunal cannot review its order.

In the case of *CIT vs. V.L.S. Finance Limited 310 ITR 224 (Del)*, it was held that where the Tribunal had overlooked Supreme Court decision reversing the decision of the High Court, although it was cited, it was a mistake rectifiable under section 254.

Hon'ble Madras High Court in the case of *Express Newspapers Limited Vs. DCIT and Another 320 ITR 12 (Mad)* held that the power under section 254 cannot be used by the Tribunal for reviewing the order which is made after consideration of all the arguments of both the parties. In the case of *CIT vs. H.P. State Forest Corporation Limited 320 ITR 54 (HP)*, the High Court while dealing with a case where the Tribunal, while setting aside, required that the income computed in pursuance of its order should not be lower than that declared by the assessee in the original return. Such directions are not within the purview of an order setting aside an assessment.

Once the application is admitted for rectification according to sub-rule (3), 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 a reasonable opportunity of being heard. However, it shall not be necessary to post miscellaneous application for hearing if it *prima facie* appears to be a petition for review.

20. Stay of demand

Implied powers of the tribunal of granting stay flow from the widest powers as mentioned in Section 254. In the case of *ITO vs M.K. Mohammed Kunhi (1969) 71 ITR 815 (SC),* it was held that the Income Tax Appellate Tribunal has, when an appeal has been preferred to it, power to stay the proceedings of the Court against whose order the appeal has been preferred and to pass an interim order staying recovery of tax pending the disposal of the appeal, even if no express provision relating to such power exists in the Income Tax Act, 1961.

a. Circumstances for exercising stay

(i) If there is a prima facie case in favour of the assessee;
(ii) the assessee's financial position does not permit payment of the demand;
(iii) the balance of convenience is in favour of the assessee and
(iv) demand is well secured with no loss to the revenue.

Principles laid down in Order 39, Rules 1 & 2 of the Code of Civil Procedure will apply to the stay of demand. *Maharana Shri Bhagwat Singhji of Mewar vs ITAT (1997) 233 ITR 192 (Raj), JCT Ltd vs ITAT (2002) 258 ITR 291 (Delhi), The Hon'ble Bombay High Court in KEC International Ltd. Vs B. R. Balakrishna & Others (2001) 251 ITR 158 (Bom)* have laid down various parameters for the stay of recovery.

In view of section 254(2A), the stay shall be operative upto 6 months and the appeals in which stay is granted must preferably be disposed of during the period of stay. In view of amendment made by the Finance Act 2007 with effect from 1.6.2007, the Tribunal may extend the period of stay but the stay in any case cannot be extended for more than 365 days. The Tribunal has also to dispose of the appeal within that period. In case stay is granted or exceeds 365 days, the stay shall stand vacated after the expiry of 365 days. This amendment will apply to all the stay orders passed on or after 1.6.2007.

Mumbai Bench of ITAT in the case of *Navrang Overseas Pvt Ltd v ACIT order dt 4.7.2007 in SA 138/Mum/2007 arising out of ITA No. 4623/Mum/05* has held that the Tribunal does not have any power to grant or allow or extend stay for more than 365 days even if the appeal has been heard and not been disposed of on the part of the Tribunal within 365 days. In the same very case of *Narang Overseas P. Ltd. Vs. ITAT, 295 ITR 22 (Mum)*, the Mumbai High Court has held that the stay being a matter of right in deserving cases, this right cannot be made nugatory. If the delay is not attributable after the disposal of the appeal to the assessee, fresh order of stay can be granted.

The Central Board of Direct Taxes has issued instructions which state that the recovery proceedings may be stayed where the income determined on assessment is substantially greater that the returned income – CBDT Instruction No. 96 *[F. No. 1-6-69-ITCC], dated 21st August, 1969 [165 ITR 650 (Ker) in the case of N. Rajan Nair vs ITO (1987)]* These instructions have been followed in the following cases:- *Mrs. R. Mani Goyal vs Commissioner of Income Tax (1996) 217 ITR 641 (All) and Maharana Shri Bhagwat Singhi of Mewar vs ITAT (1997) 223 ITR 192 (Raj)*. Tribunal cannot refuse stay on the ground that CIT has already granted conditional stay. This is so held in the case of *Ashok Kumar Aggarwal vs ITAT (1997) 226 ITR 490 (Del).*

The Central Board of Direct Taxes has issued a circular in which it has laid down guidelines for the Assessing Officer to exercise his discretion u/s 220(6) of the Income Tax Act 1961, to treat the assessee as not being in default in respect of the amounts disputed in First Appeal pending before Dy. CIT(A)/ CIT(A), where the dispute is about interpretation of law or where the issue is decided in favour of the assessee in an earlier order *[Circular No. 530 dated 6-3-1989 176 ITR (st.) 240* and *Circular No. 589 dated 16-1-1991, 187 ITR (st.) 79]*.

b. <u>Power to stay the Assessment Proceedings</u>

If the appeal before the Tribunal against order of the Commissioner u/s 263 is pending and the Assessing Officer is proposing to pass an order in pursuance of the order u/s 263, the Tribunal can stay the assessment proceedings. There are instructions of the President (ITAT) to take up such appeals on priority basis and dispose them off expeditiously to avoid multiplicity of proceedings. The relevant cases in this regard are:-

- *ITO Vs Khalid Khan (1977) 110 ITR 479 (AP),*
- *Puranmal vs ITO (1975) 98 ITR 39 (Pat.),*
- *Ritz Ltd. Vs Vyas (1990) 185 ITR 311 (Bom.)*

c. <u>Stay Proceedings before First Appellate Authority</u>

In the case of *Puranmal Kauntia v ITO (1975) 98 ITR 39 (Pat)* an appeal was pending before Tribunal and during the pendency of that appeal, the Appellate Assistant Commissioner started to proceed with the matter. The assessee filed an application before the Tribunal to stay the proceedings started by the Appellate Assistant Commissioner. In response to this, the Tribunal denied to grant stay on the ground that under the Income Tax Act there was no provision conferring any such power. When the matter went before the High Court, it was held by the Patna High Court that it could be well said that when section 254 confers appellate jurisdiction, it impliedly grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution and that the statutory power carries with it the duty in proper cases to make such orders for staying proceedings as will prevent the appeal, if successful, from being rendered nugatory.

d. Stay of Recovery during pendency of stay petition

In the case of *RPG Enterprises Ltd. Vs Dy. CIT (2001) 251 ITR (AT) 20 (30) (Bom)* the Tribunal observed: "We are living in a democratic set up and the tax payers deserve to be respected for their contribution in the National Development. Public servants are expected to discharge their functions dutifully but not unreasonably. The officers are supposed to work diligently but not harassingly. It is absolutely necessary for the Department of revenue to gain public trust and confidence by acting judiciously and avoiding undue harassment. We appreciate the scheme of rewarding honest and diligent officers of the Department but also feel that there is a necessity of identifying overzealous officers harassing the tax payers by misusing their powers."

The Tribunal held that the Assessing Officer is precluded from taking coercive action for the recovery of the disputed demand until the expiry of the period of limitation allowed for filing of appeal against the decision of the first appellate authority and also during the pendency of stay application before any revenue authority or the Tribunal. The Tribunal also held that the Commissioner is required to give an opportunity and pass speaking order.

In *Western Agencies vs Jt. CIT (2003) 86 ITD 462 (Mad),* the Tribunal has held that the Tribunal can exercise powers of a Civil Court and pass an order by way of mandatory direction to the Department to return amounts recovered forcibly during pendency of stay petition and Income Tax appeal.

e. Exhaustion of other remedy

In *Susanta Kumar Nayak v Union of India (1990) 185 ITR 627 (Cal),* it was held that the Tribunal had not at all exercised its discretion which is vested upon it, in view of the misconception that other remedies were available to the petitioner to approach the department once again. Considering this aspect of the matter, the writ petition was disposed of by setting aside the order of the Tribunal and the matter was remanded to the Tribunal again for reconsideration of the application for stay on the merits and to exercise its discretion in accordance with law.

f. **Power to stay is not curtailed by limitation provisions – Section 153(2A)**

In the case of *ITO v Khalid Mehdi Khan (1977) 110 ITR 70 (AP),* it was held that it is, no doubt, true that clause (ii) in explanation 1 to Section 153(2A) may not permit the department to exclude the period during which the stay granted by a Tribunal is in operation, since the Tribunal is, admittedly, not a court, yet sub-section (2A) does not have the effect of depriving or abridging the power of the Tribunal to grant appropriate interim orders u/s 254(1).

g. Procedure for filing and disposal of stay petition

Rule 35A of ITAT Rules 1963, lays down the procedure for filing the stay petition and also how to dispose of the same and what shall be the consequences if the petition filed does not conform with the requirements laid down in rules. The following procedure is to be followed for filing the stay petition with the Appellate Tribunal:

i. The application for stay of recovery of demand of tax, interest, penalty, fine, estate duty or any other sum shall be presented in triplicate.

ii. The application has to be presented by the applicant in person, or by his duly authorised agent, or sent by registered post to the Registrar or the Assistant Registrar, as the case may be, at the head quarters of a Bench or Benches having jurisdiction to hear the appeals in respect of which the stay application is made.

iii. Separate applications shall be filed for stay of recovery of demands under different enactments.

iv. The applications have to be neatly typed on one side of the paper and be in English and should set forth concisely the 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;
- The result of the appeal filed before the appellate Assistant Commissioner, if any;
- The exact amount of tax, interest, penalty, fine, estate duty or any other sum demanded, as the case may be, and the amount undisputed therefrom and the amount outstanding;
- The date of filing the appeal before the Tribunal and its number, if known;
- 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);
- Reasons in brief for seeking stay;
- Whether the applicant is prepared to offer security, and if so, in what form;
- Prayers to be mentioned clearly and concisely (stating exact amount sought to be stayed);
- the contents of the application shall be supported by an affidavit sworn by the applicant or his duly authorised agent;

In case the application does not conform to the above requirements, it is liable to be summarily rejected. In view of the provision of S. 253(7), an application for a stay of demand must be accompanied by a fee of Rs. 500/-

Form No. 36

[See Rule 47(1)]

Form of appeal to the Appellate Tribunal

In the Income Tax Appellate Tribunal ....

Appeal No. .... of .... 19......-19.......

Versus

....	....
Appellant	Respondent

1. The State in which the assessment was made
2. Section under which the order appealed against was passed
3. +Assessment year in connection with which the appeal is preferred

3A. Total income declared by the assessee for the assessment year referred to in item 3

3B. Total income as computed by the [Assessing Officer] for the assessment year referred to in item 3

4. **The [Assessing Officer] passing the original order
5. **Section of the Income Tax Act, 1961, under which the [Assessing Officer] passed the order

[6. The Deputy Commissioner (Appeals) in respect of orders passed before the 1st day of October, 1998/ Commissioner (Appeals) passing the order under section 154/250/271/271A/272A.]

[7. The Deputy Commissioner or the Deputy Director in respect of orders passed before the 1st day of October, 1998 or the Joint Commissioner or the Joint Director passing the order under section 154/272A/274(2).]

[8. **The Chief Commissioner or Director General or Director or Commissioner, passing the order under section 154(2)/250/263/271/ 271A/272A]

9. Date of communication of the order appealed against
10. Address to which notices may be sent to the appellant
11. Address to which notices may be sent to the respondent

[* * *]

[* * *]

[12.] ++Relief claimed in appeal

++Grounds of Appeal

1. 2. 3. 4. , etc.

....	....
Signed	Signed
(Authorised representative, if any)	(Appellant)

Verification

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

Verified today the .... day of ...., 19.........

....

Signed

Notes :

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

[Assessing Officer], two copies of the grounds of appeal before the first appellate authority, two copies of the statement of facts, if any, filed before the said appellate authority, and also —

(a) in the case of an appeal against an order levying penalty, two copies of the relevant assessment order;

(b) in the case of an appeal against an order under section 143(3) read with section 144A, two copies of the directions of the [Deputy Commissioner] under section 144A;

(c) in the case of an appeal against an order under section 143(3) read with section 144B, two copies of the draft assessment order and two copies of the directions of the [Deputy Commissioner] under section 144B;

(d) in the case of an appeal against an order under section 143 read with section 147, two copies of the original assessment order, if any].

2. The memorandum of appeal by an assessee under section 253(1) of the Income Tax Act must be accompanied by a fee specified below :

(a) Where the total income of the assessee as computed by the assessing officer, in the case to which the appeal relates, is one hundred thousand rupees or less five hundred rupees;

It is suggested that the fee should be credited in a branch of the authorised bank or a branch of the State Bank of India or a branch of the Reserve Bank of India after obtaining a challan and the triplicate challan sent to the Appellate Tribunal with the memorandum of appeal. The Appellate Tribunal will not accept cheques, drafts, hundies or other negotiable instruments].

3. The memorandum of appeal should be written in English or, if the appeal is filed in a Bench located in any such State as is for the time being notified by the President of the Appellate Tribunal for the purposes of rule 5A of the Income-tax (Appellate Tribunal) Rules, 1963, then, at the option of the appellant, in Hindi, and should set forth, concisely and under distinct heads, the grounds of appeal without any argument or narrative and such grounds should be numbered consecutively.

4. *The number and year of appeal will be filled in the office of the Appellate Tribunal.

5. ++This column is not to be filled in where the appeal relates to any tax deducted under section 195(1).

6. **Delete the inapplicable columns.

7. ++If the space provided is found insufficient, separate enclosures may be used for the purpose.

8. The memorandum of appeal shall be accompanied by a fee of—

(a) where the total income of the assessee as computed by the assessing officer in the case to which the appeal relates is one hundred thousand rupees or less, two hundred fifty rupees;

(b) where the total income of the assessee, computed as aforesaid to which the appeal relates is more than one hundred thousand rupees but not more than two hundred thousand rupees, five hundred rupees;

(c) where the total income of the assessee, computed as aforesaid, in the case to which the appeal relates is more than two hundred thousand rupees, one thousand rupees.

9. The fee should be credited in a branch of the authorised bank or a branch of the State Bank of India or a branch of the Reserve Bank of India after obtaining a challan from the assessing officer and a copy of challan sent to the Commissioner of Income Tax (Appeals).";

(a) where the total income of the assessee, computed as aforesaid, in the case to which the appeal relates is more than one hundred thousand rupees but not more than two hundred thousand rupees, one thousand five hundred rupees;

(c) where the total income of the assessee, computed. as aforesaid, in the case to which the appeal relates is more than two hundred thousand rupees, one per cent of the assessed income, subject to a maximum of ten thousand rupees;

(d) no fee shall be payable in the case of a memorandum of cross-objections;

(e) an application for stay of demand shall be accompanied by a fee of five hundred rupees.

It is suggested that the fee should be credited in a branch of the authorised bank or a branch of the State Bank of India or a branch of the Reserve Bank of India after obtaining a challan and the triplicate challan sent to the Appellate Tribunal with a memorandum of appeal. The Appellate Tribunal will not accept cheques, drafts, hundies or other negotiable instruments.".

GUIDE LINES

1. Notes printed below the form are self-explanatory and are required to be followed while preparing an appeal to the Tribunal.

2. Every appeal to the Tribunal is to be filed within 60 days of the date of communication of the order to the assessee of the Chief Commissioner or Commissioner, as the case may be.
3. Jurisdiction of the Tribunal to which the appeal may be filed is determined by an order under rule 4 of the Income Tax (Appellate Tribunal) Rules, 1963.
4. Normally the appeal is required to be presented to the Assistant Registrar or in his absence from office, to the Superintendent/Assistant Superintendent/Senior most Head Clerk in the office during the office hours of the Tribunal. Where the appellant apprehends that it is the last day of the limitation for presentation of his appeal, he may present it to any Assistant Registrar or to a Member of the Tribunal at his respective residence or wherever he may be.
5. Under rule 18 of the Income Tax (Appellate Tribunal) Rules, 1963, the appellant may at least a day before the date of hearing of the appeal, submit, in duplicate, a paper book containing copies of the documents, statements and other papers on the file of, or referred to in, the order of the Income Tax Officer, Appellate Assistant Commissioner, Commissioner (Appeals), the Inspecting Assistant Commissioner or Commissioner as the case may be, which he proposes to refer to or rely upon at the time of hearing of the appeal. The respondent may also file such a paper book in duplicate by the same date. Along with such paper book, proof of service of a copy of the same on the other side at least a week before is to be filed.
6. Whenever an appeal or application or cross-objection is field which is connected with an appeal or application or cross-objection relating to the same party filed earlier, reference hereto should be made in the latter appeal or application or cross-objection to facilitate their linking in the office of the Tribunal.
7. If an appeal/reference application/cross-objection is barred by time, or if there are reasons for believing that it may be barred by time, an application for condonation of the delay should be made well in advance of the hearing of the appeal/application/cross-objection. Such an application should ordinarily be supported by an affidavit and other documentary evidence, as for example, a medical certificate.
8. Where an appeal is filed on or after 1-6-1992, the enhanced fees laid down in section 253(6) of the Act (Rs. 250 or Rs, 1,500) will have to be paid.

Form No. 36A

[*See* rule 47(1)]

Form of memorandum of cross-objections to the Appellate Tribunal

In the Income Tax Appellate Tribunal ....

**Cross-objection No. .... of .... 19 ....-19 ....*

****In Appeal No. .... of ....19 .... 19 ....*

Versus

....	....
Appellant	Respondent

1. **Appeal No. allotted by the Tribunal to which memorandum of cross-objections relates
2. The State in which the assessment was made
3. Section under which the order appealed against was passed
4. Assessment year in connection with which the memorandum of cross-objections is preferred.
5. Date of receipt of notice of appeal filed by the appellant to the Tribunal
6. Address to which notices may be sent to the respondent (cross-objector)
7. Address to which notices may be sent to the appellant
8. +Relief claimed in the memorandum of cross-objections

Grounds of Cross-objections

1.	3.	
2.	4.	etc.

....	....
Signed	Signed
(Authorised representative, if any)	(Appellant)

Verification

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

Verified today the .... day of ....19........

....

Signed

Notes :

1. The memorandum of cross-objections must be in triplicate.

2. The memorandum of cross-objections should be written in English or, if the memorandum is filed in a Bench located in any such State as is for the time being notified by the President of the Appellate Tribunal for the purposes of rule 5A of the Income Tax (Appellate Tribunal) Rules, 1963, the, at the option of the respondent, in Hindu, and should set forth, concisely and under distinct heads, the cross-objections without any argument or narrative and such objections should be numbered consecutively.

3. *The number & year of memorandum of cross-objections will be filled in the office of the Appellate Tribunal.

4. **The number and year of appeal as allotted by the office of the Tribunal and appearing in the notice of appeal received by the respondent is to be filled in here by the respondent.

5. +If the space provided is found insufficient, separate enclosures may be used for the purpose.

GUIDE LINES

1. Notes below the form are required to be followed while preparing the memorandum of cross-objections.
2. Memorandum of cross-objections is to be filed with the Appellate Tribunal by the respondent within 30 days of the receipt of the notice from the Tribunal intimating that an appeal against the order of the AAC or, as the case may be, the Commissioner (Appeals) has been filed by the assessee or the assessing officer.
3. Where the memorandum of cross-objections is made by the assessee, the memorandum of cross-objections, the grounds of cross-objections and the form of verification appended thereto, must be signed by the person who is competent to sign the return of income of the assessee.
4. No fee is required to be paid for filing the memorandum of cross-objection in this form.
5. Memorandum of cross-objections is treated as a regular appeal by the Appellate Tribunal, Guidance Notes to Form 36 would be applicable, *mutatis mutandis*, in respect of this form also.

Covering letter for filing appeal

The Assistant Registrar Date

Income tax Appellate Tribunal

Sub: Filing of appeal u/s 253(1)(a) of the Income tax Act, 1961

_________________________ ***Versus*** _________________________

(Appellant) (Respondent)

Assessment Year ____________

Sir,

Feeling aggrieved by the order dated _________ passed by learned Commissioner of Income tax (Appeals)-I, ------------------the assessee, being the appellant herein has directed us to file an appeal before the Hon'ble Income tax Appellate Tribunal, --- and consequently we enclose the following.

Sl. No.	Particulars	No. of copies	Page Nos.
(a)	Form No. 36 (Memorandum of Appeal to the Appellate Tribunal)	3	1-4
(b)	Certified copy of the Order dated ________ passed by Commissioner of Income tax (Appeals)-I, ----- in Appeal No. ____/CIT(A)-I/------- /ACIT-___/--------/_____ (the Order appealed against)	3	5-13
(c)	Certified copy of Form No. 35 (Memorandum of Appeal to the Commissioner (Appeals) alongwith statement of facts and grounds of appeal, as filed by the appellant in the first appeal proceedings	3	14-16
(d)	Certified true copy of the Assessment order dated _____ passed under section ____of the Income tax Act, 1961 by Assistant Commissioner of Income tax ___ for the assessment year ____	3	17-22
(e)	Power of attorney in my/our favour	1	23-24
(f)	Challan dt ______ showing payment of Rs. ______through _______Bank ------- (__________) as fees for filing appeal as prescribed under section 253(6)(c) of the Income tax Act, 1961.	Original	25

Please find the above in order and fix a suitable early date for the hearing of the case.

Thanking you,

Submitted

For ___________________.
Chartered Accountant

Authorized Representative

***Specimen of Letter of Authority*-**

LETTER OF AUTHORITY

I,____hereby authorize S/Shri ____of M/s A & CO Chartered Accountants under the provisions of section 288 of the Income Tax Act, 1961 to represent and appear on behalf of ___________________________________ before the Income Tax Appellate Tribunal constituted under section 252 of the Income Tax Act, 1961 in Appeal No.__________ for the Assessment Year_______ . His/ Their explanations and statements shall be binding upon me/us.

Date (Signature)

Place_________

I/We ___________________________________of M/s A & Co Chartered Accountants do hereby declare that, being chartered accountant, I/We am/are qualified under the aforesaid provisions to represent and appear on behalf of ______________

___________________.

Date____________ (Signature)

Place.

Covering letter for filing cross objections:

The Assistant Registrar, Date
Income Tax Appellate Tribunal,
___________Bench.

Sir,

Sub: Filing of Cross objections in Form 36A A.Y.________
in the case of ____________________________

Please find enclosed Form 36A and connected papers in triplicate detailed as below

Sr. No. Particulars Page Nos.

1. Form 36A along with grounds of cross objections
2. Certified true copies of the CIT(A) order dt._____
3. Certified true copies of Form 35 with statement of facts and grounds Of appeal.
4. Certified true copy of the Assessment order u/s
5. Letter of Authority

Kindly acknowledge the same.

Submitted by,

For________________________

(_____________________)

Draft Application for condonation of delay for belated appeal/Cross objections

The Asstt. Registrar Date
Income Tax Appellate Tribunal,
_______Bench

Sub: Application for condonation of delay in filling appeal
Reg: ____

Sir,

I enclose herewith the Appeal in Form 36 under the Income Tax Act against the order of the CIT(A)______ relating to the assessment year _________ . In accordance with the provisions of Income tax Act, the appeal should have been filed with the office of the tribunal on or before _________ as I Have received the impugned order of the CIT (A) on _______________. The appeal could not be filed within 60days as I was bad ridden and was hospitalized for two months. Thus, I was prevented by sufficient cause to file the appeal within the permitted time. The medical certificate alongwith my affidavit is enclosed herewith.

I, therefore, request that the delay in filing the appeal may be condoned.

Submitted by,

(ABC)

(Performa for stay application)

BEFORE THE INCOME TAX APPEELATE TRIBUNAL__________BENCH_________.

STAY APPLICATION NO. ________/ /
(Arising out of ITA No.________/ /
ASSESSMENT YEAR :

UNDER THE INCOME TAX ACT, 1961 FOR STAY OF RECOVERY OF TAX

1	Short facts regarding the demand of tax, interest, penalty, fine, estate duty or any other sum, recovery of which is sought to be stayed.		
2	The result of the appeals before the CIT(Appeals), if any.		
3	The exact amount of tax, interest, penalty, fine, estate duty or any sum demanded, as the case may be, and the amount outstanding.		
4.	The date of filing the appeal before the tribunal and its number, if any.		
5	Whether any application for stay was made to the Revenue authorities concerned and, if so, the result thereof. (Copies of correspondence, if any, to be attached.)		
6	Reasons in brief for seeking stay.		
7	Will the applicant be prepared to offer any security and, if so, in what form?		
8	Prayers to be mentioned clearly and concisely (stating exact amount sought to be stayed).		
9	The contents of the application shall be supported by an affidavit sworn by the applicant or his duly authorised agent.		

Place : **APPLICANT**
Date :

Note: 1. The application shall be made in triplicate and shall be neatly typed on one side of the paper with copies all the relevant document including demand notice, copies of correspondence with the Revenue authorities for stay of demand and copies of the letter refusing stay of demand.
2. The contents of application shall be supported by an affidavit duly sworn in by the applicant or his authorized agent.
3. The application shall be presented by the applicant in person or by his authorized agent or sent by registered post to the Bench of the Tribunal where appeal was filed or which has got jurisdiction to hear the appeal.

(PERFORMA AFFIDAVIT TO BE ENCLOSED ALONGWITH STAY APPLICATION)

BEFORE THE INCOME TAX APPELLATE TRIBUNAL :

BENCHES : -----------------------

In the matter of :

ASSESSMENT YEAR :

AFFIDAVIT

I, --, aged about -- years old, son of --, presently ---, the above named deponent do hereby solemnly affirm and state as under :

1. That I, being the Appellant in this Stay Petition /Appeal, am fully conversant with the facts of the case and otherwise competent to make this affidavit.

2. That the contents of the accompanying application for stay of demand are true to the best of my knowledge in so far as they relate the facts of the case and the legal submissions are based on the legal advice received by me and believed by me to be correct.

DEPONENT

VERIFICATION:

I, the above named deponent do here by solemnly affirm and state that the contents of the above affidavit are true to the best of my knowledge and belief and nothing material has been concealed there from.

Signed and verified at ------------------- on this the _______ day of , .

DEPONENT

Draft Miscellaneous Application under Rule 24/ Exparte Order

BEFORE THE HON'BLE INCOME TAX APPELLATE TRIBUNAL
………………….. BENCH, …………….

M.A. No. ..………….
(In Appeal No…………………..)
Assessment Year: ………………

Re: ……………………………………..
………………………………………… ---- Appellant

Vs.
The ACIT, ………………….. --- Respondent

Application u/s 254(2) of I.T. Act, 1961 read with Rules 24 and 34A of Appellate Tribunal Rules, 1963 arising out of ITA No………..
for the A.Y. …….

With reference to the above captioned mater, the appellant most humbly begs to submit the following for your Honours' kind consideration :-

1. That the above captioned appeal has been dismissed by the Hon'ble Income Tax Appellate Tribunal …….. Bench , …….. ex-parte vide appellate order dated …….. with the following observations :-

> "2. No one appears for and on behalf of the assessee appellant despite the fact that notice has been served upon the assessee through Registered Post. Proof of the same is placed on record by way of acknowledgement dated ……. for the hearing on ……….. The appeal was passed over and called out twice and even in the second round also there was no one present on behalf of the assessee nor any request for adjournment was received. In the circumstances, it can be safely presumed that the assessee is not interested in prosecuting its appeals.
>
> 3. There might be various reasons with the appellant to remain absent at the time of hearing. One of the reasons might also be a desire or absence of need to prosecute the appeals or inability to assist the Tribunal in a proper manner. The law assists only those who are vigilant and not those who sleep over their rights. Considering the facts and keeping in view the provisions of Rule 19(2) of the Appellate Tribunal Rules, as were considered in 38 ITD 320 (Delhi) in the case of CIT vs. Multiplan India Limited, we treat this appeal as un-admitted. The assessee, if so advised, shall be free to move this Tribunal praying for recalling of this order and explaining the reasons for non-compliance etc., and if the bench is so satisfied about the reasons etc., then this order may be recalled.
>
> 4. In the result, appeals filed by the assessee is dismissed.
>
> 5. As pronounced in the open court on …….."

2. a) That at the outset itself the appellant most humbly wishes to apprise your honours' that the facts that the appellant is interested, keen and desirous to prosecute his appeal under consideration and further he is interested to assist the Hon'ble Tribunal in proper manner, are evident from the conduct of the appellant in the past, particularly that the appellant has always made compliance of each and every notice(s) of the Hon'ble Tribunal and had even filed a detailed paper book/compilation comprising of

various documents/papers relied upon for contesting various arbitrary and unjust disallowances/additions made by below authorities, both before the Hon'ble Tribunal as well as with Departmental Representative, long back on …………….

b) That the facts narrated in foregoing para 2(a), beyond any doubt establishes the bonafide intention, keen desire and willingness of the appellant to prosecute his appeal under question and to extend his utmost possible co-operation and to provide assistance to Hon'ble Tribunal in this regard.

3. a) That the appellant most humbly and respectfully wishes to further apprise your honours' that as notice affixing the hearing on ………………..was never received by the appellant thus he was not at all aware about the affixation of hearing of his appeal on …………… and obviously therefore he or his authorized Counsels could not appear on said date, to prosecute appellant's appeal.

b) That the appellant had no intention for default. He was prevented by sufficient/reasonable cause beyond his control to appear and prosecute his appeal himself or through his authorised counsel on the date fixed for hearing i.e. on ……………….

4. That unfortunately while passing ex-parte order under consideration, the paper book/compilation filed by the appellant on …………….. had escaped the kind attention of the Hon'ble Members.

5. That from the facts narrated in foregoing paras (2) and (3), it is undoubtedly evident that the appellant has got sincere desire and willingness to prosecute his appeal and is keen to assist the Hon'ble Bench in most appropriate and proper manner and there was most reasonable/sufficient cause beyond the control of the appellant which has resulted into non appearance and/or improper compliance, if any.

6. That in support of the facts narrated in foregoing paras (2) and (3) the following documents/papers are furnished :-

a) Affidavit duly sworn by the appellant; and

b) Evidence in support of the fact that the paper book/compilation was filed before the Hon'ble ITAT and with the Departmental Representative on ……………….

7. That in view of the second proviso to sub-section (2) of section 254 of I.T. Act, 1961 challan for the payment of requisite fee of Rs.50 is enclosed herewith.

PRAYER

In view of the aforementioned facts and circumstances of the appellant's case, it is quite evident that the appellant has got sincere desire to prosecute his appeal and there was most reasonable/sufficient cause beyond control of the appellant, which has resulted into non- appearance and/or improper compliance, if any, on the date fixed for hearing. The appellant assures your honours' that he will fully co-operate and assist the Hon'ble Bench in prosecuting his appeal most judiciously and will discharge related obligations properly. It is prayed that your honour be kind enough to restore/recall the above captioned appeal for fresh hearing.

Yours faithfully,

Date:

Draft Misc Application under section 254(2) for rectification

BEFORE THE HON'BLE INCOME TAX APPELLATE TRIBUNAL
………………….. BENCH, …………….

M.A. No. ..…………
(In Appeal No…………………..)
Assessment Year: ………………

Re: ……………………………………..
……………………………………… ---- Appellant

Vs.
The ACIT, ………………….. --- Respondent

Application u/s 254(2) of I.T. Act, 1961 r.w. rule 34A
of Appellate Tribunal Rules, 1963 arising out of ITA No………..
for the A.Y. …….

With reference to the above captioned mater, the appellant most humbly begs to submit the following for your Honours' kind consideration :-

1. The aforesaid appeal has been disposed of by your honour vide order dated________ .
2. That the assessee has filed the said appeal against the order of the CIT(A) dt. ____ by taking the 9 grounds of appeal. For ready reference these grounds are reproduced as under:-

   "1. 2. 3. ………………..”

3. That while disposing of the appeal, Your honour has disposed of ground no. 1 to 7 but ground no. 8 & 9 were left out and thus remained undisposed of.
4. That due to the non disposal of ground no. 8 & 9, your honour will appreciate that a mistake has crept into the order of this tribunal.

Appellant, therefore, request your honour to recall the impugned order of this tribunal dated ____________ to the extent ground no. 8 & 9 are not disposed of.

Submitted by

(_______________)

Encl: As above

Proforma for Adjournment application:

BEFORE INCOME TAX APPELLATE TRIBUNAL, BENCH ,

IN THE MATTER OF:

Vs.

Appeal No. / / for the A.Y.

ADJOURNMENT APPLICATION

Most respectfully, it is submitted that the aforesaid appeal has been fixed for hearing for today i.e. . The assessee belongs to and is putting up there, due to illness, the assessee has been advised complete bed rest and therefore he could not reach with the necessary papers for the preparation of the case. Under these circumstances, I am unable to prepare the case.

I, therefore, request your honour to adjourn the hearing by 15 days.

Submitted by:

Dated

( )
Chartered Accountant,
Address

<u>Draft Application for admission of additional Ground of appeal</u>

Before Income Tax Appellate Tribunal ___________Bench_____________

IN THE MATTER OF:

Vs.

Appeal No. / / for the A.Y.

Application for raising additional grounds of appeal
Date of hearing fixed_________________________

Sir,

The aforesaid appeal has been fixed for hearing on __________ . In the aforesaid appeal following grounds of appeal were left out to be raised. These grounds are legal grounds and all the necessary material relating to these grounds are already on record. No new facts are to be investigated.

Additional Grounds:

1.
2.
3.
…

We, therefore, request your honour to admit these additional grounds. The copy of this application has already been served on the ld. DR.

Submitted by,

(X & Co)

Place___________
Date____________

Proforma for application for admission of additional evidence

BEFORE HON'BLE INCOME TAX APPELLATE TRIBUNAL,

--------- BENCH, ---------

IT(SS) No. **40/-----/2004**

HCA (deceased) through Legal heir Smt.	Versus	**The Assistant Commissioner (IT) ,** Central Circle, --------------------
(Appellant)		(Respondent)

Block Period 01-04-1989 to 16-02-2000

Section 158BC/143(3) of the Income tax Act, 1961

APPLICATION SEEKING ADMISSION OF ADDITIONAL EVIDENCE UNDER RULE 29 OF INCOME TAX (APPELLATE TRIBUNAL), RULES, 1963

MAY IT PLEASE YOUR HONOURS

The present appeal before the Hon'ble Tribunal i.e. ITA No. 40/-------/2004 arises out of the order dated 26-03-2004 passed by learned Commissioner (Appeals)-I, -------.

2. One of the issues involved in this appeal is the assessability of the value of a Maruti Esteem Car No. DC -4CC _______which was alleged to be parked in or about the residential premises of the appellant on 16-02-2000 when a search took place at the said premises in the case of Sri P Agrawal, son of the appellant.

2.1 During the course of search proceedings, no question was put to the appellant regarding the ownership of car. During the course of block assessment proceedings, the appellant denied ownership of the said Car. However, without bringing any contrary evidence on record, learned Assessing Officer assumed the value of the said Car at Rs. 500,000 and held the Car as belonging to the appellant and assessed it accordingly.

2.2 During the course of first appellate proceedings also, the appellant denied ownership of the said Car. But learned appellate authority confirmed the said addition on the ground that no contrary evidence was filed by the appellant to prove his claim and without providing any opportunity shifted the burden to prove otherwise on the appellant.

2.3 The appellant has been able to collect a copy of the registration certificate of the said car which shows that it was not registered in the name of the assessee and disproves the contention of the AO and meet the objection of learned CIT(Appeals).

3. The appellant understands that this Hon'ble Tribunal is highest and last fact finding authority and it would be in the interest of substantial justice that the copy of the registration certificate, filed by the appellant at Serial No. 26 of the Paper-book, be admitted as additional evidence and adjudicated upon. These evidence were not filed earlier as the appellant was not given any opportunity neither by the AO. The CIT(A) although was requested for adjournment as the appellant has already applied the RTO office for the copy of the registration book but CIT(A) immediately disposed of the appeal. Thus the appellant was prevented by sufficient cause to produce the additional evidence before the authorities below.

4. The appellant has further filed Trading and profit & loss account of M/s________________for the year ending 31st March, 2001 which also contains its trading results for the year ending 31st March, 2000 also, at Serial No. 27 of the Paper book. The Assessing Officer on page 8, has relied upon the said results, but the copy of said trading results were never confronted to the appellant for rebuttal.

4.1 The appellant had objected before learned CIT(Appeals) on the reliance placed by the Assessing Officer on such trading results with confrontation to the appellant. Learned CIT(Appeals), however, has not adjudicated upon the grievance of the appellant and confirmed the addition.

4.2 The appellant has obtained a copy of said trading results and is of the opinion that such results were wrongly relied upon by the authorities below. The said trading results in strict sense are not additional evidence in as much as the same has been relied upon by the lower authorities. These evidences are merely the supporting evidence. However, since, copies thereof were not provided to the appellant, the appellant is filing the same as additional evidence and in view of the stated facts, prays this Hon'ble Tribunal to admit and adjudicate upon the same.

5. The appellant has further filed copy of acknowledgements of filing of returns of income and copy of PAN card in the case of ______________ HUF with a view to show that such HUF was existing assessee on the file of the revenue authorities. In spite of this, the revenue preferred to make the addition in the hands of the appellant.

5.1 The appellant prays that in the interest of substantial justice, the additional evidences filed by the appellant be kindly admitted and adjudicated upon and oblige.

Date: For

Proforma Index

BEFORE THE HONOURABLE INCOME TAX APPELLATE TRIBUNAL,

_________ BENCH________

In the matter of : ………… vs DCIT _________

Appeal Number : ITSS/ ___/ ___/ 2003 & ITSS/ ___/ __/ 03

Block Period : 01.04.1990 to 25.05.2000

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Sr. No.	Particulars	Pg No.
37.	Synopsis	
38.	Submissions before CIT(A)	
39.	Copy of notice received u/s 158BC dt 31.08.2001	
40.	Copy of letter dt 28.06.2002 filed before AO	
41.	Copies of pgs 25 to 27 of assessee's letter dt 7.6.2002 filed before AO	
42.	Copy of official quotation dt 17.4.98 of Calcutta SE for shares of AEFL	
43.	Copy of purchase bill & contract for purchase of 16,000 shares at 5.35 per share	
44.	Copy of letter dt 8.5.98 from AEFL intimating the assessee about registration of transfer of the said shares in his name.	
45.	Copies of 4 share certificates as sample wherein the fact of ownership of shares by the assessee w.e.f. 8.5.98 is mentioned.	
46.	Copy of acknowledgement for filing the return of income alongwith computation of assessable income of the assessee for A.Y. 99-2000	
47.	Market quotation dt 30.6.99 published in ET	
48.	Copies of sale bill & contract for sale of the shares	
49.	Copy of acknowledgement for filing the return of income alongwith computation of assessable income of the assessee for A.Y. 2000-01	
50.	Copy of affidavit of the assessee dt 6.6.2002 filed before AO	
51.	Copy of pgs 19 & 20 of assessee's letter dt 7.6.2002 filed before AO	
52.	Copy of pgs 10 to 16 of assessee's letter dt 24.6.2002 filed before AO	
53.	Legal cases relied upon	

Certified that all the above papers were available before the AO/ CIT(A) except at serial nos. 1 & 17 which are not additional evidence.

Specimen of Synopsis

BEFORE THE INCOME TAX APPELLATE TRIBUNAL, _______ BENCH______

In the matter of

……………… vs DCIT _______

A/No.: ITSS/ ___/ ___/ 2003 & ITSS/ ___/ __/ 03

Block Period 01.04.1990 to 25.05.2000

SYNOPSIS

Hon'ble Sir,

This appeal has been fixed for hearing for 19.07.2007. In this regard, we submit that our appeal be disposed of after considering our following submissions:

Brief facts:

Search & seizure was carried out at the residence and professional premises of the assessee on 25.05.2000 & continued till 26.05.2000. However, no undisclosed asset or investment was found in the possession of the assessee. The assessee is a practising Chartered Accountant and is being regularly assessed at Circle _______. A notice u/s 158BC was served on the assessee on 10.09.2001 by DCIT CC _______elhi asking the assessee to file a return for the block period within 15 days of the receipt of the notice. In response thereto, return was filed under protest showing nil undisclosed income on 24.09.01. The assessee has raised an objection regarding the jurisdiction of the Assessing Officer in the case of the assessee with a request to supply the assessee with a copy of the authorization regarding change of jurisdiction vide letter dt 26.09.2001. However, no reply was ever received in this matter.

During the AY 2000-01, the assessee sold his land at _____, _______ & incurred a loss of Rs 27,51,739/-. He also sold his investment in shares of ______. on which he earned a long-term capital gain of Rs 24,03,694/-. All these transactions were duly disclosed in the regular books of accounts of the assessee as well as in the income tax return regularly filed by the assessee. The purchase of the shares also stand duly disclosed in the income tax return for the AY 1999-2000. During the block assessment proceedings, the AO held that the transactions in the shares were bogus and hence there was no long term capital gain from the dealing of the said shares. He further held that the sale consideration of the land was understated and that it should be Rs 44,11,150/- as determined by the DVO and consequently he added a sum of Rs 25 lakhs as the undisclosed income of the assessee (being under declaration of sale consideration of land).

Addition was made despite the fact that both the transactions were shown in regular books of accounts. On appeal, the CIT(A) confirmed the addition but reduced the amount from Rs. 25 lakhs to Rs. 2,57,456/-. The assessee has come against the sustenance of the addition of Rs. 2,57,456/- by way of ground no 9 while the Revenue has come in appeal against the reduction of the addition by taking ground no 1 in their appeal.

The AO also made an addition of Rs. 1,50,000/- towards a hypothetical 6% commission presumed to have been paid by the assessee for the so called bogus accommodation entry of Rs. 25 lacs relating to the capital gain in the shares. This too was confirmed by the CIT(A) by reducing the rate of the hypothetical commission to 1.5% and consequently the amount to Rs. 37,500/-.

Similarly, an addition of Rs. 6,35,350/- was made by the AO towards receipt of a hypothetical brokerage @ 6% on transactions amounting to Rs. 2,11,78,341/- on the presumption that the assessee had acted as a mediator for accommodation entries and earned brokerage for arranging clients. The CIT(A) confirmed the addition but reduced the rate of brokerage to 3% and consequently the amount to Rs. 3,17,675/-.

The AO on the basis of 96 IVPs photocopies also added a sum of Rs. 3,18,500/- as undisclosed investment for the block period. The CIT(A) deleted the same against which the Revenue has come in appeal by way of ground no 2.

<u>Our contention:</u>

1. Gr. No. 1, 2, 3 & 5 are not pressed.
2. Ground nos 4 & 9 and ground no 1 of Revenue's appeal

	Page No.	Para No.
AO's Order	2-18/ 19-21	land/ shares
CIT's Order	5-11	9-18

2.1 These grounds relate to the addition made on account of under consideration shown against sale of land. The facts relating to these grounds are that the assessee has shown land sold on 6.7.1999 for a sum of Rs. 17,50,000/- which was purchased by him on 13.6.96 for Rs. 32,51,899/-. He was having 50% share in the land. The assessee has shown loss on the sale of this land at Rs. 27,51,739/-. These transactions were duly recorded in the regular books of account. The AO referred the matter to DVO to determine the market value as on 6.7.1999. The DVO worked out the value at Rs. 44,11,150/- relating to the share of the assessee. On the basis of the said report, the AO determined the undervaluation of sale of property at Rs. 26,61,150/-. The AO also noted that the assessee has shown shares in ______________ on 30.6.1999 for a sum of Rs.

24,99,160/- which was acquired by the assessee on 24.4.98 for a sum of Rs. 86,140/-. On the basis of search taken place in the case of __________ on 14.12.99, the Revenue has taken the view that Shri _________ was involved in giving bogus entries of various companies. Shares of __________________ were also used for the same. Shri _____________ has recorded in his statement that they charged commission @ 75 paise and there was no physical delivery of shares in these transactions. Statements of Shri __________, one of the mediators, and Shri ___________ recorded in the case of Shri __________ were produced by the AO in the assessment order. The statement of the assessee was also recorded but the assessee denied these transactions. Assessee was not provided with the cross examination of any of these parties. The AO on the basis of case of Shri _____________ took the view that the transaction was bogus and the capital gain on the sale of shares was non genuine and the assessee has bought the accommodation entry. Thus ultimately, the AO concluded that the assessee has deliberately undervalued the sale consideration on the sale of land and disclosed the bogus capital gain on the sale of the shares. The addition of Rs. 25 lakhs was made as income from undisclosed sources. When the matter went in appeal before the CIT(A), the CIT(A) as per the finding given under para 15-17 of his order worked out the difference between the long term capital gain shown by the assessee in the return and the long term capital gain to be arrived on the basis of the search treating the sale of the shares to be bogus and substituting the sale consideration for the sale of the land at Rs. 44,11,150/- in place of Rs. 17,50,000/- in the following manner:

	As per the Return		On the basis of search
Capital gain from shares	24,03,694/-		Zero
LTCG from properties	(-)27,51,739/-		(-) 90,589/-
LOSS	(-) 3,48,045/- (A)	Net	(-) 90,589/- (B)
Undeclared Income (A-B)	Rs. 2,57,456/-		

Thus, the CIT(A) sustained the addition of Rs. 2,57,456/-. Both assessee as well as Revenue are in appeal.

2.2 It is submitted that no evidence was found for all these additions during search proceedings. Section 158BB (1) prescribes that computation of undisclosed income has to be on the basis of material found during search. The income disclosed in the return is not undisclosed income u/s 158B(b). Section 158B(b) is a charging provision because it defines undisclosed income. S.158BB is a computation provision. Any income to be charged as undisclosed has to be undisclosed income. If there is a conflict between charging and computation, charging provision will prevail. Computation provision cannot supercede charging income.

2.3 We vehemently submit that Chapter XIV B consisting of Sec. 158B to Sec 158BH was introduced by the Finance Act 1995 w.e.f. 1/7/1995 making procedure of assessment of cases in which search is initiated u/s 132 or where books of A/c, other documents or any assets are requisitioned u/s132A. The chapter is titled (special procedure for assessment of search cases). The scheme of block assessment enacted under this chapter laying down procedure for the block assessment proceedings is intended by the legislature to operate simultaneously with the normal and regular scheme of assessment indicate under chapter XIV of the I.Tax Act. Both the tax schemes are independent of each other and they are not mutually exclusive. Block assessment under chapter XIV B is not intended to be a substitute for regular assessment. Its scope and ambit is limited in that sense to material unearthed during search. Therefore if the search action does not disclose undisclosed income, the question of any assessment being framed under that chapter is simply improper and outside the purview of this chapter. Clause (b) of Section 158B contains inclusive definition of undisclosed income and reads as under:-

> ***'(b) 'Undisclosed income' includes any money, bullion, jewellery or other valuable article or thing or any income based on any entry in the books of account or other documents or transactions, where such money, bullion, jewellery, valuable articles, thing, entry in the books of account or other document or transaction represents wholly or partly income or property which has not been or would not have been disclosed for the purposes of this Act or any expense, deduction or allowance claimed under this Act which is found to be false".***

2.4 If we analyze the aforesaid definition, it provides that undisclosed income includes: -

(i) Any money, bullion, jewellery or other valuable article or thing or,

(ii) Any income based on any entry in the books of account or other documents or transactions;

(iii) Such money, bullion, jewellery, valuable article, thing, entry in the books of account or other documents or transactions represents wholly or partly income or property;

(iv) Which has not been or would not have been disclosed for the purposes of this Act.

(v) or any expense, deduction or allowance claimed under this Act which is found to be false

2.5 From the aforesaid analysis of the definition, it clearly emerges that if any asset or any income as recorded in the books or documents has been disclosed or intended to be disclosed to the income tax authorities, this would be outside the pale of undisclosed income as defined under clause (b) as above. Thus we submit that any income assessable under Chapter XIV B must first be undisclosed income. Section 158B(b) is the charging provision while the computation of the undisclosed income has been provided under section 158BB. The computation provision cannot override the charging provision.

2.6 It is further submitted that section 158BB, which provides for computation of undisclosed income of block period, expressly and unequivocally provides that the undisclosed income has to be computed *"on the basis of evidence found as a result of search …… and such other materials or information as are available with the assessing officer and relatable to such evidence."* The expression *"relatable to such evidence"* has been inserted by the Finance Act, 2002 retrospectively w.e.f. 1.7.1995. Bare reading of this provision would indicate that undisclosed income has to be computed on the basis of evidence and material found during search. Any material or evidence, available to the assessing officer, not related to the search would not form the basis for computation of undisclosed income.

2.7 On the basis of the aforesaid legal provision, it is submitted that the transactions which the appellant had duly disclosed in the regular assessment and the books relating thereto do not show any unearned income and the returns and documents filed by the appellant subsequently will not entrust the jurisdiction on the assessing officer to make assessment under Chapter XIVB. In the case of CIT Vs. Ravikant Jain 250 ITR 141(Delhi), the Hon'ble Delhi High Court has held that "a block assessment under Chapter XIVB of the Act is not intended to be a substitute for a regular assessment, that its scope and ambit is limited in that sense to materials unearthed during the search, that it is in addition to the regular assessment already done or to be done." Similar view has been taken by the various High Court and the benches of the tribunal as is apparent from the following decisions:-

1. *The Hon'ble Mumbai High Court in the case of CIT vs. Vikram A Doshi reported in 256 ITR 129 has held that transaction disclosed in return which were subject to matter of Regular assessments, can not be considered in Block assessment.*

2. *The Hon'ble Madhya Pradesh High Court in the case of Bhagwati Prasad Kedia vs. CIT reported in 248 ITR 562 has held that the Assessing Officer was not entitled to question loan transaction, which is subject matter of Regular Assessment. The A.O. was wrong in holding that the said sum could be taxed in the block assessment although the same featured in the regular books of accounts.*

3. *The Hon'ble Delhi High Court in the case of CIT vs. Ravi Kant Jain reported in 250 ITR 141 has held that block assessment is not a substitute for regular assessment. Assessment of block assessment can only be done on the basis of evidence found as a result of search.*

4. *The Hon'ble Madhya Pradesh High Court in the case of CIT vs. GOM Industries Ltd. reported in 257 ITR 78 (Head note)amount shown in balance sheet and transaction recorded in books- finding that there was no concealment of Income within the meaning of Sec. 158B(b)- No substantial question of Law- Amount not assessable as Income from undisclosed sources.*

5. *The Hon'ble Mumbai High Court in the case of CIT vs. Shamlal Balaram Gurbani reported in 249 ITR 501 (head note) income disclosed in the audited balance sheet – No reason for treating income as undisclosed income for purposes of Block Assessment Tribunal justified in deleting additions- No substantial question of law arises.*

6. *The Hon'ble Gujarat High Court in the case of N.R.Paper and Board Ltd. vs. DCIT reported in 234 ITR 733 has held that block assessment is for assessment of undisclosed income of the block period and regular assessment is for assessment of total income- No double assessments – Both are for different purposes.*

7. *The Delhi 'A' Bench in the case of Sheela Aggarwal vs. DCIT reported in 106 Taxman (Tax Magazine) 227 has held that in computation of undisclosed income- Assessing officer does not acquire any power under Sec. 158BA to make roving enquiries and investigation about assessments already completed and further to compute undisclosed income on estimate basis on presumption and surmises, there being no seized material to support computation of such undisclosed income – Also held that Assessing officer could not reopen issue and assess undisclosed income on account of credit amounts especially when same stood accepted in regular assessment on scrutiny and no evidence was found during search to prove this credits as bogus or non-genuine.*

8. *The Delhi Tribunal in the case of Ravikant Jain vs. ACIT reported in 67 TTJ 797 has held that assessment under Chapter XIVB could be made only in respect of undisclosed income and such undisclosed income must come as a result of search.*

9. *The Hyderabad 'A' Bench of the tribunal in the case of Srinivasa Resorts Ltd vs. ACIT reported in 127 Taxman (Tax Magazine) 202 has held that block assessment under Chapter XIV-B can not be made unless there is material found during the search, which can lead to an inference of undisclosed income.*

10. *The Madras Bench of ITAT in the case of Niles R.Shah vs. ACIT reported in 253 ITR(A.T) 0034 that Diary containing investment in shares by Assessee found during search- no return filed by the assessee for A.Y.1995-96 at the time of search. Treating cash credits and gifts as undisclosed income and including them in total income for block period – in absence of evidence / material or information in possession of A.O., addition not justified.*

11. *The Delhi 'A' Bench of the tribunal in the case of Ravi Prakash Aggarwal (HUF) vs. ACIT reported in 67 TTJ 234 has at paras 2 & 2.1 held that cash credits recorded in the books of account and accepted by the department in respective years, in the absence of any incriminating material found during search, could not be made the subject matter of Block Assessment.*

12. *The Delhi 'D' Bench of tribunal in the case of General Exporter vs. ACIT reported in 67 TTJ 119 (Head Note). No specific documents produced by revenue to show that income assessed was a direct result of documents recovered during search queries raised in respect of documents replied by the assessee and same not made basis of assessment- Assessee already filed return disclosing income from exports supported by various documents- No further material discovered there was thus no justification for addition of income from undisclosed sources.*

13. *The Chandigarh 'A' Bench of the tribunal in the case of Shanti Rani vs. ACIT reported in 126 Taxman (Tax Magazine) 62 to which Hon'ble accountant member was the author has held that Chapter XIV B is separate code to bring to tax only undisclosed income and no income or source there of which had been disclosed in regular return can be brought under this chapter – undisclosed income will include only that asset or income which is based on any entry in the books of account or document or would not have been disclosed by assessee to department for purposes of imposing tax under the Act.*

14. *The Jodhpur bench of the tribunal in the case of Chitra Devi vs. ACIT reported in 77 ITJ 640 has held that Addition in block assessments can be made only on the basis of incriminating material found as a result of search and not without the same.*

15. *The Lucknow bench of the tribunal in the case of Savitri Devi vs. ACIT reported in 76 ITJ 628 has held at para 18 to 20 that addition made on the basis of the reply and the balance sheet filed by the assessee herself during the course of assessment proceedings could not be sustained- Assessee made the payment for purchasing the property and reflected the same duly in her accounts. Addition made on account of investment in House property could not be sustained as the same was not covered and included in the "undisclosed income".*

16. *The Nagpur Bench of ITAT in the case of Savitri Devi vs. ACIT reported in 69 ITJ 712 has held that an expenditure recorded in the books of account cannot by any stretch of imagination be called as undisclosed income.*

17. *The Delhi 'A' Bench of the tribunal in the case of Dolly farm's & Resort (P) Ltd vs. DCIT reported in 69 TTJ 821 has held that once transaction is reflected in the books of account regularly maintained such transaction cannot form subject matter of any addition in block assessment.*

18. *The Hyderabad 'B' Bench of the tribunal in the case of Essem Intra Port Services (P) Ltd vs. ACIT reported in 72 ITD 228 has held that in computing the undisclosed income information and details furnished in the return of income or statements accompanying it or shown in the books of accounts maintained in the regular course of business cannot be made the basis of computation of undisclosed income under chapter XIV B. For the purposes of chapter XIV B there should have been non disclosure of income and such non-disclosure should have been unearthed in search or requisition proceedings.*
19. *The Mumbai 'B' Bench of the tribunal in the case of Sundar agencies vs. DCIT reported in 63 ITD 245 has held that undisclosed income defined Section 158 BA does not provide a license to revenue for making roving enquiries connected with completed assessments unless some direct evidence comes to the knowledge of department as a result of search which indicates clearly of undisclosed income.*
20. *Further, our aforesaid view is duly supported by the decision of Visakhapatnam Bench of ITAT in the case of P.Govinda Satynarayan vs. DCIT 98 TTJ (Visakha) 908*

    Madhavi Finvest Pvt Ltd vs ACIT 99 TTJ (Visakha) 933

    I.Appala Raju vs ACIT 100 TTJ (Visakha) 438

2.8 Income declared in belated return is also not undisclosed income. In this regard, we rely on the following case laws:

1. *B.K.Agarwal vs ACIT (2002) 76 TTJ 69 (Lucknow)*
2. *G. Kanagaraj v DCIT (2001) 73 TTJ 731 (Chennai)*
3. *Vidya Madanlal Malani v ACIT 69 TTJ 456 (Pune)*
4. *Amarnath Aggarwal vs DCIT (2000) 67 TTJ 551 (Del)*
5. *Nagin Das M. Goradia vs. DCIT (2004) 83 TTJ 151 (Mumbai D) – 'No incriminating material having been found against the assessee during search, AO erred in treating the regular income returned in belated returns filed after the date of search as undisclosed income for purposes of block assessment.'*
6. *Suganchand C. Shah v. ACIT (2005) 149 Taxman 30 (Ahd Tribunal) – 'whether regular income, which was being disclosed year after year prior to search, could not be said to be undisclosed income merely because return for one assessment year could not be filed by it in time – Held, yes.'*

2.8 Reliance is placed on the under mentioned judgments for the proposition that no addition can be made on the basis of DVO's report, if no adverse material is found during search:-

a. *Subash Mehra v DCIT (2000) 113 Taxman (Del.)(MAG) 79.*
b. *Indore Constructions (P) Ltd. v ACIT 71 ITD 128 (Ind.)*

2.10 Capital Gains on Shares:

The allegation of the AO that the capital gain on shares is bogus has also been affirmed by the CIT(A). It is submitted that the same is not correct for the following reasons:-

a. Assessee has shown the purchase of shares in the preceding year i.e. on 24.04.98 and has reflected the same in his balance sheet filed with the department. The department has accepted the said purchase. Purchase was 2 years prior to search and 1 year prior to sale of land.
b. The shares were duly transferred in the name of assessee.
c. The sale consideration was received through a/c payee cheques.
d. As an evidence of sale value share market quotation of such shares was filed during the assessment proceedings.
e. The broker's note for sale was filed.
f. Thus the entire onus was discharged by the assessee as against this no evidence was adduced by the AO for holding such transaction as bogus. He has merely relied on the self serving statements of certain persons especially when none of them has named assessee as beneficiary for their accommodation activity. Their oral testimony cannot be given more credence than the documentary evidence filed by the assessee considering the provision of section 91 of the Evidence act.
g. Copy of statement of the parties stated in the assessment order was not given to the assessee for rebuttal although the same was specifically asked for nor any opportunity was allowed to cross examine them. In such circumstances no reliance can be placed on such statements. This proposition has been held by the Hon'ble Supreme Court in the case of *Kishinchand Chellaram v CIT 125 ITR 713 (SC).*

In the absence of cross examination not being provided the additions made are bound to be deleted. *Hon'ble Delhi High Court (jurisdictional) in the case of CIT v SMC Share Brokers Ltd 288 ITR 345* in which it was held:

"That the Tribunal was right in its view that in the absence of MA being made available for cross-examination, despite repeated requests by the assessee, his statement could not be relied upon to its detriment"

The investment made in 16,000 shares of Arihant Equity Fund Ltd. amounting to Rs. 86,140/- was duly recorded in the regular books of accounts for the financial year 1998-99 and was duly disclosed by the assessee in his Balance Sheet for the year ended on 31.03.1999 filed along with the Income Tax return on 31.12.1999 i.e. much before the date of the search 25.05.2000. The sale of the shares was also duly recorded by the assessee in his books of accounts for the financial year ended 31.03.2000. The consideration for sale of shares was received through account payee cheques and was deposited in the regular bank accounts of the assessee.

h. Further, in somewhat similar circumstances, the Delhi ITAT has deleted the adverse finding in this regard. Reliance is placed on the under mentioned judgments:-
   i ITO Vs. Rajiv Aggarwal, 139 TAXMAN 170 (SMC-1)
   ii Sita Devi Vs ACIT, CC- 19 (1), New Delhi, in ITA No.387/D/2004 order dated 31/12/2004 Delhi Bench 'C' (unreported)

2.11 From the perusal of the evidences filed by the assessee during the course of the block assessment proceedings, it is apparently clear that what has been assessed in the block assessment are the sale consideration of the shares which was received by the assessee through account payee cheques and the same were already disclosed by the assessee in the computation and the details filed alongwith the income tax return for the AY 2000-01. Therefore, these sale considerations cannot be regarded to be the undisclosed income of the assessee within the definition of the undisclosed income given u/s 158B(b) of the Income Tax Act under Chapter XIVB. No other income has been brought on record as may be detected or found during the course of the search.

Similarly the sale of the land was duly disclosed in the regular books of account. No evidence was found which may prove that the consideration disclosed by the assessee was not correct except the valuation of the DVO which is merely an estimate the consideration received by the assessee cannot be rejected. Reliance is also placed in this regard on the decision of *Hon'ble Supreme Court K.P.Verghese vs ITO 131 ITR 597.*

Therefore the block assessment framed on the assessee is invalid and without jurisdiction and therefore it must be annulled. Or alternately, the addition made on account of the capital gain must be deleted.

3. GR. NO. 6 – GENERAL IN NATURE COVERED WITH RESPECTIVE GROUNDS

4. GR. NO. 7 – NOTICE

	Page No.	Para No.
AO's Order	N/A	
CIT's Order	3-4	4 -6

4.1 In respect of ground no. 7, it is submitted that the notice u/s 158BC dt 31.08.2001 required the assessee to file the return within 15 days. The said notice did not give to the assessee minimum complete 15 clear days for preparation of return for the block period. S.158BC, which provides for the issuance of the notice reads as under:-

> *"158BC. Where any search has been conducted under section 132 or books of account, other documents or assets are requisitioned under section 132A, in the case of any person, then-*
> *(i) in respect of search initiated or books of accounts or other documents or any assets requisitioned after the 30th day of June, 1995, but before the 1st day of January, 1997, serve a notice to such person requiring him to furnish within such time not being less than fifteen days;*
> *(ii) in respect of search initiated or books of accounts or other documents or any assets requisitioned after the 1st day of January, 1997, serve a notice to such person requiring him to furnish within such time not being less than fifteen days but not more than forty-five days,*
> *as may be specified in the notice a return in the prescribed form and verified in the same manner as return under clause (i) of sub-section (1) of section 142, setting forth his total income including the undisclosed income for the block period:"*

4.2 In view of the above provisions contained u/s 158BC, the notice is to be served upon the assessee requiring him to furnish the return within such time not being less than 15 days. The provision is apparently clear. The rule of literal construction has to be followed by ascertaining the meaning of the term "not less than 15 days". The only construction to this term is that a clear notice of more than 15 days is to be given. A specific obligation has been cast on the AO to do a particular act in a particular manner and within a particular time. The AO cannot be permitted to subvert this provision on the plea that it is an irregularity. Issuing of the notice u/s 158BC is a precondition for making assessment. No valid assessment u/s 158BC or u/s 158BD can be made without issuing a notice as is provided u/s 158BC. "The notice of less than 15 days tantamount to that no notice is issued". Therefore, the assessment framed by issuing of a notice otherwise than in accordance with the provisions of section 158BC has to be treated as if no notice has been issued. This is an illegality and not an irregularity. In this regard, the assessee relies on the decision of *Mir Iqbal Hussain vs. State of UP 52 ITR 625 in which Hon'ble Allahabad High Court* examined the provisions of S.34 of the Income Tax Act, 1922. The assessing authority directed the assessee to appear the next date and to submit the return. S. 15(3) requires not less than 30 days time to be given. The assessee challenged the assessment order as less than 15 days time was given. The Hon'ble High Court held notice to be invalid. *Bombay High Court in case of CIT vs Ramsukh Motilal 27 ITR 54* held that the issuance of a notice is a condition precedent to the assumption of the jurisdiction of assessing such income. It was further held that without issue of a valid notice u/s 25, the assessment in consequence thereof must be held invalid.

4.3 Merely that the assessee had filed the return in compliance with the notice does not mean that the validity of the notice shall get waived. In this regard, reliance was placed in the case of *Maneklal vs. Dr Prem Chand 1937 SCR 575*. An illegality can never be waived. Hon'ble Supreme Court in the case of *CIT vs Brathwaite & Co. Ltd. 201 ITR 343 (SC)* considered the issue regarding the requirement of period not less than 7 years appearing to proviso to rule 1(v) of Schedule II to the Companies Profit Surtax Act, 1964 Hon'ble Court held that the only interpretation which could be given to the expression during a period of not less than 7 years by the proviso is that the period should go beyond 7 years.

4.4 We also further place reliance on the decision of the *Bombay High Court in the case of CIT vs Iqbal & Co 13 ITR 154* in which the issue was whether the notice requiring the assessee to furnish the return of income within 30 days of the receipt of the notice as against the stipulated period of 'not less than 30 days' was a valid notice. Hon'ble Bombay High Court held notice to be invalid by holding that not less than 30 days means that there must be an interval of 30 clear days. The word 'within' the stated period means something less than the moment of expiration of stated period.
However, the *Special Bench (Delhi) in the case of Smt Krishna Verma vs ACIT 107 ITD 1* has taken the view against the assessee.

4.5 In the case of *CIT vs RamKunwar 141 ITR 85 Bombay High Court* held that defect in the notice is not a procedural defect but a failure to comply with a condition precedent to the assumption of jurisdiction. We also rely on the following decision in this regard:-

1. *Kishore Agarwal vs DCIT (ITSS appeal no 7 of 2001 dt 11.5.2005)*
2. *Smt Meera Agarwal & Anil Kumar Agarwal vs DCIT (ITSS appeal no 142 & 143, Delhi dt 9.2.2005)*
3. *Naveen Varma vs ACIT 100 ITD 73 (Delhi).*
4. *Vinod Kumar vs ACIT 98 TTJ 769 (Agra).*

In view of the aforesaid settled position of law, we request your honour to allow ground no. 7 of the assessee and cancel the assessment framed on the assessee.

5. G. NO. 8 – SURCHARGE

	Page No.	Para No.
AO's Order	N/A	
CIT's Order	4 – 5	8

Not pressed

6. GR. NO. 10 – COMMISSION ON CAPITAL GAINS

	Page No.	Para No.
AO's Order	21	2
CIT's Order	11	19

Addition is wrong for the following reasons:-

a. No evidence has been found for payment of such commission.

b. Recipient has not confirmed it.

c. CIT(A) has taken a very high rate.

d. It amounts to double taxation on the one hand CIT(A) has taken sale consideration at Rs 44,11,150/- and difference between sale consideration shown in the shape of LT loss & LT gain as undisclosed income. The commission shown would form part of the same and should be reduced from undisclosed income.

7. GR. No. 11 – COMMISSION ON CLIENT'S ENTRIES

	Page No.	Para No.
AO'S	21- 26	3 & onwards
CIT'S	11- 13	20 to 22

7.1 AO has informed that search was conducted at the premises of one Mr. Manoj Agarwal a Share broker. He was not doing any actual business of share dealing but was providing only accommodation entries through mediators. He compiled a list of transaction amounting to Rs 211,78,349/- and alleged that such transactions were executed through appellant. Assuming a commission rate of 3%, an addition was made for Rs 635,350/-

7.2 The CIT(A) upheld that such transaction was executed. However for want of evidence of commission rate, he reduced the addition to Rs 317,675/- applying a rate of commission of 1.5%.

7.3 No original document or record of Manoj Agarwal was produced but computation was made by AO. In the absence of the original record, it cannot be accepted what AO is stating is correct or not.

7.4 The statement of Manoj Agarwal extracted in the Asst. order does not state anywhere that commission was paid to the appellant.

7.5 Neither any of the so called beneficiaries have deposed that they were introduced to Manoj Agarwal by the appellant or he was paid any commission.

7.6 In the absence of grant of Mr. Manoj Agarwal's statement to the appellant and right of cross examination no cognizance can be taken of such document. Reliance is placed on the decision of the Supreme Court in the case of *Kishinchand Chellaram v CIT 125 ITR 713 (SC). Delhi HC* and also on the decision of the jurisdictional High Court in the case of *CIT v SMC Share Brokers Ltd 288 ITR 345 (Del).*

7.7 Appellant has furnished a statement denying receipt of any such commission, the said affidavit has been discarded without any cross examination. Reliance placed on *Mehta Parikh & CO. v CIT 30 ITR 181 (SC)*

7.8 Mr. Manoj Agarwal was acting as a Share broker. These days brokerage in share transaction varies from 0.05% to 0.5% depending upon delivery based transaction and forward transactions as well as considering volume of transaction. In such circumstances rate of commission is very high. The rate of commission in the case of sub broker or mediator has to be lower than of main broker and it is around 0.10%. Further we may point out that on page 8 & 9 of the assessment order the AO has reproduced the statement of mediator Mr. Praveen Mittal who has stated that he received commission @0.25%. Therefore in no case the rate can be more than this.

8. In respect of ground no 2 of Revenue's appeal, I rely on the order of the CIT(A)

***Proforma index of cases relied upon* BEFORE THE HONOURABLE ITAT,**

________ BENCH_______

In the matter of : ………… vs DCIT CC _________

Appeal Number : ITSS/ ____/ ____/ 2003 & ITSS/ _____/ ____/ 03

Block Period : 01.04.1990 to 25.05.2000

LIST OF CASES RELIED UPON

I. Assessment of block assessment can only be done on the basis of evidence found as a result of search

1. *CIT vs. Vikram A Doshi reported in 256 ITR 129 (Mumbai)*
2. *Bhagwati Prasad Kedia vs. CIT reported in 248 ITR 562 (MP)*
3. *CIT vs. Ravi Kant Jain reported in 250 ITR 141 (Delhi)*
4. *CIT vs. GOM Industries Ltd. reported in 257 ITR 78 (MP)*
5. *CIT vs. Shamlal Balaram Gurbani reported in 249 ITR 501 (Mumbai)*
6. *N.R.Paper and Board Ltd. vs. DCIT reported in 234 ITR 733 (Guj)*
7. *Sheela Aggarwal vs. DCIT reported in 106 Taxman (Tax Magazine) 227 (Del)*
8. *Ravikant Jain vs. ACIT reported in 67 TTJ 797 (Del)*
9. *Srinivasa Resorts Ltd vs. ACIT reported in 127 Taxman (Tax Magazine) 202 (Hyd)*
10. *Niles R.Shah vs. ACIT reported in 253 ITR(A.T) 0034 (Mad)*
11. *Ravi Prakash Aggarwal (HUF) vs. ACIT reported in 67 TTJ 234 (Del)*
12. *General Exporter vs. ACIT reported in 67 TTJ 119 (Del).*
13. *Shanti Rani vs. ACIT reported in 126 Taxman (Chandigarh) 62*
14. *Chitra Devi vs. ACIT reported in 77 ITJ 640 (Jodhpur)*
15. *Savitri Devi vs. ACIT reported in 76 ITJ 628 (Lucknow)*
16. *Savitri Devi vs. ACIT reported in 69 ITJ 712 (Nagpur)*
17. *Dolly farm's & Resort (P) Ltd vs. DCIT reported in 69 TTJ 821 (Del)*
18. *Essem Intra Port Services (P) Ltd vs. ACIT reported in 72 ITD 228 (Hyd)*
19. *Sundar agencies vs. DCIT reported in 63 ITD 245 (Mum)*
20. *P.Govinda Satynarayan vs. DCIT 98 TTJ (Visakha) 908*
21. *Madhavi Finvest Pvt Ltd vs ACIT 99 TTJ (Visakha) 933*
22. *I.Appala Raju vs ACIT 100 TTJ (Visakha) 438*

II Income declared in belated return is also not undisclosed income:

23. *B.K.Agarwal vs ACIT (2002) 76 TTJ 69 (Lucknow)*
24. *G. Kanagaraj v DCIT (2001) 73 TTJ 731 (Chennai)*
25. *Vidya Madanlal Malani v ACIT 69 TTJ 456 (Pune)*

26. *Amarnath Aggarwal vs DCIT (2000) 67 TTJ 551 (Del)*
27. *Nagin Das M. Goradia vs. DCIT (2004) 83 TTJ 151 (Mumbai D)*
28. *Suganchand C. Shah v. ACIT (2005) 149 Taxman 30 (Ahd Tribunal)*

III No addition can be made on the basis of DVO's report, if no adverse material is found during search:-

29. *Subash Mehra v DCIT (2000) 113 Taxman (Del.)(MAG) 79.*
30. *Indore Constructions (P) Ltd. v ACIT 71 ITD 128 (Ind.)*

IV No addition can be made if no opportunity is given to assessee for rebuttal or to cross examine the persons on whose statements the AO relies:

31. *Kishinchand Chellaram v CIT 125 ITR 713 (SC)*
32. *CIT v SMC Share Brokers Ltd 288 ITR 345 (Del)*
33. *ITO Vs. Rajiv Aggarwal, 139 TAXMAN 170 (SMC-1)*
34. *Sita Devi V ACIT, CC- 19 (1) N Delhi ITA No.387/D/2004 (unreported)*

V Issue of notice u/s 158BC invalid if shorter time given to assessee:

35. *Mir Iqbal Hussain vs. State of UP 52 ITR 625 (All)*
36. *CIT vs Ramsukh Motilal 27 ITR 54 (Mum)*
37. *Maneklal vs. Dr Prem Chand 1937 SCR 575*.
38. *CIT vs Brathwaite & Co. Ltd. 201 ITR 343 (SC)*
39. *CIT vs Iqbal & Co 13 ITR 154 (Bom)*
40. *CIT vs RamKunwar 141 ITR 85* (*Bombay)*
41. *Kishore Agarwal vs DCIT (ITSS appeal no 7 of 2001 dt 11.5.2005)*
42. *Smt Meera Agarwal & Anil Kumar Agarwal v DCIT (ITSS appeal no 142 & 143, Delhi dt 9.2.2005)*
43. *Naveen Varma vs ACIT 100 ITD 73 (Delhi).*
44. *Vinod Kumar vs ACIT 98 TTJ 769 (Agra).*

VI Levy of surcharge invalid:

45. *Merit Enterprises vs. DCIT, Central Circle 1, 101 ITD 1 (Hyderabad) (SB)*

VII Non consideration of affidavit

46. *Mehta Parikh & CO. v CIT 30 ITR 181 (SC)*