

# Practical Aspect of Filing of Appeals and Appearances before CIT(A) and ITAT

# Filing of appeal before CIT(A) – Sections 246A and 248

- Section 246A provides for filing of an appeal by an assessee aggrieved by the order passed by the Assessing Officer,
- Orders which are appealable are, such as orders passed by AO under sections 143(1), 143(3), 144, 153, 154, 201, 270A, 271 etc.
- Section 248 provides for filing of appeal against order passed by AO under section 195 determining tax deductible at source while making payment to a foreign company or Non-resident but deductor claims that no tax or tax at lower rate was required to be deducted.

# Form of appeal, Fee and limitation –

## Section 249 and Rule 45

- An appeal to the Commissioner (Appeals) has to be filed in the prescribed form, Which is Form No. 35 [Rule 45(1)].
- The appeal is to be filed within 30 days from the date of service of relevant order or payment of tax. In case of appeal where an application under section 270AA was filed and same is rejected, period from filing the application to intimation of rejection order is to be excluded.
- The appeal is to be filed electronically after 1.03.2016.
- Appeal is to be verified by the person who is authorized to verify the return u/s 140 of the Act.
- Tax payable by the assessee has been duly paid.

# Form of appeal, Fee and limitation –

## Section 249 and Rule 45

- Appeal shall be accompanied by a fee of –
  - Rs.250/- where total income as computed by the AO is 1 lacs or less;
  - Rs.500/- where total income as computed by the AO is more than 1 lacs but not more than 2 lacs;
  - Rs.1,000/- where total income as computed by the AO is more than 2 lacs;
  - where the subject matter of an appeal is not covered under clauses (i), (ii) and (iii), two hundred fifty rupees

# Particular to be given in Form 35

- i. Personal information**, like name, PAN, address, phone no., e-mail id etc. These details are automatically captured from last return filed by an assessee. In case there is any change same is to be done manually.
- ii. Order against which appeal is filed** such as–
  - a) section under which order is filed;
  - b) order no. / DIN
  - c) date of order
  - d) date of service of order/notice of demand
  - e) Income-tax Authority passing the order appealed against.
- iii. Pending appeals** as on the date of filing of appeal.

# Particular to be given in Form 35

- iv. Appeal details** such as section under which appeal is filed, amount of income assessed, total addition to income, amount of additions / disallowances disputed in appeal, amount of disputed demand or amount of penalty disputed in case appeal is against penalty order.
- v. Details of taxes paid:-** under this head details of tax paid as per return etc are to be given.
- vi. Statement of facts, grounds of appeal and additional evidence:-**
  - a) Statement of fact, not exceeding 1000 words is to be given in form.
  - b) Grounds of appeal – for each issue separate ground should be taken
  - c) Additional evidence – form also ask for details of additional evidence.

# Particular to be given in Form 35

**vii. Appeal filing details:-** under this head details such as delay in filing appeal, reason for delay if any, details of payment of fee and address for correspondence are to be given.

## Documents to be uploaded along with Form 35

- Order against which appeal is being filed.
- Notice of Demand

# Drafting of Statement of Facts

- Should be concise
- Should contain all relevant facts
- Should not be argumentative

# Drafting of Grounds of Appeal

- Grounds should be drafted and given in the form in the format
- Ground of general nature challenging determination of income and raising demand should be raised
- Grounds covering all the issues should be raised
- One ground should be for one issue
- Ground should be clear and raise the relevant legal or factual issue
- Ground relating to principle of natural justice, such as not providing opportunity for submitting details or opportunity for hearing or not considering evidence or documents submitted should be raised

# Drafting of Grounds of Appeal

- In case AO has not considered facts or evidence, specific ground for same should be raised
- In case AO has relied upon any information or evidence, copy of which was not provided, specific ground for same should be raised
- In case AO has relied upon statement of any person, ground for not providing opportunity for cross examination should be raised.
- Ground for initiation of penalty proceedings or charging of interest should also be raised
- Lastly a general ground for modification or admission of additional ground should also be raised

# Power to condone the delay in filing appeal [Section 249(3)]

- The Commissioner (Appeals) may admit an appeal after the expiration of the limitation period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.
- Courts have been of the view that appellate authorities should be liberal in condoning the delay, but assessee is duty bound to show sufficient cause.
- Assessee should mention convincing reason in the Appeal Form for condonation of delay.
- Justification of sufficient cause depends on the facts of the case.

# Stay Application before CIT(A)

- Power to stay demand is not specifically provided in the section. Courts have, however, taken a view that an Appellate Authority has inherent power to stay demand or pass any other order to give necessary relief in the case, when appeal is pending before it.
- Case Law:
  - MK Mohammad Kunhi (1969) 71 ITR 815 (SC)
  - V.N. Purushothaman v. CIT (1984) 149 ITR 120 (Ker)
  - Prem Prakash Tripathi v. CIT (1994) 208 ITR 461 (All)
  - Tin Manufacturing Company of India v. CIT (1995) 212 ITR 451 (All)
  - Debasish Moulik v. Dy.CIT (1998) 231 ITR 737 (Cal)

# Filing of additional evidence before CIT(A)

## [Rule 46A]

- As a general principle during the course of appellate proceedings no new / additional document could be produced.
- Rule 46A provides certain circumstance under which additional documents could be produced before Commissioner (Appeal) during appellate proceedings. These circumstances are as under:
  - a) where the Assessing Officer has refused to admit evidence which ought to have been admitted ; or
  - b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Assessing Officer ; or

# Filing of additional evidence before CIT(A)

## [Rule 46A]

- c) where the appellant was prevented by sufficient cause from producing before the Assessing Officer any evidence which is relevant to any ground of appeal ; or
- d) where the Assessing Officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.
- Specific application is to be filed before CIT(A) in duplicate alongwith copy of documents to be submitted justifying admission of same.

**CIT(A) has to follow principles of natural justice and if circumstances warrant admission of additional evidence, he should admit the same.**

# Filing of additional evidence before CIT(A)

## [Rule 46A]

- Commissioner Appeal must:-
  - i. records in writing the reasons for its admissions.
  - ii. allow a reasonable opportunity to the Assessing Officer to –
    - a) examine the evidence or document and
    - b) to produce any evidence or document in rebuttal of the additional evidence produced by the appellant.
- Section 250(4) empowers the Commissioner (Appeal) to make further inquiry or call for additional documents, as he may require.

# Proceedings Before CIT(A)

- CIT(A) is required to fix the case for hearing.
- CIT(A) can allow the assessee to raise an additional ground.
- Preparation of Paper Book.
- Compilation of case law.
- Preparation of Written Submissions.
- Arguing the appeal before CIT(A).

## Order to be passed by CIT(A) in writing

- CIT(A) is required to record all facts and contentions.
- CIT(A) is required to adjudicate each of the ground.
- CIT(A) can confirm, reduce, enhance or annul the assessment.
- Order is to be communicated to Assessee and also to concerned Commissioner.
- CIT(A) can not dismiss the appeal, even on the ground of non prosecution.

# E-Proceedings for Appeals

- Sub-sections (6B) and (6C) inserted vide FA,2020 empowering the government to make necessary procedure for e-proceedings of appeals before CIT(A)

# Filing of Application for rectification of order (Section 154)

- Provisions of Section 154 of the Act for rectification are applicable to order of CIT(A) also.
- Application can be filed if CIT(A) has not recorded any fact or has mis-recorded the same
- Application can also be filed if any case law or legal provision has not been considered
- Application can also be filed if any ground has not been adjudicated
- Application can be filed within 4 years from end of the financial year in which order has been passed.

# Appeal before ITAT

# Filing of appeal before ITAT – Section 253

## (1) & (2)

- Sub-section (1) of section 253 provides for filing of appeal by the assessee and sub-section (2) empowers department to file appeal.
- Appeal can be filed against the orders specified in Sub-section (1), which includes:
  - i. Orders passed under section 250 or 154 by CIT(A) in appeal filed by the assessee against Assessment orders.
  - ii. Order passed by CIT under section 263.
  - iii. Order passed by CIT in case of charitable trusts under section 12AA/ 12AB/ 80G.
  - iv. Order passed by AO pursuant to directions of DRP

## Time limit for filing appeal and Cross-objection – Section 253(3), (4) & (5)

- Appeal is to be filed within 60 days from the date of communication of the relevant order to the assessee or to the Commissioner.
- Cross-objections can be filed within 30 days from the date of receipt of notice of filing of appeal by the other party, notwithstanding that appeal might not have been initially preferred against the relevant order.
- ITAT has the power to condone the delay and admit appeal or Cross-Objections after the specified period, if there are sufficient reasons for delay.

## Form of appeal, cross-objection and fee – Section 253(6) and Rule 47

- An appeal shall be made in Form No. 36.
- A memorandum of cross-objections shall be made in Form No. 36A.
- Appeal or Memorandum of Cross-Objections shall be signed by the person authorised under section 140 of the Act.
- Fee for filing the appeal is payable by the Assessee as under:
  - i. where the total income as computed by the Assessing Officer is upto Rs.1 lac Rs.500/-,

## Form of appeal, cross-objection and fee – Section 253(6) and Rule 47

- ii. where the total income is between Rs.1 lac to Rs.2 lacs, Rs.1,000/-,
- iii. where the total income is more than Rs.2 lacs, 1% of the assessed income, subject to a maximum of Rs.10,000/-
- iv. where the subject matter of an appeal relates to any matter Rs.500/-

# Contents of memorandum of appeal – Rule 8 of A.T. Rules, 1963

- Every memorandum of appeal shall be:
  - Written in English,
  - Set forth concisely the grounds,
  - Grounds of appeal have to be without any argument or narrative; and
  - Ground should be numbered consecutively.

# What to accompany memorandum of appeal – Rule 9 of A.T. Rules, 1963

- Every memorandum of appeal shall be in triplicate and shall be accompanied by –
  - i. two copies (at least one of which shall be a certified copy) of the order appealed against;
  - ii. two copies of the order of the Assessing Officer;
  - iii. two copies of the grounds of appeal before the first appellate authority and two copies of the statement of facts, if any, filed before the said appellate authority;
  - iv. if appeal relates penalty order, the memorandum of appeal shall also be accompanied by two copies of the assessment order;
  - v. If appeal relates to order u/s 143(3) read with section 144A, the memorandum of appeal shall also be accompanied by two copies of the directions u/s 144A.

## **Change of name or address after filing appeal before ITAT – Rule 9A of A.T. Rules 1963**

- In case of change of name or address of the parties appellant should file revised Form No. 36 duly filled in giving the new address of the party, duly verified in the same manner as original appeal is filed.
- The revised Form No. 36 shall specify the appeal No. as originally assigned or, in the event of non-availability of such No., the date of filing of the appeal shall be mentioned in the covering letter.

# Filing of Paper Book before ITAT – Rule 18 of A.T. Rules, 1963

- If the appellant or respondent proposes to refer or rely upon any documents or papers, which have been before lower authorities same shall be filed in paper book form and Paper Book is to be:
  - i. properly indexed and each page should be numbered and should be certified to be true copy,
  - ii. legibly written or type-written in double space or printed,
  - iii. Xerox copy of a document should be legible,
  - iv. Should not contain any document which was not before lower authorities and a certification to this effect is to be made,
  - v. filed with opposite party at least a week before the date of hearing,
  - vi. to be submitted in the Registry of ITAT in duplicate, with proof of service to other party at least a day before the date of hearing.

## Filing of Additional evidence before ITAT – Rules 29, 30 and 31 of A.T. Rules, 1963

- The parties to the appeal shall not be entitled to produce additional evidence either oral or documentary before the Tribunal without leave of the Hon'ble Bench,
- Separate application is to be made for admission of additional evidence with reasons and justification for admission of same and relevance to the grounds of appeal and necessary documents are to be submitted by way of separate Paper Book, duly indexed and numbered,
- The Tribunal, for reasons to be recorded, may allow such document to be produced or witness to be examined,

## Filing of Additional evidence before ITAT – Rules 29, 30 and 31 of A.T. Rules, 1963

- 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, it can direct the parties to produce the same,

**Admission of additional evidence depends upon facts of the case and it is matter of discretion of ITAT**

# Additional evidence - Case law

## ➤ CIT v. Rao Raja Hanut Singh (2001) 252 ITR 528 (Raj)

“Having given our thoughtful consideration, we are of the opinion that the law is well settled by a catena of decisions of the Supreme Court that production of additional evidence at the appellate stage is not a matter of right to the litigating party but within the discretion of the court which is to be exercised judiciously. The question whether the discretion has been exercised judiciously or not cannot obviously be ordinarily a question of law unless it can be disputed or found that in exercising that discretion, the Tribunal has ignored some well settled legal principle in the matter of exercise of such discretion or has acted so grossly or arbitrarily that no authority trained and disposed to adjudicate the rights of the litigating parties as a judicial or quasi-judicial Tribunal would exercise such discretion in that manner.”

# Additional evidence - Case law

## ➤ CIT v. Text Hundred India Pvt. Ltd. (2013) 351 ITR 57 (Del)

“In the present case, the reason which was given by the assessee in support of its plea for admission of additional evidence was that the assessee could not produce these records before the lower authorities due to non-retrievability of e-mail on the date because of technological difficulties. This reason was specifically mentioned in the application filed. No reply to this application was filed refuting this averment, though the Departmental representative had opposed the admission of the additional evidence. The ground pleaded by the assessee was not confronted. - Rule 29 of the Income-tax (Appellate Tribunal) Rules categorically permits the Tribunal to allow such documents to be produced for any substantial cause.”

# Admission of Additional Ground of Appeal

## – Rule 11 of A.T. Rules, 1963

- The appellant can raise an additional ground before the ITAT which he has not taken in Form 36 with the leave of the tribunal.
- ITAT has wide powers in this regard.
- Legal grounds are generally to be admitted and adjudicated.
- Party raising the additional ground has to file an application giving justification and case has to be argued firstly for admitting the ground, before same is argued on merits.
- In certain circumstances legal ground can also be raised orally during the course of hearing and if there are justifiable reasons, same needs be admitted.
- Case law in regard to powers of ITAT to admit additional ground is well settled and in this regard reference can be made to following decisions:-

# Additional Ground of Appeal – Case Law

- National Thermal Power Company Limited v. CIT (1998) 229 ITR 383 (SC)

“Under section 254 of the Income-tax Act, the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, we do not see any reason why the assessee should be prevented from raising that question before the Tribunal for the first time, so long as the relevant facts are on record in respect of that item. We do not see any reason to restrict the power of the Tribunal under section 254 only to decide the grounds which arise from the order of the Commissioner of Income-tax (Appeals).”

# Additional Ground of Appeal – Case Law

- Thyssenkrupp Elevator (India) (P) Ltd. v. ACIT, (2014) 112 DTR (Del.) (Trib.) 265

Admissibility – Assessee having discovered its right to claim depreciation in terms of section 32 on the 'goodwill' only in pursuance of the ruling of the apex Court this claim could not have been raised by the assessee at the earlier stage, therefore, additional ground raised by the assessee before the Tribunal claiming depreciation on goodwill which is separately indicated in the balance sheet is admitted.

# Additional Ground of Appeal – Case Law

- M/S VMT Spinning Co. Ltd. v. CIT (2016) 389 ITR 326 (P&H)

“Rule 11 in fact confers wide powers on the Tribunal, although it requires a party to seek the leave of the Tribunal. It does not require the same to be in writing. It merely states that the appellant shall not, except by leave of the Tribunal, urge or be heard in support of any ground not set forth in the memorandum of appeal. In a fit case it is always open to the Tribunal to permit an appellant to raise an additional ground not set forth in the memorandum of appeal. The safeguard is in the proviso to Rule 11 itself. The proviso states that the Tribunal shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of being heard on that ground.

Contd...

# Additional Ground of Appeal – Case Law

Thus even if it is a pure question of law, the Tribunal cannot consider an additional ground without affording the other side an opportunity of being heard. We venture to state that even in the absence of the proviso it would be incumbent upon the Tribunal to afford a party an opportunity of meeting an additional point raised before it. Moreover, even though Rule 11 requires an appellant to seek the leave of the Tribunal, it does not confine the Tribunal to a consideration of the grounds set forth in the memorandum of appeal or even the grounds taken by the leave of the Tribunal. In other words the Tribunal can decide the appeal on a ground neither taken in the memorandum of appeal nor by its leave. The only requirement is that the Tribunal cannot rest its decision on any other ground unless the party who may be affected has had sufficient opportunity of being heard on that ground.”

# Rectification Application before ITAT – Section 254(2) r.w.r. 34A of A.T. Rules, 1963

- The Appellate Tribunal may, at any time within six months from the end of the month in which the order was passed with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1), and shall make such amendment if the mistake is brought to its notice by the assessee or the Assessing Officer.
- Prior to 01.06.2016 period for rectification was 4 years from the date of order.
- Where an amendment is adverse to any of the parties notice is to be given and a reasonable opportunity of being heard is to be provided.

## Rectification Application before ITAT – Section 254(2) r.w.r. 34A of A.T. Rules, 1963

- Application for rectification, called Miscellaneous Application, shall clearly and concisely state the mistake apparent from the record of which the rectification is sought.
- Application shall be in triplicate and the procedure for filing of appeals will apply mutatis mutandis to the process of filing such applications.
- Application shall be accompanied by a fee of fifty rupees.

# Stay Application before ITAT – Section 254(2A) r.w.r. 35A of A.T. Rules, 1963

- Power to stay a demand against which appeal is pending before ITAT in its inherent power.
- Proviso to Section 254 (2A) provides specific powers to stay any proceeding, which includes power to stay recovery of demand.
- Stay, however, has to be for a period not exceeding 180 days from the date of such order, which can further be extended but total period of stay will not exceed 365 days.
- FA, 2020 has provided that stay shall be granted subject to the condition that the assessee deposits not less than twenty per cent of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnishes security of equal amount in respect thereof.

## Stay Application before ITAT – Section 254(2A) r.w.r. 35A of A.T. Rules, 1963

- Tribunal is also required to dispose of the appeal within the said period of stay.
- It has also been provided that if such appeal is not so disposed of within the period of 180 days or within the periods extended or allowed, which shall not, in any case, exceed 365 days, the order of stay shall stand vacated after the expiry of such period or periods, even if the delay in disposing of the appeal is not attributable to the assessee

# Stay Application before ITAT – Section 254(2A) r.w.r. 35A of A.T. Rules, 1963

- Procedure for filing of stay application - Rule 35A of A.T. Rules, 1963:
  - i. Every application for stay of recovery of demand of tax, interest, penalty, fine, estate duty or any other sum shall be presented in triplicate 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 headquarters of a Bench or Benches having jurisdiction to hear the appeal in respect of which the stay application arises.
  - ii. Every application shall be neatly typed on one side of the paper and shall be in English and shall set forth concisely the following:-

# Stay Application before ITAT – Section 254(2A) r.w.r. 35A of A.T. Rules, 1963

- a) short facts regarding the demand of the tax, interest, penalty, fine or any other sum, recovery of which is sought to be stayed ;
- b) the result of the appeal filed before the CIT(Appeals) , if any;
- c) the exact amount of tax, interest, penalty, fine, or any other sum demanded, as the case may be, and the amount undisputed therefrom and the amount outstanding;
- d) the date of filing the appeal before the Tribunal and its number, if known;
- e) 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);

## Stay Application before ITAT – Section 254(2A) r.w.r. 35A of A.T. Rules, 1963

- f) reasons in brief for seeking stay ;
  - g) whether the applicant is prepared to offer security, and if so, in what form ;
  - h) prayers to be mentioned clearly and concisely (stating exact amount sought to be stayed);
  - i) the contents of the application shall be supported by an affidavit sworn by the applicant or his duly authorised agent ;
- iii. Application shall be accompanied with a fee of Rs.500/- [Section 253(7)]

# Stay Application – Case Law

## ➤ MK Mohammad Kunhi (1969) 71 ITR 815 (SC)

“In our opinion the Appellate Tribunal must be held to have the power to grant stay as incidental or ancillary to its appellate jurisdiction. ----- . It could well be 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 proceeding as will prevent the appeal if successful from being rendered nugatory.”

# Stay Application – Case Law

- Dy.CIT v. Vadofone Essar Gujarat Limited (2015) 376 ITR 23 (Guj)
  - Revenue challenged the impugned orders passed by the Tribunal extending stay of demand granted earlier beyond the period of 365 days and in the present case, for approximately 1000 days.
  - By section 254(2A) of the Act, it cannot be inferred a legislative intent to curtail/withdraw powers of the Appellate Tribunal to extend stay of demand beyond the period of 365 days.
  - Stay beyond the period of total 365 days would always be subject to the subjective satisfaction by the learned Appellate Tribunal that delay in disposing of the appeal is not attributable to the appellant / assessee.

# Stay Application – Case Law

- on expiry of every 180 days, the appellant / assessee is required to make an application to extend stay and while disposing of such application, the learned Appellate Tribunal is required to pass a speaking order after having satisfied that the assessee / appellant has not indulged into any delay tactics.
- The object and purpose of section 254(2A) of the Act is to see that all efforts should be made by the Appellate Tribunal to dispose of such appeals in which stay has been granted as far as possible within total period of 365 days.

# Stay Application – Case Law

## ➤ Pepsi Foods Pvt. Ltd. (Now Merged With Pepsico India Holding Pvt. Ltd) v. ACIT (2015) 376 ITR 87 (Del)

Constitutional validity of the third proviso to Section 254(2A) challenged - discrimination, based on an impermissible or invalid classification - grant extension of stay beyond 365 days - Held that:- Assessors who, after having obtained stay orders and by their conduct delay the appeal proceedings, have been treated in the same manner in which assessors, who have not, in any way, delayed the proceedings in the appeal. The two classes of assessee are distinct and cannot be clubbed together. This clubbing together has led to hostile discrimination against the assessors to whom the delay is not attributable. It is for this reason that we find that the insertion of the expression – ‘even if the delay in disposing of the appeal is not attributable to the assessee’ – by virtue of the Finance Act, 2008, violates the non-discrimination clause of Article 14 of the Constitution of India.

# Appearance and arguing the appeal before ITAT

- Appeal has to be firstly argued by the Appellant.
- Argument should start with any additional ground and / or additional evidence, if required to be admitted. Case should be made out for admission of same. Hon'ble bench will hear the facts and the reason for seeking admission of additional ground or evidence and after giving opportunity to other side will take decision on the same. ITAT can either pronounce decision immediately and proceed further to hear the appeal or can adjourn the appeal to be take up later on after passing the order on admission of additional ground / evidence.

# Appearance and arguing the appeal before ITAT

- While commencing the arguments on appeal, firstly reference should be made to grounds raised in Memorandum of appeal and in case any ground is not to be pressed, it should be pointed out or in case there are multiple grounds on the same issue, it should be pointed out that which is the primary ground.
- In case any issue is covered by the orders in the case of appellant for earlier years or by the order of High Court or the Supreme Court, it should be pointed out.
- In case there is a primary legal issue, such as validity for re-opening of assessment, first of all that ground should be argued.

# Appearance and arguing the appeal before ITAT

- While arguing a ground firstly facts relating thereto should be explained, reference to documents supporting the facts should be made, how the AO and CIT(A) have dealt with the issue and what is wrong in their order – factually and legally, should be pointed out. Then case law in support of the case should be pointed out and copies of relevant decisions should be given.
- After the appeal is argued on behalf of the Appellant, case is then argued on behalf of the Respondent and the points raised on behalf of the Appellant have to be factually and legally rebutted. Case law in support of the case of Respondent have to be given.

## Appearance and arguing the appeal before ITAT

- Thereafter, again counsel for the Appellant gets an opportunity to give rejoinder and given his arguments in rebuttal of contentions raised on behalf of the Respondent. Normally, no new argument can be raised in rejoinder.
- After hearing arguments order is normally reserved by the Hon'ble Bench and order is passed and pronounces subsequently.

# Powers of ITAT- Sections 254 and 255

- ITAT can pass the order after hearing both the parties on the appeal as it think fit.
- Power of ITAT are restricted to subject matter of appeal, including additional ground admitted.
- No power of enhancement.
- Appeal is to be heard by a bench consisting of two members, one Accountant Member and one Judicial Member.
- Appeal in case of assessee, whose total income computed by AO was upto Rs. 50 lac can be decided by a Single Member.

# Powers of ITAT- Sections 254 and 255

- When there is difference of opinion between two members, President can refer the matter to Third Member and case will be decided by majority.
- President can constitute Special Bench for hearing important matter involved in number of appeals.
- Orders of ITAT are final on factual aspect; appeal on substantial questions of law are only entertained by High Court under section 260A of the Act.

# Thank You

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