

*Income -tax Appellate Tribunal is a Court. Section 288 of the Income -tax Act, 1961 deals with appearance by Authorised Representative. In the recent it has been observed that many young lawyers and Chartered Accountants appear before the Honourable Income tax Appellate Tribunal. They can make better representation if they follow check list - Appellate Tribunal – Check List – Practical Guide for filing appeal and Representation. This was published in the Publication of ITAT Bar Association “Income Tax Appellate Tribunal – A Fine Balance, law, practice, procedure and conventions - Frequently asked questions”. Revised edition, December, 2017 P. 246 to 250.*

We are of the honest opinion that if representative follow the check list will help the Income tax Appellate Tribunal for quick disposal of appeals without wasting precious time of the Court.

Also refer: ***How to be a good advocate & Full fil Expectations of Courts & Clients: Hon’ble Justice Akil Kureshi (Rtd)***  
***Practical guide to appearing before the Income -tax Appellate Tribunal by Dr. K. Shivaram Senior Advocate***  
***How can a young professionals became successful in practice? Top lawyers revel secrets***

***Editorial Board***

## **Appellate Tribunal – Check List – Practical Guide for filing appeal and Representation**

1. The order received from the First Appellate Authority shall be verified properly to ensure that all the grounds of appeal including any additional grounds of appeal have been disposed of.
2. If there is any mistake in the order or if the CIT(A) or Commissioner has not dealt with any particular ground or grounds, it is desirable that Rectification Application may be filed at the earliest.
3. Note the date on which the order of the Appellate Authority was communicated so as to file the appeal within time; i.e., within 60 days of the receipt/service of the order.
4. The Tribunal is empowered to condone the delay in filing an appeal and admit the appeal filed beyond the prescribed time limit, if good and sufficient reasons exist. Hence, if there is a delay in filing of appeal, file the application for condonation of delay with supporting evidence like Affidavit, Certificate, etc. along with the appeal.
5. If it is the last day of filing the appeal, the same can be filed at the Tribunal's office in Mumbai even in respect of appeals required to be filed at Delhi, Ahmedabad or any other place. The Registry at Bombay will forward the same to places of jurisdiction.
6. Fees for filing appeal before the Tribunal can be paid in any challan applicable to respective assessee by mentioning in the challan that the payment is for Tribunal fees. If it is the last day, Tribunal fees can be paid by cash at the office of the Tribunal.
7. The appeal shall be filed in triplicate by attaching the following documents:
  - a) Form No. 36 duly filled in and signed by the person as specified in section 140 of the I. T. Act, 1961.
  - b) Grounds of Appeal.
  - c) Copy of the order appealed against and one copy should be certified by the assessee or Authorised Representative of the assessee.

- d) Copy of the order of the Assessing Officer, certified by assessee or authorized representative.
  - e) Copy of the grounds of appeal and statement of facts filed before the First Appellate Authority.
  - f) Counterfoil of the challan for the payment of fees and one copy shall be original.
  - g) If the appeal is against the Penalty order under section 271(1)(c), copy of the Assessment Order shall also be filed.
  - h) If the appeal is against the order of Dispute Resolution Panel (DRP), the order of the Transfer Pricing Officer must also be filed.
8. As per Rules 6 and 7 of the Appellate Tribunal Rules, 1963, the Memorandum of Appeal shall be submitted to the Registrar. However, in case of emergency, the same can be handed over to the Registrar at his residence or to the members, wherever they are available.
9. Who may be joined as Respondent in an appeal filed by the assessee?  
As per Rule 13 of the ITAT Rules, in an appeal filed by an assessee under section 253(1) of the Act, the Assessing Officer concerned shall be made a respondent to the appeal. When appeals are filed against the order of CIT(A), the respondent in Form No. 35 has to be respective Assessing Officer. On many occasions it is seen that the assessee writes the name of the Commissioner (Appeals) who has passed the impugned order as respondent. When an appeal is against the order of Commissioner under section 263, the respondent shall be the Commissioner.  
However when an appeal is filed u/s. 253(1)(c), against the order of the commissioner, the registry insists that the commissioner be made as the respondent in such a case and not the Assessing Officer.
10. Authorized representative cannot sign the appeal or cross objection. Only the person authorized u/s. 253(3)(b) read with Rule 47 may have to be complied with. In case of the Company, only Managing Director is authorized to sign the appeal and cross objection. If there is no Managing Director, any director can sign the appeal or cross objection. When an appeal is signed by Managing Director, it is desirable to mention in the covering letter or in the form stating that there is no Managing Director. In case the Managing Director or Director is not available, it can be signed by

authorized representative and as soon as the Managing Director or Director resumes office, his signature may be obtained and revised form may be filed with proper explanation.

11. In case any affidavit is filed, it is to be seen whether it is on a proper form and duly stamped.
12. If the grounds of appeal are separately filed, they should be signed by the Appellant. They should be concise and serially numbered.
13. In a penalty appeal preferred under Income-tax Act, the following information is to be called for in the memorandum at App. VII (a) (i) within the prescribed period:  
Whether any quantum appeal/appeals is/are pending before the Appellate Assistant Commissioner (Appeals) concerned pertaining to the assessment year to which the penalty appeal relates;  
Whether the aforesaid quantum appeal filed before the Appellate Assistant Commissioner (Appeals) has been disposed of. If so, the date of filing of the quantum appeal before the Tribunal may be intimated.
14. An appeal received by post shall be deemed to be received on the date on which it is received at the Tribunal office.
15. As per Rule 18 of the Appellate Tribunal Rules, the appellant shall file paper book in triplicate at least 7 days before the date of hearing of the appeal. The paper book shall contain documents or statements of witnesses and other papers referred to or submitted before the Assessing Officer or CIT(A), on which the appellant would like to rely. Each paper should be certified as a true copy by the party filing the same; i.e., by the assessee or his authorised representative.
16. If the assessee in respect of whom appeal is to be preferred is dead, then the assessee's legal heirs should be brought on record. The death certificate along with an affidavit should be filed with the Registry by the legal heirs.
17. When there is change of address, a revised form may be filed and the copy may be forwarded to the Assessing Officer.

18. When there is change in name and merger of Companies, a revised form may be filed and may be intimated to the Assessing Officer.
19. In case of departmental appeal, if the name is changed after the order of CIT(A) or the Company is merged, the assessee must inform the Assessing Officer to change the name and also the copy of the said letter may be filed with Registrar.
20. In case of authority letter/Vakalatnama, it may be desirable to file in advance, with the Registrar, and obtain the acknowledgment. Without proper authorization or Vakalatnama, it may not be advisable to appear in the matter.
21. In case the matter is before single member and only one copy of the paper book was filed before the Bench, if the matter is transferred to a division Bench, then the assessee must carry one extra copy of paper book to be handed over to the Member at the time of hearing. It may be desirable to file an extra set of paper book as soon as the board is published and the matter is transferred to division Bench.
22. It is always desirable to carry at least one set of extra paper book so that if the paper book already submitted was misplaced or not kept on record, the same can be furnished at the time of hearing.
23. As soon as the acknowledgment is received, it has to be read thoroughly. If any defects are pointed out by the Registrar, the same must be rectified at the earliest.
24. Verify with the assessee whether any representative has appeared or filed Vakalatnama in the said matter. If yes, then a 'no objection' may be required to be obtained before appearing in the matter.
25. If possible, it may be desirable to ask the assessee to bring the original record or file in respect of the issues to be argued. At some occasion, member may desire to see the original records.

26. When there is an appeal by an assessee and the department or cross objection for the same assessment year:

In *CST v. Vijay Int. Udyog (1985) 152 ITR 111 (SC)*, the Supreme Court held that when the assessee and the department are in appeal against the same order, both the appeals must be clubbed together. The assessee can find out from the website of the Tribunal ([www.itat.nic.in](http://www.itat.nic.in)), as to whether the department is in appeal or not. If an application is made in advance, the appeals are heard together.

27. **Rule 27 Application**

It may be desirable to file in advance so that the other side will have an opportunity to meet the contention of the assessee.

28. **Additional evidence**

Whenever additional evidence is filed before the Bench, the same should be with proper application, explaining the reasons why the same could not be filed before the lower authorities. In certain circumstances, it can be supported by an affidavit. The additional evidence may preferably be in paper book No. 2 and the same should be continuously numbered from the paper book No. 1 which was filed. When the High Court sets aside the matter to the Tribunal, the parties concerned should make an application to the ITAT enclosing copy of order, to fix the matter for hearing before ITAT.

**III. Filing of Memorandum of Cross Objections**

1. The respondent may file a memorandum of cross objection against the order of the First Appeal on receiving the notice of appeal filed by the other party.
2. The memorandum of cross objection must be filed in prescribed Form No. 36 A within 30 days of the receipt of the notice of the appeal filed by the other party.
3. No Tribunal fee is payable in respect of appeal filed as Cross Objection.
4. Where the assessee goes in appeal before CIT(A), let's say on 5 to 6 grounds, and he decides in favour of the assessee only on one particular ground, and has not given any finding on other grounds agitated by the assessee, it would be advisable to take all the issues in the Cross Objection.

**Source - A Fine Balance, law, practice, procedure and conventions- Frequently asked questions. Revised edition, December, 2017 P. 246 to 250.**